
(1994) 07 DEL CK 0057

In the Delhi High Court

Case No : Criminal Writ Petition No. 186 of 1994

Pritpal Singh Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 226, 227
Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (1994) 3 Crimes 399 : (1994) 30 DRJ 539

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : A.K. Sharma and V.K. Shall, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India. It is prayed in the petition that order of detention dated 13th December, 1993 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by Mr. Mahendra Prasad, Joint Secretary to the Government of India be quashed and the petitioner / detenu be released forthwith.

(2) On the basis of secret information, it was learned that the petitioner was going abroad frequently with huge amount of foreign exchange. On 30th November, 1993, information was received that the petitioner had gone to Dubai by Air India Flight No AI-733 with a huge amount of foreign currency.

(3) On the basis of aforesaid information on 30.11.1993, the petitioner / detenu was apprehended on Air India aircraft IA-733 at Indira Gandhi International Airport, New Delhi, and foreign currencies viz. Dm 60500, Can.\$ 20200. Uk Pound 800, Guilder 5000 and Uae Dihram 55 were recovered and seized from the petitioner.

(4) On 1st December, 1993, his statement was recorded u/s 40 of the Foreign Exchange Regulation Act, 1973. In that statement, it was stated that the petitioner came from Kabul 5 years back and met one Manmohan Singh, (Asha Park, Tilak Nagar, New Delhi) and on his insistence, he joined him and started working with him for earning good profits.

(5) The petitioner has been carrying the foreign currency of Manmohan Singh to Singapore and Dubai frequently. The petitioner has been going to Singapore and Dubai ones or twice a month. The petitioner in his statement dated 1st December 1993 had mentioned that Manmohan Singh used to pay Rs.5000.00 to Rs. 8000.00 per trip and the return air tickets to him. The petitioner used to carry foreign exchange worth Rs.18 to Rs.20 lakhs on each of his trips abroad.

(6) The petitioner was arrested on 1st December, 1993 and produced before the learned A.C.M.M. New Delhi on the same day and thereafter he was remanded to the judicial custody till 15.12.1993.

(7) On the basis of the aforesaid facts, the Joint Secretary, Government of India came to the conclusion that the petitioner has been engaged in nefarious activities which were prejudicial to the conservation of the foreign exchange resources. The petitioner challenged the detention order before this court. This court issued Rule in this matter on 7.3.94 and thereafter counter affidavit was filed by Mr. Mahender Prasad, Joint Secretary to the Government of India, Ministry, of Finance, Department of Revenue, New Delhi, on behalf of the Union of India. The petitioner has challenged the detention order on various grounds. The principal ground on which the detention order has been challenged is that the petitioner's representation dated 16.12.93 has not been considered till this day and consequently no decision of the respondents has been communicated to him till this date. There is delay in considering the petitioner's statutory representation of more than 7 months. The learned counsel for the petitioner submitted that unduly long and inordinate delay without any Explanation in consideration of the petitioner's representation renders his detention illegal and unconstitutional. The petitioner / detenu consequently is entitled to be released only on this short ground of gross delay in consideration of his representation.

(8) Learned counsel for the petitioner has particularly invited my attention to paras V, Vi & Vii, as submitted in the counter-affidavit filed by the Union of India. In these paras, it is mentioned that the representation dated 20.12.93 (not dated 16.12.93 as mentioned in the writ petition) and 30.12.93 were received in the Ministry. In these representations, request, was made to supply the relied upon documents in Punjabi language. These representations were considered by the Central Government as well as the detaining authority, and the concerned sponsoring authority was requested to supply all the relied upon and relevant documents to the detenu as demanded in his representation.

(9) In this counter-affidavit, it is not stated when the decision of rejecting his representation was communicated to the petitioner / detenu. Learned counsel

appearing for the Union of India submitted that the petitioner's aforesaid representations were in fact letters of request for supplying relied upon and other documents and by no stretch of imagination can be termed as statutory representation. The petitioner while challenging the detention order also prayed that relied upon documents be supplied to him. It has also been submitted that by merely incorporating a request for supply of documents would not change the character of his representation. He further submitted that even the Union of India always considered it a representation and had also mentioned so, on many occasions in the counter-affidavit.

(10) Learned counsel for both the parties invited my attention to the contents of representation actually sent by the petitioner to the respondents.

(11) When the petitioner's representation is closely examined, right from para 1 to its prayer clause of the representation, it is abundantly clear that the petitioner has challenged the validity of his detention order on various grounds.

(12) While challenging the detention order on various grounds, the petitioner has specifically prayed that the detention order is liable to be set aside on various grounds. In the representation, the petitioner also requested the detaining authority to supply him all documents which were considered by the detaining authority and inform him whether they were in fact relied upon by them at the time of passing of the detention order. The petitioner in paras 1, 2, 3 and 4 has reiterated that the detention order is illegal and is liable to be revoked.

(13) Learned counsel for the petitioner to strengthen his arguments has invited my attention to judgment delivered in *Dilip Dey Vs. U.O.I.*, 44 1995 DLT 82, and relied on para 20 in which almost similar argument was advanced by the counsel appearing for the Union of India. Para 20 of the judgment reads as under : "20. In the alternative, counsel for the respondents has contended that the second communication of the President dated 17th of May, 1990 was not a "representation" in the real sense. It was, according to him, merely a demand for supply of documents. There is no substance in this plea either. First paragraph of the said communication, with reference to the detention order, states "The petitioner is innocent and he may be released". Thereafter, demand for supply of six enumerated items has been made in para 2 of this communication. Apart from this, it is apparent from the rejection memo itself, that the Central Government had dealt with it as a representation. The said rejection memo deals with the two requests separately. The first part regard the representation is reproduced below:

"WITH reference to his representation dated 7-5-90 Shri J.K. Srivastava, Advocate, on behalf of Shri Dilip Dey, a Cofeposa detenu presently lodged in Presidency Jail Alipore, Calcutta, is hereby informed that his representation regarding release of his client has been carefully considered by the Central Government but it is regretted that the same has been rejected."

In this case, the plea taken by the respondent was rejected and detention order

was declared illegal and unconstitutional and the petitioner was set at liberty.

(14) The learned counsel for the petitioner also invited my attention to judgment of the Supreme Court *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , and has relied on paras 3 and 4 of the said judgment. Somewhat similar argument was advanced by counsel appearing for the Union of India in this case also. The court has rejected the arguments and observed that there is no prescribed proforma in which the representation has to be made. The relevant portion of the judgment reads as under :

"THE answer of the respondents to the challenge based on the failure to consider the representation dated July 27, 1980 was that the communication dated July 27, 1980 was not a representation at all but was a mere request for copies of documents and Therefore the detention could not be questioned on the ground of failure to consider the detenu's representation. The answer to the challenge based on the delay in furnishing copies of documents was that the detaining authority was not obliged in law to furnish copies of documents relied upon in the grounds of detention. All that the detaining authority was obliged to do under the law was to communicate to the detenu all the basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction and that obligation had been discharged in the present case. The learned counsel urged that the view taken by *Bhagwati and Venkataramiah, JJ. In Icchu Devi Choraria vs. Union of India*, was inconsistent with the view taken by this Court in a series of cases and that the judgment required reconsideration.

4. The writ petition has to succeed on both the grounds. As we mentioned earlier the answer of the respondents in regard to the ground based on the failure of the detaining authority to consider the representation dated July 27, 1980 submitted by the detenu through his advocate was not that the representation was ever considered but that it was not a representation at all. We are unable to agree with the submission made on behalf of the respondents."

(15) The petition was allowed and the petitioner/ detenu was set at liberty by the Hon"ble Supreme Court.

(16) Learned counsel has also placed reliance on a Division Bench judgment of this court delivered in *Anil Sanan vs. Union of India* and another, Crl. W .No.523/91 on 4th December, 1991. In this judgment also, it is mentioned that the petitioner made representation and in that representation, petitioner also demanded certain documents from the .respondents in order to make the representation to the respondents for revocation of the detention order. The petitioner also by the same representation asked for revocation of the detention order. The respondent rejected the representation. The court allowed the writ petition and released the petitioner / detenu only on the ground that there has been unreasonable and long delay and no Explanation was offered by the detaining authority.

(17) Learned counsel for the petitioner also submitted that the respondents also

in fact considered the representation of the petitioner as a statutory representation and has even mentioned at number of places in the counter affidavit that the petitioner's representation dated 20th December, 1993 was received on 30th December, 1993, including paras V, Vi, & Vii, and in various other paragraphs. Therefore, there is hardly any propriety or justification on behalf of the Union of India to take this plea at this stage. The plea of the Union of India being totally devoid of any merit is liable to be rejected.

(18) The Hon"ble Supreme Court in a catena of decisions has held that there is no prescribed form in which a detenu is required to make representation. The petitioner in his representation has prayed that his detention be revoked and quashed, then it becomes the bounden duty and obligation of the respondent State to consider the same with expedition and promptitude. It is beyond comprehension that when the legal position has been clearly declared by the Supreme Court time and again then why do these lapses occur repeatedly.

(19) In view of the settled position of law which has been crystallized in a large number of Judgments of the Hon"ble Supreme Court and various High Courts, that when there is long, undue, unreasonable and inordinate delay without any valid Explanation ,then the detention order has to be quashed.

(20) In the instant case, there is clear delay of over 7 months in consideration of the petitioner's representation. In fact the decision on the petitioner's representation has not communicated to the petitioner till this date. Consequently, the detention order dated 13th December, 1993 passed by the Joint Secretary, Government of India, under Cofeposa is liable to be quashed. The petitioner shall be set at liberty forthwith unless he is required to be detained in any other case.

(21) Petition is accordingly disposed of.