

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(Crl.) 576/2003

Pawan Bajaj

...Petitioner through
Ms. Sangeeta Bhayana, Adv.

-versus-

Union of India & Ors.

...Respondent through
Mr. Rajesh Katyal, Adv.

WITH

WP(Crl.) 578/2003

Bharat Bhushan

...Petitioner through
Ms. Sangeeta Bhayana, Adv.

-versus-

Union of India & Ors.

...Respondent through
Mr. Rajesh Katyal, Adv.

Date of Decision : January 30, 2008

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE P.K. BHASIN

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

VIKRAMAJIT SEN, J. (Oral):

J U D G M E N T

1. This is the second salvo of litigation filed by the Petitioner in the High Court of Delhi. The earlier Writ Petition, bearing No.

Crl. W. 1219/2002 was dismissed by detailed Judgment dated 24.3.2003 of the Division Bench. To answer a technical objection as to the maintainability of this Petition our attention has been drawn to **Lallubhai Jogibhai Patel -vs- Union of India**, AIR 1981 SC 728 in which it has been opined that the “application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Art. 32 on fresh grounds, which were not taken in the earlier petition for the same relief”.

2. Learned counsel for the Petitioner contends that the Petitioner has studied only upto the 4th class; that in the statement recorded under Section 108 of the Customs Act it has been stated by him that he is conversant, that is, could read and write only Hindi; that the statement is also in Hindi.

3. In Ground E of the Writ Petition it has been asseverated that the Petitioner has not been supplied *pari passu* the Hindi translation of sundry documents of the Grounds of Detention. The argument is that this violates the Petitioner's infrangible rights under Article 22(5) of the Constitution of India, thereby rendering the Detention Order *non est*. Our attention has been drawn to the

“List of relied upon Documents” accompanying the subject Detention Order, where the sundry documents find mention. In paragraph 5 of the Counter Affidavit it has been pleaded that these averments are wrong, baseless and denied; “petitioner was served upon all the documents in English as well as in its Hindi translation. The receipt of the same has been acknowledged by the petitioner himself and it is for this reason that he never raised this ground either before the Central Advisory Board or before this Hon'ble Court in the earlier writ petition CrI. W. 1219/2002, which was dismissed on 24.3.2003”.

4. ***Powanammal*** -vs- *State of Tamil Nadu*, JT 1999(1) SC 31 : 1999(2) SCC 413 and *Kamarunnissa* -vs- *Union of India*, AIR 1991 SC 1640 enunciates that the non-supply of a copy of a document relied upon in the grounds of Detention must be viewed as fatal. Article 22(5) of the Constitution of India was given effect to. The distinction between a document which has been relied upon by the Detaining Authority in the grounds of Detention and a document which merely finds a reference in the grounds of Detention, was delineated and emphasised upon. Powanammal had represented that he could not understand English and, therefore, should be supplied with a Tamil version of the copy of the Remand Order, which the Court found had been relied upon. It was opined

that since the non-supply was of a 'relied upon' document, precise prejudice caused to the Detenu need not have been made good by him.

5. Paragraph 9 of the ***Powanammal*** is of general application and paragraph 15 is topical to the issue canvassed before us:

9. However, this court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detainee could not understand the English language. Admittedly, the Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detainee need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detainee.

6. Ms. Bhayana, learned counsel for the Petitioner, has also relied on *M. Ahamedkutty -vs-Union of India*, 1990 SCC(Cri) 258 where, as in the case before us, it had been opined that the bail application and the bail order were vital materials for consideration which would perforce have to be considered by the Detaining Authority, even if not specifically mentioned in the list of documents. Since admittedly these documents had not been supplied, the Detention Order was set aside.

7. We find it necessary to revert back to ***Lallubhai*** in which their Lordships had noted that non-supply of documents had not been denied in the Counter Affidavit and that affirmation of the

petitioner pertaining to the non-supply of relied upon documents had thus remained unchallenged. These observations are, in fact, the watershed between these precedents and the case before us. We note that ***Powanammal*** had been cited and considered by the Division Bench. It is wholly inconceivable that, keeping the pronouncements of the Supreme Court in view, the factual assertion as to non-supply of relied upon documents would not have been made before the Division Bench, if in fact this were so. We, therefore, find credence in the pleadings in the Counter Affidavit to the effect that the documents had been supplied to the Detenu.

8. The present Writ Petition is devoid of merit and is dismissed on this short ground.

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9. The circumstances as well as the answer to the Preliminary Objections is identical and has already been dealt by us above.

10. The question raised in this Petition is that a fatal delay has occurred in the consideration and disposal of the Representation dated 16.4.2003, filed by the father of the Petitioner, namely, Shri Satpal Popli after the disposal of the previous Representation of

the Detenu/Petitioner. The contention of learned counsel for the Petitioner is that the said second and subject Representation raised the following point for the first time, viz., -"that although the alleged incident took place on 26.4.2002 yet the impugned Detention Order was not passed till 22.7.2002. The impugned Detention Order is liable to be revoked as there has been a long and undue delay in passing the impugned Detention Order". In the previous Petition, that is, Crl. W.1219/2002 which was dismissed by the Division Bench by Judgment dated 24.3.2003 it had been noted that the Detenu/Petitioner made a Representation to the Detaining Authority on 29.8.2002 which was rejected by Order dated 11.9.2002; he made a Representation dated 23.9.2002 to the Chairman of the Advisory Board and also to the Central Government but the Detention Order was confirmed on 10.10.2002.

11. So far as the alleged delay in the disposal/decision of the second Representation authored by the father of the Detenu is concerned, the Respondents' response reads thus:-

It is respectfully submitted that the representation was received in the COFEPOSA unit from the President's Secretariat on 28.04.2003 through their letter dt. 26.04.2003. The comments of the Sponsoring Authority i.e. the DRI, New Delhi, on the

said representation were called for on the same day i.e. 28.04.2003 itself. The Sponsoring Authority sent their comments to the Detaining Authority vide their letter dated 2.05.2003 which was received in the Office of the Detaining Authority on 6.05.2003 (3rd and 4th May, 2003 were holidays being Saturday and Sunday respectively). The COFEPOSA Section put up the relevant file with all the connected papers to Deputy Secretary(COFEPOSA) the next day i.e. on 7.05.2003 who after examining the representation marked the file to the Joint Secretary (COFEPOSA) i.e. the Detaining Authority on 8.05.2003. The Joint Secretary (COFEPOSA) i.e. the Detaining Authority considered the representation and rejected the same being devoid of any merit on 8.05.2003 itself. The Memorandum of Rejection of the representation by the Detaining Authority was sent on 8.05.2003 itself, both to Sh. Satpal Popli, father of the detenu herein, who made the representation as well as to the petitioner through the Jail Authorities where he was lodged. Petitioner received the same on 9.05.2003 through the Jail Authorities.

It is respectfully submitted that the file relating to the said representation to be considered on behalf of the Central Government was after examination by the Dy. Secretary (COFEPOSA) marked to DDG and Joint Secretary (Admn.) on 09.05.2003. DDG & Joint Secretary(Admn.) cleared the file and further marked the file to Spl. Secretary & DG, CEIB, New Delhi, on the same day i.e. 09.05.2003. The Spl. Secretary & DG, CEIB, considered the said representation on 13th May, 2003 (10th and 11th May 2003 being Saturday and

Sunday respectively) and rejected the same on behalf of the Central Govt. as he found no merit in the said representation. The file was received back in the COFEPOSA Unit on 14.05.2003. The Memorandum of rejection of the representation by the Spl. Secretary & DG, CEIB, New Delhi on behalf of the Central Govt. was sent both to Sh. Satpal Popli, the father of the petitioner, who made the representation as well as to the petitioner/detenu herein himself through the Jail Authorities where he was lodged on 14.05.2003 itself and was received by him on 19.05.2003 (17th & 18th May, 2003 being Saturday and Sunday respectively) through the said Jail Authorities.

Therefore, in the light of the above facts, the contention of the petitioner/detenu herein that the representation by his father was not disposed of is misconceived, without basis and is liable to be rejected by this Hon'ble Court.

12. The alleged delay in the disposal of the second Representation spans a period of five days. Learned counsel for the Petitioner relies on *Rama Dhandu Borade -vs- Shri V.K. Saraf, Commissioner of Police*, JT 1989(2) SC 579 wherein their Lordships noted that - "...The only explanation offered by the third respondent is that further information required from the State Government was received by the third respondent on 17.10.88 after a delay of nearly 14 days and then the representation of the detenu was disposed of on 27.10.88 within which period there

were certain holidays. Barring that, there is no other explanation. This delay, when scrutinised in the light of the proposition of law adumbrated above, we are of the view that there is an inordinate and unreasonable delay and the present explanation given by the third respondent is not satisfactory and acceptable”.

13. Next, our attention has been drawn to *Rajammal -vs- State of Tamil Nadu*, JT 1998 (8) SC 598. After reproducing the extracts from *Kundanbhai Dulabhai Sheikh -vs- District Magistrate, Ahmedabad*, JT 1986 (2) SC 532 as well as *K.M. Abdulla Kunhi and B.L. Abdul Khader -vs- Union of India*, JT 1991 (1) SC 216 their Lordships observed that if delay is caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. It is significant that the Detention Order had not been set aside but rather “further detention must necessarily be disallowed. We therefore allow this appeal and set aside the impugned judgment. We direct the appellant/detenu to be set at large forthwith”.

14. Reverting back to the Petition in hand, we are satisfied that there was no delay sufficient, *per se*, to defeat the Detention Order, in the circumstances narrated in the Counter Affidavit of the Respondents (extracted supra). We also find it necessary to

draw a distinction between the release of a detenu because of delay in disposal of his Representation, and the quashing of the Detention Order as a consequence of which the personal liberty of the Detenu has been curtailed. In the present case, the only remaining relevance of the of the Writ Petition is for the quashing of the Detention Order which would impact proceedings under SFEMA.

15. The Writ Petition is without merit and is dismissed.

VIKRAMAJIT SEN, J.

P. K. BHASIN, J.

January 30, 2008
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