
(1988) 09 DEL CK 0047

In the Delhi High Court

Case No : Criminal Writ Appeal No. 258 of 1988

Shakkir Ahmed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Citation : (1988) ILR Delhi 538 : (1988) RLR 671

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

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar and Madan Lokur, for the Appellant;

Judgement

Malik, J.

(1) The petitioner who himself is a detenu has challenged the validity of the detention order dated 3rd of March 1988 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 (as amended). The detention order was passed with a view to preventing the petitioner from smuggling goods.

(2) Mr. Madan Lokur, right in the beginning, pointed out that in the detention order the word Under Secretary written under the signatures of Mr. K. L. Verma is a clerical error as Shri K. L. Verma who has passed the order is a Joint Secretary to Government of India and has been specially empowered u/s 3(1) of the Cofeposa Act.

(3) The detention order followed an incident dated 5th of January 1988 when the petitioner who was traveling in flight No. BG-691 from Singapore to Calcutta via Dhaka, Bangla Desh had landed at Calcutta Airport. The customs authorities felt suspicious about him and even though he opted for a red channel an attempt was made by the detenu to run through the exit gate. He was caught and he was found importing illegally three video cameras of foreign origin Along with three adapters and three Battery packs collectively valued at Rs. 1,27,050. A sum of

Rs. 1000 in the form of Indian currency was also found in his person. The case was further investigated and it was found that petitioner-detenu was indulging in acts of smuggling.

(4) The petitioner was formally arrested on 6th of January 1988 and was remanded to judicial custody from time to time. His bail applications dated 9th, 13th January 1988 and 12th February 1988 were rejected. He, thereafter, moved an application for bail before the High Court of Calcutta which was granted on 9th March 1988 but before he could be released on bail he was taken into detention on 10th of March 1988 in pursuance of the impugned detention order. A declaration u/s 9(1) of the Cofeposa Act was also made and served on the detenu on 14th of April 1988. I am, however, told by Mr. Lokur, learned counsel for the Union of India, that the declaration u/s 9(1) has since been revoked by the Central Government on the advice of the Advisory Board.

(5) The main grievance of the petitioner is that his representation dated 4th May 1988 made to the Central Government has not been considered up to date. There is a specific ground raised in this connection and the reply given by the respondents is that the representation of the detenu dated 18th of April 1988 to the detaining authority which was signed by the detenu on 24th April, 1988 was duly considered and rejected on 10th of May 1988. There is thus no return to the effect that the representation of the detenu dated 4th May 1988 was considered by the Central Government at any point of time. In *Rattan Singh and another v. State of Punjab and others*, AIR 1982 Supreme Court 1(1) it has been recognised that when a properly addressed representation is made by the detenu to the Central Government, for revocation of the order of detention, a specific duty is cast upon the Central Government u/s 11 to the Cofeposa Act to apply its mind and either revoke the order of detention or dismiss the representation and this has to be done with reasonable expedition. There can, as such, be no controversy that there is an obligation on the part of the Central Government to independently consider the representation of the detenu if made to it. The return filed by the respondents based on record nowhere touches this aspect of the matter. This is in spite of the fact that the petitioner-detenu has raised a specific ground in this regard.

(6) Mr. Lokur, however, has invited my attention to the record of the Central Government from which it transpires that the representation dated 4th of May 1988 of the detenu was considered on 11th and 12th of May 1988 and was thus finally rejected by the Finance Minister. It is most disgusting that a very senior officer of the Central Government of the rank of Joint Secretary who has submitted the affidavit in this case should have failed to take notice of what is writ large in the records of the Central Government. I am sure had he taken proper care to go through the records he would have taken the stand that the representation of the detenu was dealt with expeditiously by the Central Government. The rejection order of the representation has been passed by Shri N. D. Tiwari, than Hon"ble Minister of Finance, for the Central Government, and

there is no question of its being manipulated or pre-dated. The learned counsel for the petitioner has invited by attention to Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, to urge his point that the court cannot go through the confidential records of the Government in order to fish out a point against the detenu. This is being cited, in my view, out of context. What I am doing in the present case is not with the purpose of fishing out a point against the detenu. Going through the records is to the advantage of both the parties and it certainly serves the, interest of Justice to the best possible extent. There can be cases where a stand might be taken that no representation was received and if the court goes through the record it may find one present in the records but not considered. That would straightway favor the detenu and not the State. In any case, it is not fair to state that the court is not entitled to go through the records. After all, the parties are not in the courts to secure points on each other but their main effort is to assist the court to do justice and that assistance which furthers the interest of justice if coming from any quarter is always welcome. In the present case, Therefore in my view, the representation dated 4th May 1988 of the detenu has been considered by the Central Government with reasonable expedition and the very fact that it was considered and rejected within a few days of its arrival shows that it was continuously dealt with by the Central Government as required by law.

(7) There is, however, one more aspect to this which is that this order of rejection rejecting his representation was never communicated to the detenu. There is no such stand taken in the return and Mr. Lokur has frankly stated that there is no such evidence available from the records as well. The Supreme Court in the case of Harish Pahwa Vs. State of U. P. and Others, has laid emphasis on the fact that not only that the representation of the detenu must be considered and dealt with continuously but that final decision be taken and that the decision be communicated to the detenu. In this case, it seems to me that the Supreme Court has viewed the communication part of this rejection as a necessary facet to the consideration of the representation. Normally and ordinarily also, if a representation is made or if there is an appeal for the redressal of a grievance and a decision is taken it must be pronounced to the person who is interested therein. Having found that the representation has been dealt with expeditiously but not communicated to the detenu as required by Harish Pahwa's case, supra, I find that there has been non-compliance with the requirements of Article 22(5) of the Constitution. On that account, the detention order stands invalidated. The petition is allowed and the rule is made absolute and the continued detention of the petitioner is quashed. He shall be released forthwith unless required in some other case.