
(1989) 05 DEL CK 0001

In the Delhi High Court

Case No : Criminal Writ Petition No. 585 of 1988

Sansar Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10

Citation : (1989) 2 Crimes 508 : (1989) 38 DLT 338 : (1989) 17 DRJ 108

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Advocate : O.P. Malviya and Kadambini Sharma, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) The petitioner is challenging the detention order made on July 7, 1988 by specially empowered officer of the Government of India u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (hereinafter referred to as "the Ordinance". The order was passed by Shri K.L. Verma, Joint Secretary to the Government of India, against the petitioner (the detenu) with a view to preventing him from conspiring in the furtherance of export from India of Psychotropic substances. The petitioner is further seeking quashing of the declaration made by the Additional Secretary to the Government of India on August 10, 1988 u/s 10 of the Ordinance. The petitioner filed a representation to the Central Government on July 28, 1988 seeking copies of certain documents in Hindi to enable him to make an effective representation. It appears from the counter affidavit that this representation was rejected by the Finance Minister on August 31, 1988. Thereafter, he made another representation seeking revocation of the detention order on September 5, 1988 which was rejected vide memorandum of October 31, 1988.

(2) The petitioner has taken very many pleas in his writ petition. Mr. Malviya, learned counsel for the petitioner, however, urged only two grounds: (1) that the

Government did not consider the representation promptly thus resulting in inordinate delay, which has not been explained ; and (2) that the representation was dealt with by the Under Secretary. It is clear from the return that the said representations were considered by the Finance Minister himself. Thus there is no force in the argument that those were not considered by the appropriate authority. The first ground taken by Mr. Malviya has, however, considerable force. In paragraph (H) of the reply in counter affidavit, the time taken by the Government in dealing with the first representation has been explained as follows :

"regarding the first representation dated 28.7.88, the same was received in the Ministry on 1.8.88. Comments on the same were called for from the Collector of Customs, New Delhi on 1.8.88. Comments dated 11.8.88 of the Collector of Customs were received on 12.8.88, after office hours, 13th, 14th and 15th were holidays. On 16th, the papers were diarised, processed and put up to the Finance Minister on 23.8.88 through the Joint Secretary and Minister of State (Revenue). The Detaining Authority with his recommendation, put up the file to the Mos (R) on 23.8.88. The Minister with his remarks rejected the same on 31-8-1988, Memo conveying the same was issued on the same date."

(3) It is apparent from the above reply that at least 10 days were taken by the Collector of Customs, New Delhi to send his comments. Thereafter, one week i.e. from August 16, 1988 to August 23, 1988 was taken up for diarising and processing the papers. This delay has been termed as "inordinate" by learned counsel for the petitioner. He relies on very many decisions of the Supreme Court and this Court to show that unexplained delay of 10 days by any authority in dealing with the representation is to be held to be inordinate, which in turn invalidates the order of detention as having infringed the mandate on Article 22(5) of the Constitution. The latest decision of the Supreme Court on this aspect is reported in *Aslam Ahmed Zahire Ahmed Shaik v. Union of India & others*, 1989 (2) S.C. 34. It was held :

"Thus when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution."

(4) In view of the well settled law, the detention order and consequently the declaration are liable to be set aside. I order accordingly.

(5) I allow this petition and make the rule absolute. The petitioner is not required to be detained under any other valid order passed by a Court or any other

Competent Authority, be set at liberty forthwith.