

(1990) 12 GUJ CK 0038
In the Gujarat High Court

Narbharam Pitambardas Soni

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-12-1990

Acts Referred:

Citation : (1991) 2 GLR 861

Hon'ble Judges : J.U. Mehta, J;A.N. Divecha, J

Bench : Division Bench

Judgement

J.U. Mehta, J.—The petitioner has challenged the operation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). The order of detention along with the grounds of detention and the materials were served to the detenu on 25-5-1990. As per the impugned order, the detenu was detained with a view to preventing him from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

2. The learned Advocate for the petitioner raised several grounds challenging the impugned order of detention. However, one of the main grounds canvassed on behalf of the petitioner is that there is delay in considering the representation of the detenu by respondent No. 1 and, therefore, the continued detention of the detenu is bad and illegal.

3. Our attention is invited by the learned Advocate appearing for the petitioner to ground 6(v) of the petition. The contention as set out in the said ground is as under:

The petitioner says and submits that the petitioner has made one representation to the Central Government on or about 16-8-1990, a copy thereof is annexed hereto and marked as Annexure "E". The petitioner further submits that the Jail Authority of Ahmedabad is required to disclose before this Hon'ble Court that on which date the said representation was forwarded to the Central Government, and further also required to disclose the date on which the said representation was reached in the Ministry, if it is sent through registered post or speed post.

The petitioner further submits that any receipt thereof by which the said representation is forwarded, be produced before this Court, which can easily produce the date, when the said representation was received in the department of COFEPOSA.

The petitioner further submits that the said representation was considered and rejected by the Central Government on or about 17-9-1990, the said communication is annexed hereto and marked as Annexure "F. Thus there is a delay of about 31 days, in considering the representation and this delay is inordinate and avoidable delay, therefore this delay ought to have been properly explained before this Hon"ble Court, otherwise this continued detention of the petitioner is bad in law.

Mr. J.M. Patel, learned Advocate appearing on behalf of respondent No. 2 invited our attention to the reply on behalf of respondent No. 2 with regard to the said contention raised by the petitioner in the aforesaid ground 6(v) of the amended petition. The extract of the said reply is as under:

6. As regards the contents of para 6(v) (amended para) of the petition, the averments made in this para are denied. It is true that the representation dated 16-8-1990 was made by the petitioner against the order of detention. The said representation dated 16-8-1990 was received by the Ministry Office on 31-8-1990 and after completion of the official formalities regarding inward and placing of the representation before the higher authority, the Ministry Office sent the aforesaid representation to the Sponsoring Authority on 31-8-1990. There were holidays on 18-8-1990, 19-8-1990, 25-8-1990 and 26-8-1990. The said representation was received from the Ministry Office by the Sponsoring Authority on 3-9-1990 for getting the application in Gujarati duly translated into English and also for offering parawise comments. After doing the needful, the said representation was submitted back to the Ministry Office on 6-9-1990 and the said letter dated 6-9-1990 of the Sponsoring Authority was received back by the Ministry Office on 10-9-1990. On the same date, the concerned office of the Unit submitted the case file to J.S. (COFEPOSA), forwarded the same to F. M. on 10-9-1990. F. M. considered and rejected the representation of the detenu on 17-9-1990 and thereafter, vide Memorandum No. F. No. 686/317/90/EUS/VIII, dated 17-9-1990, the petitioner was informed that his representation, after careful consideration is rejected. There were holidays on 1-9-1990, 2-9-1990, 8-9-1990, 9-9-1990, 15-9-1990 and on 16-9-1990. I say that in the above view of the matter, there is no delay in considering the representation of the petitioner as alleged. I deny that there is delay of about 31 days as alleged. I say that the time taken for consideration of the representation cannot be said to be in any manner inordinate or avoidable.

Mr. Patel also invited our attention to the affidavit filed by one Jagdish R. Shukla, Jailor, Group-II, Ahmedabad General Prison, Ahmedabad. It is stated in para 2 of the said affidavit-in-reply that the Jail Authority had received the representation on 16-8-1990 and a forwarding letter was prepared on the same day and the

same was sent to the dispatch clerk on the same day. The said representation was sent by Registered Post, A.D. on 17-8-1990 and the registered post, A.D. slip was received back showing that the concerned department of the Union of India received the said representation on 20-8-1990. A xerox copy of the A.D. slip is also annexed along with the affidavit filed by Jailor Shri Shukla showing that the Registry of the Department of Central Government received the representation on 20-8-1990.

4. From the above facts, it is clear that the representation dated 16-8-1990 was received in the department of the Union Ministry on 20-8-1990 and the representation did not reach the concerned department upto 31-8-1990. It is obvious that there was delay inasmuch as even though the Jailor promptly dispatched the representation on 17-8-1990, it was not received in the concerned department of the Union of India till 31-8-1990. No explanation is forthcoming as regards the time lost in transit. It appears that after the representation is received in the concerned department of the Union of India, the Registry of the Department takes its own time in inwarding the same in the Registry before forwarding it to the concerned branch. It appears that the Registry of the department concerned had not forwarded the representation for about 11 days to the concerned branch. Even if we take that two days were holidays as stated in the affidavit-in-reply, it took nine days in forwarding the representation to the concerned branch. Time and again this Court has laid down that the representation should be dealt with as expeditiously as possible without any delay. It appears that no care is taken to see that the representation received from the detenu reaches the concerned branch immediately. It would be appropriate to refer to the following observations of the Supreme Court in this behalf in the case of *Vijay Kumar Vs. State of Jammu and Kashmir and Others*, .

The representation is to be made to the Government. Therefore, the detenu who has already been served with the detention order and thus deprived of his liberty would ordinarily be in a position to send his representation through the Jail Authorities. The Jail Authority is merely a communicating channel because the representation has to reach the Government which enjoys the power to revoke detention order. The intermediary authorities who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the Government enacts a law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this

behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.

5. In the instant case also, since the representation of the detenu was not dealt with expeditiously, we have no other alternative but to quash the impugned order of detention. The view which We are taking is also supported by the judgment of this Court, delivered in Special Criminal Application No. 1074 of 1985, decided on 19th/20th December, 1985 (Coram: A.M. Ahmedi and D.H. Shukla, JJ.)

6. In the result, this petition is allowed. The impugned order of detention dated 21-5-1980 at Annexure "A" to the petition is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith if not required for any other case. Rule is made absolute accordingly, with no order as to costs.