
(2015) 06 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No. 829 of 2015 (Arising out of SLP (Criminal) No. 2489 of 2015)

Golam Biswas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1), 8
Constitution of India, 1950 — Article 22

Citation : (2016) 332 ELT 22 : (2015) 7 SCALE 64

Hon'ble Judges : Prafulla C. Pant, J; Amitava Roy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted. In challenge is the judgment and order dated 04.03.2015 rendered by the High Court of Delhi in Writ Petition (Criminal) No. 1529 of 2014 sustaining the orders of detention dated 27.05.2014 and 13.06.2014 by the appropriate authority passed Under Sections 3(1)(i) and 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, hereinafter referred to as, "the Act") qua the detenu Barik Biswas, brother of the Appellant.

2. We have heard Mr. Gopal Subramaniam, learned senior Counsel for the Appellant and Ms. Pinky Anand, learned Additional Solicitor General, for the Union of India.

3. The skeletal facts relevant to be noticed are that on 08.03.2014, the detenu was arrested under the Customs Act at about 1.30 p.m. while he was travelling in a Toyota Fortuner car bearing registration No. WB 26 S 2600 in Beliaghata area of Taki Road, district of North 24 Parganas. The car was being driven by one Moksed Mandal and on a search thereof 44.659 kilograms of smuggled gold was recovered by the Revenue Intelligence Authorities. The detenu, though arrested,

was later released on bail by the Chief Metropolitan Magistrate, Kolkata on 12.03.2014. The bail was, however, cancelled eventually on 14.05.2014 against which he preferred Special Leave Petition (Criminal) No. 4387 of 2014 which was disposed of by this Court on 28.05.2014 in the following terms:

"We are not inclined to interfere with the order passed by the High Court cancelling the bail of the Petitioner which was granted to him by the trial court, at the same time, having regard to the nature of issue involved in the matter, we direct the Directorate of Revenue Intelligence to complete the Investigation expeditiously and preferably within four weeks from today. The moment, investigation is complete and challan is Filed in the Court, the Petitioner shall be at liberty to move an application for regular bail which shall be considered by the trial court without being influenced by any observation made in the impugned order by the High Court."

4. As the text of the order would reveal, thereby this Court, while declining to interfere with the order of cancellation of bail of the detenu, required the Directorate of Revenue Intelligence to complete the investigation expeditiously and preferably within four weeks therefrom. It was further observed that the moment the investigation was complete and challan was filed in the court, he would be at liberty to move an application for regular bail which would be considered by the trial court without being influenced by any observation made in the order of cancellation passed by the High Court.

5. Pursuant to this order, the detenu surrendered on 11.06.2014 and was taken into custody. It is a matter of record that the orders of detention referred to hereinabove was served on him on 16.06.2014.

6. As the pleaded facts and the documents on record would reveal, by then, the detaining authority on 27.05.2014 had passed an order Under Section 3(1) of the Act for his detention with a view to prevent him from smuggling goods and effecting transportation and concealment of the smuggled goods in future. In a separate communication dated 27.05.2014 of the Government of India, Ministry of Finance. Department of Revenue, Central Economic Intelligence Bureau (COFEPOSA Unit), signed by the Joint Secretary to the Government and addressed to the Appellant, the materials taken note of in passing the said order were recorded. To reiterate, however, none of these two communications were served on the detenu on that date or immediately thereafter. It was on 12.06.2014, that a letter was addressed by the Additional Director General, Directorate of Revenue Intelligence, Kolkata senior unit to the Joint Secretary COFEPOSA, Central Economic Intelligence Bureau COFEPOSA Unit, New Delhi bringing to the notice of the latter amongst others, the fact that the order of detention dated 27.05.2014 had not been executed till then and that in terms of the order of this Court rendered in SLP (Criminal) No. 4387 of 2014, there was a likelihood of he being released on bail when the investigation was complete and challan was submitted. It was indicated in the said letter as well that in such an eventuality, there was a possibility of the Appellant absconding from law and

that, thus, his detention under the Act was warranted. Incorporating the above contents of the letter and citing the same to be additional grounds, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau COFEPOSA Wing, ordered his detention under the Act on 13.06.2014. There is no indication that the order dated 13.06.2014 directing detention of the detenu was in supersession of the one dated 27.05.2014. Thus, on record, as on 13.06.2014, there did exist two orders, one dated 27.05.2014 and the other dated 13.06.2014 directing preventive detention of the detenu under the Act citing different grounds.

7. Be that as it may, it is a matter of record and the parties are not in issue that the detenu on 08.07.2014 had submitted a representation challenging the grounds of his detention, addressed to the Special Secretary-cum-Director General of CEIB, Government of India, Ministry of Finance, Department of Revenue, who was the appropriate authority to consider and decide the same on merits. This representation was received on 10.07.2014 and remained pending till the file, in accordance with Section 8 of the Act, was remitted to the concerned Advisory Board on 18.07.2014 for its consideration and decision as required under the Act. There again is no discussion that as on that date, the detenu's representation dated 08.07.2014 had remained pending with the Central Government. The records reveal that the hearing before the Advisory Board was conducted on 16.08.2014 and the proceedings got culminated on 27.08.2014. The Advisory Board sustained the order of detention. It was thereafter on 05.09.2014, the order of detention was confirmed by the Central Government. Meanwhile, on 21.07.2014, the representation which hitherto was pending before the Central Government was rejected on merits. It is contended on behalf of the Respondents that after the rejection of the detenu's representation, the same was forwarded to the Advisory Board before which the proceedings were still pending.

8. Mr. Gopal Subramaniam, learned senior Counsel for the Appellant, has emphatically urged that as the detenu's representation dated 08.07.2014 had remained pending when the matter was remitted to the Advisory Board, it was incumbent on the Central Government to forward the same along with all relevant records as needed before it (Advisory Board) for its effective consideration. According to the learned senior Counsel, this omission on the part of the Central Government, per se, vitiates the order of detention and as such the same is liable to be declared constitutionally impermissible. To endorse this view, Mr. Subramaniam has placed reliance on two Constitution Bench decisions of this Court in Jayanarayan Sukul Vs. State of West Bengal, AIR 1970 SC 675 : (1970) CriLJ 743 : (1970) 1 SCC 219 : (1970) 1 SCC(Cri) 92 : (1970) 3 SCR 225 and K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, AIR 1991 SC 574 : (1992) 73 CompCas 470 : (1991) CriLJ 790 : (1991) 1 Crimes 341 : (1991) 32 ECC 179 : (1991) 52 ELT 321 : (1991) 1 JT 216 : (1991) 1 SCALE 58 : (1991) 1 SCC 476 : (1991) 1 SCR 102 .

9. It is noticeable that the learned senior Counsel for the Appellant did raise two other contentions to oppugn the order of detention, namely, in the face of the first order of detention dated 27.05.2014, the second order dated 13.06.2014 was clearly impermissible in law which ipso facto renders the detention unlawful and further as the letter dated 05.06.2012 by Aizul Sajdar clearly exonerating the detenu from the charge on which the order of detention was based was not taken note of by the detaining authority on the purported ground that the same was subsequent to the order of detention dated 27.05.2014, further detention of the Appellant was constitutionally invalid. This was, as would be evident from the order dated 13.06.2014 that several letters/communications subsequent to 27.05.2014 were taken note of and relied upon by the detaining authority to derive its so called satisfaction.

10. Per contra, Ms. Pinky Anand, learned Additional Solicitor General has urged that a plain reading of Article 22 of the Constitution of India and the relevant provision of the Act does not mandate an inflexible time frame for the Central Government to dispose of the detenu's representation and, thus, not only it was not incumbent on its part to forward the detenu's representation dated 08.07.2014 to the Advisory Board but it was allowable as well for it to consider and reject the same thereafter within a reasonable period. As the Central Government had disposed of the detenu's representation within a reasonable time from its submission, i.e. 08.07.2014, it cannot be held to be guilty of any inaction, negligence or indifference. She urged, referring also to the decision rendered in K.M. Abdulla Kunhi and B.L. Abdul Khader (*supra*), that the Central Government in a given fact situation, if a representation is filed by the detenu after the order of confirmation would be within its authority to dispose of the same on merits even at that stage. This proposition, according to her, endorses the view that it would not be construed to be obligatory on its part to forward a pending representation of the detenu to the Advisory Board, even if filed and is pending before the matter is remitted to the Advisory Board for consideration.

11. After hearing the learned Counsel for the parties and on consideration of the pleaded facts and documents on record, we are unhesitatingly satisfied that adjudication on the issue of remittance of a pending representation to the Advisory Board would suffice to dispose of this appeal. We, thus, propose to adopt this course.

12. To start with the dates setting out the intervening events are not in dispute. To repeat, the detenu had submitted his representation on 08.07.2014 and the same was pending consideration on merit before the Central Government on 18.07.2014, the date on which the matter was remitted to the Advisory Board under the Act. The representation was rejected on 21.07.2014 when the matter was pending before the Advisory Board. The Advisory Board concluded its proceedings and gave a finding sustaining the order of detention on 27.08.2014. Unmistakably, thus, the detenu's representation which was pending at the time of remittance of the matter to the Advisory Board was not forwarded to it and

instead was rejected by the Central Government during the pendency of the proceedings before the Advisory Board.

13. In *Jayanarayan Sukul* (supra), this Court, while dwelling on the principles bearing on the process of consideration of a representation of the detenu in preventive detention cases, not only underlined that there ought not to be any undue delay in the matter, if assumed that though no hard and fast rules could be laid down to fix the duration therefor, the appropriate Government was to exercise its opinion and judgment thereon before sending the case of the detenu to the Advisory Board. In this context, it was observed that if the appropriate Government released the detenu, it would not be required for it to send the matter to the Advisory Board. However, if it was not so, the Government was to send the case along with the detenu's representation to the Advisory Board and, if thereafter the Advisory Board expressed its opinion in favour of the release of the detenu, the Government would release him/her. It was noted as well that if the Advisory Board would express any opinion against the release of the detenu, it would still be open for the Government to release the detenu. True it is, as the text of that judgment would reveal, that, in that case, the representation submitted by the detenu had remained pending with the Central Government even after the receipt of the opinion of the Advisory Board, in our opinion, the same does not detract from the unequivocal and authoritative proposition laid down by this Court vis-à-vis the obligation of the Central Government to forward the pending representation to the Advisory Board for its consideration.

14. The above view resonated in affirmation as well in *K.M. Abdulla Kunhi and B.L. Abdul Khader* (supra) wherein this Court, in paragraph 16, reiterated the above. For ready reference, we consider it appropriate to extract the same:

"16. We agree with the observations in *frances Coralie Mullin* case. The time imperative for consideration of representation can never be absolute or obsessive, it depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the Government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the Government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the Government after considering the

representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The Constitution of the Board shows that it consists of eminent persons who are Judges or person qualified to be Judges of The High Court. It is therefore, proper that the Government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the Government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the Government as early as possible."

15. As the quoted text would reveal, in essence, it was reiterated that if a representation is received by an appropriate authority and there is no time to dispose of the same having regard to the time frame fixed by the Act for reference of the matter to the Advisory Board, the representation must also be forwarded to the Advisory Board along with the records of the detenu. This assumes significance, in our comprehension, in view of the binding nature of the opinion of the Advisory Board, in case, on a consideration of the materials on record, it decides to hold against the detention. In case, the Advisory Board holds that the detention order is invalid, it is not open for the appropriate Government to continue therewith and it has to essentially revoke the same though the converse may not be the same. In other words, if the Advisory Board upholds the order of detention, it would still be open to the Central Government, depending on the merits of each case, to release the detenu. The fact that the opinion of the Advisory Board against continuance of the order of detention is final vis-a-vis the appropriate Government, in our opinion, is the motivating imperative for requiring the appropriate Government to forward the pending representation to the Advisory Board so as to enable it to traverse the entire panorama of grounds taken against the detention order for an effective, timely and meaningful consideration of the case of the detenu. This requirement as has been essentially recognized and mandated by two decisions of the Constitution Bench of this Court, does not, in any way, undermine the appropriate Government's authority to consider and dispose of such representation of any detenu under the preventive detention law. The right of the Central Government or for that matter any appropriate Government to consider and dispose of a representation of a detenu, preventively detained, has to be harmoniously construed with the obligation cast on it to forward a pending representation to the Advisory Board as has been consistently held in *Jayanarayan Sukul* (supra) and *K.M. Abdulla Kunhi and B.L. Abdul Khader* (supra).

16. As admittedly, the detenu's representation dated 08.07.2014, pending with the Central Government, the appropriate Government in the case, was not forwarded to the Advisory Board and was instead rejected during the pendency of the proceedings before the Advisory Board, we are constrained to hold that the detention of the detenu is constitutionally invalid. The rejection of the representation by the Central Government later on 21.07.2014 during the

pendency of the proceedings before the Advisory Board is of no consequence to sustain the detention. Consequently, the order of confirmation as well is rendered non est by this vitiation. In view of the determination made on the above aspect of the debate, we do not consider it necessary to dilate on the other pleas raised on behalf of the detenu. In the result, the appeal succeeds. The impugned judgment and order is set aside. The orders of detention as well as the order of confirmation are hereby annulled. The detenu is directed to be set at liberty, if not wanted in any other case. The appeal stands allowed. There shall be no order as to costs.