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W.P(Crl.)No. 56 OF 2003
ITEM NO.34

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CRL.) NO. 56 OF 2003

R.R. GOPAL @ NAKEERAN GOPAL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions and raising additional grounds and office report)

Date: 23/08/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE G.P. MATHUR

For Petitioner(s)Mr. T R Andhyarujina, Sr. Adv.
Mr. R Shanmugasundaram, Sr. Adv.
Mr. V G Pragasam, Adv.

Mr. E.C. Agrawala,Adv.

For Respondent(s)Mr. L Nageswara Rao, Sr. Adv.
Mr. Subramonium Prasad,Adv.

Mr. Gopalakrishnan, Adv.
Mr. Abhay Kumar, Adv.
Mr. Rahul, Adv.

Mr. U U Lalit, Sr. Adv.
Mr. Hemant Sharma, Adv.
Ms. Sushma Suri, Adv.

Mr. P. Parmeswaran,Adv.

UPON hearing counsel the Court made the following
O R D E R

The writ petition be treated as disposed of in terms of the signed order.

Though the petition stands disposed of, the interim order dated 16.6.2003 passed by this Court shall continue to remain in operation for a period of six weeks from today.

(D.P. WALIA)
COURT MASTER

(RADHA R. BHATIA)
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO.56 OF 2003

R.R. Gopal @ Nakeeran Gopal... Petitioner

vs.

Union of India & Ors.... Respondents

O R D E R

The learned senior counsel for the respondent-State of Tamil Nadu raises a preliminary objection to the maintainability of this writ petition submitting that the same does not deserve now to receive consideration by this Court.

Heard the learned senior counsel for the parties.

On 22.4.2003, this petition under Article 32 of the Constitution was filed by the petitioner seeking the following reliefs:

"(a)issue appropriate writ, order or directions and declare Section 4 of the Prevention of Terrorist Activities Act (Act 15 of 2002) as unconstitutional and void being violative of the rights under Article 14 and 21 of the Constitution of India;

(b)issue appropriate writ, order or directions declaring all the provisions of the Prevention of Terrorist Activities Act (Act 15 of 2002) as unconstitutional and void being violative of the rights under Article 14 and 21 of the Constitution of India;"

The same issue as to the constitutional validity of the Prevention of Terrorism Act, 2002 (POTA) was being examined by this Court in Writ Petition (Civil) No. 389 of 2002 (People's Union for Civil Liberties & Anr. vs. Union of India). By a judgment delivered on 16th December, 2003 reported as 2004 (9) SCC 580, this Court has, having gone into the issue in very many details, upheld the vires of the Act.

On 24.12.2002, G.O.Ms.No. 1262 Home (Pol.VII) was issued by the State of Tamil Nadu whereby the State Government specified the whole of the State of Tamil Nadu as notified area for the purpose of Section 4 of the said Act. Although this notification is dated 24.12.2002, challenge to the constitutional validity of this notification independently of the validity of the Act itself, was not raised in the petition. It is only after the delivery of the judgment dated 16th December, 2003 an application seeking amendment in the writ petition has been filed on 3.2.2004 wherein the constitutional validity of the notification dated 24.12.2002 is sought to be put in issue.

The constitutional validity of a notification issued under the Act is independent of the issue as to the constitutional validity of the Act itself. So far as the principal reliefs prayed for in the writ petition (reproduced hereinabove) are concerned, they do not survive for adjudication on merits in view of the decision of this Court dated 16th December, 2003 in Writ Petition (Civil) No. 389/2002 (People's Union for Civil Liberties & Anr. vs. Union of India) reported as 2004 (9) SCC 580. The petition, therefore, does not survive for adjudication. However, now by way of amendment in the main petition, the petitioner seeks to put in issue the constitutional validity of a State notification issued under the Central legislation. That remedy is available to the petitioner by filing an independent petition under Article 226 of the Constitution before the High Court. The prayer for amendment is refused, but reserving liberty to the petitioner to raise the same issue by filing a petition before the High Court if so advised.

In so far as the present writ petition is concerned, the same be treated as disposed of in view of the issue arising for decision being covered by the judgment of this Court dated 16th December, 2003 referred to hereinabove.

Though the petition stands disposed of, the interim order dated 16.6.2003 passed by this Court shall continue to remain in operation for a period of six weeks from today.

.....CJI (R.C. LAHOTI)

.....J

(G.P. MATHUR)

New Delhi;

August 23, 2004.

