STATE OF UTTAR PRADESH

v.

ZAVAD ZAMA KHAN

May 4, 1984

[D.A. DESAI, A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Public Safety Laws—National Security Act (Act XLV of 1980), Section 14—Revocation of orders of detention—Due compliance with requirements of section 8(1) read with Article 22(5) of the Constitution though complied with, subsequent representation for revocation to Prime Minister made through the counsel filed by the Central Government—Whether non-passing of any order on the revocation representation vitiates the detention.

The facts are that the respondent made a represenation dated June 18, 1983 against an order of detention passed by the District Magistrate, Moradabad dated November 6, 1982 for his detention under sub-s. (3) of s. 3 of the National Security Act, 1980, and the same was duly forwarded by the District Magistrate to the Advisory Board on June 21, 1983. The State Government had in the mean while on June 13, 1983 made a reference to the Advisory Board under s. 10 of the Act i.e. within three weeks from the date of detention together with the order of detention and the grounds therefor for its opinion. On June 23, 1983 the representation was examined by the Joint Secretary, Home Department who marked the file to the Home Secretary on June 27, 1983 who on his turn placed the file before the Chief Minister for his comments on June 27, 1983. The Chief Minister took to daysto study the file and ultimately passed an order rejecting the representation. On July 2, 1983 the State Government forwarded the representation made together with the comments to the Government of India and the Central Government rejected the same on July 19, 1983.

It appears that on July 5, 1983 the respondent through his counsel simultaneously addressed two representations for revocation of his detention under s. 14 of the Act, one addressed to the Prime Minister of India and the other to the State Government. The representation made to the Central Government addressed in the name of the Prime Minister was received in the Prime Minister's Secretariat on July 7, 1983 and the grievance of the respondent before the High Court was that the Central Government had not dealt with his application for the revocation of the order of detention under s.14 of the Act. The High Court observed that the right of the detenu to make a representation to the Central Government for revocation of the order of detention under s. 14 of Act 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 and therefore the failure on the part of the Central Government to consider the same was tantamount to a denial of the consitutional safeguard as contemplated by Art. 22(5)

A of the Constitution. It accordingly held the continued detention of the respondent to be illegal.

Aggrieved by the Order, the State preferred an Special Leave.

Allowing the appeal, the Court,

B

HELD : (1) The constitutional imperatives of Art. 22(5) enjoin that where a detenu simultaneously makes representation to the detaining authority as well as an application under s. 14 of the Act, they must not be dealt with by the appropriate Government at the same time and there was no question of any conflict of jurisdiction. If the Central Government were to revoke the order of C detention under s. 14 of the Act, there would be no representation for the State Government to consider, or refer to the Advisory Board under s. 8(b) of the Act nor will there arise any question of Advisory Board making a report to it, or on receipt of such a report, confirming the order of detention under section 8(f). The other type of cases can be where notwithstanding that the order of detention has been confirmed under s. 8(f) the appropriate Government may, at any time, revoke the same under s. 14. The power of revocation conferred on the appro- D priate Government under s. 14 is independent of the power of confirming or setting aside an order of detention under s. 8(f) [795H ; 796A-D]

2. The power of revocation conferred on the Central Government under s. 14 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 E by the State Government under sub-s. (5) of s. 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 the order of detention in a particular case. [796G-H]

Any lapse on the part of State Government in forwarding the representation made by the detenu to the Central Government for revocation of the order of F detention under s. 14 of the Act or non-consideration of the same by the Central Government makes the continued detention of the detenu bad. [793B-C]

In the present case, however, the detenu was not deprived of the right of making a representation to the detaining authority under Art. 22(5) of the Con- G stitution read with s, 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 Art. 22(5) and there was no duty 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 s. 14 of the Act. That being so. H it was not obligatory on the parr of the Central Government to consider a second representation for revocation under s. 14 of the Act. [797A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 57 of 1984. A

From the Judgment and Order dated 25-10-1983 of the Allahabad High Court in Habeas Corpus WP. No. 8420 of 1983.

Manoj Swarup and Dalveer Bhandari for the appellant. B

Mrs. & Mr. Qamaruddin, Rizwan A. Hafiez and Desh Raj for the respondent.

The Judgment of the Court was delivered by

C

SEN, J. The State Government of Uttar Pradesh has preferred this appeal by special leave from the judgment and order of the Allahabad High Court dated October 25, 1983 by which the High Court issued a writ in the nature of habeas corpus quashing an order of detention passed by the District Magistrate, Moradabad dated November 6, 1982 for the detention of the respondent D under sub-s. (3) of s. 3 of the National Security Act, 1980 on being satisfied that his detention was necessary "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order."

E

It appears that the respondent is alleged to have committed an offence of murder punishable under s. 302 and of causing disappearance of evidence punishable under s. 201 of the Indian Penal Code, 1860 in connection with the communal riots that occurred in the Moradabad city. On November 6, 1982, the District F Magistrate, Moradabad passed the impugned order of detention but it could not be served on the respondent as he was absconding. As required under sub-s. (4) of s. 3, the District Magistrate forthwith made a report of the fact to the State Government of Uttar Pradesh that he had passed an order for the detention of the respondent under sub-s. (3) of s. 3 of the Act, together with the G grounds on which the order had been made and such other particulars as, in his opinion, had a bearing on the matter. The State Government received the order of detention on November 8, 1982 and approved of the same on November 11, 1982 under sub-s. (5) of s. 3, and as required thereunder, forwarded a report to the Central Government on the next day i.e. on November 12, 1982. H The respondent surrendered to the police on May 24, 1983 and the impugned order of detention was served on him in District Jail,

A Moradabad on June 1, 1983 and the grounds of detention were furnished to him on June 2, 1983.

The respondent made a representation dated June 18, 1983 through the Superintendent, District Jail, Moradabad and he immediately forwarded the same to the District Magistrate. On B June 20, 1983 the District Magistrate forwarded the representation to the Advisory Board and the same was received by the Advisory Board on June 21, 1983. The State Government had in the meanwhile on June 13, 1983 made a reference to the Advisory Board under s. 10 of the Act i.e. within three weeks from the date of C detention together with the order of detention, and the grounds therefore, for its opinion. On June 23, 1983 the representation of the respondent forwarded by the District Magistrate together with his comments was examined by the Joint Secretary, Home Department The file was placed before the Home Secretary on June 27, 1983 who placed it before the Chief Minister with his comments. The D Chief Minister took two days to study the file and ultimately passed an order rejecting the representation on June 30, 1983. On July 2, 1983 the State Government forwarded the representation made by the respondent together with its comments to the Government of India and the Central Government rejected the same on July 19, E 1983.

On July 5, 1983 the respondent through his counsel D.S. Misra simultaneously addressed two representations for revocation of his detention under s. 14 of the Act, one addressed to the Prime Minister of India and the other to the State Government. It appears that the representation made to the Central Government F addressed in the name of the Prime Minister was received in the Prime Minister Secretariat on July 7, 1983 and the grievance of the respondent was that the Central Government had not dealt with his application for revocation of the order of detention under s. 14 even now.

G In his counter-affidavit by one M.L. Miglani, Desk Officer, Ministry of Home Affairs, New Delhi, it was stated that the Central Government had fully discharged its functions by expeditiously taking a decision on the earlier representation directly addressed by the respondent and it was under no statutory obligation H to consider the subsequent representation for revocation addressed by the respondent through his counsel to the Prime Minister. I was not a statutory representation for revocation of the impugned

order of detention under s. 14 and therefore it was not at all necessary for the Central Government to deal with it. A

The High Court placing reliance on the decision of this Court in *Phillippa Anne Duke* v. *Stata of Tamil Nadu & Ors.*[1] and certain of its own decisions held that the respondent had a right to make an application to the Central Government for revocation of the order of detention and the failure on the part of the Central Government to apply its mind to it made the continued detention illegal. B

The only question canvassed in the appeal before us is that the judgment of the High Court betrays complete lack of awareness of the nature of the constitutional safeguards enshrined under Art. 22(5) of the Constitution. It is urged that the constitutional imperatives enacted in Art. 22(5) are two-fold ; (1) The detaining authority must, as soon as may be i.e. as soon as practicable, after the detention, communicate to the detenu the grounds on which the order of detention has been made. And (2) The detaining authority must afford the detenu the earliest opportunity of making representation against the order of detention. In the present ease, it is said that the requirements of Art. 22(5) of the Constitution read with s. 8(1) of the Act had been duly complied with. There is no question of any violation of Art. 22(5) or of s. 8(1) and further that the grounds for detention set out the facts with sufficient degree of particularity and they did furnish sufficient nexus for forming the subjective satisfaction of the detaining authority. The order of detention cannot therefore be challenged on the ground that the grounds furnished were not adequate or sufficient for the subjective satisfaction of the detaining authority, or for making an effective representation. It is further urged that there being due compliance with the constitutional requirements of Art. 22(5) and of s. 8(1), the High Court was wrong in holding that the continued detention of the respondent was invalid merely because the Central Government refused to act on his application for revocation of the order of detention under s. 14 of the act. We find considerable force in the submission. C D E F G

We are not oblivious of the fact that this Court has in certain cases given expression to the view that any lapse on the part of the State Government in forwarding the representation made for revo- H

(1) [1982] 3 SCR 769.

A cation of his order of detention under s. 11(1)(b) of the COFEPOSA Act, 1974 or the failure of the Central Government to expeditiously consider the same was a denial of the constitutional right of being afforded "the earliest opportunity of making a representation against the order" as contemplated by Art. 22(5). At one time it B was thought that s. 14 of the Maintenance of Internal Security Act, 1971 which was in *pari materia* with s. 14 of the Act, did not confer any right or privilege on the detenu but there is a definite shift in the judicial attitude, for which there appears to be no discernible basis. In *Shyam Ambalal Siroya* v. *Union of India & Ors*(1)., the contention was that because a representation properly addressed to the Central C Government to order revocation under s. 11 of the COFEPOSA Act was not forwarded by the detaining authority to the Central Government, the detention was illegal. The Court construed the power conferred on the Central Government to direct revocation of an order of detention under s. 11 of that Act to be "statutory". It was observed that the power of the Central Government to revoke the D order of detention implies that the detenu can make a representation for exercise of that power and a petition for revocation of an order of detention should be dealt with reasonable expedition. Since a representation properly addressed by the detenu of the Central Government was not forwarded to the Central Government, the continued detention of the detenu was held to be illegal. E

In *Sabir Ahmed* v. *Union of India & Ors*(2)., the Court held thal non-consideration by the Central Government of a representation for revocation made by the detenu under s. 11 of the COFEPOSA Act made the continued detention to be bad, following the decision F in *Shyam Ambalal Siroya's* case, supra. It was however observed that the power conferred by s. 11 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.

G In *Rattan Singh* v. *State of Punjab & Ors.*(3), the Court went still further. There was, in that case, a lapse on the part of the State Government in forwarding the representation simultaneously made by the detenu to the Central Government for revocation of the order of detention under s. 11 of the COFEPOSA Act. The H

(1) [1980] 2 SCR 1078

(2) [1980] 3 SCR 738 (3) [1982] 1 SCR 1010

Court struck down the order of detention on the groud that there was a denial of the right of making representation to the Central Government for revocation of the order of detention under s. 11 of the Act and this was tantamount to a denial of the constitutional safeguard of Art. 22(5). A

Soon thereafter, the Court in *Sat Pal* v. *State of Punjab & Ors.*(1) examined the nature of the power of revocation conferred on the Central Government under s. 11 of the COFEPOSA Act and held that it was supervisory in nature, and it was observed : B

> "That is, as it should be, as under our federal structure the Centre must always keep a vigilant eye in the matter of life and liberty of a citizen guaranteed under Article 21. C
>
> Ours is a Constitution where there is a combination of federal structure with unitary features while in a unitary State there is only one Government; federal State involves multi-Governments namely, national or federal Government and the Governments of component States. A federal State, in short, is a fusion of several States into a single State in regard to matters affecting common interest leaving each component State to enjoy autonomy in regard to other matters. Under our Constitution, certain powers vest in the Central Government leaving certain to its component units to exercise autonomy in spheres assigned to them in the Constitution itself. The component States are not merely delegates or agents of the federal Government. Both federal and State Governments draw their authority from the same source, the Constitution. The conferment of executive power on the States in relation to a subject with respect to which the legislatures of the States have no power to make a law under Art. 258(2) must necessarily be subject to the administrative control of the Union under Arts. 256 and 247(1), to the giving of such directions to the States as may appear to the Government of India to be necessary for that purpose." D E F G

It was then observed that the constitutional imperatives of Art. 22(5) enjoin that where a detenu simultaneously makes a re- H

(1). [1982] 1 SCC 12.

A presentation to the detaining authority as well as an application for revocation under s. 11 of the Act, they must both be dealt with by the appropriate Government at the same time and there was no question of any conflict of jurisdiction. To illustrate, it was said that if the Central Government were to revoke an order of detention under s. 11 of the Act, there would be no representation for B the State Government to consider, or refer the Advisory Board under s. 8(b) ; nor will there arise any question of Advisory Board submitting a report to it, or on receipt of such a report confirming the order of detention under s. 8(f). It was further observed that the other types of cases would be where notwithstanding that C the order of detention has been confirmed under s. 8(f), the appropriate Government may, at any time, revoke the same under s. 11 of the Act. It was accordingly held that the power of revocation conferred on the appropriate Government under s. 11 is independent of the power of confirming or setting aside an order of detention under s. 8(f).

D

As to the nature of the power of revocation conferred on the Central Government under s. 11 of the COFEPOSA Act, it was stated :

> E "The making of an application for revocation to the Central Government under s. 11 of the Act is therefore part of the constitutional right a citizen has against his detention under a law relating to preventive detention. While Art. 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 s. 8(a) of the Act, Parliament has, in its wisdom, enacted s. 11 and conferred an additional safeguard against arbitrary executive action."

G The principle that emerges from all these decisions is that the power of revocation conferred on the Central Government under s. 14 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 H sub-s. (5) of s. 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 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 Art. 22(5) of the Constitution read with s. 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 Art. 22(5) and there was no duty cast on the State Government to forward the same to the Central Government, nevertheless the State Government forward 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 s. 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 s. 14. We may profitably refer to *Phillippa Anne Duke's* case, supra, where in somewhat similar circumstances it was held that failure of the Central Government to consider a representation for revocation of an order of detention under s. 11(1)(b) of the COFEPOSA Act handed over to the Prime Minister during her visit to England did not render the continued detention invalid. It was observed :

> "Representations from whatever source addressed to whomsoever officer of one or other department of the Government cannot be treated as a representation to the Government under s. 11(8)(b) of the COFEPOSA Act."

The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court is set aside and the order of detention passed by the District Magistrate under sub-s. (3) of s. 3 of the National Security Act, 1980 is maintained.

S.R. *Appeal allowed.*