

**Tryba Marek Vs. Union of India**

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**Court :** Delhi

**Decided On :** Feb-18-1992

**Reported in :** 46(1992)DLT418; 1992(22)DRJ408

**Judge :** Dalveer Bhandari, J.

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

**Appeal No. :** Criminal Writ Appeal No. 157 of 1991

**Appellant :** Tryba Marek

**Respondent :** Union of India

**Advocate for Def. :** Shri. Manan

**Advocate for Pet/Ap. :** Trilok Kumar,; M.D. Taneja,; K.K. Manan and;

**Judgement :**

**Dalveer Bhandari, J.**

(1) The detenu through the petitioner has filed writ petition under Article 226 of the Constitution of India and has prayed, inter alia, that the writ of habeas corpus be issued quashing the detention order dated 6th March, 1991, passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of

Revenue, New Delhi, under Section 3(1) of the Conservation of [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#).

(2) On 11th March, 1991, the detenu while he was in judicial custody was detained in pursuance of the said detention order on 6.3.1991. The detenu was served with the grounds of detention and some other documents in Polish language with which the detenu was well conversant. The detenu while in transit from Singapore to Amsterdam by Klm Flight no.KL-836 arrived at I.G.I. Airport, New Delhi, on 25.2.1991. The detenu came out of the aircraft into the aerobridge, with transit pass, when he was asked by the Customs Officers to show his passport etc. The detenu immediately lashed back inside the aircraft and ran towards one of the toilets, where he attempted to dump two packets in the commode. The officers apprehended the detenu and found that the said packets contained 116 pieces of gold, weighing 13525 grams valued at Rs.30.30 lacs (I.V.) and Rs.48.70 lacs (M.V.).

(3) The enquiries revealed that the detenu while in the transit, had not declared the said gold and the gold was imported in contravention of the provisions of the R.B.I. Notification no.208/62-RB dated 8.11.1962. The detaining authority came to the conclusion that the detenu had willfully and knowingly smuggled the gold into India. The detenu has challenged his detention on the ground that the detention order is wholly untenable inasmuch as the grounds of detention do not reveal how the detenu is said to have smuggled gold into India. The grounds of detention disclose that the gold was imported in contravention of an R.B.I. Notification no.208/62-RB dated 8.11.1962. The detenu in his writ petition has challenged the detention order on several grounds, but during the course of hearing, main emphasis was given by the counsel for the detenu, on the ground of non-supply of the Notification dated 8.11.1962 which was relied upon by the detaining authority. According to the learned counsel for the detenu, the said notification was a very vital document and non supply of the same has resulted in violation of his fundamental right enumerated under Article 22(5) of the Constitution of India.

(4) The other ground on which the detenu challenged the detention order is that copies of the documents supplied to him were not legible. Documents which were

supplied were not properly translated and original English text of these documents was also not made available to the detenu even after repeated requests.

(5) It was submitted by the detenu that the documents on page nos.5, 9 to 11, 13 to 20, 22-24, 30, 35-38, 41-42, 52/reverse blank, 53 to 55 of the English are not legible. It was submitted that the detenu is a Polish national and very well conversant with the Polish language. The detenu submitted that on comparison of the documents supplied in Polish language it was found as under:-

i) That all the relied upon documents, supplied in English and/or English and Hindi are not supplied in Polish translation (page nos.14, 15, 23 to 34, 35 to 43, 50 (Hindi) 53 to 56 and 57 to 62 of the set in English and Hindi are relevant); ii) That many of the relied upon documents supplied in Polish translation are, either not legible (page 26 of the Polish set) or do not incorporate the full text of the corresponding document in English because of its illegibility (page nos.10 to 13, 17 to 22, and 29 to 32 of the English set); and iii) that the text of some of the documents supplied in Polish is incomplete inasmuch as these do not incorporate the translation of the Hindi part of the text in the relied upon documents (page nos.19 to 23 of the English/Hindi set).

(6) That the detenu submits that the document at Serial no.2 of the list of relied upon documents is in Hindi which neither the detenu nor the petitioner can read and understand. Perusal of the corresponding document in Polish indicates that the name was a translation in (Polish) of an English translation of the document in Hindi. It is submitted that the said English translation from which Polish translation was made, has not been supplied to the detenu, rendering it impossible to compare and see whether the Polish document reflects complete and correct text of the English translation of the document in Hindi. Besides, it is believed that the said document viz., English translation of the document in Hindi must have been placed before and considered by the detaining authority and in that view, the matter must have been supplied to the detenu pari pasu with the grounds of detention, which was not done vitiating the detention and continued detention of the detenu.

(7) The detenu also submits that while the grounds of detention place reliance on some Immigration Records', -the same have not been supplied to him either in English or in Polish, which ought to have been supplied pari pasu the grounds of detention.

(8) The detenu submitted that Serial no.4 of the list of relied upon documents talks of a 'statement dated 25.2.1991 of Shri Tryba Marek (detenu). A scrutiny of the relied upon documents in English and Polish as supplied, contain no such statement. It was submitted, that, in fact there was no statement recorded from or by the detenu and the abovelist, therefore, reflects non- application of mind of the detaining authority. The detenu submitted that such non-application of mind vitiates detention and continued detention inasmuch as it must have vitiated the subjective satisfaction of the detaining authority.

(9) Shri K.K. Manan, appearing for The respondent submitted, that all the relied upon documents were furnished to the detenu. He further submitted that the notification is published in the financial gazette of India and it was not necessary to supply the notification.

(10) I have heard Shri Kumar, Learned counsel for the petitioner and Shri Manan, learned counsel for the respondent.

(11) Admittedly, the Reserve Bank of India notification 208/62 dated 8.1 1.-1962 was not supplied to the detenu. The learned counsel for the respondent submits that no prejudice has really been caused to the detenu on non-supply of the said notification. A careful scrutiny reveals that the detention of the detenu was passed because of the contravention of the said notification. This notification was relied upon and referred to by the detaining authority and non supply of the said notification has resulted in infringement of Article 22(5) of the Constitution of India.

(12) It may be relevant to mention that the detenu had sent an interim representation and request for certain information and clarification of the documents, dated 21.3.1991. The relevant portion of the same is set out as under:

'ON perusal of the grounds of detention and the relied upon documents, in Polish, detenu finds that there is reference to numerous provisions of various laws and notifications, etc. which have been relied upon/referred to in the matter of detenu's detention. Detenu .submits that the details of the text of these provisions/notifications have not been communicated to the detenu which has seriously prejudiced him in exercise of his right of expeditious and effective representation.'

(13) This document was received in the Ministry of Finance on 22.3.1991. The detenu received the Memorandum from the Under Secretary to the Government of India, dated 8th April, 1991:

'WITH reference to his representation dated 21.3.91, Shri Tryba Marek, a Cofeposa detenu, detained by the Central Government is hereby informed that the said representation has been carefully considered by the Central Government but it is regretted that the same has been rejected.'

(14) This shows that even after the detenu has requested the respondent to supply him necessary documents so that the detenu could make effective representation but even after that the respondent did not either supply the notification or other documents.

(15) It may be relevant to mention that the detenu had again requested the respondent vide his clarification/reminder dated 26.4.1991 after receiving the Memorandum dated 8.4.1991 from the respondent. In this clarification-cum-reminder the detenu had again reiterated his request as contained in the interim representation dated 21.3.1991 and mentioned that he is wholly handicapped in making purposeful representation on the basis of the nature and the material supplied to him as detailed therein. Again his request by way of clarification cum reminder dated 26.4.1991 of the detenu was rejected by the memorandum dated 14.5.1991 of the respondent and the same is set out as under: With reference to his representation dated 26.4.1991, Shri Tryba Marek, a Cofeposa detenu is hereby informed that his representation has been carefully considered by the Central Government but it is regretted that the same has been rejected.'

(16) It may be pertinent to mention that when the detenu did not receive positive reply of his requests, then ultimately he had sent an interim representation requesting for some information, clarification and documents etc. to make an effective and purposeful representation by his advocate dated 3.5.1991. In this document also, the Advocate for the petitioner has reiterated the request for supply of the documents and has mentioned the relevant documents and materials having not been supplied to the detenu and his client, is unable to make any effective and purposeful representation before the respondent in absence of relevant and vital documents. By another memorandum dated 14.5.1991, the representation made by Shri Trilok Kumar, Advocate on behalf of the detenu was rejected. The said memorandum is set out as under:-

'WITHreference to the representation dated 3.5.1991 made by Shri Trilok Kumar, Advocate on behalf of the Cofeposa detenu Shri Tryba Marek, Shri Trilok Kumar Advocate is hereby informed that his representation requesting for some information, clarification and documents, etc. has been carefully considered by the Central Government but it is regretted that the same has been rejected.'

(17) This is one of those exceptional cases where in spite of repealed requests of the detenu, the respondent chose not to supply the notification dated 8.11.1962 and other documents and also legible copies of the documents already supplied. This stand of the respondents cannot be rationally explained. It is indeed astonishing how the subsequent requests of the detenu and his Advocate were turned down in such a casual manner clearly reflecting total non-application of mind. One fails to understand how supply of the said notification would have prejudiced the stand of the respondents.

(18) Shri Kumar, Learned counsel for the detenu has relied upon the number of decisions particularly of the Supreme Court, to show that the respondents were under an obligation to supply the documents which were referred to and relied upon. Mr. Kumar referred to M. Ahamedkutty vs. Union of India and another 1990 (1) S.C.143. In this case, the Supreme Court observed that the non-furnishing of the copies of the bail application and bail order has resulted in the violation of Article 22(5) of the Constitution of India.

(19) Shri Kumar has also relied upon Bhupinder Singh v. Union of India. 1987 S.C.C.328. In this case, the Court has held that, since we find that even before legible copies of documents were supplied to the detenu, the detention order was confirmed on June 14, 1986 of making a representation and there was, therefore, a clear contravention of the right guaranteed by Article 22 of the Constitution.

(20) The detenu has also placed reliance on the case of Manjit Singh Grewal alias Gogi v. Union of India, : AIR 1990 SC731 . In this case also, the detention order was rendered illegal for the non supply of documents.

(21) In Manju Narula vs. K.L. Verma and others 1989 (2) Delhi Law 27, this court has taken the view that documents demanded by the detenu ought to be supplied to him. This court has taken support from the Judgment of the Supreme Court in Kirit Kumar Chaman Lal Kundaliya v. Union of India and others, Air 1981 S. C. 621. The Supreme Court has observed that even the High Court was not competent to determine the relevance of those documents nor was it entitled to go into confidential files to see as to whether the documents were relevant or not so as to reject the plea of detenu in the writ petition filed under Section 226 of the Constitution of India. therefore, there was no justification for not supplying the notification in spite of repeated requests of the detenu.

(22) Shri Manan has placed reliance on Judgment of the Supreme Court in Kamarunnissa v. Union of India and another : 1991 CriLJ2058 . This authority was cited for the proposition that all the documents which have been casually referred need not be supplied to the detenu. This case has no application on the facts of the present case. He has also placed reliance on Abdul Sattar Abdul Kadar Shaikh vs. Union of India and others, : (1990)1SCC480 . This authority was cited in support of the contention that no real prejudice has been caused to the detenu. This Judgment also does not support the respondent.

(23) On careful analysis of all these judgments, the position which clearly emerges is that all the documents which have been relied upon and referred to by the detaining authority have to be supplied to the detenu. In the instant case, the detenu was detained because of the contravention of the said notification, therefore, it cannot be said that this notification has not been relied upon by the

respondent. Non supply of the said notification is clearly violative of Article 22(5) of the Constitution. There is no justification in not supplying the notification in spite of the repeated requests by the detenu. The detention order has to be quashed only on this short ground of the non-supply of the said notification to the detenu. Large number of documents which were supplied to the detenu were not legible and in spite of repeated requests, these legible documents were not supplied to the detenu. Since the detention order is quashed on the ground of non-supply of the notification dated 8.11.1962, therefore, it is really not necessary to go into the controversy of the illegible documents and non supply of other documents.

(24) I allow the writ petition, make the Rule absolute and quash the impugned detention order and direct that the detenu be set at liberty, if not required to be detained in any other case.

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