

A

HARISH PAHWA

v.

STATE OF UTTAR PRADESH &amp; ORS.

March 18, 1981

B

[A.D. KOSHAL AND BAHARUL ISLAM, JJ.]

C

*Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Detenu assailing detention order—Failure of State Government to dispose of representation within reasonable time—Point not taken before High Court—Whether can be raised in Supreme Court—Representations of detenus to be dealt with continuously and disposed of expeditiously—Duty of State Government.*

D

The appellant who was detained by an order dated 16th May, 1980, made a representation dated 3rd June, 1980 from jail, which was received by the State Government on 4th June, 1980. Comments were called for from the Customs Authorities on the 6th of June, 1980 and were received on 13th June, 1980. On the 17th June, 1980, the State Government referred the representation to its Law Department for opinion which was furnished on the 19th June, 1980. The representation was rejected by an order dated 24th June, 1980, which was communicated to the jail authorities two days later.

E

The appellant's writ petition having been dismissed by the High Court, he came in appeal to this Court raising a new plea that the representation made by him against the detention to the State Government was not decided within a reasonable time and that the delay was fatal to the detention.

Allowing the appeal,

F

HELD : 1. In matters of this kind where all the material necessary for the determination of a new point is available on the record, and having regard to the importance of the matter, this Court can entertain the point even if it had not been raised before the High Court. [277 F-G]

2. The order of detention declared unconstitutional and appellant directed to be set at liberty. [279 F]

G

3. On numerous earlier occasions this Court has made it clear that it does not look with equanimity upon delays in considering the representations of detenus. Where the liberty of a person is involved it is the duty of the State to determine his representations with the utmost expedition and deal with it continuously until a final decision is taken and communicated to the detenu.

H

[278 G-H]

In the instant case no explanation had been given by the Government, as to why no action was taken on the representation of the detenu on 4th, 5th and

25th of June 1980 and what consideration was given from 13th June, 1980 to 16th June, 1980 and why the file had to travel from table to table before reaching the Chief Minister, who was the only authority to decide the representation.

[278 E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 183 of 1981.

Appeal by special leave from the Judgment and Order dated 30.1.1981 of the High Court of Allahabad in Civil Misc. Habeas Corpus Writ No. 6343/80 .

*R.K. Garg, Navesh K. Sharma and Mukul Mudgal* for the Appellant.

*R.K. Bhatt* for Respondent No. 1

*Hardayal Hardy and Miss A. Subhashini* for the Respondents.

The Judgment of the Court was delivered by

KOSHAL, J. This is an appeal by one Harish Pahwa against the judgment dated 30th January, 1981 of the High Court of Allahabad dismissing a petition presented by the appellant to it under Article 226 of the Constitution of India with a prayer that a writ of habeas corpus be issued against the State of Uttar Pradesh and Union of India in as much as the detention of the appellant by them was not in accordance with law.

2. The only point that has been raised before us by Mr. Garg appearing on behalf of the appellant is that the representation made by him against his detention to the State Government was not decided within a reasonable time and that the delay is fatal to the detention. This point was no doubt not taken before the High Court, but in view of its importance and the fact that all the material necessary for its determination is available on the record, we have allowed it to be raised before us and have overruled a preliminary objection taken by the State to the effect that it should not be entertained.

3. In order to decide the point we may refer to certain admitted facts. The order of detention is dated 16th May, 1980 and the representation made by the appellant against it from Varanasi Jail bears date the 3rd of June, 1980. The State Government received

**A** the representation on the 4th June, 1980 but for two days no action was taken in connection with it. On the 6th of June, 1980 comments were called for from the Customs authorities with regard to the allegations made in the representation and such comments were received by the State Government on the 13th June, 1980. On the 17th of June, 1980, the State Government referred the representation to its Law Department for its opinion which was furnished on the 19th of June, 1980. The rejection of the representation was ordered on the 24th of June, 1980 and it was communicated to the jail authorities two days later.

**C** The case of the State is that the representation was with the Customs authorities who were formulating their comments from 7th June, 1980 to the 12th of June, 1980 and that the representation was under the consideration of the Government for four days from 13th June, 1980 to 16th June, 1980, of its Law Department from 17th June, 1980 to 19th June, 1980 and then again under its own consideration for six days from 19th June, 1980 to 24th June, 1980.

**D** In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representations made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for

some assistance in connection with it ) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.

**A****B**

N.V.K.

*Appeal allowed.*