

(2010) 12 DEL CK 0058

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1628 of 2010

Ribu Kurian Ninan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(3), 5(A), 8
Constitution of India, 1950 — Article 21, 22, 22(5), 226
Customs Act, 1962 — Section 108, 110, 110(2), 110(A), 113
Penal Code, 1860 (IPC) — Section 174, 175, 228

Citation : (2011) 1 JCC 301

Hon'ble Judges : Manmohan Singh, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : B. Kumar and Naveen Malhotra, for the Appellant; A.S. Chandhiok, ASG. and Sachin Dutta, Ravinder Aggarwal, Ashish Gupta, Abhimanyu Singh and D.S. Sodhi for Respondent Nos. 1 and 2 and Meera Bhatia and Roshan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By these two writ petitions involving the common facts and law, the Petitioners Ribu Kurian Ninan (W.P.(Crl) No. 1628/2010) and Sumeet Saluja (W.P.(Crl) No. 1629/2010) have sought the quashing of their respective detention orders dated 20.09.2010 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act") ordering their detention with a view to preventing them from smuggling goods in future.

2. As per record available, it appears that on 29.09.2010 and 2.10.2010 detention orders were served upon the Petitioners and they were lodged at Central Jail, Tihar, New Delhi. The grounds of detention and relied upon documents were served upon the Petitioners on 01.10.2010 and 04.10.2010 respectively. References were made on 05.10.2010 and 06.10.2010 to the

Advisory Board u/s 8(b) of the COFEPOSA Act ibid for opinion under Sub-section (c) of Section 8. Thereafter, separate representations dated 18.10.2010 were made by them to the detaining authority as well as to the Central Govt. with a request for revocation of detention orders alternatively for supply of documents and information in order to make an effective representation.

3. The relevant facts giving rise to these petitions are :

(a) That specific information was received by the Directorate of Revenue Intelligence, Lucknow Zonal Unit that M/s Avon Exports having IEC Code No. 0509006302 being Merchant Exporter have indulged in the export of Non-Basmati Rice a prohibited item notified under DGFT Notification No. 55 (RE-2008/2004-2009) dated 05.11.2008 through ICD, Loni in the guise of Basmati Rice (stuffed under self sealing procedure) by way of mis-declaring the goods i.e. Non-Basmati Rice as Basmati Rice in export documents.

(b) On 30.10.2009 five containers bearing Nos. TGHU 0325750, GLDU 3631931, TCKU 3558342, CAXU 6182462 & TSLU 6222088 were detained at ICD, Loni, Ghaziabad for 100% examination which were given entry into the custom area at ICD Loni vide shipping bills No. 2951, 3892 and 3191 and were examined at ICD, Loni in the presence of officers of the Directorate of Revenue Intelligence, Central Bureau of Investigation and Customs, representation of CHA and Custodian. Samples were drawn from the said five detained containers and sent to Regional Agmark Laboratory, New Delhi. Test reports of the said five containers confirmed it to be Non-Basmati Rice.

(c) Since the goods found in the subject export consignment fell in the category of prohibited items and were prohibited for export as provided in DGFT Notification No. 55 (RE-2008/2004-2009) dated 05.11.2008 issued by Govt. of India, they were liable to be confiscated u/s 113 of the Customs Act, 1962 for violation of the said DGFT Notification and Section 50(2) of the Customs Act, 1962 and as such the same were seized u/s 110 of the Customs Act, 1962.

(d) In the grounds of detention, it is mentioned that during the course of investigation it appeared that the firm M/s Avon Exports was being looked after by M/s Bishan Swaroop Ram Kishan Agro Pvt. Ltd. a firm from where the affairs of M/s Aross International were being looked after.

(e) Office premises of the Bishan Swaroop Ram Kishan Agro Pvt. Ltd. was searched and hard-disc of the computer installed in the office of the Bishan Swaroop Ram Kishan Agro Pvt. Ltd. were resumed. It is mentioned that from the hard disc some documents were recovered.

(f) Statements of Shri Ribu Kurian Ninan 10% partner of M/s Avon Export were recorded on 21.12.2009 and on 22.12.2009. Later on, by letter dated 24.12.2009, he had retracted certain portions of his statement recorded on 22.12.2009.

(g) Statements of Shri Rakesh Dhatwalia's (CHA of both M/s Avon Export and M/

s Aross International statement) was recorded on 11.01.2010 and 12.01.2010 u/s 108 of the Customs Act, 1962, who stated that the export documents of both firms i.e., Avon Exports and M/s Aross International were handed over by Ribu K. Ninan, 10% partner of M/s Avon Exports and he was of the impression that both firms were related firms.

(h) In the grounds for detention it was stated that a single bank pay order of Rs. 19,000/- was issued to the debit of account in the name of M/s India Crown Food Product, New Delhi (another firm owned by the Petitioner) which was submitted towards handling charges for four containers of M/s Aross International and six containers of M/s Avon Exports which showed a nexus between the two firms and Bishan Saroop Ram Kishan Agro Pvt. Ltd. Despite several summons, the Petitioner did not appear before the investigating agency.

(i) On 11.03.2010 a complaint under Sections 174/175/228 of the IPC was filed against Sh. Sumeet Saluja in the Court of Special Judicial Magistrate, Economic Offences, Lucknow.

(j) It is further mentioned in the grounds of detention that a writ petition was filed by M/s Avon Exports through Sh. Sumeet Saluja in the High Court of Lucknow and on 25.05.2010 the said writ petition was disposed off with the direction for release of the seized goods under the provisions of Section 110A of the Customs Act, 1962 and, in compliance of the orders on 18.06.2010, the goods were ordered to be released provisionally under certain terms and conditions.

(k) In para 13 of the grounds for detention, it was stated that the prosecution proceedings have been initiated against Sh. Sumeet Saluja and proceedings are likely to be initiated against R.K. Ninan.

(l) In view of sequence of events and nexus between the dates of incident and the material on record, the presiding officer recorded his satisfaction to the effect that activity of the Petitioners amounted to smuggling and they be prevented from indulging in the said activities in future by detention u/s 3(1) of the COFEPOSA Act, 1974.

4. On merits, the Petitioners have denied the allegations raised by the Respondent and have stated that they have no concern with Aross International or with Bishan Swaroop Ram Kishan Agro Pvt. Ltd. They have also no concern with those documents and the containers seized by the authority as they were not meant for export. Copies of the shipping bills, test reports and complete investigation report were not supplied to them. They have denied any links or nexus with the firm M/s Aross International. The goods were ordered to be released by the High Court of Lucknow on provisional basis. It is also averred that in para 13 of grounds of detention it was mentioned that the adjudication proceedings are likely to be initiated against Ribu Kurian Ninan and in fact the show cause notice for extension of time u/s 110(2) of the Customs Act, 1962 was issued by the Commissioner of Customs and the same was replied. The

order for extension of investigation for the period of six months was passed. No prosecution proceedings u/s 135 of the Customs Act, 1962 have been initiated against him. It is also alleged that there was a long delay in passing the detention order as date of incident was 30.10.2009, proposal for prosecution was sent on 8.6.2010, minutes were issued on 23.6.2010 and the order was passed in end of September.

5. We are not required to go into the merits of the dispute in question as we have been informed that a prosecution against Sumeet Saluja is pending in the Court of competent jurisdiction and against Ribu Kurian Ninan, the prosecution is likely to be initiated.

6. Learned Counsel for the Petitioner raised several arguments for challenging the said detention orders during the course of hearing. We are only dealing with one of them which is strongly stressed by learned Counsel for the Petitioners namely non-supply of documents relied upon in the grounds of detention and supply of illegible documents relied upon by the Respondents. Thus, we are only required to consider if any case on behalf of the Petitioners for non-supply of vital/material documents is made out or not. We are of the view that in-case the Petitioners are able to make out their case about the non-supply of these documents within the ambit of four corners of law, then it would vitiate their preventive detention orders and it would not be necessary for us to go into the other points raised by the parties.

7. Two main contentions for quashing of their detention orders dated 20.9.2010 on the point of non-supply of documents have been urged by the learned Counsel for the Petitioners which are as under :

(i) That various vital documents as referred in paras 1 to 8 of the grounds of detention have not been communicated to the Petitioners, even despite representations made by the Petitioners for revocation of detention order on this basis or alternatively for supply of the documents.

(ii) Some of the documents relied upon by the Respondents which were communicated to the Petitioners by the Respondents were illegible/incomplete documents, the same are available at page Nos. 20, 23, 26, 38, 97, 103, 112 & 127 of the relied upon documents.

First Contention

8. The case of the Petitioners is that the order of detention is based upon the facts referred in paras 1 to 10 in the grounds of detention which also refers to various documents and the factum of the same is evident from paras 11, 13 and 15 of the orders. It is argued by the Petitioners that since the relied upon documents in the grounds of detention were not communicated to the Petitioner *pari passu*, therefore the detention is illegal and bad in law on the 5th day of detention and even the same have not been communicated upto date despite requests made in the representations. The Petitioners have given details of relied

upon documents referred in the grounds of detention in para 7(a) to (g) of their writ petitions. The details of such documents are discussed as under :

(i) In para 1 of the grounds of detention, the detail of shipping bills referred in the order have not been supplied to the Petitioners. The contention of the Respondent is that copies of the shipping bills No. 2951, 3892, and 3191 were admittedly not communicated/supplied but it was submitted by the Respondents that the seizure memo dated 22.1.2010 supplied to the Petitioners along with relied upon documents carries the number of shipping bills and the detail of the same which are also mentioned in the grounds of detention. Since the said seizure memo contained full details about the shipping bills, therefore, the right of the Petitioners was not affected for making effective representations.

(ii) It is also mentioned in the grounds of detention that the samples of the rice were drawn from the five detained containers and sent to regional Agmark Laboratory, New Delhi. Test report of the said containers was called upon as mentioned in the grounds of detention. Panchnamas of drawing of samples were drawn and through a communication/letter the same were sent to the Agmark Laboratory, New Delhi. Admittedly the said report was relied upon in the ground of detention. However, the report obtained from the Laboratory has not been communicated to the Petitioners. The reply of the Respondent is that the test report dated 23.12.2009 is not a vital document. Further its veracity was not challenged by the Petitioners, the detail of the same is mentioned in the seizure memo, even otherwise, the said test report has nothing to do with the question of detaining the detenus. Thus, according to the Respondents, no prejudice has been caused to the Petitioners by non-supply of the same.

(iii) Para 4 of grounds of detention mentions that one of the Petitioners Sh. Ribu Kurian Ninan made his statement on 21.12.2009 and 22.12.2009 u/s 108 of the Customs Act, 1962 wherein he stated that Sh. Sumeet Saluja, the other Petitioner, and Sh. Gian Chand are good friends and often they used to talk about the export of rice. Sh. Ribu Kurian Ninan had retracted portions of his statement recorded on 22.12.2009 and the said retraction was sent by him on 24.12.2009 which was received by the Respondents. Neither the retraction has been placed before the detaining authority nor there is any averment mentioned in the grounds of detention or served upon the Petitioner. The reply of the Respondent is that said retraction is only a part retraction. Further the statement made by him on 21.12.2009 has not been retracted. Therefore, non-supply of retraction would not prejudice them for making effective representations.

(iv) Para 8 of the grounds of detention refers to the writ-petition filed by Sumeet Saluja. The Petitioners submit that copies of the writ petition and orders passed by the DRI officials in terms of the orders passed by the Lucknow High Court have not been communicated. The reply of the Respondent is that the said proceedings were initiated by one of the detenus Sumeet Saluja himself. All the relevant papers were in his power and possession, thus, he had the knowledge of factum of filing of writ petition. He referred the decision of State of Tamil Nadu

and Another Vs. Abdullah Kadher Batcha and Another, , wherein it has been observed :

7. ...it is not understood as to how the order passed in a writ petition which was dismissed can be a document about which the detenu had no knowledge....

(v) In para 5 of the grounds of detention, the statements of Rakesh Dhatalia dated 11.01.2010 and 12.01.2010 recorded u/s 108 of the Customs Act were referred to but the were not communicated to the Petitioners by the detaining authority. The reply of the Respondents is that the said statements are referred to for the purpose of narration of facts and nexus between the parties in order to show the illegal activities of the Petitioners and it could not be required by the Petitioners to make effective representation.

(vi) In the grounds of detention in para 6 the detaining authority has referred to the copy of the pay order of Rs. 19,000/- issued to the debit of account in the name of M/s India Crown Food Products, New Delhi, towards the handling of containers. Copy of the pay order has not been communicated to the Petitioners. Similarly, in para 7 of the grounds of detention, it was mentioned that Sumeet Saluja despite several summons issued to him did not appear before the investigating agency i.e. DRI, Lucknow and a complaint under Sections 174/175/228 of IPC read with Section 108 of the Customs Act, 1962 had been filed on 11.03.2010 in the Court of Special Judicial Magistrate (Economic Offences), Lucknow. No copy of the complaint or any documents or any order passed by the Special Judicial Magistrate (Economic Offences) have been communicated to the Petitioners though the same had been relied upon in the detention order. The reply of the Respondent is the same that non-supply of documents has to be supported by the prejudice caused to them in making an effective representation. Since Sumeet Saluja was aware and had the knowledge about the complaint filed by the department against him, therefore, the reference in this regard is only a passing reference. Hence, there was no prejudice to the Petitioners as the Petitioners' rights were not affected for making the representations.

Second Contention

9. The learned Counsel for the Petitioners argued that copies of certain relied upon documents supplied to Petitioners were illegible and incomplete documents and a request was made before the Respondents for supply of the same in the representations dated 18.10.2010 in order to make effective representations for revocation of detention orders. The learned Counsel for the Respondents submitted that copies of the documents initially supplied to the Petitioner itself were all legible copies and there is no substance in the plea of the Petitioners. In fact at the time of hearing, Respondents produced the photocopies of the same which were actually supplied to the Petitioner as relied upon documents. A bare look at the documents and also comparison with the Annexure E filed by the Petitioners along with petitions, it shows that most of documents are legible

copies except two documents i.e., at page 26 and 127 of the list.

10. In a nutshell, the case of the Respondents is that the narration of facts in grounds of detention itself is comprehensive, the documents referred in the grounds of detention are merely referred to for the purpose of narration of facts, and therefore the same cannot be termed to be documents without supply of which the detenus are prejudiced. Mr. A.S. Chandhiok, learned ASG and senior counsel for the Respondents has argued that only the relied upon documents need to be supplied which have already been supplied. It is also submitted by him that while deciding the question as to which documents were actually relied upon by the detaining authority the Court has to see whether the non-supply of said documents shall affect the right of making an effective representation. The order of detention can be said to have been vitiated only in cases where non-supply of documents shall affect the right of a detenu to make an effective representation. It is only the relied upon documents that are necessary to be supplied and not the documents which are casual in nature which are mentioned by passing reference in the grounds of detention for narration of facts. It is also argued that the onus is on the detenu to prove that non-supply of documents has prejudiced him and affected his right to make an effective representation.

11. In support of his submission, Mr. A.S. Chandhiok, learned Additional Solicitor General for the Respondents, has placed reliance on the following judgments :

i) Radhakrishnan Prabhakaran Vs. The State of Tamil Nadu and Others, , wherein it was observed :

8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned Counsel for the Petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail.

ii) State of Tamil Nadu and Another Vs. Abdullah Kadher Batcha and Another, , wherein it was observed :

7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents.

8. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.

A similar view has been taken in J. Abdul Hakeem Vs. State of Tamil Nadu and Others, and Sunila Jain Vs. Union of India (UOI) and Another, .

iii) Powanammal Vs. State of Tamil Nadu and Another, , wherein it was observed :

9...this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non supply of document has to be supported by prejudice caused to him in making an effective representation.

(iv) Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, , wherein in para 75 it was held :

75. In the instant case, the ground of detention is the satisfaction of the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing the detenu from, inter alia, dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping the smuggled goods, or engaging in transporting or concealing or keeping smuggled goods the detention of the detenu is necessary. This satisfaction was arrived at as inferences from several factors. These have been separately mentioned. One of them is the contention but this ground was taken into consideration without taking note of the retraction made thereafter. But the inference of the satisfaction was drawn from several factors which have been enumerated before. We have to examine whether even if the facts stated in the confession are completely ignored, then too the inferences can still be drawn from other independent and objective facts mentioned in this case, namely, the fact of seizure after search of 60 gold biscuits from the suitcase of the daughter in the presence of the father which indubitably belonged to the father and admitted by him to belong to him for which no explanation has been given and secondly the seizure of the papers connected with other groups and organisations. Pratap Sait

and others to whom gold has been sold by the father are relevant grounds from which an inference can reasonably be drawn for the satisfaction of the detaining authority for detaining the detenu for the purpose of Section 3(1)(iii) and 3(1)(iv). We are of the opinion that the impugned order cannot be challenged by the rejection of the inference drawn from confession. The same argument was presented in a little different shade, namely, the fact of retraction should have been considered by the detaining authority and the Court does not know that had that been taken into consideration, what conclusion the detaining authority would have arrived at. This contention cannot be accepted. We are not concerned with the sufficiency of the grounds. We are concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in Section 3(1) of the said Act. Whether other grounds should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. This contention, therefore, cannot be accepted. If that is the position then in view of Section 5-A of the Act there was sufficient material to sustain this ground of detention.

(v) Madan Lal Anand Vs. Union of India and others, , wherein in para 29 it was held :

29. ...In the instant case, even assuming that the ground relating to the confessional statement made by the detenu u/s 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the Detaining Authority, still then that would not make the detention order bad, for in view of this Court, such order of detention shall be deemed to have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. The High Court has also overruled the contention of the detenu in this regard and, in our opinion, rightly.

12. Learned Counsel for the Respondents has argued that it is not the case of the detenu that the said retraction is not in their possession as they themselves have placed on record the said retraction statement. He referred to the case of Rajappa Neelakantan Vs. State of T.N. and Others, , wherein it was held :

6. ...We cannot appreciate the said contention for two reasons. First is that the detention order in respect of the present Petitioner should be based principally on the facts centered on what he had done in collaboration with his co-traveler. In other words, if the detention order and the connected records relating to the co-traveler were to be placed before the Detaining Authority there could possibly be an apprehension that the Detaining Authority would be biased against the Petitioner because of the various allegations contained therein. Second is that the Detaining Authority cannot be said to be totally ignorant of the fact that Radhakrishnan Prabhakaran was also detained under a separate order, for, the aforesaid detention order against Radhakrishnan Prabhakaran was passed by the same Detaining Authority just six days prior to the impugned detention order. So we do not see much force in the said ground raised now.

13. It is submitted by the Respondents that the order of detention on the accused Sumeet Saluja and Ribu Kurian were passed on the same day. Even the Detaining Authority in both the cases is the same. Therefore, the said authority must have been aware and was conscious of the partial retraction made by Ribu Kurian on 24.12.2009 while passing the order of detention in the case of Sumeet Saluja. Hence, it cannot be contended that the Detaining Authority has not taken into account the retraction made by Ribu Kurian while passing the detention order in case of Sumeet Saluja.

14. Mr. B. Kumar, Senior counsel appearing on behalf of the Petitioners, referred to various decisions in support of both of his contentions. His submissions are that the documents on which reliance has been placed in the grounds of detention and on the basis of that conclusions adverse to the Petitioners have been drawn have not been communicated to the Petitioner pari-passu along with grounds and even uptil date. This makes orders of detention bad in law on 5th day of detention and more so as the same were not communicated despite requests made in the representation. In a case titled as Thahira Haris and Ors. v. Government of Karnataka and Ors. (2009) 3 SCC 1432 it was held by the Supreme Court that detenu has right to be supplied with all documents, statements and other materials relied upon in grounds of detention without delay. The predominant object of communicating grounds of detention is to enable the detenu at the earliest opportunity to make an effective and meaningful representation against his detention. It was further held that the detention order of the mastermind was not supplied to the detenu and the detenu was prevented from making an effective representation which violated his constitutional right under Cl. (5) of Article 22.

Three earlier decisions namely, Kake Singh Alias Surendra Singh Vs. State of Madhya Pradesh, , Kesho Nath Khurana Vs. Union of India (UOI) and Others, and Pownammal's case (supra), have been considered and followed in Thahira Haris case (supra).

15. It has also been held by the Supreme Court that if the detenu knew about the documents, the same is also not a relevant factor in this regard for non communication of the documents. It is the obligation of the detaining authority to supply the relied upon documents. The following cases have been referred by the Petitioners :

i) Mehrunissa Vs. State of Maharashtra, .

ii) M. Ahamedkutty Vs. Union of India (UOI) and Another, .

iii) Dimple Prakash Shah v. Union of India and Ors. 2010 (2) JCC 1308

16. In the case of Khudiram Das v. The State of West Bengal and Ors. 1975 SCC 435 it has been held that if seriously adverse material were placed before the detaining authority it is bound to be influenced by it and hence non supply of such documents will render the detention order void under Article 22(5) read

with Section 3(3) of COFEPOSA. Judicial scrutiny cannot be foreclosed in this regard by mere averment of the detaining authority that he was not influenced by it.

17. It is not in dispute between the parties that the documents which are asked for in the representations have not been supplied despite the specific request, rather the same were rejected summarily without assigning any reason. This aspect has been dealt with by a Division Bench of this Court in the latest case of Dimple Prakash (supra), wherein in paras 22 and 23, the judgment of Union of India (UOI) Vs. Ranu Bhandari, has been followed :

22. It is argued that it is also immaterial whether the detenu was aware about the contents of these relevant documents. The Supreme Court has held that in case the detenu is in prison, he may not have access to his own documents. It is imperative for the detaining authority to supply him with all documents regardless of whether he had knowledge of the same. This is the consistent view of the Supreme Court, and a recent judgment to this effect is Union of India (UOI) Vs. Ranu Bhandari, .

23. This argument has sufficient legal force. In the grounds of detention, there is no mention about consideration of the writ petition in Madras High Court and stay order passed therein and consideration thereof. The view taken by the detaining authority on this aspect in its note/order dated 10.02.2010. Therefore, it should have been supplied to the detenu along with grounds of detention and non-supply has vitiated the detention order.

18. In para 9 of Pownammal's (supra) case, the Supreme Court held as under :

9. However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation.

19. A consistent view has been taken in several other judgments, details of some of which are given as under :

a. In Shalini Soni's case (supra) the Supreme Court relied upon Icchu Devi Choraria's case (supra) and Khudiram Das's case (supra) while interpreting Article 22(5) of the Constitution, it was observed :

...the Article has two facets, namely, (i) communication of the grounds on which

the order of detention has been made; and (ii) opportunity of making a representation against the order of detention. Communication of the order of detention means not only that the detenu is to be informed of the inferences of fact but of all the factual material that has led to the inferences of fact and, therefore, grounds of detention do not mean mere factual inferences but they mean factual inferences plus factual material which led to such factual inferences. If a document relied upon by the Detaining Authority is not supplied to a detenu, there is no communication of the grounds of detention and if there is no communication of the grounds of detention, there is no question of the detenu being enabled to make an effective or purposeful representation against the preventive detention.

b. In *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, , the Supreme Court again referred to *Ichhu Devi Choraria (supra)* and reiterated the principle laid down therein and quashed the detention order on the ground that the Detaining Authority had failed to supply, despite the request of the detenu, all documents that were relied upon for passing the order of detention.

c. In *Mohd. Zakir Vs. Delhi Administration and Others*, , the Supreme Court reiterated the principle that the documents relied upon by the Detaining Authority must be supplied to the detenu *pari passu*. Again, reference was made to *Ichhu Devi Choraria (supra)*.

d. Recently, in *Mrs. Seematti Vs. Secretary, Govt. of T.N., Home Deptt. and Others*, , the Madras High Court dealt with the non-supply of one side of a chit of paper to the detenu. The High Court held that both sides of the chit of paper ought to have been supplied to the detenu to enable him to make an effective representation and since he was not given a complete copy of the document relied upon, in spite of a request, the detention was not in accordance with law.

e. In *Usha Agarwal Vs. Union of India (UOI) and Others*, , the Supreme Court dealt with an argument where several sheets among the copies of documents supplied to the detenu were illegible and this came in the way of the detenu making an effective representation for his release. The Supreme Court re-emphasized the necessity of supplying legible copies of documents to the detenu. In the case that we are concerned with, the situation is even worse. It is not as if legible copies have not been supplied, but copies have not at all been supplied of the reverse of the bills of entry. In that sense, the present case with which we are concerned with stands on a far stronger footing than *Usha Agarwal*.

f. In *M. Ahamedkutty (supra)* it has been laid down that the detenu has the right to be furnished with the grounds of detention along with the documents relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation guaranteed under Article 22(5). It is immaterial whether the detenu already knew about their contents or not. the question of demanding the documents is also wholly irrelevant and the infirmity in that regard is violative of Article 22(5).

20. In the case of Kamarunnissa and Others Vs. Union of India and another, referred by the Respondents, the Supreme Court held (in paragraph 14 of the Report) that mere reference to documents by way of completing the narration of facts cannot entitle the detenu to claim copies of such documents. In that case, there was a reference to search authorisations and High Court had taken the view that non-supply of search authorisations would not vitiate the order of detention. This view was upheld by the Supreme Court. It was also held :

No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be.

21. We find that J. Abdul Hakeem Vs. State of Tamil Nadu and Others, referred by the Respondents, relies upon Kamarunnissa and Radhakrishnan Prabhakaran apart from M. Ahamedkutty's case (supra). This decision does not lay down any different principle of law. The Supreme Court, however, emphasized that the crux of the matter would lie in the answer to the question whether the detenu's right to make a representation against the order of detention is hampered by the non-supply of a particular document. In our opinion, there can hardly be any doubt that if any document relied upon by the Detaining Authority is not supplied to the detenu, it will certainly hamper his right to make a representation, let alone an effective representation. A similar view has been reiterated in Sunila Jain Vs. Union of India (UOI) and Another, .

22. In the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, , the Court has taken the view that while passing such orders, there had to be strict compliance of procedure, as detention orders deprives a person of his liberty without trial. Further, the Supreme Court in the case of Deepak Bajaj Vs. State of Maharashtra and Another, held as under :

18. It must be remembered that every person has a fundamental right of liberty vide Article 21 of the Constitution. Article 21, which gives the right of life and liberty, is the most fundamental of all the Fundamental Rights in the Constitution. Though, no doubt, restrictions can be placed on these rights in the interest of public order, security of the State, etc. but they are not to be lightly transgressed.

xxx xxx xxx 25. In Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, :

...the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant, to be that this power is not abused or misused.

xxx xxx xxx 29. The celebrated writ of habeas corpus has been described as a

great constitutional privilege of the citizen or "the first security of civil liberty". The writ provided a prompt and effective remedy against illegal detention and its purpose is to safeguard the liberty of the citizen which is a precious right not to be lightly transgressed by anyone. The imperative necessity to protect those precious rights is a lesson taught by all history and all human experience. Our founding fathers have lived through bitter years of the freedom struggle and seen an alien government trample upon the human rights of our citizens. It is for this reason that they introduced Article 21 in the Constitutional and provided for the writs of habeas corpus, etc.

23. So, from the above referred decisions and large number of other judgments on the point, it appears to us that a similar view has consistently been followed by the Supreme Court and various High Courts with minor variations due to the reason that the personal liberty of a citizen was affected by passing of a detention order which enabled the detaining authorities to detain a detenu without a trial.

24. In rejoinder, Mr. B. Kumar, learned Senior counsel appearing on behalf of the Petitioners submitted that there are vital documents which could have had a bearing on the decision of the Detaining Authority while passing the order had not been placed otherwise the said detention orders would not have been issued against the Petitioners. Learned Counsel also alleged that the Petitioners had made representations dated 18.10.2010 for supply of certain vital documents to make an effective representation against the detention order.

25. We agree with the submission of the learned senior counsel for the Petitioners. Both the Petitioners in the present case are in custody and it was not possible for them to remember the contents of the said documents without having the documents in front of them as they have no access to their documents. We are of the view that by depriving the detenu of the documents particularly in the present case namely (i) copy of shipping bills for the purpose of exports; (ii) test reports of the sample of rice of the Agmark Laboratory; (iii) copy of the portion of retraction of the statement of Ribu Kurian Ninan made on 22.12.2009; (iv) statement of Rakesh Dhatalia; (v) copy of bank draft issued the debit of account towards handling charges for four containers; and (vi) copy of complaint u/s 174/175/228 of IPC against Sumeet Saluja filed on 11.3.2010 in the court of Special Judicial Magistrate (Economic Offence) Lucknow, their rights which are guaranteed to them u/s 22(5) of the Constitution of India, have been breached and this vitiates the detention orders.

26. It is pertinent to mention that all the aforesaid documents have admittedly been referred to in the grounds of detention and copies thereof have not been supplied despite demands made in the representations. We are of the view that these are vital and material documents for the purpose of passing the detention orders and the said documents ought to have been supplied to the detenues.

27. There is also no force in the submission of the learned ASG that these writ

petitions are now not maintainable in view of the fact that the matters have been referred to the Advisory Board u/s 8 of the COFEPOSA Act. Those are separate proceedings and only result in an opinion. Those proceedings do not impinge upon the High Court's powers under Article 226 of the Constitution to set at naught any State action which violates Article 22 of the Constitution.

28. We are also not in agreement with the contention of the learned Additional Solicitor General that the documents were referred to only for the purpose of narration of facts and since the details thereof have been comprehensively given in the grounds of detention, the rights of the detenus were not prejudiced for making effective representations. In view of the settled law on the point involved, this Court cannot accept the contention of the Respondents.

29. No doubt that this Court would not oversee the matter as an appellate authority over the order passed by the detaining authority but at the same time, as a detention order deprives a person of his liberty this Court has to ascertain and assume itself that the constitutional safeguards have been met. The Supreme Court has time and again expressed that it is open to the Court to examine whether there has been due and proper application of mind while passing such orders.

30. For decades the law is settled that non-supply of legible copies of relied upon documents and the documents referred in the grounds of detention if they are vital and material to a detenu is violative of his fundamental rights under Article 22(5) of the Constitution of India and detentions have been quashed on this ground in a large number of cases. We are pained to note that inspite of this clear legal position, the detaining authorities continue to violate the law. Preventive detention is such a serious matter and still the concerned officers continue to act in this manner. In the process they are defeating the very object of the legislation. It is high time that some serious thought is given to this issue and responsibility is fixed.

31. The result is that in the facts and circumstances of the case the continued detention of the Petitioners namely Ribu Kurian Ninan and Sumeet Saluja is vitiated and it is ordered that the Petitioners be released forthwith unless they are required to be detained in connection with any other case. The impugned orders of detention dated 20.09.2010 are set aside.

32. Both writ petitions stand allowed accordingly. There shall be no order as to costs.