

Youssuf Abbas S/O Ahmad Abbas

Vs

Union of India and Others

Writ Petition (Criminal) No. 19 of 1982 and Special Leave Petition (Criminal) No. 208 of 1982

(O. Chinnappa Reddy, R. B. Misra JJ)

23.04.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. Ali Abbas Jaafri was arrested on September 8, 1981, pursuant to an order of detention made on July 26, 1980 under the COFEPOSA. The Grounds of Detention along with the documents necessary to enable the detenu to make a representation were served on him on September 16, 1981. The detenu claims to have made a representation against his detention on October 1, 1981. He has made an assertion to this effect in para 11 of the writ petition filed in this Court. While this is not expressly denied in the counter-affidavit filed on behalf of the Government, it is stated therein that an undated representation was received by the Government from the District Magistrate, Unnao on October 23, 1981. We will come back to this later. The Advisory Board which met on October 23, 1981, gave a personal hearing to the detenu and submitted its report on October 26, 1981. Thereafter the Government rejected the representation of the detenu on October 29, 1981. The representation, we may mention here, was admittedly not forwarded to the Advisory Board on the ground that it was received by the Government subsequent to the hearing by the Board.

2. The detenu filed a writ petition in the Allahabad High Court questioning the detention. The High Court upheld the detention and rejected the petition for the issue of the writ of habeas corpus. The detenu has filed a petition for special leave to appeal against the judgment of the Allahabad High Court under Article 136 of the Constitution and has also filed a separate writ petition under Article 32 of the Constitution.

3. Several grounds including questions relating to the vires of the COFEPOSA were raised in the writ petition as well as in the special leave petition. Most of them were not argued. Some grounds were urged by the learned counsel, but almost all of them were without substance. However, there was one submission of the learned counsel which we found to be of same substance and on which we wanted some explanation from the respondents. As we said earlier, the detenu averred in his petition that he had made a representation to the detaining authority through the Superintendent of the Jail on October 1, 1981. The submission of the learned counsel was that there was undue and unexplained delay in the consideration of the representation. The counter-affidavit filed on behalf of the respondents merely states that the representation of the detenu was received from the District Magistrate on October 23, 1981, and was rejected by the Government on October 29, 1981. No attempt was made to offer any explanations as to why the District Magistrate, Unnao did not forward the representation to the Government till October 23, 1981. A letter addressed by the Superintendent, Central Jail, Varanasi to Youssuf Abbas, brother of the detenu, has been placed before us by the learned counsel for the detenu and it shows that the representation was forwarded

by the Superintendent, Central Jail to the District Magistrate, Unnao on October 20, 1981. Why the representation was detained with the Superintendent, Central Jail from October 1, 1981 to October 20, 1981 has been explained by any one. We wanted a full and detailed explanation from the respondents for the delay in the consideration of the representation by the appropriate authorities, after it was made by the detenu on October 1, 1981. Shri Dalbir Bhandari, learned counsel for the respondents was unable to offer any explanation, but requested us to permit him to produce the relevant records. Arguments were concluded on March 24, 1982 and we reserved judgment. We informed the learned counsel that he would be at liberty to produce the relevant records within a week from the date. Notwithstanding the fact that four weeks have elapsed, the records have not been produced before us. When asked about it, the learned counsel told us that though he had written to the Government of Uttar Pradesh that the records should be produced immediately, he has not received them so far. In the circumstances, we have no option, but to proceed on the basis that the respondents have no explanation to offer for the delay in considering the representation of the detenu. On that ground alone, the writ petition is allowed and the detenu is directed to be set at liberty forthwith. No orders are necessary in the special leave petition in view of our order in the writ petition.

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