

Tara Chand

Vs

State of Rajasthan and Others

Writ Petition (Criminal) No. 430 of 1980

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

23.09.1980

JUDGMENT

R. S. SARKARIA, J. –

1. This is a petition for the issue of a writ of habeas corpus on behalf of Shri Shishupal (hereinafter called 'the detenu') who has been preventively detained in pursuance of an order passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called 'the COFEPOSA'). The detention order was passed by Shri L. N. Gupta, Commissioner & Administration, Secretary, Home Department, Rajasthan, Jaipur. The detenu was arrested in pursuance of that order on November 2, 1979. The grounds of detention were served on the detenu on November 3, 1979.

2. On November 3, 1979 the detenu's brother Tara Chand addressed a letter to the detaining authority on behalf of detenu praying for revocation of the order of detention. This letter was more in the nature of complaint against the Customs Officer, and less than a representation against the grounds of detention. The prayer made in this letter was rejected on November 19, 1979.

3. A meeting of the Advisory Board was held on November 30, 1979. The detenu was heard by the Board. The Board made report on December 3, 1979 justifying the detention. The detention was confirmed by the State Government on December 15, 1979.

4. On February 23, 1980, the detenu made a representation to the Central Government praying for revocation of his detention under Section 11 of the COFEPOSA. Another representation of the same date was sent by the detenu to the detaining authority.

5. It is alleged in the petition that these representations have not been considered by Central Government or the detaining authority up to the date of the writ petition. The representation dated February 23, 1980, of the detenu against the grounds of his detention reached the detaining authority on March 27, 1980, that is, after a delay of one month and five days.

6. It was contended on behalf of the petitioner; that there has been an infringement of the constitutional safeguards and imperatives embodied in Article 22(5) of the Constitution inasmuch as

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(i) The detenu was never told that he had a right to make a representation and to whom the representation was to be addressed.

(ii) There was extreme callousness and delay on the part of the detaining authority in considering the detenu's representation, dated February 23, 1980, against the grounds of detention.

(iii) The authority's refusal to send the representation of the detenu to the Advisory Board on the ground that he had been heard in person by the Board.

7. Shri Vishnu Dutta Sharma, Additional Director of Prosecution, Home Department, Government of Rajasthan, has filed a counter-affidavit on behalf of respondents 1, 2 and 4. In para 21 of this counter, it is admitted that the petitioner had sent an application under Section 11 of the COFEPOSA for revocation of the detention order to the order to the Central Government and that application was received in the office of the Home Secretary on March 6, 1980 for para-wise comments. It is further stated in that Para :

The Secretary on March 7, 1980 forwarded the same to the Collector of Customs, Jaipur for sending his comments. The comments of the Collector of Customs, Jaipur were received on March 13, 1980 in the office of the Home Secretary. The State Government sent its comments to the Secretary, Ministry of Finance, New Delhi on March 14, 1980. The answering respondents are not aware as to how the Central Government has dealt with the matter thereafter.

8. In the counter, it is further denied that a representation dated February 23, 1980 on the same lines as revocation application to the Central Government, was sent to the detaining authority. It is added that the application dated February 23, 1980 of the detenu addressed to the detaining authority, was only for supply of the copies of the relevant documents and for reconsideration by the Advisory Board. It is significantly admitted that this application (representation) dated February 23, 1980 of the detenu was received by the Home Secretary to the Government of Rajasthan on March 27, 1980 through the Inspector General of Prisons. Thereupon the copies were called for from the Collector, Customs and supplied to the detenu on April 1, 1980.

9. In spite of these evasive answer contained in para 21, it is clear that the representation dated February 23, 1980 of the detenu made by him through the jail authorities reached the detaining authority only on March 27, 1980. It was substantially in the same terms as the representation addressed to the Central Government for revocation of the detention under Section 11. This delay of one month and five days in communicating the representation of the detenu from the jail to the detaining authority demonstrates the gross negligence and extreme callousness with which the representation made by the detenu was dealt with by the respondents or their agents. Even after this huge delay, the representation was sent to the Collector for comments, and no intimation has been sent to the detenu about the fact of his representation dated February 23, 1980, addressed to the detaining authority. In fact, as it appears from the counter, the detaining authority refused to consider the same merely because the detenu had requested that this representation be forwarded to the Advisory Board, also. The mere fact that the meeting of the Advisory Board has been held earlier was not a valid excuse for the detaining authority in not considering the representation of the detenu at all.

10. It is well settled that in case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority to afford the detenu the earliest opportunity to make a representation and consider that the representation speedily is distinct from the Government's obligation to constitute a Board and to

communicate the representation, amongst other materials, to the Board to enable it to form its opinion and obtain such opinion. In the instant case, there has been a breach of this constitutional imperatives.

11. It was on this short ground, we had by our Order dated April 15, 1980, allowed this writ petition and directed the release of the detenu forthwith.

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