Pabitra N. Rana

Vs

Union of India and Others

Writ Petition No. 1376 of 1979

(V. R. Krishna Iyer, Syed M. Fazal Ali, D. A. Desai JJ)

30.01.1980

JUDGMENT

FAZAL ALI, J. -

1. This writ petition has been filed with a prayer that an order of detention passed against the petitioner on September 7, 1979, under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 be quashed. After the order was served on the detenu he made a representation on September 27, 1979 to the Government who received it on September 28, 1979. In support of the rule Mr. A. K. Sen has raised a number of points, but in view of one of them which is to the effect that there has been an inordinate and unexplained delay on the part of the detaining authority in deciding the representation and that the detention is therefore vitiated, we need not go into the other points. On the question of delay the petitioner had expressly taken a plea in para 11 of the petition but in their reply the respondents have not at all explained or detailed any reason why there was inordinate delay in disposing of the representation submitted by the detenu to the detaining authority. The admitted position is that the representation was received by the Government on September 28, 1979 and it was rejected on November 3, 1979, that is to say, after about one month and five days of the receipt. It is now well settled that any unexplained delay in deciding the representation filed by the detenu amounts to a clear violation of Article 22(5) of the Constitution of India and is sufficient to vitiate the detention. Our attention was drawn by the counsel for the petitioner to a recent decision of this Court in Narendra Purshotam Umrao v. B. B. Gujral ((1979) 2 SCR 315 : (1979) 2 SCC 637 : 1979 SCC (Cri) 557) where this Court while relying on an earlier decision of this Court in Pankaj Kumar Chakrabarty v. State of West Bengal ((1970) 1 SCR 543 : (1969) 3 SCC 400) pointed out that under Clauses 4 and 5 of Article 22 of the Constitution the detenu has a dual right, viz. -

> 1. to have the representation, irrespective of the length of detention, considered by the appropriate Government, and
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> 2. to have the representation considered by the Board duly constituted under the concerned Act.

We might further mention that the constitutional right to file a representation to the Government carries with it impliedly a right that the representation must be disposed of as quickly as possible and any unexplained delay would amount to a violation of the constitutional guarantee contained in Article 22(5). This Court has also pointed out that the obligation of the appropriate detaining authority to take a decision on the representation filed by the detenu is quite apart and distinct from its obligation to constitute a Board and to send the representation to it. The detaining authority is not

entitled to wait for the opinion of the Board but has to take its decision without the least possible delay. In Writ Petition 246 of 1969 decided on September 10, 1969 (Khairul Haqque v. State of W. B., (1969) 2 SCWR 529) this Court observed as follows :-

> It is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. There was, therefore, no reason for the Government to wait for considering the petitioner's representation until it had received the report of the Advisory Board. As laid down in Sk. Abdul Karim v. State of West Bengal ((1969) 3 SCR 479 : (1969) 1 SCC 433 : 1969 Cri LJ 1446) the obligation of the appropriate Government under Article 22(5) is to consider the representation made by the detenu as expeditiously as possible. The consideration by the Government of such representation has to be, as aforesaid, independent of any opinion which may be expressed by the Advisory Board.

The fact that Article 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation losses both its purpose and meaning.

2. The observations extracted above clearly show that the representation must be considered by the Government as expeditiously as possible. Mr. Lalit submitted that the delay in deciding the representation was due to the fact that the representation had to pass through various channels and departments before the Government was in a position to decide it. In the first place no such facts have been pleaded in the reply filed by the respondents and, therefore, we cannot entertain the grounds now urged by the counsel for the Union for the first time in the arguments before us. Even so it appears that at the most the detaining authority had forwarded the representation to the Revenue Intelligence whose comments were received on October 16, 1979. Thereafter there was absolutely no justification for any delay in taking a decision on the merit of the representation. Even if we assume that there was some reasonable explanation for the delay from September 28, 1979 to October 16, 1979, there appears to be no good explanation whatsoever for the delay from October 16, 1979 to November 2, 1979 when the representation was rejected by the Government. It is manifest that the Government was not obliged to wait for the decision of the Board because it had to consider the representation independently of what the Board might say. In this view of the matter, we are satisfied that there has been unreasonable delay in deciding the representation filed by the detenu and that by itself is sufficient to render the detention void. For these reasons we allow this petition, set aside the order of detention and direct that the detenu be released forthwith.

STATE OF U. P., APPELLANT v. TIPPER CHAND, RESPONDENT.

Civil Appeal No. 1234(N) of 1970, decided on February 22, 1980.

JUDGMENT

The Judgment of the Court was delivered by

Fazal Ali, J. - This is an appeal by special leave against the judgment dated September 12, 1969, of a Single Judge of the High Court of Allahabad accepting an application under Section 115 of the Code of Civil Procedure, setting aside the orders of the courts below and directing that the application made by the defendant under Section 34 of the Arbitration Act shall stand rejected so that the suit would proceed.

2. The suit out of which this appeal has arisen was filed by the respondent before us for recovery of Rs. 2,000 on account of dues recoverable from the irrigation Department of the petitioner State for work done by the plaintiff in pursuance of an agreement, Clause 22 of which runs thus :

Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions hereinbefore mentioned. The decision of such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right, matter or things whatsoever, in any way arising out of or relating to the contract, designs, drawing specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor.

3. The defendant-respondent made an application under Section 34 of the Arbitration Act to the trial Court on the plea that the above extracted Clause 22 amounted to an arbitration agreement. The pleas found favour with the trial Court as well as the appellate court but was rejected by the High Court in revision on the ground that it merely conferred power on the Superintending Engineer to take decisions on his own and that it did not authorise the parties to refer any matter to his arbitration. In this connection the High Court particularly adverted to the marginal note to the said clause which was to the following effect :

Direction of work.

4. After perusing the contents of the said clause and hearing learned counsel for the parties we find ourselves in complete agreement with the view taken by the High Court. Admittedly the clause does not contain any express arbitration agreement. Nor can such an agreement be spelled out from its terms by implication, there being no mention in it of any dispute, much less of a reference thereof. On the other hand, the purpose of the clause clearly appears to be to vest the Superintending Engineer with supervision of the execution of the work and administrative control over it from time to time.

5. Mr. Dixit relied on Governor-General v. Simla Banking and Industrial Company Ltd. (AIR 1947 Lah 215 : 226 IC 444), Dewan Chand v. State of Jammu and Kashmir (AIR 1961 J&K 58) and Ram

Lal v. Punjab State (AIR 1966 Punj 436 : 68 Punj LR 522 : ILR (1966) 2 Punj 428). In the first of these authorities the clause appearing in the contract of the parties which was held by Abdur Rahman, J., to amount to an arbitration agreement was practically, word for word, the same with which we are concerned here but we are of the opinion that the interpretation put thereupon was not correct. As pointed out by the High Court such a clause can be interpreted only as one conferring power on the Superintending Engineer to take decisions all by himself and not by reason of any reference which the parties might make to him.

6. In the Jammu and Kashmir case (AIR 1961 J&K 58) the relevant clause was couched in these terms :

For any dispute between the contractor and the Department the decision of the Chief Engineer PWD Jammu and Kashmir, will be final and binding upon the contractor.

The language of this clause is materially different from the clause in the present case and in our opinion was correctly interpreted as amounting to an arbitration agreement. In this connection the use of the words "any dispute between the contractor and the Department" are significant. The same is true of the clause in Ram Lal case (AIR 1966 Punj 436 : 68 Punj LR 522 : ILR (1966) 2 Punj 428) which ran thus :

In matter of dispute the case shall be referred to the Superintending Engineer of the Circle, whose order shall be final.

We need hardly say that this clause refers not only to a dispute between the parties to the contract but also specifically mentions a reference to the Superintending Engineer and must therefore be held to have been rightly interpreted as an arbitration agreement.

7. Holding, in conformity with the judgment of the High Court, that Clause 22 above extracted does not amount to an arbitration agreement, we find no force in this appeal which is dismissed with costs.

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