

(1989) 11 DEL CK 0003

In the Delhi High Court

Case No : Criminal Writ Petition No. 416 of 1989

Rajiv Wadhwa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-11-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1990) 40 DLT 381 : (1990) 18 DRJ 105 : (1990) 3 RCR(Criminal) 252

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Arun Jaitley, Maninder Singh, Rajender Dutt and Sangeeta Nanchaha, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition under Article 226 of the Constitution of India has been brought seeking quotient of detention order dated May 19, 1989, passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act"), with a view to preventing the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange.

(2) Various grounds have been urged in support of the petition but it is not necessary to deal with all those grounds because this writ petition is liable to succeed on a very short ground.

(3) It has been pleaded in the writ petition that the petitioner had made a representation dated June 15, 1989 and the same came to be rejected after about 40 days and there had taken place unexplained and inordinate delay in considering his representation which vitiates his continued detention.

(4) In the counter-affidavit filed by Shri A.K. Batabyal, Joint Secretary, Government of India, Ministry of Finance, in para 14 it has been pleaded that the

aforesaid representation was received in the Ministry on June 16, 1989 and the same was forwarded to the Directorate of Enforcement. Delhi Zone and it was received in that office on June 28, 1989 and the comments were received from that office on July 4, 1989 and the comments were analysed by the Under Secretary and he put up the same before the Joint Secretary on July 7, 1989, who after recording his views placed the file before the Finance Minister on July 7, 1989, who considered the said representation and rejected the same on July 13, 1989 and he directed for supply of documents and the file was received back on July 17, 1989 and the documents were supplied to the detenu on July 25, 1989 and thus. there has been no undue delay in the disposal of the said representation.

(5) In the affidavit no Explanation whatsoever has been given as to why it took about 11 days in representation being received by Delhi Zone. However, at the time of arguments the learned counsel for the respondents pointed out that the representation was sent by registered post and thus. the postal authorities had, for unknown reasons, delayed the delivery of the said registered letter to the Delhi Zone office of the Directorate of Enforcement. However, the learned counsel for the respondents has not given me any cogent reason as to why this unusual mode to sending the representation for comments by registered post had been adopted when the Ministry as well as. the Zonal Office of the Directorate of Enforcement are located at Delhi.- I have been dealing with habeas corpus writs for a considerably "long period and I have not come across any case where the representation had been sent by registered post in a Delhi Office by the Ministry for obtaining the comments. It. is not shown as to when, in fact, the representation was dispatched vide postal receipt and when it was received by the Delhi Zone Office as per any A.D receipt. On the face of it this unusual mode adopted by the Ministry sending the representation for obtaining comments by registered post to Delhi Office of the Directorate of Enforcement which has resulted in delay of 11 days, in my opinion, makes the detention bad as the representation of the detenu has not been dealt with due promptitude.

(6) Counsel for the petitioner has made reference to certain Judgments in support of his contention that as the delay in the present case. has remained unexplained, the detention of the petitioner has become bad In *Satish Bhardwaj v. Union of India & Others*, 1988 (2) Delhi Lawyer 30, there has been given no satisfactory Explanation in respect of five days delay in considering the representation and the detention of the petitioner was quashed. In the case of *Reena Mirchandani v. Union of India & Others* 1988 (2) DL 204, there was unexplained delay of about ten days in which three days were holidays, still the detention was held to be bad. Counsel for the petitioner also cited *Rajender Prasad Khanna v. Union of India & Others* 1988 (3) Crimes 829. In the said case there was unexplained delay of about 10 days in considering the representation and the order of detention was quashed by a Division Bench of this Court. The learned counsel for the petitioner also referred to *Aslam Ahmed Zahire Ahmed Shaik v. Union of India & Others*, Jt 1989 (2) Sc 34, where the representation

kept lying for about seven days in the office of the Jail Superintendent. The Supreme Court held that the said delay in dealing with the representation vitiated the detention of the petitioner.

(7) Lastly, reference was made to *Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others*, wherein the Supreme Court has laid down that the representation made by the detenu has to be considered with reasonable dispatch and must be disposed of as expeditiously as possible and there is no prescribed period in which the representation should be dealt with but the words used in Article 22(5) of the Constitution to the effect "as soon as may be" reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay and it was also laid down that what is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule: can be laid down in that regard and in case the gap between the receipt of the representation and its consideration is so unreasonable and the Explanation offered by the authorities is so unsatisfactory, such delay could vitiate the order of detention. In the said case, there was a gap of 28 days in disposing of the representation and the Explanation offered was that further information was being called for from the State Government and it was received after a delay of nearly 14 days on October 17, 1988 and the representation came to be decided on October 27, 1988. It was held that this delay is unreasonable and the detention was held to be bad.

(8) The learned council for the respondents has, on the other hand made reference to *D. John Vs. State of Kerala and Another*, wherein keeping in view the peculiar facts of that case the Kerala High Court found that there has been given satisfactory Explanation for the delay caused in that case while disposing of the representation. Nothing said in this judgment would be of any help to the respondents because, as already indicated above, there has not been given any satisfactory Explanation for causing the delay in sending the representation by registered post. Then, reference was made to *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, I have gone through the judgment and find that in view of the facts disclosed in that case the Supreme Court came to the conclusion that there was no undue delay in considering the representation as the time was taken at different levels in routine for giving the comments. Such is not the case here. Lastly, reference has been made to *Mohd Saleem v. Union of India & others*, 1989(2) DL 109. The said judgment is also based on different facts. So, examining the present case, I find that there has taken place undue delay in considering the representation inasmuch as 12 days time was taken in sending the representation from one office in Delhi to another office in Delhi and then for four days the Under Secretary had sat over the papers without giving any Explanation. Thus, the detention of the petitioner stands vitiated.

(9) I allow the writ petition and quash the continued detention of the petitioner and direct that the petitioner be set at liberty, if not required to be detained in

any other case.