

(1991) 12 AHC CK 0066

Allahabad High Court

Case No: Writ Petition No. 23762 of 1991

Vishwambhar Singh Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Dec. 20, 1991**Acts Referred:**

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 11
- Constitution of India, 1950 - Article 22(2)
- General Clauses Act, 1897 - Section 3(8)
- National Security Act, 1980 - Section 14, 3(2)

**Citation:** (1992) 34 ACR 62**Hon'ble Judges:** Palok Basu, J; Giridhar Malaviya, J**Bench:** Division Bench**Advocate:** Prem Prakash, for the Appellant;**Final Decision:** Allowed

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**Judgement**

Giridhar Malaviya, J.

The Petitioner has "challenged his detention in pursuance of an order dated 26-6-1991 passed by the District Magistrate. Kanpur Nagar u/s 3(2) of the National Security Act. The grounds of detention as supplied to the Petitioner in substance were that he had disrupted the public order had caused disruption in the polling process in the city of Kanpur on 15-6-1991. However, as we are not going to decide in this case whether the activities of the Petitioner were or were not calculated to affect the maintenance of public order, it is not necessary to give the details of the grounds in this judgment.

2. What has been argued by learned Counsel for the Petitioner in this case is that the Petitioner had sent a representation to the president of India by registered post on 12-7-1991 but till the date of filing of the writ petition i.e. 22-8-1991 he had heard

nothing from the concerned authorities about the fate of that representation. In the counter affidavits which have been filed by all the Respondents in this case including the Union of India the District Magistrate and the State Government, except the Union of India, none of the Respondents have filed any reply to the assertion made in this regard in paragraph 37 of the petition. However as the counter affidavits had been filed, learned Counsel for the Petitioner did not propose to file the rejoinder affidavit and urged that on the basis of the counter affidavit this writ petition may be finally disposed of at this stage itself although the petition had not been formally admitted when it was presented in this Court on 22-8-1991. We have acceded to the request made by learned Counsel for the petitioner and are, therefore, disposing of this writ petition at the stage of admission itself as is provided under the rules of the Court, after hearing the learned Counsel for the parties.

3. The assertion that the representation had been made to the President of India on 12-7-91 is contained in paragraph 37 of the writ petition itself. The reply of the Central Government in the counter affidavit filed by one Sri. Ishwar Singh, Desk Officer Ministry of Home Affairs, is contained in paragraphs 6, 7, 8 and 10. It would be relevant to quote these paragraphs as under:

6. The allegations made in para 37 and ground (ii) of para 47 of the petition are denied being incorrect. It is stated that a representation dated.... from the Petitioner was received by the Central Government in the Ministry of Home Affairs on 23-8-91 through President's Secretariat. This representation was immediately processed for consideration and it was found that certain vital information required for its further consideration needed to be obtained from the State Government through a wireless message dated 23-8-91.

7. That the required information was received by the Central Government in the Ministry of Home Affairs on 28-8-91 vide the State Government's letter dated 20-8-91.

8. That the representation from the Petitioner alongwith all the required information became effectively available to the Central Government in the Ministry of Home Affairs for consideration only on 28-8-91. That, a final decision to reject the said representation was taken by the Central Government on 13-10-91.

10. That the representation from the Petitioner was considered expeditiously by the Central Government and the Petitioner was informed of the decision of the Central Government most expeditiously, therefore there had been absolutely no delay at any stage on the part of the Central Government in the consideration of the representation from the Petitioner and in communicating the final decision taken thereon to the Petitioner.

4. A perusal of the aforesaid paragraphs in the counter affidavit shows that the Union Government took a month and 16 days time to dispose of the representation even after it had been received from the President's secretariat and even after the

comments on the said representation had been received from the State Government. This delay in disposal of the representation is fatal to the continued detention of the Petitioner and the claim of the Central Government that it disposed of the representation expeditiously is totally incorrect. In this connection it would be relevant to refer to the case of Raghavendra State v. Supdt. District Jail Kanpur AIR 1986 SC 356. The relevant paragraphs of the judgment reads as under:

3. The main complaint of the Petitioner in the High Court where he filed the writ petition out of which the present appeal arises on April 4, 1985 and before us in the appeal is that there was an enormous delay (75 days) in the disposal of his representation by the Central Government and for that reason alone his further detention was illegal and he was entitled to be set at liberty. The delay in the disposal of the representation by the Central Government is, indeed, not disputed, but what is claimed is that the representations though received in the President's Secretariat and the Prime Minister Secretariat on 18th and 19th March, 1985 respectively, were actually received in the Ministry of Home Affairs on May 25, 1985 and dealt with on May 31, 1985. It is stated that there was thus no delay at all in the Ministry of Home Affairs. The learned Additional Solicitor General, who appeared for the Central Government, was unable to explain to us the cause for the delay in the President's and Prime Minister's secretariats, but urged that under the Rules of Business, it was the Ministry of Home Affairs that was concerned with orders of detention under the National Security Act and as there was no delay in the disposal of the representations by the Ministry of Home Affairs and (sic) the Appellant could not complain of any delay in the consideration of his representations. The learned Additional Solicitor General also urged that the representation to the Central Government should have been addressed to the Ministry of Home Affairs and not to the President of the Prime Minister. According to him the President and the Prime Minister receive thousands of memorials and representations from every part of the country regarding a multitude of affairs and the representations could not be expected to be considered as expeditiously as they would be considered had they been addressed to the appropriate Ministry. The explanation given by the learned Additional Solicitor General may justify part of the delay, but it certainly cannot justify the enormous amount of delay in this case. u/s 3(8) of the General Clauses Act, the "Central Government" means the President and a representation addressed to the President, must, therefore, be considered to be a representation properly addressed to the Central Government. Even so some allowance may be made for the time taken to forward the representation to the appropriate Ministry. Due allowance being made for the time which may ordinarily be taken for forwarding the representation from the President's Secretariat to the concerned Ministry, we are unable to say in the present case that there has been adequate explanation for the delay. In fact, no one has filed any affidavit to explain the cause for delay in the President's and the Prime Minister's secretariats. All that we know from the record before us is that the representations were received in the President's and the Prime

Minister's Secretariats on 18th and 19th March, 1985 and thereafter, after about two months and one week, the representations were received in the Ministry of Home Affairs. We have no information as to how these representations were dealt with in the President's and the Prime Minister's Secretariats. The learned Additional Solicitor General found himself at a loss to explain the delay and justify the detention. In view of the wholly unexplained and unduly long delay in the disposal of the representations by the Central Government, the further detention of the Appellant must be held illegal and he must be set at liberty in the light of the judgment of this Court in [Sabir Ahmed Vs. Union of India \(UOI\)](#), [Smt. Khatoon Begum Ors. Vs. Union of India \(UOI\) and Others](#), and [Sat Pal Vs. State of Punjab and others](#), . The nature of the power of revocation conferred by statute on the Central Government u/s 11 of the COFEPOSA Act which interim is similar to Section 14 of the National Security Act, was explained by this Court in *Sat Pal v. State of Punjab* (supra) in the following words:--

The making of an application for revocation to the Central Government u/s 11 of the Act is, therefore, part of the constitutional right a citizen has against his detention under a law relating to preventive detention. While Article 22(5) contemplates the making of a representation against the order of detention to the detaining authority, which has to be referred by the appropriate Government to the Advisory Board constituted u/s 8(a) of the Act, Parliament has, in its wisdom, enacted Section 11 and conferred an additional safeguard against arbitrary executive action.

We must also add that this is not a case of repeated representation to the Central Government now as the case in *State of U.P. v. Zavad Zama* representation to the Central Government had been properly disposed of, the fact that the second representation to the Central Government was not so disposed of would not entitle the detenu to be released. The appeal is, therefore, allowed and the Appellant is directed to be set at liberty forthwith.

5. In view of the position of law enunciated above, it has to be held that there was inordinate delay in the disposal of the Petitioners' representation made to the President of India on 12-7-1991, which has rendered continued detention of the Petitioner bad in the eyes of law.

6. This habeas corpus petition is accordingly allowed. The Petitioner shall be set at liberty forthwith unless required in any other case.