

Shri Saleh Mohammed

Vs

Union of India and Others

Writ Petition (Criminal) No. 2192 of 1980

(P. N. Bhagwati, A.C. Gupta, E. S. Venkataramiah JJ)

03.09.1980

JUDGMENT

SARKARIA, J. –

1. This is a petition under Article 32 of the Constitution for the issue of a writ of habeas corpus.
2. Saleh Mohammed, petitioner is an Indian citizen. On January 18, 1980, an order of his detention under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called the "COFEPOSA") was passed by the Government of Rajasthan under the signature of the Home Secretary to the Government. In pursuance of that order, the detenu was arrested on January 21, 1980. The detention order and the grounds of detention were served on the detenu in jail on January 23, 1980.
3. On February 20, 1980, the detenu made a representation to the detaining authority through the Superintendent of Jail. On February 25, 1980, he was produced before the Advisory Board. Thereafter on March 10, 1980, his detention was confirmed by the State Government. On March 26, 1980, his representation was rejected by the State Government. On May 19, 1980 the detenu sent a written request for the supply of documents and material relied upon in the grounds of detention. The copies were supplied to him on June 9, 1980. On July 11, 1980, the detenu again made a representation under Section 11 of the COFEPOSA, addressed to the Central Government as well as to the State Government for revocation of his detention.
4. On July 16, 1980, the detenu filed this writ petition. Thereafter, on July 25, 1980, the Central Government rejected his representation.
5. Mr. Harjinder Singh, appearing for the detenu, has raised three contentions :
 - (1) There was inordinate and unreasonable delay of about 35 days in considering the representation of the detenu by the detaining authority.
 - (2) The detenu's right to have his representation considered by the detaining authority, independently of the recommendation of the Advisory Board, has been violated. This inference is available from the facts that the detaining authority considered and rejected his representation well after the receipt of the report of the Advisory Board; the representatives of the detaining authority were present at the hearing before the Advisory Board and had thus come to know the views of the Advisory Board which must have influenced the decision of the detaining authority

in rejecting the detenu's representation on March 26, 1980.

(3) The detenu was an illiterate rustic. The order, and the grounds of detention served on him, did not inform him that he had a right to make a representation against his detention. This omission vitiates the detention.

6. Replying to the allegations in the writ petition regarding the first contention, Shri V. D. Sharma has in his affidavit filed on behalf of respondents 2 and 3, stated that the representation of the detenu, made on February 20, 1980, was received in the Home Department of the State Government on March 14, 1980. Thereafter, the said representation was considered and rejected by the then Advisor to the Governor of Rajasthan, Shri S. L. Khurana on March 26, 1980.

7. Learned counsel appearing for the respondents-State has placed for our perusal the relevant documents from the official record. From a perusal of these documents, it appears that the representation was submitted by the detenu through the Superintendent of Jail on February 20, 1980. The Superintendent of Jail sent it to the Inspector-General of Prisons, in whose office it remained unattended till March 13, 1980, on which date it was forwarded to the State Government. No affidavit has been sworn on behalf of the Superintendent of Jail or any responsible officer of the office of the Inspector-General of Prisons as to why this representation of the detenu made on February 20, 1980, remained lying unattended in his office for 22 days. In the counter-affidavit filed on behalf of the respondents, also, no explanation of this delay has been given. It may be noted that the jail wherein the detenu was detained, the Office of the Inspector-General of Prisons and the Office of the Home Secretary to the State Government, were all located in Jaipur City.

8. Times out of number, this Court has emphasised that where the liberty of an individual is curtailed under a law of preventive detention, the representation, if any, made by him must be attended to, dealt with and considered with watchful care and reasonable promptitude lest the safeguards provided in Article 22(5) of the Constitution and the statute concerned should be stultified and rendered meaningless. Here in the instant case, we find that the functionaries of the State in attending to the representation of the detenu have been guilty of gross negligence and chilling indifference. For more than three weeks, the representation of the detenu remained lying unattended in the Office of the Superintendent of Jail, or the Inspector-General of Prisons. This inordinate, unreasonable and unwarranted delay of about 22 days amounted to a violation of Article 22(5), which guarantees to the detenu a right to have his representation considered with reasonable expedition. It was on this short ground that we had, as per our Order dated August 20, 1980, allowed this writ petition, quashed the order of Saleh Mohammed's detention and directed his release forthwith.

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