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Court : Allahabad

Decided On : Oct-18-1985

Reported in : 1986CriLJ1607

Judge : S. Saghir Ahmad and ;Brijesh Kumar, JJ.

Appellant : Ganesh Prasad Kapoor

Respondent : State of U.P. and ors.

Judgement :

S. Saghir Ahmad, J.

1. The Petition under Article 226 of the Constitution is directed against the order dt. 20th May, 1985 (Annexure-2) passed by the State Government under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Act) under which the petitioner has been detained on the grounds contained in annexure-2.

2. Annexures Nos. 3,4, 5, 6 and 7, which form part of the grounds, were also supplied to the petitioner on 10th June, 1985 when the order was served upon him.

3. A representation was made by the petitioner against the above order of detention but it was rejected by the State Government.

4. The grounds of detention recite that on 17th Jan. 1985 the custom authorities had interrogated Sri Anil Kumar Gupta in their Office and on a search of his person, 2350 U.S. Dollars, 2000 Saudi Arabian Rial and an amount of Rs. 7610/- were recovered and a recovery memo was prepared. Sri Anil Kumar Gupta in his statement gave out that he used to smuggle gold from Nepal and sell it to the petitioner. On 16-1-1985 at about 8.00 a.m. he had brought gold rings weighing 25 tolas and had sold them through the agency of the petitioner and his son for a sum of Rs. 55,000/:

The petitioner's residential premises was searched by the customs authorities on 18-1-85 where a 'Jacket' was recovered. Sri Anil Kmar Gupta had stated that he had stayed at the petitioner's house and there he had left back his jacket of light green colour. The petitioner is said to have admitted in his statement recorded on 18-1-85 by the customs authorities that Anil Kumar Gupta used to stay at his house.

5. It was on the basis of these grounds that the State Government felt satisfied that petitioner's detention under the Act was necessary and consequently the impugned order was passed on 20th May, 1985.

6. The petitioner in this petition has inter alia, contended in para 9 of the petition as under:

9. That the most alarming feature of the grounds and the supporting material supplied along with it is that all the documents contained in Annexures 3 to 7 are photo copies and the same are illegible and it is not at all possible to decipher the text of the documents and as such it is not possible to give an effective

representation against the order of detention. On this ground alone the aforesaid Writ Petition is fit to be allowed and the petitioner is set at liberty forthwith.

7. This para of the petition has been replied in para 9 of the counter-affidavit in which it has been stated as under:

9. That in reply to paras 8 and 9 of the petition it is stated that the photo copies of the documents and relevant material were handed over to the petitioner on 10-6-85 and the same were legible as is evident from the fact that the names of panchas in the panchnama dt. 17-1-85 have been got correctly typed by the petitioner in the annexure filed by him. The said annexure is annexure-7 to the writ petition. The petitioner has further preferred a representation in English to the State Government and in that he never pointed out that he cannot read or write English. In the presentation submitted by the petitioner the petitioner has signed the same in English.

8. The fact that some of the documents, which were annexed with the grounds, were illegible and it was not possible to decipher the text of the documents, has not been denied in the counter-affidavit, but the learned Deputy Government Advocate has contended that the question that the documents accompanying the grounds were not legible was not raised by the petitioner in his representation made before the State Government against the order of detention and, therefore, he should not be allowed to raise that question in the present petition.

9. We are not prepared to accept the contention.

10. Under Article 22(5) a detenu has the fundamental rights :-

(1) of being informed of the grounds on which the order of detention has been made, and:

(2) of being afforded an earliest opportunity of making a representation against the order.

11. The above rights, being fundamental rights will be available to a detenu throughout the period of his detention and he can legitimately plead at any time that the order of detention was liable to be quashed as the above rights had been infringed. There cannot, in our opinion, be an estoppel against fundamental rights.

12. If a detenu is supplied incomplete material or the grounds supplied to him are vague, he can immediately approach the Court for setting aside the order. The fact that the detenu had not earlier raised this ground in his representation against the order of detention before the State Government will not operate as a bar to his raising the question before a Court because there cannot, as already observed, be any estoppel against the fundamental rights.

13. In the instant case the original order of detention has been placed before us in the presence of the Additional Government Advocate and it was not disputed that the order placed before us was the original order served upon the petitioner. The order was accompanied by photostat copies of a number of documents but a good number of pages of the copies are partly blank and illegible. The contents cannot be deciphered. Not even the Additional Government Advocate could read those pages. Supply of half printed papers or supply of illegible papers in support of the order of detention is equivalent to non-supply or supply of incomplete documents. In this situation it cannot but be said that the right guaranteed to the petitioner under Article 22(5) was contravened and he was denied the opportunity of making an effective representation against the order of detention.

14.' In identical situation a Division Bench of the Bombay High Court in Chandra Shekhar Ojha v. A.K. Karnik, 1982 Cri LJ 1642 held that the supply of wholly blank or illegible documents amounted to non-supply of copies of the relevant documents which were relied upon for passing the detention order and non-supply of relevant documents rendered the detention itself void ab initio.

15. We are in respectful agreement with the aforesaid decision of the Bombay High Court:

16. The illegality pointed out above vitiates the detention order in the instant case as well. Since this reason alone is sufficient to dispose of this writ petition finally, we need not look into the other grounds raised during the arguments by the learned Counsel for the petitioner.

17. In view of the above, the writ petition is allowed and the impugned order dt. 20th May, 1985 contained in Annexure-lis hereby quashed. The petitioner shall be set at liberty forthwith unless his detention is required in connection with some other case. There will be no order as to costs.

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