A SALIM RAJMOHMAD MUSLIM

v.

STATE OF GUJARAT & ORS.

MAY 3, 1988

B [A.P. SEN AND L.M. SHARMA, JJ.]

Constitution of India, 1950: Article 22(5)—Detenu's right of representation a valuable constitutional right—Government to ensure strict observance of this constitutional safeguard.

C *Gujarat Prevention of Anti-Social Activities Act, 1985: Section 3(2)—Detention order—Representation of detenu—Failure of Government to consider and dispose of—Whether detention illegal.*

The petitioner, who was detained under sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985, by an D **order dated 11th June, 1987 filed a writ petition in this Court, alleging that both the detaining authority as also the State Government had not considered the representation, dated 15th July, 1987 made by him, with utmost promptitude and that, in fact, there was no disposal of the said representation by these authorities.**

E **In the counter-affidavit filed by the detaining authority, it was averred that the representation, received by it on 21st July 1987 was duly considered and rejected the same day.**

Allowing the appeal,

F **HELD: The right of representation under Article 22(5) of the Constitution of India is a valuable and constitutional right. The Government is expected to ensure that the constitutional safeguards embodied in Article 22(5) are strictly observed. [830E-F]**

Mohinuddin **v.** *District Magistrate, Beed & Ors.*, **[1987] 4 SCC 58** G **relied on.**

In the instant case, the petitioner had the right to make a representation not only to the detaining authority but also to the State Government which had the power to revocation. Although the representation made by him to the detaining authority has been H **considered and rejected, this is not a substantial compliance of the**

constitutional rights enshrined in Article 22(5) of the Constitution. The allegation made by the petitioner that he made a further representation to the State Government had not been controverted. The State Government had disdained from filing any counter-affidavit for obvious reasons. [830C-E]

The wholly unexplained and unduly long delay—rather the undeniable failure on the part of the State Government in the disposal of the representation, renders the detention of the petitioner illegal. [829G-H]

The order of detention made under sub-section (2) of s. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 is accordingly quashed. [831D]

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 124 of 1988;

(Under Article 32 of the Constitution of India)

M.C. Kapadia, Y.P. Dhingra, B.K. Satija and S.S. Khanduja for the Petitioner.

P.S. Poti and M.N. Shroff for the Respondent.

The following Order of the Court was delivered:

ORDER

After hearing learned counsel for the parties at quite some length, we are satisfied that the failure on the part of the State Government to consider and decide the representation made to them by the petitioner against his detention by an order of detention dated 11th June, 1987 passed by the Commissioner of Police, Surat City under sub-s. (2) of s. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985, makes his continued detention invalid and constitutionally impermissible. Apart from various other contentions, Shri Kapadia, learned counsel for the petitioner rightly contended that there was no explanation at all as to why the representation made by the petitioner to the State Government was not attended to and kept pending. In view of the wholly unexplained and unduly long delay—rather the undeniable failure on the part of the State Government in the disposal of the representation—renders the detention of the petitioner illegal. On the view that we take, there is no need to deal with various contentions

A raised by him on behalf of the petitioner. The learned counsel drew our attention to paragraph 8(e) of the Writ Petition where the petitioner avers *inter alia* that he had made a representation dated 15th July, 1987 to the Police Commissioner, Surat City, as also to the State Government but 'both the authorities had not considered the representation so made with utmost promptitude and that there was in B fact no disposal of the said representation by the detaining authority as well as the State Government'. This assertion of his is sought to be met by the Commissioner of Police, Surat City, the detaining authority, in the counter-affidavit. It is averred in paragraph III(e) that he had received the representation on 21st July, 1987 and rejected it on the same day after due consideration. This is not a substantial compliance of the C constitutional rights enshrined in Art. 22(5) of the Constitution. The petitioner had the right not only to make a representation to the detaining authority but also to the State Government which had the power of revocation. In view of this, Shri P.S. Poti, learned counsel appearing on behalf of the State Government, with his usual fairness, rightly accepts that the denial in paragraph III(e) of the counter-D affidavit was not sufficient. The fact remains that the allegation made by the petitioner that he had made a further representation to the State Government has not been controverted. The State Government has disdained from filing any counter-affidavit for obvious reasons. In *Mohinuddin* v. *District Magistrate, Beed & Ors.*, [1987] 4 SCC 58 this Court had occasion to deal with this aspect. In that case, there was E wholly unexplained, unduly long delay in the disposal of the representation by the State Government and it was held that further detention of the detenu was rendered invalid and constitutionally impermissible. The right of representation under Art. 22(5) is a valuable constitutional right and it is expected that the Government will ensure that the constitutional safeguards embodied in Art. 22(5) are strictly observed. F It was observed by one of us

(SEN, J.):

> "We say and we think it necessary to repeat that the gravity of the evil to the community resulting from anti-social G activities can never furnish an adequate reasons for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of the procedural safeguards."

H It was next observed:

"It goes without saying that the constitutional right to make a representation guaranteed by Art. 22(5) must be taken to include by necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Art. 22(5) is a valuable constitutional right and is not a mere formality. The representation made by the appellant addressed to the Chief Minister could not lie unattended to in the portals of the Secretariat while the Chief Minister was attending to other political affairs."

In view of the failure in the disposal of the representation by the State Government, it must be held that the further detention of the petitioner is illegal and constitutionally impermissible.

The writ petition must therefore succeed and is allowed. The order of detention passed by the Commissioner of Police, Surat City under sub-s. (2) of s. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 is accordingly quashed. We direct that the petitioner be set at liberty forthwith.

N.P.V. Petition allowed.