

(1987) 08 DEL CK 0008

In the Delhi High Court

Case No : Criminal Writ Appeal No. 188 of 1987

Satnam Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 9(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1987) 33 DLT 248

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Harjinder Singh, P.K. Behl and Mahinder Singh, for the Appellant;

Judgement

M.K. Chawla, J.

(1) Times out of number the Supreme Court has emphasized that where the liberty of an individual is curtailed under the law of preventive detention, the representation, if any, made by the detenu must be attended to, dealt with and considered with watchful care and reasonable promptitude, lest the safeguards provided in Article 22(5) of the Constitution and other statutes be stultified and rendered meaningless.

(2) Learned counsel for the parties agree that where a declaration u/s 9(1) of the Cofeposa Act in respect of a particular detenu has been issued, he has the right to make a representation u/s 11(1) against his continued detention. The dispute in this writ petitions as to which of the authority has the right or the jurisdiction to dispose of the said representation.

(3) The contention of the learned counsel for the petitioner is that such a representation has to be dealt with and disposed of by an officer superior to the authority who issued the declaration u/s 9(1) of the Act or in any case by some other officer of the same rank. The submission of the respondents is that such a

representation can be disposed of by the same officer who made the declaration in his capacity as the officer of the Central Government and can also deal with the representation u/s 11(1) (b) as the Central Government, being so lawfully constituted, and this will be a due compliance of the requirement of Section 11(1).

(4) Before answering the query, few relevant facts have to be kept in mind. On 30th November, 1986 at about 11.30 a.m. the petitioner was noticed roaming around in suspicious circumstances near the office of the Haryana State Electricity Board, Rohtak Road, by the C.R.P.F. personnel posted there. He was apprehended. The SHO Police Station Punjabi Bagh was informed. From the personal search of the petitioner 250 gold biscuits with foreign markings were recovered and sealed. The sealed parcels were then handed over to the officers of the Directorate of Revenue Intelligence for taking necessary action under the provisions of the Customs Act, 1962. After completing the formalities, the petitioner was arrested on 1.12.1986 and was produced before the Addl. Chief Metropolitan Magistrate, New Delhi on the same day. On the basis of the material collected during the course of the investigation of the case, the Administrator, Union Territory of Delhi, observed vide his order dated 5th January, 1987, that he has no hesitation in arriving at the conclusion that the petitioner has been regularly engaged in transporting, concealing and keeping foreign marked gold in India and even though the petitioner is in jail and the adjudication proceedings in the case are likely to be initiated against him, in case he is not detained, the petitioner will repeat the above acts in future.

(5) This order of detention Along with the grounds of detention were served on the petitioner on 5th January, 1987 while he was in jail. Few days later Shri Jodha Singh, elder brother of the petitioner came to interview the petitioner in jail. On coming to know of the circumstances of the petitioner's arrest and detention, Jodha Singh wrote a letter dated 3rd February 1987 to the detaining authority that his brother has been delivered a bunch of papers which are in English and Hindi. The petitioner does not understand the two languages. He requested that his brother be supplied the "Gurmukhi" version of the documents.

(6) It appears that on 6th February, 1987 a declaration u/s 9(1) of the Cofeposa Act was issued by the order and under the signatures of Shri M.L. Wadhawan, Addl. Secretary to the Government of India. Its copy appears to have been served on the detenu on or before 13th of February, 1987, as on this very date, the petitioner sent the representation to the President of India, challenging his illegal detention. He made a grievance of the fact that previously he had asked for Gurmukhi version of the documents which has not so far been supplied to him. Another order dated 6th February, 1987, that too in English and Hindi, has also been given to him the contents of which he cannot understand. On that score, he requested that his corporation be revoked and he be released immediately or in any case he be supplied with the documents in Gurmukhi language so that he can make a purposeful and effective representation. This

very grievance in writing was raised by the detenu before the Advisory Board which met on 17th February, 1987.

(7) The second representation dated 13th/16th February, 1987 was rejected and the detenu was informed of the result by letter of Shri C. Rajan Under Secretary to the Government of India dated-26th February, 1987. Regarding the supply of documents in Gurmukhi language, he was intimated that the same would be supplied by the D.R.I., New Delhi

(8) It is an admitted case that till today, the Gurmukhi version of the documents has not been supplied to the petitioner. By this inaction on the part of the respondent the petitioner's submission that his constitutional right to make an effective and purposeful representation to the authorities concerned has been frustrated, thus making the detention illegal.

(9) This is the stage to ponder over and find out the answer to the query raised above. The representation of the detenu dated 13th/16th February, 1987 is addressed to the President of India. In this representation, he has not only challenged his detention in pursuance of the order dated 5th January, 1987 but his continued detention vide order dated 6th February, 1987 of Shri M.L. Wadhawan, Addl. Secretary to the Government of India. The order of rejection dated 26th February 1987 is issued under the signature of Shri C. Rajan, Under Secretary to the Government of India. In the counter affidavit the stand of Shri C. Rajan is that the representation of the petitioner dated 16th February, 1987 was put up before Shri Tarun Roy, Joint Secretary on 25th February, 1987 who has been empowered u/s 11 of the Cofeposa Act to deal with and dispose of the representation against the orders passed u/s 9(1) of the Act. Shri Tarun Roy rejected the representation on 26th February, 1987, the information of which was conveyed to the detenu on 27th February, 1987 through the Superintendent Tihar Jail. Is this a valid disposal of the petitioner's representation against his continued detention, is the question which is agitating the mind of this Court.

(10) Section 11(I)(a) and (b) provides that the authority who is to dispose of the representation under either of the two provisions has to be different from the person or the authority which passed the order of detention or the continued detention. If the same officer is held competent to dispose of the representation u/s 11(I)(b), that would mean that the detenu's right of making representation to two deferent authorities or persons would stand curtailed. In any way, this would render the very provision of Section 11(I)(b) nugatory. Such an interpretation can not be given to this provision Taking an over all view of the matter, in my opinion, in such a case the representation u/s 11(I)(b) must necessarily be dealt with and disposed of by as officer duly empowered by the Central Government but superior in rank to the one who made the order of detention, or in any case by an officer of the same rank duly empowered in that behalf but under no circumstances, an officer junior in rank to the officer who passed the order of detention or continued detention of the detenu.

(11) The contention of the learned counsel for the respondent is that in a case where an order of detention is passed by an Additional Secretary in the Ministry of Finance, then the Joint Secretary duly constituted as the Central Government, shall be well within his right to dispose of the detenu's representation against the order of detention or the continued detention. This very defense was the subject matter of controversy in a case bearing Cr. Writ No. 65 of 1986, entitled Vijay Kumar Gujral vs. Union of India and others decided by S. Ranganathan, and H.C. Goel JJ. of this Court on 27th May, 1987. In this case, the order of declaration u/s 9(1) of the Act was passed by Shri M.L. Wadhawan, Addl. Secretary to the Government of India. The representation of the detenu against his continued detention was also disposed of by the same authority. This argument of the counsel for the detenu was that in this way, the detenu's right of making the representation to different authorities has been taken away. The Bench, on consideration of the relevant provisions held as under :

"IN view what, of has been said above we hold that the representation of the petitioner u/s 11(1) insofar as challenge to the petitioner's continuance of detention in pursuance of the declaration u/s 9(1) on ground that the declaration u/s 9(1) ought not to have been dealt with and disposed of by Shri Wadhawan himself, ought to have been placed before an officer of the Central Government either superior to him or before an officer of equal rank viz. that of an Addl. Secretary other than Shri Wadhawan and the disposal of the said representation of the petitioner by Shri Wadhawan himself was not valid and proper disposal of the representation of the petitioner. The continuance of the petitioner's detention as a consequence of the declaration, Therefore, is liable to be quashed on this ground alone."

(12) The ratio decidendi of the above said authority fairly squarely applies to the facts of the present case. Rather the case in hand is on a firmer footing, in the sense, that the order of rejection of the representation against the order continued detention of Shri M.L. Wadhawan, Addl. Secretary to the Government of India, was passed by Shri Tarun Roy, Joint Secretary to the Government of India, which office is lower in rank to the Additional Secretary. The representation of the detenu dated 16th February, 1987 should have either been disposed of by an Addl. Secretary other than Shri Wadhawan or an officer duly constituted and superior in rank to the Addl. Secretary.

(13) Finding himself in a tight corner, learned counsel for the respondent tried to get over the difficulty by alleging that the so-called representation of the detenu dated 13th February, 1987 cannot be said to be a representation in the eye of law, inasmuch as no grievance appears to have been made out against the order of his continued detention dated 6th February 1987, if there had been a proper representation, the respondents might have got it considered from an authority higher than the authority issuing the declaration u/s 9(1) of the Act. This argument has no substance, and can easily be disposed of by referring to the decision reported as Inter Continental, Agencies Pvt. Ltd. Vs. Amin Chand

Khanna and Another, . The Court lays down as under :- We are unable to agree with the submission made on behalf of the respondents. The representation has to be made in a prescribed form. There is no formula nor any magical incantation like "open sesame "to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution." The communication dated 13th February, 1987 contains a demand that the order of detention of the petitioner is absolutely illegal and that he be released forthwith. It also mentions a reason for the demand of the release, namely, that the Gurmukhi version of the copies of the statements and the documents and other material, relied upon by the detaining authority, inspire of repeated demands have not been furnished to him, thereby preventing him to make an effective and purposeful representation. The communication then ended with a reiteration of the request for the release of the detenu. This communication cannot be said to mean anything but a representation against the order of detention. This objection, has thus, no force.

(14) One more fact that will seal the fate of the impugned order of detention. It will also reveal the carelessness and the casualness with which the detaining authorities take care of the liberties of the individuals. It has all along been the grievance of the petitioner that he being an illiterate person, can only understand Gurmukhi/Punjabi language. He has been supplied with the copies of the orders/ documents and other material in English and Hindi, as a result of which he has not been able to make an effective representation against his detention. He repeated this averment not only in his two representations but also before the advisory Board. In spite of that the detaining authority has not cared to supply him the documents in Gurmukhi language. The stand of the respondent is that the non-supply of the memorandum dated 26th February, 1987 and other documents in Gurmukhi language did not adversely affect his defense. In the additional counter of the Sub-Inspector, it is also mentioned that the contents of the order of detention, the grounds of detention and the copies of the documents were explained to the detenu. Thus, no prejudice has been caused to the detenu.

(15) Even if it be assumed for the sake of arguments that an effort made by the serving officer to explain the contents of the documents to the detenu, this, by itself, is not a due compliance of the Cofeposa Act and the provisions of Article 22(5) of the Constitution, which lays down that the detaining authority is to provide material to the detenu in a language which he understands, so that an effective representation against the detention may be made. In the latest judgment of the Supreme Court reported as, Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others, , the Court had the occasion to express their opinion on the non-supply of the documents in the language which is understood by the detenu. It was a case where the copies of the order of detention, grounds of detention and other documents were supplied to the

petitioner in English and in Tibetan language, whereas the petitioner/detenu had asked for the copies of the documents in Ladakhi language. The department tried to take shelter of the fact that the petitioner's wife knew both English and Tibetan language and on that score, the detenu could make an effective representation. This argument was brushed aside by the Court in holding :

"THERE could be no two opinion that the requirement of law within the provisions of Article 22(5) of the Constitution is that the detenu has to be informed about the grounds of detention in a language which he understands. The fact that the detenu's wife knew the language in which the grounds were framed does not satisfy the legal requirement."

" WE must make it clear that the law as laid down by this court clearly indicates that in the matter of preventive detention, the test is not one of prejudice but one of strict compliance with the provisions of the Act and when there is a failure to comply with those requirements it becomes difficult to sustain the order."

In the case in hand, till today the department has not supplied the copies of the relevant documents and orders in the language which is commonly understood by the detenu. The detenu thus has been denied a fair and adequate opportunity of representing against his detention inasmuch as the grounds of detention and the copies of the documents accompanying the grounds were in English and Hindi which language is foreign to the detenu. The judgment referred to above is a complete answer to the stand of the respondent. This ground, by itself, is weighty enough to set aside the detention order.

(16) As a result of the above discussion, the petition succeeds, the impugned order of detention dated 5th January, 1987 is quashed and I order that the detenu be released forthwith if not required to be detained by the orders of any Competent Court or Authority.