
(1978) 02 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 3992 of 1977-H

R. Bhaskaran Pillai

APPELLANT

Vs

Enforcement Directorate and Another

RESPONDENT

Date of Decision : 08-02-1978

Acts Referred:

Adjudication Proceedings and Appeal Rules, 1974 — Rule 3(1), 3(1)
Foreign Exchange Regulation Act, 1973 — Section 37, 38, 41, 51

Citation : (1978) 1 ILR (Ker) 463

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Advocate : S. Easwara Iyer, C. Sankara Menon and E. Subramoni, for the Appellant; T.R. Govinda Warriar, for the Respondent

Final Decision : Dismissed

Judgement

N.D.P. Namboodiripad, J.—The question involved in this original petition is whether the retention of certain documents belonging to the petitioner and seized by the second respondent is sustainable in law, in view of certain provisions contained in the Foreign Exchange Regulation Act, 1973 (for brevity "the Act").

2. The facts are short and not in serious dispute. On September 16, 1976, the enforcement authorities searched the residence of the petitioner and seized certain documents. On July 13, 1977, the petitioner, through his counsel, issued Ex. P-2 notice for the return of the documents. What followed was Ex. P-4 notice, dated August 4, 1977, issued by the Enforcement Officer. This petition under Article 226 of the Constitution was laid for the issue of a writ of mandamus or other appropriate writ, order or direction compelling the respondents to return the documents seized from the petitioner on September 16, 1976.

3. A brief reference to the relevant sections and the rules of the Act may be helpful in resolving the dispute. The enforcement authorities are empowered to search premises by virtue of Section 37 of the Act. The power of seizure of

documents, etc., is conferred on the officers u/s 38 of the Act. Regarding the documents so seized, the other relevant provision is Section 41 of the Act, which I may read:

" 41. Custody of documents, etc.--Where in pursuance of an order made under Sub-section (2) of Section 33 or of the provisions of Section 34 or Section 36 or Section 37 or of a requisition or summons u/s 39 or Section 40, any document is furnished or seized and any Officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding one year or if, before the expiry of the said period of one year, any proceedings-

(i) u/s 51 have been commenced, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the High Court; or

(ii) u/s 56 have been commenced before a court, until the document has been filed in the court..... ".

4. From the wording of the provision it is clear that the enforcement authorities are competent to retain the documents seized u/s 38 for a period of one year on grounds stated in Section 41(i) and (ii) of the Act. The case of the respondent is that the retention of the documents seized in this case is justified by the provisions of Section 41(i). So, if any proceeding u/s 51 has been commenced, the respondents are entitled to retain the documents in question until the disposal of those proceedings including, if any, before the Appellate Board and the High Court.

5. The only remaining aspect to be considered is whether in this case there is a valid initiation of proceedings u/s 51 of the Act so as to claim the benefits u/s 41 of the Act by the respondents. The respondents relied on Ex. P-4, which is dated August 4, 1977. There cannot be the slightest doubt regarding the nature of Ex. P-4. It is a notice issued in accordance with Rule 3(1) of the Adjudication Proceedings and Appeal Rules, 1974. Rule 3(1) enjoins that before proceedings u/s 51 are initiated, the adjudicating officer shall, in the first instance, issue a notice to the concerned person. Ex. P-4 is undoubtedly such a notice, both by its form and content. It is, therefore, clear that the proceedings u/s 51 have been initiated on August 4, 1977 and the initiation of proceedings is based upon the seizure of the documents, which took place on September 16, 1976. There is, thus, valid compliance with the provisions of law by the respondents and the petitioner is not entitled to get back the concerned documents until the proceedings are terminated in the manner and at the stage as laid down in Section 41(i) of the Act. The petitioner is, therefore, not entitled to any relief.

In the result, the original petition is dismissed. No costs.