SUPREME COURT OF INDIA

Ummu Sabeena

Vs.

State of Kerala & Ors.

Crl.A.No.2136 of 2011

(Asok Kumar Ganguly and Jagdish Singh Khehar,JJ.,)

17.11.2011

JUDGMENT

Ashok Kumar Ganguly,J.,

SLP(Crl.)No.7953 of 2011

1. Leave granted.

2. All these four appeals have been filed impugning an order dated 30th September, 2011 of the High Court of Kerala whereby the writ petitions filed for issuance of writs of Habeas Corpus, assailing the orders of detention dated 26th February, 2011 passed under the provisions of Conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the COFEPOSA') were rejected by the High Court.

3. It is not in dispute that the facts in all the cases are the same. Common ground is that an order of detention under Section 3 of the COFEPOSA was served on all the detenus on 10th March, 2011 on whose behalf petitions were filed before the High Court and therefore, their detention under the COFEPOSA commenced on and from 10th March, 2011. In these proceedings, we are not going into the merits of the grounds or the recitals thereof.

4. Before us, the detention of the appellants has been assailed on the question that the representations filed on behalf of the detenus were not disposed of in accordance with the mandate of Article 22(5) of the Constitution.

5. The admitted facts are that representations were made by the detenus on the 30th March, 2011 and the same were rejected by the State Government on 8th April, 2011. But the Central Government took time till 6th June, 2011 to reject the same. This delay on the part of the Central Government in the rejection of the detention representation has been sought to be explained on the basis of an affidavit filed on behalf of the Central Government.

6. Our attention has been drawn to the said affidavit which has been filed by one A.K. Sharma, Under Secretary to the Government of India in the Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, COFEPOSA Section, New Delhi. The purported explanation has been given in para 3 of the said affidavit. A perusal of para 3 of the affidavit reveals that the representation dated 30th March, 2011 was forwarded by the State Government of Kerala to the Central Government by their letter dated 16th April, 2011 and the same was received in the COFEPOSA Unit of the Ministry of Finance, Department of Revenue, New Delhi on 21st April, 2011. It has been observed that 22nd April, 2011 to 24th April, 2011 were holidays. Thereafter parawise comments on the representation were called for from the Additional Director General, Directorate of Revenue Intelligence and the detaining authority i.e. Government of Kerala on 25th April, 2011. The comments were received on 10th May, 2011. The comments of the detaining authority were received on 18th May, 2011. Then the COFEPOSA Section submitted the file along with all the relevant files and documents to the Deputy Secretary, COFEPOSA on 18th May, 2011 for examination. After detailed examination of the issues raised in the representations and comments of the Sponsoring Authority and the detaining authority, the Deputy Secretary submitted the file with comprehensive note to the Joint Secretary, COFEPOSA on 3rd June, 2011. 4th and 5th June, 2011 were Saturday and Sunday and ultimately, the said representations were considered and rejected by the Central Government on 6th June, 2011 as being devoid of merit.

7. Now the question is whether the aforesaid manner of consideration and rejection of representation by the Central Government is in accord with the principles laid down by this Court on this aspect in several cases?

8. It is clear in this case that the Central Government took about more than two months i.e. whole of April and May and ultimately rejected the representations only on 6th June, 2011 whereas representations were made on 30th March, 2011.

9. Reference in this connection may be made to the Constitution Bench decision of this Court in the case of *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India & Ors., State of Karnataka & Ors*[1]. The unanimous Constitution Bench, speaking through Justice K. Jagannatha Shetty, after noting the Constitutional provisions under sub-clauses (4) and (5) of Article 22, was pleased to hold that neither under the Constitution nor under the relevant statutory provision, any time limit has been fixed for consideration of representation made by a detenu. The time limit, according to the Constitution Bench, has been deliberately kept elastic. But the Constitution Bench laid emphasis on the expression 'as soon as may be' in sub-clause (5) of Article 22 and held that the said expression sufficiently makes clear the concern of the framers of the Constitution that the representation should be very expeditiously considered and disposed of with a sense of urgency and without any avoidable delay.

10. Considering the aforesaid provision, the Constitution Bench held that "there should not be any supine indifference, slackness or callous attitude in considering the representation.

Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

11. In support of the said conclusion, the learned Judges of the Constitution Bench relied on various other judgments mentioned in Para 12 at page 484 of the report.

12. In a subsequent judgment in the case of *Rajammal Vs. State of T.N. & Anr*[2]. a three Judge Bench of this Court, relying on the ratio of the Constitution Bench decision in Abdulla Kunhi, reiterated the same principles. From Para 9 at page 421 of the report, it would appear that in the case of Rajammal, the concerned Minister, while on tour, received the file after 9.2.1998 and then passed the order on 14.2.1998. No explanation was offered for this delay of about five days. This Court held that such delay has vitiated further detention of the detenu [see para 11 at page 422].

13. In another subsequent judgment of this Court in the case of *Kundanbhai Dulabhai Shaikh Vs. Distt. Magistrate, Ahmedabad & Ors.*[3], this Court while reiterating the aforesaid principles, found that representation was received by the Central Government on 21st September, 1995 and then comments were called for from the State Government and the same were received by the Central Government on 18th October, 1995 and the representation was rejected on 19th October, 1995. This Court held in para 22 of the judgment at page 204 that the internal movement of the file thus took four days and this Court found that this inaction in taking up the representation for six days is unexplained and the mere ground was that there were forty or fifty representations pending for disposal is not a valid justification. This Court found that such delay voids the continued detention of the detenus and the detention order was quashed.

14. Going by the aforesaid precedents, as we must, we hold that the procedural safeguards given for protection of personal liberty must be strictly followed. The history of personal liberty, as is well known, is a history of insistence on procedural safeguards.

15. Following the said principle, we find that delay in these cases is for a much longer period and there is hardly any explanation. We, therefore, have no hesitation in quashing the orders of detention on the ground of delay on the part of the Central Government in disposing of the representation of the detenus.

16. Learned counsel for the respondents has however urged that he is not disputing the principles laid down by this Court in the aforesaid judgments but he submitted that in the instant case, the Habeas Corpus petition filed before the High Court was not to quash the detention on the ground of delay and inasmuch as it could not have been so prayed for as the writ petition was filed prior to the rejection of the representation by the detenus.

17. Learned counsel for the Union of India further argued that the question of delay has not been urged before the High Court.

18. Taking up the second objection first, we find that the question of delay was urged before the High Court as it appears from Pages 6 and 7 of the impugned judgment. But, insofar as the question of technical plea which has been raised by the learned counsel on the question of prayer in the Habeas Corpus petition is concerned, we are constrained to observe that in dealing with writs of Habeas Corpus, such technical objections cannot be entertained by this Court.

19. Reference in this connection may be made to the Law of Habeas Corpus by James A. Scott and Charles C. Roe of the Chicago Bar [T.H. Flood & Company, Publishers, Chicago, Illinois, 1923] where the learned authors have dealt with this aspect in a manner which we should reproduce as we are of the view that the same is the correct position in law:

> "A writ of habeas corpus is a writ of right of very ancient origin, and the preservation of its benefit is a matter of the highest importance to the people, and the regulations provided for its employment against an alleged unlawful restraint are not to be construed or applied with overtechnical nicety, and when ambiguous or doubtful should be interpreted liberally to promote the effectiveness of the proceeding. *[Ware v. Sanders,*[4]]".

20. In this connection, if we may say so, the writ of Habeas Corpus is the oldest writ evolved by the Common Law of England to protect the individual liberty against its invasion in the hands of the Executive or may be also at the instance of private persons. This principle of Habeas Corpus has been incorporated in our Constitutional law and we are of the opinion that in a democratic republic like India where Judges function under a written Constitution and which has a chapter on Fundamental Rights, to protect individual liberty, the Judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same is by way of exercise of power by the Court by issuing a writ of Habeas Corpus.

21. This facet of the writ of Habeas Corpus makes it a writ of the highest Constitutional importance being a remedy available to the lowliest citizen against the most powerful authority [see Halsbury, Laws of England, Fourth Edition, Volume 11, para 1454].

22. That is why it has been said that the writ of Habeas Corpus is the key that unlocks the door to freedom [see The Common Law in India-1960 by M.C. Setalvad, page 38].

23. Following the aforesaid time-honoured principles, we make it very clear that if we uphold such technical objection in this proceeding and send the matter back to the High Court for reagitation of this question, the same would deprive the detenus of their precious liberty, which we find, has been invaded in view of the manner in which their representations were unduly kept pending. We, therefore, overrule the aforesaid technical objection and allow these appeals.

24. We direct that the detenus should be set at liberty forthwith unless they are required to be detained in connection with any other case.

25. The appeals are accordingly allowed.

Judgment Referred.

[1] *(1991) 1 SCC 0476*
[2] *(1999) 1 SCC 0417*
[3] *(1996) 3 SCC 0194*
[4] *146 Iowa, 233, 124 N.W. 958*