

(1986) 02 DEL CK 0027
In the Delhi High Court
Case No : Criminal W. No. 249 of 1985

Satya Narain Aggarwal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Citation : (1986) CriLJ 1290 : (1986) 11 DRJ 7 : (1986) 2 RCR(Criminal) 366

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : Harjinder Singh, B.P.S. Mangat and N.S. Mehta, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.—By this petition under Art. 226 of the Constitution of India, the petitioner has challenged his detention u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (For short "the Act"). The detention order is dated 4th November, 1985 and it has been passed by Shri K. K. Dwivedi, Joint Secretary to the Government of India with a view to preventing the petitioner from smuggling goods or abetting the smuggling of goods.

2. Earlier to this detention order the petitioner was detained by a similar order passed on 3rd June, 1985 on the same facts and grounds. That detention order was, however, revoked by the Government on receiving the opinion of the Advisory Board that there was no sufficient cause for the detention. The detention order, Therefore, was revoked by an order of the Central Government dated 22nd August, 1985.

3. The facts as disclosed in the grounds of detention are that on 24th January, 1985 the Agriculture and Fishery Department, Hongkong informed Directorate of Revenue Intelligence that six pcs. of Rhino horns weighing 2.7 kg. were due to arrive at Bombay by Singapore Airlines SQ-22 at 01.55 hours on 25th January, 1985. The impugned goods were hand carried by the petitioner having Indian passport. The petitioner was intending to transship these goods to Macau via

Hongkong. He had no CITRS export permit and as such the consignment was suspected to be illegal and the transport of the goods had been refused.

4. On receipt of this information, Indian CITES Management Authority got in touch with the Directorate of Revenue Intelligence Department, New Delhi. On inquiry it was found that the name of the petitioner had not figured in the Passenger Manifest for Singapore Airline flight SQ-22 which landed at Bombay on 25th January, 1985. This consignment of Rhino horns was to be sold by the petitioner at Macau against cash payment to one Chaman Lal Gupta of M/s. Export Trade Corporation. The petitioner apprehending trouble, did not, however, avail of Flight No. SQ-22 from Singapore to Bombay. It was further found that the petitioner had given fictitious address to the Passport Authorities. The petitioner was ultimately traced at P. 354, Block-A, Lake Town, Calcutta on 29th May, 1985. On the same date his statement was recorded u/s 108 of the Customs Act, 1962 wherein he admitted that he was indulging in smuggling activities.

5. The petitioner was put under arrest on 30th May, 1985 and was produced before the Chief Metropolitan Magistrate, Calcutta on the same date. He was remanded to judicial custody till 7th June, 1985. On 6th June, 1985 he was detained in pursuance of the detention order dated 3rd June, 1985. The grounds together with copies of documents were supplied to him and on 8th August, 1985 the petitioner was presented before the Advisory Board before which he made a representation on 16th August, 1985. He had earlier also made a representation on 13th August, 1985. On 2nd September, 1985, the petitioner was intimated that the Advisory Board was of the opinion that there was no sufficient cause for his detention. The petitioner was released from detention on 27th August, 1985 and was granted bail by the Court on 28th August, 1985 in the complaint case. The petitioner had represented to the Advisory Board that the copies of documents supplied to him were illegible and that this had deprived him from making an effective representation. This plea of the petitioner found favor with the Advisory Board and the Advisory Board had tendered the following opinion :

"after taking into consideration the grounds of detention and the material relied upon and having regard to the written representation and oral submissions, the Board is of the opinion that the right of making an effective representation by the detenu has been violated. For this reason preventive detention is not justified.

In the opinion of the Advisory Board there is no sufficient cause for the detention of Shri Satya Narain Aggarwal."

6. What followed the opinion tendered by Advisory Board was the revocation of the detention order dated 3rd June, 1985 by the Government. This in turn was followed by the impugned redetection order dated 4th November, 1985 in pursuance of which the petitioner was once again detained on the basis of same set of facts and grounds. The petitioner has challenged his detention on a number of grounds, but since the contention of Mr. Harjinder Singh that the

redetection of the petitioner on the same facts and grounds is violative of his rights under Arts. 14, 19, 21 and 22(5) of the Constitution of India has appealed to us, we need not take up any other ground for consideration.

7. In their return the respondents have met the challenge to the detention order by submitting that the Advisory Board had accepted the petitioner's contention that by supplying to him illegible copies of documents he had been deprived of making an effective representation. According to the respondents the opinion of the Advisory Board as such was based on a purely technical ground and nothing was said on merits. The respondents state that in that view of the matter the case was considered by the detaining authority afresh. In short claim made is that the redetection was justified and it is not violative of any fundamental rights and that the detaining authority had power to redetain him. The effort of the respondents is to justify redetection of the petitioner on the same set of facts even though the previous detention order was revoked by the Government on the advice of the Advisory Board.

8. Here we may pause a little to state that it is the common case of the parties that the revocation of the detention order has been made u/s 8(f) of the Act and not u/s 11. Having heard Mr. Harjinder Singh and Mr. Mehta, learned counsel for the parties respectively we may record our views. Unfortunately, in this peculiar case of its own kind we do not have the benefit of any precedent. The question that arises for consideration is : Whether after the revocation of the order of detention on the advice of the Advisory Board, the respondents, on the same set of facts and grounds, are entitled to redetain the petitioner or not ? As already observed, we do not have any case law regarding the effect of revocation of detention order u/s 8(f), though we do have case law in respect of revocation of detention orders under S. 11 of the Act. In respect of the redetection order u/s 11(2) of the Act, the Supreme Court in the case of Ibrahim Bachu Bafan v. State of Gujarat, and Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, , has held that the power of making a fresh detention order u/s 11(2) is not available to be exercised unless the previous order is revoked u/s 11(1) of the Act. The question before their Lordships of the Supreme Court was whether a fresh order of detention could be made u/s 11(2) of the Act when the previous order of detention had been quashed by the Court. Strictly speaking we are not concerned in this case with Section 11. We have only made a reference to it to indicate that the scope of Section 11 is limited and also to state the scheme of the Act. If a detention order is revoked u/s 11(1)(a) and (1)(b), resort to Section 11(2) can be taken as Section 11(2) specifically makes provision for redetection. There can be no redetection u/s 11(2) if the detention has been quashed by a court of law which, according to the constitutional scheme, is the final reviewing authority. It is obvious from the scheme of the Act that all detention orders passed by the authority concerned can only be confirmed if the Advisory Board opines that there is, in its opinion, sufficient cause for the detention. In case the Advisory Board is of the opinion that there is no sufficient cause, the detaining authority is left with no option but to revoke the detention order. The detention in

all cases would be violative of Art. 22, if a reference for the opinion of the Advisory Board is not made. Detention being a serious matter, it is not left to the whims and caprices of the executive. In any case, the detention order cannot be confirmed by the respondents if the opinion tendered by the Advisory Board is against it. The opinion of the Advisory Board, in that view of the matter, is not a mere formality. It is to be acted upon in letter and spirit. In the present case the purport of the opinion tendered by the Advisory Board was that the detention is bad for the reason that the detenu has been deprived of making an effective representation by supplying to him illegible copies of the documents on which the grounds for detention were based. Section 8(f) of the Act in such a case imposes a duty to revoke and does not give further power to redetain on the same grounds as is provided by Section 11(2). The Act obviously is a self-contained one and does not leave anything to chances. It is, Therefore, quite reasonable to hold that if the Act does not specifically provide for redetention then in the case of revocation u/s 8(f) there is no authority to redetain.

9. Detentions are permissible for the public good provided the requirements of not only Art. 22, but also of Arts. 14, 19 and 21 of the Constitution are fulfilled. It is for this reason that the Advisory Boards consisting of fine legal craftsmen have been assigned the job of going into the validity of detention. Section 11(1) speaks of a detention order passed and revoked by the Government on its own and it is in that case alone that Section 11(2) comes into operation. On the other hand, Section 8(f) speaks of a revocation of detention order on the advice of the Advisory Board. After the Advisory Board gives an adverse opinion, Section 8(f) confers no power of redetention on the same facts and grounds. In short the Constitution though granting the executive the power to detain has subjected its decision to a quasi-judicial review and if the Advisory Board finds no sufficient cause, no further power rests with the executive.

10. Not very seldom detentions are quashed mostly on technical grounds, sometimes for lack of adequate material. This is so because the courts are not expected to go into the sufficiency or insufficiency of the material. Furthermore the satisfaction is supposed to be of the detaining authority and cannot be substituted with the satisfaction of the court. The courts have a limited role to find out whether the subjective satisfaction arrived at by the detaining authority could be reasonably arrived at. The basic guarantee, Therefore, in our constitutional scheme is the inbuilt safeguards against illegal and uncalled for detention and one of the most cardinal safeguards is that the opinion of the Advisory Board is to be honoured. In that view of the matter if the Advisory Board opines against detention, nothing survives and no further power u/s 8(f) is left with the detaining authority to redetain. This is a statutory revocation and cannot be undone on the specious plea that the revocation was done on technical ground.

11. Section 11 of the Act makes provision for revocation not on the ground that the Advisory Board has opined it to be so. It only confers authority on the

superior authority to the one who detains to revoke in case it feels that the power to detain has not been exercised properly. It may also revoke the order of detention on the ground of compassion or mercy. That is an act of the executive, and not an act of any intervening forum whether judicial or quasi-judicial. The scheme of the Act is that the detaining authority is not the final one but it has to abide by the advice of the Advisory Board, a quasi-judicial authority.

12. Mr. Mehta's contention that the Advisory Board has not disputed the facts and, Therefore, there is no law to prevent the detaining authority to order redetection after removing the technical objection is unsustainable. In our view, since Section 8(f) does not make provision for redetection, the benefit of revocation even on a technical ground must go to the petitioner. If the Advisory Board in a detention matter in which declaration u/s 9 of the Act is made says that there are sufficient grounds for detention and does not opine that there are sufficient grounds for continued detention, the detention stands vitiated and the detaining authority is not competent to pass a redetection order. Can the detaining authority redetain a person on the same set of facts if the grounds have not been furnished to him within the statutory period ? Can the detaining authority redetain a person if the matter is not referred to the Advisory Board within the statutory period ? Can the detaining authority redetain a person if the matter is not settled by the Advisory Board within the statutory period ? If the answer to all these questions of technical nature is "no", then we fail to understand wherefrom the detaining authority derives the power to redetain on the same set of facts when revocation has been done due to the adverse opinion of the Advisory Board. What is most important in the present case is that the constitutional and inbuilt safeguards have been violated by not supplying legible copies of the documents on which the grounds for detention were based. It does constitute a breach of the procedure beyond any repair. What will happen to the period of detention the petitioner had already undergone ? Mr. Mehta has relied upon *Naranjan Singh Nathawan Vs. The State of Punjab*, . That was a case under the Preventive Detention Act of 1950. In that case the Supreme Court held that in the absence of proof of bad faith the detaining authority can supersede u/s 13 of the Preventive Detention Act, 1950 an earlier order of detention challenged as illegal and make a fresh order wherever possible which is free from defects and duly complies with the requirement of law in that behalf.

13. The reliance on the aforesaid ruling to our mind is misplaced. It was a case where the detaining authority itself has revoked the detention order after being so advised as grounds of detention had not been supplied to the detenu. In the case with which we are dealing, the detention order was revoked u/s 8(f) on the opinion of the Advisory Board that there was not sufficient cause for detention. The revocation in the present case is not a matter of charity. It has taken place due to the operation of the statute and unlike Section 11(2) Section 8(f) of the Act does not confer any further power of redetection.

Moreover, ever since this was ruled, the concept of personal liberty has

undergone a vast change. In those days all detentions were being tested at the touchstone of Art. 22. Lately the Supreme Court has widened the scope inasmuch as the procedure to detain is now being tested not only at the touchstone of Art. 22 but also of Arts. 14, 19 and 21 of the Constitution. Reference in this regard may be made to Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, , particularly Para 16. The documents on which grounds are formulated together with the grounds are to be supplied to the detenu within the statutory period of five days and maximum 15 days if explained. In the present case even at the time when the Advisory Board had tendered its opinion in respect of the detention order dated 3rd June, 1985, admittedly legible copies of the documents had not been supplied to the petitioner. It was actually for that reason that the Board tendered its opinion against detention. In other words, the opinion was tendered for not complying with Art. 22(5). In A.K. Roy and Others Vs. Union of India (UOI) and Others, Supreme Court has clearly observed that "a law of preventive detention which falls within Art. 22 must also meet the requirements of Arts. 14, 19 and 21." In Khudiram Das Vs. The State of West Bengal and Others, it was again held that "this question, thus, stands concluded and a final seal is put on this controversy and in view of these decisions, it is not open to any one now to contend that a law of preventive detention, which falls within Art. 22, does not have to meet the requirement of Art. 14 or Article 19." In the case of A. K. Roy (supra) it was held that it is far too well settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Art. 21 must be fair, just and reasonable.

14. Having regard to the above discussion, we are of the view that the procedure adopted to redetain in this case is without authority of law as Section 8(f) unlike Section 11(2) of the Act confers no further power to redetain upon the detaining authority.

15. The result is that we accept this petition and quash the impugned detention order. The petitioner shall be set at liberty forthwith.

16. Petition allowed.