M. L. Jose

Vs

Union of India and Others

Writ Petition (Crl.) No. 850 of 1991

20.11.1991.

ORDER

1. This writ petition is preferred by Mr M. L. Jose, the detenu herein, challenging the validity of the order of detention passed by respondent 2 (State of Kerala) in exercise of powers conferred by Section 3(1)(i) 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 smuggling goods".

2. The facts of the case which necessitated the detaining authority to pass this impugned order of detention are well set out in the grounds of detention and hence we do not intend to proliferate the same.

3. The learned counsel appearing for the detenu assails the validity and legality of the detention order on three grounds, namely, (i) that there has been a considerable delay in considering the representation of the detenu by the Central Government; (ii) that certain vital and material documents which might have influenced the mind of the detaining authority one way or other in drawing the requisite subjective satisfaction to take the decision of directing the detention of the detenu, were withheld by the sponsoring authority and (iii) that there has been unexplained delay in passing the impugned order from the date of the alleged prejudicial activities of the detenu in question, namely from May 24, 1990.

4. Now let us examine each of the above contentions advanced by the learned counsel and examine whether the impugned detention order is vitiated under any one of the above legal submissions.

5. According to the learned counsel, the representation dated February 12, 1991 (said to be dated February 25, 1991) was disposed of only on March 21, 1991 after a delay of 25 days which delay has rendered the continued detention of the detenu illegal as being violative of Article 22(5) of the Constitution of India. In the counter-affidavit filed on behalf of the respondents, the above submission is refuted, inter alia stating that the representation of the detenu is only dated February 25, 1991 and not February 12, 1991 and the same was received in the COFEPOSA Unit on March 4, 1991, that on the very same day, it was placed before the Joint Secretary (COFEPOSA) who wanted the parawise comments to be called for from the sponsoring authority, that a letter was issued on the same day to the sponsoring authority asking for his comments, that as the comments had not been received till March 14, 1991 a telex reminder was sent and that on receipt of the comments on March 21, 1991, the case file was considered by the Joint Secretary and the representation thereafter was rejected and hence the continued detention of the detenu cannot be said to be violative of the constitutional mandate.

6. The learned counsel appearing for the petitioner in support of his submission relied upon two

decisions, namely - (1) Rama Dhondu Borade v. V. K. Saraf, Commissioner of Police [(1989) 3 SCC 173 : 1989 SCC (Cri) 520] and (2) Mahesh Kumar Chauhan v. Union of India [(1990) 3 SCC 148 : 1990 SCC (Cri) 434].

7. In Rama Dhondu Borade case [(1989) 3 SCC 173 : 1989 SCC (Cri) 520], a representation was made by the detenu on September 26, 1988 and it was disposed of on October 27, 1988 and there was no proper explanation for the delay in considering the representation. Hence having regard to the facts of that case, the detention order therein was quashed. In that decision to which one of us (S. Ratnavel Pandian, J.) was a party, after referring to various decisions of this Court regarding expeditious consideration of the representation of the detenu without delay, the following observation was made : (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."

8. In Mahesh Kumar Chauhan case [(1989) 3 SCC 173 : 1989 SCC (Cri) 520], the representation was received on August 21, 1989 and it was rejected on September 19, 1989 and there was absolutely no explanation for a delay of 17 days in getting the comments on the representation from the sponsoring authority. In view of the unexplained delay, the detention order in that case was quashed.

9. In the present case, according to the respondent, the representation was received in the COFEPOSA Unit only on March 4, 1991 and the same was considered and disposal of on March 21, 1991 after the receipt of the comments from the sponsoring authority who was admittedly at Cochin in the Kerala State which is far away from Delhi, and, some postal delay might have occurred in transmitting the representation from Delhi to Cochin and thereafter the comments from Cochin to Delhi. On the face of the facts of the present case, in our considered opinion, it cannot be said that there was unreasonable delay in consideration and disposal of the representation by respondent 1 (Union of India). Therefore, the above two decisions relied upon by the learned counsel are of no assistance to the facts of the present case. Hence, the first contention is rejected.

10. The second submission has been based on the ground that the reply to the show-cause notice dated September 13, 1990 made by his wife (against whom also a detention order has been passed) has not been placed before the detaining authority. According to the learned counsel, had this document been placed before the detaining authority, probably it might have influenced the mind of the detaining authority one way or other in reaching the subjective satisfaction. This submission is answered by the respondent stating that the reply to the show-cause notice is one and the same as that of the retraction statement dated May 31, 1990 of the detenu's wife and that inasmuch as that retraction statement has been considered by the detaining authority before passing the detention order, the reply to the show-cause notice even if placed might not have in any way influenced the mind of the detaining authority. Be that as it may, we after scrupulously going through the entire

records are satisfied that the detaining authority has neither relied upon nor even referred to the reply to the show-cause notice. So the second submission of the learned counsel has no force. Learned counsel in support of this submission relied upon a decision in Kurjibhai Dhanjibhai Patel v. State of Gujarat [(1985) 1 Scale 964]. In our view, the said decision cannot be availed of because the facts therein are entirely different. In that case, the show-cause notice and the reply to the said notice sent by the detenu himself, which according to the Court were vital documents, have not been placed before the detaining authority. For the reason stated above, the second contention has to be repelled.

11. The third contention that there is unexplained delay in passing the impugned order has no force in the present case. Even according to the learned counsel for the petitioner, the detenu came to India only by the end of October 1990 that is after passing of the impugned detention order and till then the detenu was abroad.

12. For all the aforementioned reasons, we see no substance in any of the contentions advanced by the learned counsel and consequently dismiss this writ petition as devoid of any merit.

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