

Smt. Khatoon Begum

Vs

Union of India and Others

Writ Petitions Nos. 293, 391 and 392 of 1981

(O. Chinnappa Reddy, Baharul Islam JJ)

09.03.1981

JUDGMENT

CHINNAPPA REDDY, J. -

1. These three writ petitions may be disposed of by a single judgment since the principle question argued in all the three cases is one. The question is whether delay in considering the representation made by a detenu under Article 22(5) of the Constitution vitiates a detention under the National Security Act and entitles the detenu to be released on the at ground alone. As a result of a series of decisions of this Court, it is now well settled that the representations made by a detenu under Article 22(5) of the Constitution against his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, must be considered by the detaining authority with the utmost expedition and that any unexplained delay in considering the representation will be fatal to the detention. The learned counsel for the State of Uttar Pradesh urged that the rule requiring expedition consideration of a detenu's representation is a judge made rule based on the provisions of the Conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974, and that the extension of the application of the rule to cases of detention under the National Security Act was unwarranted. The learned counsel contrasted the provisions of the National Security Act and the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, and urged that in the case of detention under the National Security Act, a certain amount of delay was inevitable having due regard to the procedure prescribed by the Act and, therefore delay in consideration of the representation should not be allowed to prejudice the detention. We are unable to agree with the submission of the learned counsel. We will presently give our reasons for our inability to accept the learned Counsel's submissions but are will first like to refer to a few facts.

2. In Writ Petition (Criminal 293 of 1981 order and the grounds of detention were served on the detenu on October 30, 1980 and November 1, 1980 respectively. The detenu made a representation on November 12, 1980. Though according to the detenu he has received no communication from the government about his representation the Additional District Magistrate has stated in his counter affidavit that the representation was rejected on December 9, 1980 and it was communicated to the detenu through the Superintendent of the Central Jail. The counter affidavit mentions not a word to explain the delay in considering the representation. The only reference to the representation in the counter affidavit is in these two sentences : "It is admitted that the detenu made a representation to the Home Secretary on November 12, 1980, and the same was rejected on December 9, 1980. The rejection of the representation was communicated to be detenu through Superintendent, Central Jail by the Government".

3. Similarly in Writ Petition (Criminal) No. 391 of 1981, the order and the grounds of detention

were served on the detenu on November 12, 1980. The representation was rejected on December 10, 1980. In the counter affidavit filed by the Section Officer, Confidential Department of the Government of Uttar Pradesh, it is stated that on receipt of the representation, the Secretary Home Department forwarded it to the District Magistrate for his comments. In order to meet the allegations in the representation, the district Magistrate had to gather information from many sources and the presentation along with his comments was returned to the after Law department was consulted and the file could reach the Home Minister on December 5, 1980 only. The representation was rejected by the Home Minister on December 8, 1980 and then communicated to the detenu through the Superintendent, Central Jail.

4. In writ Petition (Criminal) No. 392 of 1981 the order and the grounds of detention were served on the detenu on October 16, 1980. The detenu made a representation on October 24, 1980. It was rejected on November 25, 1980. The counter affidavit filed by the Additional District Magistrate does not offer any explanation for the delay in the considerations of the representation. He has satisfied himself with the statement "as regards the representation of the detenu to the Home Secretary this fact is admitted".

5. The question for consideration is whether a person preventively detained under the provisions of the National Security Act is entitled to be released if there is delay in the consideration of the representation made by him to the detaining authority. It is true that the series of cases where delay in the consideration of the representation made by a detenu was held to be fatal to the detention were case which arose under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. We are however, unable to see how that would make any difference.

6. The right of a detenu to have his representation considered "at the earliest opportunity" and the obligation of the detaining authority to consider the representation "at the earliest opportunity" are not a right and an Prevention of Smuggling Activities Act, 1974, or the National Security Act or, for that matter any other Parliamentary or State law providing for preventive detention. They are a right and no obligation created by the very Constitution which breathes life into the Parliamentary or State law. Article 22(5) enjoins a duty on the authority making the order of detention to afford the detenu "the earliest opportunity of making a representation against the order". The right and obligation to make and to consider the representation at the earliest opportunity is a constitutional imperative which cannot be curtailed or abridged. If the Parliament or the State legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the inter-departmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representations made by detenu's. It will be no answer to a demand for liberty to say that administrative red tape makes delay inevitable. The learned counsel for the State of Uttar Pradesh pointed out certain differences between the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and the National Security Act which according to him make delay inevitable in the consideration of representation in case of detention under the National Security Act. We think that the differences pointed out are irrelevant. The constitutional mandate brooks no unreasonable delay in the consideration of a representation. In the cases before us, in Criminal Writ petitions 293 of 1981 and 392 of 1981 no explanation was offered by the detaining authority for the delay in the consideration of representations and in Criminal Writ Petition 392 of 1981, administrative red tape was the only explanation offered. We are satisfied that in all the three cases there was unreasonable delay in the consideration of the representations and the detenu's are, therefore, entitled to be

released. They will be released forthwith. The writ petitions are allowed.

</html