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USHA AGARWAL

v.

UNION OF INDIA AND ORS.

NOVEMBER 2, 2006

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[S.H. KAPADIA AND R.V. RAVEENDRAN, JJ.]

Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

C

Section 3(1)—Director of company indulging in systematic and organized import—export fraud by diverting goods, imported duty free for manufacture of goods for export, into domestic market—Grant of all EXIM benefits to company stopped after detection of fraud—Order of detention passed against director of company—Order stopping EXIM benefits not placed before detaining D *authority—Detention order challenged—Held, every relevant material having bearing on the detention of a person should be placed before the detaining authority—Sponsoring authority should not place documents selectively before detaining authority—Failure to place relevant material before detaining authority may vitiate detention order—In the facts held, document stopping EXIM benefits to company controlled by the detenu was not a relevant* E *document, non-consideration of which would vitiate the detention order—Constitution of India, 1950—Article 22.*

S was Director in-charge of management of company L in which other Directors were his family members. L was availing EXIM benefits under the Duty Exemption Entitlement Certificate Scheme (DEEC) and F **upon detection of irregularities by S, grant of all EXIM benefits to L were stopped by order dated 15/20.4.2004. Thereafter, a detention order under Section 3(1) of Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) was passed against S on 19.8.2004 by the detaining authority on the ground that the detenu-S** G **had diverted goods, imported duty free for manufacture of goods for export, into domestic market and thereby indulged in smuggling and the fraudulent *modus operandi* employed by the detenu showed his propensity and potentiality to such illegal activities in future, necessitating detention to prevent him from continuing such activities. The detenu was taken into**

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custody on 11.11.2005. Mother of the detenu filed writ petition in High Court seeking quashing of detention order and release of the detenu. Writ petition challenging detention was dismissed by Division Bench of the High Court. Hence this appeal by mother of detenu-S. Simultaneously, petition under Article 32 also filed challenging detention of S .

Appellant-petitioner contended that sponsoring authority had withheld the order stopping EXIM benefits to company L which was relevant material from the detaining authority on account of which the detaining authority could not apply its mind to all relevant material before making order of detention which vitiated the order of detention; that several sheets among the copies of documents supplied to the detenu were illegible which came in the way of the detenu making an effective representation for his release; and that there was inordinate delay in considering the representation dated 7.2.2006 submitted by the detenu to the Central Government and in communicating the decision to the detenu.

Dismissing the appeal and the writ petition, the Court

HELD: 1. A detention under Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) is anticipatory and preventive. It is neither punitive nor curative. Preventive detention being one of the two exceptions to the constitutional protection under Article 22 against arrest and detention, certain procedural safeguards are provided in respect of exercise of the power to direct preventive detention. The procedural safeguards under the Constitution have been interpreted, to require every material which is relevant, having a bearing on the question as to whether a person should be detained under the Act, to be placed before the detaining authority, as the decision to detain a person is rendered by a detaining authority on his subjective satisfaction as to the existence of the grounds for such detention. The sponsoring authority should not undertake any exercise of examination and interpretation of the available material with a view to place the documents selectively before the detaining authority. It is not for the sponsoring authority to decide as to which of the relevant documents should be placed before the detaining authority, or which of the documents are likely to help, or not help, the prospective detenu. Consequently, the sponsoring authority cannot exclude any particular document from the material to be placed before the detaining authority. If the relevant facts or documents which may influence the subjective satisfaction of the

A **detaining authority on the question whether or not to make the detention order, are not placed before the detaining authority, or, are not considered by the detaining authority, it may vitiate the detention order itself. It is no answer to say that the exclusion of a relevant document did not affect the decision to detain a person, in view of the other documents that were placed before the detaining authority or that the detaining authority would** B **have come to the same conclusion even if he had considered the said document. [351-A-E]**

Attorney General of India **v.** *Amratlal Prajivandas,* **[1994] 5 SCC 54,** *Ashadevi* **v.** *K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat,* **[1979]** C **1 SCC 222,** *Sita Ram Somani* **v.** *State of Rajasthan,* **[1986] 2 SCC 86;** *Ayya alias Ayub* **v.** *State of U.P.,* **[1989] 1 SCC 374 and** *Ahamed Nassar* **v.** *State of Tamil Nadu,* **[1999] 8 SCC 473, relied on.**

2. A document is relevant for considering the case of a person for preventive detention if it relates to or has a bearing on either of the D **following two issues: (a) Whether the detenu had indulged in smuggling in other activities prejudicial to the State, which the COFEPOSA Act is designed to prevent; and (b) Whether the nature of the illegal and prejudicial activity and the manner in which the detenu had induldged in such activity, gave a reasonable indication that he would continue to indulge in such activity. In other words, whether he had the propensity** E **and potentiality to continue the prejudicial activity necessitating an order of detention. [352-C, D]**

3.1. The grievance of the detenu is that the sponsoring authority did not place the order dated 15/20.4.2004 of the Joint Director-General of F **Foreign Trade, Kolkata (made under Rule 7 of Foreign Trade Regulation Rules 1993, stopping the grant of all EXIM benefits to company L till finalization of the proposed action against the said company), before the detaining authority. [351-H; 352-A]**

3.2. The document in question did not prove any smuggling/ prejudicial activity on the part of the detenu . It only sows that the G **Department of Foreign Trade had stopped all EXIM benefits to L, pending further action, as certain illegal activities of that company had come to its notice. The said document was, therefore neither relevant nor necessary to decide whether the detenu had indulged in smuggling or other prejudicial activity. The detaining authority obtained satisfaction in regard** H **to that aspect from the material that was placed by the sponsoring**

authority to show illegal activities which amounted to smuggling. It should also to be noted that whenever any irregularities/violations in regard to export/import comes to the attention of the department, the benefits are stopped in the normal course, pending finalization of further action.

[352-D, E, F; 353-C, D]

3.3. The said document was also not relevant to establish propensity or potentiality of the detenu to continue his illegal activities. Persons indulging in such prejudicial activities routinely create 'front' companies and firms. The fact that a particular 'front' company is denied the EXIM benefits will not deter a violator from continuing such activities, as he can always operate through other 'front' companies/firms. The investigation and search by the Directorate of Revenue Intelligence, had disclosed that the detenu had other 'front' companies. In fact the detention order makes reference to a similar violation by the detenu by using another 'front' company controlled by him and his family. Therefore, it cannot be said that the document whereby EXIM benefits to one of the companies controlled by the detenu was stopped, was a 'relevant' document, non-consideration of which would vitiate the detention order.

[352-G, H; 353-A, B, D]

4.1. The High Court has examined the copies that were furnished to the detenu. In regard to the grievance relating to illegible copies occurring between pages 493 and 887 and the last page, the High Court found that these were copies of the documents which were supplied by the detenu himself, and the department could do no better than to furnish the copies thereof. If the documents furnished by the detenu to the department contained some portions or pages which were illegible, obviously the copies thereof furnished by the detaining authority to the detenu will also contain such illegible portions. The fact that a document may contain several sheets and illegibility of some sheets or parts of some sheets will not come in the way of the authorities making use of the eligible portions of the documents furnished by the detenu, supplemented by other documents secured during investigation. There is nothing strange in the department making use of partially legible documents furnished by detenu. Therefore, illegibility of portions of documents which are copies of documents furnished by the detenu, cannot be a ground for grievance by the detenu. Insofar as the allegation that some of the sheets between pages 124 to 371B were illegible, the High Court after having gone through the copies of documents furnished to the detenu, has found no substance in the contention. In fact, while acknowledging the copies of documents, the detenu has made an

A endorsement that they were legible. [354-F, G; 355-A, B, C]

Dharmishta Bhagat v. *State of Karnataka,* [1989] Supp. 2 SCC 15 and *Manjit Singh Garewal @ Gogi* v. *Union of India,* [1990] Supp. SCC 59, referred to.

B 4.2. The entire issue of furnishing of illegible copies is with reference to the question whether detenu's right to make an effective representation against his detention is hampered by non-supply of legible copies. Having gone through the representations made by the detenu against his detention, it is found that he was in no way hampered by the fact that a few of the sheets\copies of documents were partly illegible. [355-C, D]

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5.1. The order of detention states that detenu can make representations to [i] Detaining Authority; [ii] Central Government; and [iii] Advisory Board; in regard to the detention. The detenu has a constitutional as also statutory right to make a representation against detention not only to the Detaining Authority but to any authority which D can revoke the order of detention. He can also represent to the Advisory Board constituted under Section 8 of COFEPOSA Act. Such representations no doubt should be disposed of by the concerned authority as early as possible. The fact that the Detaining Authority or the Advisory Board have rejected the representation of the detenu does not discharge E the Central Government from its responsibility to consider and dispose of the representation expeditiously. This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention. [357-E, F, G]

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Sk. Abdul Karim v. *The State of West Bengal,* AIR (1969) SC 1028, *Sk. Rashid* v. *State of West Bengal,* AIR (1973 SC 824 and *Kamlesh kumar Ishwardas Patel* v. *Union of India,* [1995] 4 SCC 51, relied on.

5.2. The first representation dated 16.1.2006 was disposed of by the G Advisory Board, Detaining Authority and Central Government on 27.1.2006, 10.2.2006 and 13.2.2006. The second representation dated 7.2.2006 given to the Central Government is nothing but a reiteration of the representation that was given to the Advisory Board on 16.1.2006 copies of which were given to Detaining Authority and Central Government. The representation dated 16.1.2006 had already been

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considered and rejected by the Central Government by order dated 13.2.2006. Therefore, any delay in disposing of the subsequent representation dated 7.2.2006 or any delay in communicating the decision on such representation will not vitiate the order of detention. [359-A, B]

Abdul Razak Dawood Dhanani **v.** *Union of India,* **[2003] 9 SCC 652, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1114 of 2006.

From the Final Judgment and Order dated 21.4.2006 of the High Court of Calcutta in W.P. No. 23908 (W) of 2005.

WITH

W.P. (Crl.) No. 191 of 2006.

Pratibha Jain for the Appellant.

Vikas Singh, A.S.G., Harish Chandra, Ajay Sharma and B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. Leave granted in SLP (Crl.) No.3012/2006.

The preventive detention of one Sandip Agarwal ('detenu' for short) under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA Act' for short) is under challenge in these two matters, namely, criminal appeal by special leave against the judgment dated 21.4.2006 in Writ Petition No.23908/2005 of the Calcutta High Court and a petition seeking a writ of *habeas corpus* under Article 32 of the Constitution of India. Both have been filed by the mother of the detenu.

2. The facts, in brief, leading to the preventive detention of the detenu, as gathered from the grounds of detention, are as follows—Sandip Agarwal, the detenu, was the Director in-charge of the management of M/s Sandip Exports Ltd., the other Directors being his family members. On receipt of information about irregularities committed by the detenu, a search of the premises of Sandip Exports Ltd. was conducted by the Directorate of Revenue Intelligence on 7.11.2003. The search and the investigations disclosed that M/s. Sandip Exports Ltd. had obtained two Annual Advance Licences dated 28.3.2001 and 22.3.2002 on actual user conditions from the Director General

A of Foreign Trade, Kolkata, as manufacturer-exporter. The said Annual Advance Licences issued under the Duty Exemption Entitlement Certificate Scheme ('DEEC Scheme' for short) enabled the Licensee to import goods free of duty subject to the condition that the Licensee shall manufacture and export products (by utilizing the imported goods) within 18 months, the quantity and value being as specified in the licences in terms of Customs Notification B No. 48/99 dated 29.4.1999 as amended from time to time. The detenu imported different types of polyester and silk yarn/fabric, duty free, under the scheme by using the said licences of Sandip Exports Ltd. The duty foregone on importations made under the said two Advance Licences was Rs.14 crores. Instead of utilizing such imported materials in the manufacture of products C for exports, he diverted and disposed of the imported goods in the domestic market, and did not fulfil the export obligation. He falsely claimed that the goods for export were manufactured from out of the imported goods through a non-existing manufacturing unit, and through alleged job-workers; and he also falsely claimed that the products so manufactured out of goods imported by Sandip Exports Ltd. were exported through M/s Karan Exports (India) D Ltd., another company owned and controlled by detenu's family. In this manner, the detenu indulged in a systematic and organized import-export fraud by importing goods duty-free, under the 'DEEC Scheme' and diverting them to domestic market.

E 3. At the instance of the Directorate of Revenue Intelligence (the Sponsoring Authority), the Detaining Authority (Government of India, Ministry of Finance, Department of Revenue, represented by its Joint Secretary) passed an order of detention dated 19.8.2004 under Section 3(1) of the COFEPOSA Act. In the grounds in support of the detention order, the detaining authority stated that the action of the detenu in diverting duty free imported goods into F the domestic market in violation of the DEEC Scheme Licences, amounted to "smuggling" of goods. The detaining authority also stated that the nature and gravity of the offence and the dubious and fraudulent *modus operandi* employed by the detenu showed his propensity and potentiality to indulge in such illegal activities in future, necessitating detention to prevent him from G continuing such activities.

4. The detention order could not be executed as the detenu absconded. As a consequence, an order dated 29.3.2004 was issued under Section 7(1) of the Act. On the basis of a situation report filed under Section 7(1)(a) of the Act on 26.10.2004, the Chief Metropolitan Magistrate, Calcutta, passed H an order dated 18.11.2004 for proclamation by proceeding under Section 82

Cr.P.C. The detenu filed a writ petition challenging the order of detention. The said pre-execution challenge was rejected by the High Court on 10.6.2005. Ultimately, on 11.11.2005, the detenu was taken into custody and the detention order and the grounds in support of the detention were served on him. The copies of the documents relied upon by the detaining authority in making the order of detention, were furnished to the detenu on 14.11.2005. As the detenu claimed that he had no working knowledge of Hindi, English translations were furnished to him on 16.11.2005.

5. The detenu made a representation against his detention to the detaining authority on 25.11.2005. The said representation was rejected by the Detaining Authority on 7.12.2005 and the same was communicated to the detenu on 13.12.2005. On 14.12.2005, the detenu's mother filed W.P. No.23908/2005 in the High Court of Calcutta, seeking quashing of the detention order dated 19.8.2004 and release of the detenu.

6. The detenu made a representation to the Advisory Board constituted under the COFEPOSA Act on 16.1.2006. The Advisory Board gave a hearing on 19.1.2006 and recommended confirmation of the detention. On receiving a copy of the representation to the Advisory Board along with the report of the Advisory Board on 27.1.2006, the Central Government confirmed the detention on 1.2.2006. The representation dated 16.1.2006, copies of which were furnished to the detaining authority and Central Government, was also independently considered by them. The Detaining Authority by order dated 10.2.2006 rejected the representation of the detenu dated 16.1.2006. The Central Government (Special Secretary and Director General, Central Economic Intelligence Bureau) also rejected the said representation of the detenu by order dated 13.2.2006. These orders of rejection were served on the detenu on 17.2.2006. The detenu made another representation dated 7.2.2006 against his detention to the Central Government. By order dated 22.2.2006 the Central Government rejected the said representation and a copy thereof was served on the detenu on 18.3.2006.

7. The events subsequent to filing of the writ petition were placed on record in the pending writ petition and the order of detention was challenged on the following grounds :

(a) Relevant materials were withheld by the sponsoring authority from the Detaining Authority.

(b) The Detaining Authority had considered and relied on non-existent

A and irrelevant material in making the order of detention.

(c) The translations of Hindi documents were belatedly supplied.

(d) Copies of the documents which were relied upon by the Detaining Authority furnished to the detenu, contained several sheets which were illegible thereby preventing the detenu from making an B effective representation.

(e) There was inordinate delay in considering the representation made by the detenu to the Central Government and serving the same on the detenu.

C (f) The order of detention was based on a solitary incident. There was no material to show that there was any possibility of the detenu indulging in smuggling activities in future.

(g) The allegations against the detenu did not amount to 'smuggling' and therefore the order of detention was not justified.

D A Division Bench of the Calcutta High Court rejected all these contentions and consequently, dismissed the writ petition by judgment dated 21.4.2006. The said judgment of the Calcutta High Court is challenged in this appeal by special leave. Simultaneously, the petition under Article 32 has also been filed before this Court, challenging the detention.

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8. Though several contentions were raised in the special leave petition and the writ petition, during arguments the challenge to the detention was restricted to the following three grounds:

(i) The sponsoring authority had withheld from the detaining F authority a relevant material (Order dated 15/20.4.2004 stopping EXIM benefits to Sandip Exports Ltd made under Rule 7 of the Foreign Trade (Regulations) Rules, 1993). The detaining authority could not therefore apply his mind to all relevant material before making the order of detention.

G (ii) Several sheets among the copies of the documents supplied to the detenu, were illegible and this came in the way of the detenu making an effective representation for his release.

(iii) There was inordinate delay in considering the representation dated 7.2.2006 by the detenu submitted to the Central Government and H communicating the decision to the detenu.

Re : Point No. (i) A

9. A detention under COFEPOSA Act is anticipatory and preventive. It is neither punitive nor curative. Preventive detention being one of the two exceptions to the constitutional protection under Article 22 against arrest and detention, certain procedural safeguards are provided in respect of exercise of the power to direct preventive detention. The procedural safeguards under B the Constitution have been interpreted, to require every material which is relevant, having a bearing on the question as to whether a person should be detained under the Act, to be placed before the detaining authority, as the decision to detain a person is rendered by a detaining authority on his subjective satisfaction as to the existence of the grounds for such detention. C The sponsoring authority should not undertake any exercise of examination and interpretation of the available material with a view to place the documents selectively before the detaining authority. It is not for the sponsoring authority to decide as to which of the relevant documents should be placed before the detaining authority, or which of the documents are likely to help, or not help, the prospective detenu. Consequently, the sponsoring authority cannot exclude D any particular document from the material to be placed before the detaining authority. If the relevant facts or documents which may influence the subjective satisfaction of the detaining authority on the question whether or not to make the detention order, are not placed before the detaining authority, or are not considered by the detaining authority, it may vitiate the detention order itself. E It is no answer to say that the exclusion of a relevant document did not affect the decision to detain a person, in view of the other documents that were placed before the detaining authority or that the detaining authority would have come to the same conclusion even if he had considered the said document-vide *Attorney General of India* v. *Amratlal Prajivandas,* [1994] 5 SCC 54, *Ashadevi* v. *K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat,* [1979] F 1 SCC 222, *Sita Ram Somani* v. *State of Rajasthan,* [1986] 2 SCC 86; *Ayya alias Ayub* v. *State of U.P.,* [1989] 1 SCC 374 and *Ahamed Nassar* v. *State of Tamil Nadu,* [1999] 8 SCC 473.

10. Let us examine the facts, keeping in view the said principles. In this case, the detention order was made on the ground that the detenu had diverted G the goods, imported duty free for manufacture of goods for export, into domestic market and thereby indulged in 'smuggling' as defined in section 2(39) of the Customs Act, 1962 and the facts and circumstances showed the propensity and potentiality on the part of the detenu to continue such prejudicial activities in future. The grievance of the detenu is that the sponsoring authority H

A did not place the order dated 15/20.4.2004 of the Joint Director-General of Foreign Trade, Kolkata (made under Rule 7 of Foreign Trade Regulation Rules 1993, stopping the grant of all EXIM benefits to M/s Sandip Exports Limited till finalization of the proposed action against the said company), before the detaining authority. According to him, it was a relevant document and the non-consideration of the said document vitiated the order of detention. The fact that the said document was available in the records of the sponsoring authority, but was not placed before the detaining authority, is not disputed by the respondents. Though the High Court has referred to the contention relating to the said document (order dated 15/20.4.2004), it did not specifically deal with it.

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11. A document is relevant for considering the case of a person for preventive detention if it relates to or has a bearing on either of the following two issues : (a) Whether the detenu had indulged in smuggling or other activities prejudicial to the State, which the COFEPOSA Act is designed to prevent; and (b) Whether the nature of the illegal and prejudicial activity and the manner in which the detenu had indulged in such activity, gave a reasonable indication that he would continue to indulge in such activity. In other words, whether he had the propensity and potentiality to continue the prejudicial activity necessitating an order of detention.

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12. The document in question did not prove any smuggling/prejudicial activity on the part of the detenu. It only shows that the Department of Foreign Trade had stopped all EXIM benefits to Sandip Exports Ltd., pending further action, as certain illegal activities of that company had come to its notice. The said document was, therefore, neither relevant nor necessary to decide whether the detenu had indulged in smuggling or other prejudicial activity. The detaining authority obtained satisfaction in regard to that aspect from the material that was placed by the sponsoring authority to show illegal activities which amounted to smuggling.

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13. The said document was also not relevant to establish propensity or potentiality of the detenu to continue his illegal activities. The export-import violations, which amount to smuggling, involve considerable planning, organization and establishing a network. The propensity is deducible from the *modus operandi* adopted by the violator, the inclination of the violator to indulge in such activities and the further opportunity to commit such illegal activities. Persons indulging in such prejudicial activities routinely create 'front' companies and firms. The fact that a particular 'front' company is

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denied the EXIM benefits will not deter a violator from continuing such activities, as he can always operate through other 'front' companies/firms. The contention of the detenu that as the said order dated 15/20.4.2004, stopped the EXIM benefits to Sandip Exports Ltd., he could not have continued the alleged illegal activity, and therefore, the detention order was not warranted, is untenable. The EXIM benefits were stopped with reference to only one company namely, Sandip Exports Ltd., and that too till finalization of further action. The investigation and search by the Directorate of Revenue Intelligence, had disclosed that the detenu had other 'front' companies. In fact the detention order makes reference to a similar violation by the detenu by using M/s. Scandia Investments (P) Ltd. which was another 'front' company controlled by him and his family. When the benefits of illegal activity are stopped to a particular company, the brain behind the violation, would merely shift the operations to another 'front' company or start the activities through a new company. It should also be noted that whenever any irregularities/violations in regard to export/import comes to the attention of the department, the benefits are stopped in the normal course, pending finalization of further action.

Therefore, it cannot be said that the document whereby EXIM benefits to one of the companies controlled by the detenu was stopped, was a 'relevant' document, non-consideration of which would vitiate the detention order. The first contention is therefore rejected.

Re : Point No. (ii)

14. It is contended on behalf of the detenu that several sheets in the copies of documents furnished to him, were illegible and that prevented him from making an effective representation. It is submitted that the procedural safeguard under clause (5) of Article 22 requires the grounds of detention to be communicated to the detenu and this would mean not only the grounds but also the documents on which reliance was placed to formulate the grounds that led to the detention. It is further submitted that the documents required to be furnished, should be legible and in a language known to the detenu so as to enable the detenu to give an effective representation against the detention; that if the documents are not legible or in a language not known to the detenu, then it is as bad as not furnishing the documents; and that furnishing of copies of documents is not a mere formality but an integral part of the right of the detenu assured under the Constitution. It is contended that the order of detention is vitiated on account of the following pages of the

A documents furnished to the detenu being not legible :-

> Page Nos. 124-128, 160-178, 186, 254, 255, 257, 350, 352, 357, 358, 360, 362, 368-371, 371A, 371B, 493, 497, 500, 508, 510, 515, 516, 523, 534, 538, 543, 550, 551, 608, 611, 616-21, 623-37, 682-701, 745, 750, 755, 760, 765, 769-70, 777, 780, 821, 841-43, 857-65, 872, B 874, 882, 884, 887 and the last page.

15. In *Dharmishta Bhagat* v. *State of Karnataka,* [1989] Supp. 2 SCC 15, this Court has held that 'refusal' on the part of the detaining authority to supply legible copies of 'relevant' documents to the detenu for making an effective representation infringes the detenu's right under Article 22(5) of the C Constitution. This Court observed :

> "Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and D referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated February 12, 1988 in spite of the E request made by the detenu to supply the same renders the order of detention illegal and bad."

In *Manjit Singh Garewal @ Gogi* v. *Union of India,* [1990] Supp. SCC 59, this Court has held that where copies supplied at the request of the detenu were illegible, the constitutional safeguards were violated and the order of F detention is liable to be quashed.

16. The High Court has examined the copies that were furnished to the detenu. In regard to the grievance relating to illegible copies occurring between pages 493 and 887 and the last page, the High Court found that these were copies of the documents which were supplied by the detenu himself, and the G department could do no better than to furnish the copies thereof. If the documents furnished by the detenu to the department contained some portions or pages which were illegible, obviously the copies thereof furnished by the detaining authority to the detenu will also contain such illegible portions. The learned counsel for the appellant contented that if really any document H furnished by the detenu was illegible, it could not have been used against the

detenu. But this contention overlooks the fact that a document may contain several sheets and illegibility of some sheets or parts of some sheets will not come in the way of the authorities making use of the legible portions of the documents furnished by the detenu, supplemented by other documents secured during investigation. There is nothing strange in the department making use of partially legible documents furnished by detenu. Therefore, illegibility of portions of documents which are copies of documents furnished by the detenu, cannot be a ground for grievance by the detenu. Insofar as the allegation that some of the sheets between pages 124 to 371B were illegible, the High Court after having gone through the copies of documents furnished to the detenu, has found no substance in the contention. In fact, while acknowledging the copies of documents, the detenu has made an endorsement that they were legible.

17. The entire issue of furnishing of illegible copies is with reference to the question whether detenu's right to make an effective representation against his detention is hampered by non-supply of legible copies. The High Court after an examination of the copies of documents found that the detenu was not so hampered. Having gone through the representations made by the detenu against his detention, we also find that he was in no way hampered by the fact that a few of the sheets/copies of documents were partly illegible. We therefore find no merit in the second condition, nor any reason to interfere with the finding of the High Court in this behalf.

Re : Point No. (iii)

18. The scope of Clause (5) of Article 22 which provides that when any person is detained in 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 such order, has been examined in several decisions. Interpreting the said provision, this Court in *Sk. Abdul Karim* v. *the State of West Bengal,* AIR (1969) SC 1028, held as follows :-

> "Apart from these enabling and disabling provisions certain procedural rights have been expressly safeguarded by Clause (5) of Article 22. A person detained under a law of preventive detention has a right to obtain information as to the grounds of detention and has also the right to make a representation protesting against an order of preventive

A detention. Article 22(5) does not expressly say to whom the representation is to be made and how the detaining authority is to deal with the representation. But it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible. The constitution of an Advisory Board-
B under Section 8 of the Act does not relieve the State Government from the legal obligation to consider the representation of the detenu as soon as it is received by it. On behalf of the respondent it was said that there was no express language in Article 22(5) requiring the State Government to consider the representation of the detenu. But it
C is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to make a representation guaranteed by Article 22(5) must be taken to include by necessary implication the constitutional right to a proper
D consideration of the representation by the authority to whom it is made. The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality."

In *Sk. Rashid* v. *State of West Bengal,* AIR (1973) SC 824, this Court
E interpreting the words 'as soon as may be' occurring in clause (5) of Article 22, held as follows :

"The use of the Words "as soon as may be" is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of detention has been
F made so that he can make an effective representation against it at the earliest. The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expenditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to
G have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

Now, whether or not the State Government has in a given case
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considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal"

In *Kamleshkumar Ishwardas Patel* v. *Union of India,* [1995] 4 SCC 51, this Court observed thus :-

"Construing the provisions of Article 22(5) we have explained that the right of the person detained to make a representation against the order of detention comprehends the right to make such a representation to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty and since the officer who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention. The first premises that such right does not flow from Article 22(5) cannot, therefore, be accepted."

This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention.

19. The order of detention states that detenu can make representations to (i) Detaining Authority, (ii) Central Government, and (iii) Advisory Board, in regard to the detention. The detenu has a constitutional as also statutory right to make a representation against detention not only to the Detaining Authority but to any authority which can revoke the order of detention. He can also represent to the Advisory Board constituted under section 8 of COFEPOSA Act. Such representations no doubt should be disposed of by the concerned authority as early as possible. The fact that the Detaining Authority or the Advisory Board have rejected the representation of the detenu does not discharge the Central Government from its responsibility to consider and dispose of the representation expeditiously.

20. The grievance of the detenu is in respect of the representation to the

A Central Government on 7.2.2006 which was rejected by the Central Government and the detaining authority, by two separate orders dated 22.2.2006. The Central Government in its counter-affidavit has satisfactorily explained how the time between 7.2.2006 and 22.2.2006 was spent. But the said orders dated 22.2.2006 rejecting the representation was served on the detenu only on 18.3.2006. The reason why the rejection orders dated 22.2.2006 B were not served till 18.3.2006 on the detenu remains unexplained. In fact the respondents have admitted this unexplained delay in their counter filed in this Court. We extract below the relevant portion :-

> "In this connection, it is submitted that the Superintendent, Presidency C Correctional Home, Kolkata was requested to serve the original of the said two memorandums on the detenu and obtain signature thereon which he did on 18th March, 2006. IG (Prisons) and Chief Secretary, Government of West Bengal, have been asked to look into the circumstances leading to delayed submission of rejection memos to the detenu."

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21. The grievance of the detenu is in regard to the delay in communicating the decision dated 22.2.2006 of the Central Government till 18.3.2006. The learned counsel for the respondent however relied on the decision of this Court in *Abdul Razak Dawood Dhanani* v. *Union of India,* [2003] 9 SCC 652, to contend that delay on the part of the Central Government E in considering the detenu's representation or the delay in communication of such decision on the detenu will not be material, where the Central Government has already considered the representation of the detenu and rejected it and what is delayed is the decision on the second representation. In that case, the representation dated 12.4.2002 given by the detenu to the three authorities F namely, Advisory Board, Detaining Authority and Central Government were rejected respectively by orders dated 19.4.2002, 06.5.2002 and 08.5.2002. In addition to the first representation dated 12.4.2002, the detenu had submitted a further representation dated 19.4.2002 to the Central Government and the grievance was that the second representation had not been disposed of by the Central Government by a separate order. This Court rejected the contention G on the ground that the second representation dated 19.4.2002 contained the same grounds and same material as contained in the first representation dated 12.4.2002 and in the absence of any fresh ground or material or subsequent event justifying the consideration of the second representation, the Central Government was not bound to pass separate order disposing of the second H representation. The ratio of that decision squarely applies to this case.

22. In this case we find that the first representation dated 16.1.2006 was disposed of by the Advisory Board, Detaining Authority and Central Government on 27.1.2006, 10.2.2006 and 13.2.2006. The second representation dated 7.2.2006 given to the Central Government is nothing but a reiteration of the representation that was given to the Advisory Board on 16.1.2006 copies of which were given to detaining authority and Central Government. The representation dated 16.1.2006 had already been considered and rejected by the Central Government by order dated 13.2.2006. Therefore applying the principle in *Abdul Razak Dawood Dhanani* (supra), any delay in disposing of the subsequent representation dated 7.2.2006 or any delay in communicating the decision on such representation will not vitiate the order of detention. The third contention is also therefore rejected.

23. As a result, we dismiss the appeal as also the writ petition as having no merit.

A.K.T. Appeal and W.P. dismissed.