
(2000) 05 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 354 of 2000

Yeshwant Hiraji Chikalkar

APPELLANT

Vs

Shri R.H. Mendonca, Commissioner of Police and Others

RESPONDENT

Date of Decision : 03-05-2000

Acts Referred:

Arms Act, 1959 — Section 25, 3

Constitution of India, 1950 — Article 22, 226

Penal Code, 1860 (IPC) — Section 120B, 143, 144, 147, 148

Citation : (2000) 102 BOMLR 63

Hon'ble Judges : Vishnu Sadhi, J;P.V Kakade, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this Writ Petition preferred under Article 226 of the Constitution of India, the petitioner, who styles himself as the father of the detenu Mahendra Yeshwant Chikhalkar, has impugned the detention order dated 6th November, 1999, passed by the 1st respondent - Mr. R.H. Mendonca, Commissioner of Police, Brihan Mumbai, obtaining the detenu under Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (No. IV of 1981)(Amendment - 1996).

The detention order along with the grounds of detention, which are also dated 6th November, 1999, was served on the detenu on 16th November, 1999 and their true copies are annexed as Exhibits "A" and "B" respectively, to this writ petition.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on one C.R., namely C.R. No. 234/99 under Sections 143, 144, 147, 148, 149, 384, 387, 120-B of the I.P.C. read with Sections 3, 25 of the Arms Act, registered on 27th June, 1999 on the basis of a complaint lodged by Subhash Alokchand Gandhi at Malad Police Station and in camera statements of

two witnesses namely A and B which were recorded on 23rd July, 1999.

3. We have heard learned Counsel for the parties. Although in this writ petition Mr. K.S. Patil, learned Counsel for the petitioner, has pleaded a large number of grounds, numbered as grounds 4A to 4N in the petition but since in our view this writ petition observes to succeed on ground 4K alone, we are not advertng to the other grounds of challenge pleaded in the petition.

Ground 4K, in short, is that the petitioner submitted a large number of representations to the Advisory Board and the respondents should satisfy the Court the steps taken by them in forwarding, considering and communicating the results of those representations to the detenu. It is also pleaded in the said ground that in case there is a delay in considering the said representations, the detenu's right under Article 22(5) of the Constitution of India would stand impaired.

4. Ground 4K has been replied to in paragraph 2 of the return by Mr. M.B. Khopkar, Desk Officer, Home Department (Special), Government of Maharashtra.

From a perusal of the aforesaid paragraph, it appears that in all the detenu made four representations. The first dated 23rd October, 1999 to the Hon'ble State Minister (Home), Maharashtra; the second dated 18th November, 1999 in the Secretary, Government of Maharashtra, Home Department (Special); and the third and fourth dated 16th December, 1999 and 21st December, 1999 respectively to the Chairman, Advisory Board (under the M.P.D.A. Act).

It further transpires from a perusal of paragraph 2 of the said return that the first and second representations were rejected by the Additional Chief Secretary (Home), on 27th November, 1999 and communication to the detenu that they were rejected was made on 29th November, 1999.

It also appears from paragraph 2 of the said return that :- (a) the 3rd and 4th representations were forwarded by the Superintendent, Nasik Road Central Prison, Nasik, vide his letter dated 21st December, 1999 to the Advisory Board and copies endorsed to the Government which were received by the department on 22nd December, 1999; (b) the report of the Advisory Board was received by the Government on 3rd January, 2000; (c) since the file was received back on 21st January, 2000 from the Minister of State (Home) to whom it had been sent on 9th December, 1999 for perusal of the first representation (representation dated 23rd October, 1999), nothing could be done in between 3rd January, 2000 and 21st January 2000; and (d) after receipt of the file on 21st January, 2000, without any loss of time, on 24th January, 2000 (22nd January, 2000 and 23rd January, 2000 being holidays) the Additional Chief Secretary (Home), rejected the representations and communicated the order to the detenu on 27th January, 2000.

5. Mr. Rajiv Patil, learned Counsel for the respondents does not dispute that although the third and fourth representations were made to the Chairman,

Advisory Board, in law, the State Government was also duty bound to decide them. He, however, strenuously urged that since in between 3rd January, 2000 and 21st January, 2000 the file was with Minister of State (Home) in connection with the detenu's first representation dated 23rd October, 1999, the Additional Chief Secretary (Home) cannot be faulted for not considering the third and fourth representations during this period.

6. We have reflected over Mr. Patil's contention and are constrained to observe that we find the story of the file being with the Minister of State (Home) between 3rd and 21st January, 2000 to be no better than a bed-time story narrated by a grandmother to a grandchild who was not prepared to sleep. We say this because Mr. Khopkar in paragraph 2 of his return has stated that the detenu's representation dated 23rd October, 1999 (first representation) had been rejected on 27th November, 1999 by the Additional Chief Secretary (Home) and the result was communicated to the detenu on 29th November, 1999. In such a factual matrix we find it impossible to accept the averment in paragraph 2 of Mr. Khopkar's return that on 9th December, 1999 the file was sent to the Minister of State (Home) in relation to the said representation.

Even assuming for arguments sake that the file had been sent to the Minister of State (Home), matters would not improve because it had been sent on 9th December, 1999 and when on 3rd January, 2000, the report of the Advisory Board had been received by the Government, it should have been immediately called back. If the Officers of respondent No. 3 have committed a mistake, it is the said respondent who has to bear its consequences. It is a trite that the law does not permit a person to take advantage of his own wrong.

7. For the said reasons, in our view, the delay on the part of respondent No. 3 to consider the third and fourth representations of the detenu between 3rd and 21st January, 2000 remains unexplained. In our Judgment the said delay has rendered the continued detention of the detenu illegal.

8. Before parting with the judgment, we would like to point out that the Apex Court, times out of number, has held that in the detenu's fundamental right, guaranteed by Article 22(5) of the Constitution of India to make a representation at the earliest opportunity is implicit the obligation on the authority which has to consider such a representation to dispose of the same at the earlier opportunity and if the same has not been done and no cogent explanation for the delay is forthcoming, the detention order would have to be set aside.

9. For the aforesaid reasons, we allow this writ petition; quash and set aside the impugned detention order; direct that the detenu Mahendra Yeshwant Chikhalkar be released forthwith unless wanted in some other case; and make the rule absolute.