
(1989) 03 DEL CK 0087

In the Delhi High Court

Case No : Criminal Writ Appeal No. 655 of 1988

Kishore Kumar Mundhra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1990) 2 Crimes 67 : (1989) 39 DLT 155 : (1989) 23 ECR 325 :
(1989) 2 ILR Delhi 627

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

Bench : Single Bench

Advocate : J.K. Srivastava, Sat Pal, Rekha Agarwal and Maninder Singh, for the
Appellant;

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 quashment of detention order dated September 1, 1988, passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act"). The petitioner was alleged to have indulged in unauthorised compensatory payments to different persons in India under instructions of resident of Bangladesh. I need not refer to title facts in detail or to all the grounds urged before me because the writ petition is liable to succeed on a very short ground.

2. It has been pleaded in para 20 of the writ petition and in ground No. 1 that the petitioner had made representation dated November 7, 1988, which was delivered at the President's Secretariat but the same came to be rejected on November 30, 1988 and communication regarding the rejection of the representation was received by the petitioner on December 12, 1988. It is pleaded that there had occurred undue and unexplained delay in considering the said representation of the petitioner. It is also pleaded that the said representation of the petitioner had not been considered before the detention

order was confirmed by the Central Government. Admittedly the detention order was confirmed by the Central Government on November 21, 1988. In the counter filed by Mr. K. L. Verma, the detaining authority, it has been pleaded that his representation was received from the President's Secretariat vide letter dated November 15, 1988, in Cofeposa Unit on November 17, 1988. It was not pleaded in this particular para 20 of the counter-affidavit that this particular representation dated November 7, 1988, was similar to the representation which was made by the detenu to the Central Government and which was dated September 30, 1988. At any rate, copies of the two representations in question have been filed Along with the writ petition, the first one appears at page starting from 763 and the other starting from page 810 onwards. The bare perusal of these two representations shows that they were not similar in nature inasmuch as in the second representation the detenu had made reference to copies of the documents which were supplied to him later on, particularly the documents marked "C", "D", "E", "F" & "H" and some pages of documents marked "G" The previous representation was not: made on the basis of these documents.

3. Counsel for the respondents Mr. Sat Pal has vehemently argued that even if the second representation has made reference to some additional documents it would not make any difference because the pleas taken by the detenu vis-a-vis their documents were totally irrelevant. This Court is not to go in the question whether the pleas taken in the second representation are relevant or irrelevant or even frivolous as that would fall within the domain of the appropriate Government. The duty is cast on the appropriate Government to consider the second representation also with due promptitude if some additional facts have been pleaded in the second representation which were not pleaded in the first representation. It is for the appropriate Government to decide whether the additional facts are sufficient to enable the appropriate Government to revoke the detention order or not.

4. Counsel for the respondents has made reference to Asha Keshavrao Bhosale Vs. Union of India (UOI) and Another, . In the said case the first representation made on behalf of the detenu was a detailed one and was considered and rejected with due promptitude. The detenu had made a second representation Which was not decided promptly and there had occurred unreasonable and unexplained delay in considering the second representation. The Supreme Court observed that the second representation was on the same score and delay in disposing of the said representation did not really prejudice the detenu's case. However, where the second representation cannot be deemed to be similar to the representation already made, then the ratio laid down in this case would not be applicable. The detenu has a right to make re- presentations one after the other on different pleas and facts and it is incumbent on the pail of the appropriate Government to consider all those representations with due promptitude. It is only where the detenu makes one representation after the another on same facts that it is not necessary for the appropriate Government to consider such

repeated representations with any due promptitude. In the present case, I must hold that the second representation dated November 7, 1988. made to the Central Government was not similar to the representation dated September 30, 1988. Hence, it was incumbent upon the Central Government to have considered and disposed of this representation as well without undue delay. In the present case. what we find is that the representation dated November 7, 1988, which was delivered in the President's Secretariat took about 10 days in reaching Cofeposa Unit. No Explanation has been furnished as to why it took ten day in traveling of the said representation from one office to another office of the Central Government. The learned counsel, for the respondents has made reference to Sat Pal Vs. State of Punjab and others, , where the representation had been made to the Central Government but was given to the Punjab Government which had taken very long period for forwarding the said representation to the Central Government. It was held by the Supreme Court that the contention that the unexplained delay on the part of the State Government is sufficient to invalidate the order of detention can hardly be accepted. It was observed that the Court must look at the substance of the matter and not act on mere technicality. In the. present case, the representation was given not to any other Government but to the Central Government, may be in the President's Secretariat. So, it was necessary that the said representation should have been dealt with without any delay. It is unimaginable that it would take ten days for the representation to travel from the President's Secretariat to the Cofeposa Unit of the Central Government. So, this judgment is distinguishable on facts. It may be mentioned here that the law requires that before the detention order is confirmed and in case any representation is received from the detenu, the same must be considered at first. In the present case, the representation was admittedly received in the Cofeposa Unit of the Central Government on November 17, 1988. still it was not decided before the detention order was confirmed on November 21, 1988.

5. The learned counsel for the petitioner has made reference to Sk. Sekawat Vs. The State of West Bengal, , where the representation had been received only two flays prior to the date on which the detention order was confirmed, still it was held that the continued detention of the detenu would be invalidated inasmuch as the representation was not considered before the detention order was confirmed. The learned counsel for the respondents has tried to distinguish this judgment by asserting that in the cited case it was the first representation which was made by the detenu and thus on facts the judgment is distinguishable. I am afraid that it is not possible to agree with the said contention inasmuch as when once the detenu has made even the second representation but on additional facts, even then the said representation has to be considered before the detention order is confirmed. So, both these ground that the representation of the petitioner was not considered with promptitude and was also not considered before confirmation of the order of detention and the continued detention of the petitioner has become invalid.

6. I allow that writ petition make the rule absolute and quash- the continued detention of the petitioner and direct that the petitioner be set at liberty forthwith if not required to be detained in any other case. The parties are left to bear then own costs.