

Raghavendra Singh

Vs

Superintendent, District Jail, Kanpur and Others

Criminal Appeal No. 816 of 1985

(O. Chinnappa Reddy, V. Khalid JJ)

28.11.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. Special Leave granted.

2. The appellant, Raghavendra Singh alias Chhotey Raja is detained under the provisions of the National Security Act, 1980. The order of detention was passed on January 20, 1985 by the District Magistrate, Kanpur Dehat and the appellant was arrested on January 22, 1985 when the order of detention as well as the grounds of detention were served on him. The Government of Uttar Pradesh approved the order of detention on January 30, 1985 and reported the matter to the Central Government on January 31, 1985 under Section 3(5) of the National Security Act. A representation under Section 8 of the Act was made by the appellant on February 10, 1985 and it was rejected on February 13, 1985. On March 1, 1985, the Advisory Board's opinion was received by the State Government and on March 16, 1985, the State Government determined that the period of detention of the appellant should be one year. On March 14, 1985, the appellant made four representations, to the President of the Union of India, the Prime Minister, the Governor of Uttar Pradesh and the Chief Minister of Uttar Pradesh. Each of the representations was styled as "Representation for revocation/cancellation of detention order". The prayer in each of the representations spatially invoked Section 14 of the National Security Act which enables (i) the State Government to revoke an order of detention made by an officer specified by the State Government under Section 3(3) of the Act and (ii) the Central Government to revoke any order of detention whether made by the Central Government, State Government or an officer specified by the State Government. The representation addressed to the President was received by the President's Secretariat on March 18, 1985, while the representation addressed to the Prime Minister was received by the Prime Minister's Secretariat on March 19, 1985. It was on May 31, 1985 that the Central Government rejected his representation.

3. The main complaint of the petitioner in the High Court where he filed the writ petition out of which the present appeal arises on April 4, 1985 and before us in the appeal is that there was an enormous delay (75 days) in the disposal of his representation by the Central Government and for that reason alone his further detention was illegal and he was entitled to be set at liberty. The delay in the disposal of the representation by the Central Government is, indeed, not disputed, but what is claimed is that the representations though received in the President's Secretariat and the Prime Minister's Secretariat on March 18 and 19, 1985 respectively, were actually received in the Ministry of Home Affairs on May 25, 1985, and dealt with on May 31, 1985. It is stated that there was thus no delay at all in the Ministry of Home Affairs. The learned Additional Solicitor General, who

appeared for the Central Government, was unable to explain to us the cause for the delay in the President's and Prime Minister's Secretariats, but urged that under the Rules of Business, it was the Ministry of Home Affairs that was concerned with orders of detention under the National Security Act and as there was no delay in the disposal of the representations by the Ministry of Home Affairs the appellant could not complain of any delay in the consideration of his representation. The learned Additional Solicitor General also urged that the representation to the Central Government should have been addressed to the Ministry of Home Affairs and not to the President or the Prime Minister. According to him, the President and the Prime Minister receive thousands of memorials and representations from every part of the country regarding a multitude of affairs and the representations could not be expected to be considered as expeditiously as they would be considered had they been addressed to the appropriate Ministry. The explanation given by the learned Additional Solicitor General may justify part of the delay, but it certainly cannot justify the enormous amount of delay in this case. Under Section 3(8) of the General Clauses Act, the 'Central Government' means the President and a representation addressed to the President must, therefore be considered to be a representation properly addressed to the Central Government. Even so some allowance may be made for the time taken to forward the representation to the appropriate Ministry. Due allowance being made for the time which may ordinarily be taken for forwarding the representation from the President's Secretariat to the concerned Ministry, we are unable to say in the present case that there has been adequate explanation for the delay. In fact, no one has filed any affidavit to explain the cause for the delay in the President's and the Prime Minister's Secretariats. All that we know from the record before us is that the representations were received in the President's and the Prime Minister's Secretariats on March 18 and 19, 1985 and thereafter, after about two months and one week, the representations were received in the Ministry of Home Affairs. We have no information as to how these representations were dealt with in the President's and the Prime Minister's Secretariats. The learned Additional Solicitor General found himself at a loss to explain the delay and justify the detention. In view of the wholly unexplained and unduly long delay in the disposal of the representations by the Central Government, the further detention of the appellant must be held illegal and he must be set at liberty in the light of the judgments of this Court in *Sabir Ahmed v. Union of India* ((1980) 3 SCR 738 : (1980) 3 SCC 295 : 1980 SCC (Cri) 675), *Khatoon Begum v. Union of India* (AIR 1981 SC 1077 : (1981) 2 SCC 480 : 1981 SCC (Cri) 493) and *Sat Pal v. State of Punjab* (AIR 1981 SC 2230 : (1982) 1 SCC 12 : 1982 SCC (Cri) 46). The nature of the power of revocation conferred by statute on the Central Government under Section 11 of the COFEPOSA Act which in terms is similar to Section 14 of the National Security Act, was explained by this Court in *Sat Pal v. State of Punjab* (AIR 1981 SC 2230 : (1982) 1 SCC 12 : 1982 SCC (Cri) 46). in the following words : (SCC p. 18, para 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.

We must also add that this is not a case of repeated representations to the Central Government as was the case in *State of U.P. v. Zavad Zama Khan* (AIR 1984 SC 1095 : (1984) 3 SCC 505 : 1984 SCC (Cri) 425). In that case, it was held that where an earlier representation to the Central Government had been properly disposed of, the fact that the second representation to the Central Government was not so disposed of would not entitle the detenu to be released. The appeal is,

therefore, allowed and the appellant is directed to be set at liberty forthwith.

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