
(2005) 09 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 303 of 2005

Rajinder Arora

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 4 RCR(Criminal) 503

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : Vikram Chaudhari, for the Appellant; Meenakshi Chaudhari, Central Govt. Standing Counsel with Mr. Ram Chander, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Pursuant to this Criminal Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner prays, for quashing of the order of detention dated 31.3.2005, passed by the Joint Secretary to the Government of India, New Delhi, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA").

2. The Petitioner alleges that he is an industrialist, a manufacturer/exporter of Acrylic yarn, blankets and shawls operating in the name and style of M/s Ess Kay International. The Petitioner has two other units namely: M/s. Subal Exports and M/s. Chirag Exports which are export houses recognised by the Director-General of Foreign Trade ("DGFT").

3. On 26.5.2004, the officers of Directorate Revenue Intelligence ("DRI"), Ludhiana, raided the Petitioner's residential premises at Amritsar and Ludhiana. As no member was present at Ludhiana, the officers broke the locks and search was conducted at both the aforementioned premises. However, no incriminating document was recovered. Thereafter, the factory premises was also raised and

searched, which also did not reveal any incriminating material. All stocks lying in the factory premises were verified and no discrepancy detected. The Petitioner was illegally detained by the aforementioned officers, at Amritsar, and subjected to torture and harassment throughout the night. On 27.5.2004, the Petitioner was taken to the "DRI" office at Ludhiana and tortured for two days. The Petitioner was coerced into suffering a statement u/s 108 of the Customs Act and on 28.5.2004, was finally arrested at 16.45 hrs. The Petitioner was sent for medical examination, which revealed injuries to his person. On 28.5.2004, the Petitioner along with his co-accused Sh. Shital Vij and Sh. Ravinder Jain were remanded to judicial custody by the Chief Judicial Magistrate/Duty Magistrate, Ludhiana. On the next day, the Petitioner retracted his statements, made u/s 108 of the Customs Act, on the plea that it had been extracted under coercion, duress and torture. Thereafter, the Petitioner was admitted to a hospital, for 45 days. During the Petitioner's judicial custody, the DRI officials harassed the Petitioner's family members and forced them into depositing a sum of Rs. 60 lacs as custom duty, on 22.6.2004. Upon the failure of the DRI department to file a complaint against the Petitioner, within the statutory period of 60 days, the Petitioner was admitted to bail on 28.7.2004, by the Chief Judicial Magistrate, Ludhiana.

4. Thereafter, the Petitioner addressed numerous representations to the Respondents, recounting the above mentioned facts and requested them not to act on incorrect advice of the DRI officers and desist from initiating any proceedings under the COFEPOSA. The Petitioner also filed a criminal complaint, under Sections 323, 500, 506, 342, 343 read with Section 34 of the IPC, before a Judicial Magistrate at Ludhiana, alleging wrongful confinement, physical torture, injuries and defamation. The said complaint is pending and evidence is in progress. Despite the Petitioner's innocence the Joint Secretary to the Government of India has passed an order dated 31.3.2005 (Annexure P-1), directing the detention of the Petitioner in the Central Jail at Amritsar, hence, the present petition.

5. At the very outset and before examining the matter on merits, it would be significant to note that the present writ petition has been filed at the pre-detention stage, namely; that the order of detention has not been executed and the Petitioner is still free.

6. Counsel for the Petitioner, while impugning the order of detention, contends that an order of detention, can be impugned at the pre-detention stage and, therefore, it is not necessary for the Petitioner to surrender before filing a writ petition. Reliance for the above contention is placed upon a judgment of the Hon'ble Supreme Court in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, . It is further contended that in the aforementioned judgment, the Hon'ble Supreme Court set down five parameters, upon which, an order of detention can be impugned, at the pre- detention stage. The Petitioner, however, confines

challenge to the order of detention on the ground that the impugned order is punitive and not preventive and the order is based on vague and irrelevant grounds.

7. In order to substantiate his contentions, counsel for the Petitioner contends that the Petitioner is accused of "smuggling". The Petitioner is alleged to have imported duty free raw material, under the Duty Exemption and Entitlement Certificate (DEEC) Scheme, and instead of manufacturing goods therefrom, diverted this material to the local market.

8. It is further contended that the punitive nature of the order is established from the fact that during the validity of the licences, the competent authority, under the Foreign Trade Regulation Act, 1992, did not at any stage cancel the licences. In fact, the authority issued redemption certificates, certifying fulfilling of the export obligation. The customs authorities have no jurisdiction to inquire into the matter. Even otherwise, as the Petitioner fulfilled its export obligations, without any objection by the competent authority, the Respondents erred in initiating proceedings against him and directing detention.

9. The next argument raised by the counsel for the Petitioner is that despite the Petitioner's arrest on 28.5.2004, no complaint or prosecution has been initiated by any authority, much less the customs authorities. This fact indicates the hollowness of the case sought to be foisted upon the Petitioner.

10. The next point urged by the counsel for the Petitioner in support of his contentions, is that the grounds for detention, though not supplied to the Petitioner, but draft whereof has been annexed with the petition as Annexure P-2, clearly show that the detaining authority has primarily relied upon the alleged violation of the terms of the licences and the statement suffered by the Petitioner u/s 108 of the Customs Act. The authority has failed to consider that the statement was suffered by the Petitioner, under torture, coercion and duress. After being sent to judicial custody, the Petitioner was medically examined and several injuries were found on his person. The Petitioner has lodged a criminal complaint, which is pending adjudication before a Judicial Magistrate at Ludhiana. These facts, clearly indicate the vindictive attitude of the Respondents, thus exposing true motives behind the order of detention.

11. Another contention pressed into service by the Petitioner is that the linchpin of the entire operation is alleged one Shital Vij. As per the averments in the written statement the duty free material was diverted to the factories of Shital Vij and the Petitioner's firms, were in fact used by Shital Vij to import duty free raw-material. The Petitioner opened his bank accounts in Jalandhar at the instance of Shital Vij, who provided finance for the margin money and subsequently final payments towards import of raw material were made by Shital Vij. The Petitioner allowed his firms to be used by Sh. Shital Vij for import of raw material. However, no order of preventive detention has been passed against Shital Vij. In fact, as per the averments in the written statement, the case

forwarded by the Respondents, for the preventive detention of Shital Vij, has been rejected by the Screening Committee. Thus, as the main accused is not to be detained, no cause arises to detain the Petitioner.

12. The next contention pressed into service by counsel for the Petitioner is the delay between the Petitioner's arrest in May 2004 and the impugned order dated 31.3.2005. In case, the Petitioner was a real and live threat as to warrant preventive detention, the order should have been passed in close proximity to his arrest. The very fact that the Respondents have taken more than 10 months to pass the order of detention, exposes true motive behind the impugned order.

13. The last argument, advanced by counsel for the Petitioner is that a perusal of the grounds of detention would show that the material placed before the detaining authority, was insufficient, to enable it, to arrive at a subjective conclusion that the Petitioner's detention was warranted.

14. In response, counsel for the Respondents contends that though, as Alka Subhash Gadia's case (supra), a writ petition is maintainable, at the pre-detention stage, there are no special circumstances in this case as would warrant adjudication at a pre-detention stage. The five parameters, culled out by the Hon'ble Supreme Court for exercise of jurisdiction at pre-detention stage have not been met and, therefore, the writ petition be dismissed.

15. It is further contended that the impugned order is preventive and not punitive. The petitioner obtained 29 advance duty free licences from the Director-General of Foreign Trade, Amritsar. He imported raw material and instead of using the imported materials in terms of his obligations under the licence to manufacture and export goods, diverted it to the domestic market. The Petitioner violated customs notification 43/2002-Cus. dated 19.4.2002 and the EXIM Policy, 2002-07 and diverted imported raw material to the firm of one Shital Vij and in order to cover up these illegalities and to show fulfillment of his export obligations, procured sub-standard finished goods from the local market and exported them, thus causing a huge revenue loss to the Government. It is further contended that on 26.5.2004, 27.5.2004 and 28.5.2004, the Petitioner voluntarily recorded a statement, wherein he admitted that he diverted imported goods to Sh. Shital Vij etc. The statement was retracted by a telegram dated 29.5.2004 and a letter dated 19.11.2004. The statements of Ravinder Jain, Broker, Vinod Garg, who were the Petitioner's business associates, Subal Khanna, Proprietor of M/s. Subal Exports, Sh. Ghanshyam Goyal, Proprietor of M/s. Adarsh Parivahan, Ludhiana, Sh. R.S. Talwar, Manager, Forex, Sh. Vipin Sekhari, Senior Manager, P.N.B. etc., were recorded. On the basis of these statements, as also the subsequent letter dated 15.9.2004, wherein the bank also sought to deny the financial links between the Petitioner and Sh. Shital Vij, the detaining authority arrived at a conclusion that preventive detention of the Petitioner was warranted. The bank records were again scrutinized and after careful consideration of the facts and the material placed before it, the detaining authority issued the detention order on 31.3.2005. The order is legal and valid.

16. It is further contended that all pleas urged by the Petitioner have been considered by the detaining authority and only thereafter did it record subjective satisfaction that the Petitioner's preventive detention was warranted.

17. It is further contended that this Court, in the exercise of jurisdiction under Article 226 of the Constitution of India, can, at best, examine the legality of the impugned order, in terms of five parameters laid down by the Hon'ble Supreme Court in Alka Subhash Gadia's case (supra). Applying the aforementioned parameters to the present controversy, the order of detention does not suffer from any of the infirmities, set down by the Hon'ble Supreme Court and consequently, the present writ petition merits dismissal.

18. I have heard learned Counsel for the parties and perused the record.

19. During the course of arguments, counsel for the Respondents, produced the grounds of detention, for perusal of the Court, in a sealed cover. The grounds have been perused and returned to counsel for the Respondent. It would also be appropriate to notice here that the Petitioner has also appended, the alleged grounds of detention (Annexure P-2).

20. The first question that merits consideration is whether a writ of Habeas Corpus would issue, at the pre-detention stage, without the Petitioner surrendering. The said controversy is squarely covered by a judgment of the Hon'ble Supreme Court, reported as Alka Subhash Gadia's case (supra). The Hon'ble Supreme Court after a detailed appraisal of the law regarding preventive detention and the right of an individual to impugn the order of detention without surrendering, held as follows:

Thirdly, and this is more important, it is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre- execution stage are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied:

(i) that the impugned order is not passed under the Act under which it is purported to have been passed,

(ii) that it is sought to be executed against a wrong person,

(iii) that it is passed for a wrong purpose,

(iv) that it is passed on vague, extraneous and irrelevant grounds, or

(v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

21. A perusal of the aforementioned judgment reveals that at pre-detention stage, this Court, in the exercise of powers under Article 226 of the Constitution of India, depending upon the facts and circumstances of a case, entertain a writ petition. However, these powers have to be exercised sparingly and in the rarest of rare cases. As held by Hon"ble Supreme Court in *Madhu Garg v. Union of India* and Anr. 2004 (4) RCR (Cri) 408, if the Court arrives at a conclusion that any one of the five parameters, referred to in *Alka Subhash Gadia's* case (supra) is satisfied, the order of detention can be quashed at the pre-detention stage.

22. Before I proceed to examine the matter on merits, it would be appropriate to notice a judgment of the Hon"ble Supreme Court reported as *Union of India v. Amrit Lal Manchanda* and Anr. 2004 (1) RCR (Cri) 996, wherein the nature, intent and purpose of preventive detention has been succinctly explained. A relevant extract thereof is reproduced hereinafter:

Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meaning provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To lose our country by a scrupulous adherence to the written law: said Thomas Jefferson "would be to lose the law itself with life, liberty and all those who are enjoying with us thus absurdly sacrificing the end to the needs." This, no doubt is

the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other.

23. Preventive detention is, thus, a measure, invoked to prevent an individual from indulging in acts that may be prejudicial to the maintenance of public order to the security of State or corrode its financial base. The power of preventive detention, by its very nature being anticipatory and preventive does not necessarily relate to the commission of an offence. As held above, it is also called a jurisdiction of suspicion.

The words "preventive detention" inhere in them a pre-emptory power to detain, with an object to prevent injury. It is the duty of the Government to pre-empt an anticipated injury to public order, security of the State or its financial stability. This power, however, is to be exercised sparingly, in rare cases and only when the detaining authority, on the basis of material, placed before it, records a subjective satisfaction, that if not detained the individual concerned would indulge in acts prejudicial to the security of the State, public order or its financial stability. To arrive at such a conclusion, the authority is required to objectively analyse the material placed before it and upon an appraisal thereof record its subjective satisfaction that detention is imperative.

This Court, while exercising jurisdiction under Article 226 of the Constitution of India, does not exercise powers of an appellate authority. Its powers are confined to a perusal of the material placed before it, with an object to ascertain whether there was sufficient material before the authority to enable it, to arrive at a subjective conclusion that preventive detention was warranted.

24. The Petitioner, who runs three recognised export houses, is alleged to have misused 29 licences, issued to him by the Director-General of Foreign Trade, Amritsar. The modus operandi, alleged is that Petitioner obtained licences, under a scheme floated by the Government, which entitled him to import duty free goods. The scheme required the Petitioner to manufacture and export these duty free goods. The Petitioner, however, diverted the duty free goods to other manufacturers and instead exported sub-standard goods, which were not manufactured from the imported goods. The Petitioner, thus, fulfilled his export obligations, fulfilment whereof is reflected in the redemption certificates Annexure P-10 (Colly). However, the Respondents allege that the export was mere eye wash, as the exported goods were not manufactured from the imported material. On the basis of these allegations, the Respondents interrogated the Petitioner on 26, 27 and 28.5.2004. The Petitioner suffered a statement u/s 108 of the Customs Act, accepting his guilt, though it is alleged that he subsequently retracted this statement. On 28.5.2004, the Petitioner was arrested and sent to judicial custody. Thereafter, the Petitioner filed a criminal complaint against officers of the Respondents, alleging torture, inflicting of

injuries, illegal confinement etc., which complaint is pending consideration.

25. As noticed in the earlier part of this judgment, the Respondents have produced, for appraisal of the Court, the grounds of detention. A perusal of the grounds of detention reveal, that the facts, which have already been narrated in detail and the evidence collected against the Petitioner have been considered. The statement made by the Petitioner u/s 108 of the Customs Act and its subsequent retraction has been adverted to. The statements made by other individuals have been noticed. The role played by the Petitioner in the diversion of imported goods, to the factory of Sh. Shital Vij has been considered. The filing of a complaint, in the Court of Judicial Magistrate, Ist Class, Ludhiana, has also been taken into consideration. The entire material has been scrutinised. On the basis of this material, the detaining authority recorded its satisfaction that the activities of the Petitioner amount to "smuggling" as defined in Section 2(39) of the Customs Act, 1962, read along with Section 2 (e) of the COFEPOSA, Act 1974. The authority concluded that it had no hesitation in arriving at a conclusion that though acts of commission and omission, the Petitioner indulged in prejudicial activities and in view of these facts, the Petitioner has a high potential and propensity to indulge in such prejudicial activities in future.

26. A contention, vehemently urged, and noticed earlier, by counsel for the Petitioner is that the impugned order is punitive and not preventive. To fortify this plea, it is urged that till date no prosecution has been launched against the Petitioner by any authority. The Petitioner has not been charged with any offence nor has he been convicted and sentenced. The licences were never cancelled, and no illegality pointed out during their subsistence and as the licences have expired, preventive detention is unwarranted. The Petitioner has no opportunity to indulge in "smuggling" and, therefore, the impugned order is punitive and not preventive.

27. The ceasing of an act that led to the consideration of a case for preventive detention, is not germane to the issue in hand. Suspicion, as to future conduct, based upon past events, gives rise to a cause for preventive detention.

28. As noticed in the earlier part of this judgment, the jurisdiction of preventive detention, being one of suspicion is anticipatory and preventive in nature. The launching of a prosecution, the conviction or sentence of an individual are not sine qua non for the exercise of powers of preventive detention. It is the propensity of an individual to commit acts prejudicial to the interest of State that sets into motion a cause for preventive detention. The expiry of licences, cannot, therefore, be inferred, to bring an end to the propensity of the Petitioner or his likelihood, to indulge in "smuggling". The failure to launch a prosecution or the expiry of the licences, in my opinion, cannot enure to the benefit of the Petitioner. Past events and past conduct, however, cast their shadows on future conduct. The mere fact that the individual cannot or may not repeat the act of "smuggling" or that the opportunity to do so is remote, would, in my opinion, depending upon the facts and circumstances of a case, be insufficient to hold

that a person is incapable of indulging in similar, as distinguished from same activities in future. The authority, has taken into consideration these facts and arrived at a conclusion that the Petitioner's preventive detention is warranted. This conclusion is based upon sufficient material and does not warrant interference. The failure to launch a prosecution or the expiry of the licences, in my opinion, cannot enure to the benefit of the Petitioner. Even otherwise, the subjective satisfaction of the authority should not be commented upon, as held by the Hon'ble Supreme Court in the judgment reported as *Safiya v. Government of Kerala*, 2003 (3) RCR (Cri) 835. The subjective satisfaction of the authority, is based upon sufficient material and is sufficient to warrant an order of preventive detention.

29. Another circumstance urged by counsel for the Petitioner, is the delay of more than 10 months, in passing the order of detention. In my considered opinion, delay per se, cannot be a circumstance to set aside an order of preventive detention. It is only such delay, as is unexplained, on account of which a live and proximate link between the reasons for detention and detention stand served. As preventive detention, by its very nature is anticipatory, delay in my opinion, in the circumstances of the present case, cannot come to the aid of the Petitioner. As urged by the counsel for the Respondent, the investigating authority's recommendation was returned by the Screening Committee for want of sufficient material. The recommendation was re-submitted with sufficient material, whereupon the Screening Committee accepted the recommendation. The delay, if any, has been satisfactorily explained.

30. A contention, raised by the counsel for the Petitioner, is that the detaining authority has failed to consider that the statement u/s 108 of the Customs Act, was subsequently retracted. This averment is factually incorrect as the grounds of detention specifically refer to the retraction made by the Petitioner. The Hon'ble Supreme Court in *Surjeet Singh Chhabra v. Union of India*, 1997 (89) E.L.T. 646 (SC) , held that a retracted statement is binding. Another contention pressed into service by the counsel for the Petitioner is that the linchpin of the entire operation has not been detained and, therefore, the order is discriminatory, does not merit acceptance. Counsel for the Respondent has informed this Court that the investigating authority had recommended Shital Vij's detention but the recommendation was rejected by the Screening Committee. Non-detention of Shital Vij, in my considered view cannot aid the Petitioner to raise a plea of discrimination or bias. Article 14 does not operate in such circumstances and, therefore, the Petitioner cannot draw any benefit from the aforementioned circumstances.

31. The next contention namely; that the order of detention is based upon a single instance of alleged "smuggling" and, therefore, being illegal, is liable to be rejected. As stated above, the question is not the offence committed by the Petitioner but whether the alleged offence, if any, would give rise to a reasonable and rational suspicion that if not detained, the Petitioner would in all likelihood

commit acts prejudicial to the interest of the State, in this case, the economic well being of the State.

32. Counsel for the Petitioner has also placed reliance upon a judgment of the Hon"ble Supreme Court namely: Madhu Garg v. Union of India and Anr. (supra) to contend that his case is squarely covered by the ratio of law laid down in the aforementioned judgment. In my opinion, the aforementioned judgment does not come to the aid of the Petitioner. In the said judgment, the order of detention was quashed, on the ground that the order of detention was based upon an error of fact. It was in this context that the Hon"ble Supreme Court held that where an order of detention, is found to be based on irrelevant material, not germane to the passing of the order of detention, the entire order would stand vitiated. The circumstances of the present case are entirely different. The Petitioner has been unable to make out any case that the order of detention suffers from any fatal error of fact.

33. Another contention, raised by the counsel for the Petitioner that the Respondents have no authority to decide whether the Petitioner did not fulfil his export obligations and, therefore, the order is null and void, is without merit. On the basis of material collected, the customs authorities, have arrived at a conclusion that the Petitioner, did not manufacture any goods from the imported material and exported other sub-standard goods, thus, causing a serious monetary loss to the Government. The question before the detaining authority was whether in view of the above circumstances, the Petitioner was likely to commit acts of "smuggling". Whether the Petitioner fulfilled his export obligation or not and the manner in which he did so was a circumstance, relied upon by the authority to arrive at its conclusion. There is no statutory bar that prevents the customs authorities from determining evasion of customs duty and forwarding a case for preventive detention.

34. It is next contended that, as redemption certificates have been issued by the concerned authority, it would have to be presumed that the Petitioner had discharged his export obligations, without violation of the terms and conditions of his licences. This submission, of counsel for the Petitioner, cannot be accepted, in view of the facts and circumstances of the present case, as detailed hereinbefore.

35. The contention that the order of preventive detention is a counter blast to the criminal complaint filed by the Petitioner, complaining of injuries, illegal detention etc., in my opinion, does not detract from the legality of the order passed by the detaining authority. Mere filing of a criminal complaint, would not lead to a conclusion that the impugned order is mala fide. Even otherwise, as has been admitted by the counsel for the Petitioner, no summoning order has been passed by the Magistrate.

36. In view of what has been stated above, a perusal of the grounds of detention and the order of detention, leaves no manner of doubt that the contentions raised by the counsel for the Petitioner do not fall within any of the five

parameters set down by the Hon"ble Supreme Court in Alka Subhash Gadia's case (supra). The satisfaction of the detaining authority is based upon sufficient material and has been referred to in the grounds of detention. The conclusion recorded by the detaining authority, in the facts and circumstances of the present case, is legal and valid. The facts of the present case, including all contentions raised by the Petitioner, in his representations, as also by the counsel for the Petitioner, have been taken into consideration by the detaining authority. There was sufficient material before the detaining authority to arrive at a conclusion that in the circumstances of the present case, preventive detention of the Petitioner was imperative.

37. In view of what has been stated above, the present petition must fail and is consequently dismissed.

Petition dismissed.