

(1988) 09 DEL CK 0002

In the Delhi High Court

Case No : Criminal Writ Appeal No. 183 of 1988

Sachindranath Audya @ Sachi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-09-1988

Acts Referred:

Citation : (1989) 1 Crimes 308 : (1989) 37 DLT 180 : (1989) 16 DRJ 37

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar, Sat Pal, Rekha Agarwal and Maninder Singh, for the Appellant;

Judgement

Malik Sharief-nd-din, J.

(1) The petitioner has challenged the validity of the detention order dated 26/11/1987 passed by Shri K.L. Verma, Joint Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The order was passed with a view to preventing the detenu from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

(2) The detention itself is based on an incident dated 17/9/1987 when on an information the customs officers of Divisional Preventive Unit, Barasat Customs Division, Calcutta intercepted the detenu and one more person and recovered three foreign marked gold biscuits valued at Rs. 1,06,385.00 . This recovery was made pursuant to a secret information and the detenu on being given an opportunity to show the legal possession of the recovered gold failed to show any evidence in support of the same.

(3) The detention order is assailed on a number of grounds. But there is hardly any need for me to go into the merits or otherwise of all the grounds as this detention, in my view, will have to be vacated for one important reason of delay in the communication of the order regarding the consideration of the

representation of the detenu. The detenu has raised a specific plea that there has been unexplained delay in the consideration of the representation. The law on the subject has been clearly laid down in *Harish Pahwa Vs. State of U. P. and Others*, . The Supreme Court in this case has clearly stated that there are two facets to the consideration of the representation of the detenu ; one of them being that the representation of the detenu must be considered at the earliest possible opportunity and must be continuously considered until a final decision is taken thereon, and the other facet of this as laid down by the Supreme Court is that the result thereof must immediately be communicated to the detenu. This in short is the ratio of the law laid down in the case of *Harish Pahwa*, (supra).

(4) On behalf of the Central Government an affidavit has been filed by the detaining authority who has explained the delay in the following terms.

(5) According to the affidavit, the representation of the detenu dated 7/3/1988 was received in the Cofeposa cell with a covering letter from the President's Secretariat on 9/3/1988 and on the same day it was put up before the detaining authority who desired that comments be obtained from the office of the Collector of Customs (Preventive) West Bengal. To this effect a letter along with a copy of the representation was sent to the Collector of Customs (Preventive) West Bengal on 10/3/1988. The comments from the office of the Collector of Customs (Preventive) West Bengal were received on 21/3/1988 and on the same day a note was put up before the detaining authority who considered the same and recommended that there is no merit in the representation of the petitioner and the same deserved to be rejected. It is further stated that the file was thereafter sent to the Hon"ble Minister of Finance on 22/3/1988 and the Hon"ble Minister considered the same on 26/3/1988 and rejected the representation of the petitioner. That file was received back in the Cofeposa unit on 29/3/1988 and the memorandum of rejection was issued and sent to the petitioner on 29/3/1988 itself.

(5) Mr. Herjinder Singh on the basis of these averments in the return of the respondents states that there is no Explanation as to how the representation of the detenu was dealt with from 10/3/1988 to 21/3/1988 and from 22/3/1988 to 26/3/1988. My understanding of the law on the subject is that the delay in the consideration of the representation by itself will not be objectionable provided it is satisfactorily explained. What is important is that it must appear that the representation was dealt with continuously and the appropriate authority did not show any indifference towards it. This will have to be essentially adjudged on the facts and circumstances of each case. In the present case, the authority from whom the comments were sought is not situated in Delhi. If it were so, then there was an obligation cast upon the respondents to explain as to how the representation of the detenu was dealt with between 10/3/1988 and 21/3/1988. In the present case the comments were sought from the authority who was located in West Bengal, Calcutta. Obviously, it would take sometime for the communication to go and to arrive there from and it will also take some time for

the authority to go through the records and submit its comments. On facts of the present case, Therefore, I do not find that there has been any fatal delay. It is stated that the representation was submitted to the Minister concerned on 22/3/1988 and it was considered and rejected on 26/3/1988. Mr. Herjinder Singh stated that there has been a delay of 4 days here also and it is not being satisfactorily explained. It would appear that 26/3/1988 was a holiday and the Minister concerned was so concerned about the representation that he took it up for consideration even on a day when he was not expected to do it. Therefore, in the circumstances of this case, it would be totally wrong to accept that any indifference was shown in the consideration of the representation of the detenu.

(7) It is stated in the affidavit that the decision that his representation has been rejected was communicated to the detenu on 29/3/1988. In normal course if the decision is communicated through post it may at the most take 3-4 days or even a week but then it must be shown by the respondents that the communication regarding the rejection of the representation was served upon the detenu without any delay. As per ratio of the Harish Pahwa's case (supra) the communication of the order of rejection of the representation is a part and a necessary facet of the consideration of his representation. Mr. Herjinder Singh has submitted a photo copy of the memorandum communicated to the detenu in Calcutta jail to the effect that his representation has been considered and rejected. According to him a receipt of the same was taken from the detenu which bears the date as 9/8/1988. The photo copy submitted be placed on record. It was under these circumstances that I requested Mr. Sat Pal to find out from the records as to what the exact position is. Mr. Sat Pal states that there is nothing on the record to indicate as to when the memorandum was actually communicated to the detenu. He however maintains that it was sent by speed post as per records on 29/3/1988. There is no obligation cast on the detenu to specifically state that it was actually served on him on 9/8/1988. It is sufficient for the detenu to assert that there has been delay in the consideration of the representation. The burden as to when the memorandum regarding the rejection of the representation was actually served on the detenu is on the respondents and this burden the respondents have failed to discharge. On this short ground, Therefore, the petition is allowed. The impugned detention order is quashed and it is directed that the detenu shall be released forthwith unless otherwise required.