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Ravinder Kumar Bhandari Vs. Union of India and ors.

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Court : Delhi

Decided On : Nov-30-1988

Reported in : 1989(2)Crimes558; 37(1989)DLT12

Judge : H.C. Goel, J.

Acts : Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Sections 3(1)

Appeal No. : Criminal Writ Appeal No. 294 of 1988

Appellant : Ravinder Kumar Bhandari

Respondent : Union of India and ors.

Advocate for Def. : Mr. Lao

Advocate for Pet/Ap. : Harjinder Singh,; Rohit Kochhar,; S.K. Mishra,;

Judgement :

H.C. Goel, J.

(1) By this writ petition under Article 226 of the Constitution of India challenge is made to the detention of the petitioner, Ravinder Kumar Bhandari, as per the order of detention issued on January 19, 1988 by order and in the name of the Administrator, Union Territory of Delhi, respondent No. 2, under the provisions of

Section 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 with a view to preventing the petitioner from engaging in transporting, selling and keeping smuggled goods and also dealing in smuggled goods viz. gold. The first ground of attack to the detention of the petitioner is that the order of detention as served on the petitioner is dated January 19, 1988, whereas the grounds of detention served on the petitioner are dated January 21, 1988 and that showed that the grounds of detention were not framed and formulated simultaneously and contemporaneously with the making of the order of detention. A copy of the order of detention as served on the petitioner bears the number of the Delhi Administration, Department of Home (Police-11) and the date of January 19, 1988 at its top. The following note is appended at the bottom of the order on the copy of the order as served on the detenu : - 'By order and in the name of the Administrator of the Union Territory of Delhi.' Similarly, at the top of the copy of the grounds of detention the same number of the Department of the Delhi Administration is given. The date given over there is, however, January21,1988. At the foot of the grounds of detention also there is the same note purporting to show that the grounds of detention were also prepared and served by order and in the name of the Administrator of the Union Territory of Delhi. A copy of the order of detention was admittedly served on the petitioner on January 19, 1988 and the copy of the grounds was served on him on January 21, 1988.

(2) Shri A.S. Dagar, Deputy Secretary (Home), Delhi Administration. Delhi filed his affidavit on behalf of the Administrator, Union Territory of Delhi, as a counter to the petition. In the corresponding para 9 of the affidavit Mr. Dagar stated that the contents of para 9 are wrong and are denied. The draft detention order and grounds of detention were approved by the detaining authority simultaneously and contemporaneously. It is further stated that whereas orders 'were issued' on January 19, 1988 the grounds of detention 'were supplied' on January 21, 1988 within the stipulated period and further that the grounds of detention were served well within time. This counter as filed on behalf of respondent No. 2 is obviously of no avail to the respondents as nothing is stated therein as to on which date the orders of detention and the grounds of detention were made, which was necessary for the respondents to disclose for the specific denial of the averment of the

petitioner that both these were not passed on one and the same date and as their copies as served on the petitioner bore different dates. The Supreme Court was confronted with a similar situation in the case Sunder Lal Raid v. K.K. Dwivedi & Ors , Writ Petition (Criminal) No. 97 of 1986, decided on March 7, 1986, a copy of which was filed by Mr. Harjinder Singh on the record of this case, In that case the detenu had taken the plea that the order of detention was made on July 11, 1985 and bore that date, but that the grounds were prepared on July 15, 1985 and also bore the date July 15, 1985 and that that was in contravention of law as declared by the Supreme Court in earlier cases. An Under Secretary of the Government of India who was chosen to file the counter affidavit on behalf of respondent No. 1, Union of India; in the corresponding para 6 of his affidavit stated as below:- 'Ground I has no substance. It is wrong to allege that the grounds of detention were prepared on the 15th July, 1986. The detention order is dated 11.7.1985 and the grounds detention are dated 15.785. These are the dates on which the above two orders were dated and issued.' The Supreme Court disposed of the writ petition by making the following observation and order :- 'To say the least, this statement makes no sense and to use stronger language it is scandulous. In view of the counter-affidavit, we have no option but to quash the orders of detention and direct that the detenus should be released forthwith. '

(3) I, however, with a view to satisfy myself as to the correct position about the date of the making of the detention order and the grounds of detention, looked into the record of the case as produced by respondent No. 2. The relevant portion of the same was also shown to Mr. Harjinder Singh learned counsel for the petitioner. The records revealed that a typed note given the salient features of the case was put up by the Department of Home of the Union Territory of Delhi to the Administrator wherein there is a reference to the grounds of detention as formulated against the petitioner, a copy of which was stated to be placed on the file. Below this note the Administrator passed the order 'Approved as above. Speaking order is issued separately.' The said note bore the date of January 15, 1988. A typed order of detention which is duly signed by the Administrator without giving any date thereon is the next page on the file concerned. A cyclostyled copy having the same contents as those of the copy of grounds of detention served on the petitioner is also placed in the file of the case.

(4) Mr. Lao, learned counsel for respondent No. 2, submitted that the said order of the Administrator below the note of the Department according approval to the making of detention order and the separate speaking order which was duly signed by the Administrator were made by the Administrator on January 15, 1988 and the draft grounds of detention, which was placed before the Administrator were also duly approved by him when he accorded the approval to the proposed action, namely the making of the order of detention and that thus, the order of detention and the grounds of detention were made contemporaneously and simultaneously by the Administrator on January 15, 1988. It was next submitted that the order of detention was then authenticated by an officer of the Department of Home of the Delhi Administrator, being so authorised to do under the rules of business of the Delhi Administration on January 19, 1988 and the grounds were so authenticated thereafter on 19th and 20th January, 1988 Mr Lao made the submission according to the instructions as obtained by him from the concerned department of the Delhi Administration. Mr. Lao was, however, unable to refer to any material on the record in support of his said submission. There is admittedly no note available on the file of the case in the said regard namely, about the date on which the Administrator accorded his approval to the note as proposed by the Department the date on which the order of detention was signed by the Administrator or as to which were the draft grounds of detention that were placed on the file when the Administrator accorded his approval to the note dated January 15 1988 or the dates on which the order of detention and the grounds of detention were authenticated by the officer authorised in that behalf He was also unable to say as to what is his basis to say that a cyclostyled copy of the grounds of detention now available on the record of the case was the draft grounds of detention placed before the Administrator when he accorded his said approval. It may also be pointed out at this stage that no attempt was made by the respondents to file any supplementary affidavit of Mr. Dagar or of any other officer of the Delhi Administration to furnish information in the above regard on a sworn statement of any of the officers of the Delhi Administration, though the case remained pending for a considerably long period and the arguments in the case were also heard spread over a period of 12 days. As per Mr. Lao himself the grounds of detention were never signed by the Administrator as such I also fail to see as to how a

cyclostyled copy of the grounds of detention now available on the record of the case could be said to be the draft grounds of detention which were approved by the detaining authority. It is alto worth noting that in this copy of grounds of detention there are paras 27 and 28 which relate to informing the detenu about his right to make representation against the detention to the Administrator, Union Territory of Delhi or to the Advisory Board. Para 29 states that the grounds e . communicated to the petitioner in pursuance of Art. 22(5) of the Constitution of India These paras were not normally to find place in the grounds of detention as such and they are normally added at the foot of the grounds of detention after the grounds of detention are prepared and more so in the case of a draft grounds of detention. Not only that, the last sentence of para 26 of the grounds of detention as served on the detenu and which sentence also finds place in cyclostyled copy which is the alleged to be draft grounds of detention reads as below :- 'A copy of these grounds and statements, documents, free translated into Hindi, a language known to you are also enclosed.' I fail to see as to where was the occasion for getting Hindi transliteration copies of the grounds of detention and the statements and documents etc. at the time when only draft grounds of detention were being put up before the Administrator. In view of all this it would be too much to accept the submission of Mr. Lao which is not backed by any material on the file of the case that the grounds of detention as served on the detenu-petitioner are the same the draft of which had been duly approved by the Administrator. It thus cannot be said as proved by the respondents on whom the burden lay that the order of detention and the grounds of detention were passed 16 simultaneously and contemporaneously. That being so, the petition deserves to be allowed on this ground alone and I need not go into the other grounds as raised by Mr. Harjinder Singh in the petition. I accordingly allow the petition and quash the order of detention of the petitioner and direct that the detenu be released forthwith if not required under any other lawful order.

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