
(2002) 01 AHC CK 0153

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 24325 of 2001, connected with 6 other petitions

Sunil

APPELLANT

Vs

District Magistrate, Bijnor and Others

RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Constitution of India, 1950 — Article 21
National Security Act, 1980 — Section 3(2)

Citation : (2002) 1 AWC 636

Hon'ble Judges : S.K. Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Anurag Khanna and D.K. Singh, for the Appellant; S.M. Misra Advocate and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and S.K. Singh, JJ.—In Habeas Corpus Petition No. 243254 of 2001 the impugned detention order was passed on 18.12.2000 by which the petitioner was ordered to be detained for a period of one year. That period of one year has expired and hence, this petition has become infructuous and is dismissed as such.

2. It is deeply regrettable that this habeas corpus petition and several other petitions listed before us today (mentioned above), have become infructuous because the period of detention has expired. We are informed that a large number of habeas corpus petitions were dismissed as infructuous in November and December last year.

3. The Supreme Court has observed that Article 21 is the most basic of all the fundamental rights in the Constitution, as individual liberty is a precious right. It is deeply regrettable that habeas corpus petitions are not being heard and the petitions are becoming infructuous, as the cases were not heard before the expiry of the detention period. There was a time in this Court when the habeas

corpus petitions used to be finally disposed off within a week or 10 days of filing of the same, and that is how it should be. However, what is seen in recent times is that habeas corpus petitions are becoming infructuous.

4. Similarly, many bail applications have been pending for 2 to 3 years in this Court. Criminal appeals filed in 1980 are being taken up for hearing today. Government appeals are pending for 5 years for admission. Learned standing counsel informed us that stay vacation applications are pending in this Court for years, but could not be taken up for hearing, due to shortage of Judges.

5. This Court has a total strength of 95 Judges but at present there are only 47 incumbents (including in Lucknow Bench) and two more retirements are taking place within a month. This is one of the main reasons that the cases are not being disposed of speedily.

6. The Supreme Court in the Second Judge's case, Supreme Court Advocates on Supreme Court Advocates-on-Record Association and another Vs. Union of India, , observed that since the date of retirement of a High Court Judge is known, the entire process of filling in the vacancy to be caused by that retirement should be completed before one month of the date of the retirement so that on the very next day after the retirement, the new appointee can start functioning and in this way the work of the Court does not suffer. This was the regular practice during British days and for some time after Independence. However, it appears that a complete go-by has been given to the aforesaid nine Judges decision of the Supreme Court, and the plight of this Court is a glaring example of this, where vacancies have continued for years. Sometimes 300 cases are listed before a Judge and it is physically impossible that a Judge can decide 300 cases in one day. We are informed that some other High Courts also are in similar plight because the vacancies of the Judges have not been filled in. We earnestly request the Constitutional authorities concerned in the selection and appointment of High Court Judges to take the matter in all seriousness and promptitude realizing the gravity of the situation and fill up the vacancies at the earliest.

7. Let the Registrar General of this Court send a copy of this order to all the concerned constitutional authorities forthwith.