

Haji mohd. Akhlaq

Vs

District Magistrate and Others

Writ Petition (Criminal) No. 598 of 1987

(A. P. Sen, L. M. Sharma JJ)

17.11.1987

ORDER

1. By this petition under Article 32 of the Constitution, the petitioner challenges the validity of his continued detention under an order passed by respondent 1 the District Magistrate, Meerut dated July 21, 1987 under Section 3(2) of the National Security Act, 1980, on being satisfied that it was necessary to do so to prevent him from his prejudicial affecting maintenance of public order.
2. On the view that we take, it is not necessary to deal with the contention as to whether the impugned order pertains to maintenance of public order or merely relates to law and order. While the petitioner was detained in Central Jail, Meerut, he handed over a representation addressed to the State Government of Uttar Pradesh to the Jail Superintendent with an endorsement forwarding a copy thereof to the Secretary to the Government of India, Ministry of Home Affairs (Internal Security Section), North Block, New Delhi. The writ petition was filed in this Court on September 7, 1987 questioning the validity of the impugned order on various grounds. It has been averred in paragraph 12 that the said representation to the State Government with the request that a copy therefore be forwarded to the Central Government, was made on August 3, 1987. The last page of the representation annexed to the writ petition mentions the date as August 3, 1987 but it is stated in the counter-affidavit of the District Magistrate respondent 1 that the representation was undated and was received from the Superintendent on August 17, 1987 and that a copy thereof was also sent to the Central Government through the State Government. There was also a specific ground taken that there was a failure on the part of the Central Government to deal with the representation so far and therefore his prolonged detention was bad in law. On September 15, 1987 this Court issued a rule nisi. On September 23, 1987 the court in view of the averment in paragraph 12 as aforesaid allowed the petitioner to implead the Union of India as party-respondent. The representation marked to the Central Government was not apparently attended to till October 12, 1987. No doubt, the District Magistrate in the counter-affidavit has stated that the copy of the representation was forwarded to the Central Government through the State Government but he does not disclose the date when this was done. From paragraph 3 of the counter-affidavit sworn by Shiv Basant, Deputy Secretary, Ministry of Home Affairs, Government of India, New Delhi it is however revealed that the said representation was received by the Central Government in the Ministry of Home Affairs on October 10, 1987 through the State Government of Uttar Pradesh vide their letter dated October 9, 1987. It is further disclosed that the representation was immediately processed for consideration and the Ministry of Home Affairs took a decision on October 16, 1987 to reject the representation. It is also stated that the decision so taken was communicated to all concerned on October 19, 1987 through a wireless message.
3. From a narration of events it is apparent that there was no delay on the part of the Central

Government in considering the representation made by the petitioner. The fact however remains that the representation addressed to the State Government by the petitioner and marked to the Central Government remained unattended to till October 19, 1987. Presumably, the copy of the representation was lying at the Secretariat at Lucknow. It is now accepted in the counter-affidavit sworn by one Dharam Raj Singh, Desk Clerk, Home Department, Government of Uttar Pradesh that an undated representation of the petitioner was received by the Superintendent, District Jail, Meerut on August 17, 1987 and that the said representation along with the comments of the District Magistrate, Meerut was received by the State Government on August 18, 1987. He states that the representation was duly considered by the State Government and rejected on August 20, 1987 and an intimation to that effect was communicated to the petitioner through the Superintendent, District Jail, Meerut, and the District Magistrate. It now appears from this counter-affidavit that on October 9, 1987 the Joint Secretary, Home Department, Government of Uttar Pradesh received a radiogram from the Central Government enquiring as to whether any representation had been received from the petitioner or not. In response the Deputy Secretary, Home Department, Government of Uttar Pradesh addressed a letter stating that a copy of the undated representation was also sent by the petitioner to the Central Government and it was requested to search out the same in the Ministry of Home Affairs. There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the result that the said representation was not considered by the Central Government till October 16, 1987 i.e. for a period of more than two months. Sections 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make a representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply with the request of the detenu for the onwards transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that government. That being so, the continued detention of the detenu must be held to be illegal and constitutionally impermissible.

4. We accordingly allow the writ petition and direct the issuance of a writ of habeas corpus holding the continued detention of the petitioner to be invalid. The petitioner be set at liberty forthwith.

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