

(1990) 04 DEL CK 0020

In the Delhi High Court

Case No : Criminal Writ Appeal No. 817 of 1989

Ashqueen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1990) 41 DLT 275

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : J.K. Srivastava, Kamini Lao and R.P. Lao, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking quotient of the detention order dated November 4, 1989 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 and declaration issued u/s 9(1) of the Act dated June 8, 1989.

(2) The learned counsel for the petitioner has contented that petitioner had made a representation to the Advisory Board and till date the said representation has not been considered by the Central Government and thus the continued detention of the petitioner has become bad. He has argued that no communication has been received by the detenu regarding a decision made by the Central Government on the said representation of the detenu.

(3) In the counter affidavit filed by Shri A.S. Dagar, Deputy Secretary (Home) Delhi Administration it has been mentioned that the said representation given to the Advisory Board by the detenu was duly considered Along with the opinion of the Advisory Board by the Central Government and thereafter the Central Government had confirmed the order of detention of the petitioner for a period of

one year and the order of confirmation was duly conveyed to the detenu and thus there was no need to convey any separate decision of the Central Government with regard to the aforesaid representation given by the detenu to the Advisory Board.

(4) The learned counsel for the petitioner has made reference to *Kubic Darusz Vs. Union of India (UOI) and Others*, wherein it has been observed that in *Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others*, it was held that under Article 22(5) of the Constitution, independent of the reference to the Advisory Board the detaining authority must consider the representation at the earliest and come to its own conclusion before confirming the order of detention and consideration of the representation subsequent to the report of the Advisory Board would not cure the defect. This judgment is not applicable to the facts of the present case. It is true that if any representation is given to the detaining authority by the detenu before the opinion of the Advisory Board, the duty is cast upon the detaining authority to consider the said representation and take a decision on the same without waiting for the opinion of the Advisory Board. In the present case the detenu has not given the representation to the detaining authority before the meeting of the Advisory Board, rather the detenu in the present case had given the representation to the Advisory Board for consideration of the Advisory Board. So, there could be no occasion for the detaining authority to have considered the said representation before the opinion of the Advisory Board was received. The Advisory Board admittedly had considered the said representation and had given its opinion and the Central Government had considered not only the opinion of the Advisory Board but also the representation given to the Advisory Board and thereafter had passed the order of confirmation which was duly conveyed to the petitioner.

(5) Learned counsel for the petitioner has also cited *Bachhittar Singh Vs. The State of Punjab*, . In this judgment it has been held by the Constitution Bench that action taken by the State affecting a particular person must be communicated to said person. There is no doubt about the proposition of law that any decision taken by the detaining, authority with regard to the representation of the detenu must be conveyed to the detenu.

(6) Learned counsel for the petitioner also made a reference to *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , particularly to Para 8 where it has been laid down that the second equally relevant matter is that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The counsel for the petitioner has argued that the Memo conveying the order of the Central Government regarding confirmation of detention of the petitioner cannot be construed to as conveying the decision of the Central Government with regard to the representation of the detenu made to the Advisory Board seeking revocation of the detention order and the order must stand on its own reasons

and cannot be made good on the basis of any other extraneous reasons being now urged in support of that order. I do not find any force in this contention. The order conveying the decision of the Central Govt. for confirming the detention is on the face of it made on the basis of the record which includes the opinion of the Advisory Board as well as the representation made to the Advisory Board and other material placed before the Advisory Board and thus the decision regarding confirmation of detention made by the Central Government .by itself means that the representation of the detenu seeking revocation of the detention order stood rejected and such deemed rejection stood conveyed to the detenu in the shape of the order served on the detenu confirming his detention. So, in view of my above discussion, I hold that there was no requirement of law that any separate decision ought to have been made by the Central Government with regard to the aforesaid representation given to the Advisory Board and such a decision should have been conveyed to the detenu apart from the decision made by the Central Government confirming the detention of the petitioner and conveying the same to the detenu. It is only where a separate representation is made to the detaining authority or to the Central Government that the law requires that the decision made on the same should be conveyed to the detenu without any delay. Where the representation has been made only to the Advisory Board, the same becomes part of the record of the Advisory Board, it is true that said representation has to be also considered by the Central Government before passing the order of confirmation. In the present case the Central Government has considered the representation Along with the record of the Advisory Board and also the opinion of the Advisory Board and had taken a decision to confirm the detention of the petitioner and that decision had been conveyed to the detenu and it would be deemed that the representation stood rejected and that is why the Central Government had passed the order of confirmation and conveying of the order of confirmation to the detenu would clearly mean that the Central Government has not accepted the representation of the detenu and there was no legal requirement that any separate decision should have been made and conveyed to the detenu on the said representation of the detenu given to the Advisory Board. I find no merit in this contention.

(7) However, I need not refer to other contentions raised in support of the petition because this petition is liable to be allowed on a very short point. It has been pleaded in Ground Viii and in Para 5 of the Additional Grounds taken in Crl. M. 102 of 1990 that a representation dated March 5, 1990 was given seeking a revocation of the detention order and also for supply of documents and the said representation came to be decided on March 23, 1990 and there has thus taken place undue and unexplained delay in considering the said representation and till date no copies of the documents have been supplied as mentioned in the representation although in the Memo served on the detenu rejecting the representation it has been directed to the sponsoring authority for supplying the copies of the documents. In the counter-affidavit by the respondents no Explanation has been given as to why it took about 18 days for deciding the

aforesaid representation of the detenu. It is not explained how and in what manner the said representation was dealt with. The law required that the respondents ought to have given details as to the manner in which the said representation was dealt with from the date it was received and till it was decided finally. In the absence of any Explanation being given as to how this representation was dealt with for the said period, the Court has no option but to hold that there has occurred undue and unexplained delay in dealing with the representation of the detenu. The counsel for the respondent Ms. Kamaini Lao who appeared on behalf of Shri R.P. Lao, Advocate could not give any Explanation for the same. I, hence, hold that the continued detention of the detenu has become illegal as his representation has not been dealt with due promptitude."

(8) I allow the writ petition, make the rule absolute and quash the continued detention of the petitioner and direct that he be released from jail forthwith, if not required to be detained in any other case.