

Sat Pal

Vs

State of Punjab and Others

Writ Petition (Criminal) No. 4691 of 1981

(A. P. Sen, Baharul Islam JJ)

10.11.1981

JUDGMENT

A. P. SEN J. –

1. This petition under Article 32 of the Constitution by one Sat Pal seeks issuance of a writ of habeas corpus challenging the validity of the order of detention passed by the State Government of Punjab on May 12, 1981, under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the Act') on being satisfied that his detention was necessary with a view to preventing him from smuggling goods. The question at issue is whether the failure of the State Government of Punjab to forward the representation made by the detenu to the Central Government for revocation of his order of detention under Section 11 of the Act with reasonable despatch renders his continued detention invalid.

2. It appears that the detenu was apprehended on June 28, 1981, and served with the order of detention together with the grounds of detention as well as with copies of documents and statements replied upon in the grounds of detention. On July 4, 1981, while the detenu was under detention his counsel Shri Harjinder Singh addressed a registered letter to the Superintendent of Jail, Central Jail, Amritsar, enclosing therewith two representations drafted on behalf of the detenu, one of which was addressed to the Joint Secretary, State Government of Punjab, Department of Home, Chandigarh, and the other endorsed to the Central Government through the Secretary, Ministry of Finance, Department of Revenue, New Delhi, for revocation of the order of detention under Section 11 of the Act. The Superintendent was requested by the said letter that the representations be forwarded to the State Government and the Central Government, after obtaining the signatures of the detenu thereon. On July 6, 1981, the two representations were received by the Superintendent, Central Jail, Amritsar, and on the 7th he forwarded the same to the Joint Secretary, State Government of Punjab, Home Department, Chandigarh, with an endorsement that one of them be forwarded to the Central Government through the Secretary, Ministry of Finance, Department of Revenue, New Delhi. On the next day, i.e. July 8, 1981, the two representations, one addressed to the State Government and the other endorsed to the Central Government, were received in the Home Department. On July 24, 1981, the State Government rejected the representation made by the detenu and thereafter forwarded it to the Advisory Board, which by its Report dated July 31, 1981, considered the representation and rejected it. On receipt of the Report of the Advisory Board, the State Government confirmed the order of detention on August 6, 1981. It, however, appears that the representation made by the petitioner to the Central Government for revocation of his order of detention under Section 11 of the Act, was not forwarded by the State Government to the Central Government till September 23, 1981.

3. In his counter-affidavit dated September 8, 1981, Shri N. I. Ramanathan, Under-Secretary to the Government of India, Ministry of Finance, Department of Revenue, COFEPOSA unit, stated that no representation from the detenu relating to his detention had been received by the Central Government and, as such, the question of any delay in its disposal did not arise. It, therefore, appears that till September 8, 1981, the representation endorsed to the Central Government remained unattended to in the Punjab Secretariat. This was indeed a serious lapse on the part of the State Government, and it is quite evident that it has no explanation to offer. In his counter-affidavit, Shri Kuldip Singh Janjua, IAS, Joint Secretary to the State Government of Punjab, Home Department, has not controverted the allegation made by the detenu that his counsel had forwarded two copies of the representation, one addressed to the State Government and the other to the Central Government, with request for the onward transmission of the other representation to the Central Government. He merely adverts to the fact that the State Government had taken all the necessary steps to deal with the representation made by the detenu to it. There is no explanation given for not forwarding the other representation to the Central Government.

4. In his supplementary affidavit dated October 6, 1981, Shri N. I. Ramanathan, Under-Secretary to the Government of India, Ministry of Finance, Department of Revenue, COFEPOSA unit, has disclosed that the State Government of Punjab, by its letter No. 9677/SDSB/S-5 dated September 23, 1981, forwarded the copy of the representation endorsed to the Central Government and that it was received in the Ministry of Finance on September 24, 1981. The said representation was considered by the Central Government and rejected on September 28, 1981. It is, therefore, quite clear that there was no delay on the part of the Central Government in dealing with the representation. The question is whether the unexplained delay on the part of the State Government in not forwarding the representation till September 23, 1981, i.e. for a period of 2 months and 15 days, renders the continued detention invalid.

5. The two questions canvassed in the petition are : (1) Whether there was any duty cast on the State Government to forward to the Central Government the representation for revocation of the order of detention under Section 11 of the Act. It is urged that the detenu has no right to simultaneously make a representation against the order of detention to the detaining authority under Article 22 (5) of the Constitution and an application for revocation of the order of detention under Section 11 of the Act; (2) Whether the power of revocation of an order of detention by the Central Government under Section 11 of the Act, is exercised only after the representation has been rejected by the State Government and the Advisory Board and the order of detention is confirmed by the State Government under Section 8 (f). Otherwise, it is said there would be conflict of jurisdiction. We are unable to accept any of these contentions.

6. The whole purpose of a representation that a detenu makes under Article 22 (5) of the Constitution read with Section 8 of the Act, is to secure revocation of the order of detention. It is evident from the scheme of the Act that the power of revocation is exercisable at two stages. In the first place, there is a duty cast on the appropriate Government, i.e. the Central Government or the State Government, as the case may be, to revoke the detention order under Section 8 (f) of the Act and cause the person to be released forthwith, where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention. Secondly, the Central Government, may, at any time, under clause (b) of sub-section (1) of Section 11 of the Act, revoke an order of detention that has been made by an officer of the Central Government or by a State Government. Under clause (a) thereof, the State Government may likewise exercise such power in relation to an order made by an officer of the State Government. Under Section 11 (1) (b) of the Act, the Central Government, therefore, has the overriding power to revoke a detention order, at any time, made by the State

Government, or an officer of the State Government, under sub-section (1) of Section 3 of the Act. That is, as it should be, as unable our federal structure the Center must always keep a vigilant eye in the matter of life and liberty of a citizen guaranteed under Article 21.

7. Ours is a Constitution where there is a combination of federal structure with unitary features while in a unitary State there is only one Government; federal State involves multi-Governments, namely, national or federal Government and the Governments of component States. A federal State, in short, is a fusion of several State into a single State in regard to matters affecting common interest leaving each component State to enjoy autonomy in regard to other matters. Under our Constitution, certain, powers vest in the Central Government leaving certain powers to its component units to exercise autonomy in spheres assigned to them in the Constitution itself. The component States are not merely delegates or agents of the federal Government. Both federal and State Governments draw their authority from the same source, the Constitution. The conferment of executive power on the States in relation to a subject with respect to which the legislatures of the States have no power to make a law under Article 258 (2) must necessarily be subject to the administrative control of the Union under Articles 256 and 257 (1), to the giving of such directions to the State as may appear to the Government of India to be necessary for that purpose.

8. The constitutional imperatives of Article 22 (5) enjoin that where the detenu makes simultaneously a representation to the detaining authority as well as an application for revocation under Section 11 of the Act, they must both be dealt with by the appropriate Governments at the same time, and there is no question of any conflict of jurisdiction. To illustrate, if the Central Government were to revoke an order of detention under Section 11 (1) (b) of the Act, there would be no representation for the State Government to consider, or to refer to the Advisory Board under Section 8 (b); nor will there arise any question of the Advisory Board submitting a report to it, or on receipt of such a report, confirming the order of detention under Section 8 (f). The other type of case would be where notwithstanding that the order of detention has been confirmed under Section 8 (f), the appropriate Government may, at any time, revoke the same under Section 11 of the Act. The power of revocation conferred on the appropriate Government under Section 11 of the Act is independent of the power of confirming or setting aside an order of detention under Section 8 (f).

9. Although it was earlier though that Section 14 of the Maintenance of Internal Security Act, 1971, which was in pari materia with Section 11 of the Act, did not confer any right or privilege on the detenu, there is a general consensus of opinion that the power of revocation conferred on the Central Government under Section 11 of the Act is a supervisory power, and is intended to be an additional check or safeguard against the improper exercise of its power of detention by the detaining authority or the State Government.

10. The power under Section 11 (1) (b) may either be exercised on information received by the Central Government from its own sources including that supplied by the State Government under Section 3 (2), or, from the detenu in the form of a petition or representation. It is for the Central Government to decide whether or not, it should revoke the order of detention in a particular case. The use of the words "at any time" in Section 11, gives the power of revocation an overriding effect on the power of detention under Section 3. Ordinarily, the Central Government would in a case like the present under the Act, like to await the Report of the Advisory Board under Section 8 (c), before taking any action under Section 11 (1) (b) but the circumstances may differ, and there may be a case where the Central Government finds that the order of detention passed under Section 3 is mala fide or constitutes an abuse of power on the part of the State Government or an officer of the State Government specially empowered in that behalf, it may "at any time" revoke the order of detention.

The detenu has therefore the right to approach the Central Government by a representation for revocation of his order of detention under Section 11 (1) (b) and when such a representation is made, the State Government has the corresponding duty to forward it to the Central Government for necessary action.

11. The making of an application for revocation to the Central Government under Section 11 of the Act is, therefore, part of the constitutional right a citizen has against his detention under a law relating to preventive detention. While Article 22 (5) contemplates the making of a representation against the order of detention to the detaining authority, which has to be referred by the appropriate Government to the Advisory Board constituted under Section 8 (a) of the Act, Parliament has, in its wisdom, enacted Section 11 and conferred an additional safeguard against arbitrary executive action. It is, therefore, idle to contend that the State Government had no duty to forward the representation made by the detenu to the Central Government for revocation of his order of detention under Section 11 of the Act. The State Government had, therefore, no business in revocation of the order of detention under Section 11 of the Act for a period of two months and 15 days. In *Rattan Singh v. State of Punjab*, there was, in that case, as here, a lapse on the part of the State Government in forwarding the representation simultaneously made by the detenu to the Central Government for revocation of the order of detention under Section 11. The Court struck down the order of detention on the ground that there was denial of the constitutional safeguard of the right of being afforded "the earliest opportunity of making a representation against the order as contemplated by Article 22 (5). Chandrachud, C.J., speaking for the Court, observed : (SCC p. 483, para 4).

Someone tripped somewhere and the representation addressed to the Central Government was apparently never forwarded to it, with the inevitable result that the detenu has been unaccountably right to personal liberty.

The learned Chief Justice went on to say : (SCC p. 483, para 4)

May be that the detenu is a smuggler whose tribe (and how their numbers increase !) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus. Section 11 (1) of COFEPOSA confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must apply the right in a detenu to make a representation to the Central Government against the order of detention. The failure in this case on the part either of the Jail Superintendent or the State Government to forward the detenus representation to the Central Government has deprived the detenu of the valuable right to have its detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu set free.

The decision in *Rattan Singh* case (1981) 4 SCC 481 is, however, distinguishable on facts. In that case, the representation made to the Central Government for revocation of the order of detention was not forwarded at all to the Central Government and, therefore, the continued detention of the detenu was held to be illegal. As against this, in the instant case, the representation made by the detenu was forwarded to the Central Government on September 23, 1981, i.e., after a lapse of 2 months and 15 days. The Central Government acted with great promptitude in dealing with the representation and found no ground to interfere with the order of detention. Shri N. I. Ramanathan,

Under-Secretary to the Government of India, Ministry of Finance, Department of Revenue, COFEPOSA unit, has revealed that the copy of the representation endorsed to the Central Government was received in the Ministry of Finance on September 24, 1981. The said representation was considered by the Central Government and rejected on September 28, 1981.

12. In the present case, there was, therefore, no denial of the right of making a representation to the Central Government for revocation of the order of detention under Section 11 of the Act, unlike in Rattan Singh case, (1981) 4 SCC 481. There is nothing but the unexplained delay on the part of the State Government and that by itself is not sufficient to invalidate the order of detention. The detenu was not deprived of the right of making a representation to the State Government, i.e., the detaining authority, as well as of the right of making a representation to the Central Government for revocation of the order of detention under Section 11 of the Act. The representations that he made were duly considered by the State Government and the Central Government. The contention that the unexplained delay on the part of the State Government is sufficient to invalidate the order of detention can hardly be accepted. The Court must look at the substance of the matter and not act on mere technicality.

13. We have no hesitation in repelling the contention that the power of revocation conferred on the Central Government under Section 11 is not attracted until the State Government has considered the representation made by the detenu and rejected it and until the Advisory Board has submitted its Report to the State Government. Under the Act, a detenu has the right to simultaneously make a representation to the detaining authority which has to be considered by the Advisory Board, as also the right to apply to the Central Government for revocation of the detention order under Section 11. It is implicit in the decision in Rattan Singh case, (1981) 4 SCC 481, that there was a duty case on the State Government to forward the representation to the Central Government forthwith and failure to do so may render the continued detention illegal. Failure to comply with the second condition does not make the order of detention valid, merely because there is compliance with the first. These considerations, however, do not arise in the present case.

14. We are also constrained to record our disapproval of the disdainful attitude displayed by Shri Kuldeep Singh Janjua, IAS, Joint Secretary to the Government of Punjab, Home Department. In his counter-affidavit there is no denial of the allegation made by the detenu and indeed, there is no explanation for not forwarding the representation to the Central Government till September 23, 1981. There is instead a statement to the effect :

..... the time imperative can never be absolute or obsessive. The occasional observations that each day's delay in dealing with the representation must be adequately explained are meant to emphasis the expedition with which the representation must be considered and not that it is a magical formula.

We are at a loss to appreciate the propriety of this observation. It betrays complete lack of awareness of the constitutional obligations imposed under Article 22 (5) and shows disrespect to the several decisions of this Court, laying down that matters where the liberty of the subject is involved, should not be treated in a cavalier fashion.

15. Subject to these observations, the writ petition must fail and is dismissed.

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