

(1998) 07 MAD CK 0109

In the Madras High Court

Case No : Habeas Corpus Petition No. 414 of 1998

Selvaraj

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 8
Constitution of India, 1950 — Article 141, 22, 22(3), 22(4), 22(5)
General Clauses Act, 1897 — Section 21
Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 10, 11, 11(1), 12, 13

Citation : (1998) 2 ALT(Cri) 165 : (1999) CriLJ 67 : (1998) 2 LW(Cri) 660

Hon'ble Judges : V. Bakthavatsalu, J; T. Jayarama Chouta, J

Bench : Division Bench

Advocate : R. Sankara Subbu, for the Appellant; Syed Fasuddin, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Jayarama Chouta, J.—Petitioner, is the friend of Sambar alias Ranganathan, who has been detained as bootlegger under Tamil Nadu Act 14 of 1982 in pursuance of an order of detention dated 13-11-1997 passed by the second respondent the District Collector and District Magistrate, Cuddalore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and public health.

2. To meet the few contentions raised by the learned counsel Mr. Sankara Subbu on behalf of the petitioner, we do not deem it necessary to narrate the facts in detail, which led to the passing of the impugned order of detention by the second respondent. It will be sufficient to mention that there were two adverse cases to the credit of the detenu registered in Nellikuppam Police Station for offences

punishable under Sections 4(1)(g) and 4(1) (I) of the Tamil Nadu Prohibition Act, 1937, the period ranging from March, 1997 to August 1997. In both the cases, the detenu was found guilty and he has paid the fine amount. While so, on 1-11-1997 at 2 p.m., the Inspector of Police, Nellikuppam along with police party conducted prohibition raid at Naduveerapattu and at the place of Pathirakottai, back yard of the accused's house, they noticed that the detenu was selling I. D. arrack and he has been arrested. They found 30 litres of I. D. arrack with poisonous smell in a black colour plastic can. They seized the said I. D. arrack and the sale proceeds from the detenu under a cover of mahazar in the presence of two witnesses. A case was registered in Nellikuppam Police Station at 5 p.m. on the same day in CrI. No. 1121 of 1997 u/s 4(1) (i) and 4(1-A) of the T.N. P. Act, 1937. The case was under investigation. After follow up action, the order of detention was passed.

3. The first contention of Mr. Sankara Subbu, learned counsel for the petitioner was that there were no materials before the detaining Authority to show that the detenu was on remand on 30-11-1997 i.e., the date on which the detention order was passed by the detaining Authority and hence, the detention order is liable to be set aside as the detaining Authority has passed the order without there being materials before him, or if materials were before him, those said materials were not being supplied to the detenu. We heard the learned Additional Public Prosecutor on this point. When he pointed out from the records that the said remand from 1-11-1997 has been furnished to the detenu which is found in his paper book at page 26, learned counsel for the petitioner has to admit that the said material is found in the said paper. Hence, this contention has no force and accordingly, it has to be rejected.

4. The second submission of the learned counsel for the petitioner was that the translated version of the analyst report in Tamil was not furnished to the detenu. From the paper book supplied to the detenu, the statement of the Doctor in Tamil which contained all the details of the analyst report has been furnished to the detenu. Hence, we have to hold that there was no prejudice caused to the detenu.

5. The last contention which has been very vigorously argued by the learned counsel for the petitioner was that in the grounds of detention, in paragraph 6, the detaining authority has not informed the detenu that he has got a right to send representation to the Advisory Board and hence, by non mentioning this he has violated Article 22(5) of the Constitution of India. We heard the learned Additional Public Prosecutor on this point. Clause (5) of Article 22 of the Constitution of India, which is relevant for the purpose of the present case reads as follows :

When any person is detained in pursuance of an order made under any law providing for preventive detention, authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made shall afford him the earliest opportunity of making a representation against

the order.

6. The point raised by Mr. Sankara Subbu, learned counsel for the petitioner was whether under the provisions of Act 14 of 1982, it is obligatory on the detaining Authority to inform the detenu that he has a right to make representation before the Advisory Board and if such information is not given to the detenu while serving the grounds, it shall vitiate the order of detention being in violation of Article 22(5) of the Constitution of India.

7. To understand the said contention, it will be better for us to extract paragraph 6 of the grounds of detention which is in English :

Thiru. Sambar (alias) Ranganathan is informed that he had a right to make representation in writing, against the order under which he is kept in detention. If he wishes to make such representation, he should address it to the Secretary to Government, Prohibition and Excise Department, Chennai 9, and forward it through the Superintendent of Central Prison, Cuddalore in which he is confined as expeditiously as possible. Any representation that is made by him will be duly considered by the Government and will also be placed before the Advisory Board for consideration of his case u/s 10 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982). He is also informed that he is entitled if he desires to be heard in person by the Advisory Board. He is requested to intimate to the Secretary to Government, Prohibition and Excise Department, Chennai - 9, specifically in writing as expeditiously as possible whether or not he desires to be heard in person by the Advisory Board.

Both sides have agreed that there is no difference in the Tamil version also in paragraph 6 of the grounds of detention. In this connection, learned counsel for the petitioner invited our attention to the decision of the Supreme Court in the case of Amir Shad Khan and another Vs. L. Hmingliana and others, this is what the Supreme Court has observed:

The law of preventive detention is harsh to the person detained and, therefore, there can be no doubt that it must be strictly construed. Article 22(3)(b) denies to a person who is arrested or detained under any law providing for preventive detention the protection of clauses (1) and (2) of the said article. Clause (4) thereof enjoins that the preventive detention law must conform to the limitation set out thereunder. Clause (5) of Article 22 reads as under:

22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

The clause casts a dual obligation on the Detaining Authority, namely, (i) to

communicate to the detenu the grounds on which the detention order has been made; (ii) to afford to the detenue the earliest opportunity of making a representation against the detention order. Consequently, the failure to communicate the grounds promptly or to afford the detenu an opportunity of making a representation against the order would clearly violate the constitutional guarantee afforded to the detenu by clause (5) of Article 22 of the Constitution. It is by virtue of this right conferred on the detenu that the Detaining Authority considers it a duty to inform the appellant-detenu of his right to make a representation to the State Government the Central Government and the Advisory Board. The right to make a representation against the detention order thus flows from the constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded and earliest opportunity to exercise that right, if he so desires. The necessity of casting a dual obligation on the authority making the detention order is obviously to acquaint the detenu of what had weighed with the Detaining Authority for exercising the extraordinary powers of detention without trial conferred by Section 3(1) of the Act and to give the detenu an opportunity to point out any error in the exercise of that power so that the said authority gets an opportunity to undo the harm done by it, if at all, by correcting the error at the earliest point of time. Once it is realised that Article 22(5) confers a right of representation, the next question is to whom must the representation be made. The grounds of detention clearly inform the detenu that he can make a representation to the State Government, the Central Government as well as the Advisory Board. There can be no doubt that the representation must be made to the authority (which has the power to rescind or revoke the decision, if need be. Our search for the authority must, therefore, take us to the statute since the answer cannot be found from Article 22(5) of the Constitution read in isolation. As pointed out earlier that clause casts an obligation on the authority making the detention order to afford to the detenu an earliest opportunity to make a representation against the detention order. If we are to go by the statement in the grounds of detention our search for that authority would end since the grounds of detention themselves state the authorities to which the representation must be made. The question must be answered in the context of the relevant provisions of the law. Now as stated earlier by clause (5) of Article 22 a dual obligation is cast on the authority making the detention order one of which is to afford to the detenu an earliest opportunity of making a representation against the order which obligation has been met by informing the detenu in the grounds of detention to whom his representation should be addressed. But the authority to which the representation is addressed must have statutory backing. In order to trace the source for the statutory backing it would be advantageous to notice the scheme of the Act providing for preventive detention. Section 2(b) defines a detention order to mean an order made u/s 3. Sub-section (1) of Section 3 empowers the Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, or any officer of a State Government, not below the rank of a Secretary to that

Government, specially empowered for the purposes of this Section by that Government, to make an order of detention with respect to 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 doing any one of the five prejudicial acts enumerated thereunder. Sub-section (2) of that Section provides that when any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days forward to the Central Government a report in respect of the order. It is evident from this provision that whenever a detention order is made by the State Government or its officer specially empowered for that purpose an obligation is cast on the State Government to forward a report to the Central Government in respect of that order within ten days. The purpose of this provision is clearly to enable the Central Government to keep an eye on the exercise of power u/s 3(1) by the State Government or its officer. Then comes Sub-section (3) which reads as under :

3(3) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

This provision is clearly intended to meet the obligation cast by Article 22(5) that, the grounds of detention shall be communicated "as soon as may be" The legislation has, therefore, fixed the outer limit within which the grounds of detention must be communicated to the detenu. Thus the first part of the obligation cast by Article 22(5) is met by Section 3(3) of the Act. Section 8 provides for the Constitution of Advisory Boards. This section is clearly to meet the obligation of sub-clause (a) of clause (4) and sub-clause (c) of Clause (7) of Article 22 of the Constitution. Section 8(f) which has some relevance provides that 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. This provision clearly obliges the appropriate government to order revocation of the detention order if the Advisory Board reports wants of sufficient cause for detention of that person. Then comes Section 11 which reads as under:

11. Revocation of detention orders :- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified-

(a) notwithstanding that the order has been made by an officer of a State

Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

Sub-section (2) is not relevant for our purpose. It is obvious from a plain reading of the two clauses of Sub-section (1) of Section 11 that where an order is made by an officer of the State Government, the State Government as well as the Central Government are empowered to revoke the detention order. Where, however, the detention order is passed by an officer of the Central Government or a State Government, the Central Government is empowered to revoke the detention order. Now this provision is clearly without prejudice to Section 21 of the General Clauses Act which lays down that where by any Central Act a power to issue orders is conferred, then that power includes a power, exercisable in the like manner, and subject to the like sanction and conditions, if any, to rescind any order so issued. Plainly the authority which has passed the order under any Central Act is empowered by this provision to rescind the order in like manner. This provision when read in the context of Section 11 of the Act makes it clear that the power to rescind conferred on the authority making the detention order by Section 21 of the General Clauses Act is saved and is not taken away. u/s 11 an officer of the State Government or that of the Central Government specially empowered u/s 3(1) of the Act to make a detention order is not conferred the power to revoke it; that power for those officers has to be traced to Section 21 of the General Clauses Act. Therefore, where an officer of the State Government or the Central Government has passed any detention order and on receipt of a representation he is convinced that the detention order needs to be revoked he can do so by virtue of Section 21 of the General Clauses Act since Section 11 of the Act does not entitle him to do so. If the State Government passes an order of detention and later desires to revoke it, whether upon receipt of a representation from the detenu or otherwise, it would be entitled to do so u/s 21 of the General Clauses Act but if the Central Government desires to revoke any order passed by the State Government or its officer it can do so only under clause (b) of Section 11(1) of the Act and not u/s 21 of the General Clauses Act. This clarifies why the power u/s 11 is conferred without prejudice to the provisions of Section 21 of the General Clauses Act. Thus on a conjoint reading of Section 21 of the General Clauses Act and Section 11 of the Act it becomes clear that the power of revocation can be exercised by three authorities, namely, the officer of the State Government or the Central Government, the State Government as well as the Central Government. The power of revocation conferred by Section 8(f) on the appropriate Government is clearly independent of this power. It is thus clear that Section 8(f) of the Act satisfies the requirement of Article 22(4) whereas Section 11 of the Act satisfies the requirement of the latter part of Article 22(5) of the Constitution. The statutory provisions, therefore, when read in the context of the relevant clauses of Article 22, make it clear that they are intended to satisfy the constitutional requirements and provide for enforcement of the right conferred on the detenu to represent against his detention order. Viewed in this perspective

it cannot be said that the power conferred by Section 11 of the Act has no relation whatsoever with the constitutional obligation cast by Article 22(5).

4. We may now turn to case law on which reliance was placed. In *Smt. Raziya Umar Bakshi Vs. Union of India and Others*, , S. Murtaza Fazal Ali, J. sitting singly during vacation was concerned with a more or less similar situation. In that case, a detention order was passed by the State Government against which the detenu had made a representation to the said Government. By that representation he also prayed that his representation may be forwarded to the Central Government for being considered. That representation was disposed of by the State Government but it was not forwarded to the Central Government, notwithstanding the specific prayer of the detenu. The defence taken was that the detenu had himself sent a copy of his representation to the Central Government and, therefore, the Detaining Authority did not consider it necessary to forward the representation to the Central Government. The defence of the State Government was held to be wholly unacceptable on the following line of reasoning :

Section 11 of the Act confers a constitutional right on the detenu to have his representation considered by the Central Government. It is true that the Central Government has a discretion to revoke or confirm the detention but the detenu has undoubtedly a right that his representation should be considered by the Central Government for whatever worth it is. The mere fact that the detenu had sent a copy to the Central Government does not absolve the detaining authority from the statutory duty of forwarding the representation to the Central Government.

This observation would show that the power of revocation conferred by Section 11 of the Act has a nexus with the right of representation conferred on the detenu by Article 22(5) and, therefore, the State Government when requested to forward a copy of the representation to the Central Government is under an obligation to do so. The learned counsel for the appellant further pointed out that our case stands on a stronger footing because, admittedly, the appellants had not forwarded a copy of their representation to the Central Government as in *Smt. Raziya Umar Bakshi Vs. Union of India and Others*, .

8. The next decision on which reliance was placed by the learned counsel was in the case of *Kundanbhai Dulabhai Shaikh v. District Magistrate* 1996 SCC 470 : : 1996CriLJ1981 . He has invited our attention to paragraph 14 of the said decision, which reads as follows:

From the above, it will be seen that the right to make representation against the order of detention is not only a constitutional right but a statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earliest

or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning.

9. Again, in the case of *Nutan, J. Patel (Ms) v. S.V. Prasad* 1996 SCC 269 : 1996 AIR SCW 232, the apex Court held as follows :

The controversy is no longer *res Integra*. The Constitution Bench of this Court in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, laid down the law thus :

Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act, the question posed is thus answered : Where the detention order has been made u/s 3 of the COFEPOSA Act and PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. He must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.

10. All the above three cases arose either under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In the present case, we are dealing with Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) which is the State Act where all the provisions are not identical to the above mentioned Central Acts.

11. Considering the above decisions and the other decisions of the Supreme Court, the Bench of this Court in H.C.P. No. 1083 of 1996, decided on 28-7-1997 (*Radhakrishnan v. The Commissioner of Police, Egmore, Madras*) had held as follows :

In Enactments such as "COFEPOSA Act, or PIT NDPS Act and PBMMESSE Act, the Apex Court of this country happened to consider on an occasion more than one, the Authority to whom the representation has to be made, in cases of detention orders passed under those Enactments. The Apex Court laid down the dictum that the detenu has the right of making his representation to the Detaining

Authority and as well to an Authority, which is empowered to revoke the order of detention. Therefore, under those enactments, the detenu has the right of making a representation of those two Authorities independently.

13. The Apex Court further said that the Detaining Authority passing the order of detention, has to necessarily apprise the detenu of his right of making a representation under Article 22(5) of the Constitution to the Detaining Authority, which passed the order of detention and as well to the Authority, which is empowered to consider and revoke the order of detention, and such non-appraisal is violation of Article 22(5). The consequence of which is that the detention order passed, is liable to be set aside.

14. In a State Enactment like the Tamil Nadu Act 14 of 1982, there is no such dual authority empowered to consider the representation, if any, and revoke an order of detention. Section 3 sub-clause (2) thereof empowers a District Magistrate or the Commissioner of Police, as the case may be, to pass an order of detention and under sub-clause (3) thereof the order made therefor, shall be reported to the State Government together with the grounds on which the order has been made and such other particulars as in the opinion of the said authority, having a bearing on the order and no such order shall remain in force for more than 12 days after the making thereof, unless in the meantime, it has been approved by the State Government.

Again in paragraph 24, this is what this Court has observed :-

After passing the orders in H.C.P. 369 and 473 of 1997, the order in H.C.P. No. 63 of 1997 came to be passed. In the hurly-burly of passing orders, we ourselves somehow or other, did not notice the distinction as relatable to the appraisal of the right of representation inhering in favour of the detenu under Article 22(5) of the Constitution between the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 and Tamil Nadu Act 14 of 1982. Because of such a vital mistake committed by us, the order in H.C.P. No. 63 of 1997 came to be passed. The mistake so committed, cannot at all enure to the benefit of the petitioner in the instant case, inasmuch as such mistake committed is directly against the ratio laid down by the Supreme Court in the Constitution Bench Decision in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, . The law as laid down by the Apex Court in the said decision must have to prevail and we have to bow our heads in reverence to the said judgment under Article 141 of the Constitution of India.

12. The above decision fully covers the present contention raised by the learned counsel for the petitioner. In addition to this, learned Additional Public Prosecutor has invited our attention to a decision of the Full Bench of the Allahabad High Court in the case of Raj Bahadur Yadav Vs. The State of Uttar Pradesh and Others, . In that case, while answering the reference made by the Division Bench to the Full Bench whether under the provisions of National Securities Act, 1980, it is obligatory on the detaining authority to inform the detenu that he has right

to make a representation before the Central Government u/s 14 of the Act and, if such information is not given to the detenu while serving the grounds, it shall vitiate the order of detention being in violation of Article 22(5) of the Constitution of India, this is what the Full Bench has held in paragraphs 15 and 16 :

From the conspectus of the views taken in the decisions referred to above, the emerging position, as we see it, may be summed up thus :

Under the provisions of the Act, the detenu has a constitutional right to make a representation against the order of detention to the detaining authority and to the State Government. In addition, he has the right to be heard before the Advisory Board. He has also a statutory right to make a representation invoking the power of the Central Government to revoke or modify the detention order. Section 8(1) of the Act, which mandates that the authority making the detention order shall communicate to the detenu the ground on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government, is an extension of the constitutional safeguard provided under Article 22(5) of the Constitution. Section 14, which provides, inter alia, that without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time be revoked or modified by the Central Government vests a statutory power. This power of revocation/modification is discretionary in nature and can be exercised by the Central Government suo motu or on receiving information from the State Government or any other source or on receiving a representation from the detenu. In this regard there is a clear difference between the COFEPOSA Act, and PIT NDPS Act, 1988 on the one hand and the Act and Maintenance of International Security Act, 1971 on the other. In the former statutes there is no provision for approval of the detention order by appropriate Government. To put it differently, there is no *pari materia* provision to Section 8 of the Act in the COFEPOSA Act and PIT NDPS Act, 1988. Therefore, decisions under the COFEPOSA Act, and PIT NDPS Act, 1988 holding that right to make a representation to the Central Government is constitutional right of the detenu are not very helpful while considering the question in relation to the Act. The power of revocation/modification of the detention order vested in the Central Government u/s 11 of the Act is in the nature of a supervisory power to enable the Central Government to keep a check on the orders of the detaining authority and the State Government since the matter of liberty of citizen is involved. Therefore, if the detaining authority has stated in the grounds of detention that the detenu may make a representation to the State Government and to the Advisory Board and may inform if he will like to be heard personally by the Advisory Board, that would be in compliance with the mandate under Article 22(5). If in a case, as in the present case, these requirements are fulfilled and the detenu has made representations to the State Government and the Advisory Board has heard him and considered his representation within the time specified in the statute and the State Government has considered his representation with reasonable expedition, the constitutional safeguard is fulfilled and the

constitutional obligation cast on the detaining authority is satisfied. The view which we have taken is fortified by the Apex Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, wherein the earlier decisions rendered by the Apex Court have been taken into consideration.

16. The further question that arises for consideration is whether it is obligatory on the part of the detaining authority to state in the grounds of detention that the detenu may also make a representation to the Central Government invoking its power of revocation/modification of the order and if that has not been done, what is its effect on the detention order? On giving our anxious consideration to the matter, we are of the view that the detaining authority may state this in the grounds of detention, but failure to do so by itself, will not be sufficient to render the detention order invalid and further detention of the detenu is illegal. As we have already found the power u/s 14 of the Act is statutory, discretionary and supervisory in nature.

13. Further, we may add our grounds also. Section 9 of Act 14 of 1982 deals with Constitution of Advisory Boards, which reads as follows :

(1) The State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of a Chairman and two other members, who are, or have been Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.

Section 10 of Act 14 of 1982 is a reference to the Advisory Board, which is to the following effect:

In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under Sub-section (3) of Section 3.

14. From Section 10, it is clear that the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order. From this Section, it is clear that the representation made to the State Government shall be forwarded to the Advisory Board. The detaining Authority in the grounds of detention has to mention that the detenu has got the right to make the representation to the State Government.

15. Section 11 of the Act deals with the procedure of Advisory Boards and Section 12 refers to the action upon report of Advisory Board. Section 12 reads as follows :

Action upon report of Advisory Board :-

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as they think fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith.

From the above Section, it is clear that the confirmation of the detention order or revocation of the said order is by the State Government. Under Article 22(5) of the Constitution of India, the right of the person detained to make a representation against the order of detention comprehends the right to make such representation to the authority which can revoke the order of detention and set him at liberty.

16. Hence, we are of the opinion that it is not mandatory for the detaining authority to mention in the grounds of detention that the detenu has a right to make a representation to the Advisory Board and non-mentioning the said fact in the grounds of detention will not vitiate the order of detention. This contention of the learned counsel for the petitioner is also to be rejected.

17. No other ground has been urged before us. This habeas corpus petition, which has no merit, shall stand dismissed.