
(1995) 09 DEL CK 0005

In the Delhi High Court

Case No : Criminal Writ Petition No. 140 of 1995

Akhilesh Kumar Tyagi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Citation : (1995) 4 AD 207 : (1996) CriLJ 965 : (1995) 60 DLT 203 : (1995) 35 DRJ 1 : (1998) 2 ILR Delhi 985

Hon'ble Judges : M. Jagannadha Rao, C.J.; Manmohan Sarin, J.; A.D. Singh, J

Bench : Full Bench

Advocate : Harjinder Singh, Naveen Malhotra, H.S. Bhullar and Naresh Malhotra, for the Appellant; K.T.S. Tuls, Addl. Solicitor General, A.K. Vali, Ms. Barkha Babbar, Vikas Pahwa and N.K. Handa, for the Respondent

Judgement

M. Jagannadha Rao, C.J.—The petitioner seeks issuance of a writ of habeas corpus. He was detained on 6th December, 1994 pursuant to a detention order dated 2nd December, 1994 issued u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974. The matter came up before us on 28th August, 1995 when counsel for the petitioner contended that declaration issued u/s 9 of the Act was unconstitutional as it did not inform the detenu that he had right to submit a representation against the declaration, not only to the Advisory Board and Central Government but also to the declaring authority on the analogy of the Supreme Court judgment in Kamlesh Kumar Ishwardas Patel Vs. Union of India (UOI) and Others, rendered in the context of Section 3(1). Counsel relied upon the judgment in Charanjit Singh Gaba v. Union of India (1995) 3 AD (Delhi) 406, of Division Bench of this Court for the aforesaid purpose. The next contention was that if Section 9 declaration was bad, the enlarged periods in Section 9(2) for making a reference to the Advisory Board and for the Board to give its report ceased to be operative and if either or both of them were beyond the respective periods prescribed in Section 8, the detention would be illegal. For this purpose, counsel also relied upon another judgment of a Division Bench in Maqudoo Meera Hameem v. Joint Secretary to Government of

India, (Crl.W.P. No. 83/95) decided on 17-8-1995 by two of us (the Chief Justice and Justice Anil Dev Singh) wherein on the assumption that the Supreme Court judgment rendered u/s 3 applied to Section 9 also, we held that the declaration was bad and in cases where the reference to the Advisory Board was made beyond 5 weeks and the Advisory Board gave its opinion beyond 11 weeks we held that the continued detention also became bad. As the matter was not fully argued when Maqdoom Meera Hameem's case was decided and the point was arising in a large number of cases, we referred the question to a Full Bench on 28th August, 1995.

2. Before us, the learned Additional Solicitor General of India, Shri K. T. S. Tulsi raised a preliminary contention that the decision of the Supreme Court given u/s 3 did not in fact apply to Section 9. That would mean that his contention also is that the judgment of the Division Bench in Charnjit Singh Gaba's, case was wrongly decided. He also alternatively contended that even if it applied to Section 9, the declaration which did not inform the detenu of his right to represent to the declaring authority was valid till it was quashed and hence the respective periods of 5 weeks and 11 weeks referred to above, which got extended to 4 months and 2 weeks and 5 months and 3 weeks respectively, did not get contracted or reduced back to 5 weeks and 11 weeks respectively once - again upon the quashing of Section 9 declaration. He contended that Therefore the detention beyond 3 months did not become illegal. This contention would mean that Maqudooom Meera Hameem's case was wrongly decided. Incidentally, it was argued for the respondent that even in case we hold that the extended periods do not remain and the detention beyond three months would be invalid, the detention would still hold good for 1 year. But as contended for petitioner, we do not think it is necessary to decide this question raised by the respondents for purpose of this reference.

3. We have heard the learned counsel for the petitioner. Shri Harjinder Singh and the learned Additional Solicitor General, Shri K. T. S. Tulsi and Mr. Handa who appears for respondents in the connected case.

4. Taking the preliminary contention also into account and the question referred to the Full Bench, the following points arise for consideration :-

(1) Whether the principle laid down in Supreme Court judgment in Kamleshwar Kumar Ishwardas Patel's case rendered in connection with Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act applied to the declaration made u/s 9 of the Act in cases where the detenu had not been informed by the detaining/empowered authority that he could represent to the declaring authority and whether the declaration would be bad in law and also whether Charanjit Singh Gaba's case was wrongly decided ?

(2) If the declaration u/s 9 is to be held to be bad, whether it was bad from the inception of whether it has become bad only on its being declared as such by the Court; and if declared bad from the inception, whether the reference to the

Advisory Board, if made beyond 5 weeks of detention or the report of the Advisory Board if given beyond 11 weeks of detention would not render detention beyond three months invalid because of non-applicability of the extended periods of 4 months and 2 weeks and 5 months and 3 weeks specified in Section 9; and whether Maqudoom Meera Hameem's case was wrongly decided ?

5. Before referring to the points, we make it clear that we are not here concerned with cases where the reference to the Advisory Board made within 5 weeks and opinion is also rendered by the Board within 11 weeks. We are here dealing with a question where either reference to the Advisory Board is made beyond 5 weeks of the detention and/or where the Board has given its opinion beyond 11 weeks of the detention. In the present case before us, though reference to the Advisory Board made within 5 weeks, report of the Advisory Board was given beyond 11 weeks. (In *Crl.W. 358/95*, which is also heard in the Full Bench, the position is the same).

POINT 1

6. The Supreme Court, In *Kamlesh Kumar Ishwardas Patel v. Union of India*, (*supra*) held that where the detention order u/s 3(1) was issued not by the Central Government or by the State Government but by an officer specially empowered to pass such an order, the grounds of detention must specifically inform the detenu that he would be entitled to represent against the Section 3(1) order not only to the Advisory Board, and the Central or State Government, as the case may be, but also to the empowered officer, who was the detaining authority. This conclusion was based on a combined reading of Article 22(5), Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, and Section 21 of the General Clauses Act, 1897. The power of the empowered officer (i.e. the detaining authority) to revoke the detention order as stated in Section 21 of the General Clauses Act, and as saved by Section 11 of Conservation of Foreign Exchange and Prevention of Smuggling Activities, was described as an inherent power and not flowing from Section 21. On that basis, it was held that if the detenu was not informed of his right to represent to the empowered authority against the detention order passed by the empowered authority, the fundamental right of the detenu guaranteed under Article 22(5) would stand violated and detenu was to be released. The Supreme Court case was not a case where there was a declaration u/s 9 requiring detention for 2 years. No question arose in that case as to whether the same principle would apply if the Section 9 declaration did not inform the detenu that he had a right to represent not only to the Central Government and the Advisory Board but also to the empowered authority. Learned Additional Solicitor General, Shri. K. T. S. Tulsi, stated before us that was a matter of fact, question relating to Section 9 did not arise before the Supreme Court in the above case and that the words continued detention made in para 14 of the Supreme Court judgment were merely referable to the continued detention beyond 3 months and not the

continued detention by an order u/s 9.

7. We have, Therefore, to decide whether the Supreme Court judgment in Kamlesh Kumar Ishwardas Patels case rendered in connection with Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities can be applied to the declaration made u/s 9 of the Act ?

8. In case where a declaration u/s 9 has not been made position u/s 8 is that reference to the Advisory Board must be made within 5 weeks and the Advisory Board must submit its report on the sufficiency of the material within 11 weeks. But where a declaration is made u/s 9 within 5 weeks of the detention, the above time limitations get extended and the Government can make a reference to the Board within four months and two weeks of the detention and the Board can submit its report within 5 months and 3 weeks of the detention, as provided in Section 9(2). The declaration u/s 9 has, however, to be made within 5 weeks of the detention. It will be noticed that the same period of 5 weeks is prescribed both for making of a reference to the Advisory Board and for the making of a declaration u/s 9.

9. Firstly, we have to decide whether there is a right to represent against Section 9 declaration. Secondly, what is the source of the right to representation. Thirdly, to whom can it be made.

10. As to whether there is a right to represent against Section 9 declaration, we are of the view that in spite of the silence in Section 9, there is a right. This is because of the fact that serious consequences flow from such declaration. Primarily, it results in the postponement in respect of the duty on part of the Government to make reference to the Advisory Board from 5 weeks to four months and two weeks. Again it also postpones the time frame within which the Board has to submit a report, and this gets enlarged from 11 weeks to 5 months and 3 weeks. These results seriously affect the right of the detenu to have the question of his continued detention beyond 3 months without reference Advisory Board and total period of detention to 2 years - considered by the Advisory Board. Further, the declaration contains a further decision recording the adverse subjective satisfaction which is the basis for thinking that the detention could extend up to 2 years. There can, Therefore, be no doubt, that a right to represent against the declaration is implied, though not specifically stated in Section 9. Is this to be implied from Article 22(5) ? This is the second aspect.

11. Now, Article 22(5) speaks of a right of representation. It also speaks of a right when any person is detained in pursuance of an order made under any law providing for preventive detention. It does not use the words detention order found in Section 11 or Section 2(b) of the Act. Section 2(b) of the Act says detention order means an order made u/s 3. In our view, the words used in Article 22(5) are of wide import and are not restricted by a detention order u/s 3(1) but will also cover an order u/s 9 which results in continued detention beyond 3 months which may extend up to 2 years. Inasmuch as the language of

Article 22(5) is wide enough, the right to represent under Art. 22(5) includes not only a right to complain against detention but also a right to complain against a decision for "continued detention" pursuant to a declaration u/s 9. Article 22(5) is, Therefore, the source of the right to represent against continued detention pursuant to an order u/s 9.

12. This conclusion of ours is fortified by the decision of the Supreme Court in *Jasprit Singh v. Union of India* JT (1990) 3 SC 293 . Adverting to undue delay of 1 months and 13 days in informing the detenu of his right of representation against a declaration, the Supreme Court held that there was a violation of Article 22(5). They observed :

"This delay, in our opinion, is quite unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution of India."

12-A. The third aspect is in regard to the particular authorities to whom representations can be made. Learned counsel for the petitioner accepts that Section 11 of Conservation of Foreign Exchange and Prevention of Smuggling Activities, is not available to the petitioner as we as are not here dealing with a representation against a detention order falling within Section 2(b). Section 11 uses the words detention order and cannot, Therefore, cover cases of representation against the continued detention beyond 3 months which also comes within Article 22(5).

13. Discussion here is to be divided into three parts. Firstly, to the source of the right to represent to the Central Government, then of the right to represent to the Advisory Board and finally, the source of the right to represent to the empowered authority u/s 9. Though Article 22(5) is silent as to the persons to whom representation can be made, so far as the right to represent to the Central Government against an order u/s 9 is concerned, there was not much of argument before us by the respondents. Respondents counsel, however, at once stage, referred to Section 11 but on finding that it only uses the words "detention order", referable to Section 2(b) and Therefore to Section 3, had to give up Section 11. In our view, Therefore, the right of representation to the Central Government does not flow from Section 11 but flows from Article 22(5).

14. So far as the right to represent to the Advisory Board is concerned, there is initially a statutory right u/s 8 to question the declaration before the Advisory Board. In *Smt. Hawabi Sayed Arif Sayed Hanif Vs. L. Hmingliana and others*, the Supreme Court observed :

".....the detenu against whom the order of detention has been passed and thereafter a declaration u/s 9(1) has been made, has got a statutory right u/s 8(c) of the Act to be heard in person if he so desired and the Advisory Board has to submit its report only after hearing him. Therefore, it follows that the detenu should be served with the initial order of detention within the specified period and the order of declaration within a reasonable time so that he could make his personal representation to the Advisory Board leaving apart his right of making

representation to the detaining authority under Article 22(5) challenging the order of detention."

In that case, in view of the statutory right traced to Section 8 of the Act, the Supreme Court left open the further question as to applicability of Article 22(5). They observed :

".....there is no need to elaborately deal with the question as to whether constitutional safeguards under Article 22(5) should be extended in the case of declaration also as in the case of detention order."

We shall next deal with the question, whether the statutory right to represent before the Advisory Board at the stage of Section 9 also flows from Article 22(5). Now, it has been held that a similar right to represent to the Advisory Board at the stage of Section 3(1) order flows from Articles 22(4) and 22(7) of the Constitution of India. It has been also held that the denial of a right of hearing before the Advisory Board at the stage of Section 3(1) is a violation of Article 22(5). In *State of Punjab Vs. Sukhpal Singh*, , it was again held that if the report at the section 3(1) stage was submitted by the Advisory Board without hearing the detenu who desired to be heard against Section 3(1) order, there was a violation of Article 22(5). Again in *Harbans Lal Vs. M.L. Wadhawan and Others*, , it was held that the right of the detenu to lead evidence against Section 3(1) order was constitutional safeguard embodied in Article 22(5). It was also observed that it was so construed in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, was to be deemed to have been incorporated in the statute dealing with detention without trial i.e. in the provisions in Section 8(b) and 8(c) of COFEPOSA. In *Anil Vats Vs. Union of India and others*, , the refusal to permit a friend of the detenu to appear before the Advisory Board at the Section 3(1) state was held to be violative of Article 22(5) in the context of representation against Section 3(1) order. Thus, if the right to represent against section 3(1) order before the Advisory Board is not merely a statutory right flowing from Section 8 of the Act but is also a right traceable to Article 22(5), there can in our view, be no doubt, that a similar right to question the continued detention u/s 9 beyond 3 months and up to 2 years before the Advisory Board is also a right flowing from Article 22(5).

15. To summarise, there is Therefore a right to represent against the declaration made u/s 9 and a right to represent to the Central Government and to the Advisory Board, and these rights flow from Article 22(5) of the Constitution of India.

16. The next aspect is whether there is a further right to question the declaration u/s 9 before the very authority making the declaration i.e. the empowered authority, on the analogy of the Supreme Court's decision in *Workmen of M/s. Rohtas Industries Vs. Rohtas Industries and others*, and, if so, whether that right is an inherent right or it flows Section 21 of General Clauses Act, 1897 or whether it also flows from Article 22(5) ?

17. Learned Additional Solicitor General contended that there is a material difference between a right to represent against a detention order and a declaration. He also contended that the right to represent to the empowered authority which made the order u/s 3(1) was traced by the Supreme Court to Article 22(5) in Kamlesh Kumar Ishwar Patel's case because of the urgency of the situation. According to him, the reason is that the detenu is not to wait till a Section 11 representation against the detention order is decided by the Central Government or till the Advisory Board decides the question of validity of the detention. Immediately on detention, the detenu must have a right to make a representation to the empowered authority which passed very detention order and that is because Article 22(5) uses the words "earliest opportunity". That, according to him, is the real basis of the Supreme Court's decision. Parliament did not place the declaration and detention order at par. There was imminent urgency in case of declaration as it operated after 1 year in extending period of detention. The statute did not even prescribe a period within which declaration was to be served. It is then argued that once the detenu had an opportunity to represent against the detention order made u/s 3(1) to the Central Government, then to the Advisory Board and to the empowered authority u/s 3(1) as held in the Supreme Court judgment, and once there is a right to represent against the Section 9 declaration to the Central Government and a right to represent to the Advisory Board, (which amount to five opportunities in all), there is no need to give an additional sixth opportunity before the declaring authority. Too many opportunities it is contended, will make the Act unworkable.

18. So far as question of urgency is concerned, in our opinion, it cannot be confined to Section 3(1) orders. There is clear urgency even in cases where Section 9 declaration is issued. Once a declaration is made u/s 9(1), the very right to represent to the Advisory Board gets postponed because the Government can refer the matter to the Board within 4 months and 2 weeks whereas, if there is no Section 9 declaration, the detenu will get vested with such a right within 5 weeks. This postponement of the right to represent to the Advisory Board against the Section 9 declaration will, Therefore, be a violation of the right to represent at the earliest opportunity as visualised by Article 22(5), as held in the Supreme Court case. If in view of the sense of urgency, the above words in Article 22(5) have been construed by the Supreme Court as implying an immediate right given to the detenu to represent to the empowered authority which passed the detention order u/s 3(1) - without the need to wait till a reference is made to the Advisory Board or till the Central Government deals with a representation u/s 11. We fail to see why the said principle laid down by the Supreme Court is not to be applied to a similar urgent situation where, because of the Section 9 declaration, the detenu's right to represent before the Advisory Board gets postponed from 5 weeks to 4 months and 2 weeks and the right to obtain the Board's report gets postponed from 11 weeks to 5 months and 3 weeks. In such a situation also, in view of a similar urgency, the detenu must, and no the analogy of the Supreme Court's reasoning, have a right to represent

to the declaring authority "at the earliest opportunity." He need not wait for a reference to be made in 4 months and 2 weeks or to the report of the Advisory Board to be made in 5 months and 3 weeks, nor to the result of any representation that he might send to the Central Government. The contention that there is no element of urgency in Section 9 matters and that the judgment of the Supreme Court is distinguishable, cannot Therefore be accepted. The duty on part of the declaring authority u/s 9 to inform the detenu that he has a right to represent to the declaring authority has, Therefore, to be implied and this is apart from the right to represent before the Advisory Board or the Central Government. The right to represent to the empowered authority u/s 9 must also, Therefore, flow from Article 22(5) and cannot be treated as a simple right to natural Justice.

19. It was then submitted that the such a view would amount to adding words in Section 9. Several rulings were cited to say that the Court cannot add words to a statute. If learned counsel for the respondents have accepted that, in regard to Section 9 declaration, there is a right to represent to the Advisory Board and Central Government, and if they are not traceable to Section 11 or Section 9 then the right must spring from somewhere. The right to represent is different from a right to revoke, which is either inherent or even it is also recognised by Section 21 of the General Clauses Act, 1897. Learned counsel for the petitioner has, however, kept Section 11 out and argued that these rights flow only from Article 22(5). As already stated, Article 22(5) does not say to whom the representations are to be made. It only speaks of earliest opportunity. Because of these words, the Supreme Court has spelt out an immediate right to represent to the empowered authority at the Section 3(1) stage. If the source of the right to represent to the Central Government, the Advisory Board and the empowered authority against the Section 9 order is Article 22(5), the submission for the respondents that we are adding words in Section 9 cannot stand. This contention is, Therefore, rejected.

20. In the result, we hold that the Section 9 declaration will be bad in law if it does not inform the detenu that he has a right to represent, against the declaration to the empowered authority also, and it is bad as being violative of Article 22(5) of the Constitution of India. We, Therefore, hold that the decision of the Division Bench of this Court in *Charanjit Gaba v. Union of India* (1995 (3) A.D. 406) was correctly decided. But, as already stated, the question whether the detention will be good for one year - in cases where Section 9 declaration is issued and the reference is made in 5 weeks of detention and the Advisory Board has given its report in 11 weeks - is left open as it does not arise in the case at hand. Point 1 is decided accordingly.

Point 2 : This point raises a fundamental issue as to whether the declaration made u/s 9 - if it did not (sic) that the detenu would have a right of representation to the declaring or empowered authority though he was informed about his right to represent to the Central Government and the Advisory Board,

is valid until it is quashed by the Court or is void ab initio. The importance of this question is because of the following result of the declaration. Once a declaration is made, say, even on the 35th day (the last day of the 5 weeks period prescribed in Section 9), the time for making a reference to the Board gets enlarged because of Section 9(2) from 5 weeks to 4 months and 2 weeks and again the time for the Board to submit its report gets enlarged from 11 weeks to 5 months and 3 weeks; if the declaration becomes bad only when it is questioned and quashed, it can be argued for respondents that these enlarged periods would remain even after the Section 9 declaration is quashed. If the enlarged periods remain, the reference beyond 5 weeks and the report of the Board given beyond 11 weeks will be valid; but if, on the other hand, the quashing of the declaration by the Court for its being violative of Article 22(5) also includes a declaration that the order u/s 9 to start with, was bad then the enlarged periods provided by Section 9(2) cease to apply from the beginning and the reference made beyond 5 weeks and the report given beyond 11 weeks would be beyond the prescribed period and continued detention beyond 3 months would be invalid.

21. There are a number of rulings of the Supreme Court and also of Courts abroad and also considerable legal literature in the form of opinions of jurists, dealing with this vexed question. But, we do not propose to refer to all of them. It will be sufficient to refer to binding authority of the Supreme Court of India.

22. The direct Judgment in favor of the petitioners is the one by Krishna Iyer, J in Nawabkhan Abbaskhan Vs. The State of Gujarat, , which has been quoted in A.R. Antulay Vs. R.S. Nayak and Another, and latest in Krishan Lal Vs. State of Jammu & Kashmir, . After a very exhaustive discussion of the question whether an executive order violative of Part III of the Constitution is void or voidable, Krishna Iyer, J observed :

".....the only safe course, until simple and sure light is shed from a legislative source, is to treat as void, and ineffectual to bind parties from the beginning..... any order made without hearing the party affected if the injury is to constitutionally guaranteed right."

It was also observed that, in the case before them, where an externment order was issued u/s 56 of the Bombay Police Act, 1951, and was passed without giving an opportunity to tender Explanation and the prosecution was launched on the ground of disobedience of the order, the externment order was rendered void ab initio and was not to be treated valid till it, was quashed. It was void from the beginning as it violated Article 19. The Court observed finally that quashing was similar to performing obsequies of an order which was still-born. Krishna Iyer, J. observed :

"In the present case, a fundamental right of the petitioner has been encroached upon by the Police Commissioner without due hearing. So the Court quashed it not killing it then but performed the formal obsequies of the order which had died at birth.

23. On this authority, it must be held that if Section 9 declaration is quashed on the ground it violated Article 22(5) because the detenu was not informed of his right to represent to the empowered authority u/s 9 the quashing includes a declaration that the order was void ab initio.

24. Learned Additional Solicitor, General, Shri Tulsi, however, relied upon Attorney General for India and Others Vs. Amratlal Prajivandas and Others, decided by nine Judges of the Supreme Court. The decision related to Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). He placed reliance on the observations therein that the validity of an order of detention to which Section 12-A of COFEPOSA applied, could be challenged during the emergency, and if not challenged, could not be allowed to be challenged in SAFEMA proceedings. We do not think that the Supreme Court was dealing with the point now before us. Further, when there are direct Judgments on the same question, we are bound to follow them and we cannot ignore them on the basis of another Judgment where the point did not directly arise.

25. The other contention for the respondents is that Section 8(b) starts with the words, "Save as otherwise provided in Section 9" and Section 9(1) starts with the words "Notwithstanding anything contained in the Act" and hence once the respective periods specified in Section became operative, they remain, notwithstanding the quashing of Section 9 declaration. This conclusion cannot be accepted, if the Section 9 declaration is bad to start with and is declared as such, as per the decision in Nawabkhan Abbaskhan Vs. The State of Gujarat, . The same view appears to have been taken in Smt. Bhavna Chandrakant Acharya Vs. Union of India (UOI) and Others, ; Jethmal Kapurchard Kothari v. Union of India 1986 Cri LJ 1645 ; Abdula Mamad Mithani and etc. Vs. State of Gujarat and Others, : Ram Avtar Khandelwal v. Dy Secretary of Govt. Public (PSC Dept). Madras 1988 Cri LJ 724 and certain other Delhi rulings.

26. If, Therefore, there is a violation of Article 22(5) is not informing the detenu that he had an opportunity to represent to the declaring authority, upon the Court quashing the Section 9 declaration, the order is impliedly declared void from its inception and on that basis, the benefit of extension of the period of 5 weeks to 4 months and 2 weeks, and the benefit, of extension of 11 weeks to 5 months and 3 weeks in Section 9(2), cease to apply. It is indeed not a case of extension of the periods and a later contraction but the order quashing the Section 9 declaration would make the declaration ineffective from the date it was issued and in case either the reference to the Board is beyond 5 weeks and/or the report of the Board is beyond 11 weeks, then the "continued detention" beyond three months would be invalid.

27. Our conclusion above would mean that the Division Bench decision in Magdoo Meera Hameem v. Jt. Secy. (Crl W. P. 83/95) dated 17-8-1995 is correctly decided.

28. We make it clear again that, in cases where there is a declaration u/s 9(1)

and a reference to the Board within 5 weeks and the Board has given its report in 11 weeks and where the Section 9 declaration is later quashed, the question whether the detention is valid atleast for 1 year, is a question not arising here and we should not be understood as having decided that question. Point 2 decided accordingly.

29. In the result, we declare that Section 9 declaration is vocative of Article 22(5) and, in fact, it was illegal when it was issued, and inasmuch as the report of the Advisory Board was issued beyond 11 weeks and as the benefit of the extended period u/s 9(2) is not available as Section 9 order is bad ab initio, the detention beyond 3 months is bad. The detenu will be released forthwith, if not required to be detained in any other case.

30. Order accordingly.