

Virendra Kumar Nayak Vs. the Superintendent of Naini Central Jail and ors.

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Court : Allahabad

Decided On : Sep-17-1981

Reported in : 1982CriLJ1

Judge : H.N. Seth and; M. Wahajuddin, JJ.

Appellant : Virendra Kumar Nayak

Respondent : The Superintendent of Naini Central Jail and ors.

Judgement :

H.N. Seth, J.

1. By these two petitions under Art. 226 of the Constitution, petitioners Virendra Kumar Nayak and Yati Kumar Varma question the validity of their continued detention under the provision of the National Security Act authorised by the District Magistrate, Gorakhpur, vide his orders dated 30th April, 1981. As these petitions can be disposed of on common grounds, they are being dealt with together and are being disposed of by a common judgment.

2. Both the petitioners were arrested by the police on 29th April, 1981. While they were confined in the District Jail at Gorakhpur, they were, on 30th April, 1981, served with two different orders of the same date authorising their detention under Section 3(2) of the National Security Act. Whereas the grounds for the detention of petitioner Yati Kumar Varma were served upon him on 2nd May, 1981 those for

the detention of petitioner Virendra Kumar Nayak were served upon him on 6th May^ 1981. The District Magistrate reported the matter to the State Government which approved the detention of petitioner Virendra Kumar Nayak on 6th May, 1981 and that of petitioner Yati Kumar Varma on 8th May, 1981. After reporting the cases of the two petitioners to Central Government, the State Government referred the case of Virendra Kumar Nayak to the Advisory Board on 7th May, 1981 and that of Yati Kumar Varma on 8th May, 1981. Representations against their detention made by the two, petitioners on 16th May, 1981 were received by the State Government on 21st May, 1981 which after rejecting them on 22nd May, 1981 placed them also before the Advisory Board. The Advisory Board heard the two petitioners on 23rd May, 1981 and gave its opinion on 26th May, 1981. After receiving the opinion of the Advisory Board, the State Government confirmed the orders for the detention of the two petitioners on 30th May, 1981.

3. Virendra Kumar Nayak (petitioner in Writ Petition No. 8141' of 1981 filed on 21st July, 1981) and Yati Kumar Varma (petitioner in Writ Petition No. 8625 of 1981 filed on 29th July, 1981) then approached This court for relief under Article 226 of the Constitution of India and impugned the validity of their continued detention under District Magistrate's orders dated 30th April, 1981 on a number of grounds.

4. During the course of hearing of the writ petitions, Learned counsel for the petitioners raised a further ground for questioning the validity of the order dated 30th April, 1981 authorising the detention of the petitioners under the provisions of the National Security Act made by the District Magistrate, Gorakhpur. He contended that the condition precedent for enabling the State Government to authorise the District Magistrate, Gorakhpur to pass detention orders under the provisions of the National Security Act as contemplated by Section 3(3) of the Act, did not exist and as such the impugned orders by the District Magistrate on 30th April, 1981 were completely without jurisdiction. He also brought; it to our notice on 25th Aug., 1981 that after the detention of both the petitioners had been confirmed by the State Government, petitioner Virendra Kumar Nayak -handed over a representation dated 22nd July, 1981 for being considered by the Central Government to the Jail Authorities at the Naini Central Jail, Like-Wise Yati Kumar Varnia also handed over a similar representation for being dealt with by the

Central Government to the Jail Authorities on 29th July, 1981. The petitioners claimed that as the Central Government had not decided their representations till then, their continued detention had been rendered invalid. The respondents were given an opportunity to meet these two submissions as well and also to explain as to how the aforesaid representations made by the two petitioners had been dealt with. Notice was also given to the learned Standing Counsel for the Central Government to obtain instructions and to tell the court whether the representations made by the two petitioners had been received by it and if, so, when did it dispose of the same.

5. When the case was taken up for further hearing on 4th Sept., 1981, learned Standing Counsel produced before us copies of the notifications whereby various District Magistrates in the State had been, from time to time, authorised by the State Government to pass orders under Section 3 of the National Security Act. Learned Standing Counsel appearing for the Central Government stated that as per instructions received from the Home Minister, Government of India, the representation made by neither of the two petitioners had been received by the Central Government till 3rd Sept., 1981. The Government Advocate appearing for the remaining respondents mentioned that the two representations were despatched through special messenger to the Central Government only on 3rd Sept., 1981. He subsequently filed affidavits explaining the circumstances in which the two representations could not be despatched to the Central Government earlier than 3rd Sept., 1981.

6. According to the affidavits filed by the respondents the Supdt., Central Jail, Naini, despatched the representations of Virendra Kumar Nayak and Yati Kumar Varma dated 22nd July, 1981 and 29th July, 1981 respectively meant to be considered by the Central Government, to the District Magistrate, Gorakhpur on 25th July, 1981 and 29th July, 1981 respectively. They were received in the office of the District Magistrate, Gorakhpur on 3rd August, 1981 and 6th Aug., 1981 respectively. The affidavits of Raghunath Pd. Srivastava, Judicial Assistant, in the office of Collectorate at Gorakhpur filed in the two cases seek to explain the delay in his dealing with the two representations after they reached the Collectorate at Gorakhpur by saying that he had to go away to Lucknow in connection with other

cases that were to come up before the Advisory Board. He returned from Lucknow in the evening of 7th August, 1981. The 8th and 9th Aug., 1981 were holidays. He attended the office on 10th Aug., 1981 but during the day he developed high fever and had to return to his home. He could rejoin his duties only on 19th Aug., 1981. In the meantime lot of work had accumulated and as 22nd and 23rd Aug., 1981 were holidays, he could look into the files of the two petitioners only on 24th Aug., 1981. The same day the papers in connection with the cases of the two petitioners were, under the signatures of the District Magistrate, sent to the Home Secretary U. P. Sashan, Lucknow, through a special messenger. Sri Mohan Lai Shah, Upper Division Assistant of Secretariat at Lucknow, stated that the representations were received in the Secretariat on 25th Aug., 1981 and after being processed, they were despatched to the Secretary, Ministry of Home Affairs, Delhi, on 3rd Sept., 1981.

7. So far as the jurisdiction of the District Magistrate, Gorakhpur, to make orders authorising the detention of a person under Section 3(2) of the National Security Act is concerned, the submission of the Learned counsel for the petitioners is that primarily the jurisdiction to pass such orders under Sub-section (2) of Section 3 of the Act vests in the Central or the State Government if they are satisfied with respect to any person that it is necessary to detain him with a view to prevent him from acting in a manner prejudicial to the security of the State etc, Sub-section (3) of Section 3 enables the State Government to authorise either the District Magistrate or a Commissioner of Police to make orders under Sub-section (2) of Section 3 if having regard to circumstances prevailing or likely to prevail in any area within local limits of their respective jurisdiction it considers it necessary to do so. He contended that there was no such circumstance prevailing within the local limits of the jurisdiction of the District Magistrate, Gorakhpur which could provide any basis to the State Government to think that it was necessary to authorise the District Magistrate Gorakhpur to make orders for detention of a person under Section 3(2) of the Act.

8. Copies of various notifications dated 25-9-80, 23-12-80, 23-3-81 and 20-6-81' issued by the District Government authorising all the District Magistrates in the State of U. P. to pass order under Section 3 of the National Security Act have

been placed before us. The first of the aforementioned notifications, namely, that dated 25th Sept. 1980 states that in certain districts of the State violent incidents had taken place as a result of which there is a real possibility of such incidents taking place in other parts of the State as well. As anti social elements were taking part in activities affecting the security of the State, public order and services essential for the life of the community and as the State Government was in the aforementioned circumstances satisfied that it was necessary to do so, it authorised all the District Magistrates in the State to, for a period of three months, exercise the powers under Section 3(2) of the National Security Act. The notifications dated 23rd Dec. 1980, 23rd Mar, 1981 and 20th June 1981 went on to state that as the conditions in which the State Government vide notifications dated 25th Sept. 1980 authorised various District Magistrates to exercise the powers of making orders under Section 3(2) of the Act continued to exist, their authority for the purpose was being extended for a period of 3 months under each of the said notifications. The recitals made in the notification dated 25th of Sept. 1980 and repeated in the notifications dated 23rd of Dec. 1980, 23rd Mar. 1981 and 20th June, 1981 do indicate that there were such circumstances prevailing in the entire State of U. P. whereunder it might become necessary for the Dist. Magistrates to make immediate orders under S'. 3 (2) of the National Security Act and any delay in communicating the same to the State Government and requesting it to exercise jurisdiction under Section 3(2) of the Act may have the effect of defeating the very object with which the provisions of National Security Act had been enacted. It is primarily for the State Government to be satisfied about existing circumstances in which it would authorise various District Magistrates or Commissioners of Police to exercise, within their territorial jurisdiction, the powers to make orders under Section 3(2) of the Act. No material has been placed on the record to indicate that the recitals made in the various notifications mentioned above are not factually correct or that the same had been made by any ulterior objective. In the circumstances we are of opinion that the conferment of the power on various District Magistrates in the State to make or pass orders under Section 3(2) of the Act has been done in accordance with the provisions of Section 3(3) of the Act and the submission of the Learned counsel for the petitioners that the District Magistrate, Gorakhpur, had no valid authority to pass the impugned order cannot

be countenanced.

9. Coming now to the question of delay in consideration of the representations against their detention, made by the two petitioners to the Central Government, we find that such representations were made under S. 14 of the National Security Act which enables the Central Government to revoke an order passed either by the State Government or an officer authorised by the State Government, to pass such an order.

10. In the case of *Smt. Raziya Umar Bakshi v. Union of India* : [1980]3SCR1398 the Supreme Court while considering the provisions of S. 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, which are more or less identical to the provisions contained in S. 14 of the National Security Act, observed that Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act conferred a constitutional right on the detenu to have his representation considered by the Central Government. Even though the Central Government had a discretion to revoke or confirm the decision but the detenu undoubtedly had a right that his representation should be considered by the Central Government for whatever worth it was. It held that in a case where the said representation of the detenu had not been forwarded by the State Government to the Central Government, the detention was rendered void.

11. Again in the case of *Tara Chand v. State of Rajasthan* : 1980 CriLJ1015 , the Supreme Court again emphasised that S. 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act enjoined that the Central Government may revoke or modify an order of detention passed by the State Government. Hence, when once a representation is made to the Central Government it is duty bound to consider the same in order to exercise its discretion either in rejecting or accepting it. If there is inordinate delay in considering the representation, that would clearly amount to violation of the provisions of Art. 22 so as to render the detention unconstitutional and void.

12. In yet another case of *Tara Chand v. State of Rajasthan* : 1980 CriLJ1482 the Supreme Court held that inappropriate delay on the part of the authority to whom the representation had been handed over for being communicated to the Central

Government would also have the effect of rendering the continued detention invalid.

13. It, therefore, follows that if there has been improper delay on the part of the authorities which received the representation for being forwarded to the Central Government, the continued detention of the two petitioners would be rendered invalid.

14. While it is true that in certain cases decided by the Supreme Court certain observations had been made which went to indicate that there was in such cases an obligation on the part of the respondents to explain every day's delay in placing the representation made by the detenu before the appropriate authority and in dealing with the same, however, in the case of *Francis Coralie Mullin v. W. C. Khambra* : 1980 CriLJ548 , the Supreme Court emphasised the fact that the procedure prescribed in law relating to preventive detention for making representation is aimed at shielding personal freedom against indifference, insensibility, routine and red tape. Expedition is essential at every stage. However, the time imperative can never be absolute or obsessive. There has to be leeway, depending on the necessities of the case. But no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority.

15. In the case of *Mst. L. M. S. Ummu Saleema v, B. B. Gujaral* : [1981]3SCR647 the Supreme Court noticed the observation made by it in earlier cases which went to show that in such cases the respondents were bound to explain every day's delay in dealing with a representation made, observations which indicated that what the court meant by saying that each day's delay in dealing with the representation must be adequately explained was to emphasise the expedition with which the representation had to be considered. Relying upon the decision in *Francis Cora-lie Mullin's case* 1980 Cri LJ 548 (SC) it had at p. 893 of Cri LJ 1981 observed thus:

The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula the slightest breach of which must result in 'the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae

16. In the case of Smt. Khatoon Begum v. Union of India : 1981 CriLJ606 while considering the nature of obligation under Article 22(5) of the Constitution to deal with a representation under the provisions of a law concerning preventive detention, the Supreme Court (at p. 608 of Cri LJ) observed thus:-

Article 22(5) enjoins a duty on the authority making the order of detention to afford the detenu 'the earliest opportunity of making a representation against the order'. The right and obligation to make and to consider the representation at the earliest opportunity is a constitutional imperative which cannot be curtailed or abridged. If the Parliament or the State Legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the inter-departmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representation made by detenus.

17. The ratio which, in our opinion, emerges from the aforementioned decisions of the Supreme Court is that the representation made by the detenu must without any delay be forwarded by the person receiving the same to the concerned authority and it should be dealt with by the authority receiving the same as expeditiously as possible. Only so much of the time which is absolutely necessary, in the circumstances of a particular case, in the representation reaching the concerned authority and in its dealing with the same, can be countenanced. Any time consumed by any authority at any stage which in the circumstances of the case is not necessary for forwarding the same to the concerned authority or for consideration of the representation, would render the continued detention invalid.

The burden of showing that all the time consumed in dealing with the representation was necessary, in the circumstances of the case, is upon the detaining authority.

18. In the instant case the two representations meant to be considered by the Central Government were handed over by two detenus on 22nd July, 1981 and 29th July, 1981'. They were forwarded by the State Government to the Central Government only on 3rd Sept., 1981 i.e., after over one month. The respondents attempted to explain this delay by saying that the Supdt. of the Jail forwarded the two representations to the District Magistrate, Gorakhpur, on 25th July, 1981 and 29th July, 1981 and that they were received in the office of the District Magistrate on 3rd Aug., 1981 and 6th Aug., 1981. The clerk who was expected to deal with such representations fell ill and it was only on 24th Aug., 1981 that he was in a position to look into those representations and have the same forwarded to the State Government under the signatures of the District Magistrate on the same day. The representations were received by the State Government on 25th Aug., 1981 and after being processed they were despatched by a special messenger to the Central Government on 3rd Sept., 1981.

19. We find that the concerned representations were made with a view to be considered by the Central Government. Apart from urging that in the normal way the Supdt. of the Jail receiving the representation from a detenu forwards the same to the District Magistrate concerned who in his own turn forwards the same to the State Government for onward transmission, the respondents will not explain why it became necessary for the Supdt. of the Jail receiving the representation, meant to be considered by the Central Government, to forward the same to the District Magistrate and why it became necessary for the District Magistrate to forward the same to the State Government for onward transmission to the Central Government. It may be that on peculiar circumstances of a particular case, adoption of such a procedure on the part of the respondents may become necessary before the representation of a detenu is forwarded to the Central Government but then it is the duty of the respondents to explain the same to the court. In this case the respondents have not made any effort to explain as to why such a procedure became necessary to be followed in the case of the

representations made by the two petitioners. It thus appears that the respondents have failed to satisfy the Court that the time consumed in between the dates on which the Supdt. of the Jail forwarded the representations of the two petitioners to the District Magistrate and the State Government forwarded the same to the Central Government by special messenger was absolutely necessary in the circumstances of the case. This being the position, the delay entailed in forwarding the representations made by the petitioners to the Central Government rendered their continued detention invalid.

20. In the view which we have taken, ..it is not necessary for us to discuss or consider the other submissions made by the petitioners for impugning the validity of their detention.

21. In the result, the petitions succeed and are allowed. The respondents are directed to set the two petitioners at liberty forthwith unless required in connection with some other case.