
(1999) 09 SC CK 0127

In the Supreme Court Of India

Case No : Writ Petition (Crl.) No. 184 Of 1999

Umeshbhai Dineshbhai Shah

APPELLANT

Vs

District Magistrate, Surat and Others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2000) 10 SCC 200 : (2000) SCC(L&S) 319

Hon'ble Judges : S. N. Phukan, J;M. Srinivasan, J;G. B. Pattanaik, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This is an application under Article 32 of the Constitution challenging the continued detention of the detenu under the provisions of the Prevention of Black Marketing and Maintenance of Supply and Essential Commodities Act, 1980 (hereinafter referred to as "the Act"). Several grounds have been urged but it is not necessary for us to traverse all the grounds since the application can be disposed of on the sole ground that there has been unexplained delay in disposal of the representation filed by the detenu to the Central Government. The representation in question was made on 29-6-1999 and the State Government communicated the same to the Central Government on 5-7-1999 which was finally disposed of by the Central Government on 23-7-1999. For the aforesaid delay in question, the Central Government has indicated that the comments on the representation were received only on 21-7-1999 and therefore the Central Government could not dispose of the representation earlier than 23-7-1999. For the delay in sending the comments the State Government has filed an affidavit indicating therein that the State Government not only sent the representation to the detaining authority by speed post immediately on the receipt of the same, but also sent subsequent reminders and it is the detaining authority who made the delay in making the comments, as required. The detaining authority has filed two affidavits and in the first affidavit filed in this Court, the statement was made

that she was not aware of the representation that was filed by the detenu. This obviously is a misstatement of fact. Even in the second affidavit filed in this Court, the detaining authority has indicated that because she thought that the comments could be sent after 12 days, therefore, she did not take immediate steps. There cannot be any dispute on the aforesaid facts and circumstances that there has been delay in disposal of the representation filed by the detenu which has infringed the rights of the detenu under Article 22(5) of the Constitution and no explanation has been offered for such delay. In that view of the matter, the continued detention of the detenu becomes illegal. We, therefore, direct that the detenu be set at liberty forthwith, unless required in any other case.

2. The writ petition is disposed of accordingly.