

(1987) 05 DEL CK 0001

In the Delhi High Court

Case No : Criminal Writ Appeal No. 113 of 1987

S. Venketraman

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-05-1987

Acts Referred:

Citation : (1987) 3 Crimes 44 : (1987) 13 DRJ 276

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Harjinder Singh, B.P.S. Mangat, Rajender Dutt and Ajay Chandel, for the Appellant;

Judgement

M.K. Chawla, J.

(1) The bare minimum facts required for determining the fate of the present writ petition are that the petitioner Shri S. Venkataraman is the Chairman-cum-Managing Director of M/s. Computer and Video Tapes Pvt. Ltd. having a registered office at 93, Eldams Road, Madras-18. This Company is registered as a small scale industrial unit with the Department of Commerce. In the due course of the manufacturing process, the company placed an order with M/s. Manipal Ltd., Hong Kong, for the import of Video Magnetic tapes in pan-cakes. The goods were received in 11 consignments at Calcutta port. On 26th February, 1986, 11 sets of bill of entry were presented at the Calcutta Customs House by the Customs House Clearing Agent M/s. Harshadry N. Doshi on behalf of the Company. The declaration on the reverse of the bill of entry was signed by the petitioner, for and on behalf of the company. As per the declarations on the bills of entry clearance of the consignment was claimed under open general license, covering items of raw material components and consumable goods. The company also claimed the benefit of exemption notification and submitted duty exemption certificates purportedly issued by one J. K. Mathew, Joint Director in the office of the Industries and Commerce, Madras. In good faith, the goods were allowed clearance under open general license after assessing them to duty at the

concessional rate of 60 per cent ad-valorem and 40 per cent ad-valorem auxiliary duty.

(2) Subsequently, intelligence was gathered by the Department that some of the manufacturing units have abused the benefit of exemption notification and have managed to obtain clearance of the imported Video Magnetic Tapes at the concessional rate of duty after submitting fake/forged duty certificates. Accordingly an enquiry was initiated to ascertain as to whether the certificates issued to the Company are genuine or not. On verification, it was found that the premises of the firm were locked and not functioning. It also transpired that the exemption certificates alleged to have been issued to the company were forged. The company thus unauthorisedly enjoyed the benefit of exemption notification and got released the goods on concessional duty.

(3) On these facts, the detaining authority came to the conclusion that although adjudication proceedings and prosecution proceedings are likely to be initiated against the petitioner, he should be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing him from smuggling goods. The order of detention is dated 1-9-86.

(4) In pursuance of the order of detention, the petitioner was arrested on 4-9-86 and served with the grounds of detention. This very order is under challenge. The main contention is, that the detenu has been deprived of his right by the Advisory Board, to lead evidence in rebuttal of the allegations. Inasmuch as he has not been allowed to examine the witness who was present outside the Board room. In this behalf, Id. counsel referred to and relied upon the representation which was submitted before the Advisory Board on 4-11-1986 (Annexure-E), wherein he sought permission to produce Shri Ramachandran, Director, Computer and Video Tapes Pvt. Ltd. to support the plea that their factory situated at 93, Eldams Road, Madras had shifted to 18/2, Narasingapuram Street, Mount Road, Madras, in the year 1983, and was manufacturing Video Magnetic Tapes. The Advisory Board, however, adjourned the hearing to 12-11-86, and the representatives of the sponsoring authority were directed to bring the books for verification of the petitioner's allegations.

(5) The case was again taken up on 12-11-86, the petitioner submitted another representation to the Advisory Board (Annexure-F), wherein he specifically mentioned that Shri S. Ramachandran present outside the Board room be examined as witness to prove the documents which he has brought to show that the factory was working and from the imported pan-cakes, Video cassettes were being manufactured at their factory. According to the learned counsel, in spite of repeated requests, Shri S. Ramachandran was not examined and instead the petitioner was asked to file the affidavit of the witnesses. By not allowing the detenu, to examine the witness his constitutional right embodied in Article 22(5) of the Constitution has been violated, for which the necessary consequences must follow.

(6) The case of the respondents as disclosed in the counter is that the petitioner was allowed to file affidavits of his witnesses, which were taken on record and considered. There has, Therefore, been no violation of the petitioner's constitutional right and on this score alone the order of detention cannot be quashed.

(7) It is not disputed that the detenu has a right to be represented by a friend of his choice. He has also the right to examine witnesses to rebut the allegations made against him in the grounds of detention. The only embargo is that the witnesses must be present as there is no duty cast on the Advisory Board to summon the witnesses of the detenu. This right has been declared in the nature of a constitutional safeguard under Article 22(5) of the Constitution of India and if this right is denied to the detenu, the order of detention must fail.

(8) In the recent judgment of the Supreme Court reported as Harbans Lal Vs. M.L. Wadhawan and Others, , the controversy as to the right of the detenu to produce oral evidence as against the filing of the affidavits has been set at rest. During the course of the judgment, it was held as under:

"THE law laid down by the Supreme Court recognises the right in a detenu to lead evidence in rebuttal of the allegation against him, before the Advisory Board. All that is necessary is that the detenu should keep the witnesses ready for examination at the appointed lime. There is no obligation cast on the Advisory Board to summon them. The law recognises a right in the Advisory Board to regulate its own procedure within the constraints of the Constitution and the statute and this procedure is referable to the time limit within which the Advisory Board must complete its enquiry. The constitutional safeguards embodied in Article 22(5) of the Constitution as understood by the Supreme Court must be read into Section 8(b) of the Cofeposa Act. Therefore, the right in a detenu to adduce oral evidence in rebuttal, being a right in the nature of a constitutional safeguard embodied in Article 22(5) of the Constitution has necessarily to be read into Section 8(b) and (c) of the Cofeposa Act. There is nothing in Section 8 prohibiting oral evidence of the witnesses tendered by a detenu being taken. The concept of enquiry by the Advisory Board takes within its ambit this aspect of hearing also. Where the Advisory Board denies the right to examine witnesses produced before it by the detenu it violates the law and renders the continued detention bad."

This very ratio was adopted by this Court in a judgment reported as Munna Lal Jain v. V.O.I. and Others, 1987 (1) Cri 327, and affirmed by me in case Criminal Writ No. 59/87 re : Jugal Kishore Mosum v. Union of India, decided on 1-4-1987.

(9) Applying the ratio decidendi of the judgments referred to above to the facts of the present case, it is quite clear that in his representation, the detenu has given the names of his witnesses which he wanted to produce in rebuttal. He has also stated that they were present outside the room. Presumably he had brought the witnesses with him to prove his innocence. There was no question of his not

availing of this opportunity. Even if it be presumed for the sake of arguments that the detenu did not make any oral request but this by itself is not a ground for the Advisory Board to deprive him of his right of rebuttal when it is brought to their notice through the representation that his witnesses are present and are willing to depose the real facts.

(10) This very aspect came in for consideration in a judgment of the Supreme Court in *Surinder Kumar Arora v. Union of India and Others*, Criminal Appeal 55/86 decided on 14-1-86. The relevant portion of the judgment reads as under:

"THAT the detenu has a right to be represented by a friend of his choice and that he has the right to examine witnesses to rebut the allegations made against him has been held by this court in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, . It does not appear from the record placed before us that the written request of the detenu was ever considered. The High Court glossed over this fact with the statement that there was nothing in the record to indicate that the detenu had orally made any request that he wanted his friend to represent his case to the Advisory Board and that the request contained in the written representation was brought to the notice of the Board. We do not think that this approach of the High Court is correct. The request was made in writing and was made in the representation which was presented by him in person to the Advisory Board at the time of the hearing by the Advisory Board. He specifically mentioned in the representation that his friend and his witnesses were waiting outside. We do not think that the High Court was justified in brushing aside the submissions made on behalf of the detenu on the ground that the record does not indicate that any request was made. In these circumstances, we have no option but to allow the appeal and direct the detenu to be set at liberty."

(11) This judgment fairly and squarely applies to the facts of the present case. Taking an overall view of the matter, I am of the considered opinion that the oral request coupled with the written representation of the detenu for the examination of his witnesses could not have been ignored by the Advisory Board. The detenu has been deprived of his right to rebut the allegations made against him and this, by itself, has proved fatal, on this short ground, the petition must succeed. The detention order dated 1-9-1986 is quashed. It is directed that the petitioner be set at liberty forthwith unless required to be detained by the order of a competent court or authority.