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CASE COMMENT ON MRS. SARASWATHI SESHAGIRI V. STATE OF KERALA (AIR 1982 SC 1165)

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INTRODUCTION

In India, courts have developed a few effective parameters for proper exercise of the discretion. Judicial control of administrative discretion can be exercised either at the stage of delegation or at the stage of the exercise of discretion. Failure to exercise discretionary arises when administrative discretion is without the application of mind, abdication of mind, without due care or when it imposes unreasonable fetters.

Development in adjudicatory matters is disquieting in some matters because, according to a well-known jurist, “*absolute power corrupts absolutely*”, and so the more the powers, the greater are possibilities of its being exercised in arbitrary manner. Discretion is to be taken on the basis of evidences in accordance with policy and constitutional aspects.

The case of *Mrs. Saraswathi Seshagiri v. State of Kerala*¹, discusses laws on preventive detention and arbitrariness that holds it in ambiguity. It

intertwines the Foreign Exchange Regulation Act, 1973, of the Customs Act, 1962 and related constitutional provisions, making it a debatable study of law that circumscribes a detenu.

FACTS OF THE CASE

1. Shri T.R. Seshagiri Iyer was a recruiting and travel agent. His office in New Delhi ‘*Viswak Agencies*’ recruits skilled laborers for employment purposes in the Gulf countries.
2. The Indian Currency amounted to Rs. 2,88,900 was recovered from his possession while he was bound for Abu Dhabi by Air India flight on 19-7-1981, which he was attempting to export illegally. He was liable for punishment under section 132 and 135 of the Customs Act, 1962.
3. The Inspector of Central Excise Air Customs, Trivandrum arrested him but later released on conditional bail. The Collector of Customs and Central Excise, Cochin made a report on 13th August, 1981 to the State Government

¹ AIR 1982 SC 1165



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where he was charged with the violation of the Foreign exchange Regulation Act, 1973 and the Custom Act, 1962. The Collector also added the copies of Mahazar, relating to the seizure from the detenu, admission made by the detenu on 19th July, 1981, before the Superintendent of Central Excise and Customs and the arrest of Mahazar.

4. The Government inferred that the detenu tried to export large amount of Indian Currency in a much-planned manner. The Special Secretary Kerala conferred upon Mr. Iyer under section 3(1) of the COFEPOSA Act 1974, that he be detained to prevent him for potential future endeavors of smuggling goods.
5. The wife of the detenu filed a petition under Article 32² to challenge the order of detention on grounds to export Indian Currency was an insufficient evidence.
6. The court however dismissed the writ petition.

ISSUES OF THE CASE

Whether the application of discretionary power of the administrative authority, of detention of the petitioner exercised reasonably?

APPELLANT'S CONTENTIONS

Appellant, the wife of detenu challenged the order of detention. She contended that the attempt by detenu (her husband) was not continuous and mere one-time attempt to export Indian currency to foreign country. According to her argument, this is an insufficient ground to conclude that this will be repeated on his part anytime in future. She contended that this detention was not necessary to prevent him from doing any such act in future.

JUDGEMENT

The judgment brought into consideration a tripartite involvement- the detenu, the detaining authority and the court. The court in this case, found the act of detention, of the administrative authority, fully justified and concluded by agreeing upon the fact that the petitioner might repeat this illegal act in future. The court mentions in this regard that, "*his past act in the*

² Art. 32, Constitution of India, 1950

circumstances might be an index of his future conduct”.

The contention was supported through the case of *Debu Mahto v. the State of West Bengal*³ by stating that the act of wagon breaking committed by the petitioner, though was single and solitary, was a reasonable ground for the satisfaction detention of the petitioner. Also, in the case of *Smt. Hemlata Kantilal Shah v. State of Maharashtra and Anr*⁴, the court was not satisfied that the detaining authority was violating provisions of the constitution while detaining the petitioner, from whom 93 slabs of ‘Palladium’ were recovered during clearance at the airport.

It was also mentioned that there were sufficient evidences in the circumstances of the case for the detaining authority to satisfy the court and so it is not for the court to question whether the grounds given were sufficient or not.

As a result, the court dismissed the grounds of both the contentions and the writ petition was dismissed.

ANALYSIS

Administrative discretion is a power given to the administrative bodies which make their functions flexible and workable in this era of modern government. These powers are conferred to the administrative authorities to deal with other non-anticipated situations. The statutes are formed in such a way that they possess the discretionary powers granted to these authorities. However, the powers given by statute cannot override the Fundamental Rights.

In this case, administrative discretion has been exercised by the Special secretary (Home) of Kerala under section 3(1) of the COFEPOSA Act and he passed orders to detain Shri T.R. Seshagiri Iyer. Under this section, he has the authority to detain any person against whom he is satisfied that he has smuggled the goods; or abetted them; or transported, concealed or kept these goods; or is dealing in these goods or in its abetting. When the representation was made by the detenu, it went from the Collector of Customs to the Government of India at Cochin. The comments of customs department were also received and then, the government sent this representation to the Advisory Board. The board, exercised the

³ AIR 1974 SC 816

⁴ AIR 1982, 8 1982 SCR (1) 1028

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power given to it under Section 8(f) of the COFEPOSA Act and declared that there were sufficient grounds to detain Shri. T.R. Sheshagiri and fixed the detention of one year. The section states that for every reported case, advisory board should be satisfied that there were sufficient grounds for the detention of the concerned person (*in this case Shri T.R. Sheshagiri*) and this detention can be for a period which the board thinks fit. However, section 10 of the Act, prescribes the maximum period for detention which shall be one year if confirmed under section 8(f) of the Act and do not apply to Section 9 of the same Act. As a result, the detention was confirmed for one year under the discretionary power given by the statute to the advisory board.

Therefore, when the petition was filed by detenu's wife, the court made the statement in the judgment that "*when the legislature has made only the subjective satisfaction of the authority making the order of detention; it is not for the court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority*"⁵ and as a result the petition was dismissed by the court. However, in a similar case of *Madan Gope v. State of West*

*Bengal*⁶ where discretionary powers were exercised but they were unreasonable, the petition was accepted.

To further analysis the case of Shri Seshagiri, he is liable for punishment under Section 132 and 135 of the Customs Act. Under section 132, he shall be punished with imprisonment for a term which may extend up to two years or fine or both because she made false declarations regarding the goods, he is carrying in his two brief cases and one suit case. Under section 135(1)(ii), he shall be punished for a term which may extend to three years or fine or both as he was exporting the currency improperly with a value less than 1 Crore rupees.

CONCLUSION

Discretion exercised by the authorities are under the purview of the statutory powers and properly exercised by the authorities. Also, the discretion took place with the application of mind by the authorities and hence, it is a reasonable discretion. There were enough facts to prove Shri T.R. Seshagiri guilty and hence, the detention was valid and first attempt to break the law cannot be an excuse. Therefore, the petition is the

⁵ *P. Kasinathan And Ors. vs The Chief Secretary To Government*, (1966) 2 MLJ 53

⁶ 1975 AIR 953, 1975 SCR (3) 531

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above case of *Mrs. Saraswathi Seshagiri v. State of Kerala* was dismissed. However, in case of *Narendra Kumar v. Union of India*⁷, there was partial administrative discretion by the authorities without the application of mind and hence the petition was partly allowed.

As per the amendment up to February 26, 2019, any person cannot take currency notes outside India up to an amount not exceeding Rs. 25,000 per person, doing so is a punishable offence.⁸



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⁷ AIR 1960 SC 430

⁸ Foreign Exchange Management (Export and import of currency) Regulations, 2015, (Amended up to December

04, 2020),

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10255&Mode=0>