Jasbir Singh

Vs

Lt. Governor, Delhi

Criminal Appeal No. 913 of 1995

(G.B. Pattanaik, M.B. Shah JJ)

16.04.1999

JUDGMENT

G.B. Pattanaik, J.

1. The appellant challenges the legality of his order of detention passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA) as well as the order of the Division Bench of Delhi High Court dismissing the appellant's Writ Petition filed for issuance of a Writ of Habeas Corpus. The order of detention was passed on 25.3.1994 and the period of detention was for a period of one year which is long over but the detenu pursues his right of challenging the order of detention as a proceeding under Smugglers and Foreign Exchange Manipulators Act (SAFEMA) has been initiated by the Appropriate Authority. The appellant was apprehended at Indira Gandhi International Airport, New Delhi while he was leaving for Kuala Lumpur/Singapore and on search, US dollars amounting to 1.39 lakhs in Indian currency were recovered. Further his brother who was also going with him, from his person, foreign currency equivalent to 5.34 lakhs of rupees was recovered. The detaining authority being of the opinion that the detention of the appellant is necessary with a view to preventing him from acting in any manner prejudicial to the conservation of foreign exchange, issued the order of detention on 25.3.1994 and was served on the detenu on the same day. But the grounds of detention was served on the appellant on 30th March, 1994. In accordance with the provisions of the Act his case was forwarded to the Advisory Board and the Advisory Board on consideration of the materials placed before it, gave its opinion that there is sufficient cause for the detention of the detenu. The appropriate government thereafter confirmed the detention and after expiry of period of one year the detenu has been released but the detenu/appellant filed a Habeas Corpus Petition in the High Court challenging the legality of the order of detention. By way of an additional application the detenu also urged additional grounds and the High Court ultimately by the impugned judgment dated 15.2.1995 dismissed the Writ Petition filed by the appellant. The appellant was released on 24.3.1995 after expiry of the period of one year of detention. Though the Special Leave Petition was filed in this Court after the expiry of the period of limitation but the Court condoned the delay and granted leave, and thus, the present Appeal.

2. From the impugned judgment of the High Court it transpires that the appellant raised three contentions all of which were answered against the appellant. It was contended that the grounds of detention having been served on the appellant on 30.3.1994 though the order of detention was served on 25.3.1994, there has been an infraction of sub-section (3) of Section 3 of the Act and, therefore, the detention got vitiated. Secondly, it was urged that though the representation was made to the Advisory Board and it had not been indicated that the Central Government should also consider the same, yet the Central Government was duty bound to consider the said Representation

of the appellant addressed to the Advisory Board and such non-consideration infringes the right of the appellant under Article 22(5) of the Constitution and the order of detention is vitiated on that score. Thirdly, it was urged that the Representation that was addressed to the Central Government on 20th June, 1994 was disposed of on 6.5.1995 and thus there has been considerable delay in disposing of the Representation and such delay in disposal vitiates the order of detention. In addition to the aforesaid three grounds urged before the High Court which were reiterated by the learned Counsel for the appellant in this Court, two other grounds were also urged, namely, the grounds of detention even though had been prepared on the very date the order of detention was made yet the same not having been served for a period of 5 days there has been an infraction of sub-section (3) of Section 3 of the Act. Inasmuch as the Act postulates that the order shall be made as soon as may be, after the detention and there was no explanation for the detaining authority not to serve the grounds of detention till 30th March, 1994. It was also urged that the order of the Detaining Authority disposing of the Representation on the fact of it, indicates that there has been no application of mind, and therefore, that vitiates the order of detention. We would examine the correctness of each of the aforesaid contentions, but at the outset we may indicate that the President had promulgated Maintenance of Internal Security (Amendment) Ordinance, 1974 on 17th September, 1974 which was later on replaced by the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Act 52 of 1974). The very object of enacting the legislation was to check diversion of foreign exchange from official channels and it was thought that unless the links which facilitate violations of foreign exchange regulations and smuggling activities are disrupted by immobilising by detention of the persons engaged in these operations then there would not be any substantial impact. The Act has been amended from time to time to meet the needs of the country and the Act has been enacted at a point of time when the country was facing acute foreign exchange problem.

3. Coming to the first question as to whether by serving the grounds of detention on 30th March, 1994 there has been an infraction of sub-section (3) of Section 3, the learned Counsel appearing for the appellant urged that the order of detention having been served on 25th March, 1994 the grounds were required to be served within 5 days therefrom i.e. on 29th March, 1994 and not on 30th March, 1994 as has been factually done. According to the learned Counsel the day on which the order of detention was served cannot be excluded for computing the period of 5 days within which the grounds of detention is required to be served under sub-section (3) of Section 3 of the Act. This question no longer remains *res integra*. This Court in the case of *Haru Das Gupta v. The State of West Bengal, 1972(1) Supreme Court Cases 639*, was considering an identical provision under West Bengal Prevention of Violent Activities Act, 1970 and the Court held that the Rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded. The effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. The Court in coming to the aforesaid decision relied upon some English decisions and held that in computing the period, the date of commencement of detention that the first day has to be excluded. In the case in hand, therefore, for computing the period of 5 days the date 25th March, 1994 has to be excluded and so being done there is no infraction of sub-section (3) of Section 3 of the Act when the grounds were served on 30th March, 1994. The High Court, therefore, rightly rejected the said contention urged before it.

4. Coming to the second submission of the learned Counsel appearing for the appellant, namely, though the Representation was addressed to the Advisory Board yet the same was also to be considered by the Central Government and non-consideration of the same by the Central Government infringes the Constitutional right under Article 22(5) of the Constitution, the learned

Counsel relies upon Section 11 of the Act and the decision of this Court in *Smt. Gracy v. State of Kerala and another, 1991(1) RCR (Crl.) 508 : 1991(2) Supreme Court Cases 1*. According to the learned counsel the Central Government under Section 11 has the power of revocation and, therefore, when a detenu made a Representation to the Advisory Board it ought to have to be considered by the Central Government notwithstanding the fact that the Central Government had not been addressed in the Representation itself. There is no dispute that under Section 11 of the Act a power of revocation lies with the Central Government. This power is a supervisory power and is intended to be an additional check or safeguard against the improper exercise of the power of detention by the Detaining Authority or the State Government, and therefore, to retain the statutory safeguard the Central Government has to discharge its responsibility with constant vigilance and watchful care. This power also is independent of power of confirmation or setting aside the order of detention. But the question for consideration is when the Representation has not been addressed to the Central Government but is addressed to the Advisory Board can it be said that the Central Government also owes obligation to consider the same and decide one way or the other. It may be stated at this stage that while serving the grounds of detention on the detenu it was clearly indicated that if the detenu wishes to make any Representation against the order of detention he may do so to the Lt. Governor of the National Capital Territory of Delhi and to the Central Government and for that purpose he may address it to the Lt. Governor or to the Secretary to the Government of India, Ministry of Finance, Department of Revenue. It was further stated that if he desires to make any Representation to the Advisory Board then he may address to the Chairman, Advisory Board, COFEPOSA State, High Court of Delhi, Sher Shah Road, New Delhi. In the decision of this Court in Smt. Gracy (supra) on which learned Counsel for the appellant relied upon what has been stated by the Court is that if there is one Representation by the detenu addressed to the detaining authority then the obligation arises under Article 22(5) of its consideration by the detaining authority independent of the opinion of the Advisory Board in addition to its consideration by the Advisory Board and, therefore, when the Representation of the detenu was addressed to the detaining authority and in that case it was Central Government and not to the Advisory Board yet the Advisory Board was duty bound to consider the same, as such a Representation is the only right of the detenu under Article 22(5) of the Constitution. It was further stated that any Representation of the detenu against the order of detention has to be considered and decided by the Detaining Authority and the consideration by the Advisory Board was an additional requirement implied by reading together clauses 4 and 5 of Article 22. In the said case the Central Government was the detaining authority and, therefore, in that case the Court held that the Representation though may not have been addressed to the Advisory Board but the same was also required to be considered by the Central Government. We fail to understand how the aforesaid ratio can be held to be applicable in the present case where the Detaining Authority was the Lt. Governor of Delhi. In such a case if the Representation had not been addressed to the Central Government even though indicated in the grounds of detention then it cannot be said that any Representation made by the detenu to the Advisory Board ought to have been considered by the Central Government. That apart the detenu also did file a Representation to the Central Government on 22.6.1994 and the same was disposed of by the Central Government on 12.7.1995 and, therefore, in the said premises, the question of infraction of constitutional right of the detenu because of the Representation addressed to the Advisory Board had not been considered by the Central Government does not arise. This contention, therefore, was rightly rejected by the High Court.

5. So far as the third ground of attack is concerned, a Representation that was made to the Central Government on 22.6.1994 and was disposed of on 12th July, 1995, it cannot be said that there has been inordinate delay which can be said to vitiate the detention of the detenu. There is no inflexible

Rule that delay in considering the Representation in all cases *ipso facto* would be sufficient to render the detention void. Further what can be held to be an unexplained delay in disposing of the Representation would depend upon the facts and circumstances of each case. The right to make a Representation is undoubtedly a constitutional right of the detenu and such a Representation should be considered as expeditiously as possible. But what is reasonable expedition will depend upon the facts of each case. Judged from the aforesaid stand point and examining the time taken by the Central Government in disposing of the Representation of the detenu and the grounds advanced by the Central Government in its counter-affidavit filed in the High Court we are unable to hold that there has been an unusual delay in disposing of the Representation. Therefore, the High Court was fully justified in rejecting the said contention urged on behalf of the appellant.

6. Coming to the two other grounds which had not been raised in the High Court but urged in this Court, it is to be stated that since these grounds involve certain enquiry on facts this Court would not be justified in embarking an enquiry and deciding the same. Even otherwise we do not find any substance in either of the grounds inasmuch as under Section 3(3) of the Act the legislators themselves have fixed the time limit within which the grounds of detention could be served on the detenu. The expression `as soon as may be' cannot be read in isolation from the phrase `but ordinarily not later than 5 days'. Reading conjointly the aforesaid expressions it cannot be said that non-service of grounds of detention on the very same day when the order of detention was served on the detenu even though the grounds might have been prepared constitutes infraction of sub-section (3) of Section 3 of the Act. There may be a variety of reasons why a Detaining Authority would not be able to serve the grounds of detention on the same day even though the same may be ready and if such a ground would have been taken in the High Court explanation could have been offered. In the aforesaid premises, we have no hesitation to hold that the said submission of the learned Counsel is devoid of any force.

7. The only other contention remains to be considered is whether in the case in hand it can be said that the Detaining Authority did not apply its mind while rejecting the application of the detenu. Such a contention had also not been raised before the High Court, but according to the learned Counsel for the appellant the order that was served on the detenu would demonstrate the same. We are unable to appreciate this contention inasmuch as the communication is made only of the operative part of the order. If such a contention would have been raised in the High Court the Court would have called for the entire file. In the absence of the contention being raised in the High Court we do not think it is appropriate for us to hold from mere perusal of the order that the Detaining Authority did not apply its mind while rejecting the Representation. We, therefore, reject the said submission.

8. All the contentions having failed, this appeal fails and is dismissed.

Appeal dismissed.