CASE NO.:
Appeal (crl.) 763 of 1998

PETITIONER:
RAJAN WORLIKAR

Vs.

RESPONDENT:
STATE OF KARNATAKA AND OTHERS

DATE OF JUDGMENT: 04/05/2001

BENCH:
M.B. Shah & S.N. Variava

JUDGMENT:

WITHCriminal Appeal Nos. 764, 765, 766, 767, 768, and 769 of 1998

J U D G M E N T

Shah, J.
L...I...T.....T.....T.....T.....T.....T.....T..J

These appeals are filed against the judgment and order dated 28th October 1997 passed by the High Court of Karnataka at Bangalore in Writ Petition Nos.42 to 48 of 1997 (HC). By the impugned judgment and order, the High Court rejected the contention raised by the appellants that the order of detention under the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (hereinafter referred to as 'the PITNDPS Act) was illegal and void.

For the purpose of deciding these appeals we would refer to few facts pertaining to Criminal Appeal No. 763 of 1998. The order of detention was passed on 15th April, 1997 and has already expired on 23rd April, 1998. It has also been pointed out that trial against the appellant is pending for the offences punishable under the NDPS Act. In the grounds of detention it is alleged that detenues had established factory where they were manufacturing Mandrax tablets which are psychotropic substances prohibited under the NDPS Act at the premises situated at Belgaum, State of Karnataka. A search was conducted in the aforesaid premises on 7th and 8th November, 1996. During the search it was found that premises had been converted into a factory where Mandrax Tablets were being manufactured by installing a tabletting machine, an oven and granulator etc. Appellant Rajan Worlikar was arrested on 8th November, 1996. He applied for releasing him on bail and was released on bail on 25th February, 1997. The order releasing him on bail was stayed by the High Court. Finally that revision application was allowed and the order releasing him on bail was set aside by order dated 17th April, 1998. During that time on 15th April, 1997, as stated above, order of detention was passed against him.

At the time of hearing of this appeal, learned senior

counsel Shri Sushil Kumar on behalf of the appellant in Criminal Appeal No. 763 of 1998 submitted that the order of detention is void because of non-communication to the detenue that he has a right of making representation to the State Government. For this purpose he relied upon the decision rendered by a Constitution Bench of this Court in Kamlesh Kumar Ishwar Das Patel v. Union of India [(1995) 4 SCC 51]. He precisely relied upon Paragraph 38 of the Judgment which reads thus:

38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFESPOSA Act and the PITNDPS Act the question posed is thus answered:

Where the detention order has been made under Section 3 of the COFEPOSA Act and the PITNDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.

In support of his contention, he has referred to paragraphs 30 and 31 of the grounds of detention which are as under:

30. You have a right to make any representation against your detention to the detaining authority, Central Government and the PITNDPS Advisory Board constituted for this purpose.

31. If you desire to make any representation to the detaining authority you may do so and address it to the undersigned and forward the same through the Superintendent of the Prison, where you are detained.

It is his submission that these grounds nowhere mention that detenue has right of making a representation to the State Government and as the State Government is empowered to revoke the order of detention under Section 12 of the Act, non-communicating to the detenue that he can make a representation to the State Government vitiates the detention.

As against this, learned counsel appearing on behalf of the respondents submitted that the impugned order of detention is made by the State Government and in the grounds quoted above, it is specifically mentioned that detenue can make representation against the said order to the detaining

authority. It is, therefore, submitted that in the present case, the detaining authority is the State Government. For this purpose, reliance is place on the order of detention as well as the grounds of detention. It is also pointed out that the appellants understood very clearly that the order of detention was passed by the State Government and to that effect, there is averment made by them in paragraph 1 of the writ petitions filed before the High Court. Therefore, it was submitted that apart from the fact that appellants have not filed any representation to any authority, they have not raised this contention before the High Court. It is contended that as the appellants had not raised the contention earlier which is sought to be raised before this Court at the time of hearing of this appeal, it was not possible for the State Government to place the necessary facts on record. However, in view of Article 166(2) of the Constitution, order authenticated in the name of Governor cannot be called in question that it is an order made by the Governor.

For deciding this controversy, we would first refer to the order of detention which begins with the words Government of Karnataka, Karnataka Government Secretariat, Vidhana Sabha Bangalore. Further at the end of the order, it is stated BY ORDER AND IN THE NAME OF THE GOVERNOR OF KARNATAKA. It is signed by the Additional Chief Secretary and Principal Secretary to Government, Home and Transport Department. Similar is the position with regard to the grounds of detention. Further, in para 28 of the grounds of detention, it has been stated as under:-

28. From the above facts and materials, the Government of Karnataka is satisfied that you have knowingly aided Sri. Taj Mohd. Khan in illicit traffic in narcotic drugs and psychotropic substances as is evident from your statement and material available on record. Considering your role even though prosecution proceedings under the Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against you in the matter, the Government of Karnataka is satisfied that there is a compelling necessity in view of the possibility of your being released on bail under normal law and the possibility of your indulging in illicit traffic in narcotic drugs and psychotropic substances to detain you under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPS) 1988, with a view to prevent you from engaging yourself in such prejudicial activities in future.

(Emphasis added)

From the aforesaid paragraph as well as the order of detention and the grounds of detention, it is apparent that the order of detention is made by the State Government. However, it has been pointed out by the learned counsel for the appellants that in the main part of the order of detention, the words used are to the effect that IAdditional Chief Secretary and Principal Secretary to Government, Home and Transport Department specially empowered under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 am satisfied. Now therefore I direct that the said Shri Rajan Worlikar be detained It is also submitted that in the operative part of the order of detention, it is not mentioned that the State Government was satisfied in passing the said order. Therefore, it is contended that the

detaining authority is the specially empowered officer under section 3(1) of the PITNDPS and not the State Government.

In our view, it would be difficult to accept the contention of the learned counsel for the appellants. Undoubtedly the order of detention shows that the Additional Chief Secretary and Principal Secretary to Government, Home & Transport Department is specially empowered under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988. However, that by itself does not mean that the order of detention has been passed by him in his capacity as a specially empowered officer. If specially empowered officer has exercised his power conferred upon him under section 3(1) of the PITNDPS Act, he would not have stated that it was by order and in the name of the Governor. The beginning of the order also would not be Government of Karnataka, but it would be in his name. Further, the grounds of detention also make it clear, particularly para 28, that the order was passed by the Government of Karnataka. Therefore, it cannot be said that the appellants were not communicated that they were having right of making representation to the State Government. The grounds specifically provide that they have right to make representation to the detaining authority, the Central Government and PIT NDPS Officers Board. Ground No. 31 further clarifies that if any representation is made to the detaining authority, then it be addressed to the undersigned, namely, Additional Chief Secretary and the Principal Secretary to the Government. This also makes it clear that the detaining authority is different from the Additional Chief Secretary. Further, the appellants understood that the order of detention was passed by the State Government and in paragraph 1 of the writ petition, it has been stated that the first respondent (State of Karnataka) exercising its powers under section 3(1) of the Act has detained the appellants. In view of this factual position, in our view, it is not necessary to deal with the contention raised by the learned counsel for the respondent that under Article 166(2) of the Constitution, the order made in the name of the Governor shall not be called in question on the ground that it is not an order made by the Governor.

The learned counsel for the appellants next submitted that there is delay in making the order of detention and, therefore, the same is illegal and void. For this purpose, he submitted that appellant was arrested on 8.11.1996 and the detention order was passed after nearly 5 months i.e. on 15th April, 1997. In our view, this contention is rightly rejected by the High Court as the detaining authority has sufficiently explained the reasons for the said delay. The explanation given for the delay is also mentioned in para 4 (C) of the counter affidavit filed on behalf of the Union of India. Considering the facts stated therein, in our view, the High Court has rightly rejected the said contention.

No other contention is raised by the learned counsel for the appellants. In the result, these appeals are dismissed.