
(1988) 08 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 697 of 1988

Subhash Chander

APPELLANT

Vs

Union of India and anr.

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Citation : (1988) 2 RCR(Criminal) 482

Hon'ble Judges : Harbans Singh Rai, J

Advocate : Jai Shree Anand, Sukhbir Singh, H.S. Mattewal, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J.—The petitioner who has been detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act since November 23, 1987, impugns his detention on the ground, amongst others, that his statutory representation has not been disposed of, by the concerned authorities without unreasonable delay.

2. The case of the petitioner is that he was detained vide order dated November 23, 1987. He made his representation on December 14, 1987, which was received in the office of Ministry on December 23, 1987. It was sent for comments the same day and the comments of the Enforcement Department were received on January 14, 1988. It was forwarded to the Minister of State for Finance on the same day and the representation was considered on January 19, 1988, and was rejected on the same day. The reply by way of affidavit of Shri S. K. Chowdhry, Under Secretary, Ministry of Finance, Department of Revenue, has been filed. In the reply, the position taken up by the Under Secretary is as under :

"Para 3 is not wholly admitted. Petitioner"s representation dated 14.12.1987 was received in the Ministry on 23.12.1987 and was sent to the Directorate of Enforcement for comments and the comments from the Directorate of Enforcement were received in the Ministry on 14.1.1988 and a note incorporating points raised by the petitioner in his representation and the Department"s reply

thereto was put to the detaining authority on 14.1.1988. The detaining authority considered the representation on the same day and forwarded the file to the Hon"ble Finance Minister and the Hon"ble Minister of State for Finance considered the representation on behalf of the Central Government on 19.1.1988. Memorandum conveying consideration of representation was issued to the petitioner and as such there is no delay in considering the representation."

3. The learned counsel for the petitioner submits that even if it is accepted that the facts stated in the reply are correct, then there is delay in consideration of the representation of the petitioner. There is no explanation why the comments of the Enforcement Directorate were not received before January 14, 1988, and why after receipt of the comments the representation could not be considered till the date of rejection i.e. January 19, 1998. He has further submitted that in the light of the observations made by their Lordships of the Supreme Court in *Harish Pahwa v. State of Uttar Pradesh and others*, 1988(1) CLR 65, the detention of the petitioner is not sustainable. Their Lordships in the above case observed as under :

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of (sic) affairs the matter of consideration of representations made by the persons detained without trial. There is no explanation as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Govt. to the representation from 13th June, 1980 to 18th June, 1980, when we find that it culminated only in a reference to the Law Department, it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character abovementioned with the at most expedition, which means that the matter must be taken up for consideration as soon as a representation is received and dealt with continuously. (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. In the light of the law laid down by their Lordships in *Harish Pahwa's* case (*supra*), it is to be noted that the explanation of delay as offered in the affidavit

of Mr. Chowdhry does not meet the requirement of law.

5. As the representation of the petitioner was not decided for more than a month and in view of the law laid down by the Supreme Court in Harish Pahwa's case (supra), the detention of the petitioner is not sustainable. Following the dictum of their Lordships of the Supreme Court in Harish Pahwa's case (supra), I hold that the representation of the petitioner has not been disposed of expeditiously or in the manner laid down in that judgment. His detention is quashed. He is directed to be set at liberty forthwith, unless required in any other case.