
(2011) 02 AHC CK 0264
In the Allahabad High Court
Case No : Writ Petition No. 52063 of 2010

Yogendra Singh Chauhan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(4), 22(5)
National Security Act, 1980 — Section 10, 3(2), 3(3), 8

Citation : (2011) 2 ADJ 656 : (2011) 6 RCR(Civil) 2200

Hon'ble Judges : Ravindra Singh, J; Arvind Kumar Tripathi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sr. D.P.S. Chauhan, learned Counsel for the Petitioner, Mr. Jitendra Kumar Sisodia, learned Counsel appearing for the State of U.P, Mr. Shishir Tondon appearing on behalf of Union of India and perused the record.

2. Learned Counsel for the Petitioner has challenged the detention of Petitioner, Yogendra Singh Chauhan, on the following two grounds:

(i) Delay in forwarding and disposal of the representation by the State Government.

(ii) Representation was not placed before the Advisory Board, which was mandatory u/s 10 of the National Security Act.

3. In the present case, the detention order was passed by the District Magistrate, Gautam Budh Nagar u/s 3(2) of the National Security Act in exercise of power u/s 3(3) of the aforesaid act on 11.5.2010. It was served upon the Petitioner through Jail Authorities since he was already in detention in criminal case at district Jail, Ghaziabad. On 13.4.2010, the police of Police Station Karna recovered fake currency note of denomination of Rs. 1,000/- from the possession of the Petitioner. He had obtained the fake currency note from one Prithvi Raj Shukla, who was member of the gang. Fake currency notes of Rs. 11,000/- has

already been circulated in public and 9 fake currency note of Rs. 1,000/-was recovered from his possession. After receiving the report from the sponsoring authority the detaining authority was subjectively satisfied that the activities of the Petitioner was prejudicial to the community hence the detention order was passed on 11.5.2010 and served through Jail Authority as there was further satisfaction regarding the possibility of release from jail in near future. He was informed regarding right of representation and right of hearing before the Advisory Board. The detention order was approved by the State Government on 17.5.2010 within 12 days from the date of detention, which was communicated to the Petitioner at district Jail, Ghaziabad, after receiving the same through radiogram dated 18.5.2010 on 20.5.2010. He was produced before the Advisory Board for personal hearing on 2.6.2010. The Advisory Board found sufficient cause for detention of the Petitioner. Thereafter, the detention order was confirmed by the State Government for a period of 12 months from the date of his detention and the communication was issued through radiogram and by letter dated 29.6.2010, to communicate the Petitioner.

4. According to para 6 of the counter affidavit of Deputy Jailer, the Petitioner submitted representation on 31.5.2010, which was sent on the same day. According to para 5 of the affidavit of District Magistrate the said representation was received on 1.6.2010 and on the same day it was sent to the Superintendent of Police, Gautam Budh Nagar for para-wise comments. When the comment was not received then the reminder was issued on 24.6.2010 to the Senior Superintendent of Police, Gautam Budh Nagar to provide para-wise comment to avoid further delay. The comment was received in office of the District Magistrate on 29.6.2010, thereafter, the comment was prepared by the District Magistrate/ Detaining Authority and after completing formalities, office of the District Magistrate was directed to sent the same to the State Government as well as Central Government along-with letter dated 2.7.2010. However, the same was sent to State Government on 13.7.2010, which was received in the concerned section of the State Government on 14.7.2010. According to counter affidavit, filed on behalf of the State, by Under Secretary, the said representation was received in the concerned section of the State Government on 14.7.2010 and on the same day the representation along-with para-wise comment was sent to the Central Government. It was further stated in para 3 of the affidavit that since the case of the Petitioner had already concluded before the Advisory Board on 2.6.2010 thus the representation of the Petitioner was not sent to the Advisory Board. Thereafter, the representation was examined on 15.7.2010 and Under Secretary examined it on 16.7.2010. There was holiday on 17.7.2010 and 18.7.2010 on account of Saturday and Sunday. Thereafter, it was examined by the Special Secretary on 19.7.2010 and on 20.7.2010 file was submitted to the Higher Authorities and finally representation was rejected on 20.7.2010.

5. Learned Counsel for the Petitioner submitted that the Petitioner submitted his representation through Jail Authorities on 29.5.2010, which was forwarded from office of District Magistrate on 13.7.2010 and was rejected by State Government

on 20.7.2010. Hence there is unreasonable delay in forwarding and disposal of the representation.

6. Learned Counsel for the Petitioner further submitted that in view of the fact delay from 2.7.2010 to 13.7.2010 in forwarding the representation from office of District Magistrate remained unexplained. The explanation was given on behalf of the District Magistrate that in view of the laches on part of Nazarat section in sending the representation to the State Government when District Magistrate came to know on 15.12.2010 then Nazir, Sadar was suspended and the direction was also issued regarding inquiry. That explanation is not sufficient because the District Magistrate was required to ensure to forward the representation to the authorities concerned expeditiously without any delay. He further contended that in view of Section 10 of the National Security Act the representation should have been placed before the Advisory Board within three weeks, however, the same was not placed before the Advisory Board, and there is violation of mandatory provision. Hence in view of the fact the continued detention of the Petitioner is illegal and the same is liable to be quashed and Petitioner be released forthwith.

7. Learned Counsel for the State and Union of India submitted that there is no delay in disposal of the representation by the Central Government as well as by the State Government. Learned Counsel for the State submitted that there was no unreasonable delay on part of the detaining authority also in forwarding the representation because the letter dated 2.7.2010 was issued to forward the representation along-with para-wise comment, however, it was with-held by the Nazarat section and when District Magistrate came to know not only the representation was forwarded but even the action was taken. There was no casual approach on behalf of the District Magistrate. Hence in view of the fact, the detention of the Petitioner is legal and present habeas corpus petition is liable to be dismissed.

8. Article 21 of the Constitution of India gives protection to life and personal liberty to the citizens but that right is not an absolute right, which can be taken or curtailed in accordance with procedure established by law.

9. The Article 22(4) and 22(5) are quoted herein below:

No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with recommendation of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention.

Article 22(5) " When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

10. Section 8 of the National Security Act is identical to the provisions of Article 22(5). u/s 10 of the National Security Act it has been provided that the appropriate Government within three weeks from the date of detention of a person shall place, before the Advisory Board, the grounds on which the order has been made and the representation, if any, made by a person affected by the detention order. Placing of the representation before the Advisory Board is mandatory.

11. The protection of life and liberty of a person is a fundamental right and there is obligation to protect the same which can be curtailed only in accordance with procedure established by law. Disposal of the representation expeditiously by the detaining authority/appropriate government is not only statutory right but also constitutional right of the detenu.

12. In case of K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, the Constitution Bench of the Supreme Court observed:

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifferent, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

13. When there is a delay in forwarding the representation or in disposal of the representation, the same has to be considered in view of facts and circumstances of each case. No period has been prescribed either under the National Security Act or under the Constitution. However, the provision under Article 22(5) of the Constitution of India as well as Section 8 of the National Security Act to the effect that the authority making the order shall afford him the earliest opportunity of making a representation against the detention order, includes disposal of the representation at earliest, without inordinate and unreasonable delay. The representation is required to be dealt with at every stage with a sense of obligation and sense of urgency without unreasonable and unavoidable delay.

14. In case of Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, it was observed "the short delay cannot be given undue importance having regard to the administrative actions." Hence if the time consumed for the disposal of the representation is reasonable and there is no inordinate delay or the delay has

been explained satisfactorily then the same will not be fatal. It is not relevant whether the delay is short or long but it has to be considered in view of the facts of each case. If in process and in consideration of the representation, the attitude of the authorities were callous, indifferent and without sense of responsibility then the continued detention shall vitiate.

15. Learned Counsel for the Petitioner relied the judgment of Rajammal Vs. State of Tamil Nadu and Another, in that case there was a delay from 9th January, 1998 to 14th February, 1998 and representation was rejected on 14.2.1998. Explanation that the concerned Minister was away from Headquarter in between the aforesaid dates, was held to be not justifiable.

16. He has relied on the other judgments of this Court where there was unexplained delay. He has also relied the judgment of Abhimanyu Singh @ Dampal v. Union of India and Ors. 2010 (2) ACR 1534. In that case the representation was not placed before the Advisory Board within time.

17. In the present case, there is no explanation regarding the delay in forwarding the representation by the Detaining Authority/ District Magistrate from 2nd July, 2010 to 13th July, 2010. It was not only obligation of the Detaining Authority/ District Magistrate to dispose of the representation expeditiously if received before approval of the detention order but it was also obligation to ensure that the representation to the appropriate Government and to the Central Government (if addressed) was forwarded expeditiously, without any avoidable delay. In the present case, the detaining authority acted without sense of responsibility, obligation and urgency.

18. Admittedly in the present case the representation was submitted by the Petitioner within three weeks. The detention order is dated 11.5.2010 and the representation was submitted on 31.5.2010. The date fixed before the Advisory Board was 2nd June, 2010 and according to the counter affidavit of the State Government since the representation was received on 14.7.2010 hence it was not sent to the Advisory Board. It is clear from para 4 of the counter affidavit filed by Mr. Prem Shanker, Under Secretary, Government of U.P., Home (Confidential) that the report was received in the concerned section of the State Government from Advisory Board along-with letter dated 17.6.2010 on the same day i.e. 17.6.2010 hence it is clear that the representation was neither placed within three weeks nor on the date of hearing and even not before the report was forwarded by the Advisory Board. Hence there is violation of mandatory provision of Section 10 of the National Security Act.

19. In view of the aforesaid discussion, it is clear that the attitude of the office of District Magistrate was lethargic and without sense of obligation and sense of urgency. Hence the continued detention of the Petitioner vitiate and the continued detention of the Petitioner is hereby quashed.

20. Accordingly, the present habeas corpus petition is allowed. The Respondents are directed to release the Petitioner forthwith, if he is not wanted in any other

case. However, no order as to cost.

Office is directed to sent copy of this order to the Superintendent of District Jail, Ghaziabad and to District Magistrate, Gautam Budh Nagar, to ensure compliance of the order.