
(1988) 09 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Appeal No. 592 of 1987

G. Lakshmanan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-1988

Acts Referred:

Citation : (1989) 16 DRJ 39

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Rohit Kochhar, Sat Pal, Maninder Singh, G. Prakash and T.T.K. Kannan, for the Appellant;

Judgement

Malik Sharief-ud-din, J.

(1) The petitioner has challenged the validity of the detention order dated 24th of February, 1987 passed by the Government of Kerala u/s 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The order was passed with a view to preventing him from smuggling gold.

(2) This in turn was based on an event dated 14th May, 1986 and the petitioner pursuant to the detention order dated 24th of February, 1987 was actually taken into detention on 10th of June, 1987.

(3) The validity of the detention order is challenged on a number of grounds but there is no need for me to go into the merits or otherwise of all the grounds.

(4) The contention of Mr. Kochhar is that there has been a long and undue and unexplained delay in the consideration of his representation dated 3rd of July, 1987 which was made by him to the Government of Kerala. According to him the communication dated 24th July, 1987 was received by the detenu on 27th July, 1987 informing him that his representation has been rejected. The petitioner has raised a specific ground in this regard and the respondents No. 2 and 4 have explained the delay in consideration of the representation in the following terms :

"THE representation dated 3rd July, 1987 submitted to the Commissioner and Secretary to the Government was received by the Government on 7th July, 1987 and it was forwarded to the sponsoring authority, the Collector of Customs at Cochin for comments on the same day. The reply dated 15th of July, 1987 of the Collector of Customs was received by the detaining authority on 20th of July, 1987 and after careful consideration of the representation by the detaining authority it was rejected and a reply given to the detenu on 24th of July, 1987."

(5) I am in agreement with Mr. Kochhar that there has been unexplained delay in the consideration of the representation. I am told by Mr. G. Prakash, learned counsel for the State of Kerala, that Cochin is situated almost at a distance of 200 kilometers from Trivendrum which is headquarters of the State Government. It will be seen that the representation was sent to the sponsoring authority for comments to Cochin on the day when the representation was received and the reply dated 15th of July, 1987 was received by the detaining authority on 20th of July, 1987. Considering the distance between the two headquarters the delay, in my view, has been sufficiently explained.

(6) That, however, does not resolve the entire controversy in respect of the delay in consideration of the representation. In my view, there is another aspect on the question of delay and it is as to whether the representation when received by the government was actually put up for the decision of the detaining authority or not. When, in the aforesaid para of this order, I observed that there has been no delay in the consideration of the representation, I assumed that on 7th July, 1987 the representation was placed before the detaining authority and the decision to seek comments was taken by the detaining authority. It was on that assumption that I noticed that there has been no undue and unexplained delay.

(7) In matters of preventive detention what the detaining authority is expected to do is to adhere strictly to the constitutional safeguards as envisaged by Article 22(5) of the Constitution and one of the safeguards is that the detenu has a right to make a representation and seek its consideration at the earliest moment. Obviously, such representations are not covered by the business rules of the Secretariat but are to be dealt with keeping in view the procedural safeguards guaranteed by the Constitution. It was in this view of the matter that I specifically asked Mr. G. Prakash to show me from the records that the representation of the detenu was placed before the detaining authority on 7th July, 1987 when it was received by the government. He has only shown me a letter which has gone to the sponsoring authority on behalf of the Commissioner of Home department asking him to submit his comments. There is nothing on the records of the detaining authority to indicate that the representation of the detenu when received by the government was placed before the detaining authority and the detaining authority asked for calling of the comments of the sponsoring authority. This court in many judgments has held that the power to consider and dispose of a representation of a detenu is entirely vested in the detaining authority or the appropriate government to whomsoever it may have

been addressed and the representation cannot be dealt with in a routine manner by persons who are not concerned with it. This court has further held in several decisions that there may not be any serious objection to the detaining authority calling for further comments or information if he feels it necessary to effectively deal with the representation but then the decision must be that of a detaining authority and not of any one else. In that case what has ultimately transpired is that the representation of the detenu when received by the government on 7th of July, 42 1987 was never put up before the detaining authority and the comments were sought in routine by the office of the detaining authority. It appears that for the first time the representation was put up before the detaining authority after receipt of the comments only on 20th of July, 1987. This clearly goes to show that the detaining authority was even unaware of the fact till 20th of July, 1987 that the detenu had made a representation and till 20th of July, 1987 it came to be dealt with by persons who were not authorised to deal with it and who were not concerned with it. From that point of view I find that the detaining authority has not shown any concern about the representation of the detenu which is against the law. In regard to this aspect of the matter, I agree with Mr. Kochhar that there has been an unexplained delay, rather the representation has never been placed before the detaining authority till the date he considered and rejected it. On that account the detention order stands vitiated.

(8) There is yet another aspect of this case. The contention of the learned counsel for the petitioner is that there has been a delay in the execution of the detention order. In this regard a specific ground has been raised as ground No. 23. it is alleged that the detention order dated 24th February, 1987 was executed on the petitioner only on 10th of June, 1987 this shows that the satisfaction of the detaining authority was not bona fide and was also not germane for the purpose of the Act. In the counter affidavit the respondents 2 and 4 have submitted that the detention order was forwarded to the Superintendent of Police, Quilon for immediate execution. The Superintendent of Police, Quilon, sent the same to the Deputy Superintendent of Police, Quilon on 2nd March, 1987 and it was passed on to Sub inspector Anchal on 3rd March, 1987. It is further stated that as the warrantee was not then available in his native place the detention order could be executed only on 10th of June, 1987. On this line of reasoning it is stated that there was no avoidable delay in the execution of the detention order.

(9) Admitted position is that the detention order dated 24th of February, 1987 was executed only on 10th of June, 1987 and admittedly it was in the hands of the police officers expected to execute it on 3rd of March, 1987. Despite that it took him about three months and 7 days to execute this order and why it so happened, the court is not taken into confidence in respect of the details thereof. Only a vague and general statement that the detenu was not available at his native place has been made. Now the court cannot go by such vague and general statements as that would leave enough scope for abuse in the sense that such

vague and general statements can be made in each and every case. What is expected of the respondents is that they must indicate to the court as to what happened during these three months and 7 days, who went to execute the warrants, when and what was the report thereon. This information is withheld from the court and is kept by respondents 2 and 4 as a closely guarded secret to itself. In *Sk. Nizamuddin Vs. State of West Bengal*, , the Supreme Court has clearly held that any unexplained delay in the execution of the order of detention is bound to vitiate the subjective satisfaction of the detaining authority. In this case there was a delay of two and half months and the Supreme Court observed that this delay unless satisfactorily explained would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate recited in the order of detention. The Supreme Court further held as under :-

"IT would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities."

(10) The Supreme Court went on to clarify that when it says so, it must not necessarily be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable Explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.

(11) Thus, in short, the law on this aspect of the detention is that the delay in the execution of the order of detention will vitiate the subjective satisfaction of the detaining authority unless the delay is properly explained and it is for this reason that the Supreme Court has added a word of caution that even though they have laid down a general principle in the case *supra* its applicability will depend upon the facts and circumstances of each case. It is in the light of this law that the contention of Mr. Kochhar will have to be examined.

(12) , As I have already observed that even though the executing officer was in possession of the detention warrant on 3rd March, 1987 the order was only executed on 10th of June, 1987. The court is not told as to what happened in between. There is only a general and vague statement that the detenu was not available in his native place during all this period. Admitted position is that the detenu was on bail and the detention order was passed long after the incident and there was no need for the detenu to anticipate that there would be a detention order against him so as to compel him to remain away from home. The court is not told as to what transpired between the detaining authority and the executing agency during these 3 months and 7 days and whether the detaining

authority ever cared to write to the executing agency about the urgency of the matter, nor is the court taken into confidence as to when, how and by whom any attempt was made to arrest the detenu pursuant to the detention order. Vague replies are no Explanations .On this account also, as such, I find that the subjective satisfaction of the detaining authority in issuing the detention order is vitiated. In this case, subsequent to the passing of the detention order a declaration u/s 9(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act was also passed on 13th of July, 1987. In view of the aforesaid observations I allow this petition and quash the continued detention of the petitioner. The detenu shall be realised forthwith unless required in some other case.