
(1986) 11 AHC CK 0014

In the Allahabad High Court

Case No : Writ Petition No. 6188 of 1986 (Habeas Corpus)

Tasdeeq, Ilahi

APPELLANT

Vs

State of U.P. & Others

RESPONDENT

Date of Decision : 06-11-1986

Acts Referred:

National Security Act, 1980 — Section 3, 8(1)

Citation : (1986) 11 AHC CK 0014

Hon'ble Judges : S.C.Mathur, J and B.L.Loomba, J

Final Decision : Allowed

Judgement

S.C. Mathur, J.—Tasdeeq Ilahi has through the instant petition sought his release from detention through a writ of habeas corpus. The District Magistrate, Moradabad passed an order of detention against the petitioner on 30686 under Section 3 of the National Security Act, 1980. In pursuance of this order the petitioner was arrested on 171986 Grounds of detention were served upon the petitioner on 771986. On these facts there is no dispute between the parties.

2. The order of detention has been challenged on a number of grounds but it is not necessary to state all of them as the detention will have to be quashed on the ground that grounds of detention were not served within 5 days, thereby violating Section 8(1) of the Act.

Section 8(1) of the Act provides as follows:

78. Grounds of order of detention to be disclosed to persons effected by the order (1) When a person is detained in pursuance of detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than (Ten days) from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government,

(2)?

It has already been held by us in Writ Petition No. 5484 of 1986, Raisur Rahman v State of U.P. and others, decided on 20986 that the requirement of communicating grounds of detention within 5 days is mandatory and where the grounds are served beyond 5 days reasons in writing have to be recorded.

3. Learned counsel for the State, however, submitted that although the grounds were served on 771986, they had been signed and despatched by the District Magistrate on 571986. It has been stated that 6th July, 1a86 was Sunday and, therefore, the grounds could not be served and thereafter they were served on next working day, that is, 7th July, 1986. In order to substantiate the defence that the grounds were despatched on 571986 the relevant despatch Register was produced before us by the Learned Additional Government Advocate. From the material on record it is established that the ground of detention had been despatched on 571986. However, in the counter affidavit filed on behalf of the opposite parties no explanation has been given regarding nonservice of the grounds on the same day. If grounds had been served on 571986 there would have been no violation of Section 8(1) of the Act as that was the fifth day of detention. There has been, therefore, violation of mandatory provision of the Act. The consequence of this violation is that the petitioner's detention cannot be continued.

4. Sri Bireshwar Nath, learned counsel for the state, tried to argue that the case is covered by the latter clause of Section 8(1). Section 8(1) prescribes two periods for communication of the grounds of detention, the initial period of five days and the latter period of 10 days. When the grounds are communicated not within the initial period of five days, reasons have got to be recorded for not communicating the grounds within the said period, Further, there have to be exceptional circumstances for not effecting service of grounds of detention within the initial period of 5 days. No order containing the reasons for not effecting service within 5 days has been produced before us nor any explanation has been given in the counter affidavits regarding failure to effect service within five days. Further, no exceptional circumstances have been pointed out by the learned counsel for the State for not effecting service within 5 days. Even by acceptance of the argument advanced by Sri Bireshwar Nath the position of the State is not informed, (improved?)

5. As already stated, in view of the above, it is not necessary to consider the other grounds of detention. We may only notice that the learned counsel for the petitioner Sri Abdul Mannan strenuously submitted that relevant material was not placed before the detaining authority. In particular, the learned counsel submitted that the First Information Reports on the basis of which investigations were made by the intelligence authorities, were not placed before the detaining authority. It was submitted by the learned counsel that in the first Information Reports the petitioner had not been nominated and the possibility cannot be ruled out that on account of this fact District Magistrate may not have passed the

impugned order of detention. We make no comments on the submission.

6. In view of the above, continued detention of the petitioner is held to be illegal. A writ of habeas corpus shall issue to set the petitioner at liberty forthwith unless he is required in connection with any other case. There shall be no order as to costs.

7. A copy of the operative portion of this judgment shall be supplied to the petitioner or his counsel by tomorrow.