(1990) 07 KAR CK 0071

In the Karnataka High Court

S.L. Vasanthakumar APPELLANT

Vs

Union Government of India and others RESPONDENT

Date of Decision : 02-07-1990

Acts Referred:
Constitution of India, 1950 — Article 133, 134A
Gold (Control) Act, 1968 — Section 66

Citation : (1991) 72 CompCas 489 : (1990) ILR (Kar) 2843 : (1990) 3 KarLJ 273

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for the Appellant; V. Mukunda Menon, for the Respondent

Judgement

Rama Jois, J.—This writ appeal is presented against the order of the learned single judge dismissed the writ petition presented by the petitioner in which he had challenged the legality of seizure of certain quantities of gold and also cash belonging to the appellant by the fourth respondent.

2. The fact of the case, in brief, are these : The appellant is a certified goldsmith and licensed pawn broker and money - lender on his business in the city of bellary. On August 25, 1989, when the appellant was not in station, as he had gone to Rajasthan, the fourth respondent conducted a raid and search of the business premises of the appellant. After search, the fourth respondent seized gold weighing 569.900 gms. and also of Rs. 77,000. On receiving information, the appellant who was then in Rajasthan rushed back to ballary and made a representation on August 30, 1989, and requested the fourth respondent to return the gold and cash seized. In his representation, he stated that the entire gold belonged to his various customers and that the same had been accounted for by him in GS - 13 register and the cash of Rs. 77,000 also had been accounted for in the day book of the appellant and that, therefore was no justification for seizing the gold and cash. Therefore, in the writ petition, the petitioner sought for a direction to the fourth respondent to return the gold and

cash seized from the appellant.

3. The learned single Judge, on a detailed consideration of the contentions urged by the appellant, held that the writ forum was not an appropriate forum for deciding the various question raised by the appellant and all those points were required to be urged before the appropriate statutory authorities and it was only when the final order of the authorities went against the appellant, he had to approach this court. The learned judge also held that it was not made out that the fourth respondent had no competence to seize the gold and cash on August 25, 1989, and that the fourth respondent had also pointed out the materials which were requisite for the formation of the belief as required u/s 66 of the Gold (Control) Act. Aggrieved by the said order, the appellant has presented this writ appeal.

4. Sri K.S. Ramabhadran, learned counsel for the appellant, strenuously contended that the condition precedent for the exercise of power u/s 66 of the Act was that the fourth respondent have had reason to believe that any of the provisions of the Act had been or attempted to be contravened and without such belief recorded on the basis of cogent material, the fourth respondent could not have seized the gold and, consequently, a direction has to be issued to the fourth respondent to return the gold. In support of this connection, learned counsel relied on the judgment of the Allahabad High Court in The Collector, Central Excise, Allahabad and Others Vs. L. Kashi Nath Jewellers, and of the Patna High Court in Bawa Gopal Das Bedi and Sons and Others Vs. Union of India (UOI) and Others, . Learned counsel submitted that in these decisions, the searchers were found illegal and directions were issued to return the seized articles.

5. Learned counsel for the respondents submitted that if section 66 of the Act required the recording of reasons in writing before exercising power of search and seizure, there would have been some force in the contention of the petitioner. Learned counsel submitted that all was necessary for the exercise of the power u/s 66 of the Act was that the fourth respondent should have had reason to believe that any provision of the Act had been violated by the person concerned. In support of this submission, he relied on the judgment of the Supreme Court in Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, in which section 37 of the Foreign Exchange Regulation Act was interpreted, and submitted that the recording of the belief in writing was not a condition incorporated in section 66 of the Act. He also submitted that all the grounds available for taking action have been set out in the show - cause notice issued to the appellant, a copy of which is produced as annexure H along with the I.A. The show - cause notice is dated February 14, 1990, prepared during the pendency of the writ petition and has been served subsequently on the appellant. The relevant portion of the show - cause notice reads :

"Whereas it appears that the above said Sri Md. Yunus alias Yusuf, s/o Abdul Gaffar of Bellary and S.L. Vasanthakumar, Goldsmith of Bellary, have contravened the provisions of sections 8(1)(I) and 27 of the Gold (Control)Act, 1968, inasmuch as they owned or had in their possession, custody or control primary gold weighing totally 569.900 gms. and were engaged in business in gold without obtaining a valid gold dealer''s licence issued by the competent authority, as evidenced by seizure of two primary gold rods/pieces totally weighing 569.900 gms. valued at Rs. 1,83,500 and cash worth Rs. 77,000 from the business premises of Sri S.L. Vasanthakumar, vide panchanama dated August 25, 1989, and statement dated August 25, 1989, of Sri Md. Yunus alias Yusuf of Bellary (details as per annexure enclosed).

Now, therefore, the said Sri. Md. Yunus alias Yusuf and Sri S.L. Vasanthakumar are hereby required to show cause to the Collector of Central Excise, 71, Club Road, Belgaum, as to :

(i) why the two primary gold pieces under seizure totally weighing 569.900 gms should not be confiscated u/s 71(1) of the Gold Control Act 1968 and

(ii) why penalty should not be imposed on them u/s 74 and 75 of the Act ibid.

Sri Md. Yunus alias Yusuf and S.L. Vasanthakumar are further directed to produce at the time of showing cause all the evidence upon which they intend to rely in support of their defence.

They should stated in their written explanation as to whether they desire to be heard in person before the case is adjudicated failing which it will be presumed that they do not desire personal hearing.

If no cause is shown against the action proposed hereinabove within thirty days on receipt of this notice, or if they do no appear before the adjudicated authority when the case is posted for personal hearing, the case will be decided ex parte."

6. In our Opinion, as the fourth respondent was the competent officer for exercising power u/s 66 of the Act and as he has asserted that he had reasons to believe that had been contravention of the provisions of the Act, it is difficult to accede to the contention of the appellant that we should interfere at this itself and direct the fourth respondent to return the gold seized. As can be seen from the show - cause notice, the fourth respondent has specified the provisions of the Act which, according to him, has been contravened. If, according to the appellant, no provision of the Act been contravened, he is at liberty to urge all the grounds and the fourth respondent is bound to consider all of them and arrive at an appropriate decision. But in our opinion it is not proper for this court to prevent the fourth respondent from proceeding further with show - cause notice and to direct the fourth respondent to return the gold and drop further proceedings.

7. Now, coming to the seizure of cash of Rs. 77,000, on the last occasion, we had asked learned Central Government standing counsel to state under what authority the said amount has been seized and further we also pointed out that in the show - cause notice there was no reference to the action proposed to be

taken in respect of the amount of Rs. 77,000 seized from the appellant''s business premises. Learned counsel for the respondents submitted that the authorities have not proposed to take any action regarding the seized amount of Rs. 77,000 under any of the provisions of the Act or under the provisions of any other law and, therefore, they would be returning the said amount to the appellant. In our opinion, as about a year has elapsed from the date of seizure of the amount and, as a result, the appellant was deprived of the amount for carrying on his business and the seizure of it is not sought to be sustained under any provisions of law, the appellant is not only entitled to an order of refund of the said amount of Rs. 77,000 but he is also entitled to interest at the rate of 10 per cent per annum on the said amount.

8. In the result, we make the following order :

(i) The writ appeal is party allowed ;

(ii) A direction shall issued to the fourth respondent to return the cash of Rs. 77,000 seized from the business premises of the appellant together with interest at the rate of 10 per cent. per annum calculating it from the date of seizure up to the date of payment ;

(iii) In other respects, the writ appeal stands dismissed, leaving all the contentions open including the question that there were discrepancies in some of the questions put to the appellant by the fourth respondent, as pointed out in the order of the learned single judge and leaving to the appellant to urge all the objections available to him in law in reply to the show - cause notice.

Order on the oral application made under article 134A of the Constitution of India for grant of certificate of fitness to appeal to the Supreme Court

9. After we pronounced the order, learned counsel for the appellant made an oral application under article 134A of the Constitution of India praying for grant of certificate of fitness to appeal to the Hon''ble Supreme Court of India under article 133 of the Constitution.

10. In our Opinion, our judgment does not involve any substantial question of law of general importance which is required to be decided by the Supreme Court. The application is, therefore, rejected.

