

SUPREME COURT OF INDIA

State of Maharashtra

Versus

Santosh Shankar Acharya

(G.B. Pattanaik and U.C. Banerjee, JJ.)

Criminal Appeal No. 596 of 2000 (Arising out of S.L.P. (Criminal) No. 1329 of 2000).

01.08.2000

Criminal Appeal Nos. 597-98, 599-604, 605-06, 607 and 608 of 2000 (Arising out of S.L.P. (Crl.) Nos. 1364-65/2000, S.L.P. (Crl.) Nos. 1368-73/2000, S.L.P. (Crl.) Nos. 1953-54/2000, S.L.P. (Crl.) Nos. 1981 and 2006/2000).

JUDGMENT

G.B. Pattanaik, J. - Leave granted. The decision of the Full Bench of Bombay High Court, Bench at Nagpur, answering the question referred to, in favour of the detenu and against the State. The question that had been referred to the Full Bench for being answered is, whether in case of an order of detention by an officer under sub-section (2) of Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Boot-leggers, Drugs Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as "Maharashtra Act"), non-communication to the detenu that he has a right of making a representation to the Detailing Authority constitutes an infraction of a valuable right of the detenu under Article 23(5) of the Constitution, and as such, vitiates the order of detention. There is no dispute that in all these cases the order of detention had been passed not by the State Government under Section 3(1) of the Maharashtra Act but by the concerned officer empowered by the State Government under sub-section (2) of Section 3 of the Act. It is also not disputed that while communicating the detenu to the grounds of detention it has not been indicated therein that he has a right to make a representation to the Detaining Authority, though in the said communication it was mentioned that the detenu could make a representation to the State Government as provided under Section 8(1) of the Maharashtra Act. The Division Bench of Bombay High Court on this aspect had taken inconsistent views and, therefore, the matter had been referred to the Full Bench. The Full Bench relying upon the Constitution Bench decision of this Court in *Kamlesh Kumar Ishwardas Patel v. Union of India, 1995(2) RCR (Crl.) 276 : 1995(4) Supreme Court Cases 51*, and on thorough analysis of the different provisions of the Maharashtra Act came to the conclusion that an order issued under sub-section (2) of Section 3 of the said Act cannot remain valid for more than 12 days unless the same is approved by the State Government as provided under sub-section (3) of Section 3 of the said Act. It was further held that until the order is approved by the State Government in exercise of its power under sub-section (3) of Section 3, the Detaining Authority who had issued the order of detention under sub-

section (2) retains the power of entertaining a representation and annul, revoke or modify the same as provided under Section 14(1) of the Act read with Section 21 of the Bombay General Clauses Act. It has further been held that failure on the part of the Detaining Authority in a case where order of detention is issued under sub-section (2) of Section 3 to the detenu that he has a right to make a representation constitutes an infraction of the rights guaranteed under Article 22(5), and as such, the detention becomes invalid on that score. This conclusion is based upon the ratio of the Constitution Bench decision of this Court in Kamlesh Kumar's case (supra) even though in Kamlesh Kumar's case the Court was considering a case of detention under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short 'COFEPOSA'). Following the opinion on the question of law referred, the Division Bench of the High Court having set aside the order of detention the State Government is in appeal before us.

3. Mr. Deshpande, the learned Counsel appearing for the State of Maharashtra and Mrs. Ramani, learned Counsel appearing for the State Government in some of these appeals vehemently contended that the decision of Kamlesh Kumar's case (supra) will have no application inasmuch as the provisions of COFEPOSA are entirely different from the provisions of Maharashtra Act, with which we are concerned in the present appeals and the High Court, therefore, committed error in following Kamlesh Kumar's case (supra) and answering the point of reference. According to Mr. Deshpande the powers under sub-section (2) of Section 3 being a delegated power, the delegatee could not exercise any function once he uses power provided under sub-section (2) and passes an order of detention. The learned Counsel contends that in view of language of sub-section (3) of Section 3 the officer who issues an order of detention under sub-section (2) being required to forthwith report the fact of detention to the State Government together with the grounds on which the order has been made, the State Government becomes the Detaining Authority thereafter, and therefore, it is not necessary for him to communicate to the detenu that he could make a representation to the Detaining Authority nor does the Detaining Authority possess such power. It is the contention of the learned Counsel for the State that in view of specific provision in sub-section (1) of Section 8, the earliest opportunity of representation could be made available to the detenu to make a representation against the order of detention to the State Government by implication, the Detaining Authority does not possess any such power, and as such, the High Court committed error in coming to the conclusion that the Detaining Authority possess the power of rescinding an order of detention issued until the said order is approved by the State Government within a period of 12 days from the date of issuance of an order of detention. According to the learned Counsel the provisions of Maharashtra Act stand on a different footing than the provisions of COFEPOSA and, therefore, the ratio in Kamlesh Kumar's case (supra) will have no application at all.

4. The learned Counsel appearing for the respondents-detenus on the other hand contended, that a plain reading of Section 14, engrafting the provisions of Section 21 of General Clauses Act, into it making explicitly clear that the legislature purposely retained the power of the officer who issues an order of detention to deal with the same in terms of Section 21 of the Bombay General Clauses Act, and that being the position, non-communication of the fact that the detenu could make a representation to the Detaining Authority so long as the order of detention has not been approved by

the State Government constitutes an infraction of valuable right of detenu under Article 22(5) and, therefore, Full Bench of the High Court was fully justified in answering the reference made to it.

5. An analysis of the provisions of the Maharashtra Act indicates that section 3 empowered the State Government to issue an order of detention under sub-section (1) and the District Magistrate or Commissioner of Police on being authorised by the State Government could issue an order of detention under sub-section (2). When an officer exercises power and issues orders of detention under sub-section (2) then he is duty bound to report forthwith the fact of detention and the grounds on which the order of detention is made and/or other particulars to the State Government. On receipt of the report, the grounds and the particulars from the concerned officer the State Government is required to approve the order of detention within 12 days, and if it is not approved within 12 days then it automatically lapses. Section 3 of the Maharashtra Act is quoted herein below in extenso for better appreciation of the analysis we have thus made :-

"Section 3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

Section 8 specifically provides that a detenu must be communicated the grounds on which the order of detention has been made as soon as may be, but not later than 5 days from the date of detention. This mandatory obligation is both on the authority who passes an order of detention either under sub-section (1) or under sub-section (2). In other words, if the State Government issues an order of detention under sub-section (1), or if the officer empowered issues an order of detention under sub-section (2) then the same must be communicated to the detenu not later than 5 days

from the date of detention. It is no doubt true that in later part of sub-section (1) of Section 8 it has been categorically mentioned that an earliest opportunity of making a representation against the order to the State Government should be afforded. But that does not make the State Government the detaining authority as soon as the factum of detention is communicated by the person concerned exercising power under sub-section (2) as provided under sub-section (3) thereof nor does it take away the power of entertaining a representation from a detenu so long as the order of detention has not been approved by the State Government. Section 8(1) of Maharashtra Act is quoted herein below in extenso :-

"Section 8(1) : When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government."

It is undoubtedly true that Section 8(1) in terms, provides for a representation of being made to the State Government but, in a case where an officer other than the State Government issues a order of detention under sub-section (2) of Section 3 his powers as the Detaining Authority to deal with the representation under the provisions of Section 21 of the Bombay General Clauses Act, 1904, cannot be said to be taken away merely because Section 8(1) specifically provides for making a representation to the State Government. Section 14(1) of the Maharashtra Act is quoted herein below in extenso for better appreciation of the point in issue together with Section 21 of the Bombay General Clauses Act, 1904 :-

"Section 14(1) : Without prejudice to the provisions of Section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of Section 3."

"Section 21 : Where by any Bombay Act (or Maharashtra Act), a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or by-laws, so issued."

If the contention of Mr. Deshpande to the effect that the moment an order of detention issued by an order under sub-section (2) of Section 3 of the Act is communicated to the State Government under sub-section (3) of the said Section thereof the State Government becomes the Detaining Authority, and therefore, the power under Section 21 of the Bombay General Clauses Act cannot be exercised by the said detaining authority is correct, then it has to be found out as to under which contingency Section 14 of the Maharashtra Act would apply. To our query neither Mr. Deshpande nor Mrs. Ramani, learned Counsel appearing for the State Government could indicate any situation when such power could be exercised. It is too well known a principle of construction of statutes that the legislature engrafted every part of a statute for a purpose and the legislative intention is that every part of the statute should be given effect. The legislature is deemed not to waste its words or

to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. We are cognizant of the principle '*ex majori cautela*' but it is difficult for us to apply the said principle to Section 14 of the Maharashtra Act and even hold the same to be tautologous inasmuch as it has never been shown as to what was the necessity for the legislature to protect the power under Section 21 of the Bombay General Clauses Act, to an order of detention made under the Maharashtra Act. The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under sub-section (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government under Section 8(1), the said Detaining Authority continues to be the Detaining Authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of detention order. Consequently, until the said detention order is approved by the State Government the Detaining Authority can entertain a representation from a detenu and in exercise of his power under the provisions of Section 21 of Bombay General Clauses Act could amend, vary or rescind the order, as is provided under Section 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of section 8(1) as well as Section 14 and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detenu that he could make a representation to the Detaining Authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamlesh Kumar's case (supra) would apply notwithstanding the fact that in Kamlesh Kumar's case (supra) the Court was dealing with an order of detention issued under the provisions of COFEPOSA.

6. The counsel appearing for the State strongly relied upon the decision of this Court in ***Veeramani v. State of Tamil Nadu, 1994(1) RCR (Crl.) 625 : 1994(2) Supreme Court Cases 337***, wherein an order of detention had been issued under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (hereinafter referred to as "Tamil Nadu Act"). According to the learned Counsel for the State the provisions of the said Act are in *pari materia* with the Maharashtra Act with which we are concerned in the present appeals and this Court in *Veeramani* (supra) had recorded a conclusion that the question of Detaining Authority revoking the order after such approval does not arise and the power preserved by virtue of the provisions of General Clauses Act is no more exercisable. In the aforesaid case the Court considered several earlier decisions of the Court under the provisions of COFEPOSA and was of the view that the observations made therein could not apply to cases arising under other Preventive Detention Act including the Tamil Nadu Act. *Veeramani* (supra) also relied upon the judgment of this Court in ***State of Maharashtra v. Sushila Mafatlal Shah, 1988(2) RCR (Crl.) 373 : 1988(4) SCC 490***, for the ultimate conclusion. In our considered opinion this decision does not

assist the respondents in any manner inasmuch as the Court in Veeramani (supra) has considered the situation that emerged subsequent to the date of approval of the order of detention by the State Government and not prior thereto. As has been stated earlier, it may be difficult to contend that even after the approval of the order of detention by the State Government the Detaining Authority would still be competent to entertain and dispose of a representation in exercise of the powers under Section 21 of Bombay General Clauses Act, but this decision cannot be said to be an authority to hold that even before the approval of the order of the Detaining Authority the Detaining Authority does not possess the power under Section 21 of the Bombay General Clauses Act. Such a conclusion would make the entire provisions of Section 14 of the Maharashtra Act redundant and otiose. Then against the Court had fully relied upon the observations of this Court in State of Maharashtra v. Sushila Mafatlal Shah (supra) and the judgment of Sushila Mafatlal Shah (supra) has been directly considered and overruled in the Constitution Bench decision in Kamlesh Kumar's case (supra). It would also be appropriate to notice that even in ***Raj Kishore Prasad v. State of Bihar, 1982(3) Supreme Court Cases 10***, though the Court did not entertain the contention that the detaining authority under the provisions of National Security Act has a right to consider the representation on the ground that the order of detention had been approved by the State Government yet it had been observed that constitutionally speaking a duty is cast on the Detaining Authority to consider the representation which would obviously mean that if such representation is made prior to the approval of the order of detention by the State Government. This being the position, it goes without saying that even under the Maharashtra Act a detenu will have a right to make a representation to the Detaining Authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make representation to the Detaining Authority would constitute an infraction of the valuable constitutional right guaranteed to the detenu under Article 22(5) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgment of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed.

Appeals dismissed.