
(1992) 10 DEL CK 0025

In the Delhi High Court

Case No : Criminal Writ No"s. 85/92, 114/92, 115/92 and 365 of 1992

Mr. Vishwanath Alias Pappu

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-10-1992

Acts Referred:

Citation : (1993) CriLJ 1560 : (1993) 49 DLT 409 : (1993) 25 DRJ 9

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr. Harjinder Singh and Ms. Sangeeta Nanchahal, for the Appellant;
Mr. K.S. Bindra Mr. Madan Lokur, Mr. Pradeep Jain, Mr. B.P. Aggarwal and Ms.
Jyoti Singh, for the Respondent

Judgement

1. In all these writ petitions the common ground urged for assailing the order of detention is non-application of mind by the detaining authority. Therefore, these writ petitions were heard together and disposed of by one common order. Detention order was passed against the petitioner on 29th January, 1992 under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called as the "COFEPOSA Act"). The impugned order was passed with the view to preventing him from engaging and keeping smuggled goods and dealing in smuggled goods other wise than by engaging in transporting or concealing goods in future. Along with the detention order the grounds of detention were also supplied to the petitioner.

2. The facts germane to the present petition are that on the intervening night of 5th/6th January, 1992, the Directorate of Revenue Intelligence searched the godown of the petitioner situated at Rewari Road, Village Surana, Narnaul, District Mahindergarh (Haryana). This was supposed to be in occupation of the petitioner and his father. The search was conducted in the presence of the petitioner and was witnessed by Shri Bishan Dayal. The search resulted in recovery of 158 silver ingots/slabs of foreign origin, collectively weighing 5301.384 kgs. valued at Rs. 4,18,80,933/-. Besides this Indian currency being

the sale proceeds of the smuggled silver amounting to Rs. 2,25,000/- and three moulds and some incriminating documents were also recovered. Out of 158 silver slabs, 155 silver ingots were bearing marking indicating their foreign origin and purity of 999 was indicated on it. It is further the case of the prosecution that the seized silver belonged to Prakash Chand Lunia (co-accused) of the petitioner. The petitioner along with his father used to get commission for disposing of the same on the instructions of Shri Prakash Chand Lunia. The petitioner made a voluntary statement on 6th January, 1992 under S. 108 of the Customs Act. In the voluntary statement, the petitioner admitted the recovery of seizure of 158 silver slabs of foreign making, three moulds and some incriminating documents and Indian currency from his rented plot situated at Rewari Road, near Surana Village, Narnaul. On 7th January, 1992, the petitioner was produced before the Chief Metropolitan Magistrate, Narnaul, who remanded him to judicial custody.

3. That while the petitioner was still in judicial custody, the impugned detention order was passed under S. 3(1) of the COFEPOSA Act and was served on him. In the grounds of detention, the petitioner was also made aware that if he so wishes he could make representation against his detention to the Chairman, Central Advisory Board (COFEPOSA), High Court, Sher Shah Road, New Delhi through the Supdt. District Jail, Mahindergrah, Haryana. He was also made aware that he could be heard by the Advisory Board in due course if the Board considers it essential to do so. The relied upon documents were supplied to the petitioner.

4. The petitioner has assailed his detention primarily on the ground that the detaining authority has relied upon the documents which were irrelevant and some of the documents were illegible. Hindi Translation supplied was not the correct translation of the English documents and the documents in vernacular i.e. Hindi were not supplied to him.

5. During the course of arguments, Mr. Madan Lokur, appearing for the Union of India showed from the file that the documents supplied to the petitioner were in Hindi as well as in English and all the documents, supplied were legible. After perusing the documents, counsel for the petitioner conceded this fact. She, however, urged that she was primarily relying on one ground that the detaining authority at the time of passing the impugned order took into consideration the irrelevant documents. In this regard she has referred to the relied upon documents mentioned at Serial Nos. 22, 24, 28, 31 and 36.

S. No. DESCRIPTION 22. Application dated 10-1-1992 for allowing the counsel for meeting in the jail and court's order dated 11th January, 1992. 24. Application dated 11th January, 1992 for holding the court outside court premises and J.M.'s order dated 11-1-1992. 28. Application for legal interview dt. 13-1-1992 moved on behalf of Shri Prakash Chand Lunia. 31. D.D. No. 77 B dt. 13th January, 1992 and D.D. No. 34 B dated 14th January, 1992 of P.S. Darya Ganj regarding depositing and release of Shri Prakash Chand Lunia. 36. Application for grant of "B" class facilities." Along with the grounds of

detention, the list of relied upon documents was also supplied. Documents at Sl. Nos. 22, 24, 28, 31 and 36 are as under :

6. Petitioner took up a specific plea in his petition under Grounds Nos. II and IV which are reproduced as under :

REPLY TO GROUND II

"In reply to Ground No. II, it is submitted that detaining authority has passed the detention order after scrutinising all the documents which were placed before him. The documents referred to in the ground under reply were relied upon for a proper application of the case."

REPLY TO GROUND IV

"The contents of Ground IV are denied. In reply to the contention raised by the petitioner, it is submitted that all the documents supplied to the detenu/petitioner were quite clear and legible. The detenu had put his signature on each and every page of the documents supplied to him after his satisfaction that the same were legible. The violation of petitioner's right guaranteed under Art. 22(5) of the Constitution of India is denied.

It is further submitted that all the documents whether relied upon by the detaining authority were supplied to the detenu. The detenu's representation has already been considered and a memorandum dated 5th March, 1992 to this effect has also been sent to the petitioner. The impugned order is perfectly valid and legal."

7. In the grounds of detention at page 11, the detaining authority has mentioned that it took into consideration all the relied upon documents in arriving at the subjective satisfaction. The said reads as under :

While arriving at the subjective satisfaction I have relied upon the documents and statement annexed herewith. A copy of these documents are enclosed herewith.

8. This is the position in all the cases. The detaining authority has relied upon the documents like inspection applications, order granting "B" class etc. Therefore, building up their arguments, Counsel contended that these documents have no bearing for deciding the question of petitioner's detention, these are not relevant in any way. Since the irrelevant documents were taken into consideration, this shows the non-application of the mind of the detaining authority. From the bare reading of these documents it is clear that these do not contain any sort of material or anything against the detenu linking him with smuggling activities. Counsel for the petitioner further contended that had the detaining authority applied its mind, he would not have taken note of or looked into these documents because these documents are in no way relevant for deciding the detention or with the smuggling activities of the petitioner. This act itself will show that the detaining authority mechanically signed the detention order

without application of mind. Even when this ground was specifically raised in the petition, the respondent reiterated that these were relevant documents and have been taken note of. These documents on the face of it would show that these have no bearing or concern whatsoever with the prejudicial activities of the petitioner. Therefore, the consideration for arriving at this decision to detain the petitioner was based on irrelevant and extraneous material.

9. Counsel for Union of India, on the other hand, urged that in fact these documents were looked into by the detaining authority for the purpose of proper appreciation and to arrived at a subjective satisfaction. Moreover, by scrutinising these documents, the detaining authority has not prejudiced the petitioner in any manner. There was, even otherwise, sufficient material apart from these documents, on which the detaining authority based its subjective satisfaction, nor can it be said that by going through these documents, the detaining authority has impaired the case of the petitioner or did not apply its mind. In fact irrelevant documents are those which go to the root of the decision making process of the detaining authority. But the documents relied upon by the detaining authority cannot be called irrelevant documents as these did not go to the root of the decision making process of the detaining authority nor by the scrutiny of these documents any prejudice has been caused. Unless petitioner establish prejudice no benefit can be claimed by the petitioner on this account. In this regard he has placed reliance on the decision of the Supreme Court in the case of Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, where it was held that those documents which are out of context cannot be stated to be irrelevant. In fact the detaining authority has to look into these documents but would consider only those which were relevant while arriving at the subjective satisfaction. It is the circumstance as a whole which has to be looked into and not de hors the same. It is only after applying its mind and finding that there is a sufficient material on record, the detaining authority came to the conclusion that the petitioner should be detained and passed the impugned order. The subjective satisfaction can be challenged only when the detaining authority bases its decision on irrelevant documents. Then and then alone such a detention order has to be aside not otherwise. These documents referred to above according to Mr. Lokur are inconsequential. Even if these were remained on the record at the time of passing the order, it will not affect the decision making process of the authority. By the mere presence of these documents on the file, the detenu has not been prejudiced. Neither the act of the detaining authority nor the said decision making process is in fact based on these documents nor the right of the detenu has been impaired in any manner. In fact is for the detaining authority to decide whether a document is a relevant document or not. Court cannot look into these documents in order to arrive at a conclusion as to whether there was or was not subjective satisfaction of the detaining authority. The only thing the Court can look into is whether a reasonable man could come to the conclusion which the detaining authority arrived by looking at the material placed before him. Unless the petitioner makes out a case that on account of the reference to

these irrelevant documents prejudice has been caused the order cannot be set aside.

10. Admittedly, there cannot be any quarrel with the proposition as propounded by counsel for Union of India that this Court in its writ jurisdiction cannot go into the subjective satisfaction of the detaining authority if it is based on sufficient material and there is proper application of mind. Sufficiency or insufficiency of the material or otherwise is also none of the concern of this Court. So far as the application of mind is concerned, if it can be inferred from the material placed on record that he did not apply his mind, then this Court has ample power to set aside such an order. Similar point came up for decision before this Court in number of cases as to under what circumstances, the Court can interfere, in its writ jurisdiction, the decision making process of the detaining authority. This Court in umpteen number of cases has held that it is always available with this Court to find out whether a subjective satisfaction arrived at was based on the proper application of mind or not. As and when the detaining authority relied on irrelevant material, Courts have been lifting the veil to see that the said subjective satisfaction was proper or not. To arrive at the conclusion that subjective satisfaction was proper or not, the Court has prima facie to see the material placed before the detaining authority. Once the Court comes to the conclusion that detaining authority also scrutinised and considered irrelevant documents and did not bother to see that the documents were relevant or irrelevant but just sign the order, then in such a case an irresistible conclusion would be that the detaining authority did not apply its mind and signed the order mechanically. Then such a detention order based on non-application of mind is liable to be set aside. In this regard reference can be had to the following decisions :

1. Ved Parkash Sikri @ Vedi Vs. Union of India and Others,
2. Jagdish Mitr Vs. Union of India and Others, .
3. Diwan Singh Vs. State of Haryana and Others, .
4. Nasmia Bashir Manlekar v. Union of India reported in 1992 JCC 348.
5. Crl. W. No. 547/1991 Smt. Aisha Abdulla Hussain v. Union of India, decided on 3rd March, 1992 by Dalveer Bhandari, J.
6. Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, .
7. Crl. W. 247 and 256/92 Sh. Trilochan Singh v. Union of India decided on 25th September, 1992 by Mohd. Shamim, J.
8. Crl. W. 193/92 decided on 16th October, 1992 By Mohd. Shamim, J.
11. On careful analysis of the judgments referred to above, I hold that in the present also the order of detention is vitiated on account of the detaining authority relying on irrelevant material. In fact this shows non application of mind and absence of subjective satisfaction. In other words the detention order

was passed mechanically in a casual and perfunctory manner. In the result the petition is allowed, the rule is made absolute and the detention and continuous detention is declared illegal and bad in law. The detenu should be released forthwith unless required in any other case.

12. Petition allowed.