

(1995) 12 DEL CK 0038

In the Delhi High Court

Case No : Criminal Writ Petition No. 571 of 1995

Leszek Kwiatkowski

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(2)

Citation : (1996) 1 AD 495 : (1996) 61 DLT 691 : (1996) 36 DRJ 251

Hon'ble Judges : V.K. Jain, J;A.D. Singh, J

Bench : Division Bench

Advocate : Urmil Khanna, B. Babbar and Ajay Kumar, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) RULED.B.

(2) By this habeas corpus petition the petitioner challenges the order of detention dated May 8, 1995, passed by the Joint Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(3) The petitioner has raised several grounds questioning the detention order. However, during the course of hearing the learned counsel for the petitioner has laid emphasis on the point that representation submitted by the petitioner against his detention was not considered by the respondents. It is submitted that a representation addressed to the Finance Minister was handed over by the detenu to the Superintendent, Central Jail (CUFEPOSA Unit), on August 8, 1995, and a copy of the same was sent directly to the Finance Minister by registered post on August 23, 1995. Learned counsel has brought to our notice a copy of the postal receipt No. 906 which is at page 37 of the writ petition.

(4) On the other hand, learned counsel appearing for the respondents submits

that no such representation was received either by the Superintendent, Central Jail, or by the Finance Minister.

(5) Since the question whether or not the petitioner made a representation to the Finance Minister is a disputed question of fact, we are not inclined to go into the same. However, there is no denial by the respondents that the notice of the writ petition was served on the respondents on November 10, 1995, along with copy of the writ petition. Despite the fact that the respondents were served on November 10, 1995, and appeared before the court through counsel on November 16, 1995; November 30, 1995, and December 11, 1995, they have not cared to dispose of the representation of the detenu though a copy of the representation is annexed with the writ petition (page 35 of the writ petition). There is no Explanation as to why from November 10, 1995, till date the respondents have not disposed of the representation of the petitioner. The failure to dispose of the representation by the respondents amounts to violation of the right of the detenu under Article 22(5) of the Constitution.

(6) Accordingly, the writ petition succeeds and the rule is made absolute. The petitioner shall be released from custody forthwith, if not required in connection with some other case.

(7) A copy of this order may be communicated to the Superintendent, Central Jail, Tihar.