

Court No. - 39

Case :- WRIT - C No. - 31840 of 2019

Petitioner :- Muhammed Rasheed Khan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Hari Mohan Srivastava, Anuj Srivastava, Manish Dwivedi, Neeraj Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Surendra Singh-I, J.

1. Heard Shri Manish Dwivedi, learned counsel for the petitioner and Shri Arimardan Singh Rajput, learned Additional Chief Standing Counsel.

2. Present petition has been filed seeking quashing of the order dated 15.5.2019 passed by respondent no.2/Commissioner, Chitrakoot Dham Mandal, Banda and the order dated 22.05.2017 passed by respondent no.3/District Magistrate, Hamirpur rejecting the claim made by the petitioner under Uttar Pradesh Fighters of Democracy Honour Act 2016 (hereinafter referred to as the 'Act'). Consequential mandamus has been prayed for issuance of certificate under the Act and grant of consequential reliefs thereunder.

3. Pleadings have been exchanged.

4. Having heard learned counsel for the parties and having perused the record, it is not disputed to the respondent-State authorities that the petitioner remained confined under Maintenance of Internal Security Act, 1971 (hereinafter referred to as the 'MISA') from 23.07.1976 to 05.03.1977 at District Jail, Hamirpur. He was released on parole on 05.03.1977.

5. Though the respondent-State authorities do not dispute the basis of the above claim made by the petitioner, his entitlement under the Act has been declined on the reasoning that the petitioner was not a political detainee but that he was detained under MISA arising from his 'bad character'. Neither any fuller detail of the occurrence leading to detention of the petitioner has been disclosed nor any case detail in which the petitioner may have detained, has been disclosed nor any credible material appears to exist on record to defeat the claim of the petitioner, under the Act.

6. Primarily, the term "Fighters of Democracy" has been defined under Section 2(a) of the Act. It reads as below:

"2(a) "Fighters of Democracy" means such permanent residents of Uttar Pradesh who actively fought to protect the democracy during emergency period i.e. from 25.06.1975 to 21.03.1977 and who were detained at any time during this period on political grounds in jail under MISA/DIR for participating in such activities."

7. Under Section 3 of the Act, the provisions of the Act may not apply to persons detained in jail other than on political grounds. Thus, the Act contemplates to confer honour of such citizens who may have fought for democracy and who may have been detained under MISA for such protest offered by them.

8. Yet, section 4(3)(iii) of the Act does not exclude the application of the Act to persons who may have been detained against whom other criminal occurrences may also have been alleged besides MISA. In such cases, the District Magistrate is required to satisfy himself that whether other criminal offences were alleged while fighting for democracy, etc. Thus, mere existence of allegation of criminal offences does not itself dis-entitle a claimant to claim the benefit of the Act.

9. In the present case, Annexure nos. 3, 4 & 5 of the writ petition do bring out admission on part of the State authorities that the present petitioner was detained under MISA.

10. In absence of any further material brought on record to establish that the petitioner was detained for any other criminal offence, a presumption does exist in his favour that the petitioner was political detainee arising from the protest offered by him against imposition of national emergency. Seen in that light, the burden that otherwise lay on the State authorities to effectively assert that the petitioner was not entitled to the benefits of the Act, remained undischarged.

11. By merely stating that the petitioner was detained under MISA as a person with "bad character" was neither here nor there. Since no reference has been made to any criminal case lodged against the petitioner, no adverse inference may be drawn on the wholly subjective opinion of the respondent State authorities now drawn, that the petitioner had been detained under MISA for reason of "bad character". Here, it may be noted, the list relied upon by the learned Additional Chief Standing Counsel does not inspire confidence.

12. In absence of details of case giving rise to subjective opinion of "bad character" and in absence of such list being signed by the competent authorities, inference drawn is presumptuous and not based on credible material.

13. It is therefore concluded that the petitioner succeeded in establishing his primary eligibility under the Act. He did satisfy to the respondent authorities that he had been detained under MISA from 23.07.1976 to 05.03.1977.

14. In absence of any adverse fact being proven by the State authorities - to render the petitioner ineligible to the benefits of the Act, we find the order passed by the respondent no.3/District Magistrate as confirmed by respondent no.2/Commissioner to be based on wrong appreciation of fact and law. Accordingly, the impugned orders dated 15.05.2019 and 22.05.2017 are set aside. Direction is issued to the respondent no.3/District Magistrate, Hamirpur to issue an appropriate certificate to the petitioner and grant consequential relief treating him to be the "Fighter of Democracy" under the Act. Such action may be completed within a period of three months from today.

15. Accordingly, present petition stands **allowed**.

Order Date :- 11.3.2024
Prakhar

(Surendra Singh-I, J.) (S.D. Singh, J.)