

Mrs. Iris Fernandes

Vs

Union of India and Others

Writ Petition (Criminal) No. 181 of 1980

(R. S. Sarkaria, R. S. Pathak JJ)

14.03.1980

JUDGMENT

SARKARIA, J. –

1. This is a writ petition under Article 32 of the Constitution, on behalf of one Jovito Anthony Fernandes, who has been detained in the Central Prison, Nagpur, in pursuance of an order of his detention passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA).
2. The detenu is the husband of the writ petitioner. The detention is challenged on several grounds. One of them was that prior to January 24, 1980, the detenu had made two representations to the Government of Maharashtra, but they were not considered. The factum of making these representations was denied in the counter-affidavit filed on behalf of the respondent-State.
3. The only contention based on undisputed facts, advanced by Mr. Jethmalani on behalf of the detenu, is that he had no January 24, 1980 made a representation to the Central Government (Ex. L) requesting it to revoke his detention; and that this representation remained unattended and has not been considered by the Central Government and, therefore, the detention is vitiated.
4. On the peculiar facts of this case, we are not persuaded to accept this contention. The writ petition, as the date shows, was prepared on January 23, 1980. According to the counsel for the writ petitioner, it was filed on January 28, 1980. It came up for hearing on February 1, 1980 and rule was issued. This shows that possibly the writ petition and the representation (Ex. L) dated January 24, 1980 were prepared at the same time. The representation, dated January 24, 1980, is addressed to (1) Central Government through the Secretary, Ministry of Finance, Department of Revenue and Banking, North Block, New Delhi, and (2) Deputy Secretary, Government of Maharashtra, Home Department (Special), Bombay. January 26, 1980 was a Republic Day and the offices of the State and the Central Government were closed. It seems, therefore, that in the normal course, the receipt of this representation by the government was almost simultaneous with the filing of the writ petition. There was hardly any time for the addressee governments to look into this representation. By no stretch of imagination can it be said that the Governments concerned had delayed consideration of the representation.
5. We, therefore, dismiss this writ petition, subject to the direction that the Central Government shall consider the representation of the detenu and take a decision thereon as expeditiously as possible, within ten days from today.

</html