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Court : Rajasthan

Decided On : Dec-05-1990

Reported in : 1990(2)WLN383

Judge : K. Bhatnagar and; N.K. Jain, JJ.

Appeal No. : D.B. Habeas Corpus Petition No. 1244 of 1980

Appellant : Adu

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Mehta

Disposition : Petition allowed

Judgement :

N.K. Jain, J.

1. The petitioner has prayed for quashing the order Anx. 1 dated 23rd April 1988 directing his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and Anx. 8 dated 15.3.1990 confirming the order of detention.

2. The case of the petitioner is that in pursuance of Anx. 1 he was detained on 15th January 90 and since then he is in illegal custody. The detention has been

challenged on a number of grounds but the learned Counsel for the petitioner has confined his arguments on one point i.e. his representation Anx.5 dated 2.2.1990 submitted on his behalf has not yet been decided by the Central Government.

3. In Para No. 5 of the writ petition it has been averred that the petitioner had filed representation Anx. 4 and Anx. 5 to the State and Central Government respectively before the Superintendent Central Jail, Ajmer and despite the representations being forwarded the petitioner has not yet heard anything about his representation made to the Central Government. In reply to this Para State Government has not denied that fact of the representations being so made. Mr. Joshi, learned Addl. Advocate General however submitted that as Union of India has not been made a party to the proceeding he is not in a position to say as to what happened to the representation made to the Central Government. Mr. Mehta, therefore, impleaded Union of India as party to the proceedings and notices was issued. Mr. N.M. Lodha, learned Counsel for the Union Government filed an affidavit of Shri S.A. Huda, Dy. Secretary to the Government of India, Ministry of Finance Department of Revenue, New Delhi to the effect that no representation from the detenu or anybody else on his behalf had been received by the Central Government against the order of detention issued by the Government of Rajasthan. Mr. N.M. Lodha submitted that there is nothing no record to show that the representation was ever forwarded. The second contention of Mr. Lodha, is that the representation was addressed to the Home Department whereas it should have been addressed to the Secretary, Finance Department and as such the representation even if any not being required, there was no responsibility of the Central Government to decide the representation and the petitioner cannot take any behalf out of it. On this objection being taken, Mr. Mehta, learned Counsel for the petitioner filed an application apprising the court that Kishan Singh, another detenu lodged in Central Jail, Ajmer had addressed the representation to the Home Ministry of the Central Government and the same was decided and that matter came up for consideration before this Court in D.B. Habeas Corpus Petition 535/90 Kishan Singh v. State of Rajasthan and was decided on 27.8.1990. It is pertinent to note that the provisions of the Act are very stringent in this type of punitive detention. The detenu does not get any opportunity to explain his side or the matter before he is deprived of his liberty and, therefore, the statute has made

it obligatory on the concerned authorities to afford to the detenu earliest opportunity to represent his side of the case and which inheres the corresponding obligation on the authority to consider the representation at its earliest. This principle has been enunciated in the case of Vijay Kumar v. State of J. & K. reported in : [1982]3SCR522 . Their lordships were considering case of detention Under Section 8 of the Jammu Kashmir Public Safety Act (60 of 1978) wherein the provisions were identical to the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and their lordships were pleased to observe that if the Government enacts a law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.

4. The aforesaid observations make it abundantly clear that the detenu should be given earliest opportunity to make representation to show and convince the concerned authorities that the detention was not justifiable. As such it also casts a corresponding obligation on the concerned authorities to decide the representation with promptitude. The mandate in Article 22(5) of the Constitution is also for this purpose. When it has been admitted that the detenu petitioner filed representations to the State Government as well as to the Central Government it was for the jail authorities to explain as to when the representations were sent. It cannot be expected from the detenu to convince the learned Counsel for the Union of India that the representations were actually forwarded. Even if it was not forwarded, the fault did not lie with the detenu and he cannot be deprived of the benefit on that count. It is to be observed that the argument is not available to Mr. Lodha that Ministry of Home Affairs was not made aware of the proceeding. Apart from it in Para 2 of the affidavit filed by Shri S.A. Huda, it is mentioned that no representation from the detenu or from anybody else on his behalf has been received in the Central Government against the order of detention issued by

Government of Rajasthan. It is a statement of general type denoting that the representation did not reach the Central Government at all. Mr. Lodha, sought further opportunity to find out from the Home Department if any such representation had reached but despite opportunity being granted he could not make any statement in that regard. The position, therefore, is that the detenu had submitted his representation to the Central Government and unless there is any thing to show contrary it is to be understood that the representation must have been forwarded and it had actually done so by the concerned authorities as is evident from the affidavit sworn in by Surendra Kumar which is on record and the Central Government did not decide it. Whether the Central Government received the representation or not cannot be taken into consideration because once the representation has been made by the detenu the duty is cast on the concerned authorities to forward it to the Central Government and on the Central Government to decide it expeditiously. This having not been done the benefit would go to the detenu petitioner and he is entitled to an order of release on this count alone.

5. Consequently the petition of Adu is allowed. The order of his detention Anx. 1 and the order of confirmation Anx. 8 are quashed. He shall be set at liberty forthwith, if not required in any other case.

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