
(2006) 08 AHC CK 0036

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 15165 of 2006

Sujeet Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2)

Citation : (2006) 3 ACR 3332

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : A.B.L. Gaur and Ram Gopal Tripathi, for the Appellant; A.K. Nigam, Addl. S.G., H.C. Pathak and Arvind Tripathi, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.K. Misra, J.—By the instant petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the impugned detention order dated 3.12.2005, passed by the District Magistrate, Mau, u/s 3(2) of the National Security Act.

2. In the grounds of detention, Annexure-1 to the supplementary-affidavit, it is stated that the Petitioner was District President of Hindu Yuva Vahini and was habitually involved in flaring and spreading communal riots. On 14.10.2005 at about 8 p.m., the Petitioner alongwith hundreds of supporters, some of whom were habitual criminals, shouted slogans "Jai Sri Ram" and gave speech impregnated of inciting communal frenzy. The supporters of the Petitioner looted houses of many Muslims and ablazed shops and houses. The members of police force deployed in the area were very few and the number of rioters was much higher. The situation became out of control. People ran hither and thither. When a large contingent of police force from adjoining district was called for and deployed, then only the situation could be controlled. The riot spread in the area and the situation became alarming. The public order of the district was badly

disturbed. Atmosphere of fear and terror prevailed. Out of panic, shops were closed and people remained inside. Curfew had to be imposed to control the situation. The situation continued to be tense.

3. We have heard Sri A. B. L. Gaur, learned senior advocate assisted by Sri R. G. Tripathi for the Petitioner, learned A.G.A. and Sri H. C. Pathak for the Union of India.

4. Counter and rejoinder-affidavits have been exchanged.

5. The sole ground pressed by the learned Counsel for the Petitioner is that the incident could only relate to law and order and not public order. He contended that the ground taken up by the detaining authority for passing impugned detention order against the Petitioner is that by the act of the Petitioner, the communal riot spread in the district and public order was badly affected, but the fact is that the curfew was imposed in the city from before the present incident involving the Petitioner. On this basis, he argued that the Petitioner was not responsible for spreading communal riot in the district. He emphasized on this fact and argued that the incident related to the question of law and order only and had nothing to do with public order.

6. On the other hand, Sri Arvind Tripathi, learned A.G.A. argued that the aim of the Petitioner clearly was to spread communal riot in the district and its effect was clearly prejudicial to the maintenance of public order and to disturb even tempo of the society. Giving speech of communal hatred and burning houses and shops of a particular community gave rise to spread of communal riot in the district and it was a clear case of public order and not of law and order. Additional forces had to be deployed in the locality to maintain public order and restore confidence of the general public. Curfew was imposed to prevent the spreading of communal riot.

7. Indeed, the intensity of the complained act and its impact on the society has to be considered to ascertain as to whether it is a question of law and order or public order. It has to be considered as to what was the reach of the incident on the society. Spreading communal frenzy clearly affects public order and it cannot be termed simply a law and order problem. It has come in the grounds of detention that the Petitioner who was District President of a Hindu organization alongwith his hundreds of supporters, some of whom were hardened criminals, made speech to flare up communal hatred and burnt shops and houses of a particular community. Large number of police force was deployed and curfew was imposed in the area to control the situation. In these circumstances, by no stretch of imagination, it can be said that the Petitioner's act gave rise only to law and order problem. For the sake of argument, even if it is assumed that the curfew had already been imposed in the district from before the present incident, then it was the duty of every good citizen to maintain peace and communal harmony and not to give inciting speech to flare the communal riot.

8. Distinction between "law and order" and "public order" is one of degree and

extent of the reach of the act in question upon society. If detenu's acts have any impact upon local community or disturb the even tempo of life of the community of the specified locality, they will be connected with public order. Detenu instigating his supporters at market place to ruin members of other community and crowd looting shops will certainly come under public order. Where the detenu was giving inciting speech in public place in a manner which was provocative of communal feelings and the detenu and his supporters were involved in burning houses and shops of a particular community, the maintenance of public order will be badly affected. An incitement calculated to foment communal conflict would constitute disturbance of public order. There was sufficient material to show that the detenu had incited communal feelings, as a result of which serious riots took place between two communities and in the said rioting the detenu had taken an active part by burning houses and shops belonging to the other community. The said action of the detenu was certainly against the community at large. Hence, detention order passed was perfectly legal. It was clearly a case of disturbing the public order.

9. In view of the above, we find no illegality in the impugned order.

10. In the result, the writ petition fails and is dismissed.