

Ram Sukrya Mhatre

Vs

R. D. Tyagi and others

Criminal Appeal No. 72 of 1992

(K. Ramaswamy, K. Jayachandra Reddy JJ)

23.01.1992

JUDGMENT

1. Special Leave granted. The appellant was detained under Section 3 of the National Security Act, 1980. The detaining authority found on subjective satisfaction, on the material placed before it, that the appellant is a desperate Goonda indulging in violent and terrorising activities at village Pisarve and its surrounding areas and that the appellant has created a reign of terror among the people in the village and the residents in the neighbourhood are apprehending danger to their lives and that they were constantly living under a shadow of fear. Thereby the public order has been affected. Instances in that regard were enumerated. Accordingly, the order of detention was passed and served it on the appellant. The grounds on which the subjective satisfaction was reached was communicated within the statutory period.

2. After the representation was rejected by the Board the appellant made a representation to the Central Government on July 6, 1991. It was received by the Central Government on July 15, 1991. The Central Government sought information from the State Government through their wireless message dated July 16, 1991. The State Government in turn sought the information from the detaining authority on July 24, 1991; and the comments and the material was forwarded by the detaining authority to the State Government on receipt whereof the State Government submitted the para wise comments to the Central Government on July 13, 1991. The Central Government received the information on August 6, 1991. The order was passed by the Central Government rejecting the appellant's representation on August 24, 1991 and was duly communicated on August 27, 1991.

3. Calling in question the order the appellant filed a writ petition in the High Court. Apart from other grounds, one of the contentions raised in the High Court was that the delay in disposal of the representation by the Central Government offend his rights under Art. 22(5) of the Constitution. The Division Bench in the impugned judgment dated September 18, 1991 rejected the contention. Thus, this appeal.

4. When the Special Leave Petition came up for consideration this Court directed the Central Government to keep the record available and that the matter would be disposed of at the notice stage itself. Thus now today, apart from the counter-affidavit filed by the detaining authority, the records of the Central Government are also made available by the learned Additional Solicitor General, Shri Altaf Ahmad. We have perused the records as well.

5. Shri Khanwilkar, learned counsel for the appellant has contended that in the counter affidavit filed by the Central Government no explanation was given for the delay caused from August 6, 1991 till August 24, 1991, the date on which the appellant's representation was rejected by the

Central Government. Unless satisfactory explanations is given by the Central Government for the delay of 18 days caused in disposal of the representation, the detenu is entitled to be released as his representation was unduly delayed. Wanton laches on the part of the Central Government in disposal of the representation offend his right to freedom guaranteed under Art. 22(5) of the Constitution.

6. It is settled law that right to representation under Art, 22(5) of the Constitution includes right to expeditious disposal not only by the State Government under the relevant provision of the statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or the State Government, as the case may be, has caused delay due to negligence, callous inaction, avoidable red tapism and undue protection by the authorities concerned. As stated earlier, expedition is the rule and delay defeats mandate of Art. 22(5). So the authority is obligated to explain the delay by either filing a counter affidavit by the officer concerned on behalf of the appropriate Government or by producing the record in dealing with the case. Unfortunately, in this case the delay was not properly explained in the counter-affidavit filed on behalf of the Central Government. Pursuant to the notice issued by this Court, the record has been produced before this Court. The note file discloses that on August 8, 1991 the officer concerned put up the note before the Deputy Secretary, who in turn has submitted the file on August 9, 1991 before the Joint Secretary. The Joint Secretary expressed his views on August 12, 1991 and on the same day the Secretary also disposed of the same and forwarded the file to the Home Minister. The Home Minister on consideration of the record, by his noting dated August 24, 1991 rejected the representation of the appellant and thereafter it was duly communicated on August 27, 1991.

7. This Court in *Abdul Salam alias Thiyyan v. Union of India* (1990) 3 JT (SC) 74 : (AIR 1990 SC 1446) to which one of us (K. Jayachandra Reddy, J.) was a member elaborately considered the entire case law on the question of delay in disposal of the representation by the Central Government and held that no hard and fast rule as to the measure of reasonable time can be laid down and each case has to be considered from the facts presented therein and that if there is no negligence or callous inaction or avoidable red tapism on the facts in that case, it does not warrant interference. The need to make a reference to all the decisions once over is thus obviated. We respectfully agree with the ratio therein.

8. *K. M. Abdulla Kunhi v. Union of India* (1991) 1 SCC 476: (1991 AIR SCW 362) the learned counsel for the appellant relied upon the ratio in paragraph 11. There is no controversy and it is well settled law that the constitutional right to make a representation under Art. 22(5) and by necessary implication it guarantees the right to proper consideration of the representation also.

9. In view of the facts placed before us, we have no hesitation to come to the conclusion that the representation of the appellant was disposed of expeditiously with least avoidable delay. In the circumstances, we find no infirmity in the order passed in the disposal of the representation by the Central Government.

10. The learned counsel further contended that the appellant was released on bail on February 11, 1991 and the order of detention was passed on April 26, 1991. In between there is no untoward act committed by the detenu creating any disturbance of the public order and this factor was not taken into account by the detaining authority. Consequently, the order of detention was passed mechanically without applying the mind by the detaining authority. In the counter affidavit filed by the detaining authority, it is clearly stated that the detaining authority had kept this fact also in view

arid that it was stated that the appellant was likely to indulge in similar acts in the near future. This is also a factor which was taken into account by the detaining authority in passing the detention order.

11. Accordingly, we find no infirmity in the order passed by the detaining authority. The appeal is accordingly dismissed. Appeal dismissed.

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