

(1994) 11 SC CK 0050

In the Supreme Court Of India

Case No : Criminal Appeal No. 767 of 1994 (arising out of SLP (Criminal) No. 2424 of 1994)

B. Alamelu

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1995) 1 ALT(Cri) 1 : (1996) 54 ECC 14 : (1995) ECR 8 : (1994) 74 ELT 778 : (1994) 4 SCALE 825 : (1995) 1 SCC 306 : (1995) 1 UJ 11

Hon'ble Judges : S.B. Majmudar, J;K.S. Paripoornan, J;J. S. Verma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

S.B. Majmudar, J.—Special leave granted.

2. By an earlier order of this Court notice was issued in this matter for final disposal and accordingly we have heard the learned Counsel for the parties finally. The appellant is wife of one M. Balakrishnan who has been detained pursuant to an order passed by Joint Secretary of Tamil Nadu in exercise of powers conferred by Section 3(1)(i) and 3(1)(iii) of COFEPOSA Act. The order of his detention is dated 17th February, 1993. The said order of detention was challenged by the appellant before the High Court of Judicature at Madras in Writ Habeas Corpus Petition No. 785 of 1994. That petition came to be dismissed by the High Court by its order dated 18.8.1994. The present appeal is filed by special leave against the said order.

3. The detenu was supplied grounds of detention of even date when he was detained pursuant to the impugned detention order. The appellant had raised various contentions challenging the order of detention. The grounds raised by her in support of the petition did not find favour with the High Court and the writ petition was dismissed. In appeal amongst others one contention was placed in the fore-front in support of the appeal. The said ground was that constitutional

right of the detenu under Article 22(5) of the Constitution got infringed inasmuch as representation was made against the detention order on 4.5.1994 through the jail authorities and that was not forwarded to the Central Government till 22nd July, 1994. Consequently, the continued detention of the detenu has become illegal. In support of that contention reliance was placed before the High Court on the decision of this Court in the case. of Jai Prakash Vs. District Magistrate, Bulandshahar, U.P. and anothers, . The High Court distinguished the said decision and held that the facts of the present case are different inasmuch as the detenu is an advocate and must be deemed to be aware of the need for clearcut representation while in this case the representation was vague. The delay in sending the said representation to the Central Government had no fatal consequences on, the continued detention of the detenu.

4. The learned Counsel for the appellant vehemently contended that the reasoning adopted by the High Court is not sustainable. The learned Counsel for the respondents State of Tamil Nadu as well as the Union of India on the other hand submitted that on the facts of the present case it cannot be said that the constitutional right of detenu under Article 22(5) was violated in any manner.

5. In order to resolve this controversy it is necessary to note a few relevant facts. As stated earlier the detenu was taken into custody and was placed under preventive detention pursuant to the order dated 17th February, 1993. In the grounds of detention furnished to him it was clearly mentioned in paragraph 6 that the detenu had a right to make a representation to the State Government and also to the Government of India if he so desired in writing against the order under which he was kept under detention. It was further stated that if the detenu wished to make such a representation he should address it to the Joint Secretary to the Government of Tamil Nadu, Public (Law and Order) Department, Fort St. George, Madras- 9 or the Secretary to the Government of India, Ministry of Finance, Department of Revenue, COFEPOSA Section, New Delhi, as the case may be, and forward it through the Superintendent, Central Prison, Madras in which detenu was confined, as expeditiously as possible. Any representation that is made by the detenu will be duly considered by the State or Central Government, as the case may be. The present appellant sent the representation along with a covering letter dated 4th May, 1994 addressed to the Superintendent, Central Prison, Madras. She stated in the said letter enclosing the representation with nine copies as under:-

My husband M. Balakrishnan s/o Murugappan is in detained in your prison as a detenu under COFEPOSA Act. As per his instructions, I am enclosing his representation. Please send the same to the persons mentioned in the grounds immediately.

There is no dispute that such a letter was received along with nine copies of representation by the Superintendent of Central Prison, Madras on 4th May, 1994. A mere look at the letter shows that the representation was being sent as per the instruction of the detenu and the jailor was requested to send the

representation to the persons mentioned in the grounds immediately. It becomes, therefore, clear that a request was made by the appellant on behalf of the detenu as early as on 4th May, 1994 to send the representation not only to the State Government but also to the Central Government as mentioned in the grounds of detention, to which we have made a reference earlier. To recapitulate, the grounds of detention made it clear that the detenu had a right to make a representation to the Central Government by addressing it to the Secretary to the Government of India, Ministry of Finance, Department of Revenue, COFEPOSA Sec., New Delhi. Therefore, it was incumbent on the Superintendent, Central Prison, Madras to send one copy of the representation out of nine copies supplied to him to the said addressee. But surprisingly nothing was done in this connection by the jailor. He almost sat tight over the representation. It transpires that only the Collector of Customs having come to know about this representation, sent the same to the appropriate authority in the Central Government as late as on the 22nd July, 1994. Therefore, there was a delay of almost 84 days in sending the representation to the appropriate authority in the Central Government. It is true as submitted by the learned Counsel for the Central Government that after the representation had reached the Central Government it was considered and decided with least practicable delay by 27th July, 1994. In that connection, he invited our attention to the decision of this Court in the case of Abdul Salam alias Thiyyan Vs. Union of India and others, . In the said decision, it has been laid down that strictly speaking the Central Government is not the detaining authority within the meaning of Article 22(5) yet they are under legal obligation to dispose of the representation as early as possible. But such delay by the Central Government should not be subjected to such a rigorous scrutiny as is done in the case of a delay caused by the appropriate Government, namely the detaining authority. The Central Government should consider the representation with reasonable expedition. What is reasonable expedition depends upon the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable re-tapes and unduly protracted procrastination. From the explanation given in that case for the delay of one month and five days on the part of the Central Government in disposal of the representation, it was clear that the representation was considered most expeditiously and there was not negligence or callous inaction or available red-tapism. Therefore, the detention was not vitiated due to delay.

6. In the facts of the present case it is not the delay on the part of the Central Government in disposing of the representation on 27th July, 1994 which reached its end on 22nd July, 1994 that is on the anvil. The question is whether the delay on the part of the jailor in despatching the representation received by him on 4th May, 1994 to the Central Government has violated the constitutional right under Article 22(5) or not. So far as that question is concerned, it has to be noted that the jailor on his part never despatched the representation to the Central

Government. If he had despatched the same as expeditiously as possible after 4th May, 1994 as requested by the appellant in the covering letter, the matter would have stood on a different footing but that never happened. In the case of Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, , it has been held by this Court that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay had resulted in rendering the continued detention of the. appellant illegal and constitutionally impermissible. On the facts of the present case, the ratio of the aforesaid decision squarely gets attracted. So far as the decision of this Court in Jaiprakash's case (supra) is concerned, we fail to appreciate how the ratio of the decision could not be held to be applicable. The fact that the detenu was an Advocate in the present case cannot make any difference to the applicability of the ratio of the aforesaid decision. As . in Jaiprakash's case so in the present case, the appellant furnished nine copies of the representation to the jailor. Under these circumstances, the jailor was bound to send one copy to the Central Government and he did not do so and that infringed the constitutional right of the detenu under Article 22(5). A futile attempt was made by the learned Counsel for the respondent to distinguish the judgment on the ground that in Jaiprakash's case (supra) the detention was under the National Security Act and that representation to the Central Government was never considered while in the present case the detention is under COFEPOSA and the representation was ultimately decided upon by the Central Government. These facts would make no difference to the applicability of the ratio of Jaiprakash's case. Even under COFEPOSA, the Central Government having statutory power to revoke the detention u/s 11 cannot be said to be an authority which was not at all concerned with such a representation. On the contrary the grounds of detention themselves as furnished to the detenu had rightly indicated that the detenu could represent to the Central Government. As held by this Court in Jaiprakash's case (supra) when the detenu gave sufficient number of copies of the representation and left it to the jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent of Jail was legally bound to send one copy to the Central Government. We are, therefore, of the view that the detenu was denied his right to make an effective representation at the earliest opportunity and on that short ground his continued detention is liable to be held illegal. In our view on the facts of the present case the ratio of the decision of this Court in Jaiprakash's case has squarely got attracted.

7. One additional aspect of the matter also requires to be noted. It is not in dispute between the parties that one copy of the representation was sent by the jailor to the State Government and which also reached the Advisory Board on 10th May, 1994. The Advisory Board considered the representation and gave its

opinion in favour of detention on 22nd June, 1994. Even thereafter no attempt was made by anyone to send the representation to the Central Government till it reached it after a month.

8. For all these reasons, therefore, it must be held that the constitutional right of the detenu under Article 22(5) has got violated on account of the non-sending of the copy of the representation by the jailor to the appropriate authority of the Central Government as expeditiously as possible after he received it on 4th May, 1994 and hence continued detention of the detenu has become illegal. The appeal is, therefore, allowed. The judgment and order passed by the High Court are set aside. The respondents are directed to set the detenu, M. Balakrishnan at liberty, if not otherwise required to be detained in any other case.