

Bombay High Court

Lachhman Purshottam Bhagtani ... vs Union Of India And Others on 29 April, 1992

Equivalent citations: 1992 (3) BomCR 195, 1992 CriLJ 3685, 1993 (1) MhLj 32

Author: Puranik

Bench: N Chapalgaonkar, S Puranik

JUDGMENT Puranik, J.

1. The petitioner was detained under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 during the declaration of national emergency on 13-4-1976. However, on the termination of the national emergency on 21-3-1977 the petitioner was unconditionally released on 22-3-1977.

2. During the period of emergency was proclaimed the petitioner could not challenge his order of detention and after his unconditional release immediately after the period of emergency the question would have been only academic and was not challenged subsequently by the petitioner.

3. After these events of 1977, no steps were taken against the petitioner under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeitures of Property) Act, 1976 for a long period of nine years. It was only in the year 1986 that a letter dated 17-9-86 was received by the petitioner purporting to be under SAFEMA proceedings calling upon the petitioner to furnish requisite information regarding his properties and source of income, etc. The petitioner promptly replied to the same and furnished the required information in November, 1986. The above two letters are at Exhibits 'D' and 'E' to the petition.

4. After 1986 there was no action or no response to the petitioner's reply furnishing the particulars and information asked for. The petitioner was therefore justifiably under the impression that the proposed proceedings under SAFEMA have been closed. He was however surprised to receive a letter dated 7-2-1991 at Exhibit 'F' to the petition also under the under the subject of SAFEMA proceedings calling upon him to furnish the details of his property in his own name as well as in the name of his spouse and children and other relatives and to furnish the source of income for the same. The said notice apparently is issued under S. 18 of SAFEMA which gives powers to the authorities to investigate, inquire and compel the petitioner to furnish information. It is in these circumstances that within one month thereafter i.e. in March, 1991 the present petition came to be filed challenging the said SAFEMA notice as also the order of detention which the petitioner had suffered during the period of emergency.

5. It was contended by the petitioner that no action under the SAFEMA proceedings could be taken in view of the fact that the detention order which was issued against him during the period of emergency itself was illegal and void ab initio. He urged that at the time the order of detention was issued in 1976 no grounds were formulated pari passu along with the order of detention and as such, the order of detention is void in the eye of law. He also submitted that in fact no grounds were ever formulated even up to the date of release of the petitioner. Mr. Gursahani, therefore, submitted that since the order of detention is void, the SAFEMA Authorities cannot get any power to initiate proceedings under S. 18 or 16 or S. 6 of the SAFEMA.

6. The Deputy Secretary of the Government of Maharashtra, Home Department, has filed his affidavit-in-reply and he has categorically admitted that in the instant case he is unable to meet the contention of the petitioner that no grounds were formulated at the time the order of detention was passed or even thereafter because the entire original records of the detention proceedings have been destroyed since it was also pointed out in the reply affidavit that the detention orders and the proceedings therefrom are classified in category 'C' and destroyed after five years of its issuance. It is, therefore, apparent from the affidavit-in-reply that the respondents are unable to contest the petitioner's challenge to the order of detention on the ground of non-formulation of grounds of detention at the time of the formation of the subjective satisfaction. It is however contended by the respondents that the petition is not maintainable in view of the gross delay and laches on the part of the petitioner. Mrs. Ranjana Desai vehemently urged that the petitioner is challenging the order of detention of 1976 in the year 1992 after a lapse of over a decade and this Court should not entertain the petition after such undue delay. She also urged that even otherwise under the SAFEMA proceedings a notice was issued in the year 1986 to the petitioner to which he had replied but he had failed to challenge the said notice and it is for the first time in the year 1991 after a lapse of five years that he has approached the Court challenging the SAFEMA proceedings and consequently the detention order. She placed reliance on the judgment delivered by the Division Bench in Criminal Writ Petn. No. 1309 of 1990 decided on 15th July, 1991, by Mrs. Sujata Manohar and Mr. Justice B. N. Srikrishna as also on Criminal Writ Petn. No. 3 of 1991 dated 16th December, 1991 decided by Justice Kamat and Justice Desai at Panaji Bench Goa. We have with the assistance of the learned counsel gone through these two judgments. In the case decided by the Bombay High Court in Criminal Writ Petition No. 1309 of 1990, the facts were very gross. A notice under S. 6(1) was issued immediately after the detention period was over and in response to the said notice the petitioner therein had appeared before the competent authority for several hearings held between the period 8-10-85 to 19-11-90. Several dates of hearing have been mentioned in the said judgment on which date the petitioner had participated in those proceedings before the SAFEMA Authorities. It is thereafter that the petitioner chose to file a writ petition challenging the said SAFEMA proceedings. In our opinion, the Division Bench has rightly considered the ground of delay in the special circumstances prevailing in the said case. Such is not the case in the present writ petition where immediately after a notice under SAFEMA, the petitioner has approached the Court within one month while he has explained why did not move this Court for the period 1986 to 1991 because there was no response from the SAFEMA Authorities after the furnishing of the requisite information and he was justifiably assuming that the SAFEMA proceedings against him have been treated as closed.

7. Other case decided by the Goa Bench vide Criminal Writ Petition No. 3 of 1991 also deals with a case where the action of forfeiture of property has been initiated under S. 6(1) of the SAFEMA on 26-11-82 and it was after a lapse of nine years without any explanation for the delay or justification for the delay the petitioner had approached the Court for challenging the order of detention. It is pertinent to note in the said case that the petitioner had also challenged the order of detention on merits before the Gujarat High Court and was unsuccessful by its decision dismissing his petition on 13-3-1982. It is in these special circumstances and said Division Bench, even while approving several other rulings referred to in paragraph 7, differentiated the same on facts.

8. It was also contended on behalf of the respondent that the petition is premature inasmuch as S. 6(1) notice is yet to be issued. We are not in agreement with the learned Public Prosecutor for the simple reason that a notice under S. 18 of the SAFEMA Act would itself amount to an infringement on the privacy of the petitioner in compelling him to disclose his property and sources of income. Furthermore, it gives powers to SAFEMA Authorities for investigation and it will necessarily mean the Authority compelling the attendance of the petitioner from time to time for the purpose of enquiry. At that stage itself the SAFEMA proceedings can be challenged if it is shown that the very source of power of the competent authority, namely, the detention order was illegal and void on any ground.

9. It was also contended that there is an alternate remedy afforded by the statute, namely, of preferring an appeal against the action under S. 6(1) of SAFEMA. In the instant case, notice under S. 6(1) is yet to be issued and as observed earlier the petitioner is justifiably aggrieved by action under S. 18 of SAFEMA calling upon him to disclose the property and source of income. On all counts therefore we are satisfied that the petition is not only maintainable but it is justifiably maintainable after notice under S. 18 of the SAFEMA. As regards the challenge to the order of detention, since there is no rebuttal on the part of the respondents and on the contrary there is an admission that the records of the detention proceedings are already destroyed long back, the respondent Authorities are unable to satisfy this Court whether the grounds were formulated contemporaneously along with the order of detention. This being the case, the order of detention will have to be held as void ab initio and will have to be quashed and set aside.

10. In the result, therefore, the petition succeeds. The impugned order of detention is quashed and set aside as also SAFEMA proceedings initiated by the competent authority under Ss. 16 and 18 of the said Act. Rule made absolute accordingly.

11. Certified copy be furnished on priority basis if applied for.

12. Petition allowed.