

... which showed that the authorities are indulgent and considerate
 ... and he may expect to be taken to his house not as of right
 ... police escort at such intervals or on such occasions deemed just

The CrI. M. C. is disposed of as above.

IN THE HIGH COURT OF KERALA

Present : P. A. Mohammed J.

Sadasivan Nair v. Union of India and others

Constitution of India-Article 21 and 22-Detention order under
 ... Scope of Judicial review at the pre-execution stage of the order-
 ... cannot claim exercise of power of court as a matter of right-The
 ... can be exercised only in exceptional cases.

Held : When a citizen reasonably suspected of having passed an order
 ... against him, or that he came to know of an order of detention
 ... some other source he can seek judicial review on apprehension of
 ... of his personal liberty. "The power of judicial review is an
 ... part of our constitutional system and without it there will be no
 ... of laws and the rule of law would become a teasing illusion
 ... province of unreality". Therefore the remedy of judicial review is
 ... dispensable attribute for enforcement of constitutional rights. That
 ... when there is threat of deprivation of personal liberty, the citizen
 ... not wait till he receives an order depriving his right. "Therefore it
 ... well settled that even in a case of preventive detention it is not
 ... necessary for the proposed detenu to wait till a detention order is served
 ... before challenging the detention order". To insist that no order
 ... can be challenged until the actual detention in pursuance
 ... of takes place might irretrievably prejudice the right of proposed detenu
 ... situations. Therefore, there must be a reconciliation between,
 ... claims of the State and fundamental right of citizen. This is
 ... found to be the function of the court. (Para 8)

1980 SC 1789; 1992 (3) SCC 512; 1992 Supp. (1) SCC 496 — Relied on

Constitution of India - Article 22 - Challenge against detention order at
 ...-execution stage by a person who is absconding-When there is conflict
 ... security of the country and the personal liberty of a citizen, the

security of the country prevails over the other-Right of judicial review cannot be made available to a person who wants to avoid to submit to the order.

Held : In this case, the petitioner is not even a detainee as he has not been arrested nor was he surrendered. He is still an absconder. The right of judicial review therefore cannot be made available to a person who wants to avoid to submit to the order. The present case is one where the security of the country on the one side and the personal liberty of the citizen on the other said are involved. In the normal course of things, two rights always conflict with each other. This has always been a recurring problem for the court to adjudicate. When there is conflict between the security of the country and the personal liberty of a citizen, the security of the country prevails over the other. Personal liberty, however, may be, can be imagined of only when the country where the citizen is is safe and secure. That does not mean the personal liberty of a citizen is totally curtailed. (Para 12)

1992 Supp (1) SCC 496

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Sec. 3 (1) (ii) - Delay in execution of the order of detention in a pre-execution case the person absconding has no right to question the validity of the order of detention on the ground of delay in execution - Such a plea cannot be pleaded that the order of detention is bad for the failure to take steps under Section 7

Held : In a pre-execution case the person absconding has no right to question the validity of the order of detention on the ground of delay in execution thereof. The absconding person cannot, however, plead as a matter of right that the order of detention is bad for the failure to take steps under Section 7 of the Act. He cannot also plead, that the failure to take steps under Section 7, is fatal. It is for the court to decide whether failure to take action under Section 7 or delay thereof will vitiate the order of detention after considering the facts of each case.

1990 (2) SCC 1; AIR 1990 SC 220; AIR 1988 SC 227
AIR 1988 SC 1835; AIR 1979 SC 541

K. Ramakumar

Govt. Pleader (Lal George) and K. P. G. Menon

JUDGMENT

The petitioner is a canvassing agent of Customs Camp agency known as 'Arista Skyship Agencies'. The substantial ground of this writ petition is to restrain the respondents from executing orders