

(1989) 12 DEL CK 0038

In the Delhi High Court

Case No : Criminal Writ Petition No. 639 of 1989

Gladwyn Edwin Moffat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 9(1)
Constitution of India, 1950 — Article 226

Citation : (1990) 27 ECR 300

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Bahri, J.—This petition has been brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quotient of the detention order dated April 26, 1988, passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, and the declaration dated May 17, 1988, issued by respondent No. 5 u/s 9(1) of the said Act.

2. It is not necessary to refer to various grounds in support of the writ petition as this petition is liable to succeed on a very short point.

3. It has been pleaded in para 15 of the writ petition that the representation dated August 6, 1989, had been made to the declaring authority for revocation of the detention, but the said representation has not been dealt with expeditiously and thus, there has taken place undue and unexplained delay in considering the said representation making the detention of the petitioner as illegal.

4. In the counter-affidavit filed by Shri Kuldeep Singh, Under Secretary, Ministry of Finance, Department of Revenue, New Delhi, it has been mentioned that in fact,

the representation in question was attested by the Superintendent (Jail) on August 17, 1989 and was received in the Department on August 29, 1989. It is true that the representation was sent by the Superintendent, Dum Dam Central Jail, Calcutta, and must have been sent by post but there has taken place some undue delay at the level of the Ministry concerned in keeping the said representation unattended for a period of 14 days because it is mentioned in the affidavit that the representation came to be forwarded to the concerned sponsoring authority only on September 12, 1989, for paradise comments. Not even a single word has been uttered in the affidavit as to what happened to the representation between the period August 29, 1989 to September 12, 1989.

5. Counsel for the respondents Mr. Ram Lal Gupta has vehemently argued that the aforesaid period was spent by the officials in scrutinising the representation. It is really surprising that a period of 14 days should have been taken by the officials concerned in just scrutinising the representation in order to find out whether the comments of the sponsoring authority are required or not. After all a legal duty is cast on the respondents to have dealt with this representation with due promptitude. It appears that the officials concerned just sat over the representation for about 14 days without taking any action on the same. In case the representation on the face of it needed some comments from the sponsoring authority, the officials concerned could have sent the representation on the same day or on the following day to the sponsoring authority for obtaining the comments.

6. It is really not understood by this Court as to why the affidavit is prepared in such a slipshod manner and why the details necessary to be mentioned in the affidavit explaining the delay which occurs in dealing with the representation are not incorporated in the counter-affidavit. No Explanation has been furnished to me at least by the counsel for the respondents as to why this affidavit which has been filed in response to the rule issued by this Court lacks in these particulars. In the present case, it is quite evident from this affidavit of Shri Kuldip Singh that for a period of 14 days no steps were taken at all in respect of the representation of the detenu which was received in the Ministry on August 29, 1989 and this representation came to be forwarded to the sponsoring authority only on September 12, 1989, for obtaining the comments. So, the delay made in dealing with the representation is totally unprecedented and remains unexplained which makes the continued detention of the petitioner as illegal.

7. I allow the writ petition, make the rule absolute and quash the continued detention of the petitioner and direct that the petitioner be released from jail, if not required to be detained in any other case.