Francis Coralie Mullin

Vs

Administrator, Union Territory of Delhi and Others

Writ Petition No. 3042 of 1980

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

13.01.1981

JUDGMENT

P. N. BHAGWATI, J. –

1. This petition under Article 32 of the Constitution raises a question in regard of the right of a detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as 'COFEPOSA Act') to have interview with a lawyer and the members of his family. The facts giving rise to the petition are few and undisputed and may be briefly stated as follows :

2. The petitioner, who is a British national, was arrested and detained in the Central Jail, Tihar under an order dated November 23, 1979 issued under Section 3 of the COFEPOSA Act. She preferred a petition in the Court for a writ of habeas corpus challenging her detention, but by a judgment delivered by this Court on February 27, 1980 (See (1980) 2 SCC 275 : 1980 SCC (Cri) 419), her petition was rejected with the result that she continued to remain under detention in the Tihar Central Jail. Whilst under detention, the petitioner experienced considerable difficulty in having interview with her lawyer and the members of her family. Her daughter aged about five years and her sister, who was looking after the daughter, were permitted to have interview with her only once in a month and she was not allowed to meet her daughter more often, though a child of very tender age. It seems that some criminal proceeding was pending against the petitioner for attempting to smuggle hashish out of the country and for the purpose of her defence in such criminal proceeding, it was necessary for her to consult her lawyer, but even her lawyer found an difficult to obtain an interview with her because in order to arrange an interview, he was required to obtain prior appointment from the District Magistrate, Delhi and the interview could take place only in the presence of a customs officer nominated by the collector of customs. This procedure for obtaining interview caused considerable hardship and inconvenience and there were occasions when, even after obtaining prior appointment from the District Magistrate, Delhi, her lawyer could not have an interview with her since no customs officer nominated by the collector of customs remained present at the appointed time. The petitioner was thus effectively denied the facility of interview with her lawyer and even young daughter 5 years' old could not meet the except once in a month. This restriction on interviews was imposed by the Prison Authorities by virtue of Clause 3(b), sub-clauses (i) and (ii) of the Conditions of Detention Order laid down by the Delhi Administrative under an order dated August 23, 1975 issued in exercise of the powers conferred under Section 5 of the COFEPOSA Act. These two sub-clauses of Clause 3(b) provided inter alia as under :

> 3. The conditions of detention in respect of classifications and interviews shall be as under :

(b) Interviews : Subject to the direction issued by the Administrator from time to time, permission for the grant of interviews with a detenu shall be granted by the District Magistrate, Delhi as under : -

(i) Interview with legal adviser. - Interview with legal adviser in connection with defence of a detenu in a criminal case or in regard to writ petitions and the like, may be allowed by prior appointment, in the presence of an officer of Customs/ Central Excise/ Enforcement to be nominated by the local Collector of Customs/ Central Excise or Deputy Director of Enforcement, who sponsors the case for detention;

(ii) Interview with family members. - A monthly interview may be permitted for members of the family consisting of wife, children or parents of the detenu .....

The petitioner, therefore, preferred a petition in this Court under Article 32 challenging the constitutional validity of sub-clauses (i) and (ii) of Clause 3(b) of the Conditions of Detention Order and praying that the Administrator of the Union Territory of Delhi and the Superintendent of Tihar Central Jail be directed to permit her to have interview with her lawyer and the members of her family without complying with the restrictions laid down in those sub-clauses.

3. The principal ground on which the constitutional validity of sub-clauses (i) and (ii) of Clause 3(b) of the Conditions of Detention Order was challenge was that these provisions were violative of Articles 14 and 21 of the Constitution inasmuch as they were arbitrary and unreasonable. It was contended on behalf of the petitioner that allowing interview with the members of the family only once in a month was discriminatory and unreasonable, particularly when under trial prisoners were granted the facility of interview with relatives and friends twice in a week under Rule 559-A and convicted prisoners were permitted to have interview with their relatives and friends once in a week under Rule 550 of the Rules set out in the Manual for the Superintendence and Management of Jails in the Punjab. The petitioner also urged that a detenu was entitled under Article 22 of the Constitution to consult and be defended by a legal practitioner of his choice and she was, therefore entitled to the facility of interview with a lawyer whom she wanted to consult or appear for her in a legal proceeding and the requirement of prior appointment for interview and of the presence of a customs or excise officer at the interview was arbitrary and unreasonable and therefore violative of Article 14 and 21. The respondents resisted the contentions of the petitioner and submitted that sub-clauses (i) and (ii) of Clause 3(b) were not violative of Articles 14 and 21, since the restrictions imposed by them were reasonable, fair and just, but the petitioner was granted the facility of interview with her daughter and sister twice in a week as in the case of under trial prisoners and so far as interview with the lawyer is concerned, they would not insist on the presence of a customs or excise officer at the interview. Though these two concessions were made on behalf of the respondents at the hearing of the petition before us, the question still remains whether sub-clauses (i) and (ii) of Clause 3(b) are valid and it is necessary that we should examine this question in the context of our constitutional values, since there are a large number of detenus under the COFEPOSA Act and the conditions of their detention in regard to interviews must be finally settled by this Court.

4. Now, it is necessary to bear in mind the distinction between 'preventive detention' and 'punitive detention', when were are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person

from indulging in conduct injurious to the society. The power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Article 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of restriction laid down by those clauses on pain of invalidation. But apart from Article 22, there is also Article 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in Maneka Gandhi v. Union of India ((1978) 1 SCC 248), a very narrow and constricted meaning was given to the guarantee embodied in Article 21 and that Article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Article 21. But in Maneka Gandhi case ((1978) 1 SCC 248), this Court for the first time opened up a new dimension of Article 21 and laid down that Article 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This Court expanded the scope and ambit of the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi case ((1978) 1 SCC 248) became the starting point - the springboard - for a most spectacular evolution of the law culminating the in the decisions in M. H. Hoskot v. State of Maharashtra (M. H. Hoskot v. State of Maharashtra, (1979) 1 SCR 192 : (1978) 3 SCC 544 : 1978 SCC (Cri) 468), Hussainara Khatoon (I) case (Hussainara Khatoon (I) v. Home Secy., (1980) 1 SCC 81 : 1980 SCC (Cri) 23), the first Sunil Batra case (Sunil Batra (I) v. Delhi Admn., (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1979 SCC (Cri) 155) and the second Sunil Batra case (Sunil Batra (II) v. Delhi Admn., (1980) 2 SCR 557 : (1980) 3 SCC 488 : 1980 SCC (Cri) 777). The position now is that Article 21 as interpreted in Maneka Gandhi Case ((1978) 1 SCC 248) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilised society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrongdoing as a result of a trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from

doing harm in future and the opportunity that he has for contesting the action of the executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future, it has been laid down by this Court in Sampat Prakash v. State of J & K ((1969) 3 SCR 574 : (1969) 1 SCC 5632 : 1969 Cri LJ 1555) that : "The restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal." (SCC p. 567, para 9)

5. The question which then arises is whether a person preventively detained in a prison has any rights which he can enforce in a court of law. Once his freedom is curtailed by incarceration in a jail, does he have any fundamental rights at all or does he leave them behind, when he enters the prison gate ? The answer to this question is no longer res integra. It has been held by this Court in the two Sunil Batra case (Sunil Batra (I) v. Delhi Admn., (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1979 SCC (Cri) 155) - (Sunil Batra (II) v. Delhi Admn., (1980) 2 SCR 557 : (1980) 557 : (1980) 3 SCC 488 : 1980 SCC (Cri) 777) that "fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration". The prisoner of detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. Even before the two Sunil Batra case (Sunil Batra (I) v. Delhi Admn., (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1979 SCC (Cri) 155) - (Sunil Batra (II) v. Delhi Admn., (1980) 2 SCR 557 : (1980) 3 SCC 488 : 1980 SCC (Cri) 777), this position was impliedly accepted in State of Maharashtra v. Prabhakar Pandurang Sangzgiri ((1966) 1 SCR 702 : AIR 1964 SC 424 : 1966 Cri LJ 311) and it was spelt out clearly and in no uncertain terms by Chandrachud, J., as he then was, in D. B. Mohan Patnaik v. State of A.P. (D. B. Mohan Patnaik v. State of A.P., (1975) 2 SCR 24 : (1975) 3 SCC 185, 186-87 : 1974 SCC (Cri) 803, 804-05) : [SCC pp. 186-87 : SCC (Cri) pp. 804-05, para 6]

> Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which entitled to the precious incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

This statement of the law was affirmed by a Bench of five Judges of this Court in the first Sunil Batra case (Sunil Batra (I) v. Delhi Admn., (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1979 SCC (Cri) 155) and by Krishna Iyer, J. speaking on behalf of the Court in the second Sunil Batra case (Sunil Batra (II) v. Delhi Admn., (1980) 2 SCR 557 : (1980) 3 SCC 488 : 1980 SCC (Cri) 777). Krishna Iyer, J. in the latter case proceeded to add in his characteristic style (SCC p. 504) : "The jurisdictional reach and range of this Court's writ to hold prison caprice and cruelty in constitutional leash is incontestable" and concluded by observing (SCC p. 505) : "Thus it is now clear law that a prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through 'writ' aid. The Indian human has a constant companion - the Court armed with the Constitution." It is interesting to note that the Supreme Court of the United States has also taken the same view in regard to rights of prisoners.

Mr. Justice Douglas struck a humanistic note when he said in Eve Pall case (417 US 817 : 41 L ED 2d 495) : "Prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of the process". So also in Charles Wolff case (41 L ED 2d 935), Mr. Justice White made the same point in emphatic terms : "But, though his rights may be diminished by environment, a prisoner is not wholly stripped of constitutional protections, when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country". Mr. Justice Douglas reiterated his thesis when he asserted : "Every prisoner's liberty is of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the system requires procedural safeguards." Mr. Justice Marshall also expressed himself clearly and explicitly in the same terms : "I have previously stated my view that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the interest of inmates in freedom from imposition of serious discipline is a 'liberty' entitled to due process protection". What is stated by these learned Judges in regard to the rights of a prisoner under the Constitution of the United States applies equally in regard to the rights of a prisoner or detenu under our constitutional system. It must, therefore, now be taken to be well settled that a prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of these rights are violated, are the court which is, to use the words of Krishna Iyer, J. (SCC p. 504), "not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope", will immediately spring into action and run to his rescue.

6. We must therefore proceed to consider whether any of the fundamental rights of the detenu are violated by sub-clauses (i) and (ii) of Clause 3(b) so as to result in their invalidation wholly or in part. We will first take up for consideration the fundamental right of the detenu under Article 21 because that is a fundamental right which has, after the decision in Maneka Gandhi case ((1978) 1 SCC 348), a highly activist magnitude and it embodies a constitutional value of supreme importance in a democratic society. It provides that no one shall be deprived of his life or personal liberty except according to procedure established by law and such procedure shall be reasonable, fair and just. Now what is the true scope and ambit of the right to life guaranteed under this Article ? While arriving at the proper meaning and content of the right to life, we must remember that it is a constitutional provision which we are expounding and moreover it is a provision enacting a fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. The luminous guide-line in the interpretation of a constitutional provision is provided by the Supreme Court of United States in Weems v. U.S. (54 L ED 801) :

> Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had, therefore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than mischief which gave it birth. This is peculiarly true of Constitutions. They are not ephemeral enactments designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it". The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a Constitution, therefore, out contemplation cannot be only of what has been, but of what may be. Under any other

> rule a Constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into important and lifeless formulas. Rights declared in the words might be lost in reality.

And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction.

This principle of interpretation which requires that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

7. Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. In Kharak Sing v. State of U.P. ((1964) 1 SCR 232), Subba Rao, J. quoted with approval the following passage from the judgment of Field, J. in Munn v. Illinois ((1964) 94 US 113 : 24 L ED 77) to emphasize the quality of life covered by Article 21 : (Sunil Batra (I) v. Delhi Admn., SCR p. 503 : SCC p. 574 : SCC (Cri) p. 235) "By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world" and this passage was again accepted as laying down the correct law by the Constitution Bench of this Court in the first Sunil Batra case (Sunil Batra (I) v. Delhi Admn., (1980) 2 SCR 557 : (1980) 3 SCC 488 : 1980 SCC (Cri) 155) Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiorari, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partial damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all : it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends

against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental right. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness : it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free-will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

9. The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression 'personal liberty' occurring in Article 21 has been given a broad and liberal interpretation in Maneka Gandhi case ((1978) 1 SCC 248) and it has been held in the case that the expression 'personal liberty' used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19". There can therefore be no doubt that 'personal liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21.

10. Now obviously when an under trial prisoner is granted the facility of interviews with relatives and friends twice in a week under Rule 559-A and a convicted prisoner is permitted to have interviews with his relatives and friends once in a week under Rule 550, it is difficult to understand how sub-clause (ii) of Clause 3(b) of the Conditions of Detention Order, which restricts the interview only to once in a month in case of a detenu, can possibly be regarded as reasonable and non-arbitrary, particularly when a detenu stands on a higher pedestal than an under trial prisoner of a convict and, as held by this Court in Sampat Prakash case ((1969) 3 SCR 574 : (1969) 1 SCC 562 : 1969 Cri LJ 1555) restrictions placed on a detenu must "consistently with the effectiveness of detention, be minimal". We would therefore unhesitatingly hold sub-clause (ii) of Clause 3(b) to be violative of Articles 14 and 21 insofar as it permits only one interview in a month to a detenu. We are of the view that a detenu must be permitted to have at least two interviews in a week with relatives and friends and it should be possible for a relative or friend to have interview with the

detenu at any reasonable hour on obtaining permission from the Superintendent of the Jail and it should not be necessary to seek the permission of the District Magistrate, Delhi, as the latter procedure would be cumbrous and unnecessary from the point of view of security and hence unreasonable. We would go so far as to say that even independently of Rules 550 and 559-A, we would regard the present norm of two interviews in a week for prisoners as furnishing a criterion of what we would consider reasonable and non-arbitrary.

11. The same reasoning must also result in invalidation of sub-clause (i) of Clause 3(b) of the Conditions of Detention Order which prescribes that a detenu can have interview with a legal adviser only after obtaining prior permission of the District Magistrate, Delhi and the interview has to take place in the presence of an officer of Customs/ Central Excise/ Enforcement to be nominated by the local Collector of Customs/ Central Excise or Deputy Director of Enforcement who has sponsored the case for detention. The right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of personal liberty and the detenu cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with reasonable, fair and just procedure established by a valid law. A prison regulation may, therefore, regulate the right of a detenu to have interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it does so, it would be violative of Articles 14 and 21. Now in the present case the legal adivser can have interview with a detenu only by prior appointment after obtaining permission of the District Magistrate, Delhi. This would obviously cause great hardship and inconvenience because the legal adviser would have to apply to the District Magistrate, Delhi well in advance and then also the time fixed by the District Magistrate, Delhi may not be suitable to the legal adviser who would ordinarily be a busy practitioner and, in that event, from a practical point of view the right to consult a legal adviser would be rendered illusory. Moreover, the interview must take place in the presence of an Collector of Customs/ Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the detention and this too would seem to be an unreasonable procedural requirement because in order to secure the presence of such officer at the interview, the District Magistrate, Delhi would have to fix the time for the interview in consultation with the Collector of Customs/ Central Excise or Deputy Director of Enforcement and it may become difficult to synchronise the time which suits the legal adviser with the time convenient to the concerned officer and furthermore if the nominated officer does not, for any reason, attend at the appointed time, as seems to have happened on quite a few occasions in the case of the petitioner, the interview cannot be held at all and the legal adviser would have to go back without meeting the detenu and the entire procedure for applying for an appointment to the District Magistrate, Delhi would have to be gone through once again. We may point out that no satisfactory explanation has been given on behalf of the respondents disclosing the rationale of this requirement.

12. We are therefore of the view that sub-clause (i) of Clause 3(b) regulating the right of a detenu to have interview with a legal adviser of his choice is violative of Articles 14 and 21 and must be held to be unconstitutional and void. We think that it would be quite reasonable if a detenu were to be entitled to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of the Jail, which appointment should be given by the Superintendent without any avoidable delay. We may add that the interview need not necessarily taken place in the presence of a nominated officer of Customs/ Central Excise/ Enforcement but if the presence of such officer can be conveniently secured at the time of the interview without

involving any postponement of the interview, then such officer and if his presence cannot be so secured, then any other jail official may, if thought necessary, watch the interview but not so as to be within hearing distance of the detenu and the legal adviser.

13. We accordingly allow the writ petition and grant relief to the extent indicated above.

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