

(2006) 08 DEL CK 0245

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 563 of 2006

Shashi Goyal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Customs Act, 1962 — Section 108

Citation : (2006) 132 DLT 530 : (2006) 92 DRJ 153 : (2006) 4 RCR(Criminal) 845

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : R.K. Anand., Akshay Anand, Vikram Chaudhary and Sonam Nagrath, for the Appellant; Harish Gulati, for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Sodhi, J.—This writ petition has been filed by the petitioner challenging the order of detention bearing F. No. 673/20/2004-CUS-VIII dated 19.11.2004 issued by Sh. R.K. Gupta, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi for detention of Sh. B.K. Goyal, S/o Sh. Baburam Goyal u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from smuggling goods in future. It is contended that the petitioner being the wife of the detenu, is filing this petition on his behalf being vitally interested and aggrieved of the detention order above mentioned.

2. Brief facts as set down in the writ petition are as follows: -

On 19.11.2004 an order of detention bearing F. No. 673/20/2004-CUS-VIII, was issued by Shri R.K. Gupta, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, wherein it was stated that the said Shri R.K. Gupta who was specially empowered u/s 3(1) of the

COFEPOSA Act, was satisfied with respect to the detenu that with a view to preventing him from smuggling goods in future, it was necessary to make the order of detention and that Therefore in exercise of the powers conferred by Section 3(1) of the COFEPOSA Act, the said Shri R.K. Gupta directed that the detenu be detained and kept in custody in the Central Jail, Tihar, New Delhi. Hereto annexed and marked Annexure "A" is a copy of the said order of detention. On 20.2.2006, the detenu presented himself before the Police authorities of the Prashant Vihar Police Station, New Delhi. On the same date i.e. 20.2.2006, the detenu was sent to the Central Jail, Tihar, New Delhi, after service of the impugned order of detention (Annexure "A") and the detenu was taken in detention.

On the same date i.e. 19.11.2004 a Communication bearing F. No. 673/20/2004-CUS-VIII, was issued by the said Shri R.K. Gupta, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, containing the grounds of detention. Hereto annexed and marked Annexure "B" is a copy of the said Communication running into 36 pages; containing the grounds of detention. On 21.2.2006, the said Communication (Annexure "B") was served on the detenu. Along with the said communication, a list of documents running into 5 pages, was issued setting out the documents, which documents were purported to have been referred and relied upon by the detaining authority for issuing the said Order of detention. Hereto annexed and marked Annexure "C" is a copy of the said list of documents. On 21.2.2006, the said list of documents (Annexure "C") was served on the detenu along with the said grounds of detention (Annexure-B).

On 24.2.2006, after a lapse of three days, from the date of the service of the said grounds of detention (Annexure-B) and the said list of documents (Annexure C) which were served on the detenu, on 21.2.2006 as stated herein above, the documents running into 842 pages were served on the detenu in the Central Jail, Tihar, New Delhi. The petitioner craves leave to place before this Hon''ble Court, the said documents, as and when required at the time of hearing of this Petition before this Hon''ble Court.

3. The detention order is challenged on the grounds inter alias that the order of detention was served on the detenu on 20.02.2006. The grounds of detention were served on 21.02.2006 along with the list of documents, but the material and the relied upon documents were served on the detenu on 24.02.2006. It is contended by learned Counsel that the detention order is void ab initio since the material upon which the grounds of detention are based has not been supplied pari passu along with the grounds of detention. Learned Counsel relied upon judgments of the Supreme Court to support his contention. In Virendra Singh Vs. State of Maharashtra, , the Supreme Court has held that:

In this case as the documents and the materials forming the basis of the order of detention had not been supplied to the detenu along with the order of detention when the same was served on him, the order is rendered void as held by this

Court in Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, and in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, .

4. He also relies upon judgments of the Supreme Court in Taramati Chandulal v. State of Maharashtra, 1981 CriLJ 445 , Mangilal v. B.B. Gujral W.P. No. 1598/1981, Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, , Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, , Ahamed Nassar Vs. The State of Tamil Nadu and Others, , Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, , State of Rajasthan and another Vs. Talib Khan and others etc, and Chandra Prakash v. State of U.P. : (2002)IILLJ841SC , wherein also same view has been reiterated as taken in Virendra Singh's case (supra).

5. Learned Counsel submits that in view of the law laid down by the Supreme Court, the High Court would have little or no option but to strike down the order of detention on the ground mentioned above.

6. Learned Counsel further argues that in the present case, the statement of the co-detenu has been relied upon by the Detaining Authority in order to arrive at a subjective satisfaction. However, the retraction by the co-detenu dated 28.08.2004 has not been placed before the Detaining Authority and, Therefore, not considered. The non-consideration/non-placement of material document before the Detaining Authority would render his subjective satisfaction defective. In support of his contention, he relies upon judgments of the Supreme Court in the case of P. Saravan v. State of Tamil Nadu and Ors. 2002 SCC 1438 and Shaikat Ali v. Union of India 2000 SCC 1304.

7. We have carefully examined the material on record and find that in paragraph (i) (a) of the grounds of challenge in the writ petition, it has been stated as under:

The petitioner respectfully says and submits that the detenu having been served with the said Order of detention (Annexure A), on 20.2.2006 and the said grounds of detention (Annexure B) on 21.2.2006 and the said list of documents (Annexure C) also on 21.2.2006, it was incumbent, in law, upon the detaining authority to have arranged to get served the relied upon documents on the same date, at the same time, that is to say, on 21.2.2006 itself "Pari Passu" along with the said grounds of detention (Annex-B).

8. Reply thereto in the counter affidavit on behalf of the Detaining Authority, Sh. R.K. Gupta stated as under:

The contention of the detenu is wrong and thus denied. Section 3 of the COFEPOSA Act, 1974 provides for communication of grounds of the detention within 5 days after the detention in the ordinary course and not later than 15 days in exceptional circumstances. In this case as per detenu's own admission,

the detenu was detained on 20.02.2006 and on the same date i.e. 20.02.2006 the detenu was served with the order of detention and was sent to Central Jail, Tihar, New Delhi and on 21.02.2006 i.e. the very next day, the grounds of detention were supplied to the detenu and on 24.02.2006, the copies of relied upon documents were served upon the detenu. Therefore the detention order, grounds of detention and copies of relied upon documents were served upon the detenu within the stipulated period of five days. Thus there is no violation or infirmities as for as provision of COFEPOSA Act 1974 concerning supply of documents is concerned.

9. From the reply in the counter affidavit and the stand taken before us, we find that it is quite contrary to the law laid down by the Supreme Court, which is that the material upon which grounds of detention are based, must be supplied *pari passu* along with grounds to the detenu. That having not been done, the detention order is void *ab initio*.

10. Further, in the present case in ground (iii) of the writ petition, the petitioner has attached the detention order on the ground that:

The petitioner says and submits that the retraction of the co-detenu Sh. Subhash Bansal was not considered by the detaining authority before passing of the present detention order which vitiates the continued detention.

11. In the counter affidavit in reply by the Detaining Authority, Sh. R.K. Gupta, it is stated that:

The statement of co-detenu was duly considered by the Detaining Authority. The statement made by co-detenu Shri Subhash Bansal was his voluntary statement u/s 108 of the Customs Act, 1962 and has been duly supported and corroborated by the other documents mentioned in the grounds of detention which is fully admissible. His retraction at a later stage does not make his statement inadmissible.

12. From perusal of the reply of the Detaining Authority, it is evident that the retraction of the co-detenu has not been placed before the Detaining Authority. According to the counter affidavit, the retraction would not make his statement u/s 108 of Customs Act inadmissible. This stand of the Detaining Authority stares at the teeth of the judgment of the Supreme Court in *P. Saravan v. State of Tamil Nadu* and *Ors.* 2002 SCC 1438 and *Shaukat Ali v. Union of India* 2000 SCC 1304.

13. In view of the law enunciated by the Supreme Court and in the facts of this case, we have no hesitation in holding that the order of detention bearing F. No.673/20/2004-CUS-VIII dated 19.11.2004 is void *ab initio* and the same is struck down. The rule is made absolute. The detenu, who is in custody, pursuant to the detention order, be set at liberty forthwith unless wanted in any other case. Writ petition stands disposed of.