

(2002) 05 DEL CK 0166

In the Delhi High Court

Case No : Criminal W. No's. 26 and 64 of 2002

Vijay Kumar Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5), 226

Citation : (2002) 98 DLT 638

Hon'ble Judges : Vinod Sagar Aggarwal, J; B.A. Khan, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; Neeraj Jain, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—By this common judgment two Criminal Writs No. 26/2002 "Vijay Kumar Gupta v. Union of India and Ors." and 64/2002; "Kishan Chand Gupta v. Union of India and Ors." can conveniently be disposed together. As facts in both the petitions by and large are identical Therefore for sake of convenience the facts are being taken from Criminal Writ No. 26/2002 "Vijay Kumar Gupta v. Union of India and Ors.",

2. The petitioner has been detained vide order of 10th August, 2001 purported to have been passed by the Joint Secretary, Government of India, Ministry of Finance in exercise of powers under Sub-section (1) Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Act). The petitioner assails the order of detention of multifarious grounds, namely that there is undue delay in passing of the detention order of 10th August, 2001 because it is claimed that alleged date of incident giving rise to the passing of the detention order is 6th February, 2001. There is thus a delay of more than six months in passing the detention order. There is also a delay in execution of the detention order dated 10th August 2001

which was served on the petitioner some time on 11th September, 2001 though he was available at his address, Petitioner's claim is that there is even a delay of 11 days in dispatching the detention order and further delay of 20 days in serving the same. Another ground alleged by the petitioner is that Detaining Authority is bound to supply the grounds of detention within five days of his detention. The petitioner was served with unsigned copies of the grounds of detention and this cannot be taken to be communicating the grounds of detention in law. The representation of the petitioner is also stated to have not been considered and documents supplied were illegible. Lastly, it has been asserted that there is suppression of relevant material from the Detaining Authority. After the alleged seizure of 6th February, 2001 the Department of Revenue Intelligence i.e. Detaining Authority had issued orders whereby import of Shivalik Impex Pvt. Ltd. as well as Shiv Ganga Organic Chemical Limited being the companies responsible for illegal import have been banned- These orders were capable to sway the subjective satisfaction of the Detaining Authority but there has been non-application of mind in this regard. Vital facts were suppressed from the Detaining Authority.

3. In the counter affidavit filed by respondents 1 and 2 the petition as such has been contested. It is denied that detention order is illegal, arbitrary and unwarranted. It is denied that the grounds of detention were unsigned and on that ground, grounds so conveyed are void. The petitioner had acknowledged receipt of set of grounds of detention and each page of the grounds of detention bear the dated signature of the petitioner. According to the answering respondents, these prove that the petitioner had received the signed copy at the time of service of grounds of detention. It is stated to be a plea which is an after thought and had been taken after a month of the grounds of detention having been served. Petitioner, is alleged to have made a representation dated 22nd October, 2001 though it is shown to have been typed on 20th October, 2001. The representation was rejected after careful consideration of the Detaining Authority and Secretary Revenue.

4. It is denied that some of the documents were illegible. The assertions in this regard are pleaded to be vague. Furthermore it has been contended that documents relied upon had been supplied and no document has been withheld. The representation of the petitioner had been considered with due application of mind.

5. So far as the plea that there has been undue delay in passing the detention order is concerned even the same has been repelled. It has been pointed that incident took place on 6.2.2001, investigations continued and the proposal including the non-bailable warrants issued by the Additional Chief Metropolitan Magistrate against the petitioner was sent to the Department on 12th June, 2001. In the entire process operation of smuggling done by M/s. Shivalik Impex Pvt. Ltd., the petitioner had absconded. It was necessary Therefore to wait for a reasonable period of time. In the meantime, Sponsoring Authority submitted for

consideration of Detaining Authority the latest document relating to Court proceedings and statements of Ashwani Kumar Jain, The Sponsoring Authority submitted the show cause notice dated 2.8.2001. The Detaining Authority had passed the order on 10.8.2001. It is even denied that there was any delay in execution of the order.

6. First argument raised by the learned Counsel for the petitioner in this regard was that the grounds of detention conveyed to the petitioner were not signed and Therefore in the eyes of law the grounds of detention had not been communicated and it prevented the petitioner from making an effective representation. According to the learned Counsel, in this process his right enshrined under Article 22(5) of the Constitution have been violated. On the contrary, this argument was answered with vehemence by arguing that only the grounds of detention has to be communicated. It is not a part of the provisions that it has to be signed and Therefore there is no right of the petitioner which he can claim to have been violated.

7. The admitted position in law is that preventive detention is an invasion of personal liberty but this scheme has been envisaged by the founding fathers and has the Constitution sanction. The constitutionality of the same is not to be disputed. It is also an admitted fact that the grounds of detention have to be communicated to the petitioner and in the present case in fact same had been so communicated.

8. Though it was alleged that the grounds of detention conveyed were signed but copy of the grounds of detention placed on the ground clearly conveys that the last page is not signed by the Detaining Authority. In that view of the matter for purposes of the present petition it must be held that grounds of detention were not signed.

9. The short question Therefore of which one has to again converge is to the effect thereto. It goes without saying that ground of detention or any such copy should normally be signed by the concerned Detaining Authority. The intention is to deliver the concerned person the grounds of detention so that he can make an effective representation. The petitioner has simply acknowledged the receipt but has not stated that the grounds of detention has been signed by the Detaining Authority. However while analysing these facts one cannot ignore that this lacunae has to be examined on the touchstone of the prejudice, if any caused to the petitioner or not. The grounds that were conveyed were not stated to be having mis-statement of facts or differing from the original. After some time the petitioner represented on basis of it and the representation as such was considered. Keeping in view of these important facts it is abundantly and crystal clear beyond any pale of controversy that the petitioner as such had not been prejudiced as a result of the last page of the said ground of detention being not signed. In the absence of the same the said argument so much thought of by the learned Counsel for purposes of the present judgment must fail.

10. It is further argued that the documents supplied were not legible and, Therefore, they do not constitute communication contemplated in the eyes of law.

11. So far as the broad principle of argument is concerned, indeed, there is no controversy. The Detaining Authority is bound to supply legible copies of the documents relied upon so that the detenu can make a representation against it. However, the facts must come first. The petitioner failed to draw our attention during the course of submissions that there could be any such documents, which were not legible or which prevented the petitioner from making any effective representation. Therefore, the argument, so much thought of, must fail.

12. The two other arguments pressed at the time of submissions were that there was undue delay in passing of the detention order and that there was undue delay in execution of the detention order.

13. The detention order is of 10.8.2001 and the incident is of 6.2.2001. It is this particular fact, which was urged to bring home the contention that there is undue delay in passing of the order. Some of the other relevant facts can also be stated. The petitioner was arrested on 6.2.2001. He made retraction from earlier statement on 17.2.2001. His bail application was rejected by the Trial Court on 24.4.2001 and by the learned Additional Sessions Judge on 4.5.2001. He was admitted to jail on 4.6.2001 by this Court.

14. The reply indicates that after the incident of 6.2.2001, the investigation had continued and proposal including the non-bailable warrants pertaining to the co-accused, namely Kishan Chand Gupta, had been sent to the Department. The co-accused (petitioner in Crl.W. 64/02) had an important and significant role in the entire operation. It was necessary to wait for the availability of the co-accused for a reasonable period before the proposal could be submitted. The proposal was submitted on 12.6.2001. The Central Screening Committee approved the proposal on 25.6.2001. The detention order was passed on 10.8.2001. In other words, as per the contesting respondent there is no delay in passing of the detention order.

15. We know from the decision of this Court in the case of Dalbir Singh v. Union of India and Ors. 1995 (1) DL325, that delay in passing the order can vitiate the detention order if the Court can infer that on account of the delay the nexus between the arrest and detention order is snapped. If the delay is explained satisfactorily, in that event, the detention order necessarily need not be quashed. This Court had held :

"From the aforesaid rulings, the following principles can be summarised. Unexplained delay may vitiate an order of detention if the Court can infer that on account of that delay the nexus between the incident and the detention order has snapped. But there is no hard and fast rule regarding the length of time which can be regarded as sufficient to snap the nexus. The authorities may sometimes take time for a detailed investigation for action under the Customs Act and also for a criminal prosecution. It may also happen that there is no

apprehension as long as the person is in custody in the criminal case and only after he is released on bail, the Customs Authorities might consider preventive detention necessary and address the Detaining Authority. It may also be that the Detaining Authority may take time in calling for particulars from the Sponsoring Authority, consider the same, place it before the Screening Committee and come to a conclusion later. One cannot say that investigation should have been hurried. The Detaining Authority is not obliged to explain the delay to the detenu but is obliged to explain the same to the Court. While delay in observing the time limits in regard to safeguards provided by Article 22(5) of the Constitution might vitiate detention, that principle does not apply to delay in passing the order of detention. The latter is a factor relevant only in the context of finding out whether, as a fact, the nexus between the incident and the detention has snapped. Unexplained delay does not also lead to the inference of absence of sufficient material or that the subjective satisfaction is not genuine. Explanation for delay may be found in the detention order or in the counter-affidavit."

16. When the said test is applied to the facts of the present case, it is obvious that though there is some delay but the nexus as such had not been broken, They were waiting as the matter was under investigation and some delay in this regard had occurred. The delay is not such inordinate to prompt us to say that the order is required to be quashed.

17. However, the main argument in this regard is that there has been delay in execution of the order. Though the order had been passed on 10.8.2001, it was executed only on 11.9.2001. The Explanation offered for this delay is that it could not be served on the petitioner as the petitioner was not available.

18. Our attention has been drawn towards the decision of the Supreme Court in the case of Shafiq Ahmad Vs. District Magistrate, Meerut and Others, . The Supreme Court had held that preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, Therefore, be subject to closer scrutiny and examination by Courts. In the cited case, from 15.4.1988 to 12.5.1988 no attempt was made to contact or arrest the said petitioner and the order was quashed. This principle had been reiterated by the Supreme Court in the case of T.A. Abdul Rahaman Vs. State of Kerala and others, . The Supreme Court held that there has to be satisfactory Explanation for the delay and if it is not satisfactory the order of detention is liable to be quashed. It was held:

"12. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the Detaining Authority leading to a legitimate inference that the Detaining Authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

19. During the course of submissions, it was noticed that only in September, 2001 an attempt was made to secure the presence and detain the petitioner but throughout the month of August no such attempt had delay of 40 days in executing it on 23.10.2001. Respondents 1 and 2 have denied this in general terms and have stated that before the petitioner was arrested on 7.9.2001, he was absconding and negating all efforts taken by the Executing Authority for service of detention order. It is nowhere stated that what efforts were made by the Executing Authority to serve the order on him during these two months. No details or particulars have been given in this regard. This Explanation again can't be treated satisfactory in the facts and circumstances of the case leading us to the same conclusion that respondents had caused undue delay in executing the order on petitioner for which they have failed to furnish any satisfactory Explanation. Order is, Therefore, vitiated and would have to be invalidated in both cases.

20. In other words, there has been delay in executing the detention order. It has not been explained satisfactorily for the month of August, 2001. It is not shown that the petitioner was absconding. Consequently it must follow that there has been a delay in regard to execution of the order. On this ground, Therefore, the detention order is liable to be quashed.

21. For these reasons, the petitions are allowed. The detention orders are quashed. Parties are left to bear their own costs.