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Court : Karnataka

Decided On : Feb-21-1983

Reported in : ILR1985KAR536; 1984(1)KarLJ82

Judge : M.N. Venkatachaliah and ;K.A. Swami, JJ.

Acts : [Constitution of India](#) - Article 22(5); Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Sections 3(1)

Appeal No. : W.P. No. 5 of 1983 (H.C.)

Appellant : Ashok Kumar

Respondent : State of Karnataka

Advocate for Def. : R.N. Narasimhamurthy, Adv.

Advocate for Pet/Ap. : G. Chander Kumar, Adv.

Disposition : Petition allowed

Judgement :

Venkatachaliah, J.

1. This Petition for a Writ of Habeas Corpus is moved by Ashok Kumar on behalf of his brother-H.C. Ravindra, who is detained pursuant to the order of detention

No. HD 60 SDF 82 dated 17th December 1982 made by the State of Karnataka under Section 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred to as the 'Act'). The order reads :

ORDER

WHEREAS, the Government of Karnataka are satisfied with respect of the person known as Sri H.G. Ravindra@H.G. Ravi & Ravi kumar & H.Raju. S/o H. Gangadharappa of Davangere, Karnataka State that with a view to preventing him from engaging in concealing and transporting smuggled goods, it is necessary to make an order directing that the said Sri H.G. Ravindra @ H.G. Ravi @ H.Raju be detained.

NOW, THEREFORE, in exercise of the powers conferred by Section 3(l)(iii) of the conservation of Foreign Exchange and Prevention of Smuggling Activities Act. 1974, the Government of Karnataka hereby direct that the said Sri H.G. Ravindra @ H.G. Ravi @ Ravi kumar @ H. Raju' be detained and kept in custody in the Central Prision, Bangalore.'

2. In Annexure 'B' grounds for detention are set out. The two incidents on the basis of which the detaining authority is stated to have been satisfied as to the need for detention are these.

First, that on 8-1-1982 at about 2 A.M., at Davangere Bus Stand, Central Excise authorities intercepted the detenu when he alighted from the incoming bus from Bombay and found him carrying 53 wrist watches of foreign origin valued at Rs. 17,800/.

The second incident is stated to have occurred on 9-4-1982. On that day at about 9 A.M., the Central Excise Authorities intercepted the detenu near Kasturi Hotel, Club Road, Belgaum, and in a gunny hand-bag covered with a newspaper the detenu was found carrying 8 pieces of what are referred to as 'Sanyo Ultra Compact Cassette Car Stereo Players' made in Japan, valued at Rs. 11,200/-.

3. Upon issue of rule-nisi, learned Advocate-General appeared for the detaining-Authority; produced a counter of the Secretary to Government, Home Department and caused production of the relevant records. We have heard Sri Chanderkumar, Learned Counsel for the Petitioner and the learned Advocate-General for the State.

4. Though a number of contentions are urged at the hearing, we thought, for the purpose of this case, it would be sufficient if we examined only two of them. The first ground urged is that there is an infringement of the detenu's rights under Article 22(5) of the Constitution. In that there has been an unreasonable and unexplained delay in considering and disposing of the representation made by the detenu against the detention. The second ground is that, admittedly, the later of the two incidents occurred on 9-4-1982 and the order of detention, made as it has come to be on 17-12-1982 more than 8 months thereafter, is rendered infirm in law and stands vitiated.

5. Law of detention confers extraordinary powers on the executive to detain a person without recourse to the ordinary laws of the land and to trial by Court. Such law has to be strictly construed. Scrupulous and extreme care must be manifest in the action of the executive exercising these extraordinary powers touching personal liberty to see that executive action, strictly and meticulously conforms to the provisions, both constitutional and statutory, operating as safeguards. The satisfaction for detention is a subjective satisfaction. The truth of the factual foundations on which the subjective satisfaction rests is not amenable to judicial scrutiny. Having regard to the pre-eminent position personal liberty occupies in the constitutional scale of values. Courts in discharge of the constitutional mandate to protect this,--perhaps, the most precious--right, insist upon a rigorous adherence to procedure and have evolved certain objective and legal tests of the subjective satisfaction.

6. One of the twin rights under Article 22(5) of the Constitution of the person sought to be detained is the right to be enabled to make, at the earliest opportunity, a representation against the order of detention. As concomitant of this right, the detenu has, by necessary implication, the right to have his representation

considered and disposed of most expeditiously. The detaining authority is under a corresponding constitutional obligation to consider and dispose of the representation at the earliest. Any unreasonable or unexplained delay violates the constitutional pledge and by itself, without more, vitiates the order of the detention.

On 19-1-1983 the detenu made a representation through the Jail Authorities. This was received at the Home Ministry on 20-1-1983. On the same day, the representation was forwarded to the Collector of Central Excise and Customs Bangalore, for his para wise comments. On-22-1-1983 the para wise comments of the Collector of Central Excise and Customs were received back at the Home Ministry. 22-1-1983 was a Saturday and the following day, the 23rd a Sunday. The Home Department put-up a draft of the order on the representation and of endorsement to be issued to the detenu for approval. Between the dates 24-1-1983 and 28-1-1983 there was no progress. The drafts were placed before the Secretary and Commissioner for Home Affairs only on 28-1-1983. The Home Secretary, indeed, expressed concern over this delay and commented on it. He however, made a note that in view of the remarks of the Collector of Central Excise the file be submitted to the Chief Minister. The Law Department was requested to see the draft also. The file was put-up to the Chief Minister only on 6-2-1983 for orders. The Chief Minister approved the draft-order on 6-2-1983. The order rejecting his representation was communicated to the detenu on 8-2-1983. The ground as to unreasonableness of the time taken to dispose of the representation was taken in the Additional Statement of facts filed on 9-2-1983.

Learned Advocate-General urges that the time taken between the date of representation and the communication of its rejection was hardly 19 days, which cannot, in the circumstances of the case, be held to violate Article 22(5) and thus vitiate the detention. It is no doubt true that there cannot be any hard and fast rule as to the time that may be necessary to consider and dispose of the representation of a detenu. Having regard to the safeguards-both constitutional and statutory-the detaining authority must satisfactorily explain any delay in the consideration and disposal of the representation of the detenu. The Detaining Authority must show that there was no unreasonable delay in the disposal of the detenu's representation. The obligation of the executive to justify the detention,

when the detention is under judicial review, includes this obligation as well. If there is unreasonable delay in considering such representation, it would have the effect of invalidating the detention.

Learned Advocate-General, placed reliance on the decision of the Supreme Court in *Fitrat Raza Khan v. State of U.P.*, : 1982 CriLJ338 where the Supreme Court held that in a case where the representation made by the detenu on 8-8-1981 was duly considered by the State Government at all levels and ultimately rejected on 24-8-1981, it could not be said that the matter suffered from unreasonable delay.

In the case before the Supreme Court the representation though dated 8-8-1981 was actually handed over to the Superintendent, Central Jail, Moradabad on 10-8-1981 and on the same day it was sent to the District Magistrate. The District Judge forwarded it along with his comments to the Home Secretary on 13-8-1981. It was received in the Home Department on 14-8-1981. But it could not be attended to on 15-8-1981 which happened to be the Independence Day, and on the 16th as it was Sunday. The representation was scrutinised in the Secretariat for 3 days between the 17th, 18th and the 19th August 1981, and the nothings on the file were made. The file was perused by the Joint Secretary, Home Department, on 19th August 1981. On August 20 the Law Department was consulted. The file was placed before the Home Secretary on August 21, who placed it before the Chief Minister. The Chief Minister took two days to study the file and ultimately made an order rejecting the representation on August 24.

In the present case the picture of the sequence of events is different. There is no satisfactory explanation for the delay between 24-1-1983 and 28-1-1983 and then again from 28-1-1983 to 3-2-1983 at which latter period the file was said to be pending in the Law Department. On a perusal of the notings on the file, we cannot say that the delays were shown to be reasonable and justified. The Law Department had been asked to see the draft. The Home Secretary has, on 16-2-1983, filed an additional counter affidavit on this aspect in which he has this to say :

'3. The contention of the detenu that there has been an inordinate delay in disposing of the representation, is not tenable. The copy of the representation

made by the detenu was received on 20-1-1983 and immediately the matter was referred to the Collector of Central Excise & Customs, Bangalore and on receipt of information from the office of the Collector of Central Excise on 22-1-1983, the papers were processed and after obtaining the order of the Detaining Authority on 6-2-1983, the endorsement in question was communicated by the Under Secretary to Government, Home Department, to the detenu on 7-2-1983 itself. Thus there is no inordinate delay in the disposal of the representation as contended by the Petitioner'.

This explanation is in general terms. It does not say why 6 days were required for the Law Department to see the file We find from the notings that not only there has been a delay between 24-1-1983 and 28-1-1983 which has not been satisfactorily explained and shown to be reasonably requisite but also the time from 29-1-1983 to 3-2-1983 cannot be said to have been satisfactorily explained. All that is stated is that from 22-1-1983 to 6-2-1983 papers were being processed. We are constrained to hold that the delays have not been shown to be reasonable and, have not been satisfactorily explained. The detention gets invalidated by this infraction of Article 22(5) of the Constitution.

7. The second contention of Sri Chander Kumar is that there has been an unreasonable and unexplained delay in making the order of detention. It is relevant to note that the later of the two incidents took place on 9-4-1982. The order of detention itself was made on 17-12-1982 after a period of 8 months and 8 days.

The basis of the subjective satisfaction of the detaining authority is that the nature of the past prejudicial activities of the detenu brought to its notice, justifies a reasonable outlook for the future as to the proclivity of the detenu for similar prejudicial activity in the future also. In the present case the detaining authority has taken note of the two instances of 8-1-1982 and 9-4-1982 and claims to be satisfied the detention has become necessary with a view to preventing the detenu from engaging in concealing and transporting smuggled goods. There ought, therefore, to be some rational nexus between the quality of the past acts and the subjective satisfaction on the part of the detaining authority that the detenu is likely

to indulge in similar prejudicial activity in future. The past acts must be susceptible of such prognostication. If there is an inordinate delay between the acts imputed to the detenu and the order of detention, then the rationality of the nexus tends to snap. This is where a reasonable explanation for the delay becomes relevant and material. If there is an unexplained delay, the order of detention becomes bad on the ground that there is really no application of the mind of the detaining authority and, therefore, there is no genuine subjective satisfaction at all. This may be on account of the fact that the past acts of the detenu are so stale that their susceptibility for prognosis for the future ceases or that the order of detention made after such unexplained delay does not admit of being shown to have been made after an application of the mind in a real sense. The order, itself, may then be ultra-vires, there being no real connection between the act on the one hand and the objects sought to be achieved by the detention having regard to the objects sought to be achieved by the law of detention.

In the counter-affidavit filed by the Home-Secretary the delay is sought to be explained stating that, the detenu was masquerading and operating under different names ; that he had not disclosed his real identity both on 8-1-1982 when the first incident occurred and on 9-4-1982 when the second incident occurred, and that it took considerable time to find out his true identity as the common figure concerned in both the cases. It is contended that on the two occasions the detenu gave different names and addresses and that it was only on 27-7-1982, for the first time, that the authorities were able to establish the identity of the detenu as the common person concerned in both the cases of 8-1-1982 and 9-4-1982 respectively. This was, seemingly, a plausible explanation.

But Sri Chander Kumar produced an affidavit of the Petitioner in which it was sought to be pointed out that Sri D. Ananth Das, Inspector of Central Excise who effected the seizure of the alleged contraband from the detenu on 8-1-1982 was present in Belgaum for purpose of identification of the detenu on 13-4-1982 when the detenu's statement was recorded in connection with the incident of 9-4-1982. In response to the contents of this affidavit, Learned Advocate-General submitted that this statement was true. Advocate-General, with his usual fairness, also brought to our notice that on 24-1-1982 itself the Assistant Collector of Central

Excise, Belgaum, had made a report to the Collector of Central Excise to the effect that the person concerned in both the incidents of 8-1-1982 and 9-4-1982 respectively was one and the same. In the light of this disclosure, the claim that it was for the first time on 27-7-1982 the identity of the detenu as the person concerned in both the events was known to the authorities wears thin. Learned Advocate-General, however, stated that the Collector could be imputed with this knowledge only on 28-4-1982 when he received the letter dated 21-4-1982 from the Assistant Collector, and that as preventive detention was a serious matter the Collector did not want to act in haste and wanted to eliminate any possibility of mistake of identity in the matter and directed that the information be put to and cross-checked with the detenu himself. That is why, says Learned Advocate-General, the statement of 27-7-1982 of the detenu came to be recorded.

It appears to us that if in the month of April 1982 the Collector desired a further verification, it is not known and it is not explained--why such verification was delayed till the end of July, 1982. No satisfactory explanation is forthcoming on this aspect. It is no doubt true that delay, by itself, does not vitiate the detention; but when the delay is such as to take away the rational nexus between the grounds on which the subjective satisfaction is sought to be reached and the objects to be served by the detention, the delay invalidates the detention. In the circumstances of the present case, we are constrained to conclude that the delay between 28-4-1982 when the Collector received the report of the Asst. Collector and 17-12-1982 when the actual detention came about is unreasonable and is not satisfactorily explained. The detention must fail on this ground also.

I. In the result, for the foregoing reasons, we allow this Petition; quash the impugned order of detention and direct that the detenu be set at liberty forthwith. The detenu is on parole. He need not surrender back at the Central Jail, Bangalore, on 24-2-1983 as directed in the order enlarging, him on parole. Conditions of the parole stand cancelled. Ordered accordingly.