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(1976) 02 AHC CK 0021

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 118 of 1976

Prakash Narain Awasthi — APPELLANT

Vs

State of Uttar Pradesh — RESPONDENT

Date of Decision: Feb. 27, 1976

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 359, 39, 41
- Uttar Pradesh Security Prisoners Rules, 1972 - Rule 51, 51(1)

Citation: AIR 1976 All 414

Hon'ble Judges: T.S. Misra, J; Hari Swarup, J

Bench: Division Bench

Advocate: P.N. Awasthi, for the Appellant; Umesh Chandra, for the Respondent

Final Decision: Allowed

Judgement

Hari Swarup, J.

This petition has been moved for enforcement of an obligation cast by Rule 51 of the U.P. Security Prisoner''s Rules, 1972 (hereinafter referred to as the Rules) on the State Government to pay maintenance allowance to the dependents of a security prisoner. The petitioner is a security prisoner within the meaning of these Rules. The petitioner moved an application for payment of maintenance allowance to his dependents, his wife and two minor children as they had no means of subsistence. That application has not yet been decided. A counter-affidavit has been filed by the District Magistrate stating that he had looked into the file and directed an enquiry to be made through the Tehsildar. The District Magistrate also sent a reminder to him on 16-2-1976 to expedite the enquiry but it appears that nothing has yet been done. The District Magistrate has stated in the counter-affidavit that ultimately the State Government will pass the orders on the petitioner''s application after receiving the report from him.

2. The petitioner has now approached this Court with a prayer that a mandamus be issued to the State Government to decide his application about the payment of maintenance to his dependents. Sub-section (1) of Rule 51 of the U.P. Security Prisoner''s Rules, 1972 provides:

"Allowance for the maintenance of the dependents of a security prisoner will only be granted in cases where the State Government are satisfied that the detention of the prisoner in question has substantially affected the means of subsistence of those dependents.

(2) All applications for maintenance allowance must indicate the number and nature of the dependents and state clearly all sources of income available for their subsistence both before and after the detention of the security prisoner.

(3) All applications for maintenance allowance shall be sent to the District Magistrate of the district in which the security prisoner ordinarily resides, who shall, after such enquiry as may be necessary, forward the application to the State Government with a report on the circumstances of the dependents of the security prisoner. If the applicant is not a resident of the Uttar Pradesh, the application shall be forwarded direct to the State Government".

The purpose of the Rule is to save the dependents of a security prisoner from facing economic hardship while the bread-earner by reason of his detention is unable to support them. The intention of the Rule is to provide subsistence allowance to needy dependents of a security prisoner so that they may not face starvation or penury. Although the Rule has fixed no time limit, the intention is that the Government should take decision before it becomes too late. It must, therefore, act without delay and pass necessary orders within a reasonable time. The application of the security prisoner is required to give full details; it has to indicate the number and nature of the dependents and state all sources of income available for their subsistence both before and after the detention of the security prisoner. The District Magistrate thus gets preliminary material and has basically only to check the correctness of the prisoner''s statement and make a report to the State Government for its decision. Of course this does not mean that the authority concerned should not make the necessary enquiry, but the nature of the relief sought makes time an essence of the matter. In our opinion, the reasonable time for such an enquiry should not be more than three weeks. In any case, the lapse of time since August till February is certainly not the reasonable time as contemplated by the Rule. The assertions in the counter-affidavit clearly show that the authorities subordinate to the District Magistrate are not acting with due promptitude. The delay in the making of the report has resulted in the petitioner''s application not even reaching the State Government though six months have passed. The action of the subordinate authorities has prevented the State Government from discharging its duties. As however they are only the instrumentalities of the Government itself the lapse must be deemed to be the lapse of the Government itself. In the circumstances we have

no option but to direct a mandamus go to the State Government to decide the application of the petitioner on merits and as sufficient time has already passed it may be decided within a period of one month from today.

3. The learned Standing Counsel has, however, urged that the writ petition must be dismissed as it is not maintainable in view of the proclamation of emergency under Article 359 of the Constitution. The relevant part of the proclamation reads as under:

"In exercise of the powers conferred by Clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any court for the enforcement of the abovementioned rights shall remain suspended for the period during which the Proclamations of Emergency made under Clause (1) of Article 352 of the Constitution on the 3rd December, 1971 and on the 25th June, 1975 are both in force."

In our opinion, the suspension of Article 21 has no relevance to the present case as it is not for the enforcement of the right guaranteed under Article 21 of the Constitution that the present petition has been moved. Article 21 deals with the right to personal liberty which consists essentially of the freedom of movement and freedom of speech and expression; it does not deal with the ''right to live'' which envisages an economic freedom, the freedom from want. When a person claims subsistence or maintenance "allowance he relies on the ''right to live'' envisaged by Article 39(a) and Article 41 of the Constitution and not the right to personal liberty contemplated by Article 21 of the Constitution. Further, the relief claimed is not for the benefit of the prisoner but of the persons against whom no action has been taken. Although it is the prisoner who has approached the Court the right is claimed for and on behalf of free citizens for whose benefit Rule 51 has been framed. The petitioner does not want that he be set at liberty; he only claims that during the period he remains under detention the State Government should discharge the obligation to maintain his dependents which has been cast upon it by Rule 51. In our opinion Rule 51 is independent of Rules dealing with the detention of a person or with the rights contemplated by Article 21 of the Constitution, and, as such, the suspension of Article 21 of the Constitution cannot bar the maintainability of the present petition.

4. In the result, the petition is allowed. Let a writ in the nature of mandamus issue directing the State Government to decide the petitioner''s application under Rule 51 of the U.P. Security Prisoner''s Rules, 1972 within a period of one month from today.