
(1977) 07 CAL CK 0014
In the Calcutta High Court
Case No : Matter No. 780 of 1976

Smt. Gulab Kanwar

APPELLANT

Vs

The Director, Enforcement and Others

RESPONDENT

Date of Decision : 04-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226(1), 226(3)

Citation : AIR 1977 Cal 383

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Judgement

T.K. Basu, J.—In this application the petitioner challenges two notices dated the 13th February, 1975 and the 4th August, 1976 respectively issued by the Enforcement Directorate on the basis of violation of certain provisions of the Foreign Exchange Regulations Act, 1947/73. Two similar notices in identical terms one bearing the same date and other a different one were challenged before me in the case of Saroj Kumar Bhotika v. The Director, Enforcement Directorate, Cabinet Secretariat, Deptt. of Personnel & A. R. Govt. of India being Matter No. 486 of 1975.

2. By my judgment dated 18th January, 1977, I struck down the said two notices on the grounds fully set out in my judgment.

3. Mr. Noni Coomar Chakraborty, learned Advocate appearing on behalf of the respondents does not dispute that so far as the merits of the present petition are concerned they are fully covered by my judgment in Matter No. 486 of 1975 and the Rule should be made absolute on that ground. He however submitted that in view of the provisions of the amended Article 226 of the Constitution of India as introduced by the Constitution (Forty-second Amendment) Act, 1976 the present petition is not maintainable and I should hold it to be so.

4. In order to appreciate the contentions of Mr. Chakraborty it would be useful to set out the relevant provisions of the amended Article 226 which are as follows:--

"226 (1) Notwithstanding anything in Article 32 but subject to the provisions of Article 131-A and Article 226-A. every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases. any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. or any of them,--

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, by-law or other instrument made thereunder; or

(c) for the redress of any injury of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2)

(3) No petition for the redress of any injury referred to in Sub-clause (b) or Sub-Clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force." Relying on the above provisions of amended Article 226 of the Constitution of India, Mr. Chakraborty submitted that in the present Rule there is no allegation that any of the fundamental rights guaranteed by Part III of the Constitution of India has been violated. As such the case does not come under the provisions of Article 226(1)(a). It must therefore come either under Article 226(1)(b) or Article 226(1)(c).

5. It was submitted by Mr. Chakraborty that in order that the case may come under Article 226(1)(b) there must be an injury of a substantial nature before the petitioner can maintain the present application. It was submitted that in the instant case there was no injury of any substantial nature. All that had happened is that the Foreign Exchange Authorities had decided that a prima facie case existed for an adjudication and had issued a show cause notice. It was entirely open for the petitioner to appear before the Authorities and show cause that they had not committed any offence as alleged in the show cause notice. Therefore I should hold that there has been no substantial injury caused to the petitioner at the present stage.

6. Similarly, it was submitted that in order to bring the petitioner's case under the provisions of Article 226(1)(c) there must be a substantial failure of justice. As merely a notice to show cause has been issued and nothing more has happened I should hold that there has been no substantial failure of justice.

7. I am unable to accept these contentions of Mr. Chakraborty. These contentions of Mr. Chakraborty would be of considerable substance but for my decision in the

case of Saroj Kumar Bhotika v. The Director, Enforcement Directorate (Matter No. 486 of 1975) in which the judgment was delivered by me on the 18th January, 1977. As I have already indicated, I held in that judgment that even taking the allegations in the notice to be correct they do not disclose violation of any of the provisions of the Foreign Exchange Regulations Act of 1947 or 1973. I have further held that the charge contained in the notice has no nexus whatsoever with any of the provisions of the Foreign Exchange Regulations Act the object of which is the preservation and conservation of foreign exchange for the benefit of the country. In that view of the matter, I have held that the impugned notices are entirely without jurisdiction and void.

8. As I have already indicated, Mr. Chakraborty did not dispute that my findings with regard to the notices which are impugned in the Saroj Kumar Bho-tika's case (Matter No. 486 of 1975) (Cal) must apply with equal force to the notices impugned in the present case. This is because the notices challenged in the present rule are identical and word for word the same. In fact these notices are part of a bunch of notices which were sent to various persons who had purchased shares in a Company known as Oriental Carpet Manufacturing Ltd.

9. That being the position, the question arises as to whether the petitioner in the present case should be compelled to go before the authorities and show cause as called upon by those notices. In view that I have taken in Saroj Kumar Bhotika's case (Matter No. 486 of 1975) (Cal) the notices by which the proceedings are sought to be initiated are void as being without jurisdiction. That being the position, there is no valid initiation of any proceeding under the Foreign Exchange Regulations Act in the eye of law in view of my findings mentioned above. In that state of affairs, in my view, it will be unjust to compel the petitioner to appear before the authorities in respect of the proceedings which I have held to be initially void. To compel the petitioner to do so would in my view cause substantial injury to the petitioner within the meaning of Article 226(1)(b) of the Constitution of India. Similarly to compel the petitioner to appear before the authorities in pursuance of a void notice would in my view result in substantial failure of justice. In that view of the matter, it must be held that the present petition is maintainable both under the provisions of Article 226(1)(b) and also Article 226(1)(c) of the Constitution of India.

10. The last objection of Mr. Chakraborty was based on the provisions of Article 226(3) of the Constitution of India. That provision which I have quoted above prescribes that if the petitioner has any other remedy for the redress of his grievance then no petition shall be entertained under Article 226 of the Constitution of India. It was not seriously disputed by Mr. Chakraborty that against the impugned notices there is no right of appeal under the relevant statute. He however submitted that the petitioner had a legal right to show cause against the impugned notices and get redress by showing that she had not committed any offence as alleged in the notices. This opportunity to show cause according to Mr. Chakraborty was "any other remedy" for redress as

contemplated by Article 226(3) of the Constitution of India.

11. I am entirely unable to accept the contentions of Mr. Chakraborty. The provisions of Article 226(3) of the Constitution of India seem to prescribe that no petition for redress of any injury should be entertained in a case where the petitioner has what has been known as "alternative remedy" for the redress of his grievance. The alternative remedy as the expression itself suggests must be some other remedy other than that of contesting the proceeding itself. Such other remedy as is well-known is usually in the form of rights of appeal or revision as provided for in various Statutes. Such remedy in appropriate cases may also be the right of filing a suit but the expression "any other remedy" in my opinion cannot possibly mean the right of the petitioner to show cause against the impugned notices. This contention of Mr. Chakraborty therefore fails.

12. This disposes of all the contentions raised by Mr. Chakraborty with regard to the maintainability of the present application.

13. In the result, it must be held that in view of my judgment in the case of Saroj Kumar Bhotika v. The Director, Enforcement Directorate (Matter No. 486 of 1975) (Cal) wherein the judgment was delivered on the 18th January, 1977, this Rule must be made absolute. There will be a Writ in the nature of Mandamus directing the respondents to forthwith recall, cancel and withdraw the impugned notices dated 13th February, 1975 and the 4th August, 1976 and to forbear from giving effect thereto in any manner whatsoever,

14. There will be no order as to costs.