

(1990) 09 DEL CK 0052

In the Delhi High Court

Case No : Criminal Writ Appeal No. 141 of 1990

T. Sasidharan Pillai

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

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

Citation : (1990) 42 DLT 493

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : G. Prakash and H.S. Phoolka, for the Appellant;

Judgement

V.B. Bansal, J.

(1) Shri Sasidharan Pillai, petitioner, has filed this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure praying for the issuance of a writ of Habeas Corpus or any other appropriate writ, order or direction for quashing the order dated 7th November, 1989 passed by the respondent under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred to as the Act).

(2) In exercise of power under Sec. 3(1) of the Act respondent No. 1 Passed an order of detention of the petitioner with a view to preventing him from indulging in activities prejudicial to the augmentation of country's foreign exchange resources. This order could be served on the petitioner on 24th November, 1989 when he was sent to jail and on the same day the grounds of detention along with the list of documents were served on him. This order of detention was confirmed by respondent No. 1 on 12th February, 1990 after receiving the report of the Advisory Board and considering the materials on record.

(3) Learned counsel for the petitioner has submitted that there has been an

inordinate delay in considering the representation made by the petitioner as a result of which his right under Article 22(5) of the Constitution has been violated on account of which the order of detention is liable to be quashed and consequently the petitioner is entitled to be released.

(4) The case of the petitioner has been that on 8th December, 1989 a representation was made to the detaining authority through the Superintendent (Prison) and the intimation about its rejection has been communicated to the petitioner only on 27th January 1990 and thus an inordinate delay. Counsel for the respondent has, on the other hand, submitted that there has been in fact no inordinate delay in the consideration of the representation and it has been disposed of expeditiously. It would be necessary to refer to the reply of the respondent in para 4 (H) of the affidavit of Shri Mahendra Prasad, Joint Secretary. The relevant portion is as follows :

PARA4 (H) "The allegations are baseless. The petitioner's representation is dated 14.12.89 and not 8.12.89 as stated in the affidavit. The said representation was received by the Ministry on 18.12.89 and in the Cofeposa unit on 20.12.89. The said representation was forwarded to the Directorate of Enforcement New Delhi on 21.12.89, 23.12.89, 24.12.89 and 25.12.89 were closed holidays on account of Saturday, Sunday and Christmas. The representation was received by the Deputy Director of Enforcement Madras on 28.12.89, 30.12.89 and 31.12.89 were closed holidays on account of Saturday and Sunday. 1.1.90 was a restricted holiday. On 2.1.90 the comments were forwarded by the Deputy Director, Madras to the Enforcement Directorate New Delhi Comments were received by the Ministry on 5.1.90" 6.1.90 and 7.1.90 were holidays being Saturday and Sunday. The representation and comments were processed and put up by Under Secretary on 8.1.90 through A.D.G., Joint Secretary also perused the file and forwarded it to Fm on 9.1.90 Fm considered the representation and rejected it on 10.1.90..."

(5) A perusal of the reply clearly indicates that the representation was made by the petitioner only on 14th December, 1989 and not on 8th December, 1989 as alleged. The respondents have given the details as to how the representation was dealt with and ultimately rejected by the Finance Ministry on 10th January, 1990.

(6) Counsel for the petitioner has placed reliance upon case Harish Pahwa Vs. State of U. P. and Others, , in support of his contention that the representation has not been dealt with expeditiously. The facts of this case, to my mind, are distinguishable and cannot be of much assistance to the petitioner. In the aforesaid case after keeping the representation for a number of days a reference was made to the Law Department for opinion. It was clearly held that the Chief Minister was the only authority to decide the representation and there was no apparent reason for seeking the opinion of the Law Department, and in this process five days were spent. It was again stated that there was no proper Explanation why the representation had to travel from table to table for six days

before reaching the Chief Minister. It was, thus, in the circumstances of that case that it was held that there was inordinate delay in the consideration of the representation. In case *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, it has been observed that the time imperative can never be absolute or obsessive and the occasional observations made by the Supreme Court that each day's delay in dealing with the representation must be adequately explained are meant only to emphasise the expedition with which the representation must be considered and not that it has a magical formula, the slightest breach of which must result in the release of the detenu. The aforesaid observation has been referred to and approved in the case *Madan Lal Anand Vs. Union of India and others*. In a recent case *Abdul Salam alias Thiyyan Vs. Union of India and others*, representation was made by the detenu on 27th September, 1988 which was disposed of by the Central Government on 2nd November, 1988. Government had given details as to how the representation was dealt with till its disposal and it was held that the representation was considered most expeditiously and there was no negligence or callous inaction or avoidable red tapism.

(7) In the instant case before taking a final decision on the representation of the petitioner the comments has to be obtained from Madras and considering all the detailed facts brought on record, I have no hesitation in coming to the conclusion that there has not been any inordinate delay in considering the representation of the petitioner.

(8) Learned counsel for the petitioner has submitted that there has been an inordinate delay on the part of the respondent in communicating the rejection of his representation on account of which the order of detention is liable to be set aside.

(9) According to the respondent the representation of the petitioner was rejected on 10th January, 1990 and he was informed about the same by memorandum dated 11th January 1990. In para 4(H) of the petition it has specifically been asserted by the petitioner that the rejection of his representation was communicated to him only on 27th January 1990. This claim of the petitioner has not been controverted by the respondent. All that has been stated by the respondent is that memorandum dated 11th January 1990 was sent to the petitioner conveying him the decision of the Government to reject his representation. The claim of the petitioner, however, has not been controverted with regard to the date on which the result was communicated to him. There is no Explanation for the delay from 10th January to 27th January 1990 in communicating the result. Reliance has been placed on the case *Harvinder Singh Vs. Union of India and Others*. In the said case there was a delay of 24 days in communicating the result of the representation to the detenu. Placing a reliance upon another judgment of this Court in case *Shakir Ahmed v. Union of India Ors.* 1988 (2) DL 312 it was held that there was non-compliance of the requirements of Article 22(5) of the Constitution as a result of which the order of detention is

liable to be quashed. Reliance was also placed on the case Harish Pahwa (supra) in which it was held that there was no option but to declare detention unconstitutional if it has not been dealt with expeditiously to take a final decision and it is not communicated to the detenu expeditiously. Learned counsel for the respondent has not been able to give any plausible Explanation for this delay of 16 days in communicating the rejection of his representation to the petitioner and, thus the order of detention is liable to be set aside.

(10) Learned counsel for the petitioner has also submitted that there has been an inordinate delay in the supply of documents asked for by the petitioner on account of which the order of detention is violative of the provisions of the Constitution of India. It has been submitted that a demand was made by the petitioner of documents referred to by the respondent in the grounds of detention on 8th Dec., 1989 which have been supplied only on 16th March, 1990 and so this delay is fatal. Plea of learned counsel for the respondent has been that the representation was, in fact, made on 14th December 1990 and not on 8th December, 1990. He has further submitted that there was only a delay of one month and 8 days which cannot be considered to be inordinate and in any case the petitioner has not been prejudiced on account of the delay in supplying the said documents. He has placed reliance on the case Madan Lal Anand (supra). I have given my thoughtful consideration to this submission and have carefully gone through the aforesaid judgment but I am clearly of the view that this case is distinguishable and not applicable to the case of the petitioner. In the said case detaining authority had placed reliance upon three civil miscellaneous applications filed in C.R. No 3694/85 and supplied the copies of the said three miscellaneous applications. It was held that it was not necessary that the copy of the civil revision should also have been supplied. It was also mentioned as a fact that non-supply of the documents had not prejudiced the detenu, document being copy of C R. petition 306 of 1986. In the instant case beside other documents petitioner had asked for copy of the search warrant issued by the Asstt. Enforcement Directorate, Trivendrum for the search of the houses of Smt. B Prabha R. Chellappan Pillai and Mr. Yunus Moulavi. This matter came up in this "court in case Mohammed Din Manno v. Union of India & Others 1989 (1) DL 1 in which it has been specifically held that in case the search authorisation warrants referred to in the panchnama are not supplied to the detenu in spite of request being made the order of detention is liable to be set aside as it affects that right of the detenu of making an effective and purposeful representation. I have not been able to appreciate as to why there has been such an inordinate delay in the supply of documents. The law is well settled that documents relied upon by the detaining authority have to be supplied to detenu pari passu with the grounds of detention. All documents not relied upon but referred to have to be supplied expeditiously on demand. Demand of such document should not be taken lightly and the detaining authority must be prepared to supply such documents immediately on demand. In such cases there is hardly necessity for the detaining authority to ask for comments before the supply of the documents. Supreme

Court has condemned the dilatory procedure adopted by the detaining authority in referring the question of supply of documents to the various authority and inviting their comments. Reference in this regard can be made to the case *Mrs. Nafisa Khalifa v. Union of India*;, (1982) 1 SCC 422 . In case *Suryakant Minawala Vs. State of Maharashtra and Others*, , Supreme Court has held that a detenu has a right to be furnished with all the basic facts material with reasonable expedition and unreasonable delay of three weeks in supplying the detenu with copies was held to have infringed the constitutional imperative and had stultified the constitutional right of the detenu to make a speedy and effective representation. It is, thus, clear that on account of this delay in supplying the documents the right of the petitioner under Art, 22(5) of the Constitution has been infringed on account of which the order of detention is liable to be set aside.

(11) Learned counsel for the petitioner has submitted that the order of detention was passed by the Central Government and so the representation made by the petitioner could be rejected by the Central Government only but in the instant case it has been done so by Under Secretary to the Government of India and thus, there is non-application of mind in rejecting the representation of the petitioner. I do not find any force in this submission. As already referred to the respondents have given the details as to how the representation of the petitioner was dealt with and ultimately rejected by the Finance Minister on 10th January, 1990. The memorandum dated 11th January, 1990 conveying to the petitioner about the rejection of his representation is only a communication by the Under Secretary to the Government of India in which it has been clearly mentioned that the representation has been considered by the Central Government and rejected. Thus, it cannot be said that the representation has not been dealt with and considered by the appropriate authority.

(12) No other point has been urged.

(13) As a result the petition is allowed. Rule is made absolute. The order of detention dated 7th November, 1989 is set aside. The petitioner shall be released forthwith if not required in any other case.