

Harish Pahwa

Vs

State of U. P. and Others

Criminal appeal No. 183 of 1981

(A.D. Koshal, Baharul Islam JJ)

18.03.1981

JUDGMENT

KOSHAL, J. -

1. This is an appeal by one Harish Pahwa against the judgment dated January 30, 1981 of the High Court of Allahabad dismissing a petition presented by the appellant to it under Article 226 of the Constitution of India with a prayer that a writ of habeas corpus be issued against the State of Uttar Pradesh and Union of India inasmuch as the detention of the appellant by them was not in accordance with law.

2. The only point that has been before us by Mr. Garg appearing on behalf of the appellant is that the representation made by him against his detention to the State Government was not decided within a reasonable time and that the delay is fatal to the detention. This point was no doubt not taken before the High Court, but in view of its importance and the fact that all the material necessary for its determination is available on the record, we have allowed it to be raised before us and have overruled a preliminary objection taken by the State to the effect that it should not be entertained.

3. In order to decide the point we may refer to certain admitted facts. The order of detention is dated May 16, 1980 and the representation made by the appellant against it from Varanasi Jail bears date June 3, 1980. The State Government received the representation on June 4, 1980 but for two days so action was taken in connection with it. On June 6, 1980 comments were called for from the customs authorities with regard to the allegations made in the representation and such comments were received by the State Government on June 13, 1980. On June 17, 1980, the State Government referred the representation to its Law Department for its opinion which was furnished on June 19, 1980. The rejection of the representation was ordered on June 24, 1980 and it was communicated to the jail authorities two days later.

4. The case of the State is that the representation was with the customs authorities who were formulating their comments from June 7, 1980 in June 12, 1980 and that the representation was under the consideration of the government for four days from June 13, 1980 to June 16, 1980, of its law Department from June 17, 1980 to June 19, 1980 and then again under its own consideration for six days from June 19, 1980 to June 24, 1980.

5. In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of presentations made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to

the representation on June 4, 5 and 25, 1980. It is also not clear what consideration was given by the Government to the representation from June 13, 1980 to June 16, 1980 when we find that it culminated only in a reference to the Law Department not it is apparent why the Law Department had to be consulted at all. Again, we fail to days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to taken in a matter of such vital import. We would emphasise that it is the duty of the State to proved to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is final decision is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. The not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.

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