

(1985) 10 DEL CK 0017

In the Delhi High Court

Case No : Criminal Writ No. 152 of 1985

K. Rajendran Nair

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 14-10-1985

Acts Referred:

Citation : (1985) 10 DEL CK 0017

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Judgement

1. The present petition is under Art. 226 of the Constitution of India for issue of writ of Habeas Corpus directing the immediate release of the petitioner who is under detention by virtue of an order dt. 2nd May, 1985 of Shri K. K. Dwivedi, respondent No. 2. The order was passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the "Act").

2. The relevant facts are as follows. On January 9, 1985 on receipt of a secret information, the officers of the Trivandrum Sub-Zone of the Enforcement Directorate searched the residence of the petitioner situated at Trivandrum. As a result of the search, a number of foreign letters, local letters, pass-books of the petitioner and his wife and one S. Valsalakumari were seized. On that very day the statement of the petitioner was recorded by the Enforcement Officer, Trivandrum. In that statement, the petitioner admitted that under instructions from Shri P. S. Vaidyanathan, 1894, Cornelia Street, Ridgewood, Queens, New York, U.S.A. received during the years 1984 and 1985, the former made payments to the tune of Rs. 4,00,000/- to various persons in India. It was also stated by the petitioner that he was receiving the aforesaid instruction through letters and telegrams and that sometimes his wife Smt. Padma Kumari, an employee of Food Corporation of India, used to receive telephone calls from said Vaidyanathan from New York intimating the addresses of the persons to whom the amounts were to be paid. The petitioner in that statement revealed that he

had purchased drafts from different banks and sent to different persons as per the instructions of said Vaidyanathan. The particulars of those banks are mentioned in his statement. Further the particulars of the payments to different persons are also mentioned in the said statement.

3. The Directorate of Enforcement started investigation. On January 30, 1985 statement of the petitioner was recorded again. On January 31, 1985 he was arrested and produced before the Metropolitan Magistrate who granted bail up to 14th February, 1985 which was later on extended. On 18th February 1985 further statement of the petitioner was recorded by an Enforcement Officer.

4. On May 2, 1985 Shri K. K. Dwivedi, respondent No. 2, passed an order of detention of the petitioner under S. 3(1) of the Act "With a view to preventing him from acting in any manner prejudicial to the augmentation of the foreign exchange."

5. On June 19, 1985 Shri Harjinder Singh, Advocate acting on behalf of the petitioner made a representation to respondent 2. In the representation it was stated that he had not been supplied full documents, that Therefore his detention became illegal, that the detention order be revoked and that in the alternative he should be supplied with the documents, particulars of which were given in the representation, at the earliest so as to enable him to make a complete, effective and purposeful representation. The documents were not supplied. The petitioner made another representation dt. 10th July, 1985 and prayed that the order of his detention be revoked and that he be set at liberty forthwith. That representation was addressed to the members of the Advisory Board constituted under the Act. The petitioner thereafter also made another representation to the Advisory Board which is dt. 17th July, 1985. That representation was also through Shri Harjinder Singh, Advocate. The meeting of the Advisory Board was held on 17th July, 1985. By that time the documents as asked for by the petitioner in his representation dt. 19th June 1985 were not supplied to him.

6. The contention of the petitioner is that he was never supplied with the said documents on account of which his right to make effective representation stood frustrated. The respondents filed a counter-affidavit of Shri K. K. Dwivedi, respondent 2 which is dt. 20th September, 1985. In reply to ground No. XI it was stated that the documents as asked for by the petitioner were supplied by the Assistant Director, Enforcement Directorate vide his letter dt. 24th July, 1985, that even after confirmation of the detention order, the petitioner was at liberty to make any representation after going through all the documents but he never made any.

7. The petitioner assailed his detention on many other grounds. In the aforesaid affidavit filed by respondent 2 all the grounds were denied.

8. Learned counsel for the petitioner relied upon a judgment of Division Bench of this Court consisting of N. N. Goswamy and Charanjit Talwar, JJ. delivered on August 9, 1985 in Criminal Writ No. 126 of 1985 Haji Sayyed Mohamad Masoom

v. Union of India, Following observations were made by that Division Bench :

"The plea of the petitioner as noted above is that he was prevented from making an effective representation against the impugned detention order. The submission is that the directions by the Central Government vide memorandum of 10th June, 1985 to the Directorate of Enforcement to supply him documents to enable him to make an effective representation was of no effect. The Advisory Board to whom he had a right to make an effective representation had already met and disposed of his case much before 11th June, 1985 when the documents were supplied to him. Thus, it is alleged that the protection of fundamental rights guaranteed under Arts. 21 and 22(5) of the Constitution was denied to him. Mr. Mehta learned counsel for the respondent however, submitted that it took quite some time for the government to consider the representation of the petitioner seeking quashing of the detention order. According to him, till such time the representation was decided on merits the decision to supply him copies of the documents which he had sought could not be communicated prior to 10th June, 1985. In our view, the submission is misconceived. The documents sought for by the petitioner vide his representations; the first one being that of 26th April, 1985 were apparently supplied to him to enable him "to make an effective representation". It is stated so, in so many words in the memorandum of 10th June, 1985.

As noted above, before the Advisory Board also by a representation (copy Annexure - "N"), the petitioner had informed it that he had not yet been supplied with the copies of certain documents. The petitioner thus could not have made an effective representation to the Advisory Board as the Advisory Board meeting had already taken place on 22nd May, 1985. His right has been frustrated.

In that view of the matter, it has to be held that the petitioner was prevented from making an effective representation against the impugned detention order. We, Therefore, hold that his continued detention is illegal. The detention order dt. 6th April, 1984 is hereby quashed. The rule is made absolute and the petitioner is allowed. We direct that the petitioner be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or any other competent authority."

9. The learned counsel for the petitioner contended that in the present case, the petitioner never received the documents, as mentioned in his representation dt. 19th June 1985, that even though it be assumed for the sake of arguments that the assertion of the respondents contained in counter-affidavit of respondent 2 were correct to the effect that the documents were sent to the counsel for the petitioner, the detention order still remained illegal because the petitioner was incapacitated from making effective representation for want of those documents before the Advisory Board which had met and had heard the petitioner on 17th July, 1985.

10. Learned counsel for the respondents on the other hand urged that the

representation by the petitioner could be made even after the report of Advisory Board had been received by the Central Government and even after the detention was confirmed because the Central Government could release the detenu notwithstanding the report of the Advisory Board recommending detention, that the representation of the petitioner was never received after the documents were supplied to him which meant that even according to himself, the documents were useless and were not required for making any representation. Learned counsel for the respondents then relied upon a judgment of the Supreme Court in *State of Rajasthan and Another Vs. Shamsheer Singh*, . Para 12 of the judgment (at page 1089) reads as under :

"The next contention advanced on behalf of the respondent which has been accepted by the High Court in support of its conclusion against the detention is that the Advisory Board did not consider the documentary evidence produced by the detenu. Under S. 11(2) of the Act the report of the Advisory Board has to specify in a separate part thereof the opinion of the Board as to whether or not there is sufficient cause for the detention of the person concerned and as sub-s. (4) provides, the proceedings of the Board and its report, except that part of the report in which the opinion of the Advisory Board is specified, shall be confidential, in view of the specific plea raised by the detenu and the argument advanced before the High Court that the Board had not considered the documentary evidence, the State Government placed the report before the High Court and the same has been also placed before us as a part of the record. On a reference to the report we find that the Advisory Board in the instant case was constituted by three judges of the High Court, one of them being the Chairman. That would justify our assumption that the members of the Board by their professional ability and acumen were capable to assess the matter in a proper way and form an objective opinion on the basis of materials produced. The detailed conclusion with reasons given by the Board has also been disclosed. That shows that the detenu made before the Board very lengthy arguments and cited a number of authorities in support of his submissions. The detenu in the instant case is a practicing advocate and we are impressed by the learned Advocate-General's submission that we could assume that such a practicing advocate must have very properly placed his points before the Board."

11. The learned counsel for the respondents then pointed to the following portion of ground X in the writ petition :

"The petitioner thereafter made another representation to the Hon"ble Chairman of the Advisory Board wherein also the petitioner had specifically requested for the supply of the said document as he had not been given the same. The meeting of the Advisory Board was fixed for 17-7-85. Even though the petitioner could not come because of the long distance from Kerala his Advocate appeared and it was again reiterated before the Hon"ble Advisory Board that the petitioner had not been given complete copies of documents referred to, relied upon and taken into consideration while passing the detention order in spite of requests

made by the petitioner."

12. Learned counsel for the respondents pointed out that the petitioner had already given vent to his grievances of not receiving the documents before the Advisory Board, that the Advisory Board must have considered that grievance and must have found the same unless and that, Therefore, in view of the aforesaid observations of the Supreme Court, this ground is of no avail to the petitioner. He explained that before the Supreme Court the contention of the detenu was that the Advisory Board had not considered the documents produced before the said Board, that the Supreme Court held that as the Board consisted of High Court Judges, everything must have been considered, that in the present case also the contention of the petitioner that he could not make an effective representation for non-supply of documents must have also been considered by the Advisory Board and that hence such a grievance could not be a good ground for setting aside the detention order.

13. In my opinion the Supreme Court authority has no application in the present case. That was a case on different facts. The documents were actually produced before the Advisory Board. The Supreme Court held that they must have been considered by the Board and that there was hardly any justification for setting aside the detention order by holding that the Board did not consider those documents. In the present case, such is not the grievance of the petitioner. He complains of frustration of his right to make an effective representation for want of supply of documents. On these facts the judgment of the Division Bench of this Court (mentioned already) has application. That judgment is binding on me. In view of that judgment, the detention order in the present case is illegal and is liable to be set aside.

14. I, Therefore, accept the petition, make the rule absolute and quash the detention order dt. 2nd May, 1985. The petitioner shall be set at liberty forthwith unless required to be detained on the basis of any other valid order passed by a court or any other competent authority.

15. Criminal Writ No. 152 of 1985 stands disposed of.

16. Petition allowed.