

Vinodchandra Chimanlal Shah and others

Vs

Union of India and others

I.A. No. 101 of 1991 In Transfer Petn. Nos. 457 - 489 of 1989

(M. N. Venkatachaliah, S. Mohan, G. N. Ray JJ)

19.12.1991

ORDER:-

1. The following eight petitions under Article 226 of the Constitution are stated to be pending before the High Court of Gujarat

- (i) Special Criminal Application No. 909/ 90
- (ii) Special Criminal Application No. 514/ 91;
- (iii) Special Criminal Application No. 312/91;
- (iv) Special Crl. Application No. 381/91;
- (v) Special Criminal Application No. 581/91;
- (vi) Special Crl. Application No. 380/91;
- (vii) Special Crl. Application No. 583/91;
- (viii) Special Crl. Application No. 499/ 91.

One of the grounds common to these petitions is as to the constitutional validity of the "Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976" as also the validity of the "Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974". In addition, the action initiated under the provisions of those statutes is also assailed.

2. This Court, by its order dated 25-10-1989, directed a stay of further proceedings in all these and similar matters before the High Court in view of the circumstance that similar challenge to the constitutional validity of the said statutes was under consideration by this court and the matters had been referred to a Bench of Nine-Judges and that in the circumstances it was considered not expedient that the High Court should also concurrently proceed with the matters.

3. Shri Parekh, learned counsel appearing in support of I. A. No. 101 submits that the pronouncement of the Nine-Judge Bench on the question of the vires of the statutes might take its own time; that petitioners in the aforesaid eight petitions would not wish to press the ground of the constitutional invalidity in their petitions and would confine the challenge only to the action taken against the petitioners as impugned in the said petitions and in view of this undertaking by the petitioners, there should be no impediment in the High Court proceeding with the petitions on the

merits of other contentions. It is submitted that the general stay ordered on 25-10-1989 be modified insofar as these eight petitions are concerned so that they may be permitted to be proceeded with in the High Court in view of the fact that the question of constitutionality will not be required to be pronounced upon in the petitions.

4. This prayer is not opposed by the Union of India, on the understanding that the question of constitutional validity would not be permitted to be raised in the High Court in the aforesaid petitions.

5. Accordingly, we clarify that the order of stay dated 25-10-1989 will not affect the aforesaid eight petitions before the High Court and that it shall be open to the High Court to proceed with these matters and dispose them of in accordance with law. We might also indicate that the petitions be disposed of expeditiously and request the High Court accordingly. In the meantime, the State of Gujarat, wherever counter-affidavits have not already been filed by it, shall be permitted to file counter-affidavits in the High Court within three weeks from today. This order will also dispose of the Transfer Applications filed in this court by both sides in respect of these eight cases for withdrawing them to this court which relief, in view of our present order, does not survive.

Order accordingly.

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