

(2002) 09 SC CK 0037

In the Supreme Court Of India

Case No : Writ Petition (Criminal) 84 of 2002

A. Syed Ibrahim

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (2003) 1 ACR 335 : (2002) 8 JT 311

Hon'ble Judges : Y. K. Sabharwal, J; Shivaraj V. Patil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner by an order dated 3.5.2002 has been ordered to be detained in exercise of the powers conferred by section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent him from smuggling goods in future. The order has been issued in the name of the governor by the secretary to the government of Tamil Nadu. The petitioner was informed of his right to make a representation to the detaining authority, viz. the state government and also to the government of India, if he so desired in writing against the order under which had been kept under detention. The petitioner made representation dated 22nd May, 2002 to the central government. That representation was rejected on 5th July, 2002.

2. This petition under Article 32 of the Constitution of India has been filed seeking quashing of the detention order. The only point argued for the writ petitioner is regarding inordinate and unreasonable delay of the central government in consideration of the representation dated 22nd May, 2002.

3. In answer to the notice is-sued to the respondents, the respondents including the first respondent union of India, represented by learned additional solicitor general and assisted by the counsel for union of India appeared in court on 12th

August, 2002. Two weeks' time was granted for filing counter affidavit. The order further stated that "It is made clear that no further adjournment will be granted." Thereafter when the matter was heard on 26th August, 2002 by which time the counter affidavit on behalf of union of India had not been filed, the court directed issue of the rule. These are the circumstances under which the writ petition has come up for hearing before us. Despite the fact that more than six weeks have elapsed, no counter affidavit has been filed on behalf of the first respondent the union of India. Under these circumstances, we are unable to know as to how time was spent between 22nd May, 2002 and 5th July, 2002. Since even the record/file of Union of India is also not available in court today we need not, in the present case, examine the question whether the central government without filing counter affidavit can rely upon the file and insist upon the same being looked into to find out whether there was any explanation for the time spent in the disposal of the representation. We do, however, wish to place on record that the aspect of the personal liberty of an individual shall not be taken and treated as lightly as it seems to have been done by the central government, on filing of this petition by the detainee. It has to be kept in view that the case in hand is that of preventive detention as opposed to punitive detention and Article 22(5) of the Constitution confers on the detainee a right to make a representation against the order of detention. It is implicit in the constitutional provision that the representation when made shall be considered without any inordinate and unreasonable delay. The delay is required to be explained by the concerned authority-central government in the present case.

4. In respect of not filing the counter affidavit and perusal of the record we may only quote observations from *Rajindra v. Commissioner of Police, Nagpur Division* as under :-

".....The indulgence shown by the courts in pursuing the file seems to have given an impression that the central government is under no obligation to file a counter-affidavit to explain the delay. We propose to remove this impression once and for all if it persists and to impress upon the central government that it is under obligation to file its counter within the time permitted by the Court failing which the case may go by default. Let it be clearly understood that production of the file is not a substitute for a counter to be filed by the central government. The Court peruses the file not to absolve the central government of its responsibility to file a counter but to satisfy its conscience if it notices ambiguities in the government's stand. If the courts have shown indulgence by perusing the file where affidavit is not filed for good reason, let that indulgence not be misused by construing it to be a licence to dispense with the obligation to file a return. In the instant case no counter was filed and the High Court has taken note thereof but, if we may say so with respect, the court has shown indulgence by observing that the counter is not filed 'presumably because there is no specific allegation in this behalf in the petition'. Let it be stated that once a representation is made, the detainee is entitled to the representation being dealt with expeditiously. If there is some ex-fade delay, the obligation is on the state

to explain that delay. There is no question of a specific allegation to be made in the petition except pointing out by placing facts that there has been a delay which ex-facie calls for an explanation and that obligation has to be discharged by filing a proper counter and explaining the delay. The courts have not been unduly strict in insisting that each day's delay must be explained but it is obligatory on the part of the government to show by filing a counter affidavit that it had acted promptly in dealing with the representation. What is essential is that the court must be satisfied that the officers dealing with the representation were not indifferent to the urgency of the situation of the detainee being in jail. We are afraid that in the instant case by failing to file a counter affidavit and by failing to explain the ex-facie delay, the central government failed in its duty and, therefore, we see no alternative but to uphold the contention and quash the detention order."

5. In view of non-explanation of the time spent in consideration of the representation we have no hesitation in holding that there was inordinate and unreasonable delay in consideration thereof and the order of detention is liable to be quashing on that ground. Accordingly, quashing the order of detention dated 3rd May, 2002 the rule is made absolute. The detainee shall be released forthwith unless he is required in any other case.