

(1989) 02 DEL CK 0054

In the Delhi High Court

Case No : Criminal Writ Petition No. 592 of 1988

Kulwant Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

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

Citation : (1989) 37 DLT 37(1) : (1989) 1 ILR Delhi 249 : (1989) ILR Delhi 249

Hon'ble Judges : M. Sharief-ud-din, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.M. Bagai and Dalip Singh, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) By this writ petition Bhupinder Singh challenges the validity of the detention order passed against him u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as Cofeposa Act). The said order was passed on 14th October, 1988 by Shri K. L. Verma,, Joint Secretary to the Government of India, specially empowered under the Cofeposa Act, with .a view to preventing the petitioner from engaging in transporting, keeping and dealing in smuggled goods, otherwise than by engaging in concealing smuggled goods. The grounds of detention also dated the 14th October, 1988 were served on the petitioner on 15th October, 1988, the date on which he was detained.

(2) A number of grounds have been taken in the petition to challenge the legality and validity of the impugned order. Mr. R. M. Bagai, learned counsel for the petitioner during arguments has confined himself to only one ground. It is urged that the representation made by the detenu on 1st November, 1988 to the detaining authority seeking revocation of the impugned order, was decided belatedly on 13th December, 1988 without any satisfactory or cogent Explanation .Therefore, the continued detention of the detenu is vitiated.

(3) In paragraph 10 of the petition, the above grievance has been spelled out. That paragraph reads:

"10. That the petitioner made a representation against his detention to the detaining authority on 1st November, 1988 through the Superintendent, Central Jail, wherein he requested the detaining authority to supply him with some documents required by him for making an effective representation against his detention or, in the alternative, to revoke his detention. It is submitted that neither the said representation despite passage of such a long time has been considered nor the petitioner has been supplied with any of the documents required by him for making an effective representation against his detention order."

(4) In reply to the above averment, the respondents in their counter-affidavit allege:

"11. With reference to para No. 10, it is denied that the representation was not considered for long time. In any case it is submitted that the date of the representation is 3rd November, 1988 and not 1st November, 1988. It is denied that the petitioner was not supplied the required documents for making an effective representation. On the contrary all the relevant documents were supplied to the petitioner. The petitioner's representation was duly considered and rejected by the competent authority."

(5) We may note that the present petition was listed for preliminary hearing on 25th November, 1988, on which date notice to the respondents to show cause against it was issued. The respondents filed their answer on 3rd January, 1989. The petition was admitted on 13th January, 1989. In their counter-affidavit, the date on which the said representation was rejected has not been given but in the further affidavit filed by them, it is stated that the specially empowered officer rejected the same on 13th December, 1988. The time taken to dispose of the representation from 3rd November, 1988 is explained as follows : "The said representation dt. 3-11-88 was received in the Cofeposa Unit on 4-11-88. As some of the points raised in the representation required comments from the sponsoring authority, the representation was sent to the sponsoring authority, i.e., Collector of Customs for their comments on 7-11-88, 5th and 6th November, 1988 being holidays as Saturday and Sunday. Their comments were received vide their letter dated 9-12-88 in this Ministry on 12-12-88. 10th and 11th December, 1988 being holidays as Saturday and Sunday. A note raised by the petitioner in his representation and a reply thereto was put up by the concerned officer on 13-12-88 to the detaining authority. The representation was considered by the detaining authority and rejected on 13-12-88 and memo of rejection was issued on the same date. Therefore, there was no undue delay in considering the representation of the petitioner."

(6) According to Mr. Dalip Singh, learned counsel for the respondents there is no inordinate delay in considering the representation and in any case, he submits,

the delay has been thoroughly explained. His case is that comments were sought by the office of the detaining authority on 7th November, 1988 and thereafter on receipt of those comments on 9th December, 1988 vide letter of 9th December, 1988, the representation was dealt with and disposed of by the detaining authority within a day.

(7) We have repeatedly asked Mr. Dalip Singh about the delay which occurred from 7th November, 1988 to 12th December, 1988. We have quoted the relevant portion of the counter affidavit above. That affidavit is silent on this aspect but Mr. Dalip Singh submits that the time taken, i.e., from 7th November, 1988 to 9th December, 1988 was by the field staff of the sponsoring authority, which had to collect lot of material and information for the benefit of the detaining authority. The learned counsel, however, agrees that the representation was never placed before the detaining authority prior to 13th December, 1988. It appears that the decision to seek comments from the sponsoring authority was not taken by Shri K. L. Verma, the Joint Secretary, but by some officer subordinate to him.

(8) We may note another argument urged by Mr. Dalip Singh. According to him the present representation is not a representation in the eyes of law "and, therefore, the time taken in disposing of the same cannot be considered to be the time taken in considering the representation. He submits that a bare reading of the representation shows that it was an application seeking supply of copies of certain document and other information. The delay in dealing with such an application according to the learned counsel is entirely immaterial. Mr. Dalip Singh relies on paragraph 14 of the representation in support of his argument That paragraph reads:

"14. That my illegal detention has not only ruined my life but has adversely affected my health as I am unable to get proper treatment in the jail for the serious ailments being suffered by me. Not only this, my entire family consisting of minor children and my wife is suffering. Please have mercy on me and order my release at the earliest, or in the alternative, kindly supply me with the aforesaid documents and information since I require the same for making an effective, purposeful representation against my detention to the concerned authorities."

(9) To our mind this submission of Mr. Dalip Singh that the said representation is not a representation seeking revocation of the detention order, is entirely misconceived. Paragraph 1 of this representation reiterates the subject given on top of that representation. In that paragraph the detenu states:

"1. That I am making this representation to you "against my illegal detention imposed on me in pursuance of the above mentioned detention order passed by you on 14th October, 1988 u/s 3(1) of the Cofeposa Act. I submit that the detention order has been passed by you without any application of mind and you have deprived me of my right to freedom without due process of law. It appears

that due to rush of work you have passed this detention order "as a matter of routine and have not applied your mind to the material on record. I have learnt that about two hundred detention orders were passed by you on or around 14th October, 1988 and as such it has not been possible for you to apply your mind to each and every case. I request you to kindly examine this case thoroughly and revoke my detention order."

(10) In view of this clear plea of the detenu in his representation, it cannot be urged that that representation was merely an application for seeking documents and other information. We may note that the respondents themselves in their counter- affidavit have not taken this stand.

We hold that the representation dated the 1st November, 1988, said to have been received by the respondents on 4th November, 1988, was a representation made by the detenu to the detaining authority specifically for revocation of the impugned detention order. We further hold that there is no Explanation what so ever for the delay which occurred from 7th November, 1988 to 9th December, 1988.

(11) In *Rajinder Pd. Khanna v. Union of India & Ors.* Cr. Writ Petition No. 555 of 1987 decided on 18th August, 1988 (reported in Crimes, December 1988 edition Part XII)(1) the case law on the point was surveyed. In the facts and circumstances of that case we had held that even unexplained delay of 10 days in dealing with the representation of a detenu invalidates his continued detention.

(12) We hold that the delay of 32 days in the present case has neither been explained nor accounted for. The delay in our view is inordinate and this ground by itself is sufficient to invalidate the continued detention of Bhupinder Singh. The petition is allowed. The Rule is made absolute and the continued detention of the petitioner is quashed. The petitioner be set at liberty forthwith if not required to be detained under any other valid order passed by a Court or any other competent authority.