
(1990) 04 DEL CK 0034

In the Delhi High Court

Case No : Criminal Writ Appeal No. 559 of 1989

K.P. Abdul Khader @ Kadu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11

Citation : (1990) 41 DLT 464 : (1990) 1 ILR Delhi 266 : (1990) 2 RCR(Criminal)
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Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : Harjinder Singh, A. Acharjee, Sangeeta Nanchaha and G. Prakash,
for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The petitioner has been ordered to be defamed by order dated 10th August, 1989 made by the Government of Kerala u/s 3(1) of the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing the petitioner from. abutting the smuggling of gold. The said order is under challenge in this : petition.

(2) The petitioner, according to averments made in the writ petition, made a representation to the detaining authority on 19th August 1989, inter-alia, asking for supply of certain. documents and requesting the detaining authority to revoke the order of detention. The petitioner made another representation on the same date to the Central Government, inter-alia, seeking revocation of the order of detention. Both the representations were sent through Superintendent, Central Prison, Trivandrum. The second representation was addressed to the President of India. One of the grievance made in this petition is that the representation made to the Central Government and addressed: to President of India has not been considered till date and the detention stands vitiated on account of the.. long and

unexplained delay in considering the said" representation.

(3) The Superintendent, Central Prison, Trivandrum is respondent No. 3 whereas State of Kerala is respondent No. 2. The counter affidavit on behalf of respondents 2 and 3 has been filed by Shri Rajasekharan Nair, Additional Secretary to the Government of Kerala, Home Department, Trivandrum. The affidavit on behalf of Union of India, respondent No. 1, has been filed by Shri Kuldip Singh, Under Secretary, Government of India. Ministry of Finance, Department of Revenue. Shri Nair in his. affidavit has stated that the petitioner had made representation to the detaining authority on 21st August 1989 and not on 19th August 1989. Shri Nair further states that the representation was carefully considered by the detaining authority but petitioner's request for revocation of detention has been rejected and a reply given to him on 22nd August 1989. No grievance has been made about the disposal of representation by the detaining authority.

(4) The grievance of the petitioner is about the non consideration of his representation by the Central Government. Shri Kuldip Singh in his. affidavit has stated that no representation from detenu has been received by the Central Government and has thus denied the allegations of delay in consideration of the representation. In substance the plea is that the Central Government not having received the representation, the question of considering it or any delay in consideration of the representation, does not arise. The petitioner has averred in the petition that the representation dated 19th August 1989 addressed to the President of India was sent through Superintendent Central Prison, Trivandrum. In the counter affidavit filed by Shri Nair nothing has been stated about the representation, addressed to the President of India and alleged to have been sent through respondent No. 3. However, learned counsel for the respondents 2 and 3, produced before this court the file of the Government of Kerala and submitted that the aforesaid representation addressed to President of India was sent by State of Kerala to the Secretary to the President of India on 22nd August 1989. The file also shows that by letter dated 21st August, 1989 representation of the petitioner addressed to President of India was forwarded by Superintendent, Central Prison, Trivandrum to Commissioner and Secretary to Government, Home (SSA) Department, Trivandrum for necessary action. Along with the letter dated 22nd August 1989 the said representation was forwarded by Commissioner and Secretary to the Government of Kerala to Secretary to President of India for necessary action. The letter dated 28th September from Director, President's Secretariat, Rashtrapati Bhawan, New Delhi, to the aforesaid Commissioner and Secretary acknowledges the letter dated 22nd August 1989 and further shows that the representation of the petitioner was forwarded to Ministry of Finance, Department of Revenue) New Delhi, to face of these letters, to which no Explanation could be given by learned counsel for Union of India, it is not clear how it has been pleaded that no representation from detenu has been received by the Central Government The least this court would expect is that before taking & plea of this nature the Central Government should

ascertain facts from President's Secretariat and the State Government attach does not appear to have been done. It is retest unfortunate that the cases where liberty of the individuals is involved are being dealt with, in such a callous and indifferent manner. In view of the above I have no difficulty in coming to the conclusion that the representation dated 19th August 1989 sent to Central Government and addressed to the President of India has not been considered till date.

(5) Faced with the aforesaid difficulty, counsel for the Union of India, contended that delay in consideration of the presentation is inconsequential as the first representation of the petitioner on same grounds had been rejected by the detaining authority, as conveyed to the petitioner on 22nd August 1989. On the other hand, learned counsel turn the petitioner, vehemently contended that the representation made to Central Government and addressed to President of India was u/s 11 of the Act which casts an obligation on the Central Government to decide the representation made to it. It was further contended that tick right to make a representation u/s 11 and duty of the Central Government to consider it is independent of the petitioner's right to make a representation to the detaining authority.

(6) The Supreme Court in a catena of judgments has held that section 11 is a supervisory power of the Central Government. There is no conflict of jurisdiction in the power of detaining authority to revoke the order of detention and in the supervisory jurisdiction of Central Government u/s 11 of the Act. The constitutional imperatives of Article 22(5) enjoin that where the detenu makes simultaneously a representation to the detaining authority as well as an application for revocation u/s 11 of the Act, they must both be dealt with by the appropriate governments at the same time and there is no question of any conflict of jurisdiction.

(7) In *Shyam Ambalal Siroya Vs. Union of India (UOI) and Others*, the three Judges Bench of the Supreme Court speaking through Kailasam, J. has held that when a properly addressed representation is made by a detenu to the Central Government for revocation of the order of detention, a statutory duty is cast upon the Central Government u/s 11 to apply its mind and either revoke the order of detention or dismiss the petition, declining to order revocation. A petition for revocation of an order of detention is required to be dealt with reasonable expedition. In the Siroya's case the continued detention of the detenu was set aside as the representation was not forwarded by the State Government to the Central Government and was left unattended for a period of nearly four months. In the present case the position is still worse. The representation sent to the central Government Along with the letter of the State Government dated 22nd August 1989 has remained unattended up to date. (Also see: *Sabir Ahmed Vs. Union of India* 1980 (3) Scc 95(2) and *Rattan Singh and another Vs. State of Punjab and Others* Air 1982 Sc 1(3))

(8) In *Sabir Ahmed's* case while holding that what is "reasonable expedition is a

question depending on the circumstances of the particular case and that no hard and fast rule as to the measure of reasonable time can be laid down, it was opined that the period taken for considering the representation certainly does not cover the delay due to negligence, callous inaction, avoidable red-tapism and unduly protracted procrastination. The detention was set and as the representation made by the detenu to the Central Government had been ignored and left unattended for a period of about four months. In Rattan Singh's case two simultaneous representations were made; one was addressed to the State Government and the other to the Central Government. Both representations were made through Jail Superintendent who was requested to forward the said representations to the State Government and the Central Government. The representation made to the State Government was promptly considered and rejected. However, the representation made to the Central Government was left unattended for four months. The contention of the petitioner that inspire of long passage of time the representation to the Central Government had not been considered rendering his detention illegal, was accepted by the Supreme Court. In the said case the representation addressed to the Central Government was never forwarded to it. The Supreme Court held that the inevitable result is the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. It was further held that the failure on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. In the present case the facts mentioned earlier show that the representation was in fact forwarded to the Central Government but it has not been disposed of till date. Assuming it was not forwarded, as the Central Government has pleaded that it did not receive the representation, then also the same result will follow as far as the detenu's valuable right to have his representation considered with reasonable expedition is concerned. As the representation dated 19-8-89 addressed to the President of India has remained undisposed of for all these months, the continued detention of the petitioner cannot be upheld.

(9) Reliance by the learned counsel for the Union of India on decision of the Supreme Court in *Sat Pal Vs. State of Punjab and others*, is misconceived. In the cited case also the Supreme Court rejected the contention of the Government that the detenu has no right to simultaneously make a representation against the order of detention to the detaining authority under Article 22(5) of the Constitution and an application for revocation of the order of detention u/s 11 of the Act. The other contention of the Government that power of revocation of order of detention by the Central Government u/s 11 of the Act is exercisable only after the representation has been rejected by the State Government and the Advisory Board and the order of detention is confirmed by the State Government u/s 8(f) was also repelled in *Sat Pal's* case. It was held that there was no conflict of jurisdiction. However, on facts, the Supreme Court declined to set aside the order of detention as it was held that the Central Government had

acted with great promptitude in dealing with the representation.

(10) Similarly in *State of Uttar Pradesh Vs. Zavad Zama Khan*, the order of detention was maintained, as, on facts, the Supreme Court found that the Central Government had expeditiously considered the earlier representation and it was held that the Central Government was under no statutory obligation to consider the subsequent representation on same facts. However, the law laid down in *Siroya's Sabeer Ahmed, Rattan Singh and Sat Pal* cases was approved. The reliance of Counsel for the Central Government to decision of the Supreme Court, in *Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others*, is also misplaced. In this case too the Central Government had rejected the first representation. The second representation contained the same grounds. Even the second representation was disposed of though three months after its filing. It was held that there is no right in favor of the detainee to get his successive representation based on same grounds rejected earlier to be formally disposed of again. In the present case, such a question does not arise. It is not the case of the Central Government that at any earlier stage it had disposed of the representation of the detainee. The rejection of the representation by the detaining authority has no relevance insofar as the consideration of the representation made to Central Government u/s 11 of the Act is concerned. The power of revocation conferred on the Central Government u/s 11 of the Act is independent of the power of confirming or sitting aside the order of detention u/s 8(f) of the Act. In the present case, the Central Government has not fulfilled its obligation in considering the representation made to it u/s 11 of the Act. Accordingly, the continued detention of the petitioner stands vitiated. In view of the above, it is not necessary to consider other contentions urged in the petition.

(11) For the foregoing reasons, the petition is allowed, the rule is made absolute and the impugned order of detention and the continued detention of the petitioner is held to be illegal. The petitioner shall be released forthwith, if not required in any other case.