

Smt. Santosh Anand

Vs

Union of India and Others

Writ Petition (Criminal) No. 1097 of 1979

(V.D. Tulzapurkar, E.S. Venkataramiah JJ)

31.10.1979

ORDER

TULZAPURKAR, J. -

1. By this writ petition the detention of one Mangat Ram Anand, a detenu, detained under an order dated April 3, 1979, issued under Section 391) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act is sought to be quashed.
2. Admittedly the case of the detenu was considered by the Chief Secretary, Delhi Administration, who passed the detention order acting as the specially empowered officer under Section 3 of the Act. On April 20, 1979 a representation was made to the detaining authority on April 24, 1979, It appears that before the representation was considered by the detaining authority the same was forwarded to the Advisory Board for its consideration, which had held its meeting on May 17, 1979. Thereafter on May 24, 1979 the detenu was informed that his representation had been consideration by the Administrator, Delhi, and had been rejected. On these facts. Mr. Jethmalani appearing for the petitioner contended that the continuous detention of the detenu pursuant to the detention order was illegal and would have to be quashed on two ground - (a) that it was obligatory upon the detaining authority (Administrator) to consider the representation before sending it to the Advisory Board and (b) that in any event the detenu's representation ought to have been considered and rejected by the detaining authority itself, namely, by the Chief Secretary but the same had been straight away considered and rejected by the Administrator, who under Section 2(f) of the Act was the State Government for the union Territory, thus depriving the detenu of his remedy to approach the administrator as a higher authority after the rejection of his representation by the reasons the constitutional safeguards under Article 22(5) of the Constitution, as interpreted by this Court, had not been strictly complied with resulting in continued illegal detention of the detenu.
3. We are of the view that the continued detention of the detenu under the order dated April 3, 1979 is liable to be quashed on the second ground about which facts are clear and there is no difficulty in accepting the same. Under Article 22(5), as interpreted by this Court, as also under the provisions of Section 11 of the COFEPOSA it is clear that a representation should be considered by the detaining authority, who on a consideration thereof can revoke the detention order and if the representation is rejected by detaining authority it is open to the detenu to approach the State Government for revocation of the order and failing that it is open to him to approach the Central Government to get the detention order revoked. In paragraph 10 of the counter-affidavit filed in reply by one Mr. W. C. Khambra, Under-Secretary, Home Department, Delhi Administration, it has been categorically stated thus :

The said representation was duly considered after receipt of the comments of the Director of Revenue Intelligence by the detaining authority, i. e. respondent 3 herein (the Chief Secretary) and submitted for orders along with the relevant records to the Administrator on May 21, 1979 who considered and rejected the same on May 22, 1979. The detenu was informed in jail about the rejection of his representation by the Under-Secretary (Home) vide O. M. dated May 24, 1979.

The aforesaid averments make the position quite clear that the representation was considered by the Chief Secretary as the detaining authority only for the purpose of submitting the same for orders to the Administrator, who in his turn after considering it rejected the same on May 22, 1979. It is quite clear that the Chief Secretary as the detaining authority himself did not reject it. The original files which were produced before us by counsel for the respondents also confirm the aforesaid position. From the nothings in the file it appears clear that the Chief Secretary had on May 9, 1979 called for advice and comments of the Secretary of Law and Justice in the matter and on receipt of those comments the Chief Secretary on May 21, 1979 made an endorsement under signature of the effect "the representation may be rejected". Below this endorsement of the Chief Secretary appeared the endorsement of the Administrator to the effect that he had considered the representation as well as the comments of the Customs Department and after examination thereof he agreed that the representation had no merit and was rejected. It was on the basis of these endorsements in the file that the averments quoted above were made by Mr. Khambra in his counter-affidavit. It is thus very clear to us that the representation could be said to have been considered by the Chief Secretary at the highest but he did not take the decision to reject the same himself and for that purpose the papers were submitted to the Administrator who ultimately rejected the same. There is no affidavit filed by the Chief Secretary before us taking that he had rejected the representation. The representation was, therefore, not rejected by the detaining authority and as such the constitutional safeguard under Article 22(5), as interpreted by this Court, cannot be said to have been strictly observed or complied with. The continued detention of the detenu was clearly illegal and deserves to be quashed and we accordingly quash the same and direct that the detenu be released forthwith.

4. No orders as to costs.

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