

Before B. S. Nehra, J.

MAJOR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Criminal Writ Petition No. 2107 of 1990.

23rd August, 1991.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—S. 11(b)—Detention order—Validity of—Petitioner arrested under COFEPOSA Act,—vide detention order dated 17th July, 1989—Grounds of detention served on 27th October, 1989—Detention confirmed by the Government on 26th April, 1990 after seeking the opinion of Advisory Board constituted under the Act—Detenu making representations against the detention order to Superintendent, Central Jail, Amritsar meant to be sent for consideration of Central Government and State Government—Failure on the part of Central Government to consider the representation—Continued detention of petitioner, held, illegal—Detention order liable to quashed.

Held, that the continued detention of the petitioner has been rendered unsustainable inasmuch as the Central Government failed to consider the representation made by the petitioner against his detention. The petition is allowed and the continued detention of the petitioner is held illegal and, therefore, quashed.

(Paras 12 & 14)

Rattan Singh and another v. State of Punjab AIR 1982, SC. 1.

(FOLLOWED)

CRIMINAL WRIT PETITION under Articles 226 of the Constitution of India praying that: this Hon'ble Court be pleased to :—

- (a) accept this Criminal Writ Petition, quash the orders at Annexures P/1 and P/2 and order the petitioner to be released by the respondents forthwith after summoning and examining the entire relevant record with the respondents;
- (b) dispense with the filing of the certified copies/original copies of the annexures P/1 to P/5;
- (c) dispense with the filing of affidavit in support of this criminal writ petition as the petitioner is confined in the Central Jail, Amritsar.

Major Singh v. State of Punjab and others (B. S. Nehra, J.)

(d) *grant such other relief to the petitioner as this Hon'ble Court deems just and proper in the circumstances of the case to which the petitioner is found entitled under law and equity.*

D. S. Brar, Advocate with S. S. Brar, Advocate, for the Petitioner.

S. S. Saron DAG, Punjab, for Respondent Nos. 1 and 3.

JUDGMENT

B. S. NEHRA, J.

(1) This Criminal Writ Petition under Article 226 of the Constitution of India has been filed for quashing the orders of detention of the petitioner passed by the Government on 17th July, 1989 under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (hereinafter referred to as COFEPOSA, Act, 1974).

(2) The facts of the case are that the petitioner was arrested,—*vide* detention order dated 17th July, 1989 and was served with the grounds of detention on 27th October, 1989. It has been stated in the order of detention that the petitioner has been smuggling goods from India to Pakistan and engaging in the concealing and keeping of the smuggled goods, i.e., foreign currency etc. and also acting in a manner prejudicial to the conservation and augmentation of foreign exchange and, therefore, it is necessary to make an order directing his detention with a view to prevent him from indulging in the said prejudicial activities. His detention was confirmed by the Government on 26th April, 1990 after seeking the opinion of the Advisory Board constituted under the COFEPOSA, Act, 1974. According to the petitioner, he never smuggled any goods from India to Pakistan and, therefore, the allegation levelled against him that he smuggled foreign currency from India to Pakistan is without any basis. He has assailed the order of detention on numerous grounds. One of the salient grounds is that he had made two representations to the Jail Superintendent viz. one for the State Government and the other meant for the Central Government but these, according to him, were not considered as he did not get any reply thereto.

(3) Notice of this petition was issued to all the respondents including the State Government and the Union of India. The reply in the form of affidavit has, however, been filed only by respondent

No. 1, viz., the State of Punjab. However, the Union of India, who stood arrayed as respondent No. 2 despite being represented by Shri A. Mohunta, Advocate, did not choose to file any reply.

(4) In the written-reply filed by the State Government, it has been admitted that the petitioner has been detained under COFEPOSA, Act, 1974, but the other allegations, assailing the petitioner's detention as illegal, have been denied.

(5) In para 6(v) of the petition, it has been stated by the petitioner that he had made two representations to the Superintendent, Central Jail, Amritsar, where he was detained. One of these representations was meant to be sent to the State Government and the other to the Central Government and he orally submitted to the authorities that these be sent to the concerned authorities for consideration. However, the petitioner did not hear anything either from the State Government or from the Central Government with regard to the fate of the two representations. According to the petitioner, the representations have either not been considered so far or there was long delay in their consideration. He has, therefore, urged that the order of detention is unsustainable.

(6) In the reply filed by respondent No. 1, State Government, the allegation that the petitioner also made a representation to the Superintendent, Jail, for being sent to the Central Government has been denied for want of knowledge. As regards the representation made to the State Government, it has been stated by respondent No. 1 that after making necessary enquiry and verification and obtaining comments of the Assistant Collector (Customs), the representation was forwarded by the District Magistrate, Amritsar to the State Government and the latter rejected the same on 5th January, 1990 and the petitioner was informed of the result of this representation made to the State Government.

(7) The learned counsel for the petitioner referred to the provisions of Section 11(b) of the COFEPOSA Act, 1974, and submitted that a detention order may be revoked by the Central Government notwithstanding that the order has been made by the Officer of the Central Government or by a State Government. The learned counsel further submitted that since respondent No. 2, viz, the Union of India, has not filed any reply what so ever denying the averments regarding the filing of a representation by the petitioner

Major Singh v. State of Punjab and others (E. S. Nehra, J.)

against his detention, it would imply that it had received his representation but it neither considered the same nor communicated, its result to him and, therefore, the detention order deserves to be set aside on that scope alone.

(8) It has already been noticed above that the Union of India, despite being represented by a counsel, did not file any reply worth the name in this case. The reply filed by respondent No. 1, viz., the State Government denying for want of knowledge the petitioner's assertion regarding making of a representation to the Central Government is not helpful in concluding that no representation was made by the petitioner. The petitioner has made a positive assertion that he had made two representations to the Superintendent, Central Jail, Amritsar. It was, therefore, imperative for the Superintendent, Central Jail, Amritsar, or the State Government to specifically deny the petitioner's assertion, if that would have been the case, that he had made a representation meant to be forwarded to the Central Government. In this view of the matter, the learned counsel for the petitioner appears to be justified in urging that since respondent No. 2, viz., the Union of India has not filed any reply in this case, it should, therefore, be taken to have admitted by implication the filing of a representation by the petitioner meant for the Central Government's consideration. There is, however, no material on the record to show that the Central Government had either considered that representation or communicated the result of consideration of the representation to the petitioner.

(9) After carefully considering the contention of the learned counsel for the petitioner and the learned Deputy Advocate General, Punjab, I am of the view that there is considerable substance in the petitioner's contention that the respondent No. 2 had failed to consider his representation and, therefore, the impugned order of detention is unsustainable

(10) In *Rattan Singh and another v. State of Punjab*, (1), it was held as under :

“The failure on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government deprives the detenu of the valuable right to have his detention revoked by that Government. As a result, the continuous detention of the detenu is rendered illegal.”

(1) A.I.R. 1982, S.C. 1.

The verdict of the Apex Court in *Rattan Singh's case* (supra) fully supports the petitioner's contention that the failure on the part of the Central Government to consider his representation against his continued detention has rendered the order of detention passed against him wholly illegal.

(11) The next case, on which reliance was sought by the petitioner's counsel was a recent judgment of the Supreme Court in *Abdul Salam alias Thiyyan v. Union of India and others*, (2) in which Abdul Sallam had filed a petition under Article 32 of the Constitution of India assailing his detention under COFEPOSA Act. It is true that the Supreme Court after considering the merits of the case had dismissed the petition. Be that as it may, certain observations made in this judgment by the Apex Court again support the petition case under consideration. The Supreme Court had noticed some of its previous judgments and taken the following views :

"The Central Government may at any time revoke or modify any order made by the State Government. Though strictly speaking the Central Government is not the detaining authority within the meaning of Article 22(5), yet they are under legal obligation to dispose of the representation as early as possible."

"Once a representation is made to the Central Government, it is duty bound to consider the same in order to exercise its discretion either in rejecting or accepting it.

xxx	xxx	xxx
xxx	xxx	xxx

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.

xxx	xxx	xxx
xxx	xxx	xxx

Nischal Gupta v. Union Territory, Chandigarh and others
(R. S. Mongia, J.)

Where the representation made by the detenu to the Central Government has been ignored and left unattended for a period of four months, that would constitute violation of Article 22(5) of the Constitution.

xxx

xxx

xxx

Where the detenu made a representation to the Central Government on 26th September, 1988 and the decision of the Central Government rejecting the representation was communicated to the appellant on 31st October, 1988, it was observed, that the representation of the detenu had not been given prompt and expeditious consideration."

(12) Relying on the ratio of the judgments of the Supreme Court in *Rattan Singh's case* (supra) and *Abdul Salam's case* (supra), the conclusion is inescapable that the continued detention of the petitioner has been rendered unsustainable inasmuch as the respondent No. 2 failed to consider the representation made by the petitioner against his detention.

(13) In view of the above facts and circumstances of the case, it is not considered necessary to deal with the other grounds.

(14) For the reasons recorded above, the petition is allowed and the continued detention of the petitioner is held illegal and, therefore, quashed. The Superintendent Central Jail, Amritsar as also Superintendent, Central Jail, Patiala (as the counsel for the petitioner has verbally submitted that the petitioner is now detained at Patiala Jail) be informed to set the petitioner at liberty forthwith, unless his detention is required in any other case.

R.N.R.

Before R. S. Mongia, J.

NISCHAL GUPTA,—Petitioner.

versus

UNION TERRITORY, CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 10758 of 1991.

8th October, 1991.

Constitution of India, 1950—Art. 226—Admissions—Reservation for sportsman—Claim against reserved category—Punjab Engineering College, on the basis of instructions issued by U.T. Administration to follow the pattern as is being followed in the Panjab