CASE NO.:
Appeal (crl.) 178 of 1997

PETITIONER:
D. Anuradha

RESPONDENT:
Joint Secretary & Anr.

DATE OF JUDGMENT: 24/04/2006

BENCH:
K.G. BALAKRISHNAN & B.N. SRIKRISHNA

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN, J.

This appeal is preferred against the judgment of the Division Bench of the Madras High Court in a Habeas Corpus Petition filed by the present appellant challenging the order of detention passed by the authorities under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA Act'). The detention order was passed on 5.2.1996 and executed on 7.2.1996. The brief facts which are necessary to appreciate the contentions advanced by the appellant are as follows.

The detenue was born in Thanjavur district in Tamilnadu. He completed his Plus Two education in 1981 and later joined the B.E. Course in an Engineering College and completed the same in 1986. His father was a Government Servant working in a Local Administrative Department at Trichy. During 1988-89, the detenue came to Madras and worked as a Trainee in Madras Builders' Office. Later, he entered the field of real estate business and came in contact with others in that business. A firm was formed in 1991 by name M/s. Emerald Promoters Pvt. Ltd. The detenue married the present appellant in 1992. Apart from M/s. Emerald Promoters Pvt. Ltd., the detenue had an interest in some other financial concerns as well. The detenue was also the proprietor of M/s. T.C.V. Engineering Pvt. Ltd. in Madras. In 1995, the Enforcement Directorate received certain information that the detenue was engaged in transactions in violation of the provisions of the Foreign Exchange Regulation Act, 1973 (hereinafter being referred to as "FERA"). Notices were issued to the detenue under Section 40 of the FERA on 12.7.1995, 15.7.1995, 3.8.1995, 17.10.1995 and 25.10.1995. According to the Enforcement Directorate, the detenue evaded all these notices for about four months and ultimately the detenue was examined and his statements were recorded on various dates starting from 1.11.1995 to 31.1.1996. The Enforcement Directorate alleged that a letter dated 4.8.1994 of the Barclays Bank, Sutton, UK, with a list attached thereto, indicated that 21 cheques involving a total amount of US $ 1,04,93,313 were deposited in the account of M/s. Dipper Investments. Subsequently, some documents were recovered by the Enforcement authorities which revealed that 13 cheques for US $ 62,61,313 favouring M/s. Dipper Investment Ltd., were to be credited in account no. 3001-8937 of the said

company in Barclays Bank.

The detenue was questioned on his trips abroad to varied destinations such as Singapore, Hong Kong, London, etc. He was also questioned regarding his financial connection with Nainish Desai and one Ramachandran and also one Mr. Rajoo of Malaysia about depositing one million Singapore Dollars with the company, by name M/s. Adventure Holding Pvt. Ltd., Singapore, so as to make the detenue the Director of that Company in place of one N.C. Rangesh. From the materials collected by the Enforcement Directorate, the detaining authorities came to the conclusion that an order under Section 3(1) of the COFEPOSA Act is to be passed for preventive detention of the detenue.

On behalf of the detenue, the present appellant raised several contentions challenging the detention order. The Division Bench of the High Court rejected all those contentions and held that the detention order was legal. One of the contentions raised by the appellant was that the detenue was having the status of an NRI and, therefore, he was beyond the reach of the provisions contained in the COFEPOSA Act. This plea was elaborately considered by the High Court and rejected. The other contention raised by the appellant was that the representation submitted on behalf of the detenue was not considered in time. There was a delay in dealing with that representation and hence there was a serious infraction of the valuable right of the detenue under Article 22 of the Constitution. It was also argued that the COFEPOSA Advisory Board was not supplied with the materials as contemplated under Section 8 of the COFEPOSA Act and thus there was no proper reference to COFEPOSA Advisory Board. These pleas were also rejected by the Division Bench.

In the instant appeal before us, the main contention urged by the learned senior Counsel Shri B. Kumar was that the relevant documents were not forwarded to the Advisory Board within a period of five weeks, stipulated under Section 8(b) of the COFEPOSA Act. It was urged that the representation addressed to the Joint Secretary was not placed before the Advisory Board and the same should have been sent to the Advisory Board within a period of five weeks from the date of reference. The reference had been made to the Advisory Board on 22.2.1996 enclosing one set each of the Order of detention along with the grounds of detention and other documents. The first meeting of the Advisory Board was scheduled on 22.3.1996, but the reference was not considered on the said date. The learned Counsel for the appellant contended that while making reference to the Advisory Board under Section 8(b), the entire documents were not sent to the Advisory Board. It was pointed out by learned Counsel for the appellant that the detention order was executed on 7.2.1996 and the period of five weeks from the date of execution would expire on 14.3.1996, but all the relevant documents were sent to the Advisory Board only on 23.3.1996. This, according to the appellant, is in gross violation of Section 8 of the COFEPOSA Act.

As per Section 8(b) of the COFEPOSA Act 1974, the appropriate Government, within a period of five weeks from the date of detention of a person, shall make a reference in respect thereof to the Advisory Board constituted under clause (a) of Section 8 to enable the Advisory Board to make a report under sub-clause (a) of clause 4 of Article 22 of the Constitution. Clause (c) of Section 8 of the Act further says

that the Advisory Board, to which a reference is made shall consider the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government, or from the person concerned, shall give its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within a period of 11 weeks from the date of the detention of the person concerned. The Advisory Board has also got the power to hear the detenue in person for the purpose of arriving at such opinion.

The contention of the appellant in this case is that though the reference was made within the stipulated period of five weeks from the date of detention, all the material papers were sent to the Advisory Board only on 23.3.1996 whereas the statutory period of five weeks had already expired on 14.3.1996. This, according to the appellant's learned Counsel, is illegal and, therefore, for all practical purposes, the reference was beyond the period of five weeks of detention and the entire proceedings are vitiated. We do not find much force in this contention. It is true that it is a valuable right of the detenue to have the validity of his detention examined by the Advisory Board. It is a fundamental right of the detenue guaranteed under Article 22 of the Constitution. Any violation of the procedure is to be viewed seriously. But, in our opinion, the delay of only one week in sending some of the relevant records may not by itself make the whole reference illegal and vitiated. Under clause (c) of Section 8 of the COFEPOSA Act, a period of eleven weeks from the date of the detention is given to the Advisory Board to give its opinion. The Advisory Board is also empowered to call for any information from the appropriate Government. If the relevant materials were not placed before the Advisory Board at the time it had taken the decision, that would have been a serious violation of the right guaranteed under Article 22 of the Constitution. The fact that merely because some of the materials were inadvertently not sent along with the reference, will not vitiate the proceedings.

Strong reliance was placed on the decision of this Court in Icchu Devi Vs. Union of India and others (1980) 4 SCC 531. That is a case where the order of detention under Section 3(1) of the COFEPOSA Act was served on the detenue on June 4, 1980 and when the detenue was arrested on May 27, 1980 he was given the grounds of detention. The grounds of detention referred to several documents and statements and the detenue demanded for copies of the documents, statements and other materials. It was only in July 11, 1980 that the copies were supplied but still copies of some other records were not given. There was a delay of one month in the supply of copies of document.

In the fact situation of the above case, this Court held that the burden of showing that the detention is in accordance with the procedure established by law is always on the detaining authority in view of the clear and explicit terms of Article 22 of the Constitution. It was also held that the right to be supplied copies of the documents, statements and other materials relied upon in the grounds of detention without any undue delay flows directly as a necessary corollary from the right conferred on the detenue to be afforded the earliest opportunity of making a representation against the detention and unless the former right is available, the latter cannot be meaningfully exercised.

The learned Counsel for the appellant also contended that the representation submitted on behalf of the detenue was not placed before the Advisory Board and, therefore, it had no occasion to consider this material before giving its opinion. It was contended that the appellant had submitted the representation on 22.2.1996 and the Ministry had admitted that the same was received on 25.2.1996. When the reference was made on 23.3.1996, neither a copy of the representation was sent to the Advisory Board nor any decision was taken on the representation. It was urged by the appellant's learned Counsel that the representation was rejected belatedly and the Advisory Board did not have the advantage of considering the representation. This plea is also devoid of any force. Firstly, this is one of the five representations sent on behalf of the detenue. On 22.2.1996, appellant, the wife of the detenue sent a representation in Tamil and on 24.2.1996 and 26.2.1996 on behalf of detenue, two representations were sent by S. Ramachander Rao, the senior Advocate to the Central Government. The detenue also sent two other representations, one on 27th February in Tamil and another on 16th March, 1996. Whatever materials available with the State Government were sent to the Advisory Board and the representations were disposed of in time and the only representation sent by the appellant on 22.2.1996 was pending with the authorities when the reference was made. We do not think that the non-placement of that representation had caused any prejudice to the detenue.

Yet another serious contention urged by the appellant's learned Counsel is that the representation sent by the appellant, the wife of the detenue, to the detaining authority was disposed of after a delay of 119 days. It was pointed out that the representation was received by the Ministry on 25.2.1996 and the same was sent for translation on 27.2.1996 as the representation was in Tamil language. The translated copies did not come within a period of three months and it reached COFEPOSA Section on 3.6.1996 and on 6.6.1996 para-wise comments were sought and the representation was rejected only on 26.6.1996. This according to the appellant's learned Counsel caused serious prejudice to the detenue and this inordinate delay by itself is sufficient to set aside the detention order.

Reference was made to various decisions. In B. Alamelu Vs. State of Tamil Nadu and Others AIR 1995 SC 539, there was a delay of 84 days in forwarding a copy of the representation to the Central Government and that was held to be in violation of the procedure and the detention was held to be illegal. That is a case where the wife of the detenue sent a representation addressed to the Superintendent of the Central Prison where the detenue was kept in prison. In the representation, it was specifically stated that it should be sent to the persons mentioned in the grounds of detention. The Superintendent of the Central Prison did not send a copy of the same to the Central Government in time and there was a delay of 84 days in sending the same to the Central Government. That was held to be a serious violation of the right guaranteed under Article 22 of the Constitution.

Similar view was taken in Jai Prakash Vs District Magistrate, Bulandshahar, U.P. and Others 1993 Supp. (1) SCC 392. That was a case where the Jail Superintendent did not send the representation to the Central Government though sufficient copies were served on it. The Jail

Superintendent had sent the representation only to the State Government.

In Francis Coralie Mullin Vs. W.C. Khambra and Others (1980) 2 SCC 275, this Court held that (1) the detaining authority must provide the detenue a very early opportunity to make a representation; (2) the detaining authority must consider representation as early as possible and this preferably must be before the representation is forwarded to the Advisory Board; (3) the representation must be forwarded to the Advisory Board before the Board makes its report; and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. In this case reference was also made to Prabhakar Shankar Dhuri Vs. S.G. Pradhan (1971) 3 SCC 896(II) and Kanti Lal Bose Vs. State of West Bengal (1972) 2 SCC 529 and in these two cases, delay of 16 days and 28 days respectively in disposing the representation of the detenue was held to vitiate the detention.

The learned Counsel for the appellant also relied on Mst. L.M. S. Ummu Saleema Vs. Shri B.B. Gujaral and another (1981) 3 SCC 317 and contended that the detaining authority was under an obligation to adequately explain each day's delay and the representation made by the detenue has to be considered by the detaining authority with utmost expedition.

On a survey of the various authorities, it is clear that the representation, if any, submitted on behalf of the detenue shall receive immediate attention and that the same shall be considered by the appropriate authorities as expeditiously as possible. Any delay would naturally cause prejudice to the detenue.

In the instant case, as already noticed, the detenue himself filed two representations and on his behalf, his Counsel submitted another two representations and there is no allegation that these representations were not considered in time. But the representation filed by the present appellant, the wife of the detenue was disposed of only with a delay of 119 days. The delay was caused mainly due to non-availability of the translated copy of the representation. The representation was made in "Tamil" and it is submitted by the Union Government that it took about three months to get a proper translation of the representation and as soon as the translation was received, the authorities took urgent steps and it was disposed of within a short period. In the facts and circumstances of the case, we do not think that there was inordinate delay in disposing of the representation.

It is true that this court in series of decisions has held that if there is any serious delay in disposal of the representation, the detention order is liable to be set aside. Nevertheless, it may be noticed that if the delay is reasonably explained and that by itself is not sufficient to hold that the detenue was bad and illegal. In Smt. K. Aruna Kumari Vs. Government of A.P. & Ors. (1988) 1 SCC 296 relying on State of U.P. Vs. Zavad Zama Khan (1984) 3 SCC 505 this Court held that there is no right in favour of the detenue to get his successive representations based on the same grounds rejected earlier to be formally disposed of again and also pointed out that in any event no period of limitation is fixed for disposal of an application.

In Union of India Vs. Paul Manickam & Anr. 2003(8) SCC 342 this Court deprecated the practice of sending representations to various authorities which were not directly or immediately concerned with the detention, and delay, if any, in disposing of such representations shall not be taken advantage of by the detenue. In the present case also, all the representations were not addressed to the concerned authorities.

As regards delay in disposing of the representation, this Court, as early as 1981 observed in Ummu Saleema case (supra) that there cannot be any fixed time and the delay, if any, in disposal of the representation is to be considered vis-'-vis any prejudice that may be caused to the detenue. In Para 7 of the said judgment the following observations were made:-

"Another submission of the learned counsel was that there was considerable delay in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention. The learned counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decisions in Pritam Nath Hoon v. Union of India and in Shanker Raju Shetty v. Union of India. We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in Frances Coralie Mullin v. W.C. Khambra "the time imperative can never be absolute or obsessive". The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae."

Considering the entire facts, we do not think that in this case the detention is liable to be quashed on the ground that one out of the five representations was not disposed of in time. The delay has been satisfactorily explained and the failure to get the translated copy of the representation was an unavoidable delay. We do emphasise that such delays should be avoided.

The contention raised by the appellant's learned Counsel is that some of the relevant materials were not placed before the detaining authority and the omission to place those materials before the detaining authority had caused serious prejudice to the detenue. It was urged that the investigating authorities had collected the materials and once these materials were received by the sponsoring authority, they had no right to edit and decide which materials were relevant and they were bound to send the entire materials to the detaining authority. The learned Counsel for the appellant drew our attention to some of the relevant documents which were not

placed before the detaining authority. This contention was elaborately considered by the Division bench and it was held that all relevant materials were placed before the detaining authority.

The contention of the appellant is that the reply of N.C. Rangesh and several other documents were not placed before the detaining authority and the satisfaction arrived at by the detaining authority was incorrect and the detention was illegal. It was contended that the sponsoring authority did not place the statements of N.C. Rangesh and another Rajoo which are relevant and vital documents, in passing of the detention order. It may be noted that in the reply of N.C. Rangesh, he has stated that he is a lawyer in Singapore and that the detenue had taken legal assistance and that he was not obliged to reveal the materials as they were confidential communications. Therefore, it is clear that the statement of N.C.Rangesh was of no consequence and the sponsoring authority rightly withheld the same as it was irrelevant. Moreover, the detention order itself is passed on various grounds and even if some materials are not placed therefore the detaining authority, it would only affect one of the grounds stated in the detention order and the detention order by itself is sufficient to stand on its own on the basis of other grounds. The detention as a whole cannot be held to be illegal. If there are severable grounds, the vague nature of one of the grounds would not vitiate the entire detention order.

In Ahmad Nassar Vs. State of Tamil Nadu (1999) 8 SCC 473, referring to the cases of Ashadevi Vs. K. Shivraj, Addl. Chief Secy. to the Govt. of Gujarat (1979) 1 SCC 222; Ayya Vs. State of U.P. (1989) 1 SCC 374; Sita Ram Somani Vs. State of Rajasthan (1986) 2 SCC 86, this Court held:

"A man is to be detained in the prison based on the subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have a bearing on the issue should be placed before the detaining authority. The sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenue. The decision is not to be made by the sponsoring authority. The law on the subject is well settled; a detention order vitiates if any relevant document is not placed before the detaining authority which reasonably could effect his decision."

In the instant case, the statement of Rangesh did not divulge any details which would have in any way affected the decision of the detaining authority.

The learned Counsel for the appellant lastly contended that since the detention order was passed only in February 1996, that is, after about two years of the alleged involvement of the detenue for violation of the provisions of FERA on the basis of stale materials, the same was illegal. The allegations made against the detenue are of serious nature. It involved several crores of rupees. The various transactions had been done in a clandestine manner with the help of foreign nationals and the detenue himself had claimed to be a Non-Resident Indian. All these materials had contributed to the delay and the detaining authority had to consider these materials and cross-check the transactions. It was submitted by the learned Counsel for the respondent that the detention

order was not passed on stale materials.

The learned Counsel for the appellant had urged before the High Court that the detenue was a non-resident Indian and, therefore, the detention order could not have been passed against him. This contention was elaborately considered in point no. 1 in the impugned judgment and it was held that the detenue was not a Non-resident Indian. No materials have been placed before us to prove that he was a Non-resident Indian and therefore beyond the ken of the provisions of COFEPOSA Act. The order of detention was rightly passed and we find no reason to interfere with the impugned judgment.

The criminal appeal is without any merits and is accordingly dismissed.