
(1996) 10 DEL CK 0027

In the Delhi High Court

Case No : Criminal Writ Petition No. 72 of 1996

Kunil Mohd. Hanifa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Citation : (1997) 1 AD 73 : (1997) 65 DLT 574 : (1997) 40 DRJ 39

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Harjinder Singh and B. Babbar, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) In this writ petition, the detention order dated 27.9.1995 under Cofeposa detaining the petitioner has been questioned. Petitioner was detained on 7.11.1995. Apart from the affidavits already filed, written submissions for the respondents was filed on 30.9.1996 in reply to the submissions filed by the petitioner. Petitioner's name is Kunil Mohd Hanifa.

(2) The facts of the case are that the department received information that one P.K. Soopy Abdullah of M/s Mughal Travel Service, Bombay was engaged in illegal business of sale and purchase of foreign currency on a large scale. During the course of the search on 5.4.1995 at its premises, a large amount of foreign currency and documents were recovered. Six persons, including the petitioner entered premises of M/s Mughal Travel Service and they too were searched. According to the detaining authority, highly incriminating documents and personal diary along with foreign currency of Uae Dirham 50 were recovered from the detenu at the said premises of M/s Mughal Travel Service. The entries in the documents recovered from the petitioner and co-accused Sri P.K. Soopy Abdullah, revealed that the detenu was involved in Fera violations to the tune of Rs. 23,69,888.00 during the period of one week, between 25.3.1995 to 30.3.1995 - prior to the date of search. On 6.4.1995, petitioner is said to have

given a voluntary statement admitting the recovery of currency and the diaries and other papers. It is stated that the petitioner also wrote the accounts from the diary so recovered. In the bail application dated 10.4.1995, the petitioner retracted. Bail was rejected. Later bail was granted on 17.4.1995 at Bombay.

(3) The petitioner states he submitted a representation on 15.12.1995 to the detaining authority. This was rejected on 27.12.1995. Petitioner made representation to the Central Government on 4.12.1995. The same was rejected on 3.1.1996. Petitioner claims to have made another representation to the Advisory Board on 2.12.1995. A meeting of the Board was held on 5.1.1996. Petitioner claims to have made a second representation to the Board on 5.1.1996. Confirmation order was passed on 22.1.1996 for 1 year from 6.11.1995.

(4) From the written submissions raised by the petitioner's counsel, the following points arise for consideration:- (1) Whether the representation alleged to be dated 5.1.1996 which was filed along with the writ petition was entitled to be considered independently by the Central Government and by the detaining authority in case it contained substantially the same points raised in the writ petition ? (2) Whether the representation dated 2.12.1995 to the Advisory Board was independently considered by the Central Government ? (3) Whether there was delay in making and executing the order of detention ? (4) Whether non-supply of copies of summons to Haj pilgrims caused prejudice ? (5) Whether the detaining authority merely copied the draft grounds and did not apply its mind ? Point 1: The learned counsel for the petitioner firstly contended that the petitioner's representation dated 5.1.1996 addressed to the Advisory Board (Annexure H) was personally given on the date of hearing and was "admittedly" not considered by the detaining authority. On the other hand, it is the contention of the respondents that no such representation dated 5.1.1996 was received by the Board. However, a copy of the representation dated 5.1.1996 was annexed to the writ petition which was received in the Cofeposa Unit of the Ministry on 26.3.1996 and after carefully considering the same, it was rejected on 17.4.1996. The manner in which the representation was dealt with on various dates is set out in the reply. We have scrutinised the representation to the Central Government dated 5.1.1996 which is annexed along with the writ petition, which was filed on 6.2.1996. We find that the points raised in the writ petition filed on 8.2.1996 and in this representation are, on a comparison of various paragraphs, the same. We had pointed out the said identity to the counsel para by para. We do not propose to put the comparison in a tabular statement and unnecessarily burden the judgment in that behalf. We are satisfied that the same points are also raised in the writ petition. If, therefore, the representation annexed to the writ petition is so close to the points raised in the writ petition, can the petitioner contend that the Central Government and the detaining authority must have considered the same and passed separate orders, while the writ petition was filed before this Court ?

(5) This aspect of the matter is, in our opinion, clearly covered by the Judgment of a three Judge Bench of the Supreme Court in David Patrick Ward and Another Vs. Union of India (UOI) and Others, . In that case too, as observed by the learned Judges, (see para 23) the question was regarding the consideration of the representation received by the State Government on 5.5.1992. The writ petition came to be filed on 5.5.1992. It was held that the representation was "nothing but the writ petition itself". The relevant observations of the Supreme Court read as follows:-

"23.The representation stated to have been sent to the State Government, it is fairly conceded, is nothing more than a copy of the writ petitions filed before this Court. That was received by the State Government through Naini Jail authorities on May 5,1992. As stated in the affidavit of the third respondent while steps were taken by the State Government for processing the same for consideration, the writ petitions have come to be filed on May 5,1992. Therefore, the question of consideration of the representation on a matter, which is sub judice did not arise. If regard is had to the clear and firm stand taken in the counter-affidavit filed on behalf of the State Government that the reliefs sought by the petitioners in the writ petitions cannot be granted, question of the State Government now considering the representation, which is nothing but the writ petition itself, does not arise. In this situation, the decision of this Court in Narendra Purshotam Umrao and Syed Farooq Mohammad on the basis of which need for expeditious consideration of representation by the State Government was emphasised cannot be of any help."

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We are of the view that the above Judgment clearly covers the point against the petitioner as the points in the representation and the writ petition are substantially the same. Learned counsel has, however, sought to contend that in that case the representation was described as the "writ petition itself" but here that is not the position. We are unable to agree. It is not necessary that the representation and the writ petition must tally word for word. What is important is the ratio of the decision of the Supreme Court. It is sufficient if the representation filed along with or after the writ petition contain substantially the same points. In that event no grievance can be raised as to non-consideration of the representation or as to delay in its disposal. Learned counsel then relied upon the Judgment of a Division Bench of this court in Leszek Kwiatkowski Vs. Union of India, that if the question of receipt of representation is disputed and if it is attached to the writ petition, it should be disposed of separately and non-disposal makes the detention illegal. In the present case before us, the position is that the representation annexed to the writ petition does not contain any points not raised in the writ petition. That does not factually appear to be the position before the Division Bench which decided Leszek's case. Therefore, the Judgment of the Supreme Court above referred to is more in point. As to the further contention that the said representation ought to have been also

considered by the detaining authority, the same cannot again be accepted on the same parity of reasoning. What the Supreme Court said in relation to the non-consideration by the Central Government also applies to other authorities which are otherwise required to consider the representation. Accordingly, the analogy of the Judgment of the Supreme Court in Smt. Gracy Vs. State of Kerala and another, cannot be of any help inasmuch as that decision lays down merely that the appropriate authority has to independently consider the representation addressed to the Advisory Board. Another argument is that the right to have the representation considered by the authorities is an independent constitutional right and the Court does not substitute its opinion for the one which might have been reached by the authorities. (Kundanbhai Dulabhai Shaikh vs. District Magistrate J.T.1990 (2) S.C. 532, Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, . But, in view of the decision of the Supreme Court in David Patrick's case and the reasons already given, such a contention cannot be permitted. The rulings in Ram Bali Rajbhar Vs. The State of West Bengal and Others, and Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, did not have to consider this point at all. Learned counsel in fact stated that though it directly in point, the points raised there bear some analogy. We are unable to agree. When there is a direct ruling of the Supreme Court on facts, it is not permissible for the petitioner to refer to cases which did not have occasion to consider such an issue. On facts, this is not a case of non-consideration of the representation filed along with the C.W.P. The Central Government considered the same and rejected it on 17.4.1996. Point is, therefore, held against the petitioner. Point 2 : It is argued that in regard to another representation dated 2/4.12.1995 addressed to the Advisory Board, the same was rejected on 3.1.1996 but there is no independent consideration of the same. It is argued that the Central Government was dealing with the question of confirmation of the detention based on the report of the Advisory Board and hence the representation placed before the Board, copy of which was sent to Central Government, cannot be said to have been independently considered by the Central Government. We have verified the files and we find that the confirmation order has been passed on 22.1.1996 after receiving the report of the Board dated 11.1.1996. The representation dated 2/4.12.1995 was, as stated in paras (IX), (X) & (XI) of the reply of the Central Government, forwarded to the Central Government by the jail authorities on the same day, received by the Cofeposa Unit on 11.12.1995, para wise remarks called for on 12.12.1995 from the sponsoring authority and after receiving the same, disposed of on 3.1.1996. Therefore, it is clear from the difference in dates of disposal and the fact that separate files were maintained in the case, that the representation dated 2/4.12.1995 was independently considered without reference to the confirmation proceedings. Hence this submission is rejected. It is argued that there was another representation dated 15.12.1995 addressed to the detaining authority, and it was rejected on 27.12.1995 by the detaining authority, without independently considering the same. We have checked up the file of the detaining authority, which is separately maintained and it shows that the same

was independently considered. In fact, the representation dated 15.12.1995 is "identical" with the one dated 2/4.12.1995 addressed to the Advisory Board (which was directly communicated to the Central Government by 11.12.1995). On the latter representation, remarks dated 18.12.1995 of the sponsoring authority were already available and the same were placed before the detaining authority. In other words, the representation to the Central Government and to the detaining authority were identical and in regard to the former, the remarks of the sponsoring authority were available and were placed before the detaining authority. They were independently considered and the detaining authority rejected the representation on 15.12.1995 independently on 27.12.1995. A further contention was raised that the remarks of the sponsoring authority were not called for afresh. We have already stated that the representation dated 2/4.12.1995 earlier addressed to the Central Government. The sponsoring authority's remarks dated 18.12.1995 thereon were available and were placed not only before the Central Government for disposal of the representation dated 2/4.12.1995 but also for disposal of the representation dated 15.12.1995. We are clearly of the view that there was no point in the detaining authority repeating the exercise of calling for remarks of the sponsoring authority and that the detaining authority - as is clear from the file - had a copy of the remarks of the sponsoring authority before it sent by the latter in respect of the "identical" representation dated 2/4.12.1995 addressed to the Central Government. There is not only no prejudice but the action appears in fact to have helped the detenu in securing an early disposal of the representation by the detaining authority on 15.12.1995. In fact, if the detaining authority had called for remarks afresh, the petitioner could have obviously raised a contention that there was undue delay on the part of the detaining authority in disposal of the representation dated 15.12.1995 and fresh remarks of the sponsoring authority were not required to be called for inasmuch as the representation addressed to the detaining authority was identical with the one sent to the Central Government. In the written submissions, it has not been contended that there is any undue delay in the disposal of these two representations. In fact, we find from the reply affidavits and the record that the representations were dealt with expeditiously and there was no undue or unexplained delay. Point 2 is held against the petitioner. Point 3: This point is with regard to the alleged delay in the making and execution of the order of detention. The incident of search etc. was on 5.4.1995, the detention order was passed on 27.9.1995 by the Central Government and was executed on 7.11.1995. The details in this behalf have been specified in the reply affidavit at pages 108 to 110. On 5.4.1995, the incident occurred, on 6.4.1995, detenu's statement was recorded, on 10.4.1995, he retracted, on 17.4.1995 he was granted bail. On 20.4.1995 summons were issued to 30 Haj pilgrims as part of the investigation. Details in this behalf are set out at p.105 of the paper book. After considering the result of the same, on 20.6.1995, a joint proposal in respect of P.K. Soopy Abdullah and a draft of the proposals was prepared by the Bombay office and sent to Head Quarters at Delhi and follow up action on 4.7.1995 was taken against others J.A.Morbiwala and P.A. Mohd. Reply to

retraction was filed in the Court on 5.7.1995 as per Sl.No. 26,27 of the list of relied upon documents, on, 12.7.1995 a proposal was sent to the Finance Dept. for detention, the Screening Committee held its meeting on 18.7.1995 (which is held once a month) draft grounds dated 3.8.1995 were prepared from Bombay, revised on 9.8.1995 at Bombay, they were finalised and revised at Delhi on 24.8.1995, copies and translations were prepared as per new procedure on 14.9.1995, translations were completed in September,1995, and detention order issued on 27.9.1995. We are satisfied that there was no undue or unexplained delay in the preparation of the detention order. So far execution of the detention order is concerned, the detention order dated 27.9.1995 was sent from Head Quarters to Bombay on 29.9.1995, next 3 days were holidays, on 6.10.1995, papers were sent to State Government of Maharashtra, 7th and 8th were holidays. On 9th papers were sent to Kerala, were received there on 11.10.1995, the Trivandrum office of Enforcement Department informed on 13.10.1995 that papers had been sent to the State, papers were sent to Kasargod for execution on 18.10.1995, detenu was traced and, there were holidays on 21.10.95, 22.10.95, and 28, 29 Oct, 4th and 5th November, and order was served on 6.11.1995. This Court has considered these legal aspects regarding delay in passing the order and delay in execution of the order in Dalbir Singh vs. Union of India (1995 (1) A.D.(Del) 1169 . Even if there is lack of coordination between the detaining authority and the executing authority, it may not matter. : M. Ahamedkutty Vs. Union of India (UOI) and Another, . We are satisfied that there is no unreasonable delay in the passing of the order or in the execution of the detention order. Point 4: The point is about alleged non-supply of summons issued to Haj pilgrims and whether that has vitiated the detention order. It is clear from the grounds of detention that the summons are not among the documents relied upon by the detaining authority. Such documents need not be supplied Abdul Sathar Ibrahim Manik Vs. Union of India and others, ; Kamarunnissa and Others Vs. Union of India and another, . Even otherwise documents which are referred to in the chronology of events or which are historical in nature, cannot be equated with "relied" upon documents. (Dalbir Singh vs. Union of India 1995(1) A.D. (Del) 1169. Point 5: It is argued that the draft grounds prepared by the sponsoring authority were copied and hence there was non-application of mind. The grounds must exist by the date of detention order even though they might have been served later, within 5 days. In regard to this contention we have summoned the original records of the detaining authority and closely perused the notes sent by the sponsoring authority and the grounds finally prepared by the detaining authority. We find that in respect of this transaction, the role played by 6 persons including the petitioner were examined by the sponsoring authority. All of them were concerned with the same search operation. up to that point of search, the facts relating to them are all common. From the point of the confessional statement etc, there is difference. It appears that the sponsoring authority prepared the sequence of the events which are of a historical nature, chronologically. up to para (xi) of the draft grounds dated 3.8.1995 and 9.8.1995, those preliminary historical events are set out and are

common to the various detenus. The record of the detaining authority shows that from page 27 to 37 of the record of the said authority, the detaining authority has added 10 pages thereafter by setting out the inferences drawn by the detaining authority from the various facts set out and the documents annexed to the grounds. It is indeed these later paragraphs - partly in pencil and in pen and in the handwriting of the concerned officer in the margin and several freshly typed paras - that contain the grounds, namely the facts and the factual inferences drawn. Even in earlier paragraphs relating to the history of the case, corrections are made by the detaining authority while referring to each of the different detenus. In other words, there is clear application of mind by the detaining authority while preparing the facts and inferences from facts. Learned counsel for the petitioner contended that on facts, it must be treated that there is abdication or surrender by the detaining authority of its functions in favor of the sponsoring authority. Learned counsel relied upon *Khudiram Das Vs. The State of West Bengal and Others*, to say that facts are also grounds and *Ravinder Kumar Bhandari Vs. Union of India and Others*, to say that grounds must be in existence by the date of the detention order. There is no dispute about these propositions. But as stated above, there is no surrender or abdication of its functions by the detaining authority. In this connection the decision in *Vasanthi vs. Administrator, Goa* (1989 CrL.J. 1313) (para 16) is a case directly in point. In that case the draft grounds were before the Administrator, he underlined certain portions, added some queries in the margin in ink. Then the grounds were prepared. It was held even that was sufficient to prove application of mind. The case before us contains, - as stated above - more evidence of independent consideration of mind by the detaining authority. In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, the Supreme Court stated that primary facts as well as inferences drawn there from constitute "grounds". The said position was explained in a more detailed fashion in *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, and in the Judgment of the larger Bench in *Attorney General for India and Others Vs. Amratlal Prajivandas and Others*, . We are, therefore, unable to agree that there was non-application of mind on part of the detaining authority. Point 5 is held against the petitioner. In the result the writ petition is dismissed.