

Raisuddin Alias Babu Tamchi

Vs

State of Uttar Pradesh and Another

Writ Petition (Criminal) No. 37 of 1983

(Balakrishna Eradi, J.)

07.10.1983

JUDGMENT

BALAKRISHNA ERADI, J. -

1. Taking into consideration the fact that this is a petition for a writ of habeas corpus filed under Article 322 of the Constitution of India challenging the legality of the preventive detention of the petitioner under the provisions of the National Security Act, 1980 and the consequent urgency of the matter, as soon as the hearing of arguments in the case were completed, we announced the conclusion reached by us by passing the following order :

After hearing counsel, appearing on both sides, we have come to the conclusion that the order of detention impugned in this writ petition does not call for any interference. The writ petition is accordingly dismissed. Detailed reasons will follow.

We now proceed to state the reasons that weighed with us in reaching the aforesaid conclusion.

2. By an order dated November 6, 1982, passed by the District Magistrate, Moradabad, in exercise of the powers conferred under Section 3, sub-section (3) of the National Security Act, 1980 - hereinafter called ' the Act' - the petitioner, Shri Raisuddin alias Babu Tamchi was ordered to be arrested by the Senior Superintendent of Police and to be detained in the District Jail, Moradabad, with a view to his being prevented from indulging in any activity which may affect the maintenance of public order. Pursuant thereto, the petitioner was arrested on November 8, 1982, and placed under detention. On the same day (November 8, 1982), the petitioner was served with the order of detention and a memorandum setting out the grounds of his detention. On November 12, 1982, the State Government approved the detention of the petitioner and on November 18, the case was referred by the State Government to the Advisory Board constituted under Section 9 of the Act. Subsequently, on November 24, 1982 the petitioner submitted his representation against the order of detention. The said representation was addressed addressed by the petitioner to the District Magistrate, Moradabad. The District Magistrate forwarded the representation on the same day to the Senior Superintendent of Police, Moradabad, for his comments on the submissions contained in the letter. On November 27, 1982, the Senior Superintendent of Police submitted his comments to the District Magistrate. Thereafter, on December 3, 1982, the District Magistrate sent a report to the State Government enclosing the representation as well as the comments submitted by the Senior Superintendent of Police. The aforesaid papers despatched from Moradabad were received by the State Government on December 6, 1982. On December 9, 1982, the State Government considered the petitioner's representation and rejected the same. Simultaneously, on the same day, the State Government forwarded the representation of the petitioner to the Advisory Board. On December 10,

1982, the Advisory Board met to consider the case of the petitioner, gave a personal hearing to the petitioner and drew up its report holding that there was sufficient cause for the detention of the petitioner. The report of the Advisory Board was received by the State Government on December 12, 1982, and on December 21, 1982, the state Government confirmed the detention order under Section 12 of the Act. The petitioner was informed about the order of confirmation on December 24, 1982.

3. Through a faint attempt was made before us by the counsel for the petitioner to contend that the grounds of detention served on the petitioner did not disclose any material relevant under Section 3 of the Act, there is no scope at all for urging such contention in the present case. The imputation against the petitioner is that he was inciting and fomenting communal hatred and violence and creating an atmosphere of fear and tension in the town of Moradabad as a result of which the schools, colleges and shops were remaining closed in the town and terror reigned in the whole town. Two criminal cases had been registered against him under Sections 147/353/153-A, IPC/7 Criminal Law Amendment Act. As there was a possibility of his being released on bail and continuing to indulge in such activities which were greatly prejudicial to the maintenance of public order, it was considered necessary by the detaining authority to place the petitioner under detention. Having regard to the situation then prevailing in the town of Moradabad which was unfortunately the scene of grave communal disturbances, it is impossible to countenance the contention advanced on behalf of the petitioner that the grounds set out in support of the order of detention are irrelevant for sustaining an order of detention being made under Section 3 of the Act.

4. The next argument advanced on behalf of the petitioner was that there had been inordinate delay on the part of the detaining authority in forwarding the petitioner's representation to the State Government. The petitioner had addressed his representation not to the State Government as contemplated by Section 8 of the Act, but to the District Magistrate, Moradabad. It was received by the District Magistrate on November 24 and promptly, on the same day, the District Magistrate forwarded it to Senior Superintendent of Police for the latter's comments. The comments of the Senior Superintendent of Police were received in the office of the District Magistrate on November 27 but it was only on December 3 that the District Magistrate forwarded his report to the State Government enclosing the petitioner's representation and the comments of the Senior Superintendent of Police. It was vehemently argued by the counsel for the petitioner that there had been undue and unexplained delay on the part of the detaining authority in forwarding the petitioners, representation to the State Government inasmuch as a period of nearly six days had elapsed between the receipt of the comments of the Senior Superintendent of Police in the office of the District Magistrate and the submission of his report to the State Government. The original file pertaining to this case maintained in the office of the District Magistrate was produced before us for our perusal by Shri O.P Malhotra, the learned Senior Advocate appearing on behalf of the respondents. It is seen therefrom that during the period from November 28 to the evening of December 1, 1982, the District Magistrate had to emergently leave his headquarters because of the disturbances that had occurred in other localities within his jurisdiction where his presence was urgently needed for tackling the explosive situation. After he returned to the headquarters on the evening of December 1, the District Magistrate without losing any further time forwarded the petitioner's representation to the State Government on December 3 together with his report and the comments received from the Senior Superintendent of Police. We are fully satisfied on our perusal of the file and the averments contained in the counter-affidavit filed on behalf of the respondents that the petitioner's representation has been dealt with by the District Magistrate with all promptness that was reasonably possible under the circumstances then obtaining in Moradabad city and the surrounding areas and that the charge of inordinate delay levelled by the petitioner is baseless. In

this context we consider it necessary to emphasise that the question whether the representation submitted by a detenu has been dealt with all reasonable promptness and diligence is to be decided not by the application of any rigid or inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of the facts and circumstances of each case; if on such examination, it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu; on the other hand, if the Court is satisfied that the delay was occasioned not by any lack of diligence or promptness of attention on the part of the party concerned, but due to unavoidable circumstances or reasons entirely beyond his control, such delay will not be treated as furnishing a ground for the grant of relief to the detenu against his continued detention. As already indicated, the case before us falls under the latter category inasmuch as we are satisfied that there was no avoidable delay on the part of the District Magistrate in forwarding the petitioner's representation.

5. The last point urged on behalf of the petitioner is that there has been a violation of the provisions of the Section 10 of the Act because the Advisory Board had not considered the case of petitioner within three weeks from the date of detention. As already noticed, the petitioner submitted his representation to the District Magistrate against the detention only on November 24, 1982 even though he had been arrested and placed under detention on November 8. The said representation reached the State Government on December 6, 1982. In the meantime, the petitioner's case had been referred by the State Government to the Advisory Board on November 18 itself. The representation received from the petitioner was forwarded by the State Government to the State Advisory Board on December 9, 1982. The Advisory Board held its meeting on December 10, 1982 and, after affording a personal hearing to the petitioner, made its report finding sufficient cause for the detention of the petitioner. The argument put forward on behalf of the petitioner is that Section 10 mandatorily enjoins the State Government to take steps to see that the case of the detenu is considered by the Advisory board within three weeks from the date of detention. We are unable to see any merit in this contention. Section 10 reads :

Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of Section 3, also the report by such officer under sub-section (4) of that section.

Under the section, a duty is cast on the appropriate Government to "place before" the Advisory Board constituted under Section 9 within three weeks from the date of detention, the grounds on which the order of detention has been made and the representation, if any, made by the person affected by the order. The petitioner's counsel wanted us to interpret the words "place before the Advisory Board" as meaning "get considered by the Advisory Board". We are wholly unable to accede to this argument. Under the terms of the section, the duty cast on the appropriate Government is to forward to the Advisory Board constituted under Section 9 within three weeks from the date of detention, the papers pertaining to the detention of the detenu consisting of the grounds on which the order has been made, the representation, if any, made by the person affected by the order, etc. It is to be remembered that the Advisory Board is not an entity sub-ordinate to the Government. It is wholly independent body consisting of persons who are or have been or are qualified to be appointed as Judges of a High Court. It is entirely for the Advisory Board to regulate

its schedule of holding meetings and conducting its business in accordance with the procedure laid down under Section 11 of the Act which has specified a time limit of seven weeks from the date of detention for the submission of the Board's report to the appropriate Government. It is, therefore, wholly wrong to interpret the words "place before" as meaning anything more than forward to or submit before the Advisory Board the relevant papers relating to the detention of the datenu. In the present case, the Advisory Board has disposed of the petitioner's case well within the period of seven weeks specified in sub-section (1) of Section 11 of the Act. This contention of the petitioner is also, therefore, devoid of substance.

6. The conclusion that emerges from the foregoing discussion is that there is no ground whatever justifying any interference with the order of detention passed against the petitioner and the writ petition is, therefore, only to be dismissed.

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