

Smt. Kadeeja Siddique Vs. Commissioner and Secretary (Home), Govt. of Kerala and ors.

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Court : Kerala

Decided On : Sep-24-1991

Reported in : 1992CriLJ2638

Judge : K.P. Radhakrishna Menon and; T.V. Ramakrishnan, JJ.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#); Customs Act; [Constitution of India](#) - Articles 22, 22(5) and 350

Appeal No. : O.P. (Habeas Corpus) No. 8621 of 1991-S

Appellant : Smt. Kadeeja Siddique

Respondent : Commissioner and Secretary (Home), Govt. of Kerala and ors.

Advocate for Def. : M.C. John, Govt. Pleader, for No. 1 and; T.P.M. Ibrahim Khan, ACGSC, for Nos. 2 and 3

Advocate for Pet/Ap. : K. Rajagopalan, Adv.

Disposition : Petition allowed

Judgement :

Radhakrishna Menon, J.

1. Petitioner is the wife of Sri M.V. Siddique who is detained in the Central Prison under the provisions of [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#), for short The COFEPOSA Act, on his being found to have violated the provisions of the Customs Act in the matter of smuggling gold biscuits.

2. Prior to the passing of the order detaining Siddique in the Central Prison he was arrested and taken into custody by the police from his residence. The petitioner thereupon made Ext. P25 representation to the State Government with copy to the Central Government seeking revocation of the order of detention. The State Government by order dt. 9-5-1991 rejected the representation. Copy of the representation forwarded to the Central Government was rejected by Ext.P27 order of the Central Government dt. 26-6-1991.

3. The order of detention is under challenge in this Original Petition. Of the various grounds raised in the O.P. one ground, the consideration of which alone is relevant in the case, (other grounds therefore are left open) is the delay in disposing of the representation by the Central Government.

4. The delay in disposing of the representation, the learned counsel for the petitioner argues, has resulted in miscarriage of justice. The order of detention for this reason alone, the counsel argues, must be held to be one passed in violation of Article 22(5) of the [Constitution of India](#). The Additional Central Government Standing Counsel Mr. T.P.M. Ibrahim Khan on the other hand submitted that the delay in disposing of the representation cannot be said to be unreasonable so as to say that the detention order gets automatically

invalidated. It is all the more so because the delay in properly explained is the further argument of the counsel.

5. The question thus arising for consideration is : Can the delay of 64 days in disposing of the representation of the petitioner be said to be unreasonable as to say that it would have the effect of invalidating the order of detention

6. At the very outset we would like to observe that the answer to the question depends upon the effectiveness of the explanation of the authority concerned. The law governing this aspect of the case is well settled. We shall state the law before we go into the merits of the case.

7. On a proper construction of Clause 5 of Article 22 of the Constitution, the detaining authority is under a Constitutional obligation to consider and dispose of the representation of the detenu or one preferred on his behalf as expeditiously as possible. To put it differently if there is any unreasonable delay in considering such representation, it would have the effect of invalidating the order of detention unless it be that the authority concerned has reasonably explained the delay in disposing of the representation. The length of the delay as such may not be the criterion to take the decision as regards the validity of the order of detention. It all depends upon the facts of each case. In a given case even a delay of 15 or 20 days may be found to be unreasonable. That does not however mean that any delay of more than 20 days is always unreasonable. There is no such universal rule. There are instances where Courts have declared that even a delay of 17 days or 20 days is unreasonable. The Court was constrained to make such declarations because the delay was not properly explained. A reference in this connection to the following decisions of the apex Court is profitable :

(i) In the matter of Durga Show, (1970) 3 SCC 696 (the delay here was 16 days); (ii) Prabhakar Shankar Dhuri v. S. G. Pradhan (1971) 3 SCC 896 (2) (the delay here was 16 days); (iii) K. I. Singh v. State of Manipur, (1972) 2 SCC 576 : AIR 1972 SC 438 (the delay here was 17 days); (iv) Icchu Devi v. Union of India AIR 1980 SC 1983 (the delay here was one month and five days).

To put it pithily if the detailing authority provides reasonable explanation for the delay in disposing of the representation, the Courts will not interfere with the order of detention.

8. It is in this backdrop we have to consider the question posed in this case. The representation Ext. P25 was preferred on 22-4-1991, the date on which, according to the petitioner, the detenu was arrested and taken into custody by the police. It is true that the State Government have a case that the petitioner was arrested and taken into custody only on 24-5-1991. It is unnecessary to go into this controversy in the light of the peculiar facts of the case. The State Government rejected the representation by order dt. 9th May, 1991. The representation to the Central Government though addressed to the Secretary, Bharath Sarkar, was admittedly received by the Secretary, Home Department on 24-4-1991. The representation was written in Malayalam. After getting the representation translated, presumably into English, the Home Ministry forwarded the same to Secretary, Ministry of Finance from whose office it was disposed of on 26-6-1991. We shall in this connection reproduce paragraph 16 of the counter-affidavit filed by respondents 2 and 3. It reads :--

Ext.P25 representation was addressed to the first respondent as well as the 2nd respondent. As admitted by the petitioner, the first respondent replied the same on 9-5-91 without much delay. As can be seen from Ext. P25, the letter meant for the 2nd respondent was addressed to the Secretary, India Government, New Delhi. Moreover Ext. P25 was completely in Malayalam. From the office records it is noticed that the said representation was received in the Ministry of Home Affairs, New Delhi on 24-4-1991. After getting translation, the same was forwarded to the Secretary, Ministry of Finance, from whose office the representation was disposed of on 26-6-91. The delay was caused mainly by the fact that the representation was despatched without the full address of the addressee especially when the correct address of the officer concerned was given at the end of the grounds for detention marked at Ext. P22(9). Thus there was no unreasonable delay in disposing of the Ext.P25 representation by the 2nd respondent'.

It can be seen from the above excerpt that the delay in disposing of the representation can be attributed to two reasons : (1) the representation was written to Malayalam and (2) the representation had not been addressed to the authority to which it should be addressed, going by the details given in paragraph 21 of Ext.P22. The first reason mentioned above would suggest that consideration and disposal of a representation by a detenu or on behalf of a detenu, if written in Malayalam, is likely to get delayed. We are surprised to take note of such a remark by the Ministry of Finance, especially when it is understood Malayalam is one of the languages that can be used in representations by aggrieved persons for redressal of his grievances. A reference in this connection to Article 350 of the Constitution is profitable. We shall read the Article :

Language to be used in representations for redress of grievances.-- Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the language used in the Union or in the State, as the case may be'.

That Malayalam is one of those languages recognised by the Constitution to be used in the Union or in the State is beyond dispute. If a representation written in Malayalam or any other language recognised by the Constitution therefore is received either by the State Government or by the Central Government, we expect the Government to provide the translation, if translation into some other language is required, forthwith (forthwith because the individual concerned is in jail without trial) enabling the authority concerned to pass appropriate orders on the representation without any delay. It is all the more so in cases which fall under Article 22(5) of the Constitution. The statements in the counter affidavit in this regard would suggest that the Central Government have not so far made any arrangement to provide the translation forthwith. We cannot believe this. If, however, the Government as a matter of fact have not provided the services of a translator to get such representations as the one on hand, translated into the language in which the authority concerned is conversant with, we think that it is time for the Government to take appropriate steps in this regard. We do not wish to make any further comment on this; instead, we leave it to the good sense of the Central Government to move in the matter and do what is required under the circumstances.

9. The above position notwithstanding, Mr. Ibrahim Khan, the counsel for respondents 2 and 3 argued that the delay in disposing of the representation was not on account of the fact that the representation was written in Malayalam. The concerned Department of the Union of India in fact did not intend to convey any such meaning by stating in the counter-affidavit that 'moreover Ext.P25 was completely in Malayalam'. Suffice it to say that this explanation given by the learned counsel is not enough to clear the doubts we were constrained to entertain in regard to this aspect.

10. As regards the second reason : The affidavit does not disclose as to when the Ministry of Home Affairs got the representation translated. For that matter there is nothing in the counter-affidavit as to when the Ministry of Home Affairs forwarded the representation to the Ministry of Finance. Similarly there is nothing on record to show as to how many days did the Finance Ministry in fact take to dispose of the representation after the said Ministry received the representation from the Home Ministry.

11. To put it shortly the averments contained in paragraph 16 are as vague as vagueness could be and therefore based on such explanation we cannot hold that there was no unreasonable delay in disposing of the representation. We may even go to the extent of saying that there is inordinate delay in disposing of the representation particularly in the absense of reasonable explanation. A reference in this connection to the following observations made by the Supreme Court in *Ichhu Devi's case*, (AIR 1980 SC 1983) is relevant:--The representation of the detenu dt. 9th June 1980 was received in the Mantralaya on 14th June 1980 but that day and the next day being holidays, it came to the hands of the concerned officer only on 16th June, 1980, and a copy of it was forwarded to the Assistant Collector of Customs for his remarks on 23rd June, 1980. It is difficult to see why the concerned officer in the Mantralaya should have taken seven days for just forwarding a copy of the representation of the detenu to the Assistant Collector of Customs. There is no explanation at all for this delay in any of the affidavits filed on behalf of the detaining authority. The Collector of Customs thereafter forwarded his remarks on 30th June, 1980 and here again there was a delay of seven days for which no

explanation is forthcoming. The remarks of the Assistant Collector of Customs were received by the concerned officer on 2nd July, 1980 and thereafter the representation started on its upward journey from the Under Secretary to the Chief Minister....

For the reasons stated above, we declare that the detention order is not sustainable in law and therefore we direct that M.V. Siddique, Detenu No. 1212 in the Central Prison, Trivandrum will be released forthwith, if his detention is not required in connection with any other offence.

O. P. is disposed of as above.

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