
(2000) 02 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 23980 of 1999 (S)

Celiner Victor

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 11(1), 3(1)
Constitution of India, 1950 — Article 21, 22, 22(5)
General Clauses Act, 1897 — Section 21

Citation : (2000) CriLJ 2015

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : B. Raman Pillai, S. Vijayakumar, K.K. Dinesan and C. Harikumar, for the Appellant; K. Ramakumar, SCGSC, for Respondent 2 and K. Sasikumar, Govt. Pleader for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, C. J.

1. Magna Carta of English Law, contains a clause which reads as follows :

No free man shall be taken or imprisoned, or disseized, or outlawed, or exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers, and by the law of the land.

Birth of Article 21 of Constitution of India, 1950 (in short "the Constitution") in the world history can be traced to 1215, when Magna Carta saw light of the day. King John granted the charter of liberties under threat of civil war. Successive English monarch confirmed this Charter of English liberty. One of these confirmations known as "Statute of Westminster of the Liberties of London", which was in 1354 spoke :

No man...shall be imprisoned...without being brought in answer by due process

of law." Article 21 of the Constitution deals with fundamental right to life. Article 22 is very intimately connected with Article 21. The first two clauses of that Article contain very valuable safeguards relating to personal liberty of an individual.

2. Questioning legality of order passed by Government of Kerala, Home (SSA) Department dated 3-3-1999 in exercise of powers conferred u/s 3(1)(ii) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "the Act") directing detention of Victor Virigin Davidson (hereinafter referred to as 'the detenu'), this Habeas Corpus application has been filed by his wife.

3. It is not necessary to go into the factual aspects leading to detention in detail in view of limited nature of controversy raised. Suffice it would to mention that detention was directed on the basis of conclusion about detenu abetting smuggling of goods. On 8-10-1998, Superintendent (Intelligence) Air Customs, Thiruvananthapuram Airport and party intercepted a passenger by name Lawrence Joseph at the scrutiny hall where he was waiting after his immigration, customs and security clearance for proceeding to Dubai by Oman Flight WY 1413 via Muscat on that date. From passport and travel documents, it was ascertained that his name is Lawrence Joseph. His address as given in passport is Thiruvalla, Kottappuram P.O., Thiruvananthapuram. He was in possession of a blue-coloured zipper bag and a checkedin baggage, a brown-coloured corona suitcase which had an identification ticket and sticker of Indian Airlines security department. On being questioned as to whether he had any Indian/foreign currency or any other prohibited items on his person, or inside the bag, he replied in the negative. Thereafter his baggages were checked. Zipper bag and suit-case were subjected to detailed examination on the reasonable belief that he was concealing Indian/foreign currencies with a view to illegally take them out of India. When the suit-case was examined in detail, it was found to contain two brown-coloured packets stuck with cellotape kept in between the clothes inside the said suit-case. The two packets were then opened and on examination, Indian currency notes of Rs. 500/- denomination and foreign currencies of different denominations were recovered. Total value of currencies recovered was in the neighbourhood of Rs. 16 lakhs. In his voluntary statement dated 8-10-1998, he deposed inter alia that he has no role in smuggling activities. He pointed out that one Janardhanan to be the key figure. Lawrence Joseph's residence was searched. Efforts were made to take evidence of Janardhanan. But, as he was absconding no fruitful result was achieved. On examination of documents, clear link was established that detenu was involved in smuggling activities. On 16-10-1998, detenu's residence was searched in the presence of his father-in-law. Certain incriminating materials were seized which clearly established his role in smuggling. It was indicated in grounds of detention that there was reasonable apprehension about detenu continuing to abet smuttling of Indian/foreign currencies out of India unless he was prevented from doing so by detaining him under the Act. It was indicated to him that he has a right to make representations to the detaining authority,

Central Government and Advisory Board. Order of detention was executed on 18-5-1999. Order of detention, grounds and documents relied upon were served on detenu on the very same day. Representations were made by him on 4-6-1999.

4. Only point urged in support of application is that there was unusual and unexplained delay in disposing of the representation. State Government rejected his representation on 5-7-1999 while Central Government did it on 4-7-1999. Learned counsel for State and Central Government submitted that there was no delay in dealing with representation and same was dealt with utmost expedition. From the counteraffidavit by State, it is clear that representation was sent to sponsoring authority on 5-6-1999 and its reply was received on 16-6-1999 and finally order of rejection was passed on 5-7-1999. The manner of dealing with representation has been detailed in paragraphs 17 and 29 of the counter as follows :

17. ...The warrantee Victor Virgin Davidson has been apprehended on 18-5-1999 and the copy of grounds and relief upon documents were served upon the detenu on the same day. The detenu has submitted a representation dated 4-6-1999 and Government have examined the same and replied it on 5-7-1999 in consultation with the sponsoring authority. Central Government have examined his representation dated 4-6-1999 and replied it on 2-7-1999. As required u/s 8(b) of the Act, the case was referred to the Cofeposa Advisory Board on 14-6-1999 and the Board met on 13-7-1999, heard the detenu in person, perused the records and representation, has opined that there is sufficient cause for the detention of Shri Victor Virgin Davidson under the provisions of COFEPOSA Act....

29. The contention of the petitioner in ground F of the OP that there has been considerable delay in disposing the representation submitted by her husband is not true to facts and hence denied. It is respectfully submitted that the petitioner's husband has submitted a representation dated 4-6-1999. Government have examined the same in detail. The representation dated 4-6-1999 received from the detenu was forwarded on 5-6-1999 to the sponsoring authority for their remarks. The sponsoring authority furnished their remarks on 16-6-1999. Sponsoring authority was then contacted several times for clarifying some of the points and the detaining authority after examining the representation with reference to the remarks and the documents of the case, given a reply to the detenu on 5-7-1999. Hence it is respectfully submitted that there has not been any delay in replying the representation dated 4-6-1999 of the detenu. The Central Government have also replied his representation dated 4-6 1999 on 2-7-1999. Hence, the contention of the petitioner in grounds F, G and H of the OP are not sustainable.

5. It is to be noted that there is absolutely no explanation as to what happened between 5-6-1999 and 16-6-1999 and thereafter till 5-7-1999. In the counter-affidavit filed by Central Government also, no details as to what transpired

between 4-6-1999 and 2-7-1999 has been given. It is to be noted that though no period is prescribed by Article 22(5) of the Constitution, but decision has to be taken on the representation as soon as possible. The words "as soon as possible" used in Clause (5) of Article 22 convey the message that representation should be considered and disposed of at the earliest. But, that does not mean that authority is pre-empted from explaining any delay which would have occasioned in the disposal of representation. Court can certainly consider whether delay was occasioned due to permissible reason or on unavoidable causes. Even longer delay can be well explained. It is not enough to say that delay was very short. A Constitutional protection is given to every detenu under Article 22(5) of the Constitution which mandates grant of liberty to detenu to make a representation against detention. This is imperated by provisions itself. It also imperates the authority to whom representation is addressed to deal with the same with utmost expedition. It is to be considered in its right perspective keeping in view the fact that detention of the detenu is based on subjective satisfaction of authority concerned and an infringement of the Constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values, that it is the obligation of detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Several decisions of Apex Court notwithstanding, the snails pace at which representations are being considered shows lack of urgency of concerned authorities in matters involving preventive detentions. It has to be borne in mind that whenever there is executive invasion on personal liberty, Court has to weigh in golden scales whether the personal liberty is to be placed at a high pedestal regardless of the social cost involved in the release of a person who can be described as a termite corroding financial and economic base of the country by smuggling activities or a possible renegade. Smuggling is a social evil which affects the economic stability of a country. Persons found guilty of economic offences have to be dealt with a firm hand. But, when it comes to liberty protected by the Constitution, Court has to intervene irrespective of the enormity and gravity of allegations made against detenu. A time has come when, we feel, the executive, namely, State Government and Central Government have to be made conscious of the consequences. Lethargy in dealing with representations of detenu should not be tolerated at any cost. Supine indifference by an authority which is mandated to deal with representation of detenu expeditiously results in weakening procedural sinews, thereby affecting validity of detention order.

6. At this juncture, it is necessary to take note of Section 11 of the Act, which reads as follows :

"11. Revocation of detention orders :-

(1) Without prejudice to provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified -

(a) notwithstanding that the order has been made by an officer of a State

Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order u/s 3 against the same person.

7. It is, therefore, clear that Central Government may revoke or modify a detention order notwithstanding the fact that the order has been passed by the State Government. Even if an order of detention is passed by the State Government on a representation being made or on the basis of information before it, Central Government may revoke or modify the order. Report is submitted to the Central Government for consideration of the question as to whether any revocation or modification is called for or any affirmation has to be made. Discretionary power of the Central Government u/s 11(1) in the context of Section 3(3) is coupled with the duty to consider the report from the State Government with reasonable expedition notwithstanding the question whether any representation has been made by detenu to the State Government. (See : *Hitendra Nath Goswami v. State of Assam* 1984 CrLJ 1558. Position is, therefore, clear that when there is a representation made to the Central Government, the expedition warranted in the case of State Government is also equally applicable to the Central Government.

8. Reliance has been placed on behalf of detenu in *Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another*, . In this case, Apex Court held as follows :-

Though the delay is not long, it has remained unexplained. Though the delay by itself is not fatal, the delay which remains unexplained becomes unreasonable. In spite of this well-settled legal position, the State Government has failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible.

In *Rajammal Vs. State of Tamil Nadu and Another*, Apex Court held as follows :

The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well as be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

9. Judged in the factual position highlighted above, position is clear that there has been unexplained delay in dealing with the representation.

Above being the position, the order of detention has to fail, and we quash the same. Detenu will be set at liberty forthwith unless required to be in custody in connection with any other case. The Original Petition is allowed.