

Satyapriya Sonkar Vs. Superintendent, Central Jail and ors.

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Court : Allahabad

Decided On : Oct-15-1999

Reported in : 2000CriLJ1369

Judge : R.R.K. Trivedi and M.C. Jain, JJ.

Acts : Indian Penal Code (IPC) - Sections 286, 307, 332 and 353; Criminal Law Amendment Act - Sections 2(4), 3(5), 7, 8, 10, 11, 11(1), 12 and 14; National Security Act, 1986 - Sections 3 and 3(2); [Constitution of India](#) - Articles 22(4), 22(5), 26 and 226

Appeal No. : Habeas Corpus writ petn No. 33514 of 1999

Appellant : Satyapriya Sonkar

Respondent : Superintendent, Central Jail and ors.

Advocate for Def. : H.C. Dubey and ;S.N. Srivastava Advs. and ;A.G.A.

Advocate for Pet/Ap. : Daya Shanker Mishra, Adv.

Disposition : Petition allowed

Judgement :

R.R.K. Trivedi, J.

1. Petitioner, by means of this writ petition, has challenged his detention under order dated 4-6-1999, passed by respondent No. 2 District Magistrate, Allahabad under Section 3(2) of National Security Act, 1986 (here-in-after referred to 'Act').

2. Along with impugned order of detention, petitioner was served the grounds of detention on which basis respondent No. 2 formed his subjective satisfaction for passing the order of preventive detention against him. In grounds served on petitioner allegation against petitioner was that on 29-5-99 he alongwith his companions went to Allahabad Degree College, Allahabad in the evening where the examination of B.A. Part I scheduled for 3.00 P.M. to 6.00 P.M. was in progress. Petitioner and his companions asked principal of the aforesaid Degree College not to check the use of unfair means during the said examination. However, Principal disagreed and said that if the unfair means are adopted during examination they shall be checked. On this reply, petitioner and his companions felt annoyed and threatened principal for the consequences and they came out of the premises and for creating fear and commotion started throwing bombs in college premises on account of which Head Constable Lakhan Singh became injured. Entire premises of college was covered by the smoke entitled by the bombs. People inside college premises ran helter skelter which obstructed flow of the traffic, nearby shops were closed and public order was completely disturbed. Petitioner and his companions escaped from the place of occurrence. On receiving information about aforesaid incident, additional police force was deployed and after serious efforts the public order could be restored and the examination was completed. For the aforesaid incident case crime No. 326 of 1999, under Section 332, 353, 286, 307 of Indian Penal Code and 7 Criminal Law Amendment Act was registered in Police Station Kydgunj, Allahabad, which is under investigation.

3. It has also been mentioned in the grounds that the petitioner was confined in Central Jail, but his Pairokars were trying for his release on bail. There was strong possibility that the petitioner shall be released on bail and shall again indulge in similar activities, which shall be prejudicial to the maintenance of the public order. It has been further stated that on the basis of the aforesaid incident, detaining authority felt satisfied that in order to prevent the petitioner from acting in a any manner prejudicial to the maintenance of public order, it became necessary to pass

order for detention of petitioner.

4. Petitioner was also informed that he has a right to make a representation under Section 8 to the State Government, which may be submitted through Superintendent of the jail at the earliest. He was also informed that his case shall be referred to the Advisory Board under Section 10 of the Act within three weeks and if his representation is received after said period it shall not be considered. He was further informed that he may also make a representation to the President or Central Government addressed to the Secretary, Government of India, Ministry of Home Department of Internal Security, North Block, New Delhi through Superintendent of the jail. He has right of personal hearing before Advisory Board under Section 11(1) of the Act and if he is desirous of the same, he should mention this in his representation submitted through Superintendent of jail. The impugned order of detention was approved by the State Government on 12-6-1999 under Section 2(4) of the Act, which was duly communicated to the petitioner. On 14-6-1999, the order of detention, grounds of detention and all other relevant papers received from the District Magistrate were sent to the Central Government under Section 3(5) of the Act which were received by Secretary, Ministry of Home Affairs, New Delhi on 17th June, 1999. The case of petitioner was referred to Advisory Board on 14th June, 1999. Advisory Board examined the matter and also heard petitioner in person on 7-7-1999.

5. Opinion of Advisory Board dated 17-7-1999 was received by the State Government on 19th July, 1999. The State Government thereafter considered the matter again and confirmed the detention of the petitioner for a period of 12 months by order dated 23rd July, 1999.

6. Petitioner submitted his representation dated 18th June, 1999 through Superintendent, Central Jail, Naini which was forwarded by District Magistrate with his comments on 22nd June, 1999 which was received by the State Government on 24th June, 1999. This representation along with his parawise comments was sent to Advisory Board on 25th June, 1999. The representation was rejected by State Government on 28th June, 1999.

7. Representation of petitioner dated 18th June, 1999 was received by Central Government on 29th June, 1999. This representation was put up before the under Secretary on 2nd July, 1999 who submitted it with his comments before the Joint Secretary, Ministry of Home Affairs on 2nd July, 1999 itself. Joint Secretary also submitted it with his comments before the Minister of State (Home), Government of India on 2nd July, 1999. The representation was rejected on 5th July, 1999.

8. In this petition, counter affidavits have been filed by Bina Prasad for the Central Government, by Sri R.S. Agarwal for the State Government, by Sri S.K. Srivastava as Superintendent Central Jail, Naini and by detaining authority Sri Alok Tandon, District Magistrate, Allahabad. Petitioner also filed rejoinder affidavit.

9. During pendency of writ petition, petitioner filed three supplementary rejoinder affidavits on 15-9-99, 27-9-99 and 29-9-99. In reply to aforesaid three supplementary rejoinder affidavits Sri R.A. Khan filed three supplementary counter affidavits on behalf of State Government on 15-9-99 and 27-9-99. Detaining authority also filed affidavit on 29-99 along with certain documents. Sri Sanjeev Rajan, Senior Superintendent of Post Office, Allahabad filed counter affidavit on behalf of Central Government.

10. We have heard Sri D.S. Mishra, learned counsel for the petitioner, Sri Mahendra Pratap, learned A.G.A. for respondents No. 1 to 3 and Sri K.N. Pandey for respondent No. 4. Learned counsel for the petitioner has questioned the continued detention of the petitioner on the ground that the representation was made by Sri Kanhaiya Lal Sonkar on 27th June, 1999 to the State Government as well as Central Government for revocation of the impugned order of detention which has not been considered and decided and which rendered the continued detention of petitioner illegal. The continued detention of petitioner has also been challenged on the ground that the representation on 27th June, 1999 for revocation of the detention of petitioner submitted through his father though was received by the State Government much before 7-7-99 on which date Advisory Board heard petitioner personally and examined the matter but this representation was not forwarded to the Advisory Board by the State Government as required under Section 10 of the Act and this way the petitioner has been denied the

constitutional and statutory safeguard provided to petitioner against preventive detention and this lapse on the part of the State Government vitiated the detention of petitioner. For the aforesaid two submissions, learned counsel for the petitioner has placed reliance on the documents filed along with third and fourth supplementary rejoinder affidavits and has submitted that the representation dated 27th June, 1999 was actually served on Home Secretary, State of Uttar Pradesh on 29th June, 1999, a report to this effect was obtained from Post Office and has been filed as Annexure 2-A to the third supplementary rejoinder affidavit. Petitioner has also filed a report obtained from the Post Office to the effect that the representation dated 27 June, 1999, addressed to the Governor of Uttar Pradesh was actually delivered to the addressee on 29th June, 1999. A copy of the report has been filed as Annexure-2B. Another document filed along with aforesaid supplementary rejoinder affidavit is 2-C which shows that the representation dated 27 June, 1999 addressed to the Home Secretary, Government of India and sent through speed post was delivered to the addressee on 29th June, 1999. On the basis of the aforesaid document, learned counsel has submitted that the service of the representation dated 27th June, 1999 has been established beyond doubt and denial on the part of the State Government by means of three supplementary affidavits is incorrect and cannot be believed. Learned counsel has also submitted that the service of the representation dated 27th June, 1999 on the Central Government has been admitted in the counter affidavit filed by Sanjeev Ranjan, Senior Superintendent, Post Office filed on 29-9-99. Learned counsel has submitted that as Central Government admittedly received the representation dated 27th June, 1999 which has not been decided as yet, the continued detention of petitioner has been rendered illegal and he is entitled for relief. Learned counsel in support of his submission has cited certain judgements of Hon'ble Supreme Court and this Court which shall be referred and discussed at the relevant places.

11. Sri Mahendra Pratap, learned A.G.A., on the other hand, submitted that the representation of the petitioner dated 18th June, 1999 was forwarded by the State Government to the Advisory Board on 25th June, 1999. Father of petitioner sent by fax second representation on 14th June, 1999 to the Principal Secretary, Home, State of Uttar Pradesh which was received on the same day. It was sent to detaining Authority for comments. He received it on 17th June, 1999 and

forwarded to Senior Superintendent of Police on 20th June 1999. The comments were received from the police on 22nd June, 1999. State Government received back the representation with comments of the detaining authority on 24th June, 1999. This representation was rejected on 28th June, 1999 along with representation submitted by petitioner on 18th June, 1999. In respect of representation dated 27th June, 1999, it has been submitted that the object behind providing an earliest opportunity of making a representation by the detenu against the order to the appropriate Government under Section 8 of the Act is that the submissions of the petitioner against order or preventive detention may be taken into consideration by the Advisory Board before giving its opinion and the State Government before confirming the order under Section 12 of the Act. It has been submitted that on a combined reading of Sections 8, 10 and 11 of the Act, it is clear that detenu is not entitled to make a second or successive representation against his detention as in the present case. If such an opportunity is permitted it may amount to abuse of the process and possibility cannot be ruled out to find faults on the part of the State Government and the Central Government in not deciding successive representations in order to secure release from detention. Learned counsel has further submitted that in any view of the matter, the subsequent representation can be only on fresh facts coming into existence after rejection of the first representation. Learned counsel has submitted that in the present case, the alleged representation dated 27th June, 1999 is nothing but a repetition of the same allegation which were made by petitioner himself in his representation dated 18th June, 1999 which was considered by the State Government and Central Government. Thus even assuming for sake of argument that second representation has not been considered and decided by State Government and Central Government as no prejudice has been caused to petitioner it will not effect the continued detention of petitioner in any manner. Learned A.G.A. has further submitted that in the present case on behalf of State Government three supplementary counter affidavits have been filed by Sri R.A. Khan, Under Secretary, Home and Confidential Department of State of Uttar Pradesh who has specifically denied the receipt of the alleged representation dated 27th June, 1999. This factual aspect is highly disputed, which cannot be resolved by this Court in proceedings under Article 226 of the Constitution.

Learned A.G.A. has placed reliance in case of State of U.P. v. Zavad Zama Khan, A.I.R. 1984 S.C. 1095 : (1984 Cri LJ 922) and Pushpadevi M. Jatia v. M.L. Wadhavan, A.I.R. 1987 SC 1748 : (1987 Cri LJ 1888).

12. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties. In our opinion, on basis of the submissions made before us, following questions require determination for resolving the controversy raised in this petition :-

1. Whether the representation dated 27th June, 1999 has actually been served on respondent No. 3 namely State of Uttar Pradesh and respondent No. 4 Central Government ?
2. Whether the aforesaid representation contained fresh grounds which required consideration and decision by the State Government and Central Government ?
3. Whether under the scheme of the Act, the detenus entitled to make successive representations challenging his detention ?
4. Whether the continued detention of the detenu cannot vitiate if he failed to establish any prejudice caused to him on account of non-consideration of the subsequent representation by the State Government or the Central Government ?
5. Whether the order of detention shall vitiate if the appropriate government failed to place all the representations received by it from the detenu before Advisory Board, as required under Section 10 of the Act ?

13. We take up the first question first as to whether the representation dated 27th June, 1999, sent by father of petitioner to the State Government and Central Government has been served or not. There is no dispute about its service so far as Central Government is concerned. In paragraph No. 3 of the counter affidavit filed by Sanjeev Ranjan on 29-9-99, it has been stated that the speed post article dated 27th June, 1999 at Allahabad has been delivered to the addressee Home Secretary, Government of India, New Delhi on 29th June, 1999. However, there appears controversy regarding service of representation dated 27th June, 1999 on the State Government in view of the denial in the supplementary counter affidavit

filed by Sri R.A. Khan. Learned A.G.A. has submitted that as on question of service parties are at variance and it is highly disputed question of fact it cannot be resolved by this Court under Article 226 of the Constitution. We are not prepared to accept this submission of the learned A.G.A. that this Court cannot determine the question of fact in proceedings under Article 226 of the Constitution. High Court has jurisdiction to try issues both of facts and law. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, question of fact may fall to be determined. It is a self imposed restriction where a complicated question of fact is required to be determined on basis of the oral and documentary evidence which cannot be appropriately dealt with in present proceedings that this Court declines its discretion. The Court in sound exercise of jurisdiction considering the nature of the case, declines to entertain such writ petitions. Hon'ble Supreme Court in case of Babuhai Mulbhai Patel v. Nandalal Khodidas Barot AIR 1974 SC 2105, dealing with the aforesaid question held as under in paragraph No. 9 of the judgment:-

x x x x x x x x x The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petition, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceeding of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ

petition, the High Court may decline to try a petition (See *Gunwant Kaur v. Bhatinda Municipality*, AIR, 1970 SC802). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.

14. In the present case, for determining the question of service of representation, we have to only peruse the affidavits and the documents filed alongwith them. In paragraph No. 30 of the writ petition, petitioner specifically averred that a representation was made by father of petitioner on 27th June, 1999 and it was sent to state Government and Central Government under registered cover and by speed post respectively. It has also been stated that the representations have not been received back by petitioner's father unserved and he is of firm belief that the representations have been received by the Central Government and State Government but they have not been decided and the detention of the petitioner is in contravention of Article 22(5) and Section 14 of the Act which require expeditious disposal of the representation. In the counter affidavit filed by Bina Prasad on behalf of the Central Government nothing has been said about representation dated 27th June, 1999 in paragraph No. 6 of the counter affidavit in which paragraph No. 30 of the writ petition has been replied. On behalf of State Government Sri R.S. Agarwal filed counter affidavit. In paragraph No. 6 of his counter affidavit, it has been stated that the representation dated 27 June, 1999 of the petitioner's father as alleged has not yet been received in the concerned section of the State Government. In view of this denial, petitioner filed a supplementary rejoinder affidavit annexing therewith the reports obtained from the Post Office that the registered letter dated 27th June, 1999 was served on 29th June, 1999 on Home Secretary, Uttar Pradesh, Lucknow. Another report has been filed showing that on 29th June, 1999 letter addressed to Governor was also delivered. Along with the rejoinder affidavit petitioner also filed postal receipts showing that the representation was sent to Governor of U.P. in a registered envelop on 27th June, 1999 on payment of Rs. 25/- as postal charges. The representation was also served to Pramukh Sachiv, Uttar Pradesh Shasan on payment of Rs. 25/- as postal charges. Two receipts were numbered as 3411 and

3410. There is a third receipt No. 653 dated 27th June, 1999 which shows that the representation was sent by speed post on payment of Rs. 45/- as postal charges to Home Secretary, Central Government. All these documents filed along with rejoinder affidavit established service. The supplementary counter affidavit filed by Sri R.A.Khan denied receipt or representation dated 27th June, 1999 in the concerned section of the government. In the supplementary counter affidavit filed on 27-9-99 about averments made in paragraph No. 3 about receipts and the addresses, are as under:-

3. That the three receipts bearing No. 3411 and No. 3410 issued by the Post Office, Allahabad and No. 553 issued by EMS Allahabad are only indicative of the fact that three closed envelopes addressed to (1) His Excellency The Governor, U.P.(2) Principal Secretary, U.P. Lucknow and (3) Home Secretary, Central Government, Internal Security Department, North Block, New Delhi were dispatched. The second envelope bearing address Principal Secretary, U.P., Lucknow is an incomplete address because it does not contain the name of the department to which the letter is supposed to be delivered. They are inadmissible as evidence of proof of the contents contained therein. However, appropriate efforts to locate the alleged contents were made by the concerned section of the State Govt. On enquiry, the Post Master, General Post Office, Lucknow orally informed that any written information about these can be given only on the official request of the Post Office Branch at Allahabad; which had dispatched these letters.

15. From the aforesaid reply, it is clear that the stand taken is hyper-technical and not convincing. It is admitted position that the representation dated 27th June, 1999 sent to Central Government through Home Secretary by speed post was delivered to the addressee. The report of the Post Office clearly indicated that the registered cover addressed to the Principal Secretary, Home and the Governor of Uttar Pradesh were already served on 29th June, 1999. On the receipt No. 3410 only Pramukh Sachiv has been mentioned on the basis of which, it appears, the reply in the supplementary counter affidavit has been developed though the representation dated 27th June, 1999 which has been filed as Annexure - 1 to the rejoinder affidavit clearly shows that it was addressed to the Principal Secretary, Home, U.P. Government, Lucknow. The petitioner has substantiated the fact, that

the representation were actually served on 29th June, 1999 by the report obtained from the Post Office against which there is nothing on the record to disbelieve. If the reports were not correct, it was open to State Government to obtain another report from the postal authorities for which procedure was disclosed as stated in the supplementary counter affidavit of Sri R.A. Khan. Thus, in our opinion, there is sufficient material on record to establish that the representation have actually been served on the Central Government and the State Government or through the Governor of Uttar Pradesh and Secretary, Home Department, Uttar Pradesh.

16. Questions No. 2, 3 and 4 are related to each other and can be conveniently considered and decided together. There is no doubt about the legal position that the right of representation against preventive detention is constitutional and safeguard provided under Article 22(5) of the Constitution in Section 8 of the Act is only extension of the same right. The detaining authority is required to afford the detenu earliest opportunity of making representation against the order to the appropriate government. The representation so made has to be forwarded to the Advisory Board while making the reference under Section 10 of the Act. It is also to be considered by the State Government (appropriate government) at the earliest. In addition to the aforesaid right petitioner has also a remedy under Section 14 of the Act under which Central Government and the State Government may revoke the order of detention. The relief under Section 14 of the Act may be claimed at any namely before the order of detaining authority is confirmed by the State Government under Section 12 of the Act or subsequent there to. Thus from the provisions of Act, it is clear that the right to make representation by the detenu is not confined under Section 8 only. The detenu may make a second representation to the State Government and the Central Government under Section 14 of Act for invoking the power of revocation. Thus the detenu can make representation more than once during the period he is under detention. Whether the successive or frequent representations amount to abuse of the right conferred under the provisions of the Act, can be dealt with by the State Government and the Central Government and not by any other authority. The submission of the learned A.G.A. was that the subsequent representations can be permitted only on the basis of fresh ground which were not available at the time the first representation was made. The analogy behind this submission appears to be based on the

doctrine of constructive res judicata. A Division Bench of this Court in case of *Sushil Kumar v. Adhikshak*, Kendriya Karagar, Naini, Allahabad, 1983 Cri LJ 744 held that the application of the doctrine of constructive res judicata is confined only to civil action and is entirely inapplicable to any illegal detention and do not bar a subsequent petition for a writ of habeas corpus. The Court also observed that Section 14 of the Act providing for revocation or modification, has a very wide scope which is not the position in the matter of habeas Corpus before the Court.. The relevant extract from judgment is being reproduced below :-

When a detention is challenged before a Court, the Court considers whether legal imperatives have been observed and the right procedure has been followed and the proper opportunity, as envisaged in Article 22(4) of the Constitution as well as under the provisions of the Act in question, has been afforded. The Court does not examine the desirability of the detention of the detenu, which depends on so many other factors including conditions prevailing in any particular region and the need of the detention, the matter comes within the ambit of subjective satisfaction of the detaining authority. Besides, while the Court cannot modify the order as to reduce the period of detention etc. even that scope is open to the appropriate authority under Section 14 of the Act.

17. Hon'ble Supreme Court in case of *Sabir Ahmed v. Union of India*, 1980 (3) SCC 295 in paragraph No. 12 while repelling the contention of the Central Government that it is not under duty to consider a representation made to it by the detenu for revoking his detention, if it simply repeats the same allegations, statement of facts and arguments which may be contained in the representation made to the detaining authority, held as under :-

It is true that Section 3(2) of COFEPOSA mandates the State Government to send a report to the Central Government. But it does not mean that the representation made by the detenu, if any, should also be sent along with that report. There appears to be no substance in the contention that the Central Government is under no duty to consider a representation made to it by the detenu for revoking his detention, if it simply repeats the same allegations, statement of facts, and arguments which were contained in the representation made to the detaining

authority. It is common experience that an argument or submission based on certain facts, which does not appeal to a tribunal or authority of first instance, may find acceptance with a higher tribunal or supervisory authority. Whether or not the detenu has under Section 11 a legal right to make a representation to the Central Government is not the real question. The nub of the matter is whether the power conferred by Section 11 on the Central Government, carries with it a duty to consider any representation made by the detenu, expeditiously. The power under Section 11 may either be exercised on information received by the Central Government from its own sources including that supplied under Section 3 by the State Government, or, from the detenu in the form of a petition or representation. Whether or not the Central Government on such petition/representation revokes the detention is a matter of discretion. But this discretion is coupled with a duty. That duty is inherent in the very nature of the jurisdiction. The power under Section 11 is a supervisory power. It is 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. If this statutory safeguard is to retain its meaning and efficacy, the Central Government must discharge its supervisory responsibility with constant vigilance and watchful care. The report received under Section 3, or any communication or petition received from the detenu must be considered with reasonable expedition. What is 'reasonable expedition' is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable redtapism and unduly protracted procrastination.

18. From the aforesaid legal position expressed by Hon'ble Supreme Court about the representation, it is clear that the second or successive representation may be made by the detenu during the period of his detention and such representations are to be considered and decided expeditiously. The provisions of COFEPOSA in this regard are similar to Act. The contention of the learned A.G.A. was that the representation dated 12th June, 1999 contained similar allegations, as were made in the representation dated 18th June, 1999 by the petitioner and hence no prejudice has been caused to petitioner as earlier the representation was already rejected by the Central Government. But this submission can not be accepted in

view of the legal position expressed by Hon'ble Supreme Court in Sabir Ahmed's case, (1980 (3) SCC 295) wherein it has been held that it is common experience that an argument or submission based on certain facts, which does not appeal to a tribunal or authority of first instance, may find acceptance with a higher tribunal or supervisory authority. This analogy may be applicable to the same authority as well. It is well known that an authority or Court which at first instance does not accept the submission, on re-hammer accepts the same on subsequent occasion. From the aforesaid observations, it is clear that the representation submitted to the Central Government or the State Government even if it is based on same ground, it cannot be ignored and has to be considered by the appropriate authority. The observations of the Division Bench in case of Sushil Kumar, (1983 Cri LJ 744) (supra) are also very material. The power under Section 14 of the Act, conferred on State Government and Central Government is very wide and they can revoke order of detention for various considerations. They may come to conclusion that the preventive detention is no longer necessary, looking to the incident of the present case on which basis the impugned order of detention was passed, was related to the use of unfair means during examination. Admittedly, examinations were over long back. This could, by lapse of time, be one of the important consideration for the State Government and Central Government to revoke the order of detention on the ground that its purpose has already been served. But if the representations are allowed to be ignored in the manner it has been done in the present case it shall defeat the very purpose for which the right of representation has been conferred on the detenu. We have already found that the representations sent by father of the petitioner on 27th June, 1999 were served on the State Government as well as on the Central Government but they have not been considered and decided though more than three months have passed. In our opinion, for this lapse on the part of the respondents No. 3 and 4, the continued detention of petitioner has been rendered illegal.

19. Coming to the last question that the detention of the petitioner vitiated as the appropriate Government failed to send the representation dated 27th June, 1999 before the Advisory Board as required under Section 10 of the Act, we are of the opinion that on this ground also the detention of the petitioner cannot be continued. The facts found by us are that the representation dated 27th June,

1999 was received by the State Government on 29th June, 1999. From the counter affidavit filed by Sri R.S. Agarwal, it is clear that the Advisory Board considered the matter and heard petitioner on 7-7-99. Thus there was sufficient time on the part of the State Government to place the subsequent representation also before the Advisory Board which, in the present case, has not been, admittedly, done. A Division Bench of this Court in case of Rajendra Kumar Sharma v. Superintendent, District Jail, Agra, 1985 Cri LJ 999, held that if the subsequent representation of the petitioner is not placed before the Advisory Board, petitioner's detention is rendered invalid. The Division bench held in paragraph No. 27 of the judgment as under :-

The words 'if any' used after the word 'representation' does not deprive a detenu from making a representation subsequent to the reference made by the State Govt. to the Advisory Board. These words have been provided in the section to emphasise upon the State Govt. to make the reference not later than three weeks from the date of detention order even if no representation is made by the detenu during that period. The right of the detenu to make representation or representations survives even after that reference. In other words these words also do not restrict right of the detenu to make a supplementary representation in continuation of his earlier representation, if he finds that his earlier representation was incomplete or lacking in particulars or clarification.

The Division Bench further held in paragraph No. 29 of the judgment as under :-

In the above view of the matter, the State was bound to place the supplementary representation dated 21-8-1984 of the petitioner also before the Advisory Board by 23-8-1984 i.e. within three weeks from the detention order as stipulated by Section 10 of the Act. Consequently there is a violation of the mandatory provisions of Section 10 of the Act.

20. In the present case, admittedly, case of the petitioner was referred to Advisory Board on 14th June, 1999 i.e. before the petitioner could make his representation. The representation dated 18th June, 1999 was sent to the Advisory Board on 25th June, 1999 i.e. after three weeks but before the matter was considered by the Advisory Board. In these facts, the subsequent representation submitted on behalf

of petitioner could also be placed before the Advisory Board which was served on 29th June, 1999. The State Government was under obligation to place all the representations before the Advisory Board. In the facts and circumstances, the detention of the petitioner became illegal on account of non-compliance of Section 10 of the Act.

21. For the reasons stated above, this petition is allowed. As continued detention of petitioner has been found illegal, respondents are directed to set petitioner at liberty forthwith if his detention is not required in connection with any other case.

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