

Julia Jose Mavely

Vs

Union of India and Others

Writ Petition (Criminal) No. 859 of 1991

(S. R. Pandian, R. M. Sahai, JJ)

22.10.1991

ORDER

1. The detenue, namely, Mrs Julia Jose Mavely, who is now lodged in the Central Prison, Thiruvananthapuram, has filed this petition under Article 32 of the Constitution of India challenging the validity of the order of detention passed by respondent 2, the State of Kerala in exercise of powers conferred by Section 3(1)(i) and 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') directing the petitioner/detenue to be detained and kept in custody in the abovesaid prison with a view to preventing the detenue from smuggling goods and engaging in transporting or concealing or keeping smuggled goods. The period of detention has been fixed for one year as per the order dated January 16, 1991 with effect from October 27, 1990. As the facts of the case which necessitated the detaining authority to pass this detention order, are well set out in the grounds of detention, we think that it is not necessary for us to reiterate the same. Challenging the validity of the order, the learned counsel appearing on behalf of the petitioner/detenue pressed only one contention that there has been undue and unexplained delay in disposing the representation, made by the detenue to respondent 1. The said contention as set out under ground No. VIII in the writ petition reads as follows :

"It is submitted that there is considerable delay in disposal of representation by the Central Government. The representation of the petitioner sent on November 23, 1990 (said to be dated November 27, 1990) was disposed of on January 3, 1991 after a delay of 1 month and 6 days. It is submitted that the delay in disposal of representation is in violation of the constitutional safeguard provided under Article 22(5) of the Constitution and therefore the continued detention of the petitioner is bad in law."

2. This ground is met by respondent 1 in his counter stating as follows :

"As regards ground No. VIII, it is submitted that the representation dated November 27, 1990 from the detenue was received in the COFEPOSA Unit only on December 4, 1990. That very day it was placed before the Joint Secretary, COFEPOSA, who directed that parawise comments may be called for from the sponsoring authority. A letter was issued to the sponsoring authority that very day asking for the comments. The comments were received on January 1, 1991. The officer concerned submitted the case file to JS (COFEPOSA) on January 3, 1991 who considered and rejected the same on that day. The detenue was informed of rejection of her representation by a memo issued on January 3, 1991 itself."

3. From a reading of the above statement made in the counter of respondent 1, it is clear that the Sponsoring Authority from whom the comments were called for, had delayed in sending the comments up to January 1, 1991 despite the fact that the comments were called for from him on December 4, 1990. Barring that, no explanation is forthcoming as to why the delay had occasioned at the hands of the Sponsoring Authority to send the parawise remarks or the comments to respondent 1. The learned senior counsel appearing on behalf of respondent 1 unsuccessfully tries to explain by stating that since the Sponsoring Authority was at a far away place i.e. Ernakulam, the delay had occasioned due to postal transmission and that if the postal delay is excluded there is actually no delay rendering the detention order invalid. But at the same time, he unhesitatingly states that on December 4, 1990 a letter calling for the comments was sent to the Sponsoring Authority by speed post. In our considered opinion, the above explanation now offered cannot be accepted for more than one reason. First, respondent 1 has not proffered such explanation in his counter. Secondly, even accepting this present explanation, the delay cannot be said to have been explained, because the postal transmission, according to the learned counsel was by speed post. Thirdly, no supporting affidavit is filed by the Sponsoring Authority who alone could explain the delay at his end. Respondent 1 thus, has failed to explain to undue delay of nearly 28 days in obtaining the comments by giving all necessary particulars. The learned counsel of respondent 1 relied upon two decisions namely (1) M. Mohamed Sulthan v. Joint Secretary, Government of India, Finance Department [(1991) 1 SCC 144 : 1991 SCC (Cri) 104 : JT (1990) 4 SC 41] and (2) Pratap Jeevanlal v. State of Maharashtra [1986 Cri LJ 1157]. In our opinion, the decision in Mohamed Sulthan case [(1991) 1 SCC 144 : 1991 SCC (Cri) 104 : JT (1990) 4 SC 41] will not be of any assistance to respondent 1 because the facts as set out in the counter filed in that case, showed that including the postal delay for communication from Delhi to Madras and back in obtaining the comments of the Sponsoring Authority, the time taken was from January 30, 1990 to February 12, 1990 and the necessary particulars appear to have been set out by specific pleading. The decision in Pratap Jeevanlal case [1986 Cri LJ 1157] cannot also be availed of by respondent 1 since in that case the contention advanced was that the detaining authority was not justified to take assistance from the sponsoring authority which contention was repelled by the High Court. Leave apart, the facts of that case reveal that there was not much delay in the Sponsoring Authority in sending his comments to the detaining authority. It appears that the comments called for on February 20, 1985 by the detaining authority were forwarded on March 1, 1985, to say, within 8 to 9 days. Hence, we hold that these two decisions relied upon by respondent 1 are of no help to the case of respondent 1.

4. Learned counsel appearing for the petitioner relied on the decision of this Court, namely, Rama Dhondu Borade v. V. K. Saraf, through Commr. of Police [(1989) 3 SCC 173 : 1989 SCC (Cri) 520] in which this Court after making reference to various decisions of this Court on the question of delay in disposal of representation, has observed as follows : (SCC p. 180, para 20)

"True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word 'as soon as may be' occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. 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. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

5. Coming to the facts of that case, there was a delay of 28 days in disposing the representation and the delay was sought to be explained stating that there was a delay of 14 days in obtaining certain further informations from the State Government. The Court, not accepting that explanation as satisfactory quashed the detention order as being violative of Article 22(5) of the Constitution.

6. The next decision relied upon on the side of the petitioner is Mahesh Kumar Chauhan v. Union of India [(1990) 3 SCC 148 : 1990 SCC (Cri) 434]. In that case the Sponsoring Authority caused a delay of 17 days in forwarding the comments and there was no explanation as to why such a delay had occurred. Having regard to those facts, this Court held that the unexplained delay had vitiated the order of detention.

7. As we have already pointed out there was an inordinate delay of nearly 28 days in forwarding the comments by the Sponsoring Authority which delay stands unexplained in the instant case.

8. In these circumstances, we are constrained to hold that the undue and unexplained delay in the present case in the disposal of the representation of the detenu has rendered the impugned order invalid.

9. In the result the impugned order of detention is set aside and the detenu is directed to be set at liberty forthwith unless the petitioner's detention is required for any other cause.

10. The writ petition is allowed.

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