Frances Coralie Mullin

Vs

W. C. Khambra and Others

Writ Petition No. 1524 of 1979 Writ Cri. M.P. 77 of 1979

(O. Chinnappa Reddy, R. S. Sarkaria JJ)

27.02.1980

JUDGMENT

CHINNAPPA REDDY, J. -

1.Mrs. Frances Coralie Mullin, a British National was served on November 23, 1979, with an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. The grounds of detention were also served on her on the same day. On December 1, 1979, her Advocate sent a telegram to the detaining authority, namely the Administrator, Union Territory of Delhi, asking for copies of statements and documents upon which reliance was placed in the grounds of detention. The telegram was received by the detaining authority on December 3, 1979. The Director of Revenue Intelligence who was directed by the Administrator, Union Territory of Delhi, to supply copies of statements and documents to the detenu, so supplied them on December 7, 1979. Seventeen documents were mentioned in the accompanying letter. Alleging that one of the documents (item 14) was not sent, the Advocate wrote a letter by registered post on December 17, 1979, asking for a copy of that document also. A reply was sent on January 1, 1980, to the effect that document 14 had also been supplied earlier but nonetheless another copy of the same document was being sent again. On December 22, 1979, the detenu made a representation to the detaining authority and it was actually received by the latter on December 26, 1979. The Home Department of the Delhi Administration forwarded a copy of the representation to the Customs authorities for their remarks. The remarks were receive on January 4, 1980. Thereafter the representation was considered and rejected by the Administrator on January 15, 1980. The rejection of the representation was communicated to the detenu on January 17, 1980. In the meanwhile the Advisory Board to whom the detention of the petitioner had been referred met on January 4, 1980 and considered the matter. The detenu was produced before the Advisory Board and various concerned Departmental officials were also present. On January 10, 1980, the Advisory Board recorded its opinion and forwarded the same to the detaining authority. It was received by the Home Department of the Delhi Administration on January 11, 1980 but was actually placed before the Administrator on January 19, 1980 when the detaining authority confirmed the order of detention.

2. In this application for the issue of a writ of Habeas Corpus three submissions were made by Shri Ram Jethmalani, learned counsel for the petitioner :

> 1. The representation of the detenu, made on December 22, 1979, was not communicated to the Advisory Board as it ought to have been, when the Board met on January 4, 1980.
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> 2. The detaining authority should have disposed of the representation before

forwarding it to the Advisory Board. Even if the detaining authority did forward it to the Advisory Board, the detaining authority should not have awaited the hearing before the Advisory Board and should not have allowed itself to be influenced by such hearing.

3. There was inexcusable delay in enabling the detenu to make a representation and in disposing of the representation.

3. Notwithstanding the clear assertion in the additional grounds raised by the petitioner, which she was allowed to do by an order of the court that her representation dated December 22, 1979, was not placed before the Advisory Board when the Board met on January 4, 1980, there was no specific denial of the assertion in the counter filed by the Delhi Administration to the additional grounds. However, we were informed by Shri Abdul Khader, learned counsel for the Delhi Administration, that the representation was in fact forwarded to the Advisory Board and also considered by the latter. He produced the relevant files before us which we also permitted Shri Jethmalani to inspect. We are satisfied that the representation was forwarded to the Advisory Board and it was also considered by the latter. There is therefore, no force in the first submission made on behalf of the petitioner. We wish to repeat here, what we have said on earlier occasions, that there should be greater precision and perspicuity in affidavits filed in the court. Care and clarity are particularly important when the court is concerned with questions of personal freedom.

4. In support of the second and third submissions, reliance was placed by the learned counsel for the petitioner on the four principles laid down by this Court in Jayanarayan Sukul v. State of West Bengal ((1970) 3 SCR 225, 232; (1970) 1 SCC 219 : 1970 SCC (Cri) 92), and on the observations of the Court in Narendra Purshotam Umrao v. B. B. Gujral ((1979) 2 SCR 315 : (1979) 2 SCC 637 : (1979) SCC (Cri) 557) and Ramchandra A. Kamat v. Union of India ((1980) 2 SCC 270). In the first case a Constitution Bench of the Court laid down four broad principles to be followed in regard to representation of detenus : (SCC p. 224, para 20)

First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If, however, the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will expreses any opinion against the release of the detenu the Government may still exercise the power to release the detenu.

In the second case, to the facts of which we will refer later, the observations upon which reliance was placed were : "It is urged that the Government was sunder a constitutional obligation to consider the representation before the hearing before the Advisory Board. There is no quarrel with

the principle but the difficulty is about the application of the principle on the facts and circumstances of the present case. In fact, the Government has to reach its decision uninfluenced by the opinion of the Advisory Board". In the third case, offer of inspection of documents twelve days after request for copies was considered fatal to the detention and it was observed : (SCC p. 273, para 8)

If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation is denied. The detention cannot be said to be according to the procedure prescribed by law. When the Act contemplates the furnishing of grounds of detention ordinarily within five days of the order of detention, the intention is clear that the statements and documents which are referred to in the grounds of detention and which are required by the detenu and are expected to be in possession of the detaining authority should be furnished with reasonable expedition.

5. We have no doubt in our minds about the role of the court in cases of preventive detention : it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine. The four principles enunciated by the Court in Jayanarayan Sukul v. State of W. B. ((1970) 3 SCR 225, 232 : (1970) 1 SCC 219 : 1970 SCC (Cri) 92) as well as other principles enunciated in other cases, an analysis will show, are aimed at shielding personal freedom against indifference, insensibility, routine and red tape and thus to secure to the detenu the right to make an effective representation. We agree : (1) the detaining authority must provide the detenu a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. We, however, hasten to add that the time-imperative can never be absolute or obsessive. The Court's observations are not to be so understood. There has to be lee-way depending on the necessities (we refrain from using the word 'circumstances') of the case. One may well imagine a case where a detenu does not make a representation before the Board makes its report making it impossible for the detaining authority either to consider it or to forward it to the Board in time or a case where a detenu makes a representation to the detaining authority so shortly before the Advisory Board takes up the reference that the detaining authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be be made for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority.

6. We notice that in Narendra Purshotam Umrao v. B. B. Gujral ((1979) 2 SCR 315 : (1979) 2 SCC 637 : (1979) SCC (Cri) 557), the detenu made his representation on March 4 and 6, 1978, the Advisory Board gave a hearing on March 13 and the detaining authority rejected the representation

on March 18. The Court perused the records of the Government and the Advisory Board and concluded that there was no infraction of the Constitutional safeguard in Article 22(5). It was held, with reference to the records, that the Government had taken a decision uninfluenced by what transpired at the hearing before the Board. The matter was found to have been dealt with by the Government at all levels and the detaining authority had come to an independent conclusion of his own by applying his mind to the facts and circumstances of the case.

7. We have already expressed our agreement with the four principles enunciated in Jayanarayan Sukul v. State of W. B. ((1970) 3 SCR 225, 232 : (1970) 1 SCC 219 : 1970 SCC (Cri) 92). We would make one observation. When it was said there that the Government should come to its decision on the representation before the Government forwarded the representation to the Advisory Board, the emphasis was not on the point of time but on the requirement that the Government should consider the representation independently of the Board. This was explained in Nagendra Nath Mondal v. State of W. B. ((1972) 1 SCC 498 : (1972) SCC (Cri) 227). In Sukul case ((1970) 3 SCR 225, 232 : (1970) 1 SCC 219 : 1970 SCC (Cri) 92) the court also made certain pertinent observations at pp. 231-232 : (SCC p. 224, para 19)

No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible ....

8. In Prabhakar Shankar Dhuri v. S. G. Pradhan and Kantilal Bose v. State of W. B. (AIR 1972 SC 1623 : (1972) 2 SCC 529), delay of 16 days and 28 days respectively in disposing of the representation of the detenu was considered sufficient to vitiate the detention. On the other hand, in Nagendra Nath Mondal v. State of W. B. ((1972) 1 SCC 498 : (1972) 2 SCC (Cri) 227) a delay of 34 days was held on to affect the validity of the detention as part of the delay was explained by the circumstances that the records of the case had been sent to the Advisory Board and part of the delay was explained by the enquiries which the Government had to make. The court observed : (SCC p. 504, para 15)

That fact is not disputed before us and so also the fact that those records showed that on June 7, 1971, government had sent the files in connection with the petitioner's case and his representation to the Advisory Board. As soon as the representation was returned to it, Government considered it and rejected it but that was before the Board made its report and sent it to Government. But counsel urged that this fact may explain the lapse of time from the date that the records were sent and the date when they were returned, but not the delay between May 27, 1971 and June 7, 1971 during which Government could have arrived at its decision. That argument has not much force, because in a given case Government may not be able to reach a proper conclusion within a short time, especially, in a case where another authority, in this case the District Magistrate, has passed the questioned order. It might have to make inquiries as to the situation in the locality, the nature of and the circumstance in which detention was found necessary, the previous history of the person detained etc. Therefore, it is difficult to agree with counsel that Government should have reached its conclusion during the said period .... There can be no hard and fast rule with regard to the time which Government can or should take, and that each case must be decided on its own facts.

9. We may now consider whether the facts here disclose a disregard to the petitioner's constitutional right as claimed by his counsel in his second and third submissions. The petitioner's request for copies of statements and documents was received by the detaining authority on December 3, 1979,

and at the instance of the detaining authority, the Director of Revenue Intelligence furnished the copies sought on December 7, 1979. The authorities who laid the information before the detaining authority and who were primarily concerned in the matter were the Customs authorities via the Director of Revenue Intelligence. So the detaining authority directed the Director of Revenue Intelligence to furnish copies of the documents and it was so done. There was no delay in furnishing of documents and no legitimate complaint could be made on that score. The detenu's representation was received by the detaining authority on December 26, 1979. Without any loss of time copy of the representation was sent to the Customs authorities for their remarks. That was obviously necessary because the information leading to the order of detention was laid by the Customs authorities. The facts were undoubtedly complex since the allegations against the detenu revealed an involvement with an international gang of dope smugglers. The comments of the Customs authorities were received on January 4, 1980. The Advisory Board was meeting on January 4, 1980 and so there could be no question of the detaining authority considering the representation of the detenu before the Board met, unless it was done in great and undue haste. After obtaining the comments of the Customs authorities it was found necessary to take legal advice as the representation posed many legal and constitutional questions. So, after consultation with the Secretary (Law and Judicial), Delhi Administration, the representation was finally rejected by the Administrator on January 15, 1980. These facts are stated in the counter-affidavit filed on behalf of the Delhi Administration and are substantiated by the records produced before us. If there appeared to be any delay, it was not due to any want of care but because the representation required a thorough examination in consultation with investigators of facts and advisers on law. We ourselves examined the records and we find that though the Administrator considered the representation of the detenu after hearing by the Board, the Administrator was entirely uninfluenced by the hearing before the Board. The application for the issue of a writ of Habeas Corpus is therefore dismissed.

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