

(1997) 09 DEL CK 0072

In the Delhi High Court

Case No : Criminal Writ Petition No. 17 of 1997 and Civil Miscellaneous Appeal No. 4597 of 1997

D. Rana @ Dharmesh Prill @ Dharmesh Rana

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Citation : (1997) 5 AD 880 : (1998) CriLJ 354 : (1997) 69 DLT 746 : (1997) 43 DRJ 328

Hon'ble Judges : A.P. Misra, C.J.; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Madan Lokur, Naveen Malhotra, K.C. Mittal and L.R. Luthra, for the Appellant;

Judgement

A.P. Misra, C.J.

(1) Heard, learned counsel for the parties. In view of the peculiar facts and circumstances of this case, as also agreed by the learned counsel for the parties, it is being disposed of finally at the admission stage.

(2) The petitioner has challenged the detention order dated 25.9.1996 passed by the respondent No. 2 and for the direction to set him at liberty forthwith. The brief facts of the case are as under:

ON 4th April, 1996 Shri Imad Ali Hussain Ali, holder of Iraqi Passport, reported at Customs counter with one black coloured brief case in the Customs departure hall of Igi Airport, New Delhi for onward journey to Oman by flight No. RJ-193. After clearance, while he was stopped by the Customs authorities and it is alleged that from his possession foreign currency equivalent to Rs. 10,97,000.00 approximately was recovered and seized u/s 110 of the Customs Act, 1962 by the Customs authorities. It is also alleged that from his possession certain documents were also recovered. It is alleged that Shri Imad Ali in his statement

had stated that he arrived at Igi Airport, New Delhi, and smuggled 2.190 Kgs. of gold and his friend Shri Hytham Saffar was also accompanied with him and he stated that the gold was collected from him by the petitioner. Shri Hythem Saffar was also taken into custody from the Suncity Hotel. Karol Bagh, New Delhi.

(3) On 25.9.1996 an order of detention was passed against the petitioner by order and in the name of Lt. governor of the Nct of Delhi by Shri Rakesh Bhatnagar, Dy Secretary (Home) u/s 3(1) of Cofeposa, 1974.

(4) The order of detention was served upon the petitioner in Jail on 26.9.1996 and the grounds of detention and documents were also served upon the petitioner.

(5) This petition raises number of grounds. It is no necessary to refer to all those as we are deciding this petition only on a short ground which is the main contention raised by learned counsel for petitioner, viz., Joint Secretary(Revenue) who decided the representation of the petitioner was not competent to decide as he had no authority under the law. Counsel for the respondent has placed reliance on the `Delegation of Powers" in the notification No. F.685/1A/84-I/Duo Viii issued on 26.4.1991 (Annexure 1). Under the said notification powers u/s `5" Sub-Section (1) of the Section 7, Clause (f) of Section 8 Section 10, Section 11 and Sub-section (1) of Section 12 under the Cofeposa Act, 1974, to dispose of the representation was delegated to the Secretary or Special Secretary or Additional Secretary or Joint Secretary in the Ministry of Finance (Deptt. of Revenue), Government of India. On the other hand for the petitioner, reliance is placed on the notification in the year 1996 which is dated 25.7.1996 (Annexure X-I) No. F. 50/61/96-Ad.I issued by Additional Secretary to the Govt. of India, Ministry of Finance, Department of Revenue. This notification issued is not disputed. Under this the Finance Minister has delegated the powers to the Secretary (Revenue) in respect of disposal of cases referred to therein at item No. (1)

"All files concerning representation from COFEPOSA/PITNDPS detenus addressed to the Government of India."

(6) The contention raised for the respondent is that this notification is not in supersession to the 1991 notification. This is in addition to 1991 Notification. Both notifications can co-exist.

(7) Learned counsel for the petitioner strongly relied on the case of Vinod Punwani Vs. Union of India and Others in CrI.W.P. No. 581/95 decided on 20.3.1996. Here the notification No. A 22012/2/93-Admn.1 of 20.1.1993 was considered. There representation of the detenu was decided by the Minister of State for Revenue and Expenditure, and as per petitioner"s case it ought to have been dealt with by the Finance Minister. Thus there was no power to the Minister of State in the absence of delegation by the Finance Minister. With reference to the aforesaid 1993 Notification, the Court held:

"...PARA(B) shows that the Finance Minister will deal with the matters, namely, representation for revocation and confirmation of detention period under the COFEPOSA..."

(8) Mr. Madan Lokur learned counsel for the petitioner tried to draw inference in view of this, the 1991 Notification is shown to have been superseded. We find this case did not refer to the 1991 notification though 1993 Notification indicates the power being retained by the Minister concerned.

(9) However, for the purpose of disposal of this petition it is not necessary to draw indirectly inference from the aforesaid decision. We find the language used in the 1996 notification is very clear while delegating powers to the Secretary it clearly refers to the following cases;

"All files concerning representation from COFEPOSA/PITNDPS detenus addressed to the Government of India."

(10) Under this it has to be disposed of by the Secretary (Revenue), to whom the Finance Minister has delegated the powers. The wording is very clear. It does not lead to any exception or it does not carve out any case on file to be excluded from his jurisdiction. If this be so how under 1991 Notification Joint Secretary continue to retain the power. The argument of Union by learned Counsel, Mr. K.C. Mittal can be tested from another angle. He contends both the notifications can co-exist. If that be so all the officers in 1991 and 1996 Notification will have jurisdiction in the matter. If we see 1991 Notification, it already refers Secretary as one of the Officers, then where was the occasion to delegate Secretary again in 1996 Notification. Such an interpretation will make 1996 Notification superfluous. Having considered the matter we are clearly of the opinion that 1996 Notification makes no room of doubt that 1991 Notification stands superseded, if not earlier to which we are not considering herein.

(11) In view of this the disposal of the representation by the Joint Secretary, was without jurisdiction as it is not disputed that the said representation was decided after 26.7.1996, the date of 1996 Notification. Since the representation of the petitioner has not been decided by the authority empowered, the continued detention of the detenu is illegal. Accordingly, we direct respondent authorities to release the petitioner forthwith, unless required in any other case.

(12) With the aforesaid directions, petition stands allowed.