
(2002) 01 AHC CK 0010

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 8387 of 2001

Mukesh Kumar Gupta and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 10, 11, 3, 3(1), 8
Constitution of India, 1950 — Article 22, 22(5), 226, 246
General Clauses Act, 1897 — Section 21

Citation : (2002) CriLJ 2195

Hon'ble Judges : S.R. Singh, J; R.D. Shukla, J

Bench : Division Bench

Advocate : A.D. Giri, Vijay Prakash and A. Samad, for the Appellant; S.K. Singh and S.N. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—The validity of the detention order dated 16-2-2001 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA Act, 1974) is under challenge in this Habeas Corpus Writ Petition under Article 226 of the Constitution of India. The impugned detention order is sought to be quashed superadded with a command to the opposite parties to release the petitioner forthwith.

2. The petitioner, a suspended Superintendent of Customs and Central Excise, Meerut-1 has been detained pursuant to the impugned detention order made by the Joint Secretary to the Government of India (COFEPOSA Section) "with a view to preventing him from abetting the smuggling of goods in future". The detention related Incident took place on 18-7-2000 in which foreign made ball bearings/roller bearings valued at Rs. 3.60 crore and meant for home consumption were seized from the premises of M/s. Dooab Exim, Meerut. The cartons containing bearings were taken out from Inland Container Depot (LCD.), Meerut on the evening of 17-7-2000 by filing false declaration regarding value, quantity and

description as to the country of origin. On the basis of investigation, search and seizure by the officers of the Directorate of Revenue Intelligence (D.R.I.), a complaint came to be filed amongst others, against the petitioner under Customs Act, 1962 (in short the Act of 1962) on 16-9-2000 in the Court of Special Chief Judicial Magistrate, Meerut. The investigation revealed that the containers of bearings were cleared without examination from LCD., Meerut with the active connivance of the petitioner for which he was paid Rs. 10 lakh for each of the two consignments under Bill of Entry No. 00023 dated 5-6-2000 and Bill of Entry No. 00026 dated 17-7-2000 were seized from the premises of M/s. Dooab Exim, Meerut on 18-8-2000. The incident involved evasion of custom duty to the tune of Rs. 90 lakhs. The Competent Authority/Sponsoring Authority sent six sets of proposal vide letter dated 25-9-2001 to the Detaining Authority's office for action under COFEPOSA Act, 1974 in respect of S/Sri B.S. Sethi, A.K. Jain, T.N. Mittal, P.K. Gupta and M.K. Gupta (petitioner) alongwith identical sets of material documents relied on by Sponsoring Authority in support of proposal. A show cause notice dated 5-1-2001 came to be issued against the petitioner and others under the Act of 1962. Reply given by the petitioner to the show cause notice is dated 23-5-2001. The detaining authority after going through various materials placed before it and having regard to the facts and circumstances of the case particularly the fact that the petitioner had arrived at the requisite satisfaction the "inclination and propensity to indulge in smuggling activities" and unless prevented was "likely to indulge in such prejudicial activities in future" and passed the impugned order dated 16-2-2001. The grounds of detention served on 24-2-2001 shows that it was on consideration of petitioner's "high potentiality and propensity to indulge in such activity in future," that the detaining authority considered it necessary to detain the petitioner under the COFEPOSA Act, 1974 with a view to preventing him from abetting the smuggling of the goods in future.

3. The complaint for the prosecution of the petitioner was filed on 16-9-2000 but the prosecution proceedings came to be stayed by this Court vide order dated 29-9-2000. The petitioner was placed under suspension vide order dated 5-10-2000. The detention order was earlier quashed by this Court vide judgment and order dated 19-4-2001 on the premises that since the petitioner had been suspended on 5-10-2000 and, therefore, he could not continue the prejudicial activities which he was doing by virtue of his office. On the matter being taken to the Supreme Court by Special Leave to Appeal, the Apex Court found that the premises adopted by the Division Bench of this Court was too "fragile" and "tenuous" to be approved and accordingly set aside the judgment and order under appeal and remanded the matter to this Court for disposing the same afresh after adverting to the other grounds if urged on behalf of the petitioner. The petitioner was directed to surrender himself with two weeks of the judgment dated September 11, 2001. Consequent upon the Apex Court judgment the petitioner surrendered on 29-9-2001 and is presently detained and kept in custody in Central Jail, Meerut.

4. It has been urged by Sri Gopal Swaroop Chaturvedi, Senior Advocate appearing for the petitioner that the impugned detention order and consequential detention are vitiated on the grounds, *inter alia*, firstly, that there had been an inordinate delay in making the detention order; secondly, that non-existent material was relied on by the detaining authority in passing the detention order; thirdly, that all the relevant materials were not placed before the detaining authority as a result whereof the subjective satisfaction of detaining authority as to the necessity of detaining the petitioner is vitiated; fourthly, that Central Government erred in not giving set off to the petitioner for the period he remained outside the Jail as a result of the judgment of this Court which came to be set aside by the Apex Court; fifthly, that the representation dated 13-3-2001 addressed to the Secretary, Government of India was wrongly decided by the Joint Secretary (COFEPOSA Section); and lastly that there has been unexplained delay in disposal of representation dated 13-3-2001 by the Central Government. Sri Sanjay Kumar Singh, appearing for Union of India vehemently refuted the submissions made by Sri Gopal Swaroop Chaturvedi, Senior Advocate and urged that the detention order was passed after taking into account all the relevant facts and the Central Government was justified in directing that the petitioner be detained for a period of one year from 24-2-2000 after excluding the period from 21-4-2001 to 28-9-2001 when the petitioner was out of detention pursuant to the order of this Court.

5. In re-Delay in passing detention order

It has been submitted by learned counsel appearing for the petitioner that there has been inordinate delay in passing the detention order and the delay, proceeds the submissions, having not been satisfactorily explained, will vitiate the requisite satisfaction arrived at by the detaining authority. Reliance has been placed on *Ahamed Mohaideen Zabbar Vs. State of Tamil Nadu and Ors*, in which it has been held that in the absence of any satisfactory explanation, delay in passing the order of detention would be "unreasonable". The question is no longer *res integra*. In *Olia Mallick alias Oliruddin Mallick Vs. The State of West Bengal*, the detention order was passed after lapse of five months. The Supreme Court held that mere delay in making the order would not be sufficient to hold that the detaining authority would not have been satisfied about the necessity of the passing of the detention order. In *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, the Supreme Court, while maintaining that credible chain between the prejudicial activity alleged by the detaining authority and the purpose of detention is snapped if there is too long and unexplained interval between the offending acts and the order of detention, held that no "mechanical test by counting the months of the interval" could be found for it all depends on the nature of the acts relied on - grave and determined or less serious and corrigible, on the length of the gap-short or long, on the reason for the delay in taking preventive action like information of participation being available only in the course of investigation. It was emphasised that the Court has to investigate, in the circumstances of the each

case, whether the causal connection has been broken. In *Odut Ali Miah Vs. The State of West Bengal*, the decision of the detaining authority was reached about five months after the prejudicial activity. Krishna Iyer, J. repelled the contention based on the ground of delay as a mere "weed of straw" and held that the "time lag" between the dates of the alleged incidents and the making of the order of detention was not so large that it could be said that no reasonable person could reach the satisfaction which the detaining authority did on the basis of the alleged incidents. In *Vijay Narain Singh Vs. State of Bihar and Others*, *Gora Vs. State of West Bengal*, *Raj Kumar Singh Vs. State of Bihar and Others*, and *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, it has been emphasised that mere delay in passing the detention order by itself would not be sufficient to hold that rational nexus for the subjective satisfaction of the detaining authority did not exist. In *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, all these cases were considered by the Supreme Court and it was held that "test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. It was a case of detention under COFEPOSA Act, 1974. The following observations made by the Apex Court may be usefully quoted : (Paras 9 and 10 of AIR)

In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 there is apt to be some delay, between the prejudicial activities complained of u/s 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and therefore this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the Courts-. Sometimes such investigation has to be carried on for months together-due to the magnitude of the operations. Apart from taking various other measures i.e. launching of prosecution of the persons involved for contravention of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons u/s 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening

Committee may meet once or twice a month. If the Screening Committee approves of the proposal, it would place the same before the detaining authority. Being conscious that the "requirements of Article 22(5) would not be satisfied unless the "basic facts and materials" which weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the Court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under which the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the person.

Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention....

6. Having regard to the above case law we are of the considered view that if the detaining authority after taking into consideration the prejudicial activity and events showing tendency or inclination of a person to indulge in the prejudicial activity in future and being conscious of the time gap, arrives at a satisfaction that such a person is likely to repeat the prejudicial activity in future and, therefore, it is necessary to detain such person with a view to preventing him from acting in a prejudicial activity/manner, then the subjective satisfaction so arrived at by the detaining authority cannot be said to have been vitiated merely on the ground that it was based on an incident "too remote in point of time". The detaining authority in the instant case has, after taking into consideration the materials placed before it as also the "inclination", "propensity" and "potentiality" of the petitioner to engage in the prejudicial activity in future, recorded its satisfaction that time gap between the date of incident in passing of

detention order has not diminished the high propensity and potentiality of the petitioner to indulge in such prejudicial activity in future and has specifically recorded its satisfaction that the proximity between the date of incident and the issue of detention order as well as the object and purpose of the detention has been well maintained. It is not that the detaining authority passed the impugned detention order without application of mind and without adverting itself to the time gap between the date of the detention related incident and passing of the impugned order. The requisite satisfaction has been arrived at by the detaining authority after judging the nature and extent of petitioner's past activity, the deliberate and organised manner in which such activity has been indulged in by the petitioner and his role therein. We, therefore, find no substance in the submissions made by Sri Chaturvedi that the satisfaction arrived at by the detaining authority as to the necessity of passing the impugned detention order is vitiated due to the reason of time gap between the date of incident and the passing of the impugned order of detention.

7. The next submission of Sri Chaturvedi is that the impugned order of detention was passed on the basis of non-existent material in that the statement contained in para 20 of the grounds of detention that "you admitted that you had allowed the subject goods to be cleared without examination thereof is non-existent being factually incorrect. The submission, in our opinion, is untenable. The above statement in para 20 of the grounds of detention is in fact quite in consonance with the statement made by the petitioner on 18-7-2000 wherein he has stated in expressed words : "I have not seen the goods being examined physically. I was sitting in my Chamber in LCD. I had not called for inspection any sample also." And yet he gave the examination report and pass out order on the reverse of the duplicate bill of entry stating that the goods were examined as per declaration report and further that since the Importer happened to be a regular importer and exporter he believed the Inspector's words. In his statement dated 28-8-2000 he had clearly stated that, "The examination was done by the Inspector in respect of B.E. No. 00026 dated 17-7-2000. As told I had not conducted any examination of this consignment". The statement "you admitted that you had allowed the subject goods to be cleared without examination thereof occurring in para 20 of the grounds of detention, therefore, cannot be said to be non-existent, the same being sum and substance of the aforesaid statements of the petitioner. We, therefore, find no merit in the submission that the detaining authority considered any non-existent material in arriving at the requisite satisfaction,

8. Sri Chaturvedi then contended that public notice No. 4/98-Customs dated 9-6-1998 which defined the duties of the Superintendent and those of the Inspector were not placed before the detaining authority. The submission is that according to the public notice dated 9-6-1998 it was the duty of the Inspector to examine the goods and it being no part of the duty of the Superintendent, the petitioner may not have been roped in the case had the said public notice been placed before the detaining authority. The aforesaid document provides that in

the case of first appraisal, the examination of the goods will precede the assessment of bill of entry and the Appraiser/Superintendent is required to endorse the examination order on the reverse of the bill of entry after taking approval from the Assistant Commissioner of Customs and thereafter the importer/CHA gets the goods examined. It further provides that the bill of entry will then be presented by the importer/CHA for examination. It is required to be done after verification of the seal of the bill of lading and bill of entry of "Inspector of Customs". The examination is thereafter required to be conducted by the examining staff who is expected to give the examination report on the original and duplicate copy of the bill of entry which is then presented by the importer/CHA to the Appraiser/Superintendent for assessment. Having given our anxious consideration we do not find any merit in the submission that non placement of the public notice aforesaid before the detaining authority vitiated the requisite satisfaction arrived at by it. The public notice aforesaid is a notice issued by the Government of India, Ministry of Defence, Department of Revenue, Office of the Commissioner of Customs and Central Excise, North U.P. Commissionerate, Meerut-1. The petitioner himself in his statement did not dispute that he ought to have examined the goods as Superintendent " of Customs and it was his duty to examine the goods and ascertain its valuation before giving pass out order. Sri Ajai Kumar, Inspector, Customs and Central Excise LCD. Division in his statement dated 17-8-2000 clearly stated that though the Inspector is the proper officer for conducting examination of all import and export consignment but since there was only one Inspector at LCD., Meerut, "Superintendent LCD, also conducts examination indefinitely quite frequently." On being asked about the examination of the consignment in question the Inspector stated that he had not examined the same and was categorical on the point that the petitioner had told him, that he himself would take care of the examination of the said consignment into two containers. All these materials were placed before the detaining authority and it was upon consideration of all the relevant materials placed before it that the detaining authority arrived at the requisite satisfaction and passed the impugned order.

9. The next submission made by Sri G.S. Chaturvedi, learned Senior Advocate appearing for the petitioner is that the Central Government while confirming the order of detention vide order dated 31-10-2000 erred in not giving a "set off for the period from 21-4-2001 to 28-9-2001 in computing the maximum period of detention. The petitioner, it has been submitted by Sri Chaturvedi, ought to have been given a "set off for the period he was out of jail pursuant to High Court's order. This point too is no longer res integra. The argument that the petitioner should have been given a set off for the period during which he was out of jail pursuant to the erroneous order of the High Court which was set aside by the Apex Court, cannot be countenanced in view of what has been laid down by the Supreme Court in *Sunil Fulchand Shah Vs. Union of India and Others*, Dr. A.S. Anand, C.J.I, speaking for the majority has laid down the law as under : (Para 18)

The quashing of an order of detention by the High Court brings to an end such an order and if an appeal is allowed against the order of the High Court, the question whether or not the detenu should be made to surrender to undergo the remaining period of detention, would depend upon a variety of factors and in particular on the question of lapse of time between the date of detention, the order of the High Court and the order of this Court, setting aside the order of the High Court.

A detenu need not be sent back to undergo the remaining period of detention, after a long lapse of time, when even the maximum prescribed period intended in the order of detention has expired, unless there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the appellate order and the State is able to satisfy the Court about the desirability of "further" or "continued" detention:

Where, however, long time has not lapsed or the period of detention initially fixed in the order of detention has not expired, the detenu may be sent back to undergo the balance period of detention. It is open to the Appellate Court considering the facts and circumstances of each case, to decide whether the period during which the detenu was free on the basis of an erroneous order should be excluded while computing the total period of detention though normally the period during which the detenu was free on the basis of such an erroneous order may not be given as a "set off against the total period of detention. The actual period of incarceration cannot, however, be permitted to exceed the maximum period of detention, as fixed in the order, as per the prescription of the statute.

10. It would thus appear that when a detenu is released pursuant to an erroneous order of the High Court which is set aside in appeal, he may be sent back by the Supreme Court to undergo the remaining period of detention even if the maximum prescribed period of detention has expired if there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the appellate order provided that the State is able to satisfy the Supreme Court about the desirability of "further" or "continued" detention. In the present case the maximum period of detention as prescribed by Section 10 of the COFEPOSA Act, 1974 had not expired on the date the judgment of the High Court was set aside by the Supreme Court. It is clear from the above cited authority that normally the period during which a detenu was free on the basis of an erroneous order passed by the High Court may not be given as a "set off against the total period of detention but it is open to the appellate Court to decide, considering the facts and circumstances of each case, whether the period during which the detenu was free on the basis of erroneous order should be excluded while computing the total period of detention if the same, had been indicated in the order of detention. In the instant case no period

was fixed in the detention order. The argument that State could not present any material to satisfy the Court about the desirability of "further" or "continued" detention of the petitioner does not appear to have been raised before the Supreme Court. The Supreme Court in the instant case set aside the erroneous order of this Court and remitted the case back for decision afresh on consideration of other points. The Central Government have confirmed the detention order and fixed the period of detention for the first time after taking into consideration the relevant aspects of the matter. Section 3 of the COFEPOSA Act, 1974 empowers the Central Government or the State Government or any officer of the Central Government not below the rank of Joint Secretary to Government specially empowered for the purpose of this section by that Government or any officer of the State Government not below the rank of Secretary to that Government specially empowered for that purpose to detain a person for the purposes sought to be achieved by the Act. The impugned order of detention has been passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, an officer specially empowered by the Government of India for the purpose of Sub-section (1) of Section 3 of the COFEPOSA Act, 1974 to pass a detention order in respect of any person with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from - smuggling goods, or abetting the smuggling of goods etc. What should be the period of such detention is not provided in Section 3(1) of COFEPOSA Act, 1974 and the detaining authority is not legally bound to specify the period of detention in the detention order nor is it necessary for the appropriate Government to specify the period of detention in the order confirming the detention order. However, Clause (4) (a) of Article 22 of the Constitution of India visualises that no law providing for preventive detention shall authorise detention of a person for a longer period than three months unless the Advisory Board has reported, before expiration of the period of three months, that there is in its opinion sufficient cause for such detention provided that nothing in this sub-clause shall authorise the detention of such person beyond the maximum period prescribed by any law made by Parliament under such sub Clause (b) of Clause (71). In *Sunil Fulchand Shah Vs. Union of India and Others*, it has been held: (Para 8)

A combined reading of Clauses (4) and (7) makes it clear that if a law made by Parliament or the State Legislature authorises the detention of a person for a period not exceeding three months, it does not have to satisfy any other constitutional requirement except that it must be within the legislative competence of the Parliament or the State Legislature, as the case may be. (Article 246, Entry 9, List I and Entry 3, List III of Seventh Schedule). The Constitution itself permits the Parliament and the State Legislature to make law providing for *Fagu Shaw and Others Vs. The State of West Bengal*, ; *Panna Jadev Vs. The State of West Bengal*, ; *Habibullah Khan Vs. The State of West Bengal*, ; *Suresh Bhojraj Chelani Vs. State of Maharashtra*, . detention, without trial, upto a period of three months without any safeguards but where the law seeks to

provide for detention for a longer period than three months, it must comply with the constitutional safeguards which are found in sub-clauses (a) and (b) of Clause (4), though leaving it to the discretion of the detaining authority to decide what should be the maximum period of detention. Outside limit to the period of detention has, however, been laid down by the proviso which says that nothing in sub-Clause (a) of Clause (4) shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Clause (7).

11. The detaining authority in the instant Case being the officer, of the Central Government specially empowered to pass an order of detention u/s 3(1) of the COFEPOSA Act, 1974 did not prescribe any period of detention for it was not legally required. Section 10 of the COFEPOSA Act, 1974 prescribes the maximum period of detention and the period of detention has been fixed by the Central Government while confirming the order of detention under Clause (f) of Section 8 of the COFEPOSA Act, 1974 which reads thus:

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

12. It would be evident from Clause (f) of Section 8 of the Act that the appropriate Government may confirm detention order and continue the detention of the person concerned for such period "as it thinks fit". Section 10 of the Cofeposa Act, 1974 prescribes the maximum period of detention. The Central Government while confirming the order of detention passed by an officer of the Central Government specially empowered u/s 3 of the COFEPOSA Act, 1974 may be presumed to have addressed itself to the question as to what should be the period up to which the detenu may be "continued" in detention subject to the maximum period prescribed by the Statute. The power u/s 8(f) is not unfettered though it is formulated in a subjective language. The appropriate government while continuing detention for such period "as it thinks fit" not exceeding the maximum period prescribed by the Statute may be presumed to have acted reasonably and in good faith and upon proper grounds. Despite subjective language used in Clause (f) of Section 8 of the COFEPOSA Act, 1974, the appropriate Government does not have discretion to continue the detention for a period longer than the maximum period prescribed by the Statute. Continuance of detention beyond three months would depend upon the opinion of the Advisory Board. In case the Advisory Board has reported that there is, in its opinion, sufficient cause for detention of a person, the appropriate Government may confirm the detention order and continue the detention of the persons concerned for such period "as it thinks fit" not exceeding the maximum period

prescribed by the Statute. In *Vijay Kumar Vs. Union of India (UOI) and Others*, a question came up for consideration before the Hon'ble Supreme Court- as to whether appropriate Government is required to give reasons while confirming the detention of a detenu for the maximum period of one year from the date of detention as prescribed in Section 10 of the COFEPOSA Act, 1974. The Apex Court repelled the contention and held as under : (Paras 29 and 38 of AIR, Cri LJ)

This contention, in our opinion, is devoid of any merit. Section 10 of the act provides, inter alia, that the maximum period for which any person may be detained in pursuance of any detention order shall be a period of one year from the date of detention or the specified period. Section 10 does not provide that in imposing the maximum period of detention, any reason has to be given. In confirming the order of detention-it may be reasonably presumed that the Government has applied its mind to all the relevant facts and, thereafter, if it imposes the maximum period of detention, it cannot be said that the Government has not applied its mind as to the period of detention. In any event, u/s 11 of the Act, a detention order may, at any time, be revoked or modified by the Government. In the circumstances, we do not think that the detenu was in the least prejudiced or that there has been non-application of mind by the Government to the question of period of detention of the detenu. This contention of the appellant also fails. No other point has been urged in this appeal.

xx xx xx xx xx xx xx If the Advisory Board reports that there is in its opinion sufficient cause for the detention of the person, the concerned authority may confirm and continue the detention of the person for such period as it thinks fit. The expression "as it thinks fit" in Section 8(f) of the Act indicates that the concerned authority after considering the report of the Advisory board may fix any period for detention. The authority is not required to give any special reason either for fixing a shorter period or for fixing the maximum period prescribed u/s 10. The opinion of the Advisory Board and the grounds of detention are the only basis for confirming and continuing the detention, for any period, even up to maximum period prescribed. Section 11 provides for revocation of detention order. The detention order may at any time be revoked or modified. When the power to revoke the order of detention could be exercised at any time, it is not necessary for the authority to articulate special reasons for continuing the detention for any period much less for the maximum period prescribed under the Act.

13. In the instant case the Central Government has ordered that the petitioner be detained for a period of one year from the date of his detention i.e. from 21-4-2000 which period will now end on 2-8-2001 after excluding the period when he was out of detention under the erroneous order of the Court after fully considering the report of the Advisory Board and materials on record including the fact that the petitioner remained out of detention from 21-4-2001 to 28-9-2001. Fixation of period of continuance of detention in the present case, in our opinion, is not vitiated. The Advisory Board in the instant case gave its

opinion dated 15-10-2001 that there was sufficient cause for detention of the petitioner. The impugned order of detention dated 16-2-2001 came to be confirmed by the Central Government vide order dated 31-10-2000. The petitioner was lodged in jail on 24-2-2001 but he was released from jail on 21-4-2001 on the basis of the High Court's order dated 19-4-2001 but surrendered on 29-9-2001. The opinion of the Advisory Board was thus given before expiry of three months of detention period. Continuance of detention upto the maximum of period of detention is not vitiated.

14. It has been then submitted by the learned counsel appearing for the petitioner that the representation dated 13-2-2001 addressed to the Secretary, Government of India, Ministry of Defence, Department of Revenue was wrongly decided by the detaining authority namely the Joint Secretary, Government of India, Ministry of Defence, Department of Revenue. In fact the representation dated 13-3-2001 addressed to the Secretary, Government of India was received in the office of the Joint Secretary, Government of India, Ministry of Defence, Department of Revenue on 13-3-2001 forwarded by the Superintendent, District Jail, Meerut under his covering letter of even date i.e. 21-3-2001. The representation dated 13-3-2001 addressed to the Secretary, Government of India, Ministry of Defence, Department of Revenue was independently considered and rejected by the Secretary, Government of India, Ministry of Finance, Department of Revenue on behalf of the Central Government on 30-3-2001 and by the detaining authority on 28-3-2001. The decision rejecting the representation of the petitioner by the detaining authority was conveyed by the Under Secretary Sri SC Gulati to the detenu on 29-3-2001. Similar decision of the Central Government rejecting the representation was separately conveyed to the detenu by Sri S.C. Gulati, Under Secretary on 30-3-2001. Another representation dated 21-3-2001 addressed to the Joint Secretary (COFEPOSA Section) was received in his office on 22-3-2001, It was considered and rejected by the detaining authority vide order dated 4-4-2001 and the memo of rejection of the said representation was sent to the petitioner by Sri SC Gulati, Under-Secretary, Government of India on 4-4-2001 itself. It has been submitted by Sri G.S. Chaturvedi, learned Senior Advocate appearing for the petitioner that the representation addressed to the Central Government ought not to have been decided by the detaining authority namely, the Joint Secretary (COFEPOSA Section). The submission made by the learned counsel is untenable. It is not disputed that the representation dated 13-3-2001 addressed to the Central Government and the one dated 21-3-2001 addressed to the detaining authority were identically worded. The detaining authority is under constitutional obligation by virtue of Article 22(5) of the Constitution and under statutory obligation by virtue of Section 21 of the General Clauses Act, 1897 to consider and decide, "as soon as may be", the representation if any filed by a person detained under any providing for preventive detention as otherwise the constitutional mandate that the authority making the order shall, "as soon as may be", communicate to such person the ground on which the order has been made and afford him "earliest

opportunity" of making a representation against the order, would become meaningless. The power of the "appropriate Government", Central Government in this present case, u/s 11 of the COFEPOSA Act to revoke or modify, the detention order is without prejudice to the powers of the detaining authority u/s 21 of the General Clauses Act, 1897. Section 11 in fact provides an additional remedy. In fact the detaining authority namely the Joint Secretary (COFEPOSA Section) can revoke or modify a detention order passed by it even without a representation being made to it by the detenu. The exercise of power by the detaining authority is not vitiated merely because the representation was addressed to the Secretary, Government of India, Ministry of Defence, Department of Revenue nor did the order dated 28-8-2001 rejecting the representation dated 13-3-2001, in any way, inhibit him from considering the representation dated 21-3-2001 addressed to him which came to be rejected by a separate order dated 4-4-2001.

15. Lastly it has been contended by the learned counsel for the petitioner that continued detention of the petitioner is vitiated because of unexplained delay in disposal of his representation by the Central Government. As noticed herein above representation dated 13-3-2001 addressed to the Secretary, Government of India, Ministry of Finance, Department of Revenue was received in the COFEPOSA Section dated 13-3-2001 and It was considered and rejected by the Secretary, Government of India, Ministry of Finance, Department of Revenue on behalf of the Central Government on 30-3-2001 and it was considered and rejected by the Secretary, Government of India, Ministry of Finance, Department of Revenue on behalf of the Central Government on 30-3-2001. Unexplained delay in disposing of the representation is no doubt fatal and vitiates continued detention of a person detained under any law providing for preventive detention. In *P. Paulsamy Vs. Union of India and Another*, unexplained delay from 28-10-1998 to 10-11-1998 was held to be uncalled for and unreasonable and, therefore, fatal. In the fact situation of that case the representation was held to have been dealt with in a routine manner. In *Rajammal Vs. State of Tamil Nadu and Another*, delay from 9-2-1998 to 14-2-1998 remained unexplained. The Supreme Court held that such unexplained delay vitiated further detention of the detenu therein for the law required utmost promptitude in the matter of disposal of representation preferred by person detained under a law providing for preventive detention involving vitally important fundamental right of the citizen", However, in *Jasbir Singh Vs. Lt. Governor, Delhi and Another*, it has been held, in no uncertain terms, that there is no inflexible rule that delay in considering the representation in all cases ipso facto would be sufficient to render the continued detention void. The right of a detenu to get his representation decided with utmost promptitude and as expeditiously as possible but what is "reasonable expedition", it was held by the Apex Court, "will depend upon the facts of the each case". In the instant case a plea as to delay in disposal of representation has been raised neither in the statement of facts nor in the grounds taken in the writ petition and consequently it is not possible to hold whether the delay in

disposal of representation from 13-3-2001 to 30-3-2001 was unreasonable. This point has been raised for the first time during the course of arguments with the result that the respondents could not get an opportunity to explain delay, The Central Government, therefore, cannot be held to have dealt with the representation in a casual manner and/or without a sense of expedition. Question of delay, it cannot be gainsaid, has to be looked into in the light of facts pleaded in the writ petition and the reply contained in the counter -affidavits. In the absence of necessary foundation in the writ petition, the argument advanced by Sri Chaturvedi that there has been unexplained delay in disposal of representation by the Central Government cannot be countenanced. No other point was pressed by the learned counsel appearing for the petitioner.

16. In the result the petition fails and is dismissed.