
(1989) 11 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Petition No. 433 of 1989

V.K. Nassar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-11-1989

Acts Referred:

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

Citation : (1990) 41 DLT 538 : (1990) 1 RCR(Criminal) 235

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : S.R. Setia and Ratan Lal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Vide order dated January 25, 1989, passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act") the petitioner has been detained on February 2, 1989, with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. This writ petition has been filed challenging the aforesaid detention order.

(2) The learned counsel for the petitioner has raised three grounds for challenging the said detention order. Firstly, he has argued that it is not disclosed in the order of confirmation served on the detenu on May 15, 1989, as to when, in fact, the reference was made to the Advisory Board and as to whether the Advisory Board had submitted its opinion within eleven weeks from the date of detention or not. Hence, he wanted the court to look into the record to verify these facts.

(3) The record shows that the reference was made to the Advisory Board on March 8, 1989 and the Advisory Board gave the opinion on April 20, 1989 and soon after the opinion was received by the Government. u/s 8 of the Cofeposa

Act, the reference to the Advisory Board has to be made within five weeks from the date of the detention and the Advisory Board is required to give its opinion within eleven weeks from the date of the detention. These legal requirements have been complied with. Hence there is no merit in this contention.

(4) The learned counsel for the petitioner has cited *Andrew C. Schmidt Vs. Union of India and Others*, . The facts of the said case are distinguishable because in the said case the last date for giving the opinion by the Advisory Board was June 2, 1983 and it was not made clear by the authorities as to, in fact, when the opinion was submitted to the Government by the Advisory Board and thus, it was held that the opinion had not been submitted by the Advisory Board Government within the stipulated period of eleven weeks from the date of detention and thus, detention of the petitioner in that case was declared vitiated. Such is not the case here. The Advisory Board had given the opinion on April 20, 1989, and submitted the same well within eleven weeks from the date of detention of the petitioner.

(5) The second ground urged by the learned counsel for the petitioner is that the petitioner had made a representation dated March 16, 1989, to the Central Government and the same came to be rejected on April 21, 1989 and thus, there had taken place under and unexplained delay in disposal of the aforesaid representation.

(6) Shri Kuldip Singh, Under Secretary, Ministry of Finance, Department of Revenue, New Delhi, in the counter-affidavit has averred that in fact, the representation addressed to the Central Government was dated March, 27 1989 but it was signed by the petitioner on March 30, 1989 and the same was received in COFEPOSA. Unit of the Ministry on April 4, 1989 under cover of letter dated March 31, 1989 of the Department of Home, Government of Kerala. It may be mentioned here that the detenu stands detained in the Central Prison, Trivendrum (Kerala). The representation was sent to the Deputy Director of Enforcement, Madras, for comments and the comments were received on April 12, 1989 and they were analysed and put up by the Under Secretary on April 13, 1989, before the Assistant Director General who recorded his note and sent the file to the Minister of State (Revenue) on April 17, 1989 and the Minister recommended the rejection of the representation subject to approval of the Finance Minister on April 17, 1989 and the Finance Minister rejected the representation on April 20, 1989 and the rejection memo was issued on the following day. It is also mentioned in the affidavit that April 14 to April 16, 1989, were holidays and so also April 18, 1989.

(7) The learned counsel for the petitioner has argued that the representation should not have been sent for obtaining comments without the same being put up before the Hon"ble Finance Minister. There is no merit in this contention because the perusal of the representation clearly indicates that the same could not have considered by the Hon"ble Finance Minister till the comments have been given on the said representation by the sponsoring authority. The

sponsoring authority in the present case is admittedly located at Madras and thus, it was proper to have sent the representation for comments as soon as the representation was received in the Ministry without unnecessarily delaying the consideration of the representation by putting it up at first before the Hon"ble Finance Minister through the proper channel. There has not taken place any undue delay in the disposal of the representation. Hence, find no merit in this ground as well.

(8) Lastly, the learned counsel for the petitioner has contended that the detention of the petitioner was confirmed by the Central Government vide communication dated May 9, 1989, served on the petitioner on May 15, 1989 and thus, it is clear that the detention of the petitioner has not been confirmed within three months as required by law which vitiates the continued detention of the petitioner.

(9) The learned counsel for the petitioner has cited *Shri Ujjal Mandal Vs. The State of West Bengal*, which had laid down that if the order of detention is not confirmed, namely, before the expiry of three months from the date of the detention, the detention becomes illegal. It has been held that it would not be necessary to confirm order of detention even after the receipt of the report of the Advisory Board by the Government if the Government only wants to continue the detention for the period of three months from the date of detention, as the initial order of detention would authorise the continuance of detention for that period without any confirmation and the confirmation is necessary only to continue the detention after expiry of three months. So, it was held that the order of detention must be confirmed before the expiry of the period of three months. It was laid down that unless the power of confirmation is exercised within the period of three months from the date of detention the detention after the expiry of that period would be without the authority of the law. He has also made reference to *Nirmal Kumar Khandelwal Vs. Union of India (UOI) and Others*, which also reiterates the same law. In this judgment it was also laid down that the order of confirmation of the detention, if made after the expiry of three months from the date of detention, would be illegal. He has also made reference to *Bachhittar Singh Vs. The State of Punjab*. In this judgment the Supreme Court had interpreted the provisions of Article 166 of the Constitution of India and has laid down that before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. The learned counsel for the petitioner has argued that applying the ratio laid down above, even though the order of confirmation may have been made within three months of the date of the detention, still it would not be valid order till it had been issued and served on the detenu.

(10) As far as the facts are concerned, it is evident from the record that the Central Government had made the order of confirmation in the file on May 6, 1989 but the said order was issued on May 9, 1989 and was served on the

petitioner on May 15, 1989. I have come across a judgment of the Supreme Court in Smt. Pushpa Vs. Union of India (UOI) and Others, , which directly deals with this point. In para 13 of the judgment while discussing ground No. 2 in the said case, the Supreme found court that the petitioner in that case was detained on January 27, 1989 and order dated April 30, 1989, was issued under the signatures of Under Secretary (Home) wherein it was mentioned that by order and in the name of the Administrator the confirmation of the order of detention of the detenu after the receipt of opinion of the Advisory Board is made. Relying on the date mentioned in the order communicated to the detenu, which was April 30, 1979, a contention was raised that the order confirmation had been made three days after the expiry of the period of three months. The contention was negatived as it was found from the record that the Lt. Governor, who is the competent authority to confirm the order of detention, had confirmed the same in the file on April 27, 1979 and thereafter the order was drawn up and communicated vide letter dated April 30, 1979. So, it was held that as the order of confirmation was made in the file within three months of the date of detention, the detention had not become illegal. The judgment in the case of Bachhittar Singh (supra) death with the provisions of Article 166 of the Constitution and thus, is not applicable to the interpretation of Section 8 of the Cofeposa Act which has been dealt with by the Supreme Court in the judgment of Smt. Pushpa (supra). Moreover, what has been held in the former case is that order becomes effective only on being communicated but it was not laid down that the date of order made in the file is of no consequence. So, it cannot be said that the order of confirmation in the present case has not been made within three months from the date of detention of the petitioner on the mere ground that the letter issued to the petitioner was dated May 9, 1989, and was served on the petitioner on May 15, 1989. I hence, find no merit this contention as well.

(11) No other point has been urged.

(12) I, hence, discharge the rule and dismiss the writ petition.