

Shri Tushar Thakker

Vs

Union of India and Others

And

Mariam Tayabali Zanzibarwala

Vs

Union of India and Others

Writ Petitions (Criminal) Nos. 528 and 481 of 1980

(R. S. Sarkaria, P. S. Kailasam JJ)

03.09.1980

JUDGMENT

SARKARIA, J. –

1. This judgment will cover two writ petitions. Writ Petition (Criminal) 481 of 1980 is by Mariam Tayabali Zanzibarwala seeking a writ of the habeas corpus for the release of the detenu who is her husband. Writ Petition (Criminal) 528 of 1980 has been filed by Tushar Thakker on behalf of the detenu, Harish Vrajlal Thakker.

2. The premises of the detenu in Writ Petition 481 of 1980 were searched by officers of the Directorate of Enforcement in connection with certain alleged illegal remittances made by certain persons through M/s. Thomas Cook (Overseas) Ltd., and some recoveries of purported incriminating documents were seized. The detenu was arrested on the same day and remanded to judicial custody. He was released later on bail on the condition that he should attend the Office of the Directorate of Enforcement daily. On his applications this condition was progressively relaxed by the Chief Metropolitan Magistrate.

3. On September 5, 1979, the detenu was arrested in pursuance of a detention Order dated August 31, 1979 issued by Shri B. B. Gujral, Additional Secretary, in the Ministry of Finance (Revenue), Government of India. The grounds of detention under Section 3 of the COFEPOSA were also supplied to him on the same date.

4. On September 8, 1979, the detenu addressed a letter to the Additional Secretary to the Government of India, asking for supply of copies of the documents mentioned in that letter, which, according to the detenu, were necessary to enable him to make an effective and purposeful representation. Since copies were not being supplied, the detenu on September 15, 1979 wrote through his advocate to the Deputy Director of Enforcement, Bombay, enclosing therewith a copy of the letter dated September 8, 1979 which he had earlier addressed to the Additional Secretary to the Government of the India, requesting for supply of the copies mentioned in the said letter,

immediately. In the reply to the said letter received on September 22, 1979 by the advocate of the detenu, it was stated that instead of copies, the detenu could inspect the same documents in the Office of the Collector on September 24, 1979. On September 25, 1979, the detenu's advocate under cover of his letter of that date, sent the detenu's representation dated September 24, 1979, to the jail authorities, with a request that the same be forwarded for consideration to the Government of India. This representation was received by the jail authorities on September 25, 1979, but was not considered by the Central Government up to March 26, 1980, the date of the institution of the writ petition.

5. No copies of the documents were supplied to the detenu, although by another letter dated September 28, 1979, the Assistant Director of Enforcement against made a offer that the detenu could inspect the documents. In reply, the detenu through his advocate addressed a communication on October 2, 1979 that it was to possible to take inspection of the documents and that without the copies of the necessary documents it was not possible to prepare the detenu's representation. In this letter, he further informed that the detenu was willing to deposit any advance charges for preparing the copies.

6. By letter, dated October 15, 1979, the detenu was informed that his representation, dated September 24, 1979, had been considered by the detaining authority and rejected. In the meantime, the Advisory Board held its meeting and the detenu received a letter on November 3, 1979, informing that his detention had been confirmed under Section 8(f) for one year with effect from September 5, 1979.

7. The detenu sent a representation in the form of an application to the Central Government on December 26, 1979 praying that his detention be revoked under Section 11 of the COFEPOSA. This application also was not considered by the Central Government, but the detenu again received a communication dated February 7, 1980 that the said representation had been considered by the detaining authority and rejected.

8. In the writ petition, the detenu had also challenged the constitutional validity of Sections 5-A and 12-A of the COFEPOSA, but this ground has not been pressed at the time of arguments. It may be noted that the detenu is under preventive detention since September 5, 1979 for a period of one year, apart from the period he had remained in custody under the code of criminal procedure.

9. The first contention raised on behalf of the detenu was that he was not furnished with copies of the materials and documents referred to or relied upon in the grounds of detention, although he had repeatedly made applications for obtaining the same, that the offer to take inspection, instead of copies, made on September 8, 1979, was not an adequate substitute for the supply of the copies. In this way, the detenu's right under Article 22(5) of the Constitution to be furnished with such materials, with reasonable expedition to enable him to make a effective representation was violated.

10. The second contention is that the detenu's representations addressed to the Central Government for revoking the detention under Section 11 of the COFEPOSA were not considered by that Government but were illegally rejected by the detaining authority.

11. In the supplementary counter-affidavit filed by Shri N. I. Ramanathan, Under-Secretary, Ministry of Finance on behalf of the Union of India, it is admitted that a letter from Shri Nazifdar, Advocate of the detenu was received in the Deputy Director of Enforcement for supply of copies of documents and that in reply, the advocate was told to take inspection of the documents. It is stated

that the advocate, did not appear on September 24, 1979 in the Office of the Enforcement Directorate for inspection of the documents, therefore, another letter was addressed to Shri Nazifdar requesting him to contact the Enforcement Officer on October 3, 1979; that photostat copies of 43 documents were made available to the detenu on October 4, 1979; and copies of the remaining 19 documents were handed over to the Superintendent, Central Prison, Bombay on October 12, 1979 with a direction that he should pass them on to the detenu (Who had been sent to court), on his return from the court. He further stated that Shri Nazifdar, Advocate, was requested to take inspection of documents in the bona fide belief that this would be sufficient to enable him to prepare an effective representation of the detenu.

12. In the first counter filed by the same Under-Secretary, it is stated that no representation, dated December 19, 1979, of the detenu was received in the Ministry, but his representations dated December 22, 1979 and December 26, 1979 were received and the same were rejected by the detaining authority as they were not specifically addressed to the Central Government. In para 9, it is stated that a letter, dated September 10, 1979, was received from the detenu in the Ministry of Finance through the Central Prison, Bombay, on September 20, 1979, for supply of documents some of which were made available to him on October 4, 1979 and the rest on October 12, 1979.

13. From the facts alleged in the writ petition and admitted in the counters, it is clear that there was unreasonable and inordinate delay in the supply of the copies of the material documents to the detenu. He had made the request for supply of copies of those materials, by a letter from jail on September 8, 1979. All the copies were not supplied till October 12, 1979. It is regrettable that the letter dated September 8, 1979 of the detenu for copies took 11 days to travel from the jail to the detaining authority in the Ministry of Finance, New Delhi, Surely some functionary of the government in some office was grossly negligent in conveying or transmitting this letter to the detaining authority. Although the advocate of the detenu as a matter of additional precaution to eliminate office delays, again directly wrote on September 15, 1979 a letter to the office of the Directorate of Enforcement for immediate supply of the copies mentioned in the enclosure, as he thought that the documents would be in his office, yet, instead of promptly supplying the copies repeatedly asked for by the detenu, the advocate was told to come and take inspection of the documents. The inspection of the documents, as the advocate rightly demurred, was no substitute for the constitutional obligation to furnish the detenu promptly with copies of all the materials relied upon in the grounds of detention, to enable him to prepare and make a purposeful representation. With great reluctance, the copies of all the documents requested for by the detenu on September 10, 1979 were supplied on October 12, 1979, after a delay of about 32 days. Even if five or six days which would have been normally take in transit, were to be excluded, there was a delay of 25 or 26 days in supplying the copies. This delay was not been satisfactorily explained, and in the circumstances of the case, was clearly unreasonable.

14. This Court has repeatedly held that the detenu has a constitutional right under Article 22(5) to be furnished with copies of all the material relied upon or referred to in the grounds of detention, with reasonable expedition. Delay tends to stultify the detenu's right to make an effective representation and, to have it considered speedily by the authority concerned. The delay in supplying the copies to the detenu, in the facts of the instant case, being inordinate and unreasonable, had vitiated the continuance of his detention. It was to this short ground, we had by our Order dated May 7, 1980 allowed this writ petition and ordered the release of the detenu.

15. In Writ Petition 528 of 1980, the detenu, Harish Vrajlal Thakker, was arrested on September 5, 1979 in pursuance of a detention order passed under Section 3 of the COFEPOSA on August 31,

1979 by Shri B. B. Gujral Additional Secretary to the Government of India, Ministry of Finance, New Delhi, and the grounds of detention were also served on the detenu on the same date on which he was detained. On September 10, 1979 the detenu's counsel wrote a letter to the detaining authority through the Superintendent, Central Prison, Bombay, for supply of the copies of the documents and materials relied upon in the grounds of the copies of the documents and materials relied upon in the grounds of detention to enable him to prepare an effective representation for the detenu. The detaining authority did not promptly deal with this request of the detenu. Therefore, on September 15, 1979, his advocate wrote to the Deputy Director of Enforcement for supply of the copies of the documents and statements. Along with this letter he sent a copy of the letter dated September 10, 1979 which he had earlier addressed to the Additional Secretary to the Government of India for supply of the documents. Instead of supplying the copies without delay, on September 22, 1979, the detenu's counsel was informed by the Deputy Director of Enforcement that he could take inspection of documents on September 24, 1979. The detenu's counsel and the detenu himself being handicapped, did not taken the inspection.

16. The detenu on September 25, 1979 made an application for revocation of the detention order, to the Central Government. This application/representation was made by him through his advocate, who sent it under cover of his letter dated September 25, 1979, to the Superintendent of Jail, Bombay, with a request that the representation be forwarded to the Central Government. This representation was not considered by the Central Government. In this representation, the detenu had also complained that he had not been supplied all the statements and other materials relied upon in the ground of detention. The authorities dilly-dallied in supplying the copies. Another communication was received by the counsel for the detenu, that he could take inspection of the documents, instead of the copies. The advocate wrote to the office of the Directorate of Enforcement that inspection was not an adequate substitute for the supply of the documents. He repeated his request for urgent supply of the copies. Thereafter on October 4, 1979 some of the copies were supplied to the detenu in jail; no copies of statements of Chema and Vikram, for which he had requested, were supplied to him. The detenu complained about the non-supply of those statements, but he was asked to sign the receipt without any objection. On October 25, 1979, the detenu received a communication dated October 15, 1979, from the Deputy Secretary to the Government of India, informing him that his representation had been considered by the detaining authority and rejected. The representation of the detenu was not sent by the detaining authority to the Advisory Board which held its meeting on October 18, 1979. Thereafter, the detention order was confirmed by the Central Government vide their Order dated November 3, 1979. On January 10, 1980, the detenu made another representation to the Central Government, this time through the detaining authority, wherein he complained that his earlier representation for revocation of detention order under Section 11 of the COFEPOSA, had not been attended to.

17. As in the connected case, the legality of the detention of Harish Vrajlal Thakker, was been challenged, inter alia, on the ground that there was inordinate delay of 24 days in supplying the copies of documents and materials relied upon in the grounds of detention. The detenu further complains that even after this unreasonable delay, copies of all the materials asked for by him were not supplied to him; that copies of the statements of two material witnesses were ever furnished to him. This delay of about 24 days in supplying the copies and the non-supply of the copies of the statements of two material witnesses referred to in the grounds of detention, has not been satisfactorily explained by the respondents. In the circumstances of this case, also, the delay in furnishing the copies of the materials to the detenu had violated his constitutional right to make an effective representation and to have it speedily considered by the authority concerned.

18. It was for this reason, we had be our Order dated May 7, 1980 allowed this writ petition and ordered the release of the detenu forthwith.

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