
(1985) 05 AHC CK 0038

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 2154 of 1985

Vir Abhimanyu alias Biran Yadav

APPELLANT

Vs

Superintendent, District Jail Fatehpur & Ors.

RESPONDENT

Date of Decision : 24-05-1985

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1985) 05 AHC CK 0038

Hon'ble Judges : I.P.Singh, J and R.P.Shukla, J

Final Decision : Allowed

Judgement

1. P. Singh, J.—Vir Abhimanyu alias Biren Yadav petitioner (hereinafter referred to as the detenu) has filed the present writ petition to challenge the validity of the detention order, dated 1511985 passed by Sri K. K. Gupta who has signed the said order as District Magistrate, Fatehpur (hereinafter referred to as the detaining authority) under Section 3(2) of the National Security Act (65 of 1980) (hereinafter referred to as the Act; with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. After hearing the learned counsel from both sides, we are of the opinion that it would not be necessary to go into all the points taken and detailed in the writ petition because it can be effectively disclosed of on a short point to be discussed hereinafter.

3. The learned counsel for the detenu has challenged that Sri K. K. Gupta, who had signed the detention order in question as District Magistrate, Fatehpur, was, in fact, not holding that office on that date. i.e. 1511985, and as such, the detention order was passed by an authority lacking jurisdiction to pass it, and, as such, was ab initio a bad and invalid order.

4. Our attention was drawn by the learned counsel for the respondents to the Notification No. 2012/Do1854/1(15)84, Lucknow : dated 6th April, 1985 Annexure to the counteraffidavit of Chandrapal Singh, Upper Division Assistant in

Confidential Section 6, U. P. Secretariat, Lucknow. The said Notification conferred on Sri K. K. Gupta the powers of Collector, Fatehpur and the designation and powers of District Magistrate, Fatehpur under Section 20(1), Cr.P.C., 1973 with retrospective effect from 10/1/1985 to 29/1/1985.

5. Thus it bears out that on 15/1/1985 the said powers were not possessed by him. They came to be possessed by him by virtue of the above notification dated 6/4/1985 retrospectively. The question arises as to whether such retrospective conferment of powers would validate the detention order, dated 15/1/1985 when Sri K. K. Gupta did not enjoy those powers as a matter of fact.

6. In our considered opinion, the powers under Section 3(2) of the Act could only be exercised by the officer who enjoyed the powers of District Magistrate on that particular day. If on the relevant date the particular officer did not enjoy these powers, then certainly he had no jurisdiction to pass the detention order under said Section 3(2). Subsequent conferment of that power on the particular officer would not validate the detention order passed by him when he did not enjoy those powers.

7. In our above view, we stand fortified by the decision in the case of *Sadanand Tripathi alias Sant Gyaneswar Sri Sadanand Param Hans v. State of U. P. and others*, 1982(8) ALR page 80, in which it was held :

"No doubt that some times Government issues appointment letter appointing officials with effect from an anterior date. However, the purpose of such retrospective appointment merely is to confer same service benefits like counting the period prior to that appointment towards service etc., of such appointments. The purpose of retrospective appointment neither is nor can it be to infuse life into an order which does not exist in the eyes of law and to thereby validate a detention which from its very inception was invalid and nonexistent in the eyes of law.

An order which was passed by a person when he was not competent to pass the same does not get validated by his being so appointed with retrospective effect.

In the instant case Sri S. N. Jha, the regular District Magistrate took earned leave for the period from June 3, 1981 to June 30, 1981 and during the period Sri K. K. Prasad the Additional District Magistrate was to look after the work of the District Magistrate. The order for petitioner's detention was passed by Sri K. K. Prasad on 23rd of June, 1981 while he was performing the duties of District Magistrate, Deoria, in pursuance of the Commissioner's order dated 29th of May, 1981.

"Held : In the result, the conclusion is inescapable that the order for the petitioner's detention passed on 23rd of June, 1981 has throughout continued to be without jurisdiction and the petitioner cannot be kept under detention in pursuance thereof.

(1981 A. W. C. 583 followed)""

8. In the instant case, Sri K. K. Gupta was not having the powers of the permanent District Magistrate on 15/11/1985. Obviously, he lacked jurisdiction to pass the impugned detention order dated 15/11/1985. The said order was bad and illegal ab initio. It could not be validated by conferment of the powers on him as District Magistrate through the said notification dated 6/4/1985.

9. In the result, the writ petition succeeds and is allowed. The respondents are directed not to detain Vir Abhimanyu alias Bireo Yadav (detenu) any more in pursuance of the detention order, dated 31/5/1985 passed by Sri K. K. Gupta designating himself as District Magistrate, Fatehpur.

10. It is made clear that the order, which is passed by us today, will not entitle the detenu to be released physically if he could be detained in pursuance of any other lawful order or is wanted otherwise in any other matter.