SUPREME COURT OF INDIA

Mahesh Kumar Chauhan alias Banti

Vs

Union of India and Others

Criminal Appeal No. 302 of 1990

(K. Jayachandra Reddy, S. Ratnavel Pandian JJ)

02.05.1990

JUDGMENT

S. RATNAVEL PANDIAN J. -

1. Leave granted.

2. This appeal is directed by the detenu, Mahesh Kumar Chauhan alias Banti, questioning the correctness of the judgment made in Criminal Writ Petition No. 657 of 1989, by the High Court of Delhi dismissing the petition as devoid of any merit. The above writ petition out of which this present appeal has arisen was filed by the appellant, Mahesh Kumar Chauhan, against the order of detention dated July 13, 1989, clamped upon him by the first respondent 1, Union of India in exercise of the powers conferred by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the Act"), with a view to preventing the detenu from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods.

3. The entire facts of the case are well set out in the grounds of detention and, therefore, we think that it is not necessary to reiterate the same.

4. Mr. Harjinder Singh, learned counsel appearing on behalf of the appellant, raised a variety of contentions one of which being that there is an inordinate and unexplained delay in considering and disposing of the representation of the detenu dated August 18, 1989, and as such the continued detention of the appellant is impermissible and unconstitutional as being violative of the mandatory provisions of article 22(5) of the Constitution of India.

5. In the counter-affidavit filed on behalf of the respondent before the High Court, the declarant, namely, Joint Secretary, Department of Revenue, Ministry of Finance, while refuting the allegation of the appellant that his representation has been dealt with in a 'cavalier manner' has stated that the petitioner has made his representation on August 21, 1989, and not on August 18, 1989, as alleged by the appellant and that it was received in the office of his department on August 23, 1989, and the same was forwarded to the concerned sponsoring authority on August 25, 1989. The sponsoring authority sent his comments only on September 11, 1989. Thereafter, the representation along with the comments was processed and put up before the Minister of State for Revenue who considered and rejected the same on September 15, 1989, subject to the approval of the Finance Minister. On September 18, 1989, the file was received back from the Finance Minister's office and the

memorandum was issued on September 19, 1989, rejecting the representation. Mr. Harjinder Singh submitted that the offices of the detaining authority and the sponsoring authority are within the metropolis of Delhi and that there is absolutely no explanation for the delay occasioned on the part of the sponsoring authority in sending his comments till September 11, 1989, though the representation was sent for comments to the said authority even on August 25, 1989, and that this considerable delay at the hands of the sponsoring authority stands unexplained thus vitiating the order of detention.

6. In support of the above contention, he placed much reliance on the decision of this court in Rama Dhondu Borade v. V. K. Saraf, Commissioner of Police ((1989) 3 SCC 173; AIR 1989 SCC (Cri) 520) to which one of us (Ratnavel Pandian J.) was a party. In the above cited decision, this court, after referring to the dictum laid down in Smt. Shalini Soni v. Union of India ((1980) 4 SCC 544; AIR 1981 SCC (Cri) 38) and some other decisions of this Court dealing with similar questions of delayed disposal of representation, has laid down the following proposition of law : (SCC pp. 179-80, para 19)

> "The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation with reasonable dispatch and to dispose of the same as expenditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in article 21 of the Constitution."

7. However, in the same decision, it has been pointed out : (SCC p. 180, para 20)

> "What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard".

8. We hasten to say in this connection that, in site of the fact that this court, in a series of decisions, has repeatedly and consistently laid down the rule in precise and clear terms that all the procedural safeguards prescribed under Article 22(5) of the Constitution of India should be scrupulously and strictly observed one of which is ingrained in our system of judicial interpretation, being that the detenu shall be afforded the earliest opportunity of making a representation against the validity of the order of detention clamped upon his and that representation should be considered and disposed of as expenditiously as possible.

9. How far this court has seriously viewed the culpable supine indifference, callousness and recalcitrant attitude on the part of the appropriate authorities while dealing with the representative at various stages and disposing of the same cause, considerable delay in prismatically reflected with enhanced intensity through a plethora of pronouncements of this apex court. We may appositely refer to a few.

10. Shelat J. in Khairul Haque v. State of West Bengal ((1969) 2 SCWR 529) (Writ Petition No. 246 of 1969 decided on September 10, 1969) after referring two earlier decision in Sk. Abdul Karim v.

State of West Bengal ((1969) 1 SCC 433) and Durga Show, In re ((1970) 3 SCC 696 : 72 Punj LR 910) has observed thus :

> "The fact that article 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicity mean that such representation must, when made, be considered and disposed of an expenditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

11. A constitution Bench of this court in Jayanarayan Sukul v. State of West Bengal, ((1970) 1 SCC 219 : 1970 SCC (Cri) 92) has highly deprecated the conduct of appropriate authorities in unduly and unreasonably delaying the consideration and disposal of a representation and stated as follows (SCC p. 224, para 18) :

> "The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at sake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities."

12. Sarkaria J. in Shaik Hanif v. State of West Bengal ((1974) 1 SCC 637 : 1974 SCC (Cri) 292) has expressed as follows (SCC p. 643, para 10)

> "It is the duty of the court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference on the part of the authorities entrusted with their application.

13. In Raisuddin v. State of U. P. ((1983) 4 SCC 537 : 1984 SCC (Cri) 16), it is pointed out (SCC pp. 540-41, para 4)

> "... if, on such examination, it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the court will undoubtedly treat it as a factor vitiating the continued detention of the detenu ..."

14. Chinnappa Reddy J. in Frances Coralie Mullin v. W. C. Khambra ((1980) 2 SCC 275 : 1980 SCC (Cri) 349) has expressed his view saying (SCC p. 280, para 5)

> "... no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination."

15. We do not like to swell this judgment by recapitulating all the pronouncements of this court on this point.

16. Now, the unchallengeable legal proposition that emerges from a host of decisions a few of which we have referred to above is that a representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expenditiously as possible; otherwise, the continued detention will render itself impermissible and invalid as being violative of the constitutional

obligation enshrined in article 22(5) of the Constitution and if any delay has occurred in the disposal of representation, such delay should be explained by the appropriate authority to the satisfaction of the court.

17. In spite of the weighty pronouncements of this Court making the legal position clear, it is still disquieting to note that, on many occasions, the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. We feel that, in case the appropriate authority in unable to explain personally the delay at various stages, then it will be desirable - indeed appropriate - for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay.

18. The next question is should or can the court, in the absence of any explanation, wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of a very serious nature as in the present case" ? Our answer would be "Not at all".

19. In this connection, it will be relevant to make a reference to the view expressed by Mathew J., speaking for the majority in Prabhu Dayal Deorah v. District Magistrate, Kamrup ((1974) 1 SCC 103 : 1974 SCC (Cri) 18), which is as follows (SCC p. 114, para 21)

> "We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history in insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

20. Reverting to the facts of the present case as submitted by learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on August 25, 1989, and the comments from the sponsoring authority were received by the Department on September 11, 1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in Rama Dhondu Board case ((1989) 3 SCC 173 : 1989 SCC (Cri) 520) (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in article 22(5) of the Constitutional of India rendering the impugned order invalid.

21. For the foregoing reasons, we set aside the order of the High Court, allow the appeal and direct the detenu to be set at liberty forthwith, unless his detention is required for some other cause.

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