

Pushpa Devi M. Jatia

Vs

M. L. Wadhavan, Additional Secretary, Government of India and Others

And

Pushpa Devi Jatia

Vs

Union of India and Others

Special Leave Petition (Civil) No. 1370 and Writ Petition No. 363 of 1986

(A. P. Sen, S. Natrajan JJ)

19.12.1986

ORDER

A. P. SEN, J. -

1. This petition for special leave directed against the judgment and order of the Bombay High Court dated May 3, 1986 and the connected petition under Article 32 of the Constitution raise common question and therefore they are disposed of by this common order. The petitioner by a petition under Article 226 filed before the High Court prayed for the issuance of a writ of habeas corpus, which is also the prayer before us, for the release of her husband Mohanlal Jatia, who has been detained by an order of the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, dated December 13, 1985 under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, on being satisfied that it was necessary to detain him "with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange."

2. In support of these petitions, learned counsel has mainly advanced the following contentions, namely : (1) As is evident from the grounds of detention, the detaining authority relied upon the statements recorded by R. C. Singh on the assumption that they were valid statements under Section 40 of the Foreign Exchange Regulation act, 1973 although they were in reality not so, inasmuch as R. C. Singh was not a "gazetted officer of Enforcement" within the meaning of Section 40 of the Act and therefore there was no material on which the satisfaction of the detaining authority could be reached. (2) In a habeas corpus petition, the burden was entirely upon the respondents to produce the relevant records and to substantiate that the detention was strictly according to law. The failure on the part of the respondents to produce the relevant notification showing that R. C. Singh was a gazetted officer of Enforcement within Section 40 of the FERA when he recorded the statements in question must necessarily lead to inference that he was not a gazetted officer of Enforcement. (3) The impugned order of detention was void ab initio and it could not be sustained by recourse to the de facto doctrine or any assumption that R. C. Singh was acting under the colour of his office as a gazetted officer of Enforcement or in treating the statements to be valid being relatable to Section

39 (b) of the FERA. (4) It is not possible to predicate to what extent, and in what manner, the mind of the detaining authority was influenced by his wrongful assumption that the statements recorded by R. C. Singh who was not a gazetted officer of Enforcement, were statements made under Section 40 of the FERA, and even assuming that the statements recorded by R. C. Singh could be treated to be statements relatable to Section 39 (b) of the Act, it is not possible to say whether the detaining authority would have based his satisfaction upon such material. (5) There was non-application of mind on the part of the detaining authority as the grounds of detention are based on several factual misstatements. According to the learned counsel, the factual errors were self-evident as the entries relied upon in paragraph 44 of the grounds of detention, do not find place in the account books of Messrs Greenfield Corporation. The failure of the Central Government to place before the detaining authority, the original account books of Messrs Greenfield Corporation, deprived the detaining authority to apply his mind to the correctness or otherwise of the facts stated therein. (6) There was infraction of the constitutional safeguards enshrined in Article 22 (5) of the Constitution inasmuch as there was failure on the part of the detaining authority to consider the representation filed by the detenu under Section 8 (b) of the COFEPOSA through one Ashok Jain and received at the President's Secretariat on April 15, 1985 and therefore the impugned order of detention was vitiated and the continued detention of the detenu was rendered illegal and void. Other subsidiary questions were also raised. Having given the matter our anxious consideration, we are of the considered opinion that none of the contentions can prevail.

3. We have also heard learned counsel for the parties on the application made by the Union Government under Section 340 of the Code of Criminal Procedure, 1973 for prosecution of the persons responsible for forging the document purporting to be the alleged representation made by the detenu under Section 8 (b) of the COFEPOSA on April 15, 1985 as, in fact, no such representation was ever made, and for making alleged interpolations in the relevant records. We reserve our orders thereon.

4. Accordingly, the special leave petition and the writ petition are dismissed. The detailed reasons for the judgment and the consequential directions, if any, shall follow.

</html