
(1990) 07 DEL CK 0043

In the Delhi High Court

Case No : Criminal Writ Petition No. 41/90

Shiv Shankar Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-07-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1990) 30 ECR 169

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Y.K. Sabharwal, J.—The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue by order dated 15th December, 1989 made in exercise of power u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act directed the detention of the petitioner with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. Pursuant to the order of detention the petitioner was detained on 18th December, 1989. The order of detention and continued detention of the petitioner is under challenge in this petition.

2. On facts there does not appear to be any dispute. The petitioner made a representation dated 8th January, 1990 and, inter alias requested for revocation of the detention order. One of the grounds taken in the petition to the validity of the order of detention and continued detention of the petitioner is delay in consideration of the said representation and its disposal. It is well settled that the representation made by the detenu is required to be disposed of with a reasonable dispatch, promptitude and without any delay. What constitutes unreasonable delay depends upon the facts and circumstances of each case. Of course, it is up to the respondent to explain the time gap taken in disposal of the representation. Turning to the facts of the present case, the time spent in

disposal of the representation has sought to be explained in para 14 of the affidavit of Sh. Mahender Prasad, Joint Secretary, Government of India, Ministry of Finance, Department of Revenue. It is, inter alia, stated that the representation dated 8th January, 1990 was received in the Ministry on 15th January, 1990. It may be noticed that the affidavit admits that the representation was forwarded to the Superintendent of Central Jail, Agra to the Ministry under his letter of same date which means 8th January, 1990. It has not been shown to me that the representation was forwarded on a date other than 8th January, 1990. The representation was sent by Ministry to Headquarters for comments vide their letter dated 16th January, 1990. The Headquarters in turn sent the representation to the Delhi Zonal Office vide their letter dated 19th January, 1990. The representation was received by Agra Sub-Zonal Office for comments on the very date i.e. the 19th January, 1990. The comments to the said representation were prepared and forwarded to Delhi Zonal Office for onward transmission to Headquarters and Ministry vide letter dated 22nd January, 1990. It is explained that 20th January and 21st January, 1990 were holidays being Saturday and Sunday. It is further explained that the comments were forwarded by department of Enforcement under their letter dated 24th January, 1990 and were received in the Ministry the same day. The relevant papers, according to the said affidavit, were placed before the concerned officer on 7th February, 1990. The period between 24th January, 1990 and 7th February, 1990 is sought to be explained by pointing out the intervening holidays, namely 26th, 27th and 28th January, 1990 and 3rd and 4th February, 1990. It is then stated that the papers were processed by the concerned officer and put up on 8th February, 1990 through ADG/JS who recorded their views and marked the file to F.M. on 9th February, 1990. The representation was considered and rejected by the F.M. on 20th February, 1990. The period between 9th February, 1990 and 20th February, 1990 is sought to be explained by pointing out Saturdays and Sundays in between, namely, 10th, 11th, 17th and 18th February, 1990. It is then averred that rejection memo was issued on 21st February, 1990.

3. From the aforesaid narration of facts it becomes clear that there is no Explanation whatsoever for three periods, namely, 8th January to 15th January, 1990, 29th January, 1990 to 7th February, 1990 and 9th February, 1990 to 20th February, 1990. During these periods the respondent has mainly pointed out Saturdays and Sundays and other holidays. It will be useful to notice that between 9th and 12th January, 1990 there were no holidays, likewise, there is no holiday between 29th January, 1990 and 2nd February, 1990 as also between 12th February and 16th February, 1990. These three periods were full working weeks without any intervening holidays. Under these circumstances, the respondent in the facts and circumstances of the present case, cannot by pointing out holidays and Saturdays and Sundays explain whatsoever. On the facts and circumstances of the case, thus, it is evident that representation of the petitioner was not considered expeditiously and with promptitude and the

impugned order of detention is liable to be quashed on this short ground and it is not necessary to go into other grounds urged in the petition.

4. Accordingly, the order of detention dated 15th December, 1989 and the continued detention of the petitioner is set aside. The rule is made absolute and the writ petition is allowed. The petitioner is directed to be set at liberty forthwith, if not required in any other case.