

PABITRA N. RANA

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v.

UNION OF INDIA AND ORS.

January 30, 1980

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

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Preventive Detention under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Inordinate and unexplained delay in deciding the representation filed by the detenu violates Article 22(5) of the Constitution and hence vitiates detention.

Allowing the Writ Petition, the Court

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HELD: Under clauses 4 and 5 of Article 22 of the Constitution the detenu has a dual right viz.

(i) to have the representation, irrespective of the length of detention, considered by the appropriate Government; and

(ii) to have the representation considered by the Board duly constituted under the concerned Act. [870 E-F]

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Further, the constitutional right to file a representation to the Government carries with it impliedly a right that the representation must be disposed of as quickly as possible and any unexplained delay would amount to a violation of constitutional guarantee contained in Article 22(5). [870 F-G]

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The obligation of the appropriate detaining authority to take a decision on the representation filed by the detenu is quite apart and distinct from its obligation to constitute a Board and to send the representation to it. The detaining authority is not entitled to wait for the opinion of the Board but has to take its decision without the least possible delay. [870 G-H, 871 A]

Pankaj Kumar Chakraborty & Ors. v. State of West Bengal [1970] 1 SCR 543 and *Narendra Purushotam Umrao etc. v. B. B. Gujral and Ors.*, [1979] 2 SCR 715; relied on.

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CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 1376 of 1979.

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(Under Article 32 of the Constitution).

A. K. Sen and Harjinder Singh for the Petitioner.

U. R. Lalit and M. N. Shroff for the Respondent.

The Judgment of the Court was delivered by

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FAZAL ALI, J.—This Writ Petition has been filed with a prayer that an order of detention passed against the petitioner on the 7th

A September, 1979, under s. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 be quashed. After the order was served on the detenu he made a representation on the 27th September, 1979 to the Govt. who received it on the 28th September, 1979. In support of the Rule Mr. A. K. Sen has raised a number of points, but in view of one of them which is to the effect

B that there has been an inordinate and unexplained delay on the part of the detaining authority in deciding the representation and that the detention is therefore vitiated, we need not go into the other points. On the question of delay the petitioner had expressly taken a plea in para 11 of the petition but in their reply the respondents have

C not at all explained or detailed any reason why there was inordinate delay in disposing of the representation submitted by the detenu to the detaining authority. The admitted position is that the representation was received by the Government on the 28th September, 1979 and it was rejected on 3rd November, 1979, that is to say, after about one month and five days of the receipt. It is now well

D settled that any unexplained delay in deciding the representation filed by the detenu amounts to a clear violation of Art. 22(5) of the Constitution of India and is sufficient to vitiate the detention. Our attention was drawn by the counsel for the petitioner to a recent decision of this Court in *Narendra Purushotam Umrao etc. v. B. B. Gujral & Ors.*(¹) where this Court while relying on an earlier decision of this Court in *Pankaj Kumar Chakraborty, & Ors. v. State of West Bengal*(²) pointed out that under Clauses 4 and 5 of Art. 22 of the Constitution the detenu has a dual right, viz.,

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1. to have the representation, irrespective of the length of detention, considered by the appropriate Government, and
 2. to have the representation considered by the Board duly constituted under the concerned Act.
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G We might further mention that the constitutional right to file a representation to the Government carries with it impliedly a right that the representation must be disposed of as quickly as possible and any unexplained delay would amount to a violation of the constitutional guarantee contained in Art. 22(5). This Court has also pointed out that the obligation of the appropriate detaining authority to take a decision on the representation filed by the detenu is quite apart

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(1) [1979] 2 S.C.R. 315.

(2) [1970] 1 S.C.R. 543.

and distinct from its obligation to constitute a Board and to send the representation to it. The detaining authority is not entitled to wait for the opinion of the Board but has to take its decision without the least possible delay. In Writ Petition No. 246 of 1969 decided on September 10, 1969 this Court observed as follows :

"It is implicit in the language of Art. 22 that the appropriate Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. There was, therefore, no reason for the Government to wait for considering the petitioner's representation until it had received the report of the Advisory Board. As laid down in *Sk. Abdul Karim & Ors. v. State of West Bengal*, (supra) the obligation of the appropriate Government under Art. 22(5) is to consider the representation made by the detenu as expeditiously as possible. The consideration by the Government of such representation has to be, as aforesaid independent of any opinion which may be expressed by the Advisory Board.

The fact that Art. 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

The observations extracted above clearly show that the representation must be considered by the Government as expeditiously as possible. Mr. Lalit submitted that the delay in deciding the representation was due to the fact that the representation had to pass through various channels and departments before the Government was in a position to decide it. In the first place no such facts have been pleaded in the reply filed by the respondents and, therefore, we cannot entertain the grounds now urged by the counsel for the Union for the first time in the arguments before us. Even so it appears that at the most the detaining authority had forwarded the representation to the Revenue Intelligence whose comments were received on 16-10-79. Thereafter there was absolutely no justification for any delay in taking a decision on the merit of the representation. Even if we assume that there was some reasonable explanation for the delay from 28th September, 1979 to 16th Octo-

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- A** ber, 1979, there appears to be no good explanation whatsoever for the delay from 16th October, 1979 to 2nd November, 1979 when the representation was rejected by the Government. It is manifest that the Government was not obliged to wait for the decision of the Board because it had to consider the representation independently of what the Board might say. In this view of the matter, we are
- B** satisfied that there has been unreasonable delay in deciding the representation filed by the detenu and that by itself is sufficient to render the detention void. For these reasons we allow this petition, set aside the order of detention and direct that the detenu be released forthwith.

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V.D.K.

Petition allowed.