

Makhan Lal Gokul Chand

Vs

Administrator, Union Territory of Delhi and Another

Writ Petition (Crl.) No. 608 of 1983

(CJI Dr. A. S. Anand, G. T. Navavati, K. T. Thomas, D. P. Wadhwa, S. Rajendra Babu JJ)

02.11.1999

ORDER

1. On 27-9-1983 a three-Judge Bench of this Court doubted the correctness of the "Wide observations" made in the case of Ram Bali Rajbhar v. State of W. B.¹ and Referred the matter to a larger Bench. The referring Bench noticing that the detenu had already suffered detention for a period of 10 months out of the 12 months' period of detention imposed by the order dated 15-12-1982, directed the detenu to be released on parole.
2. Mr. Hajinder Singh, learned counsel appearing for the petitioner has taken us through the judgments in Rajbhar case¹ and Pushpa case². A careful perusal of both the judgments, however, shows that there is no conflict between the two. The view expressed in Rajbhar case¹ in our opinion lays down the correct law and does not call for any reconsideration. Insofar as the view expressed in Pushpa case² is concerned, it deserves to be noticed that the learned Single Judge, deciding the petition during the vacation, did not say anything which may be considered as running contrary to the view expressed in Rajbhar case². On facts it was found in that case that tow representations had been made by the detenu against the order of detention and both the representations were placed before the same Advisory Board when it met and the Board considered the representations at that sitting. The argument raised in that case that the second representation had not been considered by an Advisory Board was thus found, on facts, as not valid. The Court, under those circumstances, declined to examine the contention whether personal appearance of the detenu to explain his case before the Advisory Board, since he had filed detailed written representation, infringed any of the rights of the detenu.
3. Learned counsel appearing for the parties have been unable to point out any area of conflict between Rajbhar case¹ and Pushpa case². In fairness to the learned counsel it must be noticed that they submitted that the reference does not require to be noticed that they submitted that the reference does not require to be answered. We agree.
4. Coming, however, to the facts of the present case, It is found that representations had been made by the petitioner against the order of detention and the advisory Board. The representations were rejected. The order of detention and the order of rejection of the representations was challenged through Writ Petition No. 6 of 1983, which was dismissed by the Delhi High court on 1-2-1983. The order of the Delhi High Court was challenged through Special Leave Petition No. 379 of 1983, another writ petition, being Writ petition (Crl) No. 182 of 1983, was also filed under article 32 of the constitution of India, once again putting in issue the same order of detention which had been upheld by the Delhi High court. The special leave petition as well as the writ petition stood dismissed by a three-judge Bench of this court on 23-2-1983. The petitioner thereafter filed yet

another writ petition being Writ petition (Crl.) No. 363 of 1983 challenging the order of detention on some "additional grounds". That writ petition was also dismissed by this Court on 27-4-1983. After dismissal of the third writ petition on 27-5-1983 the petitioner appears to have sent a representation, on 7-5-1983 the petitioner appears to have sent a representation, on 7-5-1983, to the first respondent involving powers under Section 21 of the General clauses Act read with section 11 of COFEPOSA. The petitioner also requested for the constitution of fresh Advisory Board to consider his representation. On 23-5-1983, the representation of the petitioner was rejected by the Delhi Administration after due consideration. This fourth writ petition has been filed thereafter challenging the same order of detention, the validity of which had been upheld earlier as noticed above. Mr Harjinder Singh appearing for the detenu submitted that the failure of the State to constitute a fresh Advisory Board to consider the representation dated 7-1983, rendered the order of detention bad.

5. After perusing the record and hearing learned counsel for the parties, we are of the opinion that there is no merit in the submission made by the learned counsel for the detenu. As already noticed, the petitioner had three times earlier, challenged the order of detention and failed. In the representation filed by the petitioner on 7-5-1983, we find that neither was any fresh material brought on record nor were any subsequent events pointed out which may have warranted a "fresh" consideration of the representation made by the detenu. It was only change in the language of the representation made by the detenu. It was only change in the language of the representation. The Delhi Administration was, therefore, justified in rejecting the representation dated 7-5-1983. Since there were no "fresh material" or "subsequent events" brought out in the representation dated 7-5-1983, there was no obligation on the State to get that representation considered by a "fresh Advisory Board" and, therefore, the exercise of discretion by the State in rejecting the representation and not constituting a "fresh" Advisory Board cannot be faulted. The detenu had, as already noticed, unsuccessfully challenged the same order of detention thrice. Making of the representation on 7-5-1983, without any fresh cause being available to him, was apparently designed to file yet another writ petition. We cannot but disapprove this attitude of the detenu. There is no merit in this writ petition, which fails and is hereby dismissed.

6. Learned counsel for the petitioner then lastly submitted that since the detenu had already remained under detention for a period of ten months before being enlarged on parole, he may not be sent back to jail to undergo the remaining period of detention.

7. The petitioner was detained, as already noticed, by an order made on 15-12-1982. After he had suffered detention for a period of about 10 months, he was directed to be released on parole by this court on 27-9-1983. More than 16 years have now gone by. In our opinion, in the peculiar facts and circumstances of this case, it would now not be in the interest of justice to cancel the order of parole and direct the petitioner to undergo the remaining period of detention of about two months.

8. We, therefore, while dismissing the writ petition, direct that the detenu need not now be taken into custody to undergo the remaining period of detention.