
(1998) 10 BOM CK 0059

In the Bombay High Court

Case No : Criminal Writ Petition No. 227 of 1998 with Criminal Application No. 2854 and 2833 of 1998

The State of Maharashtra

APPELLANT

Vs

Iqbal Mohammed Memon and others

RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Central Ordinance Act, 1949 — Section 24
Constitution of India, 1950 — Article 133(1), 134A, 226
Criminal Procedure Code, 1973 (CrPC) — Section 41, 42, 52A, 53, 82
Customs Act, 1962 — Section 151, 152, 2
Limitation Act, 1963 — Section 5
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68B, 68F, 68H, 68O, 74A
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3, 4, 5, 6, 7

Citation : (1999) 5 BomCR 752 : (1999) 1 MhLj 584

Hon'ble Judges : T.K. Chandra Shekhara Das, J; A.V. Savant, J

Bench : Division Bench

Advocate : S.G. Page, S.P.P. and D.G. Bagwe, app, for the Appellant; Adhik Shirodkar, S.V. Pikale, G.S. Pikale, S.S. Pikale, J.C. Satpute and R.A. Shirodkar, instructed by y S.V. Pikale and Co., for the Respondent

Judgement

A.V. Savant, J.—Heard the learned Counsel; Shri Page for the petitioner State of Maharashtra, Shri Adhik Shirodkar for respondents No. 1 to 7 and Shri Satpute for respondent No. 8.

2. This is the petition filed by the State of Maharashtra seeking to challenge the Order dated 20-10-1997, passed u/s 68-I of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "N.D.P.S. Act") by the Competent Authority, appointed by the Central Government u/s 68-D of the N.D.P.S. Act. Under the said order, out of 11 properties which are mentioned at Exhibit A-1 to the petition, four properties mentioned at Sr. Nos. 2, 3, 4 and 5 have been held to be illegally acquired within the meaning of Clause (g) of section 68-B of the N.D.P.S.

Act and the said properties have been ordered to be forfeited to the Central Government, free from all encumbrances, as contemplated by sub-section (3) of section 68-I of the said Act. In respect of the property at Sr. No. 6 in Exhibit A-1, viz. the contents in Locker No. 297/A with the Union Bank of India, Juhu Tara Road, Juhu, Mumbai, a direction has been given that the said locker should be closed back by keeping the contents therein and a fresh show-cause notice should be issued u/s 68-H of the said Act as to why the said properties should not be declared to be the illegally acquired properties and forfeited to the Central Government. In respect of the remaining six properties at Sr. Nos. 1, 7, 8, 9, 10 and 11, a finding has been recorded that the affected persons were able to explain the source from which the said properties were acquired and on the basis of the material on record, it was proved that the said six properties were acquired lawfully and could not, therefore, be treated as illegally acquired properties. Consequently, these six properties are taken out of the forfeiture proceedings under Chapter V-A of the N.D.P.S. Act. This petition by the State of Maharashtra is, therefore, confined to the six properties which have been released from the forfeiture proceedings viz. the properties at Serial Nos. 1, 7, 8, 9, 10 and 11 of Exhibit A-1 to the petition. Few facts necessary to appreciate the rival contentions may be stated.

3. On the 2nd September, 1994, the Secretary to the Government of Maharashtra, Preventive Detention, Home Department, viz. the detaining authority passed an order under sub-section (1) of section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, "PITNDPS Act") recording his satisfaction that it was necessary to detain Shri Iqbal Mohammad Memon @ Iqbal Mirchi respondent No. 1 (for short, "detenu") with a view to preventing him from engaging in illicit traffic in psychotropic substances. On 30th December 1994 the State Government issued an order u/s 8(1)(b) of the PITNDPS Act, 1988 recording its satisfaction that the detenu had absconded or was concealing himself. The State Government, therefore, directed the detenu to appear before the Com-missioner of Police, Greater Bombay, between 10 A.M. and 5 P.M. on any working day within 30 days from the date of publication of the order. The detenu was ordered to be detained in the Bombay Central Prison, Bombay. However, since the order of detention could not be executed, a proclamation was issued by the Chief Metropolitan Magistrate, Esplanade, Bombay, on 12th January 1995 u/s 82 of the Code of Criminal Procedure, 1973 to the effect that the State of Maharashtra had reason to believe that the detenu had absconded or was concealing himself so that the order of detention could not be executed. Proclamation was, therefore, made that the detenu was required to appear before the Commissioner of Police, Greater Bombay, on any working day between the 31st and 45th day from the date of publication of the said proclamation.

4. As stated earlier, the first respondent is the detenu. Respondents No. 2 and 4 are the wives of the first respondent detenu. Respondent No. 3 is the brother of the detenu. Respondents No. 5 and 7 are the sisters of the detenu and

respondent No. 6 is the brother-in-law of the detenu. The 8th respondent is the Competent Authority, appointed by the Central Government in exercise of its powers u/s 68-D of the N.D.P.S. Act.

5. As indicated earlier, as many as 11 properties were identified to be illegally acquired properties as per the provisions of section 68-E of the N.D.P.S. Act and hence, notice of seizure and/or freezing of the illegally acquired properties was issued u/s 68-F of the said Act in respect of some of the properties on 22nd March 1995, As required by sub-section (2) of section 68-F, any order of seizure/freezing made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of making of the order of seizure/freezing. The order dated 22nd March 1995 was, therefore, confirmed on 19th April 1995 in respect of some of the properties. A further order of freezing some properties was passed on the 14th August 1995, which was confirmed on the 23rd August 1995. Another order of freezing was passed on the 22nd August 1995 freezing some more properties out of 11 properties mentioned above, which was confirmed on the 15th September 1995. The last freezing order was passed on 13th January, 1997, which was confirmed on the 6th February 1997.

6. Notice u/s 68-H of the N.D.P.S. Act was issued to the affected persons to show cause why all or any of the properties identified as having been illegally acquired, should not be declared to be illegally acquired properties and forfeited to the Central Government under Chapter V-A of the Act. Respondents No. 1 to 7 showed cause and pursuant to the inquiry being held the impugned order has been passed releasing the six properties at Sr. Nos. 1, 7, 8, 9, 10 and 11, which is the order impugned before us. As indicated earlier, the properties at Sr. Nos. 2, 3, 4 and 5 have been held to be illegally acquired properties and have, therefore, been forfeited to the Central Government. An appeal has been filed by the affected persons in respect of the four properties held to be illegally acquired and the said appeal is pending before the Appellate Tribunal for forfeited properties constituted u/s 68-N of the Act. In respect of the property at Sr. No. 6, a fresh inquiry has been ordered under the impugned order.

7. Before we come to the merits of this petition filed by the State of Maharashtra, we must deal with the preliminary objection raised by Shri Shirodkar on behalf of respondents No. 1 to 7 and Shri Satpute appearing for respondent No. 8. The preliminary objection is two-fold.

(A) Under the Scheme of the N.D.P.S. Act, it is the Central Government to which the properties stand forfeited u/s 68-A of the Act. The entire scheme of the N.D.P.S. Act shows that the Central Government would be the "person aggrieved" within the meaning of sub-section (1) of section 68-O of the Act. The State of Maharashtra is not a person aggrieved within the meaning of sub-section (1) of section 68-O of the Act. It is only a person aggrieved by an order of the Competent Authority made under sections 68-F, 68-I, 68-K and 68-L, who can, within 45 days from the date on which the order is served upon him, prefer an

appeal to the Appellate Tribunal constituted u/s 68-N of the Act. The proviso to section 68-O empowers the Appellate Tribunal to entertain an appeal filed after a period of 45 days but before the expiry of 60 days, provided the tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Respondents' contention is that since the State of Maharashtra could not have filed an appeal, inasmuch as it was not a "person aggrieved" within the meaning of subsection (1) of section 68-O, it has no locus to file the present writ petition.

(B) The second preliminary objection is that the writ petition is hopelessly delayed and there are laches on the part of the State Government. The impugned order dated 20-10-1997 was received by the Anti-Narcotics Cell, Bombay, on 29-10-1997. The initial period of 45 days for filing the appeal expired on 13th December 1997, which was a second Saturday and was, therefore, not a working day. An appeal could, therefore, been filed by the aggrieved party on Monday, the 15th December, 1997. Subject to making out sufficient cause, the appeal could have been filed within 15 days from 15th December 1997. It should have, therefore, been filed, latest, by Tuesday, the 30th December 1997. Admittedly, no appeal has been filed by the aggrieved party or even by the State of Maharashtra. This writ petition has been filed on the 2nd March 1998. It is, therefore, contended that the petition is hopelessly delayed and should not be entertained. We will deal with these two preliminary objections raised by the respondents.

8. Coming to the first objection as to who is the "person aggrieved" within the meaning of section 68-O (1), it may be necessary to make a brief reference to the Preamble of the N.D.P.S. Act, 1985. The Preamble reads as under :-

"An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property, derived from, or used in illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances) and for matters connected therewith".

Under section 3 of the Act, the Central Government has been given the power to add to or omit from the list of psychotropic substances. Section 4 gives power to the Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs. u/s 5, the Central Government has been given power to appoint the Narcotics Commissioner and other officers with such designation as he thinks fit for the purposes of the Act. u/s 6, the Central Government can constitute the Narcotic Drugs and Psychotropic Substances Consultative, Committee. Section 7 empowers the State Government to appoint such officers as it thinks fit for the purposes of the Act.

9. Under Chapter II-A dealing with National Fund for Control of Drug Abuse, the

Central Government may constitute a Fund called "National Fund" for control of drug abuse. u/s 7-A, the sale proceeds of any property forfeited to the Central Government under Chapter V-A are to be credited to the said National Fund. Under sub-section (2) of section 7-A, the Central Government has power to apply the said Fund to meet the expenditure incurred in connection with the measures taken for combating illicit traffic in or controlling abuse of, narcotic drugs and psychotropic substances. u/s 7-B, the Central Government is required, at the end of each financial year, to cause to be published in the Official Gazette a report giving an account of the activities financed u/s 7-A.

10. Chapter V dealing with the "Procedure" contains provisions regarding the power to issue warrant and authorisation u/s 41. Section 42 deals with the power of entry, search, seizure and arrest without warrant or authorisation. u/s 52-A, it is the Central Government which has power of disposal of the seized narcotic drugs and psychotropic substances. u/s 53 the Central Government may after consultation with the State Government, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of police station for the investigation of the offences under the Act. Under sub-section (2) of section 53, the State Government may by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under the Act.

11. Chapter V-A deals with the "Forfeiture of Property derived from or used in illicit traffic". The proceedings were initiated under this Chapter and the impugned order has been passed u/s 68-I of the said Chapter. Section 68-B(c) defines the "Competent Authority" as an officer of the Central Government authorised by it u/s 68-D of the Act. Clause (g) of section 68-B defines what is meant by "illegally acquired property". Section 68-C contains a prohibition on holding illegally acquired property. Section 68-D authorises the Central Government by an order published in the Official Gazette to authorise any Collector of Customs or Collector of Central Excise or Commissioner of Income Tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under the Chapter. Sub-section (2) of section 68-D states that the competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct. Section 68-E deals with identification of illegally acquired properties. Section 68-F deals with the procedure of seizure or freezing of illegally acquired property. Section 68-G says that the management of the properties seized or forfeited under the said Chapter will be the responsibility of the Central Government which may, by order to be published in the Official Gazette appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the function of an Administrator. Under sub-section (3) of section 68-G the Administrator shall also take such

measures, as the Central Government may direct, to dispose, of the property which is forfeited to the Central Government. Section 68-H deals with Notice of forfeiture of property. The notice is to be given to the person affected to show cause as to why all or any of the properties identified as having been illegally acquired, should not be declared as illegally acquired property and forfeited to the Central Government under the said Chapter. Section 68-I deals with the order of forfeiture of property in certain cases, as in the present case. Sub-section (3) of section 68-I provides that where the competent authority records a finding to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of that Chapter, stand forfeited to the Central Government, free from all encumbrances. Sub-section (4) of section 68-I deals with the situation where any shares in a company stand forfeited to the Central Government. Section 68-K authorises the competent authority to make an order giving an option to the person affected to pay, in lieu of forfeiture, fine equal to the market value of the property. u/s 68-M certain transfers have been declared to be null and void and if the said transfer is declared to be null and void for the purpose of Chapter V-A, it is liable to be ignored and such property is to be forfeited to the Central Government u/s 68-I. Section 68-N deals with the power of the Central Government to constitute an Appellate Tribunal for hearing appeals against the orders made under sections 68-F, 68-I, 68-K and 68-L.

12. Then, we come to the relevant provisions of section 68-O dealing with the appeals. Section 68-O reads as under:-

"68-O. Appeals-

(1) Any person aggrieved by an order of the competent authority made u/s 68-F, section 68-I, sub-section (1) of section 69-K or section 68-L, may within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal :

Provided that the Appellate Tribunal may entertain an appeal after the said period of fifty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3) where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this

section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal :

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of the member.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the tribunal and obtain a certified copy of any part thereof.

13. In support of his contention that the State of Maharashtra is the "person aggrieved", Shri Page has placed reliance on the decision of the Apex Court in *Ebrahim Aboobakar and another v. Custodian General of Evacuee Property*, 1952 Supreme Court Reports, 696. That was a case where Aboobakar Abdul Rehman, father of the appellant before the Apex Court, was possessed of a considerable immovable as well as movable property, including, a cinema theatre in Bombay. After partition of India, he went to Pakistan. On information furnished by one Tek Chand Dolwani to the Additional Custodian of Evacuee Property, a notice was issued to Aboobakar u/s 7 of the Ordinance to show cause as to why his property should not be declared as evacuee property. Tek Chand Dolwani was heard in the proceedings. He filed his written statement and an order of adjudication was passed on 8-2-1950 that Aboobakar was not an evacuee. Another notice was, however, issued to Aboobakar calling upon him to show cause as to why he should not be declared as intending evacuee u/s 19 of the Ordinance. On 9th February 1950 the Additional Custodian adjudicated him as an intending evacuee. On 31st March 1950 Tek Chand Dolwani, being an informant and interested in the adjudication of Aboobakar as an evacuee, filed an appeal against the Order dated 9th February 1950 to the Custodian General of India. Question was as to whether Tek Chand Dolwani was the "person aggrieved" within the meaning of section 24 and had locus standi to file an appeal. Since Tek Chand Dolwani was held to be a person aggrieved, an appeal was carried to the Apex Court. The question arose as to whether Tek Chand Dolwani was a "person aggrieved" by an order made under section's 7, 16, 19 or section 38 of the Ordinance. Section 24 enabled a person aggrieved by an order under sections 7, 16, 19 or section 38 to prefer an appeal. The Apex Court held at page 705 of the Report that the scheme of the provisions of the Act/Ordinance clearly indicated that Tek Chand Dolwani was a person interested who was heard during the proceedings where he had filed a written statement and had adduced evidence. As Tek Chand Dolwani was the first informant, he was, as the first informant, entitled to the first consideration in the allotment of the property. The Apex

Court, therefore, concluded as under:-

"Further Tek chand Dolwani was the first informant who brought to the notice of the Custodian concerned that the property of Aboobaker was evacuee property and in view of the order of the Ministry of Rehabilitation he was, as a first informant, entitled to first consideration in the allotment of this property, the Additional Custodian was bound to hear him on the truth and validity of the information given by him. When a person is given a right to raise a contest in a certain matter and his contention is negatived, then to say that he is not a person aggrieved by the order does not seem to us to be at all right or proper. He is certainly aggrieved by the order disallowing his contention. Section 24 allows a right of appeal to any person aggrieved by an order made u/s 7. The conclusion reached by the Additional Custodian on the 8th February, 1950 that Aboobaker was not an evacuee amounted to an order u/s 7 and Tek Chand therefore was a person aggrieved by that order."

14. The ratio of the decision in Ebrahim Aboobaker's case has been considered by the Apex Court in Md. Sharfuddin Vs. R.P. Singh and Others, , which was also a case under the Administration of Evacuee Property Act, 1950. The question was whether the Assistant Custodian could prefer an appeal u/s 24 of the Act to the Custodian. The Patna High Court had taken the view that such an appeal was competent. On Appeal to the Apex Court, reliance was placed on the ratio of the decision in Ebrahim Aboobakar's case (supra), which the Apex Court distinguished in para 7 of its Judgment at page 1316. In Ebrahim Aboobakar's case, the Apex Court was dealing with the rights of Tek Chand Dolwani, who was informant and who was interested in the adjudication proceedings. In Md. Sharfuddin's case the Apex Court was concerned with the right of an Assistant Custodian to file an appeal u/s 24 in the capacity of a person aggrieved within the meaning of section 24 of the Act. The Apex Court held that where a statute or rule framed thereunder provide for a dispute between two parties to be decided by a tribunal, it is implicit in that provisions that the defeated party is the one which is aggrieved by that decision. But the same cannot be said of the Custodian and the party in whose favour he gave a decision; nor can another subordinate officer of the Custodian who made the decision and who has no statutory duty to appear before the Custodian to put forward the case of the department or lead evidence in support thereof be equated to a party in a Us. It may be appropriate to reproduce Para 7 where the Apex has discussed the ratio in Ebrahim Aboobakar's case :

"(7) Strong reliance is placed upon the decision of this Court in Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, in support of the contention of the respondents. In that case, on information supplied by one Tek Chand Dolwani to the Additional Custodian of Evacuee Property, the latter started proceedings under the Bombay Evacuees (Administration of Property] Act, 1949 against one Aboobaker. The Additional Custodian, after recording the statement of Aboobaker and examining the evidence produced by Tek Chand

Dolwani, held that the said Aboobaker was not an evacuee. Tek Chand Dolwani filed an appeal against the said order to the Custodian-General of India. One of the questions raised was whether the said Tek Chand Dolwani was a person aggrieved by the order of Additional Custodian within the meaning of section 24 of the Central Ordinance XXVII of 1949 and was entitled to appeal against the said order. This Court held that the said person was a person aggrieved within the meaning of the said section. It was provided in R. 5(5) of the Rules made under the Ordinance that any person or persons claiming to be interested in the inquiry or in the property being declared as evacuee property, might file a written statement in reply to the written statement filed by the persons interested in the property claiming that the property should not be declared as an evacuee property; and that the Custodian should proceed to hear the evidence, if any, which the party appearing to show cause might produce and also the evidence which the party claiming to be interested as mentioned above might adduce. The rule, therefore, authorized the Additional Custodian to adjudicate between the person moving the Custodian to declare a property as evacuee property and the person denying that fact. In that context, this Court held that the person moving the Custodian was a person aggrieved within the meaning of section 24. This decision or the decisions relied upon by this Court in the aforesaid case in coming to the said conclusion are not relevant to the present enquiry. Where a statute or rules framed thereunder provide for a dispute between two parties to be decided by a tribunal, it is implicit in that provision that the defeated party is one aggrieved by that decision. But the same cannot be said of a Custodian and the party in whose favour he gave a decision; nor can another subordinate officer of the Custodian, who made the decision and who has no statutory duty to appear before the Custodian to put forward the case of the department or lead evidence in support thereof, be equated to a party in a lis. We, therefore hold having regard to the scheme of the Act, that the Assistant Custodian Headquarters, Patna, is not a person aggrieved within the meaning of section 24 of the Act, The appeal to the Custodian, therefore, was not competent".

15. At this juncture, it may be stated that admittedly in the proceedings u/s 68-I for forfeiture of the property, no show-cause notice was issued to the State of Maharashtra. The State of Maharashtra did not file any written statement, nor did it participate in the proceedings by leading any evidence, as was done by Tek Chand Dolwani in Ebrahim Aboobaker's case. The State of Maharashtra was not a party before the competent authority. It was not heard by the competent authority when the impugned order was made.

16. We may then refer to the decision of the Apex Court in Directorate of Enforcement Vs. Deepak Mahajan and another, . The question which arose for consideration was about the nature of powers of the Police Officers who are authorised to assist the Customs Officers by virtue of the provisions of section 151 of the Customs Act, 1962. Section 151 deals with the powers of the Central Government to notify other officers of the Central Government or State Government, to assist the officers of customs in the execution of the provisions

of the Customs Act. The provisions of Clause (e) of section 152 (sic 151) of the Customs Act are similar to the provisions of Clause (j) of section 68-T of the N.D.P.S. Act. Section 68-T of the N.D.P.S. Act gives the list of officers, who are empowered and required to assist the Administrator appointed u/s 68-G. Clause (j) of section 68-T is worded similar to that of Clause (e) of section 151 of the Customs Act. Dealing with the nature of powers of the Police Officers empowered u/s 151 of the Customs Act to assist the customs officers in the execution of the Customs Act, the Apex Court observed that the section did not empower the Police Officers to exercise the powers conferred upon the Customs Officers by and under the Act, it only authorised and required and Police Officers to assist the customs Officers in the exercise of their powers.

The observations to this effect are to be found in para 15 of the Judgment, at page 19, as under:

"However, section 151 of Customs Act empowers and requires certain specified officers enumerated under Clauses (a) to (e) to assist officers of customs in the execution of the Act. One of the officers enumerated under Clause (c) is "officers of police". But this section does not empower police officers to exercise the powers conferred upon customs officers by and under the Act but only authorises and requires the police officers to assist the customs officer in the exercise of their powers".

Then, in para 16 of the Judgment, the Apex Court observed as under:-

16. The "proper officer" referred to in various provisions of the Customs Act, who is to perform any function under the said Act, means the officer of customs who is assigned those functions by the Board or Collector of Customs as defined under Clause (34) of section 2 of Customs Act, but it does not include the Officers of Police or any other officers enumerated u/s 151. Therefore, the police officers have no independent role to play in exercise of the powers under the Customs Act as in sections 45 and 46 of the F.E.R.A."

17. We may also refer to a Division Bench decision of this Court in Vasnatai Ranchhodas Patel and Others Vs. Union of India and Others, . Division Bench of Chainani, C.J., and S.P. Kotval, J., (as he then was) was called upon to consider the nature of the powers of the sic in para 5 of its Judgment, at page 717 of Criminal Law Journal said as under:-

"(5) Section 151 of the Customs Act empowers the officers mentioned in the section to assist officers of customs in the execution of this Act. The officers of the Enforcement Directorate acted under this section read with the notification issued by the Central Government on 23rd May 1964, when they seized the diamonds claimed by the appellants on 23rd and 24th July 1964. Mr. Sorabjee, the learned Counsel for the respondents has, however, fairly conceded before us that he is unable to justify the seizure of the diamonds under the provisions of section 151. No other provision of law has been pointed to us under which the diamonds could have been seized or taken charge of by the officers of the

Enforcement Directorate. The seizure of the diamonds on 23rd and 24th July 1964, therefore, appears to have been without authority of law".

We may at this juncture reproduce the provisions of section 151 of the Customs Act, which reads as under :-

"151. Certain officers required to assist officers of customs.---

The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely:

- (a) officers of the Central Excise Department;
- (b) officers of the Navy;
- (c) officers of Police;
- (d) officers of the Central Government or State Government employed at any port or airport;
- (e) such other officers of the Central Government or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette."

18. We may now refer to section 68-T of the N.D.P.S. Act which is similar to section 151 of the Customs Act, 1962. Section 68-T of the N.D.P.S. Act reads as under :-

"68-T. Certain officers to assist Administrator, competent authority and Appellate Tribunal.---For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed u/s 68-G, competent authority and the Appellate Tribunal, namely:-

- (a) officers of the Narcotics Control Bureau;
- (b) officers of the Customs Department;
- (c) officers of the Central Excise Department;
- (d) officers of the Income Tax Department;
- (e) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973);
- (f) officers of police;
- (g) officers of the Narcotics Department;
- h) officers of the Central Economic Intelligence Bureau;
- (i) officers of the Directorate of Revenue Intelligence;
- (j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette".

19. On a consideration of the scheme of the provisions of the N.D.P.S. Act, including section 68-T, it is clear to us that in the proceedings for forfeiture of property derived from or used in illicit traffic, which is the subject matter of Chapter V-A of the N.D.P.S. Act, an officer of the State Government has a very limited role to play. Under sub-section (2) of the section 53, the State Government may by notification published in the Official Gazette invest any officer of department of drug control, revenue or excise or any class of such officers with the powers of an officer in-charge of a police station in investigation of offences under this Act. We have also indicated that the earlier provisions, starting with the Preamble, section 3 and section 4 onwards, make it clear that it is the Central Government which is primarily concerned with taking such measures as it deems necessary and expedient for preventing and combating abuse of narcotic drugs, psychotropic substances and illicit traffic therein. The sale proceeds of the properties which are forfeited in accordance with the provisions of Chapter V-A of the Act vest in the Central Government which has to credit the proceeds to the National Fund constituted u/s 7-A. The said fund is administered by the Central Government.

20. In the scheme of the provisions of Chapter V-A of the N.D.P.S. Act, the State Government is not given any notice of being heard in the forfeiture proceedings. The State Government does not file any objections, it does not lead any evidence. It was not heard in the present case, nor did it participate in the proceedings in any manner whatsoever. u/s 68-T, it is true that amongst several officers, who are empowered and required to assist the Administrator appointed u/s 68-G for managing the properties which are seized or forfeited under the said Chapter, one of the officers could be an officer of the State Government as specified by the Central Government by a notification in the Official Gazette as provided by Clause (j) of section 68-T. That section deals with empowering several officers of different departments of the Central Government. u/s 74-A the Central Government has got power to give, such directions as it may deem necessary, to the State Government regarding carrying into execution of the provisions of the N.D.P.S. Act and the State Government is bound to comply with the directions. u/s 76, the power to make rules vests with the Central Government. It is true that u/s 78 the State Government also has got the power to make rules in a certain limited sphere.

21. Taking an over-all view of-the matter, it is difficult for us to agree with the contention of Shri Page that the State of Maharashtra is an "aggrieved person" within the meaning of section 68-O of the Act. We have already indicated above that the decision in Ebrahim Aboobaker's case (supra) rested on the scheme of Administration of the Evacuee Property Act where, on facts, Tek Chand Dolwani as the first informant was entitled to participate in the proceedings. He had received notice, had filed the written statement, had led evidence and was heard in the proceedings. What was conclusive was that, as the first informant, he was entitled to be first considered if the evacuee property was to be allotted to anyone. The Apex Court's decision in Md. Sharfuddin Vs. R.P. Singh and Others,

has made it absolutely clear that an officer like the Assistant Custodian, who had no statutory duty to appear before the Custodian or to put forth his contention, cannot be a "person aggrieved" within the meaning of section 24 of the Administration of Evacuee Property Act. Similarly, the Division Bench decision of this Court in *Vasnatal Ranchhoddas Patel and Others Vs. Union of India and Others*, , makes it clear that merely because the officers of the Anti-Narcotic Cell of the State Government are authorised to assist the officers of the Central Government in carrying out the purposes of the N.D.P.S. Act, the State Government would not be an aggrieved person within the meaning of sub-section (1) of section 68-O of the Act.

22. We have indicated above the scheme of Chapter V-A. We may, in particular, reproduce the provisions of section 68-I which reads as under:-

"68-I. Forfeiture of property in certain cases.---

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued u/s 68-H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this subsection ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally-acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and recorded a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares."

Sub-section (3) of section 68-I makes it clear that the property which is forfeited

vests in the Central Government, free from all encumbrances. Similarly, u/s 68-G the management of the properties seized or forfeited vests in the Central Government, which appoints an Administrator for the purpose. Section 68- G reads as under:-

"68-G. Management of properties seized or forfeited under this Chapter.---

(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 68-F or u/s 68-I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose, of the property which is forfeited to the Central Government."

23. On the question as to whether State of Maharashtra is a "person aggrieved", we may also state that the 8th respondent Competent Authority appointed by the Central Government u/s 68-O of the N.D.P.S. Act has filed the affidavit of his Inspecting Officer Shri Gangwar. In the affidavit, there is a categorical plea that the State Government has no locus in the matter. Shri Gangwar has elaborated the role that can be played by the State Government in accordance with the directions of the Central Government for carrying out the purposes of the Act. A reference is made to the provisions of section 53 of the N.D.P.S. Act and the other provisions appearing in Chapter V-A and it is concluded that the State Government has no locus in the matter. It is stated in para 2 of the affidavit that the State Government has no legal right in the matter and hence, it is not entitled to file any petition under Article 226. The filing of the petition is thoroughly misguided, says Shri Gangwar on behalf of respondent No. 8. In para 3 of the affidavit, it is pointed out that the State Government did not make even an attempt to approach the Appellate Tribunal within 45 days or 60 days, but slept over the issue. A contention is also raised that the State Government has not explained its laches.

24. Taking into account the scheme of the provisions of the N.D.P.S. Act, and in particular the provisions of Chapter V-A under which the impugned order is passed and bearing in mind the law laid down by the Apex Court in Mohd. Sharfuddin's case (supra), we have no hesitation in coming to the conclusion that the State Government was not a necessary or even a proper party in the proceedings before the competent authority. Similarly, the State Government is not a "person aggrieved" within the meaning of sub-section (1) of section 68-O of the Act. The first preliminary objection of Shri Shirodkar and Shri Satpute must, therefore, be upheld.

25. Since we have heard the Counsel at length; we may also deal with the second preliminary objection raised by the respondents, though the writ petition can be disposed of on the first preliminary objection itself. In fairness to all the learned Counsel, who have argued the matter at length, we think it necessary to deal with the second preliminary objection as well viz. that this petition is hopelessly delayed and that the State is guilty of serious laches.

26. The impugned order was passed on 20-10-1997. The writ petition has been filed "on the 2nd March 1998. There is not a word in the petition about the delay in filing the petition. In para 12 of the petition, all that is stated is as under:-

"12. Although an appeal is provided for against the order of the Competent Authority, to an Appellate Tribunal at New Delhi, the tribunal, by its order dated 27 January 1998 has held that the Government/investigating officer/investigating agency does not have the right to file an appeal u/s 68-O, N.D.P.S. Act, as neither of these are aggrieved persons under that section. In the circumstances, filing an appeal against the impugned order of the competent authority has been virtually ruled out by the Appellate Tribunal. Therefore, save and except for the instant writ petition, there is no remedy available at all in law for the petitioners against the impugned order."

We will deal with this explanation given in para 12 a little later. However, in the petition, as originally filed, there was nothing stated about the time taken for filing the petition belatedly, on the 2nd March, 1998. At the time of admission of the petition, we granted leave to amend, pursuant to which para 15-A has been inserted. It makes very interesting reading. By the newly added para 15-A, an explanation has been given for the delay in filing the petition. We find it convenient to reproduce para 15-A, which reads as under:-

"15-A. Petitioner-State respectfully submits that the impugned order came to be passed by the respondent No. 8 herein on 20-10-97 and the copy thereof was received by the office of the Dy. Commissioner of Police, Anti Narcotics Cell, C.B., C.I.D., Mumbai on or about 29-10-97. The said copy of the order was perused by Mr. M.S. Shinde, Asstt. Commissioner of Police, Anti-Narcotics Cell and he marked the same to Mr. Chandanshive, P.I. for necessary action. In turn Shri Chandanshive marked the said order to P.S.I. Thorawade for further necessary action. Thereafter, both the officers viz. Mr. Chandanshive and Mr. Thorawade, were making oral enquiry about the further action to be taken in the matter. Informally, the matter was discussed with the office of the Competent Authority when they were given them to understand that remedy of appeal is not available to the State Government since the State Government cannot be treated as "person aggrieved" under the provision of section 68-O of the N.D.P.S. Act, 1985. Consequently, the said officers carried the impression that further remedy of appeal is not available for challenging the order passed by competent authority on 20-10-97. In between, the then Dy. Commissioner of Police, Anti-Narcotics Cell, Shri Kakkar came to be transferred on 17-11-97 and consequently Shri Bodakhe, Dy. Commissioner of Police, Crime Branch (Preventive) was holding

charge of the office of the Dy. Commissioner of Police Anti-Narcotics Cell. Mr. Bodakhe held the additional charge till 4-2-1998 and on 5-2-1998 Mr. Dilip Shrirao was appointed as Dy. Commissioner of Police in the office of the Anti-Narcotics Cell. In between the office of the Anti -Narcotics Cell again approached to the office of the competent authority-respondent No. 8 herein, on the question of remedy of appeal and they were supplied the zerox copy of the order dated 27-1-1998 passed by the Appellate Tribunal for Forfeited Properties, New Delhi, in F.P.A. Nos. 20-BOM/93, 26/BOM/93 and 27/ BOM/96 whereunder the said tribunal has held that the remedy of appeal is not available to the Government and the officers of the Government since they are not covered by the expression "Person aggrieved" under the provision of section 68-O of the N.D.P.S. Act, 1985. The aforementioned two officers viz. P.I. Chandanshive and Mr. Thorawade, P.S.I. again placed the papers and the impugned order before Mr. Shrirao, Dy. Commissioner of Police, Anti-Narcotics Cell, who in turn decided to obtain opinion of the legal expert. Accordingly, the opinion of legal expert was obtained on 26-2-98, wherein it was advised to the Anti-Narcotics Cell to prefer a criminal writ petition IN THE HIGH COURT OF BOMBAY, challenging the impugned order. Thereafter on the basis of legal opinion sought, Dy. Commissioner of Police, Anti-Narcotics Cell, initiated the proposal with the Government through the Commissioner of Police, Gr. Mumbai on 27-2-1998, and after receipt of the necessary sanction for approaching this Honourable Court, the present petition is filed today i.e. 2nd March, 1998. Petitioner-State therefore respectfully submits that taking into consideration the aforementioned developments in this behalf, this writ petition is being filed as expeditiously as possible and without any deliberate lapses on the part of either the State of Maharashtra or its officers. In view of what has been stated hereinabove, the State has been left with no other remedy, but to approach this Honourable Court by way of this writ petition under Articles 226 of the Constitution of India. Petitioner-State respectfully submits that, in view of what is stated hereinabove, this writ petition be entertained, tried and disposed off by this Honourable Court under it's jurisdiction under Article 226 of the Constitution of India. Petitioner State respectfully further submits that important questions of law are involved in this writ petition which require consideration by this Honourable Court and even on that count, this Honourable Court would be pleased to entertain, try and dispose off this writ petition."

27. In the first place, the limitation of 45 days from the date of service viz. 29-10-1997 expired on 13th December 1997, which was a second Saturday and was a holiday. The appeal could have been filed on Monday, the 15th December 1997 treating that as the 45th day. Subject to sufficient cause being made out, the appeal could have been filed on the 30th December, 1997. No appeal has been filed at all. The order of the Appellate Tribunal on which reliance is placed in para 12 is an order passed on 27-1-1998. It is necessary to examine the contention of the State Government in para 12 of the petition based on order dated 27-1-1998 in some other proceedings. The order dated 27-1-1998 at Exh. "G." has been passed by the Appellate Tribunal for Forfeited Property, New Delhi,

in proceedings between Shri B.B. Ghorpade, Intelligence Officer, Narcotics Control Bureau, Mumbai, and the competent authority. Three appeals were preferred by Shri Ghorpade who had investigated into the question whether the properties of some other affected persons were illegally acquired properties. That case has no connection with this case. The officer had passed orders of seizure of the property u/s 68-F(1). A preliminary objection was raised by the competent authority itself which had passed the order that Shri Ghorpade was not an "aggrieved person" so as to be able to file an appeal u/s 68-O. The tribunal upheld the objection holding that the officer, Shri Ghorpade, had filed the appeals in his individual name though he had added his designation in the title. If the appeals were preferred in his individual capacity, they could not be entertained by the tribunal u/s 68-O. If the appeals were treated as having been in the official capacity, the Intelligence Officer of the Narcotics Control Bureau could not be treated as a "person aggrieved" within the meaning of section 68-O. The tribunal placed reliance on the decision of the Apex Court in *Md. Sharfuddin Vs. R.P. Singh and Others*, where it was held that a subordinate officer, who had no statutory duty to appear before the superior officer, had no locus to file an appeal. At any rate, that decision was delivered on 27-1-1998 when even the period of 60 days for filing the appeal had expired, on 30th December 1997.

28. That apart, coming to the explanation trotted out in para 15-A of the petition for condonation of delay, we have no doubt that the officers of the Anti-Narcotics Cell of the State Government were far from diligent. Para 15-A states that the order was perused by one Shri M.S. Shinde, Assistant Commissioner of Police. He marked it to Shri Chandanshive, Police Inspector, for necessary action, Chandanshive in turn marked the order to P.S.I. Thorawade for further action. Thereafter, both Chandanshive and Thorawade were making oral inquiries. It is not clear from the added explanation as to when the inquiries were made and with whom. The contents of the affidavit are wholly vague. It is then stated that "informally, the matter was discussed with the office of the competent authority when they were given to understand that remedy of appeal is not available to the State Government." It is not clear as to what is meant by "informally" and who discussed the matter with the Anti-Narcotics Cell and with which officer of the competent authority. There are no written nothing produced before us to substantiate the averments made in para 15-A, even when leave to amend was granted by us. It is then stated that the said officers carried an impression that the remedy of an appeal was not available for challenging the order. No officer named in para 15-A has come forward to file an affidavit in support of this explanation. The petition is sworn by a third person Sherali S. Saiyad, Inspector of Police. Even he has not sworn any affidavit in support of para 15-A. It is then stated that, in between, the Dy. Commissioner of Police Shri Kakkar was transferred on 17th November 1997 and Shri Bodakhe was holding charge as the Deputy Commissioner of Police Shri Bodakhe held additional charge till 4-2-1998 and from 5-2-1998 Shri Dilip Shrirao was appointed as the Dy. Commissioner of Police. It is then stated that "in between the office of the Anti-Narcotics Cell

again approached to the office of the competent authority". We are at a loss to understand as to which officer discussed the matter when and with whom. No correspondence is produced before us to substantiate this explanation. We have no doubt in our mind that the explanation given in para 15-A is far from satisfactory and shows lack of diligence on the part of the officers of the Anti-Narcotics Cell of the State Government. As indicated earlier, reliance on the Judgment dated 27-1-1998 in B.B. Ghorpade's case is thoroughly misplaced. Indeed, it is misleading, inasmuch as, the Judgment was delivered after the appeal period had expired, on 30th December, 1997. Nothing prevented the State Government from filing an appeal by 15th December 1997 or, at any rate by 30th December 1997 if the State was an "aggrieved person". The Judgment in B.B. Ghorpade's case was delivered on 27th January 1998. Reliance on the judgment on B.B. Ghorpade's case is entirely an after-thought, apart from the same being wholly misleading. There is no satisfactory explanation for the delayed filing of this petition.

29. We may in this behalf briefly refer to the observations of the Apex Court in the Constitution Bench decision in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, In para 108 of the judgment at page 631 of the report, the Apex Court has summed up its discussion and culled out the propositions. In proposition 1 dealing with the period of limitation for a claim of refund of tax/duty, it has been observed as under:

"...No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 and of this Court under Article 32-cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it."

Then in the tenth proposition in para 108 at pages 634-635 dealing with the scheme of section 11-B of the Central Excises and Salt Act and section 27 of the Customs Act, 1962, the Apex Court has observed as under:

"..... The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them".

30. Reference may also be made to the order passed by the Apex Court in *Collector of Central Excise and Others Vs. Hyderabad Plywood Industry and Another*, . The brief order reads as under:

"... Appeal allowed.

ORDER

1. In this case, the respondent-assessee filed a refund claim which application was returned to be resubmitted in the prescribed form instead of resubmitting the refund application in the prescribed form, the respondent filed a writ petition in the High Court which has been allowed. It appears that the writ petition was preferred beyond the period of six months prescribed by the Central Excise Rules, 1944 for filing the refund claim. In this view of the matter the appeal is allowed and the judgment of the High Court is set aside. The Revenue shall be entitled to enforce the Bank guarantee and shall be entitled to recover the duty due in accordance with law.

2. No costs."

31. In Union of India and Another Vs. Kirloskar Pneumatic Company Limited, , similar view has been taken and High Court's direction prohibiting the customs authorities from rejecting the assessee's application for refund on the ground of limitation was held to be unsustainable. It has been held that it is not permissible for the High Court even while acting under Article 226 of the Constitution to direct the authorities under the Act to act contrary to the statutory provisions viz. section 27 of the Customs Act, 1962. The power conferred by Article 226 is designed to effectuate the rule of law.

32. As far as the provisions contained in section 68-O permitting the Appellate Tribunal to condone the delay upto 15 days only, we may refer to the decision of the Apex Court in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . A similar provision contained in section 58 of the Motor Vehicles Act, 1939 was held to be valid. The relevant discussion is to be found in para 8 of the judgment at page 2168. Apex Court has held that the express provision in sub-section (3) of section 58 that the delay in making the application for renewal shall be condonable only if it is not more than 15 days expressly excludes the applicability of the provisions of section 5 of the Limitation Act. This provision may seem to be harsh, observed the Apex Court, but it has been deliberately and advisedly made. Similar observations are made by this Court in Usman Yusuf Kamani v. Foreign Exchange Regulation Appellate Board, New Delhi, 1980 M.L.J. 316. The observations are to be found in para 17 of the judgment at pages 323-24. Intention of the legislature is obvious viz. the person aggrieved who wants to avail of the appellate remedy should not be lethargic and should be diligent in prosecuting the remedy of an appeal. In our view, the delay in filing this petition has not been properly explained.

33. In the view that we have taken, we must uphold both the preliminary objections raised by Shri Adik Shirodkar and Shri Satpute. Accordingly, we hold that

(i) the State of Maharashtra is not a "person aggrieved" within the meaning of

sub-section (1) of section 68-O of the N.D.P.S. Act. If, therefore, the State of Maharashtra is not a "person aggrieved", it could not have filed the appeal u/s 68-O of the Act. Consequently, it would follow that writ petition filed by the State of Maharashtra will not be maintainable on the ground that the State is not a "person aggrieved" and hence it has no locus to maintain the petition.

(ii) Even assuming that the petition was maintainable at the instance of the State of Maharashtra, the delay in filing the petition is not at all explained. There was no explanation in the petition as originally filed. The amended para 15-A does not contain any satisfactory ground for condonation of delay. The averments in the said para are vague. There are no details as to who consulted whom and when. There are no dates on which the alleged discussion and/or consultation took place. There is no affidavit in support of the averments in para 15-A. None of the officers named in para 15-A has come forward to file an affidavit owning the responsibility.

34. In the circumstances, we are left with no alternative but to hold that on the two grounds mentioned above, the writ petition must fail. Rule is accordingly discharged.

35. At this stage Shri Page prays for leave to appeal to the Apex Court under Art. 134-A of the Constitution of India. According to Shri Page, the case falls under Art. 133 (1) (a) namely the case involves a substantial question of law of general importance. Since we have followed the law laid down by the Apex Court, we do not think that there is any controversy on the question or that the case involves a substantial question of law of general importance. Hence, leave refused.

36. At this stage Shri Page prays for continuation of interim relief in terms of prayer (d) for a period of eight weeks. Shri Pikale opposes. However, having regard to the fact that the State desires to carry the matter further in appeal to the Apex Court, we think it proper to direct that interim relief in terms of the prayer (d) of the petition which was granted on 17th March, 1998, should continue for a period of eight weeks from today.

37. In view of the above, Criminal Application No. 2854 of 1998 filed by respondent No. 4 does not survive and is rejected.

38. Similarly Criminal Application No. 2833 of 1998 filed by respondent No. 4 also does not survive and is rejected.

39. Application rejected.