

Jai Prakash

Vs

District Magistrate, Bulandshahar, U. P. and another

Writ Petn. (Criminal) No. 1342 of 1991

(Kuldip Singh, R. M. Sahai, R. C. Patnaik JJ)

30.03.1992

ORDER

1. The District Magistrate Bulandshahar Uttar Pradesh, by an order dated July 23, 1991, directed that Jagdish s/o Kanchan Singh (the detenu) resident of village Dhamera Kirat District Bulandshahar be detained under the National Security Act, 1980 (the Act). The order was served upon the detenu while in custody in connection with two criminal cases registered against him. The grounds of detention served upon the detenu also stated as under :

"You are hereby informed in accordance with S. 8 of the above Act that you have the right to file a representation to the State Government against the order under which you have been detained. If you want to send any such representation then that should be submitted through the Superintendent of Prisons, Bulandshahar while addressing it to the Home Secretary to the State Government.....You are also informed that if you want to submit any Representation then you may do so before the Central Government against such order under which you have been detained. And if you submit to any such representation then you may submit the representation through the Superintendent of Prisons Bulandshahar while addressing to the Home Ministry (Inter Security Department) Government of India, New Delhi."

2. The detenu submitted the representation against his detention through the jail authorities on August 3, 1991. The original records produced by the State Government show that the representation was addressed to "The Home Secretary" without indicating whether to the State Government or the Central Government.

3. The representation was rejected by the State Government on August 9, 1991. This petition under Art. 32 of the Constitution of India has been filed through the brother of the detenu challenging the order of detention. It is averred in the petition that the detenu submitted nine copies of the representation to the jail authorities.

4. The District Magistrate Bulandshahar, in his counter, states as under :

"That para 4 of the writ petition is admitted to the extent that the copies of the representation were received through the office of the Superintendent District Jail Bulandshahar. Out of these one copy was retained in my office six copies were forwarded to the Government of U.P. and one copy was communicated to the

Advisory Board under the National Security Act. The deponent has specifically inquired from the office of the Superintendent District Jail Bulandshahar and upon information received from the said office, it is respectfully submitted that the detenu has not made any representation to the Central Government."

Mr. R. K. Jain, learned Senior Advocate assisted by Mr. Udai Lalit has contended that even though, no representation was sent by the detenu to the Central Government, the State Government was under an obligation to send a copy of the representation received by it to the Central Government. The argument is based on the interpretation of S. 3(5) read with S. 14 of the Act. Since the Central Government has the power under S. 14 of the Act to revoke the detention at any time, it is contended that the State Government is bound to send all relevant material received by it, from time to time, to the Central Government. It is not necessary for us to go into the question raised by the learned counsel. We are inclined to allow this petition on the facts of this case.

5. The District Magistrate along with the grounds of detention specifically informed the detenu that he has a right to make representation to the State Government and also to the Central Government. The representation sent by the detenu was neither addressed to the State Government nor to the Central Government. He only mentioned "Home Secretary" as the addressee without further indicating whether he meant Home Secretary to the State Government or the Central Government. It is not disputed that the detenu gave nine copies of the representation to the Superintendent Jail for onward submission to the authorities. We are of the view that the Superintendent Jail, in the circumstances of this case, was under an obligation to send one copy of the representation to the Central Government. The Superintendent Jail sent the representation only to the State Government and not to the Central Government. When the detenu gave sufficient number of copies of his representation and left it to the jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent Jail was legally bound to send one copy to the Central Government. We are, therefore, of the view that the detenu was denied his right to make an effective representation and on that short ground his detention is liable to be quashed.

6. We allow the writ petition and quash the detention order dated July 23, 1991.

Petition allowed.

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