

MAHESH KUMAR CHAUHAN @ BANTI

v.

UNION OF INDIA AND ORS.

MAY 2, 1990

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA  
REDDY, JJ.]

A

B

C

D

E

F

G

H

*Preventive Detention: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: Section 3(1)—Detention Order—Representation of detenu—Expeditious disposal of—Necessity for—Explanation of delay by appropriate authority—Need for—Undue and unexplained delay—Whether violative of Article 22(5) of the Constitution.*

The appellant filed a writ petition before the High Court challenging the detention order passed against him under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, alleging that his representation was dealt with in a cavalier manner, resulting in undue delay in its disposal.

Refuting the allegation, it was contended on behalf of the respondents that the representation, received on 23.8.89, was forwarded to the sponsoring authority for comments on 25.8.89 and the comments were received only on 11.9.89, and orders rejecting the representation were issued on 19.9.89, after obtaining the orders of the appropriate authorities. The High Court rejected the petition as devoid of any merit.

In the appeal before this Court, on behalf of the appellant it was contended that the offices of the detaining authority and the sponsoring authority were within the same city and there was absolutely no explanation for the delay on the part of the sponsoring authority in sending the comments till 11.9.89, though the representation dated 18.8.89 was sent for comments to the said authority even on 25.8.89, thus vitiating the order of detention, and that in view of the inordinate and unexplained delay in considering and disposing of the representation, the continued detention of the appellant was impermissible and unconstitutional, as being violative of the mandatory provisions of Article 22(5) of the Constitution of India.

Allowing the appeal, this Court,

A HELD: 1.1 A representation of a detenu whose liberty is in peril  
and deprived should be considered and disposed of as expeditiously as  
possible; otherwise the continued detention will render itself impermis-  
sible and invalid as being violative of the constitutional obligation  
B in the disposal of a representation, such delay should be explained by  
the appropriate authority to the satisfaction of the Court. [985A-B]

*Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police &*  
*Ors.*, [1989] 3 SCC 173; *Khairul Haque v. State of West Bengal*, [1969]  
II Supreme Court Weekly Reports 529; *Jayanarayan Sukul v. State of*  
*West Bengal*, [1979] 1 SCC 219; *Shaik Hanif & Ors. v. State of W.B.*,  
C [1974] 1 SCC 637; *Raisuddin v. State of U.P.*, [1983] 4 SCC 537 and  
*Frances Coralic Mullin v. W.C. Khambra and Ors.*, [1980] 2 SCC 275,  
relied on.

D 1.2 In spite of the weighty pronouncements, of this Court making  
the legal position clear, it is still disquieting to note that on many occa-  
sion the appropriate authorities cause considerable delay in considering  
and disposing of representations and also exhibit culpable indifference  
in explaining such delay. In case the appropriate authority is unable  
to explain personally the delay at various stages, then it will be  
desirable—indeed appropriate—for the concerned authority or auth-  
E orities at whose hands the delay has occurred to individually explain  
such delay. [985C-D]

F 1.3 The Court, in the absence of any explanation, cannot wink at  
or skip over or ignore such an infringement of the constitutional  
mandate and uphold an order of detention merely on the ground that  
the enormity of allegations made in the grounds of detention is of very  
serious nature, as in the present case. [985D-E]

*Prabhu Dayal Deorah v. The District Magistrate, Kamrup &*  
*Ors.*, [1974] 1 SCC 103, relied on.

G In the instant case, except merely mentioning that the representa-  
tion was forwarded to the concerned sponsoring authority on 25.8.89  
and the comments from the sponsoring authority were received by the  
Department on 11.9.89, there is absolutely no explanation as to why  
such a delay had occurred. This undue and unexplained delay is in  
violation of the constitutional obligation enshrined in Article 22(5) of  
H the Constitution of India rendering the order invalid. [986B-C]

*Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police & Ors.*, [1989] 3 SCC 173, relied on. A

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 302 of 1990.

From the Judgment and Order dated 29.1.1990 of the Delhi High Court in Crl. Writ Petition No. 657 of 1989. B

Harjinder Singh and R.N. Joshi for the Appellant.

N.S. Hegde, Additional Solicitor General and Udai Lalit for the Respondents. C

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. Leave granted.

This appeal is directed by the detenu, Mahesh Kumar Chauhan @ Banti questioning the correctness of the judgment made in Criminal Writ Petition No. 657/89 by the High Court of Delhi dismissing the petition as devoid of any merit. The above Writ Petition out of which this present appeal has arisen was filed by the appellant, Mahesh Kumar Chauhan against the order of detention dated 13.7.1989 clamped upon him by the first respondent, Union of India in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') with a view to preventing the detenu from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods. D E F

The entire facts of the case are well set out in the grounds of detention and, therefore, we think that it is not necessary to reiterate the same.

Mr. Harjinder Singh, learned counsel appearing on behalf of the appellant raised a variety of contentions, one of which being that there is an inordinate and unexplained delay in considering and disposing of the representation of the detenu dated 18.8.89 and as such the continued detention of the appellant is impermissible and unconstitutional as being violative of the mandatory provisions of Article 22(5) of the Constitution of India. G H

A In the counter affidavit filed on behalf of the respondent before  
the High Court, the declarant namely, Joint Secretary, Department of  
Revenue, Ministry of Finance while refuting the allegation of the  
appellant that his representation has been dealt with in 'cavalier  
manner' has stated that the petitioner has made his representation on  
21.8. 1989 and not on 18.8.1989 as alleged by the appellant and that it  
B was received in the office of his Department on 23.8.89 and the same  
was forwarded to the concerned sponsoring authority on 25.8.1989.  
The Sponsoring Authority sent his comments only on 11.9.1989.  
Thereafter, the representation along with the comments was processed  
and put up before the Ministry of State for Revenue, who considered  
and rejected the same on 15.9.1989 subject to the approval of the  
Finance Minister. On 18.9.89 the file was received back from the  
C Finance Minister's office and the memorandum was issued on 19.9.89  
rejecting the representation. Mr. Harjinder Singh submitted that the  
offices of the detaining authority and the sponsoring authority are  
within the metropolis of Delhi and that there is absolutely no explana-  
tion for the delay occasioned on the part of the sponsoring authority in  
D sending his comments till 11.9.1989 though the representation was sent  
for comments to the said authority even on 25.8.1989 and that this  
considerable delay at the hands of the sponsoring authority stands  
unexplained vitiating the order of detention.

E In support of the above contention, he placed much reliance on  
the decision of this Court in *Rama Dhondu Borade v. V.K. Saraf,*  
*Commissioner of Police & Ors.*, [1989] 3 SCC 173 to which one of us  
(Ratnavel Pandian, J.) was a party. In the above cited decision, this  
Court after referring to the dictum laid down in *Smt. Shalini Soni v.*  
*Union of India*, [1980] 4 SCC 544 and some other decisions of this  
Court dealing with the similar questions of delayed disposal of rep-  
F resentation, has laid down the following proposition of law:

G "The detenu has an independent constitutional right to  
make his representation under Article 22(5) of the Con-  
stitution of India. Correspondingly, there is a constitu-  
tional mandate commanding the concerned authority to  
whom the detenu forwards his representation questioning  
the correctness of the detention order clamped upon him  
and requesting for his release, to consider the said rep-  
resentation within reasonable dispatch and to dispose the  
same as expeditiously as possible. This constitutional  
requirement must be satisfied with respect but if this con-  
H stitutional imperative is observed in breach, it would

amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very-concept of liberty—the highly cherished right—which is enshrined in Article 21 of the Constitution.”

However, in the same decision, it has been pointed out “What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid in that regard.”

We hasten to say in this connection that inspite of the fact this Court in a series of decisions has repeatedly and consistently laid down the rule in precise and clear terms that all the procedural safeguards prescribed in under Article 22(5) of the Constitution of India should be scrupulously and strictly observed one of which as ingrained in our system of judicial interpretation, being that the detenu shall be afforded an earliest opportunity of making a representation against the validity of the order of detention clamped upon him and that representation should be considered and disposed of as expeditiously as possible.

How far this Court has seriously viewed the culpable suppine indifference, callousness and recalcitrant attitude on the part of the appropriate authorities who while dealing with the representations at various stages and disposing of the same cause considerable delay is prismatically reflected with enhanced intensity through a plethora of pronouncements of this apex Court. We may appositely refer to a few.

Shelat, J. in *Khairul Haque v. State of West Bengal*, Writ Petition No. 246 of 1969 decided on 10.9.69 reported in 1969 II Supreme Court Weekly Reports 529 after referring two earlier decisions in *Sk. Abdul Karim and Others v. State of West Bengal*, [1960] 1 SCC 433 and *Durga Show and Ors. v. State of West Bengal*, [1970] 3 SCC 696 has observed thus:

“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, be 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”.

(emphasis supplied)

A A Constitution Bench of this Court in *Jayanarayan Sukul v. State of West Bengal*, [1979] 1 SCC 219 has highly deprecated the conduct of appropriate authorities in unduly and unreasonably delaying the consideration and disposal of a representation and stated as follows:

B “The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.”

C (emphasis supplied)

D Sarkaria, J. in *Shaik Hanif & Ors. v. State of W.B.*, [1974] 1 SCC 637 has expressed as follows:

E “It is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference on the part of the authorities entrusted with their application.

F In *Raisuddin v. State of U.P.*, [1983] 4 SCC 537, it is pointed out,

“..... if on such examination, it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu .....

G Chinnappa Reddy, J. in *Frances Coralie Mullin v. W.C. Khambra and Others*, [1980] 2 SCC 275 has expressed his view saying:

“..... No allowance can be made for lathgargic indifference. No allowance can be made for needless procrastination.”

H We do not like to swell this judgment by recapitulating all the pronouncements of this Court on this point.

Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.

In spite of the weighty pronouncements, of this Court making the legal position clear, it is still disquieting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. We feel that in case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable—indeed appropriate—for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay.

The next question is should or can the Court in the absence of any explanation wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature as in the present case? Our answer would be 'Not at all'.

In this connection, it will be relevant to make reference to the view expressed by Mathew, J. speaking for the majority in *Prabhu Dayal Deorah v. The District Magistrate, Kamrup and Others*, [1974] 1 SCC 103 which is as follows:

"We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in

A accordance with the procedure established by law.”

B Reverting to the facts of the present case as submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25.8.1989 and the comments from the sponsoring authority was received by the Department on 11.9.1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in *Rama Dhondu Borade's* case (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the impugned  
C order invalid.

For the foregoing reasons, we set aside the order of the High Court, allow the appeal and direct the detenu to be set at liberty forthwith, unless his detention is required for some other cause.

D N.P.V.

Appeal allowed.