

(1997) 09 DEL CK 0071

In the Delhi High Court

Case No : Criminal Writ Petition No. 110 of 1997

Bahadur Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 70 DLT 412

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : H.S. Bhullar and B. Babbar, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a petition under Article 226 of the Constitution which calls in question the order of detention dated 17th October, 1996 passed by the Joint Secretary, Government of India, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The petitioner has challenged his detention, inter alia, on the ground of delay in disposal on his representation by the Central Government.

(2) Learned Counsel appearing for the petitioner points out that the petitioner had filed a representation before the Central Government on 12th November, 1996, after a period of twenty eight days. Learned Counsel submits that the delay in disposal of the representation of the petitioner has not been explained by the respondents. On the other hand, learned Counsel for the respondents submits that there is no delay in disposing of the representation of the petitioner. She has invited my attention to para 8 of the counter-affidavit. She points out that the representation of the petitioner reached the Cofeposa Unit on 13th November, 1996 and paradise comments were called from the Sponsoring Authority on the next date i.e. 14th November, 1996. Relying upon the averments made in the said para, learned Counsel submits that the paradise

comments were furnished by the Sponsoring Authority on 2nd December, 1996 and the same were received in the Cofeposa Unit on the same day. With regard to the gap of about eighteen days from the date of the receipt of the communication till the date of furnishing of paradise comments by the Sponsoring Authority, she explains that during this period there were about seven holidays and the Sponsoring Authority took only eleven days to give its comments. Similarly, in regard to the period taken by the Central Government to dispose of the representation after its receipt from the Sponsoring Authority, she submits that the representation was dealt with and disposed of by the Central Government within a span of few days between 2nd December, 1996 and 10th December, 1996. Learned Counsel has also explained that between 2nd December, 1996 to 10th December, 1996 there were two holidays. So out of twenty-eight days there were nine holidays and the representation was disposed of in sixteen days. The learned Counsel vehemently contends that the period of sixteen days taken by the Central Government to dispose of the representation of the petitioner does not render the continued detention of the petitioner constitutionally impermissible and illegal. The contention of Ms. Barkha Babbar is that the representation of the petitioner was considered and disposed of with reasonable and expedition.

(3) I have considered the submissions of learned Counsel for the parties. While it is true that during the time the representation of the petitioner remained pending there were nine holidays from 14th November, 1996 to 12th December, 1996, but the counter-affidavit, at the same time, is petitioner was being dealt with during the working days, viz. 15.11.1996, 18.11.1996, 19.11.1996, 20.11.1996, 21.11.1996, 22.11.1996, 26.11.1996, 27.11.1996, 28.11.1996, 29.11.1996, 5.12.1996, 6.12.1996 and 9.12.1996. These dates do not include the dates when the representation was received from one lever to another. These dates are 12.11.1996, when the representation was received by the Superintendent, Central Jail; 13.11.1996, when the representation was received in the Cofeposa Unit; 14.11.1996, when the representation was sent to Sponsoring Authority for comments; 2.12.1996, when the representation was again received in the Cofeposa Unit with the comments of the Sponsoring Authority; 4.12.1996, when the representation was received by the Director (Admn. IV); and 10.12.1996, when the representation was disposed of by the Secretary (Revenue). In its bid to explain the time consumed in disposing of the representation Ms. Babbar takes shelter behind the specious plea that during the above period the representation was being processed. This plea is of no avail to the learned Counsel as the Central Government has failed to show that during the above said days, which fall before and after the holidays, the representation was being dealt with continuously before it was disposed of. In case the plea of the learned Counsel for the respondent is allowed to prevail, it would amount to condoning lethargic indifference of the officials dealing with the representation of detenus. The representation of a person whose personal liberty has been curtailed by clamping an order of preventive detention must be considered without needless

procrastination otherwise the constitutional obligation to furnish earliest opportunity to make a representation and to have the same considered and disposed of expeditiously would lose its purpose and meaning. In *Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad and Others*, 1996 Scc Cri. 470, the Supreme Court did not tolerate a delay or inactivity of six days in taking up the representation of a detenu. In that case the Supreme Court observed as follows:

"22. In both these cases, we have to read the old story of lethargy of the State Government. In the first case, the representation dated 23.8.1995 was received in the office of the Chief Minister on 25.8.1995 and was ultimately disposed of on 12.9.1995 and the order was communicated to the detenu on 14.9.1995. During this period, the file was being processed in the Government Departments. It is pointed out in the counter-affidavit that the representation, on being received in the Office of the Chief Minister on 25.8.1995 was sent to the Secretary, Food and Civil Supplies Department, where it was received on 29.8.1995. The internal movement of the file thus took four days. The representation was then sent to the Special Branch where it was received on 1.9.1995. The representation was then sent to the Special Branch on 6.9.1995. The inactivity in taking up the representation for six days is explained by showing in the counter-affidavit that there were about 40 to 50 representations pending for disposal and they were taken up chronologically. This indicates that the representation was placed in the queue and was not given precedence over other representations which are not said, in the counter-affidavit, to relate to detention orders. Even if they related to preventive detention, then such of those which were ready for disposal and in respect of which comments from various departments had been gathered and other form a lists completed should have been disposed of immediately and should not have been kept pending on the ground of "chronological disposal" by saying that representations filed earlier by other detenues were still to be disposed of. The chronology must be broken as soon as a representation is ready for disposal".

(4) In *Ruma Dhondu Borade v. V.K.. Saraf, Commissioner of Police and Others*, 1989 Scc Cri 520, the Supreme Court while dealing with a case of unexplained delay in the disposal of the representation of a detenu held as follows :

"22. In the instant case the gap between the receipt and the disposal of the representation is 28 days but up to date of service of the order of rejection on the detenu the delay amounts to 32 days. The only Explanation offered by respondent 3 is that further information required from the State Government was received by respondent 3 on October 17, 1988 after a delay of nearly 14 days and then the representation of the detenu was disposed of on October 27, 1988 within which period there were certain holidays, barring that, there is no other Explanation. This delay when scrutinised in the light of proposition of law adumbrated above, we are of the view, that there is an inordinate and unreasonable delay and the present Explanation given by respondent 3 is not

satisfactory and acceptable".

(5) Learned Counsel for the respondents, however, submitted that the time imperative is not absolute and relied upon the following decisions of the Supreme Court.

1. Madan Lal Anand Vs. Union of India and others, .

2. Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, .

(6) It is correct that the time imperative is not absolute, but, as already pointed out, the delay in the instant case has not been properly explained by the respondents. The judgments relied upon by the respondents turn on their own peculiar facts and having regard to those facts the Courts found that there were no delays in disposal of the representations. In the instant case, the respondents have not shown that the representation of the petitioner was receiving continuous attention of the concerned authorities before it was disposed of by the Central Government.

(7) In view of the above discussion, the writ petition succeeds and the continued detention of the petitioner is held to be constitutionally impermissible and illegal. Accordingly, the petitioner is directed to be released forthwith unless he is required in connection with some other case. The writ petition is disposed of.