(1971) 08 DEL CK 0027

In the Delhi High Court

Case No : Civil Writ Appeal No. 942 of 1970

Karnidan APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 12-08-1971

Acts Referred:

Citation : (1971) ILR Delhi 385(2)

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : G.L. Sanghvi, Janendra Lal, K.N. Kataria and R.M. Mehta, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The main question for decision in this civil writ petition is whether the issue of notice dated 2nd March 1970 to the petitioner by the Director of Enforcement, Enforcement Directorate, Ministry of Finance, New Delhi, to show cause why adjudication proceedings as contemplated by section 23-D of the Foreign Exchange Regulation Act Vii of 1947 should not be taken against him, after Indian currency notes of the value of Rs. 50,000 were seized from his person as a result of his search u/s 19A of the said Act on 3rd March 1969, is a "proceeding" within the meaning of section 19G of the said Act entitling the Director of Enforcement to retain the said currency notes until the disposal of the said proceeding. According to clause (7) of section 19A the expression "docume

(2) This civil writ petition was filed on the supposition that no notice had in fact been issued with in the period of one year from the date of the said search; but this question has been set at rest, against the petitioner, by the production of not only the photostat copy of postal receipt, dated 2nd March 1970. but also the photostat copy of the original postal envelope inside which the original notice (dated 2nd March 1970) was sent by registered post to-the address mentioned by the petitioner himself at the time of the search-23, East Park Road. Karol

Bagh, New Delhi; it had been returned to the sender for the reason that no such person was living there. This aspect of the matter, Therefore, was not even argued before me.

(3) Only a few necessary facts which will help appreciate the controversy need be noticed; the facts themselves may be taken from the affidavit of Shri S. M. Bagai, Deputy Director. Enforcement Directorate, dated 4th December, 1970 filed in opposition to this writ petition.

(4) Information was received by the Enforcement Directorate of the Ministry of Finance, New Delhi, in May 1968, that one Shri Surajmal Banthia of 16. Bonfield Lane, 1st Floor, Calcutta, and residing at Mahatma Gandhi Road, Calcutta (who was native of the village of Bidasar in the District of Churu in Rajasthan) was indulging in large-scale of trafficking in foreign exchange. It was further reported that he had two partners and colleagues, namely, Dhanraj Surana alias Dhanpat Singh Surana of Bikaner and Mangelal Baid of Calcutta, care of Jasraj Jaichand Raj, 16, Bonfield Lane, Calcutta. The modus operandi was to collect from persons of Indian origin residing in London foreign exchange in the form of pounds sterling, in consideration whereof payments were made in Indian currency to persons in India. According to the information received No. 23, East Park Road, Karol Bagh, New Delhi, was used for the purpose of making these compensatory payments. The petitioner is the brother-in-law of Dhanraj Surana alias Dhanpat Singh Surana and was keeping the said premises; the petitioner was employed as an agent for making these compensatory payments. Further information was received by the Enforcement Directorate on 28th February, 1969 concerning a secret place where the compensatory payments were being made; this was located at R-731, New Rajinder Nagur, New Delhi, which was in the occupation of Ram Lal Jain.

(5) On the basis of the above information the Enforcement Directorate decided to search both the premises on 3rd March 1969. No. 23, East Park Road was found locked and hence was kept under surveillance. When the search of R-731, New Rajinder Nagar was in progress, a person who was subsequently identified as the petitioner (Karnidan), was found loitering outside the premises in a furtive and suspicious manner. He was, Therefore, accosted and his person was searched by Shri R. S. Seth, Assistant Enforcement Officer, who has not been made a party to this writ petition. It may be noticed in this connection that the other officers, who have been imp leaded in this writ petition, are Shri K. L. Tukral and Shri O. P. Vasudeva (respondents 4 & 5 respectively) in addition to the Director and Deputy Director (Shri Bagai) respondents 2 and 3 respectively. Respondents 4 and 5 have sworn two affidavits stating that a search was conducted not by them but by Shri R. S. Seth. In spite of the said averment Shri R. S. Seth has not been made a party to this petition.

(6) Shri Bagai has stated in his affidavit that the search was made by Shri R. S. Seth, the Assistant Enforcement Officer in the reasonable belief that he might have secreted on his person some documents which will be useful and relevant in

proceeding under the Act. Annexure R. I to the return filed by Shri Bagai is a copy of the Panchnama which was prepared by Shri Seth concerning search of the person of the, petitioner, which was conducted in the presence of two respectable and independent witnesses, both of whom attested the same. It is seen there from that at 3-45 P.M. the Panches were called upon by Shri Seth to witness the search of a person who was found roaming outside the house No. R-731, New Rajinder Nagar, New Delhi, under suspicious circumstances; he was no other than the petitioner who had also received a copy of the same which he had acknowledged in the Panchnama itself. The petitioner was carrying a cloth bag of black colour in his hand. When he was approached he gave his name as Karnidan S/o Bhairu Dan, resident of 23, Park Area, Karol Bagh, New Delhi. His person was searched, but nothing was found excepting a bunch of keys. Thereafter the cloth bag was searched; inside it was a bundle wrapped in a piece of newspaper containing Rs. 50,000 in Indian currency notes. A Panchnama was made. The petitioner himself was made to sign statements, one on 3rd March 1969 and another on the following day. Statements of not only the petitioner but of some other persons were recorded which disclosed details concerning the operation of the said racket.

(7) It was first contended that no ground for reasonable belief at all existed for searching the petitioner. It is worth recalling that in spite of the affidavit of Shri Bagai, referring, to the petitioner as the brother-in-law of Dhanraj Surana alias Dhanpat Singh Surana. a partner or colleague of Surajmal Banthia, no rejoinder has been filed by the petitioner denying the relationship. The circumstances leading to and attending the said search, as narrated above, do make out that there were sufficient reasons for Shri R. S. Seth to believe that the petitioner had secreted on his person some documents which will be useful or relevant to any proceeding under the Foreign Exchange Regulation Act, 1947. It is important that while the petitioner imp leaded respondents 4 and 5 he did not make any endeavor to implead Shri R. Seth even after respondent 4 solemnly stated on oath that it was Shri Seth, but not those two officers, who made the search of the petitioner''s person.

(8) In addition to the above considerations it has to be remembered, as pointed out by Gajendragadkar J. in Pukhraj v. D. R. Kohli Air 1962S C 1959, that this court does not sit in appeal over the decision of the said officer and that we can only consider whether any ground existed prima fade to justify the said reasonable belief. The most important point, Therefore, that was argued at some length on behalf of the petitioner was that the issue of the said notice, copy of which is Annexure A to the writ petition, is not a proceeding within the meaning of section 19G of the said Act. Section 19G reads as follows:-

"CUSTODYof "Custody of documents-Where in pursuance of an order made under sub-section (2) of Section 19 or of the provisions of Section 19A, 19C or 19D or of a requisition or summons u/s 19E or 19F, any document is furnished or seized and the Director of Enforcement or any other officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule. direction or order made there under, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding one year or if, before the expiry of the said period of one year, any proceedings u/s 23- (a) have been commenced before him, until the disposal of, those proceedings, including the proceedings, if any, before the Appellate Board and the High Court, or (b) have been commenced before a Court, until the document has been filed in that Court."

Section 23(IB) reucis as follows:-

"Any court trying a contravention under sub-section (1) or sub-section (1A) and the authority adjudging any contravention under clause (a) of subsection (1) may, if it thinks fit, and in addition to any sentence or penalty which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or any other money or property, in respect of which the contravention has taken place, shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the person committing the contravention or any part thereof shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf."

(9) The offence stated to have been committed in this case is an attempt to make a payment, by the petitioner, who was residing in India, to any person by order or on behalf of any person outside India without the exemption of the Reserve Bank of India contravening section 5(l)(c) read with Section 23B of the said Act. Section 23B provides as follows:-

"Whoever attempts to contravene any of the provisions of this Act or of any rule, direction or order made there under shall be deemed to have contravened that provision, rule, direction or order, as the case may be."

(10) There cannot be any dispute that the facts alleged, if they are proved, would bring the case u/s 5(l)(c) read with section 23B of the Act. Whether these allegations are made out or not is a matter which should be decided in the adjudication proceedings which have been initiated by the Director by the issue of the said notice dated 2nd March, 1970. The only question for consideration now is whether by reason of the issue of the said notice the Director could retain the said currency notes which are documents within the meaning of the said Act for this purpose, for a period exceeding one year from the date of recovery, until the disposal of the proceeding initiated by him and those, if any, before the appellate Board and the High Court? It is necessary in this context to read rule 3(1) of the Adjudication Proceedings and Appeal Rules 1957 framed u/s 27 of the said Act-(Rules which were framed by the Central Government vide notification No. 1(5)-EFVII/, 57. dated the 24th December, 1957):

"3.Adjudication proceedings--(1) In holding an inquiry under sub-section (1) of section 23D of the Act for the purpose of adjudging under clause (a) of sub-section (1) of section 23 whether any person has committed contravention, the Director shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why adjudication proceedings should not be held against him."

(11) A mere perusal of the said rule shows that the issue of the notice is a step, a first step, in the holding of inquiry for the purpose of adjudging whether there has been any contravention of the Act or not. This meaning can be gathered from the opening words of the said Rule: "In holding an inquiry". The above result seems to follow from a mere reading of the relevant provisions of the Act set out above and the above rule.

(12) On this very question the decision of Gokhale J. in Eastern Machinery Trading Co. Vs. State, is against the petitioner. Gokhale J. held that the expression "proceedings" and "inquiry", though they have not been defined in the Act, had been used synonymously. The argument that the proceeding u/s 23D and Rule 3 commences only after the inquiry relating to the show cause notice issued under Rule 3 is completed was, with respect, rightly repelled. The mere issue of a show cause notice under Rule 3 would result in the proceeding commencing before the Director and clause (a) of section 19A would be attracted.

(13) I am unable to see any force in the argument of Shri Sanghi, learned counsel for the petitioner, that the language of section 23D shows that the inquiry being one which can be conducted only after giving reasonable opportunity of being heard, the giving of such notice cannot be a part of the said inquiry itself. He went on to further urge, on the basis of the expressions "" inquiry" and "proceedings" being held to be used synonymous in the above decision, that the proceeding itself is one which commences after the issue of the notice giving such an opportunity and hence the issue of notice is not itself the commencement of the said proceeding. Apart from being so involved this argument flounders on the very language of Rule 3 which has been read earlier, according to which the issue of the notice is itself part of the process of holding the inquiry.

(14) A feeble attempt was also made by urging that even for retention of documents u/s 19G of the Act a "reasonable belief" must be entertained by the Directorate of Enforcement or any other concerned officer that the documents sought to be retained would be evidence of the contravention of any of the provisions of the Act or rule there under. What has been stated above is sufficient to show the existence of such reasonable belief of the authority issuing the notice.

(15) In the result this writ petition, which is thoroughly devoid of merit, is dismissed with costs. Counsel''s fee Rs. 200.

