

Lakhbir Singh Vs Union of India and Others

Court: Delhi High Court

Date of Decision: Nov. 15, 1989

Acts Referred: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 " Section 3(1), 9(1)

Constitution of India, 1950 " Article 22(5), 226

Criminal Procedure Code, 1973 (CrPC) " Section 482

Citation: (1989) ILR Delhi 508

Hon'ble Judges: P.K. Bahri, J

Bench: Single Bench

Advocate: Anu Prakash and R.M. Bagai, for the Appellant;

Judgement

P.K. Eahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking

quotient of the detention of the petitioner. The detention order dated May 19, 1989, has been passed by respondent No. 2 against the petitioner

u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act") with a view to

preventing the petitioner from smuggling goods and engaging in transporting and concealing smuggled goods. A declaration u/s 9(1) of the

Cofeposa Act has also been issued on June, 8, 1989 and vide order dated August 17, 1989, the period of detention was fixed for two years.

(2) Various grounds have been raised in the petition but it is not necessary to refer to all of them.

(3) This case had reached for hearing on November 10, 1989 and the matter remained part-heard but surprisingly no one appeared for the

respondents at all. Even today although I waited for counsel for the respondents to appear for sufficient period but counsel for the respondents has

not cared to appear. Hence, I proceed to pass the judgment in this case.

(4) In para 5 of the writ petition, it has been averred that the petitioner had made representation dated June 19, 1989, but till date of filing of the

present writ petition, no reply has been received to the said representation. It was pleaded in ground B that there has, thus, occurred undue delay

in considering the representation made by the petitioner vitiating the continued detention of the petitioner.

(5) In the counter-affidavit filed by Shri Kuldip Singh under Secretary to the Government of India, Ministry of Finance, Department of Revenue, it

has been mentioned in para 5 that the representation dated June 19, 1989, was received in the Cofeposa Section on July 6, 1989, from the Home

Department. Punjab Government, under letter dated June 30, 1989 and the Home Department of the Punjab Government, in fact, had received

the said representation accompanied by letter dated June 29, 1989, of Superintendent Jail, Patiala. The representation was sent to the sponsoring

authority based in Chandigarh from where the comments were received vide letter dated July 20, 1989 on July 24, 1989 and after the comments

were analysed, a note was put up by the Under Secretary to the Joint Secretary on July 27, 1989 and the Joint Secretary put up the file to the

Minister of State (Revenue) on the same day and the matter was placed before the Hon"ble Finance Minister who rejected the representation on

July 31, 1989 and the rejection memo was issued on August 4, 1989.

(6) It is evident from the aforesaid contents that there has been given no Explanation with regard to the delay which had occurred from June 19,

1989 to June 29, 1989. It appears that the Superintendent (Jail), Patiala, where the petitioner is lodged had kept the representation for about 10

days without taking any action on the said representation. There has occurred also an unexplained delay in sponsoring authority taking time from

June 30, 1989 to July 24, 1989, for giving the comments. If we take out a week's time from the said period which must have taken in sending the

letter to the sponsoring authority and then receiving the comments by post from the sponsoring authority even then at least a period of 16 days has

been taken by the sponsoring authority in giving the comments and no Explanation has been given as to why so much period was required for

giving the comments by the sponsoring authority.

(7) I may refer to Aslam Ahmed Zahire Ahmed Shaik v. Union of India & Others, Jt 1989(2) Sc 34(1). In the cited case, it was laid down that :

THUS when it is emphasised and re-emphasized by a series of decisions of this Court that a representation should be considered with reasonable

expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all

reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay,

caused by slackness on the part of any authority will ultimately result in the delay of the disposal of the representation which in turn may invalidate

the order of detention as having infringed the mandate of Article 22(5) of the Constitution.

(8) In the cited case, a representation was handed over to the Superintendent (Jail), Bombay, on June 16, 1988, who was only to transmit the

same to the authorities concerned but he kept it in cold storage unattended for a period of seven days. This delay was said to have resulted in

making the detention of the detenu in that case as bad. In the present case also, the Superintendent (Jail), Patiala, appears to have kept the

representation with him for a period of ten days without taking any action and thus, for parity of reason it must be held that the continued detention of

the petitioner has become bad.

(9) In *Rajender Prasad Khanna v Union of India and Others* 1988 (3) Crimes 829,(2), a Division Bench of this Court held the continued detention

of the detenu as vitiated as no Explanation had been given for not dealing with the representation for a period of 11 days.

(10) So, in view of the above discussion, I hold that there has occurred unexplained and undue delay in considering the representation of the

petitioner making the continued detention of the petitioner as bad.

(11) I allow the petition and quash the continued detention of the petitioner and direct that the petitioner be set at liberty, if not required to be

detained in any other case.