

(1989) 02 DEL CK 0032

In the Delhi High Court

Case No : Criminal Writ Petition No. 499 of 1988

Kulwant Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-02-1989

Acts Referred:

Citation : (1989) CriLJ 1433 : (1990) 1 Crimes 300 : (1989) ILR Delhi 244

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

Bench : Division Bench

Judgement

Charanjit Talwar, J.—The petitioner, Kulwant Singh, challenges the legality of the order passed on July 6, 1988 by Shri K. L. Verma, Joint Secretary to the Government of India under S. 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (in short the Ordinance). The order was made with a view to preventing the petitioner from engaging in possession and sale of narcotic drugs. The grounds of detention also dt. the July 6, 1988 were served on the detenu on July 7, 1988 while he was in judicial custody at Central Jail, Tihar.

2. A number of pleas have been taken in the petition but before us it is the plea urged in the additional affidavit filed on December 20, 1988, which has been pressed. The argument is that the representation made by the detenu seeking revocation of the impugned order has been considered and rejected by Shri K. L. Verma. The plea is that it was required under the law to be considered by the appropriate Government, in this case the Central Government. Paragraphs 2 and 3 of the said affidavit may be quoted to highlight the contention :-

"2. That it appears from the counter-affidavit filed by the respondents that the representation of the petitioner Annexure "D", dt. 25-8-88, addressed to respondent No. 1 has been considered and rejected by respondent No. 1, and that it was not placed by him before the Minister or the officer concerned empowered under the Rules of Business of the Government to deal with such representations.

3. That the petitioner states and submits that the representation made by him has not been considered and decided by the competent authority and as consequence thereof the continued detention of the petitioner has become illegal on this ground over and above the grounds set out in the main writ petition."

3. We may note that the learned counsel for the respondents had no objection in permitting the petitioner to bring on record the above affidavit. He, however, had sought liberty to file a further affidavit in reply to the above averments. An additional affidavit of Shri S. N. Balakrishnan, under Secretary to the Government of India, Ministry of Finance (Department of Revenue), New Delhi was filed by the respondents to controvert the additional grounds urged in the further affidavit. We may quote paragraphs 5, 6 and 7 of that affidavit. The averments bring out the stand of the Union of India :

"4. That the representation of the petitioner dt. 25-8-88 was addressed to Shri K. L. Verma, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi, being the detaining authority which was dealt with the Department and was considered carefully. The authority applied his mind and rejected the same.

5. That the representation was made to the specific authority by name who is also competent to deal with the representation. As such, it is apparent on the face of the representation that the petitioner wanted to draw the attention of the specific authority asking him to consider the representation of the petitioner. The specific authority mentioned in the representation is accordingly competent to deal with the representation and the petitioner cannot urge before this Hon"ble Court that the representation has not been considered by the competent authority.

6. That under the provisions of R. 3 of the Government of India (Transaction of Business) Rules, 1961, the Government of India has made the provisions that the powers vested in the Central Government under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 shall be exercised by the officers, Ministry of Finance, (Department of Revenue), Government of India. A specific notification has been issued for the purpose under the signatures of the Minister of Finance prescribing the various authorities to exercise the various powers under various sections. A copy of the Notification No. 685/14/84-Cus. VIII dt. 14th September 1984 is annexed herewith as Annexure R-1 to this Affidavit for ready reference.

7. That the officers of the range of Addl. Secretary or Joint Secretary in the Ministry of Finance (Department of Revenue), Government of India have been vested with the powers u/s 5, sub-section (1) of S. 7, Clause (f) of S. 8, S. 11 and sub-section (1) of S. 12 under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974 (52 of 1974). In pursuance of the specific provision made under R. 3 of the Government of India (Transaction of Business) Rules, 1961, Shri K. L. Verma, Joint Secretary to the Government of

India, whom representation was addressed by the petitioner, is also competent to deal with/consider, the representation of the petitioner."

4. Along with the above said affidavit, the respondents have filed an order dt. July 11, 1988 passed by Shri S. B. Chavan, Minister of Finance, Government of India, New Delhi, whereby certain powers of the Central Government are to be exercised by the officers in the Ministry. The order has been passed in pursuance of the provisions of R. 3 of the Government of India (Transaction of Business) Rules, 1961. That order, inter alia, provides that the Additional Secretary or Joint Secretary in the said Ministry can exercise the powers under S. 5, sub-section (1) of S. 8, Clause (f) of S. 9, S. 12 and sub-section (1) of S. 13. The said annexure is marked as (R-II).

5. Mr. R. L. Mehta, learned counsel for the petitioner, in support of his argument relies on a recent decision of this Court in Subash Chander v. Union of India (Criminal Writ No. 384/88) decided of January 31, 1989. A similar question had been urged before us in that case also. We followed the decision of the Supreme Court in the case of State of Maharashtra and Another Vs. Sushila Mafatlal Shah and Others, . We quoted extensively the question posed by their Lordships of the Supreme Court on the scope and the powers of the specially empowered officer to deal with the representations and the answers given by that Court.

6. We held that the specially empowered officer under S. 3(1) of the COFEPOSA even if additionally authorised to revoke an order of detention under S. 11 of the COFEPOSA was, ipso facto, not authorised to deal and decide the representation made to him challenging the order of detention passed by him. That conclusion of ours is based on the observations in Smt. Sushila Mafatlal Shah's case (supra) wherein the Supreme Court has said in very clear terms that the specific duty of the specially empowered officer under S. 3(1) is to place the representation before the officer concerned or Minister specially empowered under the Rules of Business of the Government of India. The present case is fully covered by that decision. For the same reasons, we allow this petition and make the rule absolute. The continued detention of the detenu is quashed. He shall be set at liberty forthwith unless otherwise required.

7. Petition allowed.