

(1995) 02 DEL CK 0090

In the Delhi High Court

Case No : Criminal Writ Appeal No. 488 of 1994

Munna Lal Khandelwal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1995) 1 AD 808 : (1995) CriLJ 2870 : (1995) 2 Crimes 82 : (1995)
59 DLT 298

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Trilok Kumar, M.D. Taneja and B. Babbar, for the Appellant;

Judgement

Vijender Jain, J.

(1) The detention order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as Cofeposa Act) was passed on 6th May, 1994. The said detention order was served upon the petitioner on 12th June, 1994 along with grounds of detention.

(2) The learned Counsel for the petitioner, Mr. Trilok Kumar urged various grounds in the writ petition such as inordinate delay in passing and in execution of the detention order, relevant material neither placed nor considered by the Detaining Authority thereby vitiating the subjective satisfaction of the Detaining Authority, non-supply of all relied upon documents parri-pasu grounds of detention amounting to infraction of Section 3(3) of the Cofeposa Act and Article 22(5) of the Constitution of India, all relied upon documents not supplied in the language known to the petitioner, supply of unintelligible relied upon documents and placing of reliance on irrelevant documents thereby showing non-application of mind.

(3) Ms. Barkha Babbar, learned Counsel for the respondent has vehemently

opposed the arguments of learned Counsel for the petitioner and has stated that all the relied upon documents have been supplied to the petitioner some unintelligible documents have also been supplied but if the documents in original were not unintelligible, the same could not be made legible. She has argued that there is no inordinate delay in execution of the detention order as investigation took time.

(4) The learned Counsel for the petitioner also urged additional grounds that there was inordinate delay in consideration of the representations dated 20.6.94 and 29.7.94 by the Central Government and by the Detaining Authority. As a matter of fact, he has argued that the representation dated 20.6.94 does not appear to have been considered by the Detaining Authority, i.e. the Joint Secretary, Cofeposa till date. It has also been argued that there was no independent consideration by the Central Government of petitioner's representations addressed to the Advisory Board dated 20.6.94 and 29.7.94 as their consideration appears to have been influenced by the opinion of the Advisory Board as these appear to have been considered and disposed of simultaneously with the passing of order of confirmation.

(5) First of all I would like, to deal with the arguments of learned Counsel for the petitioner that reliance has been placed upon irrelevant documents which shows non-application of mind by the Detaining Authority. The ground of attack of the petitioner is that a large number of irrelevant documents have been relied upon for the subjective satisfaction of the Detaining Authority to detain him. A number of statements and Panchnamas relied upon by the Detaining Authority are irrelevant which reflect non-application of mind in the matter of segregating relevant from the irrelevant materials, thereby placing reliance on the irrelevant materials vitiating the subjective satisfaction to detain the petitioner amounting to frustrate the right of the petitioner to make an expeditious, effective and purposeful representation as envisaged under Article 22(5) of the Constitution of India. The case of the petitioner is that he has been drowned under plethora of documents regardless to their relevancy. He has argued that the material relied upon must be relevant, pertaining to and proximate to the petitioner. List of such alleged irrelevant documents are Annexures "O" and "O-"" to the petition. At page 115 annexure "O" specifically pleads that a number of irrelevant grounds, statements and documents have been relied upon by the Detaining Authority for subjective satisfaction by the Detaining Authority by taking into consideration the irrelevant documents shows that there was non-application of mind by the Detaining Authority. The argument of the learned Counsel for the petitioner is two folds, that by taking into consideration the irrelevant documents for arriving at a subjective satisfaction to detain results in non-application of mind as there is no nexus with subjective satisfaction with such documents, secondly a prejudice is caused to petitioner's right under Article 22(5) to make effective representation expeditiously.

(6) On the other hand, learned Counsel for the respondent Ms. Babbar has

argued that all these documents were relevant for the purpose of subjective satisfaction of the Detaining Authority. The reply of the respondent in this regard is as under:-

"PARA15. In reply to the contents of para 15 it is submitted that there has been no non-application of mind. The documents mentioned in these paras are very much relevant. Certain documents were enclosed in various petitions as enclosures and the same have been supplied. Para 16. In reply to the contents of para 16 it is submitted that all relied upon documents are related to the case and as such relevant. Para 17. In reply to the contents of para 17 it is submitted that all documents relied upon are connected with the case and hence related to the detention of the detenu."

(7) I have gone through some of the documents. One is a letter written by Shri Sukhram, Minister of State for Communication, New Delhi to Smt. Shiela Kaul, Minister of Urban Development, Nirman Bhawan, New Delhi, regarding allotment of Government accommodation to one Ajay Kumar Constable. Then there are other documents which are at pages 103,105,110,112,125,717,718,899,900,901,and 902 which I fail to understand how the same are relevant for arriving at subjective satisfaction of the Detaining Authority in the case. In *Khudiram Das v. State of West Bengal* 1975 Scc 435, a Constitutional Bench of the Supreme Court considered the question of subjective satisfaction of the executive which leads to the passing of the detention order in which it was held that:-

:.....FIFTHLY where the satisfaction is not grounded on materials which are of rationally probative value, i.e. the grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached and they must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute....."

(8) As I said earlier that how the documents which I have perused can possibly have any bearing for the subjective satisfaction of the Detaining Authority regarding unlawful activity on the part of the petitioner. There is no denial by the respondent that these documents were not relied upon by the Detaining Authority for the subjective satisfaction as these documents and statement have been relied upon by the Detaining Authority as per their own admission. In paragraph 72 of the grounds of detention the .list of the relied upon documents is enclosed and these documents find mention in the said list. In these matters the question is not of prejudice but the Court has to look as to the state of mind of the Detaining Authority at the relevant time and to find out whether it applied its mind to the real issue. This was the view taken in *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, . In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , it was observed that:-

"IT is an unwritten rule of law/constitutional and administrative, that whenever a

decision making function is entrusted to the subjective satisfaction of a statutory .functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Whether there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the ground so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and the materials that went in to make up the mind of the statutory, functionary and not merely the inferential conclusions "

(9) Therefore, irrelevant material has been taken to consideration for the subjective satisfaction of the Detaining Authority, the end result would be that the Detaining Authority has not applied its mind to relevant and proximate matters. The same view has been taken in plethora of authorities, by this Court including *Dewan Singh Verma v. uoi* 1988 (2) D L 197, *Jagir Singh v. uoI*, (Criminal Writ No. 514/93 decided on 10.5.94) as well as *Pritam Singh through Prem Kumar v. Uoi & Ors.*, (Criminal Writ No. 140/94 decided on 1.12.94). Following the catena of cases discussed above which squarely apply to the present case. I am of the view that the detention order on this ground alone cannot be sustained. I need not go into the other grounds urged by the learned Counsel for the petitioner. The detention order dated 6th May, 1994 is accordingly quashed. The petitioner shall be released forthwith, if not required in any other case or if not detained under orders of the Competent Court. The rule is made absolute. Writ petition is allowed.