

(1999) 07 DEL CK 0071

In the Delhi High Court

Case No : Criminal W.P. No. 995/98

Kailash Chand Solanki

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

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

Citation : (1999) 4 AD 762 : (1999) CriLJ 3813 : (1999) 80 DLT 509 : (1999)
66 ECC 72

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sh. Ashutosh, for the Appellant; Sh. Jayant Bhushan, Ms. Priya
Kumar and Sh. Chandrashekhar Mulherkar, Advs, for the Respondent

Judgement

K.S. Gupta, J.—This Petition challenges the detention order dated 1st September, 1998 passed by respondent No. 2 against the petitioner u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the "Act").

2. It is alleged that on the intervening night of 3rd/4th April, 1998 at about 9.30 PM truck bearing No. MP-23 D/7893 driven by Sher Singh was intercepted by the officers of the Directorate of Revenue Intelligence at Jaipur Delhi National Highway near Rajokari and the petitioner was seated in the truck at that time. 273 packages were loaded in the truck and detailed examination of those packages resulted in the recovery of bearings, cosmetics, rechargeable Ni-Cd (Nickel Cadmium) Pencil batteries, glass wares, torch-cum-key rings and microwave oven wares etc., all of foreign origin and collectively valued at Rs. 82,96,900/-. On demand neither said Sher Singh nor petitioner could produce any document for legal importation/transportation of the recovered goods. Petitioner was, Therefore, arrested on 5th April, 1998 and on being produced before ACMM, New Delhi was remanded to judicial custody from time to time. A

complaint was filed against the petitioner in the Court of ACMM, New Delhi on 2nd June, 1998 under the Customs Act, 1962. Thereafter, aforesaid order of detention dated 1st September, 1998 was passed against the petitioner by respondent No. 2.

3. Two fold contention advanced on behalf of the petitioner was that there was unexplained delay in disposing of the petitioner's representations dated 8th September, 1998 and 23rd September, 1998 by the detaining authority as also the Central Government and that Hindi translation of the relied upon documents at Serial Nos. 47, 64, 65 & 66 which are in English, were not supplied to the petitioner. Respondents allege that the comments to the former representation were sent by the sponsoring authority in time by registered post but delivery thereof to his address was delayed by the Postal authorities. It is, however, not necessary to deal with the ground regarding alleged delay in dealing with the representation dated 8th September, 1998 because this writ petition is liable to succeed on the remaining grounds.

4. By way of ground IV it is alleged in the writ petition that the petitioner sent a representation to the detaining authority through his counsel on 24th September, 1998 (Annexure J) and the same was casually and mechanically rejected by the detaining authority vide memorandum dated 20th October, 1998 (Annexure K). By way of ground VII it is further stated that the petitioner also sent a representation dated 23rd September, 1998 (Annexure L) to the Central Govt. and the same was rejected casually and mechanically vide memorandum dated 23rd October, 1998 (Annexure M). Thus there has been long and undue delay in consideration of the said representation which is violative of the provisions contained in Article 22(5) of the Constitution of India. Corresponding paras of the reply filed on behalf of the respondents on the affidavit of Somnath Pal, Joint Secretary to the Government of India, Ministry of Finance, Dept. of Revenue, Janpath Bhawan, New Delhi which are relevant are reproduced as under :-

"IV. In reply to Ground IV, it is submitted that the representation dated 23.9.1998 submitted by the Advocate of the detenu (date wrongly mentioned as 24.9.1998. and the same was received in the Ministry on 24.9.1998. The said representation was sent to the Sponsoring Authority for comments on 25.9.1998. In between 26th, 27th & 29th September and 1st to 4th October and again 10th and 11th October, 1998 were a closed holidays. The Sponsoring authority furnished comments vide their letter Dated 15.10.1998 which is received in the COFEPOSA Unit on the same date. The case file was submitted to the Under Secretary concerned on 16.10.1998. The Under Secretary concerned examined and processed the representation and submitted the case file to the Detaining Authority on 20.10.1998 (in between 17th, 18th & 19th October, 1998 were closed holidays). The Detaining Authority after careful consideration of the various points made in the representation in the light of the facts and circumstances leading to issue of the detention order and the comments of the Sponsoring Authority rejected the representation on 20.10.1998 and the detenu

was informed about the rejection of his representation vide memo dt./20.10.1998. It is thus evident that there is no undue or unreasonable delay in the consideration and disposal of detenu's representation dt. 23.9.1998.

VII. In reply to Ground VII, it is submitted that the representation dated 23.9.1998 submitted by the Advocate of the detenu addressed to the Secretary was received in the COFEPOSA Unit on 24.9.1998. It was sent to the Sponsoring Authority furnished the comments vide letter dated 15.10.1998 received in the COFEPOSA Unit on the same date [in between 26th, 27th and 29th September and 1st to 4th and 10th and 11th October (in all 9) were closed holidays]. The case file was put up to the Under Secretary concerned on 16.10.1998. The Under Secretary examined, proceeded and submitted the case file to the ADG, CEIB on 20.10.1998 [in between 17th, 18th and 19th October, 1998 were closed holidays]. The ADG submitted the file to Spl. Secy. -cum-DG, CEIB on 21.10.1998. The SS-cum-DG, CEIB rejected the representation of the detenu on 22.10.1998 on behalf of the Central Government and the detenu was informed vide memo dated 23.10.1998. Thus there was no undue or unreasonable delay in the consideration and disposal of the detenu's representation dated 23.9.1998 by the Central Government."

5. From the above replies to ground IV & VII it is manifest that the petitioner's representation dated 23rd September, 1998 addressed to the detaining authority and the Secretary were sent to the sponsoring authority for comments on 25th September, 1998 and the sponsoring authority furnished the comments vide letter dated 15th October, 1998. In between 26th, 27th, 29th September, 1st to 4th October and 10th & 11th October, 1998 are alleged to be the closed holidays. These holidays being known holidays intimated in advance and personal liberty of a citizen being involved the sponsoring authority was expected to prepare the comments and forward the same to the detaining authority as also to the Central Government expeditiously. According to the own admissions of the respondents in between 28th, 30th September, 5th, 6th, 7th, 8th, 9th October and again 12th, 13th & 14th October were the working days. But it has not been categorically disclosed in the reply affidavit as to how these working days were utilised by the sponsoring authority in preparing the comments to both the said representation which are by and large identical in nature. In the absence of disclosure to that effect and also the urgency in the matter, we are of the view that there was unexplained delay on the part of the sponsoring authority in preparing the comments and forwarding them to the detaining authority and the Central Government which in turn had resulted in delayed disposal of the representation(s) by both the authorities. In the decision in *Rajammal Vs. State of Tamil Nadu* and another 1998 III AD SC 256, the order of detention was quashed by the Supreme Court on ground of explained delay of 5 days in considering the representation by the Minister concerned. In *Kundanbhai Dulabhai Sheikh Vs. Distt. Magistrate, Ahmedabad & Others*. JT 1996 (2) SC 532, the Apex Court adversely commented upon the delay of 6 days in taking up the representation of the detenu for consideration. Likewise in the decisions in

Rashid Sk. Vs. State of West Bengal, , Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, , Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, and Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, , explained delay in considering the representation(s) was held to vitiate the order of detention by the Supreme Court. On the ration of these decisions and the facts of the present case the detention order in question deserves to be quashed on the said ground.

6. Coming to another ground regarding non-supply of Hindi Translation of the documents at Serial No. 47, 64, 65, & 66, reply to ground X of the reply which is relevant reads thus:-

"X. In reply to Ground X it is submitted that the contention of the petitioner is wrong and hence denied. It is wrong to say that the petitioner/detenu has not been supplied with complete Hindi translation of pages Nos. 29-34 and 38-44 as these documents themselves are the Xerox-copy of original documents which are in Hindi and, Therefore, no translation was required. Page No. 47 of relied upon documents is a customer information form of the owner of the cellular phone No. 09811194737. The other entries of the customer information form are not of any relevance. Its non supply of Hindi version does not in any way prevent the detenu from making a purposeful representation. Page No. 64-66 of relied upon documents are pages of telephone directory of Darbhanga Telecom District and only one entry i.e. owner of telephone No. 22762 (G.M. Sugar Mill, Samastipur) has relevance, its non-supply in Hindi does not in any way prevent the detenu from making a purposeful representation. Page No. 89 is a petition for bail filed in the Hon"ble High Court by the petitioner himself, the Hindi translation of which (page 89) has been served upon the petitioner/detenu. It is thus submitted that these documents cannot be said to have breached in any way the detenu"s right to make a representation."

7. It is thus not disputed even by the respondents that Hindi translation of the documents at Serial Nos. 47, 64, 65 & 66 which are in English, was not made available to the petitioner. Assertion as made in the writ petition is that the petitioner can understand only Hindi language and that is why copies of the remaining documents were supplied to him in Hindi. Copies of the grounds of detention (Annexure B) and the list of relied upon documents (Annexure C) have been filed Along with the writ petition and the documents whereof non-supply of Hindi translation is alleged, are noted at Serial Nos. 47, 64, 65 & 66 in the said list of relied upon documents. In Powanammal Vs. State of Tamil Nadu & Anr. 1999 I AD SC 33 failure to supply Tamil version of the order of detention passed in English, a language not known to the detenu, was held to vitiate her further detention. While dealing with that question in the majority judgment it was held :-

"However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a

document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds reference in the order of detention or amount the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

8. Decisions in *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, , *Madan Lal Anand Vs. Union of India and others*, and *Kamarunnissa and Others Vs. Union of India and another*, on which strong reliance was placed on behalf of the respondents in support of the submission that the petitioner's complaint of non-supply of aforesaid documents is not supported by any prejudice caused to him in making effective representation to the detaining authority and the Central Government against the order of detention in question, were also distinguished in *Powanammal's case (supra)*. Non-furnishing of the Hindi translation of the aforesaid four documents thus renders the continued detention of the petitioner illegal.

9. For the foregoing discussion, the petition is allowed, the order of detention dated 1st September, 1998 is quashed and the petitioner is ordered to be released forthwith if not required to be detained in any other case.