
(1986) 01 DEL CK 0004

In the Delhi High Court

Case No : Criminal Writ Petition Appeal No. 230 of 1985

Ardn Kumar Tandon

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Citation : (1986) ILR Delhi 640

Hon'ble Judges : M. Sharief-ud-din, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Harjinder Singh, B.P.S. Mangat, N.S. Mehta, R.M. Bagai and M.K. Gupta, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) This is a writ petition by Arun Kumar Tandon for issuance of a writ of habeas corpus and for quashing the detention order stated to have been made on 26th August, 1985, by the Administrator of the Union Territory of Delhi in exercise of the powers conferred on him by section 3(1) read with section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act). The subsequent declaration made on 8th October, 1985, u/s 9(1) of the Act by the Additional Secretary to the Government of India is also sought to be quashed.

(2) The detention order was passed with a view to preventing petitioner "from dealing in smuggled goods, viz., gold, smuggling goods, viz., lizard skins out of India and also preventing him from transporting, concealing and keeping smuggled goods viz., gold". The grounds on which the detention order has been made were served on the petitioner on 13th September, 1985, while he was lodged in Central Jail, Tihar. It may be noticed that according to the counter-affidavit filed by respondent No. 2, the petitioner was detained on 10th September, 1985. in pursuance of the said detention order. In paragraphs I to 25 of these grounds, the allegations against the petitioner and his associates have

been noted in detail. Briefly, the allegations were that two Chinese nationals based in Hongkong, one of whom was known to the petitioner for the last 5-6 years, during their trips to India, had illegally imported into India gold which was got disposed of or dealt with by the help of the petitioner or by him personally. It appears that from the proceeds of that gold, the petitioner along with his two associates illegally exported lizard skins out of India. In paragraph 26, however, the satisfaction of the Administrator has been expressed in the following terms :-

"26. On the basis of the entire material on record, the Administrator of the Union Territory of Delhi is of the considered opinion that you have been dealing in smuggled goods and also engaged in transporting, concealing and keeping smuggled goods, viz., gold. Even though prosecution proceedings have already been initiated "against you, the Administrator of the Union Territory of Delhi is satisfied that you should be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing you from dealing in smuggled goods and also preventing you from engaging in transporting, concealing and keeping smuggled goods viz., gold".

(3) On receipt of the grounds, the petitioner herein made a representation against the detention order. A copy of that representation has been annexed as Annexure "D" to the writ petition. In paragraph 2 of that petition it was pointed out by him that the grounds of detention which were served on him were undated. After quoting paragraph 26 of the grounds it was submitted, "there is complete non-application of mind in passing of the said detention order, which has been passed with respect to dealing in smuggled goods, viz., gold and also smuggling of goods, viz., lizard skin out of India. There is absolutely no material to come to the conclusion that I have been smuggling goods, viz., lizard skin out of India and dealing in smuggled goods, viz., gold". In paragraph 4 of that representation it was further submitted, "that the grounds of detention are at variance with the order of detention. In the grounds of detention, there is no mention that I smuggled goods, viz., lizard skin out of India. There is thus complete non-application of mind. It seems that the detaining authority did not take into consideration the fact that there is no material to arrive at the conclusion of smuggling goods, viz., lizard skin out of India. The satisfaction arrived at in the grounds of detention does not, in any manner, suggest that the Administrator was satisfied with regard to smuggling goods, viz., lizard skin, out of India. The order of detention has been passed in a casual and cavalier manner which being not in conformity with the satisfaction arrived at in the grounds of detention, makes the detention illegal".

(4) Admittedly, the representation against the detention order was rejected by the Administrator. The order of rejection is dated 16th October, 1985. In that very order, however, it has been stated that some documents, out of those sought for by the petitioner, were being supplied to him. The declaration u/s 9(1) of the Act which is impugned was made on 8th October, 1985. The operative portion of that declaration reads :--

"NOW, Therefore, I, the undersigned hereby declares that I am satisfied that the aforesaid Shri Arun Kumar. Tandon is likely to smuggle goods out of Delhi Airport which is an area highly vulnerable to smuggling, as defined in Explanation 1 to Section 9(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act".

(5) Mr Harjinder Singh, learned counsel for the petitioner, urged a number of pleas in support of his contention that the detention order as also the continued detention of the petitioner is bad in law. His main plea, however, is the same which was taken by the petitioner in his representation, as quoted above. The plea is that the grounds of detention make it abundantly clear that the Administrator made the detention order with a view to preventing the petitioner from dealing in smuggled goods, and also preventing him from engaging in transporting, concealing and keeping smuggled goods, viz., gold, as per paragraph 26 of the grounds, whereas the satisfaction recorded in the order of detention, a copy of which was supplied to the petitioner duly authenticated by the Deputy Secretary (Home) (copy Annexure "A") states that petitioner was to be detained "with a view to preventing him from dealing in smuggled goods, viz., gold, smuggling goods, viz., lizard skin out of India and also preventing him from transporting, concealing and keeping smuggled goods, viz., gold", thereby clearly implying that on the allegation of exporting lizard skins out of India, the Administrator was not satisfied that the petitioner be detained. It is further urged that the declaration made u/s 9(1) of the Act has been made solely on the ground that the petitioner was likely to smuggle goods out of the Delhi, Airport. That the petitioner was likely to smuggle goods out of India has not been made a ground of detention, it is so urged by Mr. Harjinder Singh. Thus it is submitted that the detention order is based on a ground different from the grounds of detention and as such it is liable to be held illegal.

(6) In answer to the rule nisi the Delhi Administration, respondent No. 2, has filed its counter-affidavit. The Union of India, respondent No. 1, chose not to file any affidavit. Thus, qua that respondent this is a case of no return.

(7) Here we may notice another fact. During the course of arguments, Mr. Bagai, learned counsel for respondent No 2 sought our permission to produce for our perusal the file containing the original detention order signed by the Administrator. His plea was that in paragraph 26 of the grounds, on which reliance was being placed by Mr Harjinder Singh, a mistake had crept in. It was urged that the Administrator's satisfaction was based on the fact that the detenu had been smuggling lizard skins out of India. By speaking order we permitted the said respondent to file a further affidavit. In paragraph 2 of that affidavit the relevant portion of the detention order is quoted as under :-

"I further order that Shri A. K. Tandon be detained under the aforesaid provisions of the Act with a view to preventing him from dealing in smuggled goods viz.. gold, smuggling of goods viz. lizard/snake skins out of India and also preventing him from transporting, concealing and keeping smuggled goods viz., gold".

(8) The contention is that in paragraph 26 of the grounds, by a typographical error the words "smuggling of goods, viz., lizard/snake skins out of India" were left out. The plea is that the entire argument of the petitioner based on the construction of statement of facts in paragraph 26 of the grounds is misconceived. It is, however, admitted that the petitioner was not informed till the filing of the further affidavit that there has been such a typing error or clerical mistake in paragraph 26 of the grounds of detention.

(9) Mr. Mehta, learned counsel for respondent No. 1 (Union of India) in support of his contention that the declaration u/s 9(1) of the Act is valid, placed the original record of the Central Government before us. On a perusal of that record it appeared that the Delhi Administration while informing the Central Government about the detention of the petitioner forwarded to them an authenticated copy of the order (Annexure A), and also a copy of the grounds served on him. This record was shown to us when this writ petition was placed for hearing before us on a reference made by one of us (Charanjit Talwar J.), but prior to the filing of the further affidavit on behalf of the Delhi Administration. It was suggested by Mr. Bagai that the file containing the original detention order signed by the Administrator might possibly have been sent to the Central Government. His plea was that the Central Government was thus deemed to be aware that the original detention order was made by the Administrator on the ground of illegal export of lizard skins out of Delhi. However, he could not produce any record to show that the original file had been sent to the Central Government. The Central Government, as noticed above, had shown us the record earlier but not when this question arose. That record was thus not forth coming to verify the position. As pointed out earlier, it is a case of no return as far as respondent No. 1 is concerned. The averment of the petitioner that the declaration on u/s 9 of the Act has been made on a ground which was not a ground of detention, is thus to be taken for granted. It is now settled that the declaration u/s 9 not merely extends the period of detention but enables the detaining authority to detain a person without obtaining the opinion of the Advisory Board for a period longer than three months but not exceeding six months. We may notice that Mr. Bagai appearing on behalf of Delhi Administration made a strenuous effort to show that the declaration u/s 9(1) of the Act could be made on a ground other than the grounds on which the detenu is detained. According to him in a case where the pre-condition, namely, that the detenu had been detained with a view to preventing him from smuggling goods or abetting of smuggling of goods or engaging in transporting, or concealing or keeping smuggled goods, is satisfied, the Central Government on its satisfaction that such person (a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling or (b) abets or is likely to abet the smuggling of goods into, out of or through any area highly valuable to smuggling or (c) engage or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling, can make a declaration that effect within five weeks of the detention of such person. As noticed above, his plea is that the

ground for making declaration could be different from the grounds of detention. According to him if the detention order has been passed with a view to preventing a detenu from smuggling goods, the Central Government on going through the grounds on which the detention order is made, can make a declaration based on any one of the grounds mentioned in (a) to (c), noted above, and not essentially on that very ground which is the basis of the detention order. It is not necessary in this case to deal with this plea raised by Mr. Bagai as the Union of India who have made the declaration, have neither taken this plea in writing or urged it. It had to be averred by respondent No. 1, if at all it was their case that the declaration has been made on a ground different than the ground on which the detention order has been made. As the declaration made u/s 9 of the Act is based on a ground which is not averred to in paragraph 26 of the grounds of detention, and this being a case of no return as far as respondent No. 1 is concerned, it has to be held that the declaration made by them is on a non-existent ground. Since that declaration is invalid the continued detention of the petitioner is to be held to be bad in law. The consequence is that the detention order is also to be quashed It is ordered accordingly.

(10) We direct that the detenu Arun Kumar Tandon be set at liberty forthwith unless required to be detained under a valid order of an authority or a Court. Rule made absolute accordingly.