

S.M. Jahubar Sathik

Vs.

State of Tamil Nadu

Criminal Appeal No. 435 of 1999.

S. Saghir Ahmad and S. Rajendra Babu, JJ.

13.04.1999

JUDGMENT

S. Saghir Ahmad, J.

1. Leave granted.

2. The appellant has been detained in pursuance of an order dated 4.11.1997 passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, 'the Act'). This was followed by a declaration under Section 9(1) of the Act which was made on 27.11.1997. These orders were challenged by the appellant before the Madras High Court by a writ petition under Article 226 of the Constitution of India which was dismissed on 15.12.1998. It is against this judgment that the present appeal has been filed.

3. It is contended by the learned Counsel for the appellant that against the order dated 27.11.1997 passed under Section 9(1) of the Act, the appellant had made a representation to the Central Government on 8/10.12.1997. But the representation was rejected after an inordinate delay for which no reasonable explanation has been provided by the respondents. In the counter-affidavit filed before the High Court in this case, the respondents had sought to explain the delay as under :-

"9. With regard to averments made in Para 8(xxxviii) it is humbly submitted that the representation dated 8.12.1997 (actually dated 10.12.1997) was received in the office of the Department of Revenue on 15.12.1997 from the State Government of Tamil Nadu. The same was received in the Cofeposa Unit of the Ministry on 16.12.1997.

16.12.1997 The representation dated 10.12.1997 was forwarded to the Commissioner of Customs, Chennai for furnishing of parawise comments.

19.12.1997 The letter calling for proforma comments was received by the Assistant Commissioner of Customs (Cofeposa), Chennai.

20.12.1997

21.12.1997 Were closed holidays being Saturday and Sunday.

22.12.1997 Proforma comments were prepared and submitted to the Additional Commissioner of Customs for approval.

23.12.1997 Additional Commissioner approved the comments and the same were forwarded to Under Secretary (Cofeposa).

25.12.1997

27.12.1997

28.12.1997 Parawise comments were received from the Sponsoring Authority. On the same day clarifications were called for from the Section Officer (Cofeposa) by the Under Secretary (Cofeposa).

30.12.1997 Clarifications were provided and file resubmitted to Under Secretary (Cofeposa).

1.1.1998 The representation from the detenu dated 10.12.1997 and proforma comments dated 23.12.1997 from Customs Department, Chennai were placed in two separate files for consideration by the Additional Secretary (Administration) and Secretary (Revenue).

1.1.1998 Clarifications were again sought from the Customs Department, Chennai on certain points.

3.1.1998

4.1.1998 Were closed holidays being Saturday and Sunday.

6.1.1998 The Cofeposa Unit in Customs Department, Chennai, received the letter calling for clarifications.

7.1.1998 Clarifications prepared and submitted to Assistant Commissioner (Cofeposa) who submitted the same to Additional Commissioner of Customs, Chennai for approval.

9.1.1998 Additional Commissioner approved the clarifications and the same were dispatched to New Delhi.

10.1.1998

- 11.1.1998 Were closed holidays being Saturday and Sunday.
- 12.1.1998 Letter from Additional Commissioner of Customs, Chennai with clarifications received in the office of Joint Secretary (Cofeposa).
- 13.1.1998 Clarifications received in the Cofeposa Unit.
- 13.1.1998 The Section Officer (Cofeposa) submitted the file to Under Secretary (Cofeature).
- 14.1.1998 Clarifications were again sought from the Customs Department on certain points.
- 17.1.1998
- 18.1.1998 Were closed holidays being Saturday and Sunday.
- 20.1.1998 Letter asking for clarifications was received in the office of the Assistant Commissioner (Cofeposa), Chennai.
- 20.1.1998 Clarifications to the letter dated 20.1.1998 were prepared.
- 21.1.1998 Clarifications were forwarded to the Under Secretary (Cofeposa), New Delhi.
- 23.1.1998 Clarification from Additional Commissioner of Customs, Chennai was received in the Cofeposa Unit of the Ministry.
- 24.1.1998
- 25.1.1998
- 26.1.1998 Were closed holidays being Saturday, Sunday and Republic Day.
- 27.1.1998 The Under Secretary (Cofeposa) submitted the file to Joint Secretary (Cofeposa).

- 28.1.1998 The Joint Secretary (Cofeposa) submitted the file to Secretary (Revenue).
- 29.1.1998 The Secretary (Revenue) received the file.
- 30.1.1998 The Secretary (Revenue) considered the representation dated 10.12.1997 on behalf of the Central Government and rejected the same.
- 31.1.1998
- 1.2.1998 Were closed holidays being Saturday and Sunday.
- 2.2.1998 A Memo rejecting the representation was issued.

The representation dated 10.12.1997 was considered and rejected by the Secretary (Revenue) in 49 days of which 17 days were holidays and actual time taken for considering and disposing off the representation is only 32 days. The time taken for communication with the Sponsoring Authority at various stages of consideration is also included in the total time taken. It is humbly submitted that the representation dated 10.12.1997 was expeditiously and independently considered by the Secretary (Revenue) and disposed it off without any delay.

- 27.1.1998 The copy of representation dated 10.12.1997 along with parawise comments of the Sponsoring Authority dated 23.12.1997 and clarifications dated 9.1.1998 and 20.1.1998 furnished by the Customs Department, Chennai were placed in a separate file and submitted by Under Secretary (Cofeposa) to Joint Secretary (Cofeposa).
- 28.1.1998 Joint Secretary (Cofeposa) submitted the file to Additional Secretary (Administration).
- 29.1.1998 Additional Secretary (Administration) considered the representation dated 10.12.1997 and rejected the same.
- 31.1.1998
- 1.2.1998 Were closed holiday being Saturday and Sunday.

2.2.1998 File was received back from Additional Secretary (Administration). 2.2.1998 A Memo rejecting the representation dated 10.12.1997 was issued.

The representation dated 10.12.1997 was considered and rejected by the Additional Secretary (Administration) in 49 days, of which 17 days were holidays and the actual time taken for considering and disposing off of the representation is 32 days. The time taken for communication with the Sponsoring Authority at various stages of consideration is also included in the total time taken. It is humbly submitted that the representation dated 10.12.1997 was expeditiously and independently considered by the Additional Secretary (Administration) and disposed off without any delay."

4. We have considered the explanation and have also examined the original files. The respondents before disposing of the representation had sought clarifications thrice. A perusal of the original file placed before us reveals that the clarifications were sought in the usual bureaucratic style only for the sake of clarification without there being any need for it. In these circumstances, it cannot be said that the representation was disposed of with promptitude. On the contrary, even the explanation offered by the respondents in their counter affidavit filed before the High Court indicates the lethargic attitude with which the representation was taken up, dealt with and ultimately disposed of after seeking clarifications thrice on issues which did really not arise nor were there any necessity for seeking clarifications. The representation could have been disposed of without seeking clarification which obviously was sought to cover up the delay in prompt disposal of the representation.

5. Since the matter was not considered by the High Court in the right perspective, the impugned judgment cannot be sustained. The appeal is allowed. The judgment and order dated 15.12.1998 passed by the High Court is set aside and the detention order dated 4.11.1997 passed under Section 3(1)(i) of the Act as also the declaration made on 27.11.1997 under Section 9(1) of the Act are quashed with the direction that the appellant shall be set at liberty forthwith unless his detention is required in connection with some other case.

Appeal allowed.