
(1990) 07 DEL CK 0001
In the Delhi High Court
Case No : Criminal Writ 1/90

Mohd. Amin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 10, 3(1), 9(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1990) 30 ECR 455

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Y.K. Sabharwal, J.—The petitioner was ordered to be detained pursuant to the order dated 5th October 1989 made by the Administrator of the Union Territory of Delhi in exercise of powers conferred by Section 3(1) read with Section (f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act"). The said order was made while the petitioner was in jail in connection with the incident of alleged smuggling on 7th July 1989. The order of declaration u/s 9(1) of the Act was made by Additional Secretary to the Government of India on 27th October 1989. The challenge in this petition is to the order of detention and the declaration order.

2. It is alleged in the petition that the representation against the order of declaration referred to above was addressed to President of India and there is long and unexplained delay in consideration of the said representation. A copy of the representation has been placed on record. Petitioner has also placed on record English translation of the representation dated 12.12.1989 alleged to have been sent to the President of India. The original representation is said to be in Pushtu language. The main grounds of challenge is twofold. In so far as the challenge to order of declaration is concerned, relying on the judgment of the

Supreme Court in Jagpreet Singh v. Union of India 1990 (30) ECR 11, firstly it is contended by learned Counsel for the petitioner, that the petitioner had a right to make a representation against the declaration and he was not informed of this right which vitiates the said order. Secondly it is contended that there has been long and unexplained delay in considering the representation. In the counter-affidavit filed on behalf of the Union of India the only substantial plea taken is that no representation dated 12.12.1989 alleged to have been made to Central Government has been received in the COFEPOSA Section. In the rejoinder affidavit the petitioner again reiterated his plea taken in the writ petition about the representation having been made by him and sent to President of India. It is further pleaded that the representation was sent under postal receipt No. 1247 dated 9.12.1989 from the Post Office of Supreme Court Building and it was properly addressed. It is also explained in the rejoinder that the acknowledgement due had not been received and, Therefore, a letter dated 26th February" 1990 was sent by advocate of the petitioner to Post Master, GPO, New Delhi, and to the Post Master, Supreme Court Building, New Delhi, to clarify whether the said registered letter has been sent to the addressee. Copy of the letter dated 26th February 1990 has been filed along with the rejoinder affidavit. Petitioner has also placed on record reply dated 21st March 1990 received from the postal authorities stating that the article was delivered to the addressee on 11.12.1989, However, there is some confusion about the date of the representation. The date given on the English translated copy of the representation is 12.12.1989. That is also the date mentioned in the petition but from perusal of the photocopy of the representation in Pushtu language it appears that the date on the representation is 9.12.1989 and not 12.12.1989. That explains the reply of the postal authorities that the article was delivered to the addressee on 11.12.1989. Learned Counsel for the respondent in any manner, was misled or the respondent did not urge that by this confusion about the date the respondent could not properly appreciate the averment about the representation having been made by the petitioner.

3. Learned Counsel for the respondent sought to distinguish the present case from Jagpreet Singh's case 1990 (30) ECR 11 and contended that decision of Supreme Court in Jagpreet Singh's case is not applicable in the present case; unlike the case before the Supreme Court, the representation was made by the petitioner and, Therefore, it cannot be said that he was not aware about the right to make a representation against the declaration. However, the representation in the case in hand was made nearly one month and 13 days after the order of declaration. It may be possible in a given case for the respondent to contend that there was no prejudice to the petitioner on his not being informed that he has a right to make a representation if such a representation is made soon after the order of declaration. But that is not the position in so far as the present case is concerned. In Jagpreet Singh's case the order of declaration was set aside by the Supreme Court on the ground that there was delay of about a month and 13 days before the detenu was made aware of his rights under the Constitution to

make an effective representation against the declaration. That delay was considered to be unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution of India. From representation referred to above, at best, it can be said that the petitioner became aware of his constitutional right to make the representation on or around 9th December 1989 when he made the representation. The ground of challenge urged by learned Counsel for the petitioner, in my opinion, is squarely covered by Jagpreet Singh's case 1990 (30) ECR 11 and accordingly, the order of declaration is liable to be set aside.

4. Learned Counsel for the petitioner has shown to this Court and has placed on record a photostat copy of the order dated 15th March 1990 confirming the detention order and further directing u/s 10 of the Act that the detenu be detained for a period of two years from the date of his detention i.e. 5th October 1989. The order of declaration having been set aside the confirmation of order of detention had to be within three months. Admittedly this was beyond the period of three months and consequently the order of detention is also liable to be quashed.

5. There is also considerable force in the contention of the petitioner that there has been long and unexplained delay in considering the representation. It appears that the representation was received in the President's Secretariat on 11.12.1989. As noticed hereinbefore the only averment made on behalf of the Union of India is that it was not received in the COFEPOSA Section. It has not been explained as to what happened on receipt of the representation in the President's Secretariat. It is vehemently contended that it may not have been received in the President's Secretariat. However, such a contention is not available to the respondent. It was for the respondent to make proper verification from the President's Secretariat particularly when full particulars had been given by the petitioner at least along with his rejoinder. In the counter-affidavit it is not stated that the representation was not received in the President's Secretariat. The respondent cannot be relieved of its obligation by making an averment that it was not received in COFEPOSA Section. The representation has not been disposed of till date. On this ground also the order of declaration is liable to be quashed.

6. For the aforesaid reasons, the impugned order of detention as also the impugned order of declaration are set aside. The petition is allowed and the rule is made absolute. The petitioner is directed to be set at liberty, if not required in any other case.