Smt. Madhu Khanna vs Administrator, Union Territory Of ... on 11 September, 1986

Equivalent citations: AIR1987SC48, 1987CRILJ318, 1987(12)ECC284, 1986(26)ELT197(SC), 1986(2)SCALE394, (1986)4SCC240, AIR 1987 SUPREME COURT 48, 1986 (4) SCC 240, 1986 CRIAPPR(SC) 262, 1986 CURCRIJ 306, (1986) 26 ELT 197, (1986) 3 SCJ 559, (1987) 1 CRILC 84, (1986) 30 DLT 382, (1986) JT 401 (SC)

Bench: M.M. Dutt, O. Chinnappa Reddy

ORDER

1. Smt. Madhu Khanna has filed the Special leave petition against the judgment of the Delhi High Court dismissing her application under Article 226 of the Constitution of India praying for quashing the detention of her husband by the order dated December 11, 1983 under Section 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as 'the COFEPOSA ACT', and also for the quashing of the declaration dated February 14, 1986 made under Section 3(1) of the COFEPOSA Act. She has also filed a writ petition under Article 32 of the Constitution of India challenging the validity of both the afore- said orders. A rule nisi has been issued on the writ petition.

2. As prayed for, the special leave is granted. However, as elaborate arguments have been made by the learned Counsel of the parties, we proceed to dispose of the appeal on merits. Needless to say, the disposal of the appeal will mean disposal of the rule nisi.

3. The detenu Viswa Nath Khanna, was a clearing agent. It is not disputed that he used to arrange for the import of foreign goods for the staff of the Afghan Embassy in India. It appears from the grounds of detention that on May 18, 1985 two air conditioners had arrived from Hongkong in the name of one Ashok Kumar of Afghan Embassy. On suspicion, the consignment was opened and it was found that the rear panel of one of the air conditioners had within it a metallic box which was not a part of the air conditioner, and that the box contained 195 gold biscuits (10 tolas each). The said air conditioners were imported by the detenu for the said Ashok Kumar and were taken to the residence of the detenu from the airport. It was in the background of the above facts that the detention order was made.

4. The first point that has been urged by Mr. Jethmalani learned Counsel appearing on behalf of the appellant, is that the declaration is bad because of the failure of the declaring authority to consider the representation of the detenu dated February 11, 1986 addressed to the President of India. The respondents produced before the learned Judge of the High Court at the hearing of the writ petition the original files relating to the detention of the detenu. The learned Judge looked into the files and it was found by him that the representation dated February 11, 1986 reached the declaring authority

on February 13, 1986. It was dealt with and rejected" by the respondent No. 2, Mr. M.L. Wadhawan, Additional Secretary to the Government of India, Ministry of Finance on February 14, 1986. The order under Section 9(1) of the COFEPOSA Act was also made by him on that very day, that is, on February 14, 1986. The representation and the order rejecting it are contained in one file and the order under Section 9(1) of the Act is contained in another file. We have also looked into the files produced before us by the learned Additional Solicitor General. The files were also looked into by Mr. Jethmalani.

5. It is not in dispute that the representation of the detenu dated February 11, 1986 was considered and rejected. It is, however, the contention of the learned Counsel for the appellant that before making a declaration under Section 9(1), the declaring authority did not consider the representation. Our attention has been drawn by the learned Counsel to the fact that the declaration does not contain any reference to the representation. It is, accordingly, submitted by the learned Counsel that non-reference to the representation in the declaration shows that the representation was not considered by the declaring authority before he made the declaration. It has been already noticed that the representation was rejected and the declaration was made on the same day. In our opinion, there is no valid ground for thinking that after the declaration under Section 9(1) was made, the respondent No. 2 rejected the representation. In the order directing that it is a fit case for making a declaration under Section 9(1) of the COFEPOSA Act, the respondent No. 2 took into his consideration the denial of the detenu that he had no concern with the smuggled gold. This shows that the respondent No. 2 had considered the representation before he made the declaration under Section 9(1) of the COFEPOSA Act. It is however, submitted by Mr. Jethmalani that what the respondent No. 2 had cons dared was the denial of the detenu at the investigation stage and not his representation dated February 11,1986. We are unable to accept this contention. There is nothing to show that the denial of the detenu that was considered by the respondent No. 2 was his denial at the investigation stage.

6. Moreover, the respondent No. 2, Mr. Wadhawan, has filed an affidavit in which it has been stated by him that after the consideration of the representation, the declaration was made by him on February 14, 1986 keeping in mind the allegations made in the representation as well as the materials on record. The High Court has believed the statement of the respondent No. 2 and we do not also find any reason not to believe the same. In the circumstances, even though the representation has not been referred to in the declaration, there is ample evidence to show that the respondent No. 2 had considered the representation before he made the declaration. The non-mention of the representation the declaration seems to be a mere omission. There is, therefore, no merit in the contention of the appellant.

7. It is next contended on behalf of the appellant that the continued detention of the detenu is illegal and invalid as the Advisory Board did not at all consider the same. There is no substance in the contention. The Advisory Board in its report has categorically observed that there is sufficient cause for the continued detention of the detenu. The learned Counsel for the appellant concedes that in view of this observation in the original report of the Advisory Board, he cannot press the point.

8. It is, however, urged on behalf of the appellant that as the information required by the detenu in his letter dated February 11, 1986, reached him on February 24, 1986, that is, after an undue delay, there was a denial to him of the right guaranteed under Article 22(5) of the Constitution of India and, as such, the order of detention is illegal and should be quashed on this ground. In that letter the detenu requested the Administrator, Delhi to intimate him whether the exporters, shown in the relevant invoices, were interrogated and whether an attempt was made to find out from them the circumstances in which the gold came to be exported in the air conditioners. The Administrator informed the detenu by his memo dated February 24, 1986 that no such statement of exporters could be recorded so far. This contention was also made before the High Court and the High Court after considering the facts and circumstances of the case came to the finding that the said letter of the detenu had been dealt with all reasonable promptness. The learned Judge of the High Court recorded in his judgment as follows :

> A perusal of the files reveals that this application was received by the Administrator on February 13, 1986. On the same day it was sent to the Collector of Customs for comments. The Collector of Customs on the same day sent the application to Customs Headquarter, Palam for comments. The Custom Office, Palam prepared comments and sent the same to Customs Headquarter on February 17, 1986. It may be mentioned that 15th and 16th February, 1986 were holidays on account of Saturday find Sunday. The custom Headquarter sent the comments to the Delhi Administration on the same day i.e. February 17, 1986. These were put up before the Dy. Secretary (Home) on February 18, 1986. The file was put up before the Home Secretary on the same day. The file was then put up before the detaining authority on February 19, 1986, and the detaining authority on February 20, 1986 approved the proposal that the detenu be informed that no statement of exporters had been recorded. The file was received back by the Dy. Secretary (Home) on February 21, 1986 and the detenu was informed vide memo dated February 24, 1986. Again 22nd and 23rd February, 1986 were holidays on account of Saturday and Sunday. These facts disclose that the application of the detenu was dealt with all promptness. I am satisfied that there was no unjustified delay.

9. It is submitted by the learned Counsel for the appellant that the letter was sent from one officer to another as a routine practice for their comments and not because the detaining authority required such comments for supplying the information to the detenu. We do not sec any force in the contention. It has been pointed out by the learned Judge that at the time of making the detention order, the statements of the exporters had not been recorded and, consequently, could not and did not form part of the materials placed before the detaining authority. In the circumstances, the learned Judge has rightly observed that the act of the respondent No. 1 in calling for the comments from the Customs Department for the purpose of supplying the authentic information to the detenu was justified. The contention of the appeliant is rejected.

10. Lastly, it is complained on behalf of the appellant that the confirming authority had not considared at all the deposition of the defence witness, Mr. ML, Khanna, the father of the detenu. It appears that the Advisory Committee has in its report referred to the evidence of the said M.L.

Khanna. The report of the Advisory Committee was considared by the confirming authority. In the circumstances, it cannot be said that the confirming authority had not applied his mind to the evidence of the defence witness as contended on behalf of the appellant. It is, however, submitted by the learned Counsel for the appellant that the relevant portion of the evidence of the defence witness has not been mentioned in the report of the Advisory Committee, and, accordingly, the confirming authority had no occasion to consider the same. We do not think that it is incumbent upon the Advisory Board to refer in detail the evidence of the defence witness in its report. It will not be unreasonable to presume that all the records including the deposition of the said M.L. Khanna were before the confirming authority. It will be a mere surmise to hold that the confirming authority had not applied his mind to the deposition of the defence witness, even though such deposition has been referred to in the report of the Advisory Committee. The contention, in our opinion, is without any substance and is rejected. No other point has been urged on behalf of the appellant.

11. Before we part with this case, we may record that although the constitutional validity of Section 9 of the COFEPOSA Act has been challenged, Mr. Jethmalani has not pressed the same before us.

12. For the reasons aforesaid, the appeal is dismissed and the rule nisi is discharged. There will, however, be no order as to costs.