

A

SHYAM AMBALAL SIROYA

v.

UNION OF INDIA AND OTHERS

February 20, 1980

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

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Section 11—Detenu's representation for revocation of detention order not considered by Government—Non-consideration, if vitiates the order.

C

The petitioner's brother was detained by an order of detention dated 31st August, 1979 under s. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the grounds of detention were served on him on 5th September, 1979. An application was made on 17th September, 1979 for supply of documents and statements recorded and relied on in the grounds of detention. On 22nd September, 1979 he made an incomplete representation. The documents were supplied on 25th September, 27th September and 3rd October, 1979. The detenu made a second representation on 5th October, 1979 requesting that the order of detention be revoked

D

by the Central Government but no action was taken on them till the date of hearing.

In the writ petition it was alleged that the first representation as well as the second representation requesting for the revocation of the order under s. 11 of the Act were not considered by the Central Government and that non-consideration of the representation vitiated the detention order. The detaining authority on the other hand contended that the mere fact that the representation was not considered by the Central Government did not vitiate the order of detention.

E

Allowing the petition,

HELD : The continued detention of the detenu cannot be held to be according to procedure. [1081F]

F

If a properly addressed petition is left unattended for a long period of time the detention order cannot be justified as being according to procedure. [1081 E]

G

The power conferred on the Central Government by section 11 of the Act is wide enough to enable that Government to revoke the detention order at any stage for the words used are a detention order may at any time be revoked or modified. Any petition for revocation of an order of detention should be dealt with with reasonable expedition. It may be permissible for the Central Government to take reasonable time for disposing of a petition for revocation of an order of detention but it would not be justified in ignoring the representation because a statutory duty is cast upon the Central Government. It is necessary that the Government should apply its mind and either revoke the order of detention or dismiss the petition. [1080G-H]

H

In the instant case the representation which was properly addressed by the detenu to the Central Government was not forwarded to that Government and

as such no action had been taken till the date of hearing. There is no justification in sending the representation to the Central Government at this very late stage. [1081C&E]

ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 1414 of 1979.

Under Article 32 of the Constitution.

Ram Jethamalani and Harjinder Singh for the Petitioner.

U. R. Lalit, E. C. Agarwala and M. N. Shroff for the Respondent.

The Judgment of the Court was delivered by

KAILASAM, J. The petitioner is brother of Virendra Ambalal Siroya who was detained by an order of detention dated 31-8-1979 issued by Additional Secretary to the Government of India under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The detenu was served with the grounds of detention on 5-9-1979. The counsel for the detenu made an application on 17-9-1979 for supply of documents, and statements recorded and relied on in the grounds of detention. Before the documents were supplied, an incomplete representation was made by the detenu on 22-9-1979. The documents were supplied on 25-9-1979, 27-9-1979 and 3-10-1979. The detenu again made a second representation on 5-10-1979 and requested that the order of detention may be revoked by the Central Government.

Mr. A. K. Sen, the learned counsel for the petitioner, submitted that the representation requesting the Central Government to order the revocation under S. 11 of the Act was not forwarded by the detaining authority to the Central Government and as such the detention is illegal. In the memorandum of grounds in his writ petition at paragraph XIV the detenu submitted that he made representation to the Central Government and that the Central Government had not considered the representation at all. In paragraph XV the detenu contended that the second representation was an application for revocation under S. 11 of the Act wherein he specifically requested that the Central Government should revoke the order. The said representation was not considered by the Central Government. It was submitted that non-consideration of the representation by the Central Government vitiated the detention order. In reply the detaining authority stated in paragraph 15 as follows :—

“It is submitted that the consideration of representation of the detenu by the detaining authority is perfectly valid and legal and in accordance with the law. It is, however, denied that merely because it was not considered by the Central Government, the detention order is vitiated in any way.”

A It is clear from the statement that the representation was not forwarded to the Central Government. The plea on behalf of the detaining authority is that merely because the representation was not considered by the Central Government, the detention order would not be vitiated.

B The representation of the detenu dated 5-10-1979 is marked as Annexure 'E'. It states that it is a further representation in the matter of his detention. After setting out the various grounds, the relief asked for in paragraph 5 runs as follows :—

“The petitioner prays that :

- C** (a) That the order of detention be revoked by the Central Government.
- (b) This further representation be placed before COFEPOSA Advisory Board alongwith the earlier representation.
- D** (c) That the Advisory Board be pleased to report to the Central Government to revoke the impugned order of detention.”

E The request of the detenu is clear : He prayed for the revocation of the order of detention by the Central Government. It is not the case of the detaining authority that he did not understand the representation as being intended for the Central Government. On the other hand, his plea is that the mere fact that the Central Government has not considered the representation would not vitiate the order of detention. The detaining authority is the Additional Secretary, Government of India, Ministry of Finance and it is not disputed that a communication to the Central Government can be properly addressed by sending it to the Additional Secretary, Government of India, Ministry of Finance.

F It is admitted that the representation was properly addressed to the Central Government. The Central Government is empowered to revoke the order of detention at any stage. It was submitted that the order of revocation by the Central Government can only be passed after the order of detention is confirmed by the detaining authority and the Advisory Board. The power conferred on the Central Government by S. 11 is wide enough to enable the Central Government to revoke the detention order at any stage for the words used are a detention order may at any time be revoked or modified. The power of the Central Government to revoke the order of detention implies that the detenu can make a representation for exercise of that power. Any petition for revocation of an order of detention should be dealt with reasonable expedition. In this case it is the main ground urged

G

H

on behalf of the detenu that the petition of the 5th of October, 1979 was not forwarded to the Central Government and consequently no order has been passed on that petition up to date. In the course of arguments, Mr. A. K. Sen on behalf of the detenu submitted that even the earlier representation was addressed to the Central Government which was also not forwarded. We do not think that we should entertain this plea as it was not pleaded in the memorandum of grounds that the first representation was to the Central Government but made for the first time in the Court before us. In any event, it is clear that a representation properly addressed by the detenu to the Central Government was not forwarded to the Central Government and as such no action had been taken up to date. It may be permissible for the Central Government to take reasonable time for disposing any revocation petition. But it would not be justified in ignoring the representation for revocation of the detention as a statutory duty is cast upon the Central Government. It is necessary that the Government should apply its mind and either revoke the order of detention or dismiss the petition, declining to order for revocation.

The question that arises for consideration is, as to what will be the consequence if a properly addressed petition is not forwarded to the Central Government and as such left unattended for a period of nearly four months. We feel that in such circumstances the detention cannot be justified as being according to the procedure. In the circumstances we do not feel that we will be justified in sending the representation to the Central Government for disposal at this stage.

Taking all the facts and circumstances of the case, we feel that the continued detention of the detenu cannot be held to be according to procedure. His release has already been ordered.

P.B.R.

Petition allowed.