(1986) 08 DEL CK 0011

In the Delhi High Court

Case No : Criminal Writ No. 180 of 1986

Mrs. Satbir Kaur — APPELLANT

Vs

Administrator, Union Territory of Delhi and Others — RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 2(f), 3(1)
Constitution of India, 1950 — Article 22, 226
Customs Act, 1962 — Section 108, 110

Citation : (1987) 10 ECR 585

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunanda Bhandare, J.—In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order of Shri Bhupinder Singh dated 7th January, 1986 made by Delhi Administration u/s 3(1) read with Section 2(f) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act). Though the order of detention and grounds of detention were made on 7th January, 1986 Bhupinder Singh was detained on 23rd March, 1986 and the grounds of detention were served on him on 27th March, 1986.

2. In the grounds of detention it was alleged that on 24th September, 1984 the officers of the Customs Preventive Unit, Delhi examined one Maroon colour zipper suit-case having black lining on it pertaining to Airways Bill No. 074-5218-5560 having C.W.C. location No. G-10624 in Go-down ''B'' of the Central Warehousing Corporation, Gurgaon Road, New Delhi in the presence of two independent witnesses. This suit case had arrived from Singapore by flight KL-836 dated 12.8.1984 and belonged to Bhupinder Singh. The Airways Bill of the suit-case showed that the contents of the suitcase were declared as ''personal effects and used clothing''. However, on the examination of the

suitcase it was found that it contained 907 frames for goggles/spectacles and 21 goggles, all of foreign origin collectively valued at Rs. 1,25,080 and some used and old clothes. Since there was no evidence in that suitcase to prove the lawful importation of these goods the same Along with suitcase were seized u/s 110 of the Customs Act.

3. On the same day residential premises of Bhupinder Singh were searched which resulted in recovery of 16 frames of goggles/spectacles of foreign origin valued at Rs. 1,450. The wife of Bhupinder Singh who was present at the time of the search could not produce any evidence of lawful import of the said frames and as such these frames were also seized u/s 110 of the Customs Act. Two incriminating documents were also recovered and seized from the premises. On the same day the business premises of Bhupinder Singh namely M/s. Thukral Optical Company, 6/221, Kandle Kashan Street, Fatehpuri, Delhi were also searched which resulted in the recovery of frames of goggles/spectacles with and without glasses all of foreign origin collectively valued at Rs. 69,610. Bhupinder Singh could not produce any evidence for lawful possession/import of these goods and as such the same were also seized u/s 110 of the Customs Act, 1962.

4. Two statements of Bhupinder Singh u/s 108 of the Customs Act were recorded on 24th and 25th September, 1984. In his statement dated 24.9.1984 Bhupinder Singh narrated how he tried to establish himself at Bangkok but failed and the number of times he went abroad. In his statement on 25.9.1984 Bhupinder Singh stated that he went abroad twice during the year 1984 and both the times he visited Singapore. On his first visit he had booked one suitcase containing frames of goggles/spectacles for Delhi as unaccompanied baggage declaring them as personal effects and used clothes. Again after 10 days when he went to Singapore he booked another suitcase containing frames of goggles/spectacles as unaccompanied baggage declaring the contents as personal effects and used clothings. The first time he returned on 9th/10th August, 1984 he had brought with him few pieces of frames of goggles/spectacles in addition to the unaccompanied ones which were confiscated by customs at Delhi Airport itself and he had to pay personal penalty of Rs. 300. After his return from the second trip from Singapore he collected delivery orders from the airlines for both the consignments for different dates. He visited the Central Warehousing Corporation, Gurgaon Road on 10th August, 1984 and tried to clear the unaccompanied package which he had booked during his first visit to Singapore in July, 1984. However, the Customs authorities seized the suit case containing frames of goggles/spectacles and, Therefore, out of fear he decided not to claim the second suitcase. He further stated that these two consignments were brought in partnership with one Abdul Qayum of Kanpur. The statement of Abdul Qayum was recorded on 12th October, 1984 by the Customs authorities. Bhupinder Singh was arrested on 26th September, 1984 and produced before the Additional Chief Metropolitan Magistrate (A.C.C.M.), New Delhi. The bail application filed by Bhupinder Singh was rejected on that date. Another bail application was moved by him on 8th October, 1984 and the A.C.C.M., New Delhi

granted him the bail of furnishing a personal bond in the sum of Rs. 25,000 with two sureties in each the like amount. He further directed Bhupinder Singh not to leave India without the permission of the Court and to surrender his passport within 3 days to the Customs authorities. The grounds of detention also mentioned about the previous incidents of 10.10.1984 in which Bhupinder Singh was involved.

5. As per paras 15 and 16 of the grounds of detention while passing the order of detention under the Act the Administrator of Union Territory of Delhi had considered and relied on all these facts and formed his opinion that Bhupinder Singh had been indulging in smuggling of goods i.e. frames of goggles/spectacles into India and, Therefore, though adjudication proceedings had been initiated against him he should be detained under the Act with a view to preventing him from smuggling the goods i.e. frames of goggles/spectacles into India. The Administrator had also relied on these statements and documents while passing the detention order.

6. The statements and documents on which the Administrator had relied were supplied to Bhupinder Singh. Bhupinder Singh was informed that if he wished to make a representation to the Administrator or the Advisory Board he could do so. It was further stated that these grounds were communicated in pursuance to Clause 5 Article 22 of the Constitution of India.

7. Bhupinder Singh, filed representations against this order of detention to the Administrator, Union Territory of Delhi and the President of India on 17th April, 1986. However, since the case was fixed before the Advisory Board on 7th May, 1986 Bhupinder Singh also filed a representation before the Advisory Board on that very day. Another letter was submitted to the Advisory Board on the same date making a request to permit him to lead and examine witness in rebuttal of the charges made against him in the order of detention. The name of the witness was also mentioned in the said letter.

8. Though the petitioner in the writ petition has challenged the order of detention on several grounds at the hearing the main contention was that Bhupinder Singh had specifically requested that one witness mentioned by him in the letter dated 7.5.1986 be allowed to be examined and this witness was present when the Advisory Board met but he was not examined which resulted in miscarriage of justice. It was contended that several facts were considered by the Administrator, Union Territory of Delhi when he passed the impugned order. One of the grounds was that when the house of Bhupinder Singh was searched he was found to be in possession of spectacles frames and goggles for which be could not produce any evidence of lawful import. It was submitted that these frames and goggles were available from local dealers in India and the detenue was in possession of the purchase bills and voucher from which he could prove these purchases. It was further submitted that the detenue had got these goggles and frames as samples because he had started a business of manufacture of the same and the goods which were seized from the unaccompanied baggage in the absence of the

petitioner could be imported freely after paying customs duty. It was submitted that he could rebut the allegation if he was allowed to examine the witnesses. However, the Advisory Board did not allow the examination of this witness.

9. Learned Counsel for the petitioner relied on A.K. Roy v. Union of AIR 1982 SC 711 in support of this contention.

10. Learned Counsel for the respondent did not dispute that as per judgment of the Supreme Court in A.K. Roy''s case (supra) if the detenue requests that he be allowed to examine a witness to rebut the allegations made against him the Advisory Board had to permit him to do so. However, it was contended that this request could be granted if the witness was present at the appointed time. Earned Counsel submitted that even as per this decision there was no obligation cast upon the Advisory Board to summon any witness. It was submitted that in the present case the witness whom Shri Bhupinder Singh wanted to examine was not present on the day the Advisory Board considered the case and heard the detenue.

11. The Administrator, Union Territory of Delhi had formed his opinion after considering several facts mentioned in the grounds of detention and after consideration of these facts the Administrator had come to a conclusion that Bhupinder Singh be detained under the Act with a view to preventing smuggling of goods i.e. frames of goggles/spectacles and goggles into India. One of the facts which weighed with the Administrator was that these goods were also seized from the residence and business premises of Bhupinder Singh. It appears that Bhupinder Singh wanted to rebut this allegation against him by examining a witness who was present on the day the Advisory Board met. The relevant extract of the petition where this ground has been averred by Shri Bhupinder Singh reads thus:

(v) The detenue was produced before the Advisory Board on 7th May, 1986 to consider the question of the detenue''s detention. The detenue wanted to prove that at the time of seizure of spectacle frames from his house, the detenue was in possession of purchase bills and vouchers for which he could easily prove the legitimate purchase of the said frames from local dealers. The detenue by his letter addressed to the Advisory Board made a request that he may kindly be allowed to produce his witness who were present on the occasion in order to rebut the evidence against him that the frames had been smuggled. Hereto annexed and marked as Annexure ''E'' collectively is a copy of representation addressed to the Hon''ble Chairman and Members of the Advisory Board, Delhi High Court, New Delhi and also the application for examining the witnesses. The detenue has been gravely prejudiced as his application was not considered and was ignored by the Advisory Board. The Hon''ble Supreme Court in A.K. Roy v. Union of India 1981(1) SCC 711 held that the detenue is entitled to examine his witnesses to rebut the charges against him. The failure by the Hon''ble Members of the Advisory Board to consider this application is a serious infringement of the detenue''s fundamental rights.

(vi) That the Hon''ble Advisory Board is bound under the law to send the entire record of the proceedings before it to the Central Government and the Central Government is in turn under an obligation under the Constitution to apply its mind to the entire materials and then proceed to make the order of confirmation. In particular, the Advisory Board was bound to inform the Central Government about the presence of witnesses and the Board''s refusal to record their evidence.

12. A counter affidavit has been filed by the respondent in reply to the show cause notice to the writ petition and this submission of the petitioner has nowhere been denied by the respondent. In fact, there is no reply to Ground No. 5 of the petition and as regards Ground No. 6 the reply reads thus:

It it wrong and denied. The Advisory Board to not bound under the law to send the entire record of the proceedings before it, to the Central Government. In this case, the Administrator of the Union Territory of Delhi has passed the orders for the detention of the detenue and not the Central Government. As such, the question of sending record to the Central Government does not arise. However, the Advisory Board sent the entire record to the Administrator who after due application of mind to the record and proceedings of the Advisory Board confirmed the detention order of the detenue.

13. Thus it is only now at the arguments stage it is being denied that the witness was not present. Though there is nothing on record to substantiate the contention of the respondent that the witness was not present on that date and though specific averment made by the petitioner has not been denied by the respondents in their counter-affidavit, in order to ascertain the correct position I summoned the original record from the respondents which the earned Counsel for the respondent very kindly produced in Court. On perusal of the record and the opinion of the Advisory Board also there is nothing to indicate that the witness was not present.

14. In view of this position the case of the petitioner is clearly covered by the judgment of the Supreme Court in A.K. Roy''s case (supra) whether the examination of the witnesses produced by the detenue if present before the Advisory Board has been found to be necessary by the Supreme Court. Since in the present case the witness was not examined though the present detenue was denied a valuable right and the order of detention deserves to be set aside as being vocative of the principles of natural justice. The petition is, Therefore, allowed. The detention order dated 7th January, 1986 is hereby quashed. The rule is made absolute. The petitioner is directed to be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or any other competent authority.

