

(2010) 08 AHC CK 0489

Allahabad High Court

Case No: Civil Miscellaneous Habeas Corpus Writ Petition No. 17442 of 2010

Abdul Qayyum

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 19, 2010

Acts Referred:

- National Security Act, 1980 - Section 3(2)
- Penal Code, 1860 (IPC) - Section 489B, 489C
- Reserve Bank of India Act, 1934 - Section 22

Citation: (2011) CriLJ 2008

Hon'ble Judges: Poonam Srivastav, J; Bala Krishna Narayana, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard Sri Mohd. Islam, counsel for the Petitioner, Sri D.S. Shukla Advocate on behalf of Union of India Respondent No. 1 and Sri Sudhir Mehrotra Advocate appearing on behalf of Respondent Nos. 2, 3 and 4.

2. Counter and rejoinder affidavits have been exchanged. The habeas corpus petition is taken up for final hearing.

3. This habeas corpus writ petition has been preferred against the detention order dated 11.11.2009 passed by the District Magistrate, Allahabad detaining the Petitioner under the provisions of National Security Act (hereinafter referred to as NSA).

4. According to the Petitioner, the facts of the case are that Petitioner was taken into custody by police of Police Station Ghoorpur, Allahabad on 16.10.2009. His daughter sent a telegram next day i.e. 17.10.2009 to the D.I.G. and District Magistrate, Allahabad informing them regarding arrest of her father. However, according to record, it transpires that the Petitioner was arrested in connection with an offence

under Sections 489-B, 489-C I.P.C. registered at case crime No. 402 of 2009. The Station Officer Police Station Ghoorpur submitted a report on 5.11.2009 for initiating proceeding under the NSA which was forwarded to the District Magistrate, Allahabad u/s 3(2) of NSA on 7.11.2009 and detention order was passed against the Petitioner on 11.11.2009. It is stated that the Petitioner submitted a representation to Respondent Nos. 1 and 2 i.e. Union of India and State of U.P. against the detention order praying that the order may be revoked. The representation of the Petitioner was not accepted and, therefore, the instant habeas corpus writ petition has been preferred.

5. Sri Mohd. Islam Advocate while canvassing the petition on behalf of Petitioner has submitted that the District Magistrate passed the detention order on a consideration that fake currency notes were being circulated by the Petitioner which would result in hampering the economic order of the State, thereby supplies and services of the State will be adversely effected. The detention order is annexed as Annexure-1 to the writ petition. The challenge is mainly on the ground that the detention order was not supplied to the Petitioner nor the detention order u/s 3(2) of NSA could be invoked in a case where the authority was of the view that services essential to the community would be adversely effected since the word "services essential to the community" have not been included u/s 3(2) of NSA nor it has been defined. His argument is that the word "services and supplies" came up for consideration before the Apex Court in the case of [A.K. Roy and Others Vs. Union of India \(UOI\) and Others](#),

6. We have gone through the said decision. Since the word services essential to the community is not defined, the Apex Court observed in paragraph 67, extract of which is quoted below:

What we propose to do is to hold that no person can be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community unless, by a law, order or notification made or published fairly in advance, the supplies and services, the maintenance of which is regarded as essential to the community and in respect of which the order of detention is proposed to be passed, are made known appropriately, to the public.

7. Thus, the effort of the Hon"ble Supreme Court was to dispose of the question regarding vagueness of any provision of NSA. In view of the aforesaid observation, a notification was issued on 8.2.1982 vide Notification No. n/15011/1/82-IS (DO-II) enumerating the services which would include the "maintenance of supplies and services essential to the community". As many as 16 services were mentioned in the list given in the notification and at serial No. 11 the services included was "any service" relating to the banking or emanating for the bank services and at serial No. 16 any other services related to the State which has not been mentioned under the, other heads, were also included. Meaning thereby wide power was given to the

State and there were a number of categories of services which would have a direct and indirect effect of maintenance of security of the State relating to the essential services. .

8. Argument of learned Counsel is that since the Petitioner was found in possession of 13 fake currency notes of Rs. 1000 denomination and remaining notes were of Rs. 100 denomination. The total amount of currency notes recovered from the detenu was Rs. 25,100/-. Submission is that this does not come within the clutches of Section 3(2) of NSA and, therefore, detention order is absolutely illegal. Sri Islam laid emphasis on his submission that right to issue bank notes is within the power of Reserve Bank of India as provided u/s 22 of the Reserve Bank of India Act, 1934 and, therefore, can not be termed to be services u/s 3(2) of NSA..

9. The next submission is that sponsoring authority had also appended a list of criminal history of the Petitioner which was not referred in the grounds of detention and this evidently influenced the mind of the detaining authority and, therefore, liable to be set aside. Next submission is that the detention order ;was passed to deprive the Petitioner from release on bail whereas there was no material before the detaining authority to arrive at a conclusion that if the detenu is released, he will indulge in acting in any manner which would be prejudicial to the maintenance of supplies and services essential to the community. Besides, he submits that ground of detention is based on extraneous considerations and thus the subjective satisfaction of Respondent No. 3 is vitiated in law and the detention order deserves to be quashed.

10. Sri Sudhir Mehrotra has filed counter affidavit disputing each and every arguments on behalf of the Petitioner. At the very outset he has submitted that a huge amount of fake currency notes were recovered from his possession and they were being circulated in the market. Evidently this would have a direct threat to economy of the country. A fear and terror crept in the mind of public at large and the necessary outcome is that even the genuine notes were being refused in the open market, and community at large suffered at the hands of such undesirable elements who were circulating fake currency notes. In the circumstances, there was no other option but to take preventive steps against such an erring person. So far apprehension in the mind of District Magistrate that if the detenu is released on bail was fully justified because the detenu was already granted bail by the Court. It had become essential to ensure that the detenu may not be set free to once again indulge in such activities.

11. Sri Sudhir Mehrotra has placed reliance on a Division Bench decision of this Court in the case of Atikur Rahaman @ Atiq Kirana v. Union of India and Ors. (LXVI) 2009 ACC 864: (2009 (5) AU 467).

12. Sri Mohd. Islam has relied upon a number of decisions of the Apex Court; [Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others](#), and [Powanammal Vs.](#)

State of Tamil Nadu and Another,

13. We have gone through both the judgments. In fact it relates to non-supply of documents and, therefore, the Petitioner was deprived of the effective right to make his representation and consequently the detention order was held to be illegal, We are of the view that these decisions are of no help to the Petitioner as the detention order was provided and notification was issued in compliance of the Apex Court decision in case, of A.K. Roy and Others Vs. Union of India (UOI) and Others, categorizing 16 cases which could be included in the activities detrimental for maintenance of essential supplies and services to the community. The case of the Petitioner is squarely covered within the frame work of Clause 11 and obviously Clause 16 which is very wide, includes each and every services which relates to the services to the community at large. No other point has been canvassed by Shri Islam to bring home his argument that the detention order is illegal and vitiated in law.

14. In the instant case, we have seen the detention order, examined the fact and also the fact that the authorities have decided the representation of the Petitioner expeditiously without any delay. No ground for interference is made out. The writ petition is accordingly dismissed.