

(1991) 02 DEL CK 0034
In the Delhi High Court
Case No : Criminal Writ No. 295 of 1990

Sabu Thomas

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Citation : (1992) CriLJ 1587 : (1991) 45 DLT 6 : (1991) 3 RCR(Criminal) 36

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : Rohit Kochhar, for the Appellant; J.P. Verghese, P.L. Sebastian and G. Parkash, Advs, for the Respondent

Judgement

1. By this petition under Art. 226 of the Constitution of India, the petitioner has challenged his detention by the impugned order dated 7th of February, 1990 passed by the Government of Kerala with a view to preventing him from smuggling goods, abetting the smuggling of goods, and dealing in smuggled goods, under sub-sec. (1) of S. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act).

2. The facts relevant for decision of this case fall in a narrow compass. In pursuance of the impugned order, the petitioner was arrested on 21st of February, 1990. On 28th of February, 1990, he sent identical representations to the Detaining Authority and also to the Central Government. The former, by a communication dated 24th of March 1990, supplied some of the demanded documents to the petitioner. The latter rejected it by a memorandum dated 29th of March, 1990. After the Advisory Board submitted its report, on 17th of April, 1990 the Detaining Authority passed an order confirming the petitioner's detention. The present petition was filed in this Court on 24th of May, 1990. A number of grounds were taken to challenge the detention order and the continued detention of petitioner. It is unnecessary to refer to them here as the petitioner has presented only one of the grounds raised later, by a miscellaneous application registered as CrI.M. 289/90, on the basis of certain subsequent

developments.

3. After disposal of the first set of representations, the petitioner made another representation dated 22nd of June, 1990 to the Detaining Authority, inter alia, asking for supply of some more documents. Those were not supplied. So, the petitioner made a second representation dated 18th of August, 1990 to the Central Government to revoke the impugned detention order. The ensuing discussion is about this representation (hereinafter referred to as the second representation).

4. By an order dated 17th of October, 1990, the petitioner's Crl.M. 289/90 was allowed, and he was permitted to urge additional grounds. The respondents were granted liberty to file their replies. It is the Central Government which is really concerned with the additional grounds; but, it has not filed any reply to meet the same. The relevant averments made in paragraph 6, paragraph 7 and Ground (C) of the application are reproduced below :-

"6. The petitioner submits that on 18-8-90 he made a representation through his father Shri K. J. Thomas to the Central Government addressed to the President of India, Rashtrapati Bhavan, New Delhi. A copy of the said representation along with its English translation is annexed hereto and marked as Annexure X-III collectively. The petitioner submits that the said representation dated 18-8-90 was made to the Central Government on fresh grounds which were neither urged nor taken up in the earlier representation dated 28-2-90 made to the Central Government.

7. The petitioner submits that his representation dated 18-8-90 made to the Central Government has not been considered till date and there is thus long and unreasonable delay in consideration of the said representation. It is pertinent to mention that the said representation was sent by registered post and was received in the President Secretariat on 22-8-90. A copy of the relevant A/D is annexed hereto and marked as Annexure X-IV. The petitioner submits that a communication dated 11-9-90 was sent by the office of the President Secretariat addressed to his father wherein it was mentioned that the representation dated 18-8-90 addressed to the President of India has been forwarded to the Ministry of Finance, Department of Revenue, New Delhi. A copy of the said communication dated 11-9-90 is annexed hereto marked as Annexure X-V.

Ground C. That the documents requested for by the petitioner in his representation dated 22-6-90 were very relevant and material and ought to have been supplied to the petitioner pari-passu the grounds of detention. Since the same has not been done it has violated the petitioner's fundamental rights guaranteed in the Constitution of India, thus making his continued detention illegal."

5. Now, counsel for the petitioner has contended that detention of the petitioner must be set aside as the Central Government has failed to expeditiously consider his second representation.

6. When an order of detention is made by a State Government, as in the present case, sub-sec. (2) of S. 3 of the Act requires that Government, within ten days, to forward to the Central Government a report in respect of the order. This requirement is meant to ensure proper exercise of the power vested in the Central Government, at any time, to revoke or modify the detention order under S. 11 of the Act. In view of this provision, it is incumbent upon the Central Government to expeditiously deal with and dispose of any representation made to it concerning the exercise of this vital and over-riding power of great significance vested in it by virtue of S. 11 of the Act.

7. In *Kishore Kumar Mundhra v. Union of India*, (1989) 2 Del L 337 a question arose whether successive representations also, should be dealt with by the appropriate Government with due promptitude. Bahri, J. held as follows :-

"..... The duty is cast on the appropriate Government to consider the second representation also with due promptitude if some additional facts have been pleaded in the second representation which were not pleaded in the first representation. It is for the appropriate Government to decide whether the additional facts are sufficient to enable the appropriate Government to revoke the detention order or not."

That was a case of second representation made to the Detaining Authority itself, but that makes no difference. The same principle would apply with equal force to representation(s) made to the Central Government in respect of detention orders passed by a State Government. Indeed in *P. S. Sasi v. Union of India*, Crl.W. 699/89 decided on 20th of March, 1990, an order of detention made by the Government of Kerala was challenged on the ground of inordinate delay in the consideration of the representation made to the Central Government. Since the delay had not been explained in the counter-affidavit, Sabharwal, J. quashed the continued detention of the petitioner.

8-9. In the present case, the second representation was made by the petitioner to the Central Government on fresh grounds, among others, arising out of failure of the Detaining Authority to supply documents demanded by his representation dated 22nd of June, 1990. The relevant portion of paragraph 4 of the second representation made by father of the petitioner on his behalf is set out below :-

"..... It is further submitted that I on behalf of the detenu had made another ineffective representation to the detaining authority on 22-6-90, wherein also a request was made for supply of numerous documents which are referred to, relied upon, to enable the detenu to make an effective representation. It is respectfully submitted that the said documents requested for in the representation have not been supplied to the detenu till date, thereby violating his fundamental rights guaranteed under the Constitution of India. The detenu's continued detention is thus completely illegal."

10. Thus, it is clear that the cause for the second representation was the failure of the Detaining Authority to discharge its functions resulting in violating of the

petitioner's right under Art. 22(5) of the Constitution of India. Such a lapse would vitiate continued detention under the Act. On this ground, in view of the powers vested in it under S. 11 of the Act, the Central Government was bound to consider revocation of the petitioner's detention order.

11. Learned counsel for the Union of India tried to wriggle out of this situation on the plea that all the relevant documents had already been supplied by the Detaining Authority in response to the petitioner's first representation, and that the second representation was really worthless. It is not for this Court to go into the question whether the pleas taken in the second representation are relevant or irrelevant or even frivolous as that would fall within the domain of the appropriate Government.

12. As noticed earlier, the Union of India has not controverted the facts stated by the petitioner in paragraphs 6 and 7 of Crl.M. 289/90. Nothing to the contrary has been shown at the time of hearing either. The unrebutted case of the petitioner shows : that the second representation was made on fresh grounds; it was duly received in the President's Secretariat on 22nd of the August, 1990; and that the President's Secretariat forwarded the same on or about 11th of September, 1990 to the Ministry of Finance, Department of Revenue, New Delhi. There is no Explanation forthcoming for the delay in dealing with the representation in the President's Secretariat from 22nd of August to 11th of September, 1990. Further, nothing has been said to show whether the Central Government has considered it even till date.

13. Therefore, the continued detention of the petitioner is quashed. I direct that the petitioner be set at liberty forthwith unless he be required to be detained in any other case.

14. Accordingly, Rule is made absolute and the petition is allowed with costs. Counsel's fee Rs. 2,200/-.

15. Petition allowed.