

(1996) 12 DEL CK 0023

In the Delhi High Court

Case No : Criminal Writ Petition No. 463 of 1996

Naresh Chand Jain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-12-1996

Acts Referred:

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

Citation : (1997) 1 AD 556 : (1997) 65 DLT 249 : (1997) 40 DRJ 623

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Naveen Malhotra and A.K. Vali, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) This is a writ petition filed by the petitioner questioning the detention order dated 3.4.1996 passed by the respondent u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) One of the points urged on behalf of the petitioner is that a representation was addressed by the petitioner to the detaining authority, namely, the Joint Secretary on 15.5.1996 with a request to send a copy of the representation to the Central Government. A perusal of the records produced before us show that the said representation was initially rejected by the detaining authority on 6.6.1996. On the margin of the note an endorsement was made that the representation may be placed before the Central Government for its due consideration.

(3) Thereafter, we find a separate file opened which contains the representation dated 15.5.1996 and placed for consideration before the Central Government. There is a noting by the Under Secretary on 7.6.1996 that the representation deserves to be rejected. If the matter had rested there and the matter was placed before the Secretary and the Minister there would have been no difficulty.

But unfortunately, the file again came to the Joint Secretary, who also happens to be the detaining authority, and he made a further endorsement on the file on 7.6.1996 that the representation merits rejection, and it appears to us that it was on that basis that the representation was rejected by the Secretary on 10.6.1996 and the Minister on 11.6.1996. If the Joint Secretary had merely forwarded the papers to the Secretary and to the Minister, there would not have been any difficulty. Unfortunately, he made an observation that the representation merits rejection. Inasmuch as he had already rejected the representation addressed to him on 6.6.1996, he ought not have made any remarks on the file relating to the consideration of the representation by the Central Government.

(4) We are of the view that the rejection by the Central Government may have been influenced by the observations made by the detaining authority on its file also.

(5) For the aforesaid reasons, we are of the view that there is violation of Article 22(5) of the Constitution of India, and the petitioner is to be released forthwith, if he is not required to be detained in any other case. Writ petition stands disposed of.