Smt. Khatoon Begum Ors. vs Union Of India (Uoi) And Ors. on 9 March, 1981

Equivalent citations: AIR1981SC1077, [1983]53COMPCAS244(SC), 1981CRILJ606, 1981(1)SCALE507, (1981)2SCC480, [1981]3SCR137

Bench: Baharul Islam, O. Chinnappa Reddy

JUDGMENT

1. These three Writ Petitions may be disposed of by a single judgment since the principal question argued in all the three cases is one. The question is whether delay in considering the representation made by a detenu under Article 22(5) of the Constitution vitiates a detention under the National Security Act and entitles the detenu to be released on that ground alone. As a result of a series of decisions of this Court, (a) Jayanarayan Sukul v. State of West Bengal (b) Narendra Purshotam Umrao etc. v. B.B. Gujral and Ors. : (c) Ramchandra A. Kamat v. Union of India and Ors. (d) Frances Coralte Mullin v. W.C. Khambra and Ors. ; (e) V.J. Jain v. Pradhan (f) Smt. Ichhu Devi Choraria v. Union of India and Ors. it is now well settled that the representation made by a detenu under Article 22(5) of the Constitution against his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, must be considered by the detaining authority with the at most expedition and that any unexplained delay in considering the representation will be fatal to the detention. The learned Counsel for the State of Uttar Pradesh urged that the rule requiring expeditious consideration of a detenu's representation is a judge-made rule based on provisions of the Conservation of Foreign Exchange and Prevention of the Smuggling Activities Act, 1974, and that the extension of the application of the rule to cases of detention under the National Security Act was unwarranted. The learned Counsel contrasted the provisions of the National Security Act and the provisions of the Conservation of Foreign Exchange Prevention of Smuggling Activities Act, 1974, and urged that in the case of detention under the National Security Act, a certain amount of delay was inevitable having due regard to the procedure prescribed by the Act and, therefore, delay in consideration of the representation should not be allowed to prejudice the detention. We are unable to agree with the submission of the learned Counsel. We will presently give our reasons for our inability to accept the learned Counsel's submissions but we will first like to refer to a few facts.

2. In Writ Petition (Criminal) No. 293 of 1981 the order and the grounds of detention were served on the detenu on October 30, 1980 and November 1, 1980 respectively. The detenu made a representation on November 12, 1980. Though according to the detenu he has received no communication from the Government about his representation, the Additional District Magistrate has stated in his counter-affidavit that the representation was rejected on December 9, 1980 and that it was communicated to the detenu through the Superintendent of the Central Jail. The counter-affidavit mentions not a word to explain the delay in considering the representation. The only reference to the representation in the counter-affidavit is in these two sentences: "It is admitted that the detenu made a representation to the Home Secretary on November 12, 1980, and the same

was rejected on December 9, 1980. The rejection of the representation was communicated to the detenu through Superintendent, Central Jail by the Government'.

3. Similarly in Writ Petition (Criminal No. 391 of 1981, the order and the grounds of detention were served on the detenu on November 12, 1980. The representation was rejected on December 10, 1980. In the counter affidavit filed by the Section Officer, Confidential Department, of the Government of Uttar Pradesh, it is stated that on receipt of the representation, the Secretary, Home Department, forwarded it to the District Magistrate for his comments. In order to meet the allegations in the representation, the District Magistrate had to gather information from many sources and the representation along with his comments was returned to the Home Secretary by the District Magistrate on November 25, 1980. Thereafter Law Department was consulted and the file could reach the Home Minister on December 5, 1980 only. The representation was rejected by the Home Minister on December 8, 1980 and then communicated to the detenu through the Superintendent, Central Jail.

4. In Writ Petition (Criminal) Nc. 392 of 1981 the order and the grounds of detention were served ion the detenu on October 16, 1980. The detenu made a representation on October 24, 1980. It was rejected on November 25, 1980. The counter affidavit filed by the Additional District Magistrate does not offer any explanation for the delay in the consideration of the representation. He has satisfied himself with the statement "as regards the representation of the detenu to the Home Secretary this fact is admitted".

5. The question for consideration is whether a person preventively detained under the provisions of the National Security Act is entitled to be released if there is delay in the consideration of the representation made by him to the detaining authority. It is true that the series of cases where delay in the consideration of the representation made by a detenu was held to be fatal to detention were cases which arose under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. We are however, unable to see how that would make any difference.

6. The right of detenu to have his representation considered "at the earlier opportunity" and the obligation of the detaining authority to consider the representation "at the earliest opportunity" are not a right and an obligation flowing from either the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, or the National Security Act or, for that matter any other Parliamentary of State law providing for preventive detention. They are a right and an obligation created by the very Constitution which breathes life into the Parliamentary or State law. Article 22(5) enjoins a duty on the authority making the order of detention to afford the detenu "the earliest opportunity of making a representation against the order". The right and obligation to make and to consider the representation at the earliest opportunity is a Constitutional imperative which cannot be curtailed or abridged. If the Parliament or the State legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the inter-departmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representations made by detenus.

It will be no answer to a demand for liberty to say that administrative red tape makes delay inevitable. The learned Counsel for the State of Uttar Pradesh pointed out certain differences between the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and the National Security Act which according to him make delay inevitable in the consideration of representations in cases of detention \ under the National Security Act. We think that the differences pointed out are irrelevant. The constitutional mandate brooks no unreasonable delay in the consideration of a representation. In the cases before us, in Criminal Writ Petition Nos. 293 of 1981 and 392 of 1981 no explanation was offered by the detaining authority for the delay in the consideration of representations B and in Criminal Writ Petition No. 391 of 1981, administrative red tape was the only explanation offered. We are satisfied that in all the three cases there was unreasonable delay in the consideration of the representations and the detenus are, therefore, entitled to be released. They will be released forthwith. The Writ Petitions are allowed.