

# SUPREME COURT OF INDIA

Kantilal Hirji Shah

Vs.

State of Tamil Nadu

(G.B. Pattanaik, Doraiswamy Raju and S.N. Variava JJ.)

26.04.2000

## ORDER

1. This is an application under Article 32 of the Constitution of India by a detenu under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA) assailing the order of detention dated 17.12.1999. The order of detention is assailed primarily on two grounds, namely, that the representation made to the Central Government as well as to the State Government have not been disposed of within a reasonable despatch as a result of which the constitutional right of the detenu under Article 22(5) of the Constitution has been infringed. When the case was listed before a Bench of two learned Judges of this Court, a contention was advanced that the very fact that on receipt of the representation of the detenu on 3.1.2000, the officers of the department called for a parawise comments from the sponsoring authority, and thereafter the matter was dealt with, would indicate that the matter has been dealt with mechanically without proper application of mind inasmuch as the representation having been made to the Secretary of the Department, it is only he who could have himself dealt with immediately or could not have asked for the comment, and in support of this contention a decision, of this Court in the case of R. Paulsamy v. Union of India and Anr. was pressed into service as the observation made in paragraph 6 of the aforesaid judgment to some extent supported the contention of the petitioner. The Bench thought it fit to refer the matter to a Bench of 3 learned Judges to examine the correctness of the aforesaid decision in R. Paulsamy's case. That is how the matter has been placed before us.

2. The learned Counsel for the petitioner contends that in view of the aforesaid decision of this Court the conclusion is irresistible that the detenu's representation had not been attended to immediately by the appropriate authority, and on the other hand, some subordinate officer called for report from the sponsoring authority, and as such there has been an infringement of his right under Article 22(5) of the Constitution. So far as the representation made to the State Government is concerned, the counsel contends that the manner in which the representation to the State Government has been dealt with, would indicate that there was absolutely no necessity to call for a report from the public (SC) Department, and therefore there has been no explanation for the period 7.1.2000 to 10.1.2000, and on account of such unexplained delay in disposal of the representation of the detenu, he is entitled to be released and the order of detention is liable to be quashed.

3. The learned Additional Solicitor General appearing for the Union of India contends that the enunciation of law made by this Court in Paulsamy's case does not appear to be correct inasmuch as in the functioning of the governmental system it would be necessary for the officers, who were subordinate to the detaining authority, to call for some informations from others without which the

representation of the detenu possibly cannot be disposed of effectively and so long as these officers can not take any decision on their own, it cannot be said that there has been an infringement of detenu's right under Article 22(5) merely because a subordinate officer called for some report from the sponsoring authority or any other appropriate authority. He places reliance on the decision of this Court in *Kamarunissa v. Union of India and Anr.* wherein this Court rejected the contention raised by the detenu by holding "the contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise". He also places reliance on the decision of this Court in *A. Sanjeevi Naidu Etc. v. State of Madras and Anr.* which deals with the question as to how Government functions and it has been held in that case that "it is always open to a Minister to call for any file in his Ministry and pass orders. He may also issue directions to the officers in his Ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates." These observations, of course, have no direct application to the case in hand, as in the present case, the officers concerned had taken no decision in the matter, and on receipt of the representation have merely called for the reports from the sponsoring authority which was absolutely necessary for effective disposal of the representation in question. So far as the State Government is concerned, Mr. Iyer appearing for the State contended that there has been no delay in disposal of the representation, and on the other hand, the manner in which the representation had been dealt with, would indicate that the concerned authorities have dealt with reasonable despatch, and in fact, ultimately the representation was disposed of on being considered by the Secretary of concerned department, and the Secretary of the Law Department as well as the Minister concerned on the very same day on 13.1.2000.

4. Having heard the learned Counsel for the parties the first question that arises for our consideration is whether the judgment of this Court in *Paulsamy's* case can be held to be correct in law. In paragraph 6 of the said judgment, this Court observed: "Examining the present case in hand, in the light of the ratio laid down above, we find that though the representation was received on 28.10.1998, comments of the sponsoring authority were called for on 29.10.98 which were received on 10.11.98. From the records we find that the order for calling for comments of the sponsoring authority was not passed by any of the officers empowered by the above orders of the Minister dated 7.7.1995. Therefore, we hold that the representation was dealt with in a routine manner and there was no application of mind by the competent officer as to whether it was necessary to call for comments of the sponsoring authority. In other words, this delay from 28.10.1998 to 10.11.1998 being uncalled for has to be regarded as unreasonable and, therefore, fatal in view of the ratio laid down by this Court in *Venmathi Selvam*. We, therefore, make the rule absolute, quash and set aside the impugned order of detention and direct that the detenu be released forthwith unless he is required to be kept in jail in connection with some other case." It appears to us that the very fact that on receipt of the representation a comment was sought for from the sponsoring authority by an officer who had not passed the order of detention was itself treated to be the grounds for the conclusion that the representation has been dealt with in a routine manner and there was no application of mind by the competent officer. We cannot subscribe to the aforesaid conclusion expressed by the learned Judges in the aforesaid case. When a representation is received in the department of the concerned authority it is not necessary for the authority to whom the representation is made, himself to make entry in the diary and immediately deal with the matter without taking the assistance of any other subordinate officers. A detenu under Article 22(5) has a

right that his representation should be considered by the appropriate authority as expeditiously as possible and there should not be unexplained delay in the matter of disposal of the representation. Subordinate Officer calling for comments from any other authority does not, in fact, deal with the representation nor does it express any view on the representation and acts clerically only to get the necessary comments for being considered by the persons on whom the power to dispose of the representation vest. That being the position, and taking into account the system through which the Government functions, it is difficult for us to sustain the conclusion of this Court in Paulsamy's case in paragraph 6 quoted above. In our view, therefore, the fact that on receipt of the representation, the Joint Secretary of the department called for the comments of the sponsoring authority immediately and on receipt of the same had forwarded to the higher authority which was dealt with by the appropriate authority, would not constitute any infringement of the constitutional right of the detenu under Article 22(5) nor it can be said that the representation has been dealt with mechanically without application of mind. We therefore hold that the law laid down by this Court in aforesaid case is not correct. Applying our mind to the manner in which the representation has been dealt with by the Central Government, as indicated in the counter affidavit, it is difficult for us to hold that there has been any unexplained delay in disposal of the representation, and therefore the contention of the learned Counsel for the detenu that the order of detention should be quashed on that score cannot be accepted.

5. So far as the contention with regard to the delay in disposal of the representation of the State Government is concerned, in paragraph 33 of the counter affidavit, it has been clearly indicated as to how the detenu's representation has been dealt with from day to day till it was finally disposed of by the Hon'ble Minister on 13.1.2000. We cannot accept the contention of the learned Counsel appearing for the detenu that it was not necessary by the concerned authority to call for the remarks of the public (SC) Department since that department is the detaining authority. Taking into account the facts that holidays intervened in between and the manner in which the representation has been dealt with by the concerned authority, we must hold that the representation has been dealt with utmost expedition and there has been no delay in the matter of disposal of the representation. In the aforesaid premises, we do not find any infirmity with the order of detention so as to be quashed by this Court under Article 32. The Writ Petition is accordingly dismissed.