
(1994) 12 DEL CK 0020
In the Delhi High Court
Case No : Criminal W. No. 486 of 1994

Rakesh Kumar Gupta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Citation : (1994) 12 DEL CK 0020

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : R.L. Mehta and Navin Malhotra, for the Appellant; Ms. Meera Bhatia and Gajender Kumar, for the Respondent

Judgement

1. This writ petition challenges the order of detention dated 23rd March 1994 bearing No. F. No. 673/30/94-Cus. VIII, passed by Sh. Mahendra Prasad, Joint Secretary to the Govt. of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act) by "which the petitioner was ordered to be detained and kept in custody in Central Jail, Tihar, Delhi.

2. Briefly the facts are that the officers of the Enforcement Directorate, Delhi Zonal Office, intercepted a Maruti Car bearing registration No. DL-2C-F4598 and a Maruti Van with registration No. DL-3C-E1822 at Sonauli Border while the said two vehicles were driving to cross over to Nepal along with their passengers. The search of both the vehicles was conducted u/s 36 of Foreign Exchange Regulation Act, 1973. As a result of the search foreign exchange as per details given below was recovered and seized. It was found concealed in the cavities of the vehicles.

SEIZURE FROM THE MARUTI CAR NO. DL-2CF-4598

U.S. \$ (Cash) : 50,000/-

U.S. \$ (T.Cs.) : 12,610/-

Canadian \$ (T.Cs.) : 11,300/-

U.K. Pound (T.Cs.) : 4,580/-

D.M. (T.Cs.) : 150/-

French Fr. (T.Cs.) : 5,700/-

SEIZURE FROM THE MARUTI VAN NO. DL-3CE-1822

U.S. \$ (Cash) : 26,150/-

Drafts/Cheques/M.O. & U.S. \$: 20,592/-

D.M. : 5,044/-

U.K. Pound : 3,480/-

Canadian \$ (Money Order) : 1,000/-"

3. Apart from the above seized foreign exchange certain incriminating documents were recovered and seized from the cavities of the said vehicles. As the vehicles were allegedly being used for illegal trafficking of foreign exchange, the same were also seized by the officers of the Directorate. Statement of the passengers of the vehicles, namely, S/Shri Naresh Bhardwaj, Virender Chopra, Jaspal Singh, M. M. Sharma, Geeta Arora and Kumari Poonam Arora, u/s 39 of the Foreign Exchange Regulation Act, 1973 were recorded. In view of some of the statements recorded by the officers of the Directorate of Enforcement respectively, the premises of Praveen Kapur at 62, Sainik Vihar was searched on 22-1-94. 200 gold coins 6.5 lacs of Indian currency and certain documents were seized from there. Statement of Beena Kapur wife of Praveen Kapur was recorded. Statement of O. P. Gupta, father of the present petitioner was also recorded.

4. On 23rd March 1994 order of detention was passed against the petitioner u/s 3(1) of the COFEPOSA Act by respondent No. 2 with a view to prevent him from acting in any manner prejudicial to the conservation of foreign exchange. According to the respondents as disclosed in the grounds of detention the petitioner was also a passenger in one of the cars which were intercepted on 21-1-1994, and he slipped and ran away towards Nepal side of the border. Therefore, no statement of the petitioner was recorded. On 11-6-1994 the order of detention was served on the petitioner by the police and he was taken in custody. On 15th June 1994 grounds of detention and list of relied upon documents containing the documents were served on the petitioner. On 20th June 1994 reference was made to the Advisory Board u/s 8B of the COFEPOSA Act.

5. The petitioner has taken several grounds in the writ petition challenging the detention order. However, the main emphasis at the time of hearing was on the ground of non-supply of legible copies of relied upon documents to the petitioner. As already noted a list of relied upon documents along with photo copies of the documents was served on the petitioner on 15th June 1994. On 1-7-1994 a

representation was sent by the petitioner to the Central Govt. whereby legible copies of some of the relied upon documents were asked for. A copy of the said representation has been placed on record as Annex .X-II. As per para 4 of the representation the petitioner submitted that documents No. 2 and 98 of the English bunch of documents and documents No. 54 to 57, 93, 94, 102, 103, 110, 115, 116, 121, 123, 125 and 127 of the Hindi bunch of documents were absolutely illegible. The petitioner submitted that because of this the petitioner was unable to make an effective and purposeful representation which was his fundamental right in view of the provisions of Art. 22 of the Constitution of India.

6. In this behalf it is to be noted that the impugned detention order itself makes the petitioner aware of his right to make representation in para 21 of the grounds of detention where it is stated as under :-

"21. You have a right to make representation to the Central Government, Detaining Authority and Advisory Board. If you wish, to make a representation against your detention to the Central Government (Secretary to the Govt. of India), Ministry of Finance, Department of Revenue/Detaining Authority, you may do so by addressing it to the Secretary/Joint Secretary (COFEPOSA), Govt. of India, Ministry of Finance, Deptt. of Revenue, Central Economic Intelligence Bureau, 6th floor, B Wingh, Janpath Bhawan, Janpath, New Delhi - 110 001 and forward the same through the Superintendent of the Prison wherein you are detained. If you desire to make any representation to the Advisory Board, you may address it to the Chairman, Central Advisory Board (COFEPOSA), High Court of Delhi, Sher Shah Road, New Delhi and forward the same through the Superintendent of the Prison wherein you are detained. You are further informed that you shall be heard by the Advisory Board in due course, if the Board considers it essential to do so or if you so desire."

7. The petitioner has further averred that on 2nd July 1994 the petitioner was produced before the Central Advisory Board (COFEPOSA). He made a representation before the Advisory Board and reiterated his request of supply of documents as per his representation dated 1st July 1994. The petitioner requested for an adjournment on this ground. A copy of the representation dated 2nd July 1994 made to the Advisory Board has also been placed on record as Annx. X-III. The meeting of the Advisory Board was adjourned to 5th August 1994 in view of the representation of the petitioner regarding supply of legible copies of the documents.

8. The Central Govt. vide its order dated 29th July 1994 dealing with the representation of the petitioner dated 1st July 1994 rejected the request of the petitioner for revocation of the order of detention but the sponsoring authority was directed to supply again to the petitioner legible copies of the documents which were illegible as per the petitioner's representation. Inspire of the said order of the Central Govt. legible copies of the illegible documents were not supplied to the petitioner even up to 5-8-1994 when the meeting of the Advisory Board was again fixed. On 5-8-1994 the petitioner again represented before the

Advisory Board that the legible copies of the documents have not been supplied to him. The order of the Central Govt. containing the direction to the sponsoring authority to supply legible copies was also brought to the notice of the Advisory Board. The petitioner expressed his handicap in the matter of making effective and purposeful representation in the absence of legible copies of relied upon documents. However, the Advisory Board concluded the matter of hearing of the petitioner's case on 5-8-1994. The legible copies of the documents were supplied to the petitioner only on 9-8-1994. Thus it is obvious that the petitioner was deprived of his right to make an effective representation before the Advisory Board.

9. The learned counsel for the respondents submitted that the copies of the documents initially supplied to the petitioner itself were all legible copies and there is no substance in the plea of the petitioner that copies of certain relied upon documents supplied to him were illegible. To examine this aspect my attention was drawn to some of the illegible documents photocopies whereof have been placed on record by the petitioner. In fact at the time of hearing learned counsel for the petitioner produced the photocopies which were actually supplied to the petitioner as relied upon documents. A bare look at most of the documents shows that they are illegible. It is impossible to decipher some of the documents referred to by the petitioner in this behalf. The purpose of ensuring supply of legible copies of relied upon documents to a detenu is to enable him to exercise his fundamental rights under Art. 22 of the Constitution of India. Therefore, the requirement for supply of copies of relied upon documents is not a mere formality. When the Constitution guarantees a right of representation to a detenu, it is natural that it should be ensured that the right can be effectively exercised and it is not reduced to a mere formality. Prevention detention means detention without trial and, Therefore, certain safeguards have been laid down under Art. 22 for the detenu. We are a country governed by the rule of law and Courts have to ensure that the executive performs its statutory functions in accordance with law and does not function in an arbitrary manner.

10. In fact the adjournment granted by the Advisory Board on 2nd July 1994 in view of representation of the petitioner dated 1st July 1994 for supply of legible copy of the relied upon document shows that the Advisory Board was also of the view that the petitioner had been supplied illegible copies of relied upon documents which was frustrating the right of the petitioner to make representation to the Advisory Board as also the Central Govt. Ultimately as per the facts which have emerged the right of the petitioner to make a representation to the Advisory Board has been totally denied in the present case. Till 5-8-1994 when the hearing of the Advisory Board concluded legible copies of relied upon documents had not been supplied to the petitioner. It is not suggested on behalf of the respondents that the petitioner ever waived the demand. The detenu has a right to make a representation before the Advisory Board as well as before the Central Govt. In fact the petitioner was made aware of this right by the communication containing the grounds of detention, para 21

whereof has been quoted herein before.

11. Learned counsel for the petitioner has brought to my notice several judgments of this court on the aforesaid point where the detention was quashed on the ground of denial of right to the detenu to make effective representation to the authorities on account of lapse on the part of the detaining authority to ensure that legible copies of relied upon documents were supplied to the detenu. The point is too obvious and well settled and, Therefore, I need not cite all these judgments.

12. The result is that in the facts and circumstances of the case the continued detention of the petitioner is vitiated and it is ordered that the petitioner be released forthwith unless otherwise required to be detained in connection with any other case.

13. For decades the law is settled that non-supply of legible copies of relied upon documents to a detenu is violative of his fundamental rights under Art. 22(5) of the Constitution of India and detentions have been quashed on this ground. I am pained to note that in spite of this clear legal position, the officers of the Govt. dealing with such cases continue to violate the law. Whether a document is legible or not is not an issue on which there is scope for two opinions. Preventive detention is such a serious matter and still if the concerned officers continue to act in this illegal manner, the inference is obvious. They are apparently doing this to help the detenus to get their detention quashed. In the process they are defeating the laudable object of the legislation and bringing the entire Govt. machinery to disrepute. It is high time that some serious thinking is given to this issue and responsibility is fixed. Action is called for against such erring officials. I am constrained to say this because case after case I find similar defaults on the part of the government officers handling preventive detention cases which result in detention being quashed.

14. A copy of the judgment be sent to the Supdt. Central Jail. Copies of this judgment be also sent to the Secretaries, Ministry of Finance (Department of Revenue) and Ministry of Law, Justice & Company Affairs, Govt. of India. The petition is disposed of.

15. Order accordingly.