
(1997) 08 DEL CK 0088

In the Delhi High Court

Case No : Criminal Writ Appeal No. 3 of 1997

Jagannath Mehrotra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1998) 72 DLT 117

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

Bench : Single Bench

Advocate : R.K. Handa, B.S. Kapoor, Rajeev Gulati, B. Babbar, S.K. Agarwal and L.R. Luthra, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a writ petition where by the petitioner challenges the order of his detention dated July 5, 1997 issued by the Joint Secretary, Government of India, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act"). The allegations against the petitioner are as follows :

(2) The Enforcement Directorate, Delhi Zone, New Delhi, on an information intercepted one Natwar Dalmia at the Indira Gandhi International Airport. New Delhi, while he was about to board a flight to Singapore. On the search of the person of Natwar Dalmia, US \$ 50,000.00 and Dm 1,25,000.00 were recovered. Natwar Dalmia made a statement u/s 40 of the Foreign Exchange Regulation Act according to which foreign currency was purchased by him from the petitioner. As a result of his statement, the premises of the petitioner were searched by the officers of the Enforcement Directorate. The search led to seizure of Rs..23,00,000.00 and one instrument of Dm 2150. Besides, certain documents were also seized. While the search was in progress one Mohd. Mustaq allegedly came to the premises of the petitioner and from his personal search: US \$ 400 were recovered.

(3) PETITIONER'S statement was recorded under Section.40 of the FERA. On the basis of the material mentioned in the grounds of detention, the Joint Secretary, Government of India, issued the impugned detention order against the petitioner u/s 3(1) of the Act.

(4) The petitioner filed a representation dated October 10,1996 addressed to the Detaining Authority. In this representation it was requested that the same should also be forwarded to the Central Government so that it could order the release of the petitioner. The representation of the petitioner was considered by the Joint Secretary, Cofeposa, being the Detaining Authority, but the same was rejected on October 28, 1996. Subsequently, on November 15, 1996 the representation of the petitioner which was forwarded by the Detaining Authority to the Central Govt. was also rejected by the Secretary, Revenue. The petitioner feeling aggrieved of the detention order and the rejection of the representations has filed the instant writ petition.

(5) Learned Counsel appearing for the petitioner has raised various pleas in support of the challenge. However, the writ petition can be disposed of on a short point. It is not disputed that the petitioner had filed a representation on October 10,1996 which was meant to be considered by the Detaining Authority as well as by the Central Government. It cannot be denied by the respondents that the Joint Secretary rejected the representation of the petitioner on October 28,1996. It is also admitted on both sides that the representation of the petitioner was forwarded to the Central Government only on November 13,1996. There is no Explanation as to why the representation of the petitioner was not immediately forwarded to the Central Govt. after the Joint Secretary had dealt with it on October 28,1996. It took about sixteen days to transmit the representation of the petitioner to the Central Government. It is well-settled that the detenu has a right not only to file a representation but to have the same considered expeditiously. In the event of the representation not being considered without undue delay, the detenu's right under Articles 21 and 22(5) of the Constitution would be violated. In *Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad & Ors.*, Jt 1996 (2) Sc 532, where there was inactivity in dealing with a representation for a period of six days, the Supreme Court quashed the detention order and while doing so the Supreme Court observed as follows :

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the "liberty and freedom" to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

(6) 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 & 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 taken up by 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 formalities 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 detenus were still to be disposed of. The chronology must be broken as soon as a representation is ready for disposal.

(7) In the instant case, as already pointed out above, the representation of the petitioner was not attended to for a period of sixteen days. The inactivity on the part of respondent No. 1 renders the continued detention of the petitioner illegal.

(8) In this view of the matter, the impugned detention order is hereby quashed and the petitioner is directed to be released forthwith in case he is not needed in connection with some other case.

(9) The operative portion of this order be communicated to the Superintendent, Central Jail, Tihar, New Delhi.