
(1990) 42 DLT 267 : (1990) 2 RCR(Criminal) 395

Delhi High Court

Case No: Criminal Writ Appeal No. 4 of 1990

Madan Lal Anand

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: July 25, 1990

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3(1)
- Constitution of India, 1950 - Article 22(5)

Citation: (1990) 42 DLT 267 : (1990) 2 RCR(Criminal) 395

Hon'ble Judges: Usha Mehra, J; S.B. Wad, J

Bench: Division Bench

Advocate: Harjinder Singh, Rohit Kochhar, V.K. Makhija and Sangeeta Nanchaha, for the Appellant;

Judgement

Usha Mehra, J.

(1) This is a third round of litigation started by the petitioner (Madan Lal Anand), challenging the legality of the detention order dated 30th September, 1988 of the Conservation of Foreign Exchange and. Prevention of Smuggling Activities Act, 1974 (as amended) (for short "the Cofeposa Act").

(2) The petitioner (Madan Lal Anand) earlier had filed a similar writ petition No. 555 of 1988 in this Court, which was dismissed on 17th March, 1989 thereafter he filed SLP . (Criminal) in Supreme Court being No. 950/89 against the judgment of this Court, which was also dismissed vide judgment datcd26th October, 1989. The present writ petition is filed for the same relief but on the basis of some alleged fresh and additional grounds which according to petitioner, were not taken up or urged in the writ petition as well as in the SLP It is not necessary, for the view that we are going to take, to deal in detail with

the grounds on which the order of detention was passed except to notice that the detaining authority, from the facts collected, was satisfied that although petitioner was neither the partner nor a proprietor of M/s. Jasmine and M/s. Expo International yet he was actively associated with his brother Shri Ved Paul Anand, who was actively involved in the import of the duty free goods obtained in advance licenses as actual user and in illegal disposal of the same.

(3) It was in this back-ground that the detaining authority with a view to preventing him from-

(A)abetting the smuggling pf goods; and (b) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. passed the impugned detention order against him.

(4) He made a representation against the detention order on 17th January, 1989 to the Central Government. The said representation was rejected vide Memorandum dated 20th February, 1989 which was served upon the detenu in the Central Jail, Tihar, New Delhi on 21st February, 1989. In the declaration dated 2nd November, .1988 it has not been mentioned that the detenu has a right to make representation. He filed a writ petition which was dismissed against which be went to Supreme Court in SLP . which was also dismissed. He made a fresh representation on 5th December, 1989 on the basis of fresh and additional" grounds.

(5) Mr. Vijay Krishan Makhija, Counsel appearing for the respondents contended that the present petition is abuse of legal process and not bonafide. Some finality has to be attached to the round of litigations which the petitioner is initiating one after the other, on the same grounds and for the same cause of action. So far as this objection of the respondent is concerned (no doubt this is the third round of litigation) cannot loss sight of the fact that in a detention matter neither principles of resjudicata nor constructive resjudicata is applicable, if the petition is based on fresh or additional grounds. Each case has to be decided on its own merits. In this regard reference can be had to the decision of the Supreme Court in the case of [Abdul Sattar Abdul Kadar Shaikh Vs. Union of India \(UOI\) and Others](#), decided on 24th January, 1990 in writ petition (Criminal) No. 532 of 1989.

(6) The impugned detention order was passed on 30th September, 1988 with a view to preventing the detenu from .abetting the smuggling of goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. He has urged that he was not made aware of the existence of some of the relevant documents and statements namely: -

(I)Statements recorded by the C.B.I, of the co-detenus S/Shri Naresh Chadha, Krishan Lal Chawla and G.L. Aggarwal on 1st June, 1988, 2ndJune,1988 and 3rd June, 1988 respectively. The enquiry conducted by C.B.I, with regard to Ms. Jasmine, B-3/7 Vasant

Vihar, New Delhi pertains to the same allegations which from the subject "matter of the grounds of detention. These documents are relevant and material. These have been suppressed from the detaining authority, thus vitiating the detention and making detenu's detention illegal; (ii) .Apart from other documents which are referred to and relied upon and which have not been supplied to the detenus are the advance licenses bearing Nos. (i) P/L/3078321/C/XX/92/D/84 dated 3rd August, 1984 (ii). P/L/3078644/C/XX/92"D/84 dated 11th Sepetmber, 1984 (iii) No.P/L/3041054 dated 21st December. 1984 (iv) No. P/L/3042825 dated 7th Jan., 85 and license No. P/L/3042846/C/XX/D/94/84 Dt. 25th Jan, 1985. Some of the documents which have been supplied to him are illegible.

(7) By the present writ petition the petitioner had challenged the detention order inter alias on the grounds :-

(I) That material documents were not supplied; (ii) There was delay of more than a month in disposal of his representation which delay has remained un-explained; and (iii) The declaration u/s 9 of the Act dated 2nd November, 1988 violates his right under Article 22(5) of the Constitution of India.

(8) So far as the alleged non-supply of documents are concerned, this was in the knowledge of the petitioner as is apparent from his first representation made on 17th January, 1989. He had mentioned about the licenses as well as the recording of the statements by the C.B.I, of his co-detenus. Therefore, it cannot be said that there was any concealment of documents or facts.

(9) The question/which remains for consideration is about the infringement of petitioner's fundamental right under Article 22(5) of the Constitution of India. Article 22(5) of the Constitution of India confers two rights on the detenu, namely the right to be informed of the grounds of which the order of detention has been made, and secondly, to be afforded an earliest opportunity to make a representation against the order.

(10) As we have already mentioned, the detenu was supplied the copies of the documents relied upon by the detaining authority. Since all the documents have been supplied by the detaining authority, we find that the detenu was in no way handicapped. Even, otherwise, a mere non-supply of any document whatever its nature may be, to the detenu would not per se amounts to denial of opportunity under Article 22(5).

(11) The second contention is that the declaration u/s 9(1) of the Act dated 2nd November, 1988 did not make the detenu aware of his right of representation against the declaration. The detenu was not made" aware of this right even by any other letter. The detenu had thus been deprived of his constitutional right to make representation against the declaration and, Therefore, the declaration is vocative of the provision of Article 22(5) of the Constitution of India. Reliance was placed on the. decision of the Supreme Court in Jagprit Singh v. Union of India & Others (Criminal Appeal No. 23/90) decided on 28th March, 1990.

(12) In Jagprit Singh's case, the Supreme Court observed :-

"FROM the papers placed on record, it was not until the detenu wrote to the declaring authority on 10th November, 1988 seeking clarification as to whether he had a right of representation against the declaration and, if so, to which authority that a clarification on this matter was furnished to him on 17th November, 1988. In other words, there has been a delay of about a month and 13 days before the detenu was made aware of his rights under the Constitution to make an effective representation against the declaration. This delay, in our opinion, is quite unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution of India. The detention of the detenu beyond the original period of one year, in the circumstances, was unjustified."

Further, the Supreme Court has noted in the said case :

"IT is undeniable that in the facts and circumstances of this case, the detenu has not been made aware, either in the order of declaration or within a reasonable time thereafter, that he had a right to make a representation against the declaration to the appropriate authorities."

(13) The Counsel for the respondents, however, submits that on the facts of this case, it will have to be assumed that the petitioner was aware of the right of representation against the declaration, but deliberately delayed the representation. He submits that the petitioner is a well-educated person, (Engineer) had availed of services of eminent lawyers in making all the representations and proceedings before the Advisory Board.- His brother and nephew were also detained and also contested all the proceedings under the Act. The counsel places reliance on the decision of the Supreme Court in the case of [Abdul Sattar Abdul Kadar Shaikh Vs. Union of India \(UOI\) and Others](#), where on similar facts, the Supreme Court had held that non-mention of right of representation in the impugned order was not fatal. We, however, note that the areas of detenu's protection are being extended by the Supreme Court, from time to time and, Therefore, the decision rendered by the Supreme Court in 1990 in Jagprit Singh v. Union of India & Ors. (Supra) is directly to the point. If right of representation in a declaration u/s 9(1) of the Act is covered by procedural guarantee under Article 22(5), non-mention of such a right in the declaration dated 2nd November, 1988 would render detention beyond the period of one year, had.

(14) Once the declaration is declared illegal, the detention of the petitioner beyond the original period of one year, in the circumstances, was unjustified. We, Therefore, set aside the detention of the petitioner beyond 29th September, 1989 and direct that he be set at liberty at once unless there are other justifiable circumstances to hold him back in custody. Criminal Writ is accordingly disposed of with no order as to costs.