A.C. RAZIA

v.

GOVERNMENT OF KERALA AND ORS.

MAY 7, 2003

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

Preventive Detention :

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Sections 3(1)(i)-(iv) and 3(2)—Constitution of India, 1950—Article 22(5)—Detention order—Representation by detenue—Representation and allied documents being placed before Central Government in regional language by concerned authority—Non-translation in English language—Non-availability of records to show if officer concerned having knowledge of regional language—Confirmation of detention order—Justification of—Held: As Central Government could not exercise full and independent application of mind due to non-translation, detention order vitiated—Guaranteed rights under Article 22(5) violated—Thus order of High Court confirming detention order set aside.

Detention Order was passed against appellant's husband under Sections 3(1)(i), (ii), (iii) and (iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Appellant made a representation in regional language to the detaining authority and to the Central Government. Both the representations were rejected. Thereafter on reference Advisory Board passed a report and the Government then confirmed the detention order. Aggrieved appellant filed writ petition challenging the detention order. High Court dismissed the same. Hence the present appeal and writ petition.

Appellant contended that representation sent to the Central Government and also the documents forming the basis of detention order was in Malayalam and no English translation of the same was made available to the Central Government; and that there is nothing on record to show that the concerned officer who dealt with the representation knew Malayalam, the same was not considered in the manner contemplated under the Constitution and COFEPOSA Act, thus the detention is vitiated.

A State Government contended that the consideration of the representation by the Authority and the Government is different; and that there is no need to furnish translation of all the documents relating to detention to the Central Government.

Union of India contended that under section 3(2) of the COFEPOSA B Act, it is not relevant whether the State Government forwards the relied upon documents to the Central Government or not since there is no provision in the COFEPOSA Act for approval of the detention order by the Central Government; that the Central Government is to apply its mind for the purpose of taking a decision whether it is necessary to interfere with the detention order; and that in the instant case, the Central C Government took decision upon the report under Section 3(2) on the basis of the comments on appellant's representation and on the abridged English translation of the documents, which was made available to them by the State Government.

D Referring the matter to a larger Bench, the Court

Per Rajendra Babu, J.

HELD: 1. There is a fundamental difference between the consideration of a representation by the Government under Section 3 and that of the one by the authority under Section 8 of Conservation of Foreign E Exchange and Prevention of Smuggling Activities Act, 1974. The Government under its constitutional obligation under Article 22(5) of the Constitution will have to ascertain whether the order itself is permissible under law or not, whereas the Authority is looking the matter under Article 22(4). [27-H; 28-A]

F *K.M. Abdulla Kunhi* v. *Union of India,* [1991] 1 SCC 476; *P.K. Chakrabarty and Ors.* v. *State of West Bengal,*[1969] 3 SCC 400 and *Jayanarain Surul* v. *State of West Bengal,* [1970] 1 SCC 219, not applicable.

2.1. For a proper consideration of the representation by the detenue by Central Government, there should be full and independent application G of mind on the representation and on all the documents upon which the detention order was passed. This could not be done by a ritualistic perusal of the documents in a perfunctory manner. The grounds of detention and the documents upon which it is based should be strictly scrutinized. For this purpose, the necessary documents should be translated into the H language which could be understood by the concerned person who is sitting

upon judgment over the same and without which, the full and independent application of mind cannot be ensured. [28-G, H; 29-A]

2.2. In the instant case there is no indication anywhere that the documents referred to in the detention order are not really relevant in examining the grounds of detention. It is not the case of respondents that the reference to documents in the detention order is made only in the passing but not relied upon. The concerned authority had not placed representation and the allied documents in a translated form before the Central government, the latter could not exercise full and independent application of mind in the appellant's case and his representation was not properly evaluated. Therefore, the detention violates the constitutional guarantee under Article 22(5) of the Constitution. The High Court has not looked into this dimension of the case and in a cryptic manner disposed of the matter by just commenting on the proficiency of the detenu over English language, thus is liable to be reversed. [29-B, F; 30-B, C]

Amir Shad Khan v. *L. Hmingliana,* [1991] 4 SCC 39; *Ayya alias Ayub* v. *State of U.P. and Anr.,* [1989] 1 SCC 374; *T. Delkar* v. *Administrator, Union Territory Delhi,* [1987] 2 SCC 69 and *Union of India* v. *Diljeet Singh,* [1999] 2 SCC 672, referred to.

Per G.P. Mathur, J. (Dissenting):

1.1. In the instant case, the detention order was made by the State Government, the appropriate Government would be the State Government and not the Central Government. Therefore, the duty of making the reference to the Advisory Board and that of confirming the detention order after receiving the opinion of the Advisory Board to the effect that there was sufficient cause for detention of the detenu, was that of the State Government in view of Section 8(b) and (f) of COFEPOSA Act. The role of Central Government in such a situation comes under Section 3(2) of the Act. [36-G, H; 37-A]

1.2. Under the relevant provision of statute, Central Government can exercise the power for revocation of the detention order and it is some kind of a supervisory power. The petitioner invoked this exercise of power by making a representation to the Central Government. In such a situation it will not be legitimate to hold that merely because English translation of copies of all the documents which were supplied to the detenu along with the detention order had not been made available to the Central

A Government, there has been any infraction of any constitutional guarantee of the detenu under Article 22(5). [37-E, F, G]

1.3. Copy of the detention order and grounds of detention are always sent to the Central Government when a report is made under Section 3(2) of the Act. If representation is in regional language it is also translated B into English by the Sponsoring Authority and sent to the Central Government along with para-wise comments. If there is any specific doubt or confusion with regard to the points raised in the representation, further clarification is obtained from the Sponsoring Authority and if the situation so warrants the assistance of an official/person conversant with the C regional language is also obtained. [38-A, B]

Pankaj Kumar Chakrabarty and Ors. v. *State of West Bengal,* [1969] 3 SCC 400; *Jayanarayan Sukul* v. *State of West Bengal,* [1970] 1 SCC 219; *Hardhan Saha* v. *State of West Bengal and Ors.,* [1975] 3 SCC 198; *K.M. Abdulla Kunhi and B.L. Abdul Khader* v. *Union of India and Ors.,* [1991] 1 D SCC 476; *Sabir Ahmed* v. *Union of India and Ors.,* [1980] 3 SCR 738; *Sat Pal* v. *State of Punjab,* AIR (1981) SC 2230 and *State of U.P.* v. *Zavad Zama Khan,* AIR (1984) SC 1095, referred to.

1.4. Though there is requirement of supplying copies of all the documents along with the grounds of detention to a detenu but it is equally E well settled that it is not necessary to supply each and every document of which a mere passing reference has been made or which has not been specifically relied upon by the detaining authority. Such principle will apply in the matter of consideration of the representation made to the Central Government in the case of a detenu who has been detained in F pursuance of detention order passed by the State Government.

Mst. L.M.S. Ummu Saleema v. *B.B. Gujaral and Anr.,* [1981] 3 SCC 317; *Kamarunnissa* v. *Union of India,* [1991] 1 SCC 128 and *Abdul Sathar Ibrahim* v. *Union of India,* AIR (1991) SC 2261, referred to.

G 1.5. While considering such a representation it is not necessary for the Central Government to look to and thoroughly examine all those documents which have been supplied to him along with grounds of detention. The Central Government may examine other matters also but basically it is required to examine the pleas raised by a detenu in his representation. A detenu may not raise such pleas which may require H examination of all the copies of documents which have been supplied to

him along with detention order. A perusal of the representation made to the Central Government, would show that except for denying the allegations made against the detenu, hardly any such specific plea has been taken which may require perusal and examination of all the documents, copies of which had been supplied to the detenu. The petitioner has not shown as to how on account of non-translation of any specific document there has not been a proper consideration of the representation on the part of the Central Government. [39-C, D, E]

1.6. The representation made to the Central Government is dealt with by several officers like Deputy Secretary, Joint Secretary and Secretary of the Department. The same is done in the instant case. There is every possibility that one of such officers may not be fully familiar with the regional language in which some documents may have been written. The translation of all the documents into English language is bound to take a long time which will necessarily entail in delaying the consideration of the representation and that by itself will become a valid ground for challenging the detention order. Such an interpretation which will frustrate the whole object of passing a detention order and the detention laws futile in almost every case should not be given unless there are compelling reasons. [39-F, G, H]

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 153 of 2003.

From the Judgment and Order dated 29.11.2002 of the Kerala High Court in O.P. No. 21952 of 2002.

WITH

W.P. (Crl.)No. 6 of 2003.

B. Kumar and P.K. Manohar, for the Appellants.

T.L.V. Iyer, K.R. Sasiprabhu, John Mathew, Sushil Tekriwal, Ms. Pinky Anand and B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

The appellant's husband has been detained under Sections 3(1)(i), 3(1)(ii), 3(1)(iii) and 3(1)(iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) on 24/6/

A 2002 vide detention Order dated 19/4/2001. The detenu was duly served with the Order of detention along with the grounds of detention and other relevant documents in the Central Jail Trivandrum, where he was detained. It is submitted that these documents were voluminous which is running to more than four hundred pages. Later he was also supplied with an Order in original dated 16/5/2002, which is about twenty pages.

B

On 13/7/2002 appellant made a representation in regional language (Malayalam) to the detaining authority and to the Central Government. Both these representations were rejected on 30/7/2002 and 29/7/2002 respectively. The case of detenu was referred to the Advisory Board and on the basis of C this report the Government has confirmed the detention order on 6/9/2002. Later, a writ petition was filed before the Kerala High Court by the appellant herein seeking the relief of her husband and on being dismissed, the appellant urging the same relief has filed a writ petition before us as well as special leave petition challenging the order of the High Court.

D The definite case of the appellant before us is that representation sent to the Central Government was in Malayalam and no English translation of the same was made available to the Central government. It is also submitted that even the documents forming the basis of the Order of detention was in Malayalam and had not been translated into English for the proper appreciation by the Central Government. And since there is nothing on record to show E that the concerned officer who dealt with the representation knew Malayalam, the same was not considered in the manner contemplated under the Constitution and COFEPOSA Act. Therefore, it is argued that the detention is vitiated.

On behalf of the State Government it is argued that the consideration of the representation by the Authority and the Government is different. It is F also submitted that there is no need to furnish translation of all the documents relating to detention to the Central Government. The Union of India contended that it is not relevant in the context of section 3(2) of the COFEPOSA Act, whether the State Government forwards the relied upon documents to the Central Government or not. Since there is no provision in the COFEPOSA G Act for approval of the order of detention by the Central Government, all that the Central Government is to do is to apply its mind for the purpose of taking a decision whether it is necessary to interfere with the order of detention by way of revocation or modification and for this purpose the Detention Order and the Grounds of detention are adequate... .In this case it is not disputed that the Central Government took decision upon the report under Section 3(2) H on the basis of the comments on appellant's representation and on the abridged

English Translation of the documents, which was made available to them by the State Government.

The State Government mainly placed its reliance upon the decision of a Constitutional Bench of this Court in *K.M. Abdulla Kunhi* v. *Union of India,* [1991] 1 SCC 476. Based on this ruling, they attempted to convince us that while sending the 'report' under Section 3(2) of the COFEPOSA Act there is no need to submit all the translated documents to the Central Government which was relied upon to detain the detenu.

In Abdulla Kunhi the main question raised for consideration was - Whether the confirmation of detention order upon accepting the report of the Advisory Board rendered itself invalid solely on the ground that the representation of the detenu was not considered and subsequent consideration of the representation would not cure that invalidity ? This Court answered this in the negative. Analyzing the difference between the purpose of Article 22(5) and Article 22(4) it was held that:

> "The constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. However, the obligation of the government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from its obligation to refer the case of detenu along with the representation to the Advisory Board under clause (4) of Article 22 read with Section 8(c) of the COFEPOSA Act to enable the Board to form its opinion and send a report to the government. The obligation of the government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the government."

(Emphasis supplied)

First of all it is to be noted that there is a fundamental difference between the consideration of a representation by the Government under Section

A 3 and that of the one by the authority under S on 8 of COFEPOSA Act. The Government under its constitutional obligation under Article 22(5) will have to ascertain whether the order itself is permissible under law or not. Whereas the Authority is looking the matter under Article 22(4), in that case the Authority was not considering the correctness of the detention . They were only concerned about the duration of detention. For ascertaining the B extension of detention, it may not be necessary to look into all the relevant documents. It is in this context that this Court held that the report to the government and to the authority is different. Therefore, *Abdulla Kunhi* cannot be employed to buttress the argument advanced on behalf of State Government. This being the position, the other two decisions cited to support the arguments C by the State Government - *P.K. Chakrabarty and Ors.* v. *State of West Bengal,* [1969] 3 SCC 400 and *Jayanarain Surul* v. *State of West Bengal,* [1970] 1 SCC 219, are also of no assistance to decide the case in hand.

Preventive detention is an extraordinary measure enabling the detention of a person without trial. Then the only option for the detenu is to make a D representation to the concerned authorities. His right to liberty under Article 21 depends upon the proper consideration of such representation. Fundamental right to liberty in these cases could be ensured only by a proper consideration of the representation after full and independent application of mind on the representation and on the relevant documents. This Court in a string of cases E has pointed out the 'dual obligations' of the State and Authorities under Article 22 (5). They are (i) to communicate the detenu the grounds on which the detention order has been made and (ii) to afford to the detenu the earliest opportunity of making representations against the detention order. In *Amir Shad Khan* v. *L Hmingliana,* [1991] 4 SCC 39, it was held that the right to make a representation against the detention order thus flows from the F Constitutional guarantee enshrined in Article 22 (5). Therefore decision upon any such representation should be taken only after proper consideration of the same.

In this case the only point for consideration is whether the Central Government has properly considered the representation by the appellant or G not. Thus, the focal point of dispute is not the effect of Report sent under Section 3(2) of the COFEPOSA Act, 1974 but non-consideration of the original representation to the Central Government in the light of Article 22(5) of the Constitution. For a proper consideration by the Central Government, there should be full and independent application of mind on the representation and H on all the documents upon which the detention order was passed. This could

not be done by a ritualistic perusal of the documents in a perfunctory manner. The grounds of detention and the documents upon which it is based should be strictly scrutinized. For this purpose, the necessary documents should be translated into the language which could be understood by the concerned person who is sitting upon judgment over the same and without which, the full and independent application of mind cannot be ensured. Therefore the non-translation of relevant documents in the present case vitiates full and independent application of mind over the representation. It falls foul of Article 22 (5). There is no indication anywhere that the documents referred to in the order of detention are not really relevant in examining the grounds of detention. It is not the case of respondents that the reference to documents in the order of detention is made only in the passing but not relied upon.

It is also to be noted that for the proper exercise of the power of revocation under Section 11 of the COFEPOSA Act, there should be proper consideration of the representation by the revocation authorities (concerned officers, State Government or the Central Government). As pointed out, this could be done only by the full and independent application of mind on the representation and on all the documents upon which the detention order was passed. For this purpose also translated documents is quiet necessary. In *Ayya alias Ayub* v. *State of UP and Anr.*, [1989] 1 SCC 374 it was held that- "if a piece of evidence which might have reasonably affected the decision to pass an order of detention is excluded from consideration, there would be failure of application of mind, which, in turn, would vitiate the order of detention." Here it is not necessary to anticipate whether the authority would have or would not have rejected the representation if all the documents were produced for consideration. In *T. Delkar* v. *Administrator, Union Territory Delhi*, [1987] 2 SCC 69, it is pointed out that the role of the Court is only to ascertain whether the constitutional safeguard has been infringed or not. Since in this case the concerned authority had not placed representation and the allied documents in a translated form before the Central government, the latter could not exercise full and independent application of mind in the appellant's case. Consequently, the guaranteed rights under Article 22(5) of the Constitution are violated. It must be made clear that Section 3(2) of the COFEPOSA Act cannot control or whittle down the ambit of Article 22(5) of the Constitution.

It is worthwhile to refer *Union of India* v. *Diljeet Singh*, [1999] 2 SCC 672, in the context of present case. Wherein, it was held that:

A "....Consideration of report sent up by the State Government under Section 3(2) of the COFEPOSA Act by the Central Government or a competent authority to whom power is delegated is a statutory requirement which is in addition to the obligations imposed by Article 22(5) of the Constitution. Non-compliance of the statutory requirement, like abrogation of safeguards, would vitiate continued detention of a B person ordered to be detained under COFEPOSA Act."

In result, the appellant's representation was not properly evaluated. Therefore, the detention in the present case violates the constitutional guarantee under Article 22(5). The High Court has not looked into this dimension of C the case. In a cryptic manner they disposed of the matter by just commenting on the proficiency of the detenu over English language. The same is liable to be reversed.

The appeal as well as the writ petition is allowed and the order of detention is quashed. The detenu unless otherwise required in any other D matter shall be set at liberty forthwith.

G.P. MATHUR, J. I regret my inability to agree with the view taken by my esteemed brother Hon. S. Rajendra Babu, J. that there has been no proper consideration of the representation made by the detenu on account of the fact that English translation of all the documents was not made available E to the Central Government and consequently his detention order is liable to be set aside.

The relevant facts may be noticed in brief. On 24.12.2000, the baggage of one Anodiyil Mammu, who was waiting to board a flight to Dubai from F Trivandrum International Airport after completing customs immigration and security checks, was examined by the staff of Revenue Intelligence. His briefcase, apart from other articles, was found to be containing 9 big thread rolls of different colours, which contained foreign currencies of different countries like Saudi Riyal, US Dollar, Qatar Riyal, Oman Riyal, UAE Dirham, Kuwait Dinar, Bahrain Dinar and Malaysian Ringgit, the value of which was G about Rs. 28,41,484.15. His baggage included a cardboard carton which on opening revealed some packets of chips, below which a big glass jar containing pickle was kept. When the pickles were removed, a plastic packet was found inside which also contained huge quantity of foreign currencies, the value of which was about Rs. 45,43,939.05. The recovered foreign currencies equivalent H to Indian Rupees 73,85,423.20 was seized under the Customs Act. The

statement of Anodiyil Mammu was recorded under Section 108 of the Customs Act, which showed that it was P. Mohammed Kutty, who had given him the foreign currency for transporting it to Dubai for which he was to be paid certain amount. Thereafter, the Government of Kerala passed an order of detention against P. Mohammed Kutty under Section 3(1)(i), 3(1)(ii), 3(1)(iii) and 3(1)(iv) of COFEPOSA Act with a view to preventing him from smuggling goods, abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods. The detenu's wife A.C. Razia then filed an original petition challenging the detention order of her husband, which was dismissed by Kerala High Court. The petitioner has preferred the Special Leave Petition against the aforesaid order of the High Court and has also filed an original petition under Article 32 of the Constitution for issuance of a writ of habeas corpus to set at liberty the detenu P. Mohammed Kutty.

The main contention of learned counsel for the petitioner is that the detenu had been served with the grounds of detention along with documents in support thereof which ran into 422 pages and subsequently, another set of documents running into 22 pages was also supplied. Many of these documents were in Malayalam language. The detenu through his wife made a representation dated 28.5.2001 to the State Government, which was rejected on 20.6.2001. Another representation was made to the Central Government on 13.7.2002, which was rejected on 29.7.2002. Learned counsel has submitted that many documents supplied to him were in Malayalam language, but the same were not translated into English and as such there was no proper consideration of his representation by the Central Government and consequently his right of representation under Article 22(5) of the Constitution had been violated rendering his continued detention illegal.

In order to examine the contention raised, it is necessary to look into the pleas taken by the petitioner in the original petition which was filed by her in the High Court of Kerala, copy of which has been filed as Annexure P-5 to the Special Leave Petition. In para 1 of the grounds, it is stated that the detenu knows only Malayalam language and does not know English at all, but the grounds of detention running into 10 pages were supplied in English. In para 2, it is stated that the documents which were vital and relied upon had also been supplied in English and their Malayalam translation was not supplied. The documents referred to in this para are Mahazar for seizure of goods in the airport on 24.12.2000, eight documents seized from Anodiyil Mammu, another document recovered from him which contained names and telephone numbers of persons in Dubai, Ledger extracts of Matha Tourist

A Home which showed that Anodiyil Mammu and some others had stayed in the aforesaid tourist home on the night preceding to 24.12.2000, statement of S. Subair, copy of the letter containing several annexures which were sent on behalf of the detenu to the Custom Authorities on 15.1.2001 and copy of the remand order passed by the learned Magistrate remanding Anodiyil Mammu, P. Mohammed Kutty and some others to judicial custody.

B

In ground no. 6 it is stated that the detenu in his representation had mentioned that he knows only Malayalam and how the non-translation of the grounds of detention and the relied upon documents into Malayalam language had handicapped him and his request to supply translation of those documents C was not complied with. In paragraph 7 of the grounds, it is stated that some of the documents like statement of four persons including the detenu were in Malayalam, but English copy of the same was not sent to the Central Government under Section 3(2) of the Act. It is also stated here that if all the documents which are very vital and relied upon have not been translated into English language, then the consideration and rejection of his representation D by the Central Government has been reduced to a farce.

In the counter affidavit filed on behalf of the State Government, it was submitted that the detenu had studied upto 10th standard and he writes his name and address and also affixes his signature in English and his allegation that he does not know English is not correct. The detenu had a partnership E business in a shop which is situated in the Cochin International Airport and had to necessarily deal with customers including foreigners conversing with them in English and his business was such which showed that he had a working knowledge in English. In para 7 it was submitted that copies of documents duly translated into Malayalam had also been supplied to him. In F para 10, it was stated that pages 1 to 422 of the relied upon documents along with Malayalam translation (pages 1 to 335 of the translated documents) had been served upon the detenu and it was reiterated that the plea taken by the detenu about ignorance of English language was incorrect as he could easily read and write his name in English. An additional counter affidavit was also filed and in paras 3 and 5 thereof it was submitted that Malayalam version G of the detention order, grounds of detention and the translated version of all the documents relied upon in issuing the detention order were served upon the detenu.

A counter affidavit on behalf of the Union of India was also filed and H the relevant portion of para 3 thereof is being reproduced hereinbelow:

"With regard to the averments made in Ground 12 of the Original Petition in so far these relate to the Central Government, it is respectfully submitted that a representation dated 13.7.2002 in Malyalam language of the wife of the detenu i.e. Shri A.C. Razia, the Petitioner herein, addressed to the Secretary, Ministry of Finance, Department of Revenue, Janpath Bhawan, 6th Floor, New Delhi was received in the COFEPOSA Unit of Ministry of Finance, Department of Revenue on 18.7.2002. Para-wise comments alongwith translation of the representation were called for from the Sponsoring Authority on 18.7.2002 itself. The comments on the representation along with its English translation sent by the Sponsoring Authority through their letter dated 24.7.2002 letter which was received in the COFEPOSA Unit on 25.7.2002 (in between 20th and 21st July 2002 were holiday being Saturday and Sunday respectively). The case file was submitted by the COFEPOSA Unit to the Deputy Secretary (COFEPOSA) on the same day i.e. 25.7.2002 itself.

....

The averments made in grounds 7 & 13 of the Petition that the non-translation into English language of all the statements which are relied upon in the grounds has disabled the Central Government from performing its duties and obligations under Section 3(2) and Article 22(5) of the Constitution is also denied firstly because the relied upon documents are not relevant and material for the purpose of Section 3(2) report to the Central Government and secondly because a copy each of the Detention Order and Grounds of Detention is invariably sent to the Central Government by the State Government as Section 3(2) report. As regards representation normally a representation received from the detenu is considered by the Central Government after obtaining para-wise comments of the Sponsoring Authority. If a representation is in regional language, it is also got translated into English by the Sponsoring Authority and sent to the Central Government along with para-wise comments. The Grounds of Detention and Detention Order are already in English language. Consideration of the points raised in the representation is done on the above basis and in case of any specific doubt or confusion in any particular case, further clarification/report is obtained from the Sponsoring Authority or State Government. The Central Government can also get, if situation so warrants, the assistance of an official/

A person conversant with the language of the representation to get any point of doubt, if any, clarified *vis-a-vis* the pleas raised in the representation. The plea of the petitioner that the consideration of the representation in his case is a farce is therefore without any basis."

The High Court did not accept the plea of the Petitioner that the right B of the detenu to make an effective representation was in any way affected on account of non-supply of Malayalam translation of documents which were in English language and accordingly dismissed the original petition.

The main contention raised before us, however, is that the detenu's wife A.C. Razia had sent representation dated 13.7.2002 in Malayalam C language to the Central Government but as the translation of all the documents relied upon in the grounds of detention was not made available in English language, there has been a violation of Section 3(2) of the COFEPOSA Act and Article 22(5) of the Constitution on the part of the Central Government. Learned counsel for the Respondent has submitted that the nature of the D function which has to be performed by the State Government, which passed the detention order, the Advisory Board, which gave the opinion that there was sufficient cause for detention of the detenu and the Central Government are entirely different. The Advisory Board had considered the entire material including the documents which were in Malayalam language and on proper consideration thereof had given an opinion under Section 8(f) of COFEPOSA E Act that there was sufficient cause for detention of the detenu. The State Government had also considered the entire material including the documents (both in Malayalam and English language) and after consideration thereof had rejected the representation. The Central Government was only required to consider the representation in the light of Section 11 of the COFEPOSA F Act and even if English translation of few documents, copies of which were supplied to the petitioner along with the grounds of detention, had not been made available, it would not in any way affect the consideration of the representation and the order passed by it was perfectly valid.

Clause 5 of Article 22 provides that when any person is detained in G pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Section 2(a) of COFEPOSA Act defines "appropriate Government" and it means, as respects a detention order made by the Central Government or by an officer H

of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or a person detained under such order, the State Government. In view of the fact that the detention order was made by the State Government, the appropriate Government would be the State Government and not the Central Government. Therefore, the duty of making the reference to the Advisory Board and that of confirming the detention order after receiving the opinion of the Advisory Board to the effect that there was sufficient cause for detention of the detenu, was that of the State Government in view of Section 8(b) and (f) of COFEPOSA Act. The role of the Central Government in such a situation comes under Section 3(2) of the COFEPOSA Act where the State Government has to make a report to it within 10 days of making an order of detention and Section 11, where it has power to either revoke or modify the order of detention made by the State Government.

What is the nature of duty to be performed by the "appropriate Government" and the Advisory Board has been considered by several decisions of this Court. In *Pankaj Kumar Chakrabarty and Ors.* v. *The State of West Bengal*, [1969] 3 SCC 400, a decision by Constitution Bench, it was held as under in para 10 of the reports:

> ".............Though Clause 5 does not in express terms say so it follows from its provisions that it is the detaining authority which has to give to the detenu the earliest opportunity to make a representation and to consider it when so made whether its order is wrongful or contrary to the law enabling it to detain him. The illustrations given in *Sk. Abdul Karim's* case [1969] 1 SCC 493 show that Clause 5 of Article 22 not only contains the obligation of the appropriate Government to furnish the grounds and to give the earliest opportunity to make a representation but also by necessary implication the obligation to consider that representation. Such an obligation is evidently provided for to give an opportunity to the detenu to show and a corresponding opportunity to the appropriate Government to consider any objections against the order which the detenu may raise so that no person is, through error or otherwise wrongly arrested and detained..In our view it is clear from Clauses 4 and 5 of Article 22 that there is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely (1) to have his representation irrespective of the length of detention

A considered by the appropriate Government and (2) to have one again that representation in the light of the circumstances of the case considered by the Board before it gives its opinion. If in the light of that representation the Board finds that there is no sufficient cause for detention the Government has to revoke the order of detention and set at liberty the detenu. *Thus, whereas the Government considers the* B *representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention..........................*

C (emphasis supplied)

The same question was again considered by another Constitution Bench in *Jayanarayan Sukul* v. *State of West Bengal* [1970] 1 SCC 219 and it was held in paras 10 and 11 that Article 22 of the Constitution guarantees the right of a detenu to have a proper consideration of the representation by the D appropriate Government. In *Hardhan Saha* v. *The State of West Bengal and Ors.*, [1975] 3 SCC 198, Chief Justice Ray, speaking for the Constitution Bench reiterated the same principle and held as under in para 24 of the report.

"............Section 8 of the Act which casts an obligation on the State E to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). *The Government considers the representation to asscertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers whether in the light of the representation there is sufficient cause for detention.*

F (emphasis supplied)

The same question again came to be considered by another Constitution Bench in *K.M. Abdulla Kunhi and B.L. Abdul Khader* v. *Union of India and Ors.*, [1991] 1 SCC 476, where also a detention order had been passed by the G State Government under Section 3(1)(iv) of the COFEPOSA Act and after review of all the earlier authorities, it was held that that the Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law and the Board on the other hand considers the representation and the case of the detenu to examine whether H there is sufficient cause for detention. These authoritative pronouncements

clearly lay down that the duty cast upon the appropriate Government under Article 22(5) of the Constitution is to consider the representation and to ascertain whether the order is in conformity with the power conferred under the Statute, namely, COFEPOSA Act.

In *Sabir Ahmed* v. *Union of India and Ors.*, [1980] 3 SCR 738, it was observed that the power conferred by Section 11 of COFEPOSA Act on the Central Government was a supervisory power and it was intended to be an additional check or safeguard against the improper exercise of its power of detention by the detaining authority or the State Government. In *Sat Pal* v. *State of Punjab*, AIR (1981) SC 2230, it was observed that while Article 22(5) of the Constitution contemplates 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, the Parliament has, in its wisdom, enacted Section 11 and conferred an additional safeguard against arbitrary executive action. Section 14 of National Security Act is para materia with Section 11 of COFEPOSA Act. In *State of U.P.* v. *Zavad Zama Khan*, AIR (1984) SC 1905, the Court after referring to *Sabir Ahmed* (supra) and *Sat Pal* (supra) and several other decisions observed that the principle that emerges is that the power of revocation conferred on the Central Government under Section 14 of the National Security Act *is a statutory power* which may be exercised on the information received by the Central Government from its own sources including that supplied by the State Government under sub-section (5) of Section 3 of the said Act or from the detenu in the form of a petition of representation. These authorities clearly show that it is under the relevant provision of statute that the Central Government can exercise the power for revocation of the order of detention and it is some kind of a supervisory power. It is the exercise of this power which was invoked by the petitioner by making a representation to the Central Government. In such a situation it will not be legitimate to hold that merely because English translation of copies of all the documents which were supplied to the detenu along with the detention order had not been made available to the Central Government, there has been any infraction of any constitutional guarantee of the detenu enshrined in Article 22(5) of the Constitution.

The problem can be examined from another angle. The counter-affidavit filed by Union of India shows that after the representation made by the wife of the detenu was received by the Central Government on 18.7.2002, para-wise comments along with the translation of the representation were called

A from the Sponsoring Authority on the same day. The Sponsoring Authority thereafter sent the comments along with English translation of the representation. The affidavit further shows that copy of the detention order and grounds of detention are always sent to the Central Government when a report is made under Section 3(2) of the Act. If representation is in regional language it is also translated into English by the Sponsoring Authority and
B sent to the Central Government along with para-wise comments. If there is any specific doubt or confusion with regard to the point raised in the representation, further clarification is obtained from the Sponsoring Authority and if the situation so warrants the assistance of an official/person conversant with the regional language is also obtained.

C

Though there is requirement of supplying copies of all the documents along with the grounds of detention to a detenu but it is equally well settled that it is not necessary to supply each and every document of which a mere passing reference has been made or which has not been specifically relied upon by the detaining authority. In *Mst. L.M.S. Ummu Saleema* v. *B.B. Gujaral*
D *and Anr.*, [1981] 3 SCC 317 it was held as under in para 5 of the report:

> "......................It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied
> E upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the fundamental rights guaranteed by Article 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which
> F are not relied upon by the detaining authority in making the order of detention..................".

Similar view was taken in *Kamarunnisa* v. *Union of India,* [1991] 1 SCC 128, wherein it was held as under in para 14 of the reports:

> G "........................It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however, irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the
> H grounds of detention, cannot vitiate an otherwise legal detention order.

No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however, slight or insignificant it may be."

The entire case law on this point was reviewed in *Abdul Sathar Ibrahim* v. *Union of India,* AIR (1991) SC 2261 and it was held that such of those documents which are not material and to which a casual or passing reference is made in the grounds, need not be supplied. In my opinion the same principle will apply in the matter of consideration of the representation made to the Central Government in the case of a detenu who has been detained in pursuance of an order of detention passed by the State Government. While considering such a representation it is not necessary for the Central Government to look to and thoroughly examine all those documents which have been supplied to him along with grounds of detention. The Central Government may examine other matter also but basically it is required to examine the pleas raised by a detenu in his representation. A detenu may not raise such pleas which may require examination of all the copies of documents which have been supplied to him along with detention order. A perusal of the representation made to the Central Government, copy of which has been placed before us by the learned counsel for the Union of India, would show that except for denying the allegation made against the detenu, hardly any such specific plea has been taken which may require perusal and examination of all the documents copies of which had been supplied to the detenu. The petitioner has not shown as to how on account of non-translation of any specific document there has not been a proper consideration of the representation on the part of the Central Government.

The representation made to the Central Government is dealt with by several officers like Deputy Secretary, Joint Secretary and Secretary of the Department, as has also been done in the present case. There is every possibility that one of such officers may not be fully familiar with the regional language in which some documents may have been written. The translation of all the documents into English language is bound to take a long time which will necessarily entail in delaying the consideration of the representative and that by itself will become a valid ground for challenging the detention order. Such an interpretation which will frustrate the whole object of passing a detention order and the detention laws futile in almost every case should not be given unless there are compelling reasons.

A In view of the reasons given above, I am of the opinion that there is no merit in the submission made by the learned counsel for the petitioner and the Special Leave Petition and also the Writ Petition are liable to be dismissed.

ORDER

B In view of our difference of opinion, these matters are referred to a larger Bench.

Registry to place the papers before Hon'ble the Chief Justice for appropriate orders.

C N.J. Referred to the Larger Bench.