
(1987) 04 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 272 of 1987

Avtar Singh @ Mehtab Singh @ Pehlwan @ Paras Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 09-04-1987

Acts Referred:

Citation : (1987) 1 RCR(Criminal) 643

Hon'ble Judges : I.S.Tiwana, J

Advocate : P.S. Hundal, Harbhajan Singh, S.S. Sarin, Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. The petitioner who has been detained under Section 4 of the National Security Act since September 8, 1986, impugns his detention on the ground amongst others that his statutory representation has not been disposed of by the State Government without unreasonable delay. Though the parties are at variance as to the date on which the said representation was submitted by the detenu to the jail authorities according to him it was so submitted on November 15, 1986 and according to the Superintendent, Tihar Jail, New Delhi, it was handed over to him on November 20, 1986 yet the same was concealedly disposed of by the State Government, i.e. Minister of State for Home Affairs, on December 17, 1986. This time lag between November 20, 1986 and December 17, 1986, has been explained through an affidavit of Mr. V.V. Chadha, Under Secretary to Government, Punjab, Home Department, in the following manner :

"That on 20.11.1986, the petitioner made a representation to the State Government, Punjab, through the Supdt. of Tihar Jail, Delhi. The said Supdt. forwarded the representation to the Distt. Magistrate, Amritsar on the same day. It was received in the office of Distt. Magistrate on 24.11.1986. The Distt. Magistrate, Amritsar, sent the same on 28.11.1986 to the SSP/Amritsar for comments (22/11, 23/11, 29/11 and 30.11.1986 were holidays). The SSP/Amritsar received on 1.12.1986 and furnished the comments on 3.12.1986 to

the Distt. Magistrate, Amritsar. The Distt. Magistrate, Amritsar, forwarded the comments on 3.12.1986 to the State Government, which were received on 4.12.1986. The Distt. Magistrate Amritsar was asked to supply the copy of the representation on 4.12.1986 because the same was not sent along with the comments. The D.M. Amritsar submitted the representation on 5.12.1986 (Holiday) which was received on 8.12.1986 (6/12, 7/12 holidays). In the light of parawise comments and other material on record the representation was examined on different dates viz. 10.12.1986, 11.12.1986, 12.12.1986, 15.12.1986 and 16.12.1986 at various stages (13/12, 14/12/86 were holidays). The representation was considered and rejected on 17.12.1986 by the competent authority on merits. Thus the representation was decided expeditiously. The detenu was informed accordingly through the Supdt. of the Jail Tihar.

The grouse of the petitioner's counsel is that even if it is to be accepted from argument's sake that the representation in question was actually handed over to the Superintendent, Tihar Jail, on November 20, 1986, there is no explanation whatsoever for not dealing with the same from 24th to 28th of November, 1986 by the District Magistrate, Amritsar and similarly for the nonconsideration of the same by the State Government in the Secretariat from 8th to 17th December, 1986. It is urged by him in the light of the observations made by their Lordships of the Supreme Court in (paragraph 5) *Harish Pahwa v. State of Uttar Pradesh and others*, 1982(1) C.L.R. 65, that this detention cannot be sustained. This is what has been observed in this judgment :

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representations made by the persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We should emphasize that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been

done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

2. It is thus apparent that the above noted explanation offered by the State Government in the form of an affidavit of Mr. Chadha, does not meet the requirements of law as laid down by their Lordships. Mr. Saron, learned Counsel for the State, however, contends that it is neither possible nor advisable to lay down any rigid formula about the time lag within which such like representations should be disposed of and all that the State Government has to take note of is that the representation should be considered and disposed of by it as soon as possible. In order to substantiate this stand of his, he makes a reference to State of Orissa and another v. Manilal Singhanian and another, AIR 1976 SC 456. I have perused the judgment and find that this pronouncement does not in any way detract from the principle laid down in Harish Pahwa's case (supra) which concededly is a latter pronouncement. In Manilal Singhanian's case (supra) the State Government, as is evident from the facts stated in paragraph 4 of the judgment, had explained each and every day's delay in the disposal of the representation of the detenu. It was in the light of that that their Lordships made the following observations :

"What is important to note is that there was no delay at any stage in this movement of the representation from one officer to another. Every officer dealt with the representation promptly and after examining it and making his notings, submitted it to the higher officer. The representation undoubtedly went to the Chief Minister on 7th November, 1974 but since the Chief Minister was out of Cuttack, it had to wait till the Chief Minister returned and it is important to note that as soon as she returned, she immediately, without any delay at all, disposed of the representation."

3. There is no such explanation in the case in hand. The examination of the representation during the time lag 8th December to 17th December, 1986 "on different dates" and "at various stages" is not explained in any manner. I have also gone through the original record and find that but for referring the file from one officer to another, nothing material or substantial appears to have been done in the matter. What for the comments of the officers from bottom to top were needed and what for the same had to be referred to the Law Department in the absence of any legal issue raised in the representation, is not explained by the learned State Counsel. I, therefore, following the dictum of their Lordships of the Supreme Court in Harish Pahwa's case (supra), hold that the representation of the petitioner has not been disposed of expeditiously or in the manner laid down in that judgment. Thus his detention is quashed and he is directed to be set at liberty forthwith.

JUDGMENT accordingly.