SUPREME COURT OF INDIA

Sheetal Manoj Gore

Vs

State of Maharashtra and Others

Writ Petition (Criminal) No. 26 of 2006

(B. P. Singh and R.V. Raveendran, JJ)

21.08.2006

JUDGMENT

B. P. SINGH, J.

The instant Habeas Corpus petition has been filed by the petitioner Sheetal Mnoj Gore, (The Deetnu) impugning the order of detention passed under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on January 27, 2006. The order of detention has been challenged mainly on three grounds namely, delay in passing the order of detention, non-application of mind by the detaining authority and supply of documents in a language which he did not understand.

2. According to the petitioner, the detenu is the proprietor of M/s. Manoj Enterprises. It is stated in the impugned grounds of detention that the detenu acted as an agent of some exporters and was found to be involved in fraudulent exports made by those exporters. On a perusal of the order of detention it would appear that goods seized were found to be mis-declared as to their nature and value. Some of the seized goods were goods cleared without payment of Central Excise duty from factories declaring them as meant for export but diverted to local market. In the corresponding airway bills the goods were described as "Industrial Raw Material" as against their specific names. On a consideration of all the material placed before her the detaining authority was satisfied that the petitioner had played a very crucial role in perpetuating the whole fraud on the revenue along with two others. The detenu had, therefore, actively aided and abetted the smuggling of the goods as

defined by Section 2(39) of the Customs Act, 1962, and as adopted in the COFEPOSA Act, 1974 vide Section 2(e) thereof. Considering the nature and gravity of the offence and the well organized manner in which the detenu was engaged in prejudicial activities, with a view to prevent him in future from abetting smuggling of goods, it was necessary to detain him under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

3. It is the case of the petitioner that the first statement of the detenu was recorded under Section 108 of the Customs Act by the officers of the DRI on March 29, 2005. Thereafter, several statements of his were recorded, the last on April 28, 2005.Similarly, the statements of his accomplices were also recorded between March and June, 2005. The detenu was arrested on March 30, 2005 in connection with a criminal case registered against him but he, as well as one of his accomplices, was released on bail on April 12, 2005. On January 10, 2006 the impugned order of detention was passed.

4. Shri Uday U. Lalit, learned senior counsel appearing on behalf of the petitioner submitted that there was an inordinate delay in passing the order of detention which resulted in snapping of the live link between the acts complained of and the order of detention. He submitted that the prejudicial activity of the detenu must have come to the notice of the detaining authority some time in March, 2005, but the order of detention was passed 1C months later. If there was really any material to support the allegations against the detenu, and there was urgency in the matter, the detaining authority could not have waited for so long before passing he order of detention. He further submitted that the detaining authority who passed the impugned order namely, Smt. Chandra Iyengar, was empowered under Sec. 3(1) of the COFEPOSA Act, 1974 to act as a detaining authority by the State Government of January. 10, 2006 Before her one Ms. Neela Satyanarayana was empowered under Section (3) (1) of the Act to act as the detaining authority. She had been so empowered on June 3, 2003 and continued as such till January 9, 2006. She must have received the proposal for the detention of the detenu between April 12, 2005 and September 12, 2005 that is the date of release of the detenu on bail and the date of receipt of further generated documents as mentioned in para 28 of the impugned grounds of detention. Despite this Neela Satyanarayana did not issue any order of detention against the detenu. It appeared from the record that on October 21, 2005 she had made an endorsement for issuance of detention orders against the detenu and others, but no such orders were issued. The impugned order of detention was issued by Smt. Chandra Iyengar, who was empowered to act as the detaining authority under the Act only on January 10, 2006 and who issued the impugned order of detention on January 27, 2006. It was, therefore, submitted that from March, 2005 till January, 2006 no order of detention was passed and this inordinate delay in issuing the order of detention itself established that there was no urgency in the matter neither was there material to reach the alleged subjective satisfaction, nor was it necessary to detain the detenu under the provisions of the Act.

5. The detaining authority filed a very detailed affidavit in reply explaining the steps taken during this period. She explained that the proposal for the issuance of an order of detention was processed during the tenure of her predecessor and thereafter during her tenure. The processing of such proposals is a continuous process and every effort is made to see to it that necessary steps and the procedures prescribed are legally followed by the detaining authority. The statement of the detenu under Section 108 of Customs Act, 1962 was recorded on March 30, 2005 where in he disclosed about the nature of his job and his involvement as also the involvement of others, and the role

played by him in the exports detailed in the grounds of detention. From the perusal of the documents, it was revealed that from January, 2003 to March, 2005, the concerned firms indulged in exports of various bulk drugs and formulations. The detenu had played a crucial. Role in clearing and substituting the original goods with cheap talc; in preparing Airway Bills and Bills of Lading with misleading description of "industrial raw material" against specific description of goods in respective export documents; in clearing the substituted goods, in coordinating such exports with agencies/persons as per plan, all for a consideration. After considering these prejudicial activities of the detenu, the sponsoring authority first forwarded the proposal to the Screening Committee for its approval. The Screening Committee in its meeting held on June 14, 2005 approved the said proposal. Thereafter, the sponsoring authority forwarded the proposal to the office of the then detaining authority which was received on July 7, 2005. The detaining authority found that the complete set of documents were not enclosed and therefore, complete set of documents was called for from the sponsoring authority on July 11, 2005 which was forwarded on the same day. The proposal ran into 778 pages, and apart from the detenu, there were proposals for detention of two other persons involved. While the scrutiny was undertaken, further generated documents were received on September 12, 2005. A detailed note was prepared and put up on September 26, 2005. A detailed note was prepared and put up on September 26, 2005 which was forwarded to the Under Secretary on the same day. The Deputy Secretary prepared his note and gave his endorsement on October 20, 2005 and forwarded it to the then detaining authority. The then detaining authority instructed her office to make a chart stating the extent of involvement of each of the three proposed detenus and the role played by them. Accordingly, a note was prepared and submitted on the next day before the Under Secretary who immediately forwarded it to the Deputy Secretary, who after giving his endorsement forwarded the file to the then detaining authority. On October 21, 2005, the then detaining authority gave her endorsement with instruction to issue orders in respect of all three detenu. In the meantime, further generated documents were received from the sponsoring authority on November 18, 2005 apart from receipt of pre-detention representations made by the petitioner on November 24, 2005 and November 25, 2005. The file was submitted before the Under Secretary on November 29, 2005, who after giving his endorsement forwarded it to the Deputy Secretary on November 29, 2005. The remarks of the sponsoring authority were called on the representations which was forwarded by the sponsoring authority on Deember 13, 2005. In the meantime, the sponsoring authority forwarded further generated documents on December 13. 2005 and December 25, 2005. A detailed note was again prepared on January 6, 2006 and was put up for approval before the Under Secretary on the same day. The Under Secretary gave his endorsement and forwarded it to the Deputy Secretary who gave his endorsement on January 7. 2006. The deponent was empowered as the detaining authority by order dated January 10, 2006. The proposal was placed before her and after careful consideration of the representations the same were rejected on January 18, 2006. Thereafter the sponsoring authority again forwarded further generated documents on January 20, 2006. The wife of the detenu also sent a representation of January 20, 2006. The representation and the generated documents were again considered in the Department and thereafter the representation was rejected on January 25, 2006. The generated documents were also processed and the matter put up before the detaining authority. She made her endorsement on January 25, 2006 and also reconstructed and reformulated the grounds of detention which were got typed and approved on January 25, 2006. The approved draft grounds of detention alongwith the fair copies were placed before her on January 27, 2006 and after carefully going through the papers and after being subjectively satisfied that the order of the detention against the detenu was justified, the order of detention was issued on January 27, 2006.

6. It will thus appear that the detaining authority has given a very detailed and vivid account of the manner in which the file was dealt with in the Home Department of the Government of Maharashtra. It will appear that the sponsoring authority had collected large volume of evidence, which required to be examined. At the same time, several representations were received from time to time which also required to be considered at various levels. In the meantime the sponsoring authority had also collected more documents which it had sent to the office of the detaining authority. All this took time. Therefore, it is not as if the detaining authority was oblivious of the importance and urgency of the matter. The detailed account given by her shows that the matter was being continuously processed and considered. It was on account of the consideration of voluminous material which was received at different stages that some time was consumed.

7. We are satisfied that there was no delay on the part of the authorities in taking necessary steps in connection with issuance of the order of detention. Moreover, the time taken in completing the process for issuance of order of detention has not to be tested applying the same standard as is applied in the matter of consideration of representation of a detenu. This Court in several judgments has emphasized the promptness with which the concerned authority must deal with representation received from the detenu. The right to represent and its fair and prompt consideration by the concerned authority is constitutional right guaranteed to a detenu. The authorities dealing with such representations must be aware of the fact that the detenu is languishing in custody without a trial. Their conduct must, therefore, disclose a consciousness of the urgency in the matter. The norm and standards laid down by this Court in the matter of consideration of the representation of a detenu, cannot be strictly applied to the case of processing of a proposal for detention of a person under the Act. No doubt, if there inordinate delay in issuing the order of detention, it may well be argued that the live link between the prejudicial activity of the detenu and the purpose for which order of detention is issued is snapped, and being stale there was no justification for issuance of an order of detention. In the facts and circumstances of this case, we are satisfied that the details furnished by the detaining authority provide sufficient explanation for the time taken in issuing the order of detention. We are also satisfied that the detaining authority was conscious of the fact that the matter required immediate attention, but in view of the voluminous record which had to be scanned and scrutinized before issuance of the order of detention, the order could not be issued earlier.

8. There is one other reason which explains why the order of detention could not be issued earlier. We have been informed that the petitioner had moved the High Court and obtained an order of stay on June 30, 2005. Such an order was passed in view of the fact that an application for compounding of the offence was pending and it was, therefore, prayed that pending consideration of that application, no such proceedings should be resorted to. It appears that the said order was modified on October 19, 2005. This also explains why the order could not be passed earlier and only after the order could not be passed earlier and only after the order was modified, the then Detaining Authority had made an endorsement for the issuance of order of detention, but the same could not be issued immediately for the reasons explained by the Detaining Authority. We, therefore, find to substance in the first submission urged on behalf of the petitioner.

9. The second submission urged on behalf of the petitioner relates to non- application of mind by the detaining authority. It was submitted that the detaining authority, who issued the order of detention took charge on January 10, 2006. She issued the order of detention on January 17, 2006. In between there were some holidays and, therefore, the working days were reduced to 12. From the

counter affidavit filed on behalf of the detaining authority, it appears that the documents ran into about 2000 pages. The detaining authority had other responsibilities to shoulder in the Home Department and having regard to the nature and volume of work handled by such officers it was hardly possible for her to consider all the material on record and to reach the requisite subjective satisfaction in the matter. If the earlier detaining authority could not issue the order of detention for several months, it was surprising that the present detaining authority performed the same job in just a few days. Apparently, therefore, the detaining authority issued the order of detention in great haste and without application of mind. She signed the order of detention on the grounds which were perhaps prepared by her predecessor.

10. The detaining authority has replied to these allegations. She has asserted that as a detaining authority she considered the relevant material and only after being subjectively satisfied that it was necessary to issue the order of detention, -she issued the order of detention. She had herself formulated the grounds of detention and the grounds alongwith documents were furnished to the detenu. She has denied that due to work assigned to her hardly got any time to apply her mind to the proposal and the documents and to formulate the grounds of detention on the basis of the material collected. She has denied the allegation that she could not have issued the order of detention within such short period and that she had issued the order in great haste, without application of mind, and signed the grounds of detention prepared by others. She has stated that processing of proposal for issuance of detention order was a continuous process undertaken by the detaining authority. It was firstly undertaken by Neela Satyanarayana and from January 10, 2006 by the deponent.

11. We are not impressed by the arguments advanced on behalf of the petitioner, The order of detention was not prepared overnight. As explained by the detaining authority it is a continuous process. The proposal of the sponsoring authority is first examined by the Screening Committee and thereafter by the officers of the Home Department at various levels. The material collected is then placed before the detaining authority for its consideration. In this case the sponsoring authority had made a proposal much earlier, but from time to time further generated documents were being dispatched to the detaining authority which were considered by the detaining authority. There is really no basis for the assertion that the detaining authority without applying her mind passed the order of detention.

12. Learned counsel submitted that detaining authority in all probability, had signed the grounds of detention which had earlier been prepared by her predecessor. The submission is based on the fact that in paragraph 28 of the ground it is stated as follows:-

"While scrutinizing the proposal and relief upon documents I received further generated documents on 12-09-2005, 13-12-2005, 23-12-2005 and 20-01-2006 I also received representations dated 24-11-2005, 25 -11 -2005 and 20-01 -2006 made by Mrs. Sheetal Manoj Gore on behalf of you. Before passing the detention order I have considered all documents and all representations".

13. The submission is that the documents referred to therein except those dated January 20, 2006 were received before the detaining authority was empowered to act in that capacity. The averment is so worded as to give the impression that the detaining authority had herself received the documents

generated between the months of September and December, 2005. It was submitted that in all likelihood this paragraph was simply copied form the earlier draft grounds of detention which may have been prepared by the then detaining authority. We find no substance in the submission. A mere reading of the paragraph discloses that it also refers to documents received on January 20, 2006. This itself establishes that the detaining authority must have applied her mind to the documents mentioned therein, because if it had not done so, there could be no reference to the documents dated January 20, 2006 in the grounds of detention, since those did not exist when the earlier detaining authority may have finalized the draft grounds of detention. This completely demolishes the charge of the detaining authority acting mechanically. We entertain no doubt that the detaining authority did apply her mind to the material on record and only on being subjectively satisfied about the compelling necessity to issue the order of detention, issued the order and grounds of detention. It may be that she also considered the draft grounds of detention which may have been prepared by the earlier detaining authority, but that by itself will not vitiate her order if she applied her mind to the relevant material on record and recorded an independent subjective satisfaction on the basis thereof. In the fact and circumstances of this case, we are satisfied that the detaining authority did not proceed to issue the order of detention mechanically on the basis of the subjective satisfaction of her predecessor, but applied her mind to the material on record and independently reached the subjective satisfaction that it was necessary, in facts of the case, to issue the order of detention. The second submission urged on behalf of the petitioner is also rejected.

14. The last submission urged on behalf of the petitioner is that translated copies of all documents, statements and other materials were not furnished to the detenu within the statutory period of five days. The documents served upon the detenu were in the English language which he did not understand. Some letters written by the wife of the detenu to the authorities much before the order of detention was served disclose that the detenu did not know the English language and was only conversant with Marathi and Hindi languages. There was thus a breach of Article 22(5) of the Constitution of India. For this reliance was placed on the decision of this Court reported in Ibrahim Ahmad Batti v. State of Gujarat and others[. . We may at the threshold notice that this decision was reconsidered by a larger bench of this Court in State of Rajasthan and another etc. v. Talib Khan and others etc 2 which overruled the decision in Batti's case. However, having regard to the facts of this case, it is not necessary for us to consider the legal submission urged on behalf of the detenu.

15. It is not in dispute that the order of . detention was served on the detenu on January 30, 2OO6.While receiving the order of detention and other documents served therewith the detenu made an endorsement on each page acknowledging receipt the documents. No doubt there is an endorsement in Marathi but what is significant is that he has signed in English. On the following day the detenu no doubt sent a letter to the detaining authority through the Jail Superintendent that the order of detention and the grounds of detention supplied to him were in English language which he did not understand. He, therefore, requested that he may be supplied all those documents translated in Marathi. Thereafter, on 10th February, 2006 i.e., within 10 days the translated documents were made available to him. There is ample material on record to establish that the detenu in fact was conversant with the English language and corresponded with the authorities in that language. The authorities, therefore, had no reason to suspect that he did not know the English language. One such document on record is a letter addressed by him to the Directorate of Revenue Intelligence which is dated 24Ih December, 2005. The letter is written in the English language and signed by the petitioner in English. Counsel sought to explain this letter saying that the letter contains legal submissions and, therefore, that may be a letter drafted by his advocate and only

signed by the detenu. However, there is also another letter of 18lh January, 2006 written to the Senior Intelligence Officer, DRI Mumbai notifying his change of address. This letter is also in the English language and signed by him in English. There is, therefore, material on record to establish that the petitioner understands the English language and has been corresponding with the authorities in that language. Moreover, if one were to notice the manner in which he was conducting his export business, it would leave no manner of doubt that having regard to the large number of documents to be filed and required to be filled, he could not have conducted his business on such a large scale without being conversant with the English language. He has signed all documents in English.

16. It was urged before us that two representations by the wife of the detenu were submitted before the order of detention was served in which it was stated that the detenu did not understand the English language. Those documents are not before us and, therefore, we wish to make no observation in that regard. On the basis of the material before us we are satisfied that the detenu knows the English language and, therefore, service of the documents upon him in the English language did not breach Article 22 (5) of the Constitution of India. However, by way of abundant caution translated copies of documents were provided to him within 10 days of his request. We, therefore, find no merit in the last submission urged on behalf of the detenu.

17. Counsel for the petitioner then sought to urge before us that there was abnormal delay in this disposal of the representation and, therefore, the detention has become bad. The writ petition was filed soon after the order of detention was served on the detenu. The delay in the disposal of the representation was not subject of challenge in the writ petition. We are, therefore, not persuaded to examine that aspect of the matter. If so, advised the detenu may challenge the order of detention on that ground in separate proceedings.

18. We, therefore, find no merit in any of the contentions urged before us. This writ petition is devoid of merit and is accordingly dismissed.