

Abdullah Kadher Batcha Vs. the Commissioner of Customs (Airport) Customs House, Rajaji Salai, Chennai-1 and Another

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Court : Chennai

Decided On : Aug-10-1999

Reported in : 1999(3)CTC235; 2000(67)ECC55

Judge : P.D. Dinakaran, J.

Acts : [Constitution of India](#) -- Article 226; [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#)

Appeal No. : Writ Petition No. 13514 of 1999

Appellant : Abdullah Kadher Batcha

Respondent : The Commissioner of Customs (Airport) Customs House, Rajaji Salai, Chennai-1 and Another

Advocate for Def. : Mr. K. Kumar, Additional Central Government Standing Counsel, ;Mr. G. Sankaran, Government Adv.

Advocate for Pet/Ap. : Mr. M.M.K. Alfudeen, Adv.

Judgement :

ORDER

1. It appears that the petitioner has reliably understood that the respondents are taking certain proceedings against him, with regard to an alleged act of smuggling said to have taken place on 14.5.1999 for non-declaration of certain goods brought by him from Singapore, by Singapore Airlines, under the provisions of [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) (hereinafter referred to as 'COFEPOSA').

2. The learned counsel for the petitioner contends that the said proceedings initiated by the respondents against the petitioner is illegal and invalid, inasmuch as the very market value of the goods, which is the subject matter of the proceedings initiated against the petitioner, are estimated to the tune of Rs. 10,82,250, without taking into account a sum of Rs.1,00,000 towards the value of the goods declared by him. According to the learned counsel for the petitioner, the value of the goods shall be only a sum of Rs. 9, 82,250, if the value of the goods declared is taken into consideration and consequently, the provisions of COFEPOSA are not attracted. The learned counsel for the petitioner further contends that the legal and fundamental rights of the petitioner is seriously threatened due to the non-application of mind by the respondents, with regard to the alleged estimation of the value of the goods and hence, the petitioner seeks a writ of mandamus to forbear the respondents from taking any proceedings against the petitioner under the provisions of COFEPOSA in connection with the seizure of the goods, referred to above.

3. In support of his contentions, learned counsel for the petitioner, relies upon the decision of the Apex Court in Additional Secretary Government of India v. Alka Subhash Gadia, 1992 SCC (Cri) 301.

4. Mr.K. Kumar, learned Additional Central Government Standing Counsel and Mr.G. Sankaran, learned Government Advocate takes notice for respondents 1 and 2 respectively.

5. The learned Additional Central Government Standing Counsel appearing on behalf of the first respondent contends that the relief sought for in this writ petition is premature in nature and even though the first respondent has collected materials with regard to the alleged smuggling activities of the petitioner, he has

not taken any decision on the same.

6. The learned Additional Central Government Standing Counsel appearing for the first respondent further contends that the ratio laid down in *Additional Secretary., Government of India v. Alka Subhash Gadia*, 1992 SCC (Cri.) 301, which arise after passing of the detention order, but during the pre-execution stage, is not applicable to the facts and circumstances of the instant case, where the detention order is yet to be passed

7. I have given careful consideration to the submissions of both sides.

8. In *Additional Secretary., Government of India v. Alka Subhash Gadia*, 1992 SCC (Cri) 301, the Apex Court, under Articles 226 and 32 of the Constitution, has framed the following limitations, viz.

'(i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as courts of appeal or revision, correct mere errors of law or of facts;

(ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be by-passed;

(iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed;

(iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice or any constitutional provision;

(v) the Court may also intervene where

(a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or

(b) where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or

(c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose;

(vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the petitioner's legal rights, it will grant final relief but will not dispose of the petition only by granting interim relief;

(vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it ought to have, the Court interferes with the resultant order;

(viii) In proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded.'

9. Of course, the Apex Court has held that this Court has power to interfere with, when some legal and fundamental right of the individual is seriously threatened, though not actually invaded. But the fact remains that the above limitation was

made in the context of a case where the authority has taken a decision and a detention order was already passed, but not executed. In other words, the right of this Court to interfere with some legal and fundamental right of the individual, when it is seriously threatened, though not actually invaded, is available only if and after the authority takes a decision and passes an order of detention, which is not based on materials, but not prior to the passing of the final order. Therefore, I am obliged to accept the contention of the learned counsel for the first respondent that the above writ petition is premature as it would not be proper for this Court to entertain this writ petition, which would otherwise amount to an intrusion into the powers of the respondents, conferred under the provisions of COFEPOSA. Hence, writ petition fails and is dismissed. Consequently, WMP.NO. 19417 of 1999 is also dismissed. No costs.

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