

Navungal Pathumma

Vs

Union of India and Others

Criminal Appeal No. 858 of 1998

(G. T. Nanavati, S. P. Kurdukar JJ)

21.08.1998

JUDGMENT

NANAVATI, J.

1. Leave granted.

2. Heard learned counsel for the parties.

3. In this appeal, the appellant is challenging the judgment and order passed by the High Court of Kerala in OP No. 7900 of 1997. The appellant is the wife of one M. Ahmmedkutty, s/o Kunhammedkutty against whom an order of detention was passed on 28-3-1995 by the Government of Kerala, on being satisfied that with a view to prevent him from abetting the smuggling of goods, it was necessary to make such an order. The said order was passed under Section 3 of the COFEPOSA Act. Pursuant to the said order, the appellant's husband was detained on 17-1-1997. Thereafter Mr. Mohile, Additional Secretary to the Government of India made a declaration under Section 9(1) of the Act.

4. The order of detention and his continued detention were challenged by the appellant before the High Court on the following three grounds :

(1) there was delay in executing the order of detention;

(2) there was no justification for passing the order of detention; and

(3) there was delay in considering the representations made by the detenu.

5. The High Court did not find any substance in any of these contentions and, therefore, dismissed the writ petition.

6. Mr. Raju Ramachandran, learned counsel for the appellant, is now challenging the order of detention and continued detention of the appellant's husband on the grounds that :

(1) the representation dated 4-2-1997 made by the detenu was not considered by the Additional Secretary to the Government of India before making the declaration under Section 9 of the Act.

(2) there was a delay in considering the representation made by the detenu by the Additional Secretary to the Government of India; and

(3) relevant documents pertaining to the detention of the detenu's brother were not supplied to or placed before the detaining authority.

7. Having heard learned counsel and considered the relevant material, we find that this appeal deserves to be allowed on the first two grounds raised by the learned counsel. It is not in dispute that the representation dated 4-2-1997 made by the detenu was received by the Ministry of Finance on 10-2-1997. It is also not in dispute that before making the declaration under Section 9 on 13-2-1997, the representation made by the detenu was not considered. In the affidavit filed by Mr. M. S. Negi, Under-Secretary to the Government of India before the High Court, it was stated as under :

"A copy of the detenu's representation dated 4-2-1997 (and not 30-1-1997) addressed to the Advisory Board, the Additional Secretary to the Government of India and Secretary to Home Department, Trivandrum forwarded by the Superintendent, Thiruvananthapuram vide his letter dated 4-2-1997 was received in COFEPOSA Unit on 10-2-1997. Since the proposal for issue of declaration had already been submitted to the Additional Secretary, the representation in question was not considered by the declaring authority."

8. This statement makes it clear that though the representation had reached the Additional Secretary, he did not consider it before making the declaration. The reason given by him is that by that time, proposal for making the declaration was already made. The representation made by the detenu was against the order of detention itself. It was therefore necessary to consider it before making the declaration. The decision whether the detention order deserved to be revoked or not was required to be taken before deciding the necessity of making the declaration. Merely because the representation was subsequently rejected cannot justify non-consideration of the representation at the time when it ought to have been considered. The reason for non-consideration of the representation before making the declaration being not sustainable, it has to be held that there was undue delay in considering the representation, rendering the continued detention of the detenu illegal.

9. We, therefore, allow this appeal and direct that the appellant's husband, Shri M. Ahmmedkutty be released forthwith unless his presence is required in jail in connection with some other case.