ABDUL RAZAK DAWOOD DHANANI

v.

UNION OF INDIA AND ORS.

APRIL 17, 2003

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Sections 3(1), 8(f) and 11—Detention order—Representation before competent authority—Rejection—Second representation also being rejected—Justification of—Held : Second representation was not on any new grounds or fresh material or any subsequent event—There was only change in language--Thus rejection of second representation justified—In such case Central Government not bound to consider second representation and pass a separate order.

Appellant's son was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Detenu made representation to the detaining authority and Central Advisory Board challenging his detention order on various grounds. Advisory Board considered the case of detenu and opined against his release. Detaining authority then after careful consideration rejected detenu's representation. Thereafter Central Government also rejected the representation. Detenu made second representation but the same was also not dispose of by a separate order and the detention order was confirmed. Aggrieved appellant challenged the detention. High Court dismissed the same. Hence the present appeal.

Appellant contended that a detenue has a constitutional right to make as many representations as he wishes to make, and the detaining authority as well as the Central Government are under a constitutional obligation to consider and dispose of every representation made by the detenue at the earliest. It was further contended that even if a detenu does not have a constitutional right to make a second representation, in the facts of the instant case since the first representation was pending when the second representation was received, it was a part of or continuation of the first representation, in any case, it was material before the Central Government which it was bound to consider.

Respondent contended that all the relevant materials including the second

A representation which formed part of the papers which came from the Advisory Board, were considered by the Central Government while rejecting the representation; that the principle is well established that there is no constitutional right of a detenu to make successive representations, nor is there a corresponding obligation on the competent authority to consider and dispose of such representation by a separate order, unless the subsequent B representation discloses "fresh grounds" or "fresh material" or any "subsequent event" which may justify the consideration of another representation; and that Article 22(5) speaks of "a representation" and therefore another representation can be considered only if new grounds based on fresh materials are brought to the notice of the competent authority.

C

Dismissing the appeal, the Court

HELD: 1.1. The submission that there is no constitutional right of a detenu to make successive representations, nor is there a corresponding obligation on the competent authority to consider and dispose of such D representation by a separate order, unless the subsequent representation discloses "fresh grounds" or "fresh material" or any "subsequent event" which may justify the consideration of another representation and a formal disposal by a fresh order must be accepted. [812-E, F]

1.2. Having carefully scrutinized the two representations it is found there E is no new ground or fresh material or any subsequent event in the second representation made by the detenu. The same grounds and the same materials as stated in the first representation have been stated in the second representation, except for the difference in language and the manner of presentation. In these circumstances the Central Government was not bound to consider the second representation and pass a separate order disposing of F the same. In fact all the grounds stated in the second representation were also stated in the first representation which was rejected by the Central Government after obtaining opinion of the Advisory Board and after due consideration. Therefore, there was no obligation on the part of the Central Government to pass a similar order again on the basis of the second representation which did G not contain any new or fresh grounds justifying a fresh consideration. [813-A-D]

Ram Bali Rajbhar v. *The State of West Bengal and Ors.*, [197]) 4 SCC 47, distinguished.

H *Makhal Lal Gokul Chand* v. *Adminstrator, Union Territory of Delhi and*

Anr., **[1999] 9 SCC 504**; *Smt. K. Aruna Kumari* **v.** *Government of Andhra Pradesh and Ors.*, **[1988] 1 SCC 296**; *State of Uttar Pradesh* **v.** *Zavad Zama Khan*, **[1984] 3 SCC 505**; *Amir Shad Khan* **v.** *L. Hmingliana and Ors.*, **AIR (1991) SC 1983**; *Smt. Gracy* **v.** *State of Kerela and Anr.*, **[1991] 2 SCC 1 and** *Sat Pal* **v.** *State of Punjab*, **[1982] 1 SCC 12 referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 22 of 2003.

From the Judgment and Order dated 24.7.2002 of the Mumbai High Court in Crl. W.P. No. 464 of 2002.

C.A. Sundaram, Ms. Mukulika Akbar, Tripurari Ray and Vishwajit Singh for the Appellant.

Raju Ramachandran, Additional Solicitor General, P.P. Malhotra, Brijesh Kumar, B.K. Prasad and V.N. Raghupaty for the Respondents.

The Judgment of the Court was delivered by

B.P. SINGH, J. This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Bombay dated 24th July, 2002 in Criminal Writ Petition No.464 of 2002 dismissing the writ petition filed on behalf of the detenu Mohd. Yusuf Razak Dhanani by his father Shri Abdul Razak Dawood Dhanani appellant herein, challenging his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA').

It is not in dispute that the order of detention dated 20th February, 2002 was passed by the Joint Secretary to the Government of India, who was specially empowered under Section 3 (1) of the COFEPOSA in this behalf. The order of detention as well as the grounds of detention were served on the detenu on 26th February, 2002. The detenu on 12th April, 2002 submitted a representation to the detaining authority, the Secretary to the Government of India, Ministry of Finance as also to the Chairman of the COFEPOSA Central Advisory Board. In the said representation various grounds were raised challenging the order of detention and praying that the order of detention be revoked as there was no sufficient cause for the appellant's detention. The Advisory Board considered the case of the detenu on 19th April, 2002 but the opinion of the Advisory Board was not in favour of the release of the detenu. Thereafter the detaining authority passed an order on 6th May, 2002

A rejecting the representation of the detenu after fully considering the same. By order dated 8th May, 2002 the representation of the detenu was rejected by the Central Government after careful consideration.

The case of the appellant is that he made a second representation on 19th April, 2002 but the same was not considered and the order of detention
B was confirmed. Before the High Court it was urged on behalf of the appellant that the detenu had made a third representation on 14th May, 2002 but the appellant has not made any submission before us with regard to the said third representation, and therefore the finding of the High Court on this aspect of the matter has not been challenged before us.

C It was submitted before us by the appellant that in the second representation of April 19, 2002 new grounds had been taken by the detenu challenging the order of detention. This representation had been sent to the Advisory Board with a request that the same may be forwarded to all other authorities competent under the law to revoke the order of detention. Learned
D counsel for the appellant submitted before us, relying upon the judgments of this Court in *Amir Shad Khan and Anr.* v. *L. Hmingliana and Ors.*, AIR (1991) SC 1983 and *Smt. Gracy* v. *State of Kerala and Anr.*, [1991] 2 SCC 1 that when such a representation is received by the Advisory Board with a request to forward the same to the appropriate authorities, the Advisory Board is under an obligation to forward the same to the competent authorities. Learned
E Additional Solicitor General did not dispute the proposition that in such a case it is only appropriate that the Advisory Board must forward the representation to the concerned authorities. In the instant case the meeting of the Advisory Board took place on 19th April, 2002 and the second representation also bears the same date. The learned Additional Solicitor
F General submitted that all the relevant materials, including the second representation which formed part of the papers which came from the Advisory Board, were considered by the Central Government while rejecting the representation by order dated 8th May, 2002.

On the other hand counsel for the appellant submitted that the power
G under Section 11 of COFEPOSA is independent of the power to confirm the order of detention under Section 8 (f) of the Act. Both of the powers have to be exercised separately. The Advisory Board is under an obligation to forward the representation to the concerned authorities if such a request is made to it by the detenu while submitting his representation before the
H Advisory Board, because the detenu has a constitutional right to make a

representation. The constitutional right to make a representation is not confined to only one representation, and therefore it is obligatory for the detaining authority as well as the Central Government to consider and dispose of every representation made by the detenu. He submitted that the order of 8th May, 2002 disposed of the first representation of 12th April, 2002 but did not dispose of the second representation made on 19th April, 2002. The second representation of 19th April, 2002 may have been considered by the Advisory Board or by the detaining authority, since the detaining authority formally rejected the representation dated 19th April, 2002 by a separate order dated 8th May, 2002, but the Central Government did not pass a similar order. So far as the second representation was concerned the same was never considered or rejected, because the order of May 8, 2002 rejecting the representation specifically refers to the representation dated 12th April, 2002 which was the first representation. He also challenged the order confirming the detention under Section 8(f) of the Act because the same was passed without first disposing of the second representation which was made by the detenu on 19th April, 2002.

Counsel for the appellant relied upon several decisions of this Court and urged that a detenu has a constitutional right to make as many representations as he wishes to make, and the detaining authority as well as the Central Government are under a constitutional obligation to dispose them of at the earliest. Counsel refers to the decision of this Court in *Ram Bali Rajbhar* v. *The State of West Bengal and Ors.*, [1975] 4 SCC 47. We find that the said decision is clearly distinguishable because that was not a case where an order of detention was sought to be quashed on the ground of non-consideration of the second representation. In the aforesaid decision this Court considered the scope of the power and the manner of its exercise conferred by Section 14 of MISA. It was held that the State Government can revoke or modify an order of detention if it is satisfied on new or supervening conditions or facts coming to light, that a revocation or modification had become necessary. Section 14 of the Act vests a wider power than that which the State Government may have possessed under the provisions of Section 21 of the General Clauses Act, 1897. It is left to the Central Government in the exercise of its discretion, either to exercise the power read with provisions of Section 21 of the General Clauses Act or without the aid of Section 21 of the General Clauses Act. It was further observed that it would be a reasonable and judicious exercise of the power under Section 14 of the Act to refer the case once again to the Advisory Board for its opinion before a subsequent

A representation made on "fresh materials" by a detenu is rejected. The subsequent reference would result from a necessarily implied power of the Government to act, so far as possible in a like manner to the one it has to adopt in confirming or revoking the initial detention order under Section 12 of the Act. The Court did not quash the detention order but only directed the Government to consider and take an early decision upon the pending B fresh representation of the petitioner. It thus appears that this Court did not quash the order of detention merely on the ground that the second representation was not disposed of by the State Government expeditiously. Counsel then relied on the judgment of this Court in *State of Uttar Pradesh* v. *Zavad Zama Khan,* [1984] 3 SCC 505. This was again a case under MISA, C 1971 and this Court after referring to the judgment in *Sat Pal* v. *State of Punjab,* [1982] 1 SCC 12 noticed the observation appearing in that judgment which reads thus :

> "The making of an application for revocation to the Central Government under Section 11 of the Act is, therefore, part of the constitutional D right a citizen has against his detention under a law relating to preventive detention. While Article 22(5) contemplates the making of a representation against the order of detention to the detaining authority, which has to be referred by the appropriate Government to the Advisory Board constituted under Section 8(a) of the Act, Parliament has, in its wisdom, enacted Section 11 and conferred an E additional safeguard against arbitrary executive action".

Thereafter this Court went on to hold :-

> "The principle that emerges from all these decisions is that the power of revocation conferred on the Central Government under Section 14 F of the Act is a statutory power which may be exercised on information received by the Central Government from its own sources including that supplied by the State Government under sub-section (5) of Section 3 or from the detenu in the form of a petition or representation. It is for the Central Government to decide whether or not it should revoke G the order of detention in a particular case. In the present case, the detenu was not deprived of the right of making a representation to the detaining authority under Article 22(5) of the Constitution read with Section 8(1) of the Act. Although the detenu had no right to simultaneously make a representation against the order of detention to the Central Government under Article 22(5) and there was no duty H cast on the State Government to forward the same to the Central

Government, nevertheless the State Government forwarded the same forthwith. The Central Government duly considered that representation which in effect was nothing but a representation for revocation of the order of detention under Section 14 of the Act. That being so, it was not obligatory on the part of the Central Government to consider a second representation for revocation under Section 14." A B

The aforesaid decision therefore does not help the appellant. The appellant also relies upon the judgment of this Court in *Smt. K. Aruna Kumari* v. *Government of Andhra Pradesh and Ors.*, [1988] 1 SCC 296. We have carefully perused the judgment and we find that even this judgment does not support the case of the appellant. This was again a case of detention under the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 in paragraph 9 of the report, the following observation is made: C

"So far as the second representation filed by Madhava Rao's cousin Lakshmana Rao is concerned, it has, in fact, been disposed of by the Central Government but about 3 months later after its filing. It was argued that Section 14 of the Act clothes the authority with the power of revoking the detention order, and such a power carries with it the duty to exercise it whenever and as soon as changed or new factors call for the exercise of that power. Reliance was placed on the observations of this Court at page 786 (SCC p. 207) in *Haradhan Saha* v. *State of West Bengal* and those in paragraph 9 of the judgment in Sat Pal V. State of Punjab . It is true that such a power coupled with the duty exists but the duty to exercise it arises only where new and relevant facts and circumstances come to light. This was not so here, and as observed in para 13 of the judgment in *State of U.P.* v. *Zavad Zama Khan*, there is no right in favour of the detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. In any event no period of limitation is fixed for disposal of an application under Section 14 and as we have seen earlier the second representation filed by Lakshmana Rao indeed, was considered and rejected". D E F G

It thus appears from the aforesaid judgment that even the statutory power vested in the Central Government to revoke the order of detention may be exercised in its discretion only in cases where "fresh materials" or "changed or new factors" call for the exercise of that power, and there is no right in favour of the detenu to get his successive representations based on the same H

A grounds rejected earlier to be formally disposed of again. This principle finds affirmation in a judgment rendered by a constitution bench of this Court in *Makhan lal Gokul Chand* v. *Administrator, Union Territory of Delhi and Anr.*, [1999] 9 SCC 504 in which this Court found that the petitioner challenged the order of detention and failed thrice, and yet filed another representation which did not disclose any fresh material, nor were any subsequent events B pointed out which may have warranted a "fresh" consideration of the representation made by the detenu. It was only a change in the language of the representation. The Delhi Administration was, therefore found, justified in rejecting the representation since there were no "fresh grounds" nor any "fresh material" or "subsequent events" brought out in the last representation. C There was, therefore, no obligation on the part of the State to get that representation considered by a "fresh Advisory Board" and, therefore, the exercise of this discretion by the State in rejecting the representation and not constituting a "fresh" Advisory Board could not be faulted. The writ petition was accordingly dismissed.

D Faced with this situation counsel for the appellant submitted that even if a detenu does not have a constitutional right to make a second representation, in the facts of this case it must be held that since the first representation was pending when the second representation was received, it was a part of, or continuation of the first representation. In any case, it was E material before the Central Government which it was bound to consider.

The learned Additional Solicitor General submitted that the principle is well established that there is no constitutional right of a detenu to make successive representations, nor is there a corresponding obligation on the competent authority to consider and dispose of such representation by a F separate order, unless the subsequent representation discloses "fresh grounds" or "fresh material" or any "subsequent event" which may justify the consideration of another representation. A mere reiteration of the same grounds on the same material is not sufficient, and in such a case there is no legal obligation even to consider such a representation. He further submitted that G Article 22(5) speaks of "a representation" and therefore another representation can be considered only if new grounds based on fresh materials are brought to the notice of the competent authority. Having regard to the authorities, we find considerable force in the submission urged by the learned Additional Solicitor General.

H We have, therefore, carefully perused the first representation dated 12th

April, 2002 as well as the second representation dated 19th April, 2002. We requested counsel for the appellant to point out any new ground based on fresh material or any subsequent event which justify a reconsideration of the matter on the basis of the second representation. Having carefully scrutinized the two representations we do not find any new ground or fresh material in the second representation made by the detenu. The same grounds and the same materials as stated in the first representation have been stated in the second representation, except for the difference in language and the manner of presentation. Having not found any new ground or fresh material or any subsequent event justifying a consideration of the second representation of the detenu, we are not persuaded to hold that in these circumstances the Central Government was bound to consider the second representation and pass a separate order disposing of the same. In fact all the grounds stated in the second representation were also stated in the first representation which was rejected by the Central Government after obtaining opinion of the Advisory Board and after due consideration. There was, therefore, no obligation on the part of the Central Government to pass a similar order again on the basis of the second representation which did not contain any new or fresh grounds justifying a fresh consideration.

A B C D

We, therefore, find no merit in this appeal and the same is accordingly dismissed.

N.J. Appeals dismissed. E