

Arulsamy Sabastian, Madras Vs. Secretary to Govt. (Political General Administration (Law and Order-ii)) Department, Govt. of A.P., Hyd.

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Court : Andhra Pradesh

Decided On : Aug-30-1997

Reported in : 1998(2)ALD812; 1998(1)ALD(Cri)482; 1998(1)ALT(Cri)149; 1998CriLJ1516

Judge : Y. Bhaskar Rao and ;V. Rajagopal Reddy, 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. 697 of 1997

Appellant : Arulsamy Sabastian, Madras

Respondent : Secretary to Govt. (Political General Administration (Law and Order-ii)) Department, Govt. of A.P.

Advocate for Def. : Mr. B. Adinarayana Rao, Adv.

Advocate for Pet/Ap. : Mr. D. Panduranga, Adv.

Judgement :

ORDER

Y. Bhaskar Rao, J.

1. The petitioner-Arulsamy Sebastain filed the writ petition assailing his detention orders dated 1-11-1996 passed by the first respondent -- The Secretary to Government (Political General Administration) (Law & Order -II) Department, Government of A.P.,Hyderabad under Section 3(1) (i) and (iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (as amended) (for short 'the Act')

2. It is stated that when the petitioner boarded the Indian Airlines Flight IC 591 on 16-9-1996 at about 10-00 p.m. and when the flight was to take off, a few D.R.I. Officers came to the flight and off loaded him and brought him down. The petitioner was travelling to Sharjah for getting visas for various jobs at Gulf Countries. The petitioner had been four times earlier to Sharjah. The D.R.I. Officers had falsely alleged that he had been illegally exporting foreign currency through Hyderabad Air Port, Hyderabad and further alleged that they have recovered foreigncurrency from a bag brought by him, but the petitioner denied the said allegation. It is further stated that the D.R.I. Officers extorted a false and incriminating statement as though one K.B.Abdullah and Jahir came along with him from Madras by train. The petitioner further stated that he was arrested and produced before the Magistrate on 18-9-1996 and was remanded to judicial custody. Thereafter the petitioner and odier persons were ordered to be released on bail on 16-9-1996 by this Court, Accordingly he was released on bail on 19-10-1996 on the condition that he should stay in Hyderabad till further directions and he should furnish his address of stay at Hyderabad and- should not move from the said address without giving

proper intimation to the D.R.I. Officers and also further directed to report to the D.R.I Department on 10th and 20th day of every month between 4.00 P.M and 6.00 P.M. until further orders. The petitioner has complied with the directions imposed by the High Court. It is further submitted that when the petitioner went to the D.R.I. Office on 01-11-1996 to report his presence as per the directions of the High Court the detention order was served on the petitioner by the first respondent. The petitioner received ten copies of the representation prepared under his instructions from his wife. His representations were forwarded on 9-12-1996 and were received by him on 11-12-1996 and accordingly the Jail authorities forwarded the representation to the concerned authorities on 12-12-1996. The representation was received by the first respondent on 13-12-1996. The Advisory Board met on 17-12-1996 and his representation was rejected by the Advisory Board. It is contended that there is abnormal delay in disposing of the representation by the first respondent and delay is not properly explained. Therefore, on that ground itself the detention order has to be quashed.

3. On the other hand, learned Government Pleader contended that there is no delay on the part of the respondents in considering the representation sent by the petitioner and the representation was considered within the shortest possible time and the respondents have not violated any of the provisions of the Act or the [Constitution of India](#). There are no merits in the writ petition and the writ petition is liable to be dismissed.

4. To appreciate the above contention, it is relevant to state certain facts. The detention order was passed on 01-11-1996. Petitioner was taken into custody on 01-11-1996 and was lodged in the Central Prison, Chenchalguda, Hyderabad. The petitioner submitted a representation to the jail authorities on 12-12-1996. The same was forwarded by the jail authorities to the concerned on 13-12-1996. The representation was received by the first respondent on 13-12-1996. The said representation was forwarded to the D.R.I. for remarks on 13-12-1996. Remarks were received on 16-12-1996. The Advisory Board met on 17-12-1996 and rejected the representation of the petitioner on 1-1-1997. first and Second respondents received the representation on 13-12-1996. The representation was sent to DRI on 13-12-1996 for remarks. Para-wise remarks were received on 16-12-1996. The Advisory Board meeting was conducted on 17-12-1996 and the concerned staff attended the said meeting on 17-12-1996. The jail authorities received rejection memos on 03-1-1997 and the jail authorities addressed a letter on 4-1-1997 to the detaining authority regarding service of rejection memo.

5. The contention of the petitioner is that from 12-12-1996 until the order of rejection of the representation, the delay is not properly explained. There is enormous delay which is fatal and the fundamental right guaranteed under Article 22(5) of the [Constitution of India](#) is violated. Therefore, the detention order has to be quashed.

6. Learned Government Pleader contended that they have specifically stated in the counter-affidavit that how quickly the proceedings have taken place and there is no delay. In that counter-affidavit of the first respondent, it is stated that the representation of the petitioner was received by the respondent on 13-12-1996. The said representation was sent to the Directorate of Revenue Intelligence for remarks on the same day. It is submitted that 14-12-1996 and 15-12-1996 were the public holidays being second Saturday and Sunday. Parawise remarks were received on 16-12-1996 along with the English translated copy of the representation of the petitioner. On 17-12-1996 the meeting of the Advisory Board was conducted and the concerned staff attended the meeting alongwith records. Hence the representation of the petitioner could not be considered on 17-12-1996. 22-12-1996 was Sunday; and 24-12-1996 was Optional Holiday, between the period from 18-12-1996 and 24-12-1996. Seven fresh detention orders were passed by the Collector and District Magistrate, Prakasham district and the Commissioner of Police and Additional District Magistrate, Vishakapatnam and they were due for approval by the Government on 22-12-1996 and 26-12-1996 respectively. They have been attended by the Section and the Government has to approve the above said orders of detention within 12 days from the date of passing of the said order as required under the Act. It is submitted that the meeting of the Advisory Board has been fixed on 30-12-1996 for consideration of certain other cases for which material has to be prepared by the same staff. Apart from the case of the petitioner, the

Advisory board which met on 17-12-1996 reviewed three other cases for which material has to be prepared by the very same staff. The concerned section submitted two files one to the Detaining Authority through the Joint Secretary to Government (Law and Order) and another to the Chief Secretary to the Government through the Joint Secretary to the Government (Law and Order). The said files were returned to the section on 01-10-1997 after passing appropriate orders.

7. The facts stated supra show that from 16-12-1996 to 24-12-1996 no action was taken on the representation of the petitioner. The averments made in the counter-affidavit show that they were not able to consider the representation because there was work load of confirming other detention orders and to attend the Advisory Board meetings regarding other cases etc. Therefore, they were not in a position to consider the case of the petitioner immediately and thereafter the representation of the petitioner was attended to and orders were passed. Thus, it is evident that, even according to the counter-affidavit, as the section staff and officers were attending to other detention orders, they were not able to dispose of the representation of the petitioner and therefore, it cannot be said that there is delay. We are not able to agree with the said contention.

8. It is a settled principle as laid down by the Supreme Court and this Court that the authorities have to dispose of the representation as early as possible as the right is guaranteed to the detenu under Article 22(5) of the [Constitution of India](#). If there is any infraction, even in the least measure, the detention order has to be quashed.

9. In *Aslam Ahmed v. Union of India*, : 1989 CriLJ1447 the Supreme Court held that though the detenu had handed over the representation to the Superintendent of Central Prison on 16-6-1988, the latter has callously ignored it and left the same unattended for a period of seven days and forwarded the same to the Government at his pleasure on 22-6-1988 and that the Superintendent of Central Prison has not given any satisfactory and convincing explanation as to why he had kept the representation with himself except saying that during the period of seven days there was a Sunday. Considering the said delay, whether it is fatal or not, the Supreme Court held that disposal of the representation of the detenu must be made with reasonable expedition and that the unexplained delay of seven days in forwarding the representation and the consequent delay of eleven days in its disposal by the Government will result the detention of the detenu as illegal and unconstitutional. Therefore, the delay is fatal,

10. In another case in *R.D.Borade v. V.K.Saraf*, : 1990(25)ECC50 the Supreme Court held that the detenu made a representation to the Central and State Government on 26-9-1988, that on 30-9-1988 State Government asked for further information, that the information was received by the third respondent therein on 17-10-1988, that thereafter the representation was considered and finally rejected on 27-10-1988, that the decision of the Central Government was communicated to the appellant/detenu through fresh wireless message on 31-10-1988. It is further held that attempting to explain the delay from 17-10-1988 to 27-10-1988 it is stated in the counter-affidavit filed on behalf of the third respondent that 18th, 20th, 22nd and 23rd October, 1988 were the closed holidays; but no explanation was given as to why the representation was not attended to and disposed of on 17th, 19th, 21st, 24th, to 26th October, 1988. It is further held that in explaining the delay in communicating the decision taken on 27-10-1988 it is stated that 29th and 30th October were holidays but the affidavit is silent as to why that decision had not been communicated to the detenu either on 27th or 28th October, 1988. It is also held that the explanations given by both the 1st and the 2nd respondents are not at all satisfactory and they were left with the impression that the 1st and 2nd respondent had not diligently collected the informations required by the 3rd respondent and thereby caused a considerable delay which had further delayed the consideration and disposal of the representation of the detenu by the third respondent. Considering those facts the Supreme Court held that the delay is unreasonable and the explanation offered is unsatisfactory and that the detention order was held to be bad.

11. In other case in *Gazi Khan v. State of Rajasthan*, : 1990 CriLJ1420, the Supreme Court held that the delay in considering the representation of the detenu and filing of reply affidavit and additional affidavit having no personal knowledge is deprecated and is violative of the right of the detenu guaranteed under Article 22(5) of

the [Constitution of India](#).

12. In *Kundanbhai Dulabhai Shaikh v. Distt. Magistrate*, : 1996 CriLJ1981 , the Supreme Court held that the right to make representation is not only a constitutional right but a statutory right as well and it is the duty of the authorities to dispose of the representation at the earliest. It is also further held that unexplained delay or unsatisfactory explanation for disposal of representation would vitiate the order of detention, that violation of fundamental rights invites Court's intervention irrespective of enormity and gravity of allegations made against the detenu and that the representation should not be kept pending on the ground that representations filed earlier by other detenues were still to be disposed of and that the representation must be disposed of as soon as it is ready for disposal.

13. The principles laid down in the above cases make it clear that the representation filed by the detenu must be disposed of within a reasonable time. Unexplained and unsatisfactory delay will vitiate the detention order, where there is delay in disposal of the representation. If day to day delay is properly explained and shown that there is no enormous delay on the part of the Government inconsidering the report and the representation has been disposed of within a reasonable time without any negligence or lethargy, in that case, it could be said that the delay is properly explained and there is no violation of the right guaranteed to the detenu under the provisions of the [Constitution of India](#). But where there is delay in disposing of the representation and the said delay is not satisfactorily explained, then it has to be held that the right of the detenu guaranteed under Article 22(5) of the [Constitution of India](#) is violated. Thus, there is distinction between the cases where the delay is properly explained and where the delay is not properly explained. In the present case what the respondents were doing from 18-12-1996 to 24-12-1996, excluding the Sunday falling on 23-12-1996 is not known, and the delay is not at all properly explained. Thus the same is fatal and vitiates the detention order. Further, non-consideration of the representation of the petitioner within a reasonable time on the ground that the Section Officers and staff were busy and attending other cases before the Advisory Board cannot be said to be satisfactory explanation for the delay.

14. In view of the above stated facts and circumstances of the case the detention order is quashed. The writ petition is allowed. The petitioner/ detenu is directed to be set at liberty forthwith if he is not required in any other case.

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