Ibrahim Bachu Bafan

Vs

State of Gujarat and Others

And

Mithu Bawa Padhiyar

Vs

State of Gujarat and Others

Writ petitions (Criminal) Nos. 1541 and 1542 of 1984

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

12.02.1985

JUDGMENT

RANGANATH MISRA, J. -

1. In each of these applications under Article 32 of the Constitution the petitioner therein challenges the order of detention made against him under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) (referred to as the 'Act' hereinafter). As the facts are more or less the same and common contentions have been advanced, these two applications are being disposed of by a common order.

2. Petitioner in Writ Petition No. 1541 of 1984 was detained with effect from December 28, 1983, pursuant to an order made under Section 3(1) the Act on December 7, 1983. The detention was assailed before he Gujarat High Court in a writ petition filed on January 22, 1984. While the said application was being heard, the order of detention was revoked on April 5, 1984, but on the same day another order under Section 3(1) of the Act was made directing his detention and he was detained pursuant to that order with effect from the very day. The second order of detention was challenged by a new writ petition before the High Court. A Division Bench of that Court by order dated August 8, 1984, quashed the same by holding that the order of detention was violative of Article 22(5) Constitution and directed the petitioner to be set at liberty. 20, 1984, a fresh order was made detaining the petitioner effect from the same day the petitioner was detained again. On the date of detention the petitioner was served with documents along with the grounds of detention. The writ petition has been filed in this Court challenging that order of detention.

3. So far as the petitioner in Writ Petition No. 1542 of 1984 is concerned, he was detained with effect from January 12, 1984, pursuant to an order under Section 3 of the Act dated January 2, 1984. That order of detention was assailed before the High Court and in course of the hearing of the writ petition, the order of detention was revoked on April 5, 1984. On the selfsame day another order of detention was passed and the petitioner was detained with effect from that date. On April 10, 1984, the petitioner assailed his detention by filing a second writ petition. On August 8, 1984, the High

Court quashed that order of detention on similar grounds as in the connected writ petition. On August 8, 1984, a fresh order of detention was made under which the petitioner has been taken into custody. His writ petition assails that order of detention.

4. During the pendency of these writ petitions before this Court the Act was amended by Central Act 58 of 1984. The Amending Act received assent of the President on August 30, 1984 but became effective from July 31, 1984. Section 9 of the principal Act of 1974 was amended by Section 2 of this Act and the amended provision authorised making of a declaration by the Central Government or any officer of the Central Government not below the rank of Additional Secretary to that Government on the basis of satisfaction that the detenu - "(a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or (b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or (b) abets or is likely to abet the suggling of goods into, out of or through any area highly vulnerable to smuggling; or (c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling". A declaration as contemplated by the amended provision was made by the Additional Secretary to the Government of India in the Ministry of Finance (Department of Revenue) in respect of each of the petitioners on September 18, 1984, and this declaration has been placed on record along with an affidavit of the respondents. Under Section 10 of the Act the maximum period of detention is one year where Section 9 is not invoked, but where a declaration is made, the maximum period is extended up to two years. When rule was issued an affidavit in opposition has been filed justifying the order of detention and the petitioner has also filed a rejoinder.

5. Mr Jethmalani appearing on behalf of the detenu in each of these writ petitions advanced a number of contentions but ultimately pressed one of them which in our opinion entitles each of the petitioners to succeed and the order of his detention to be quashed. That contention is that the power conferred under Section 11(2) of the Act is not available to be exercised where there has been no revocation under Section 11(1) of the Act of a previous order of detention but has been quashed by the High Court in exercise of its extra-ordinary jurisdiction. In order to haves a full comprehension of the point advanced by counsel it is necessary to refer to Section 11 of the Act. Section 11 of the Act provides :

> (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified -
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> (a) Notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;
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> (b) Notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.
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> (2) The revocation of a detention order shall not bar the making of another detention order under Section 3 against the same person.

6. Law of preventive detention within the ambit of which the Act is covered has been accepted by our Constitution. Challenges to legislations of preventive detention as being ultra vires the Constitution has, therefore, been repelled by this Court on more than one occasion. The in-built safeguards provided by the different statutes dealing with preventive detention have been accepted to be in keeping with the rule of law. There is judicial consensus that under the preventive detention

law, before the Act in question came into the field, repeated orders of detention could not be made. This Court had clearly indicated that more than one order of detention on the same grounds in succession would not be valid. Notwithstanding the aforesaid legal position, Section 11(2) of the Act authorises making of "another detention order under Section 3 against the same person." Counsel for both the parties have agreed that all the three orders of detention made in these cases were on the same grounds. Mr Mehta for the respondents has fairly conceded that as the law declared by this Court stood and but for the enabling provisions in Section 11(2) of the Act, the impugned orders would not stand a moment's scrutiny.

7. Mr Jethmalani does not intend to dispute the vires of sub-section (2) of Section 11 in those writ petitions but has contended that the ambit and scope of sub-section (2) of Section 11 extends to orders of revocation covered by sub-section (1). Otherwise stated, in situations not covered by sub-section (1) an order under sub-section (2) cannot be made. The heading of Section 11 is "Revocation of Detention Orders". Sub-section (1) authorises revocation by two authorities, namely, - (a) if the order has been made by an officer of a State Government, the State Government or the Central Government may revoke the order; and (b) if the order has been made by an officer Central Government or by a State Government, revocation permissible by the Central Government. Sub-section (1) of Section 11 indicates that the power conferred under it in the situations (a) and (b) is exercisable without prejudice to the provisions of Section 21 of the General Clauses Act. That section provides that a power to issue orders includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind such orders. Under Section 21 of the General Clauses Act, therefore, the authority making an order of detention would be entitled to revoke that order by rescinding it. We agree with the submission of Mr Jethmalani that the words "without prejudice to the provisions of Section 21 of the General Clauses Act 1897" used in Section 11(1) of the Act give expression to the legislative intention that without affecting that right which the authority making the order enjoys under Section 21 of the General Clauses Act, an order of detention is also available to be revoked or modified by authorities named in clauses (a) and (b) of Section 11(1) of the Act. Power conferred under clauses (a) and (b) of Section 11(1) of the Act could not be exercised by the named authorities under Section 21 of the General Clauses Act as these authorities on whom such power has been conferred under Act are different from those who made the orders. Therefore, conferment of such power was necessary as Parliament rightly found that Section 21 of the General Clauses Act was not adequate to meet the situation. Thus, while not affecting in any manner and expressly preserving the power under Section 21 of the General Clauses Act of the original authority making the order, power to revoke or modify has been conferred on the named authorities.

8. The rule relating to interpretation of statutes is too well settled to be disputed that unless a contrary intention is expressly or by necessary implication available, words used in a statute should be given the same meaning. This position is all the more so where the word occurs in two limbs of the same section. We, therefore, agree with the contention advanced by counsel for the petitioners that the word 'revocation' in sub-section (2) has the same meaning and covers the same situations as provided in sub-section (1) of Section 11 of the Act. This would necessarily mean that the power under sub-section (2) would be exercisable in cases covered by sub-section (1).

9. This leads us to examine the tenability of the submission of Mr Jethmalani as to the true meaning of the world 'revocation.' 'Revoke' is the verb and 'revocation' is its noun. These words have no statutory definition and, therefore, would take the commensense meaning available for these words. Black's Law Dictionary gives the meaning of the word 'revoke' to be "the recall of some authority or thing granted or a destroying or making void of some deed that had existence until the act of

revocation made it void". Wharton's Law Lexicon gives the meaning to be "the undoing of a thing granted or a destroying or making void of some deed that had existence until the act of revocation made it void". The Shorter Oxford English Dictionary gives the meaning of the word 'revocation' to be "the action of recalling; recall of persons; a call or summons to return; the action of rescinding or annulling, withdrawing...". The meaning of the word 'revoke' has been given as "to recall, bring back, to restore, to retract, to withdraw, recant, to take back to oneself". The true meaning of the verb 'revoke' and its noun, therefore, seem to signify that revocation is a process of recall of what had been done. According to the Webster's Third New International Dictionary, the word means - "an act of recalling or calling back, the act by which one having the right annuls something previously done". According to the Corpus Juris Secundum. 1952 Edition, Vol. 77, the word 'revoke' carries with it "the idea of cancellation by the same power which originally acted and not to setting aside of an original order by higher forum of power or jurisdiction. It does not mean repudiation".

10. The power conferred under clauses (a) and (b) of sub-section (1) of Section 11 is in fact extension of the power recognised under Section 21 of the General Clauses Act and while under the General Clauses Act, the power is exercisable by the authority making the order, the named authorities under clauses (a) and (b) of Section 11(1) of the Act are also entitled to exercise the power of revocation. When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to be void and striking down the same it nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the situation is obtained is patently different and while one process is covered by Section 11(1) of the Act, the other is not known to the statute and is exercised by an authority beyond the purview of sub-section (1) of Section 11 of the Act. It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-section (2) of Section 11 is not applicable and the detaining authority is not entitled to make another order under Section 3 of the Act on the same grounds.

11. We are of the view that this seems to be the legislative scheme. The pronounced judicial view of this Court was that repeated orders of detention are not to be made. Parliament while making provision in Section 11(2) of the Act, must be taken to have been aware of such view and in conferring the power of making repeated orders, safeguards have been provided under sub-section (1) by confining the exercise of power to limited situations. Clothing the prescribed authority to exercise power under Section 3 even in a situation where the Court has intervened to bring about nullification of the order of detention would give rise to complicated situations and keeping the scheme of the section in view we are of the clear opinion that where an order is quashed by a court in exercise of extraordinary jurisdiction, the power of making a fresh order under sub-section (2) of Section 11 is not available to be exercised.

12. In view of this conclusion of ours, the orders made on August 20, 1984, on the same grounds on which the previous orders of detention had been made and which had been quashed by the High Court are not tenable in law. Once those orders are held to be invalid, the declarations made subsequently under Section 9 of the Act could not be made and would have no effect. Leaving all other questions mooted in the writ petitions and partly argued before us by Mr Jethmalani open for examination in suitable cases, we allow these writ petitions on the rationale of our conclusion indicated above. The petitioner in each of these cases is directed to be set at liberty forthwith.

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