
(1983) 07 GUJ CK 0018
In the Gujarat High Court

Smt. Manjulaben Ratilal Navik APPELLANT
Vs
State and Another RESPONDENT

Date of Decision : 21-07-1983

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(1), 5A, 8, 8(1)

Citation : (1983) 2 GLR 1505

Hon'ble Judges : M.B. Shah, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

M.B. Shah, J.—The detenu's wife has filed this writ of habeas corpus for quashing and setting aside the detention order dated March 18,

1982 passed against Shri Ratilal Devabhai Navik residing at 14-15, Sugam Society, Rander Road, Siirat or at village Dandi, taluka Olpad, district

Surat under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as ""COFEPOSA"").

2. The grounds of detention were also, supplied on the same day i.e. on March 18, 1983. The detention order was issued for preventing the

detenu from smuggling goods and transporting smuggled goods. After receipt of the report from the Advisory Board under Clause (1) of Section 8

of COFEPOSA, the detention order was confirmed only for preventing him from transporting smuggled goods. The said confirmation order was

passed by the State Government on April 23, 1983.

3. As per the grounds of detention, the Customs Officers received the information that vessel ""UMR1477 Krishnaprasad"" was to leave Persian

Gulf Ports in the morning of 30-7-1982 with huge consignments of contraband goods, and that the goods were likely to be landed on the coast of

Dandi around 5-8-1982. In spite of vigil maintained by the Customs Officers around Dandi coast the consignment of the goods landed on 5-8-

1982 at early hours. When the Customs Inspectors who were patrolling on the Dandi Coast saw the vessel they boarded the said vessel and found

that one Mitha Bawa, Deva Ditya, Soma Natha and Makan were on the board but no contraband goods were found from the said vessel. They

came to know from the crew that the said vessel landed around mid-night and the contraband goods were removed to the village. While the

Customs Inspectors were questioning the said members of the crew the detenu reached there with some of his persons and prevailed upon the

officers and did not allow them to seize the said vessel.

On 6-8-1982 Customs Officers saw a group of persons near Gheewala Falia and suspecting that those persons might have brought contraband

goods, some rounds were fired to control the said group. In the said group the detenu was also present. Other persons ran away but he remained

there and when he was questioned he had not given satisfactory explanation regarding his presence at that place with such big crowd. At that time,

he had disclosed before the Customs Officers that there were only 150 packages of textiles and that he had already removed the said goods.

In the morning of August 7, 1982 report was received that the smuggled goods were to be transported from Dandi in two trucks. Therefore, a

watch was kept at Chikhli crossing and Bhilad check post. The truck which was intercepted at Chikhli crossing was found without occupants,

while in the truck, which was intercepted at Bhilad check-post one junior driver named Lakhbir Singh was apprehended. Both the trucks were

brought to Valsad Customs Division office and contraband goods like wrist-watches, video cassette recorders, cassettes, synthetic fabrics etc.

valued in aggregate at Rs. 32,56,980/- were found from truck No. DEB 751. From the other truck contraband goods worth Rs. 10,96,790/-

were found. The statement of Lakhbir Singh who was the junior driver of the truck was recorded and he had stated that he took the truck in the

compound of one factory from where packages were loaded in the truck. Four persons were present in the factory compound from where

packages were loaded. The detenu was one of them and that detenu looked like a leader of all those persons.

The detaining authority has referred to the statements of number of other persons. One such statement is that of one Naeemkhan Ismailkhan who

was the driver of detenu's yellow colour jeep and as per his say smuggled goods belonging to detenu were landed on the coast of Dandi on

August 4, 1982 at night. On the next day i.e. on August 5, 1982, he was called by the detenu and was taken to locality at extreme end of village

Dandi towards Bhagva side and there he saw some packages lying and some labourers were also present there. The detenu informed the labourers

to take those packages to Kudiyaana village on head load and he promised to pay Rs. 150/- to each of them. When he accompanied by detenu

was returning back. Customs Officers stopped them. On August 6, 1982 the said Naeemkhan had gone with the detenu to village Kudiyaana in a

jeep. At Kudiyaana village the detenu got down from jeep and went towards some huts where a blue coloured truck was parked and the packages

were loaded into the truck. The said truck was brought by the detenu on the road and from there it was taken to some place.

As per the statement of Somabhai Rambhai Khalasi alias Chako he had gone at the place known as ""Dari"" situated at the coast of Dandi where a

vessel with smuggled goods had arrived and that the detenu was present along with other persons. The detenu informed him to keep a watch on

the labourers when the packages of smuggled goods were off-loaded from the vessel. 150 packages of smuggled goods were offloaded from the

vessel. On the night of August 5, 1982, 50 to 60 labourers came near Talavia Falia and that the said packages were despatched towards

Kudiyaana village on head-load. After referring to other statements and considering materials which were placed before the competent authority the

detention order for preventing the detenu from smuggling goods and from transporting smuggled goods was passed. The said detention order was

subsequently confirmed by the Government only on the ground of transporting smuggled goods because the Advisory Board had reported under

Clause (c) of Section 8 of the Act that out of the two grounds of detention viz. (i) smuggling of goods and (ii) transporting smuggled goods, there

was no sufficient cause for detention of the detenu on the ground of smuggling of goods but there was sufficient cause for detention on the ground

of transporting smuggled goods.

4. The order of detention has been challenged by the learned Counsel appearing on behalf of the petitioner on the following grounds:

(i) As the detention order was passed on two grounds viz. smuggling of goods and transporting of smuggled goods, the competent authority has no

jurisdiction or power u/s 8(f) of COFEPOSA to confirm the original order on one ground. The detention order as a whole could be confirmed or revoked.

(ii) Once the Advisory Board came to the conclusion that the part of the order was unsustainable the Advisory Board ought to have opined that

there was no sufficient cause for detention because the Advisory Board could not rely upon Section 5A of the COFEPOSA.

(iii) It was incumbent for the detaining authority to find out whether the ordinary legal process would have sufficed in the present case and as no

such satisfaction is disclosed, the order is bad,

(iv) Delay:

(a) As there was a long delay in passing the detention order, the detention order is vitiated. It was submitted that as the incident had taken place on

5th August, 1982 and the last statement was recorded on 20th September, 1982 there was considerable delay in passing the detention order

because the said order was passed only on March 18, 1983.

(b) As the grounds of detention do not disclose the circumstances showing the reasons for delay in passing the detention order his right of making

effective representation under Article 22 Sub-article (5) is violated.

(v) Non-application of mind.

Non-application of mind by the detaining authority on the following grounds:

(a) There is total non-application of mind in framing the grounds of detention and the manner in which they are framed, is totally inconsistent with

the facts admitted by the detaining authority and this has resulted in great prejudice to the detenu at every stage.

(b) At some stages it is mentioned that the vessel did not belong to the detenu, at other stages it is mentioned that the vessel belonged to the detenu.

(c) In the detention order in paragraph 2 it has been mentioned as under:

When the officers were questioning the said crew, you reached that place with some of your persons and prevailed upon the officers and did not

allow to seize the said vessel. This is evident from the report dated 10-8-1982 of Inspectors M/s. Y. C. Shah and N.C. Meena.

It is submitted that looking to the report which is dated 10th August, 1982 it is clear that in this ground the sequence of incidents is not mentioned chronologically.

(d) It was further submitted that even though intelligence report, dated 30th July, 1982 received by the customs department, revealed that the

vessel UMR 1477 Krishnaprasad which was under the control of R.D. Navik will be landing at Dandi between August 3, 1982 and August 5,

1982 yet no steps were taken to keep surveillance at Dandi Coast and that officers had allowed the said vessel to land at Dandi and to see that the

goods were unloaded and thereafter a false case has been made out to rope in the detenu.

(e) The story that the detenu came to the vessel and informed the Assistant Collector that he had smuggled goods and that he had transported them

is wholly unbelievable.

(f) That with regard to incident dated 6-8-1982 which involves directly the detenu in transporting the smuggled goods the said incident solely

depended upon the report of Rakeshkumar and as authority has not cared to consider the complaint filed by the said Rakeshkumar;

(g) No statement of the real owner of the vessel was recorded nor he was interrogated by the concerned officer;

(h) That the competent authority had considered him as a well-known smuggler as stated in para 39 of the affidavit-in-reply and, therefore, also

there is non-application of mind on the part of the Government in passing the said order as there is no material on record to show that he was a

well-known smuggler.

5. With regard to the first contention of the learned Counsel that as the detention order u/s 3(1) of the COFEPOSA was passed by the State

Government on two grounds i.e. for preventing him from smuggling goods and for transporting smuggled goods, the State Government had no

authority to confirm it on one ground. He submitted that the detention order as a whole can be confirmed by the State Government u/s 8(0) of the

Act but the said detention order cannot be confirmed in part. He has submitted that the phrase used u/s 8(0 is that ""the appropriate Government may confirm the detention order"". Therefore, the jurisdiction of the State Government was only to confirm the order which was passed, and not to substitute it by passing confirmation order only with regard to one ground. We must say at the out set that the said submission of the learned Counsel is devoid of any substance in view of Section 5A of the COFEPOSA. As per the provisions of Section 3(1) of the Act the appropriate Government may, if satisfied, with respect to any person pass an order of detention;

- (1) with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange;
- (2) with a view to preventing him from smuggling goods;
- (3) with a view to preventing him from abetting the smuggling of goods;
- (4) with a view to preventing him from engaging in transporting or cancealing or keeping smuggled goods;
- (5) with a view to preventing him from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods;
- (6) with a view to preventing him from harbouring persons engaged in smuggling goods or abetting the smuggling of goods.

This section clearly shows that the appropriate Government is entitled to pass an order of detention for preventing the detenu from acting in any manner stated above. The object of the Act is to provide for preventive detention for the purpose of conservation or augmentation of foreign exchange and prevention of smuggling activities and for the matters connected therewith. This object of the Act is incorporated in Section 3 (1) of the Act. Section 3(1) of the Act, first part i.e. with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange, gives general power to the appropriate authority to detain any person who indulges in such activities. The rest of the provisions are different facets of one activity, i.e. smuggling. Therefore, it is clear that Section 3 empowers the appropriate authority to detain any person if he is engaged in either one more or all of the activities mentioned above i.e. from (1) to (6).

6. Now, if we refer to Section 5A of the Act it is clear that when the appropriate government has passed the detention order under Sub-section (i) of Section 3 on two or more grounds such detention order is deemed to have been made separately on each of such grounds. That means, if the detention order is passed with a view to preventing a person from acting in any manner prejudicial to conservation or augmentation of foreign exchange and also from preventing him from smuggling goods, then as per Section 5A the said order is deemed to have been made separately on both the grounds. By legal fiction it would be deemed that there are two separate orders on each ground. Section 5A (a) also provides that such order meaning thereby the order which is passed on two or more grounds shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. This Sub-section (a) of Section 5A of the Act clearly shows that if one or some of the grounds mentioned in the order is or are invalid, the order as a whole cannot be said to be invalid. Sub-sec, (b) of Section 5A introduces further deeming provision that the detention order shall be deemed to have been made under said Sub-section (1) of Section 3 after being satisfied as provided in that section with reference to remaining ground or grounds. So reading Section 5A as a whole the only meaning which can be given to the said section is that if the appropriate authority has passed the order u/s 3(1) on numerous grounds then as per deeming provisions of Section 5A the said detention order shall be deemed to have been made separately on each of such grounds, and further it shall be deemed that the appropriate authority had arrived at necessary satisfaction as required u/s 3(1) on each ground separately. That means separate detention order shall be deemed to have been made on each separate ground and u/s 5A(b) the appropriate authority shall be deemed to have passed the said detention order under Sub-section (1) of Section 3 after being satisfied as provided in that section with reference to remaining ground.

7. The learned Counsel Mr. Ram Jethmalani has relied upon the judgment in the case of Shibban Lal Saksena Vs. The State of Uttar Pradesh and

Others, wherein it has been held as under:

The Government itself in its communication dated the 13th of March, 1953 has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made u/s 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made.

To say the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective division of the executive authority which is against the legislative policy underlying the statute. In such cases, we think the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole. This principle, which was recognised by the Federal Court in the case of - AIR 1943 72 (Federal Court) seems to us to be quite sound and applicable to the facts of this case.

We desire to point out that the order which the Government purported to make in this case u/s 11 of the P.D. Act is not one in conformity with the provision of that section. Section II lays down what action the Government is to take after the Advisory Board has submitted its report. If in the opinion of the Board there is sufficient reason for the detention of a person, the Government may confirm the detention order and continue the detention for such period as it thinks proper. On the other hand, if the Advisory Board is of opinion that there is no sufficient reason for the detention of the person concerned, the Government is in duty bound to revoke the order.

What the Government has done in this case is to confirm the detention order and at the same time to revoke it under one of the sub-clauses of Section 3(1)(a) of the Act. This is not what the section contemplates. The Government could either confirm the order of detention made u/s 3 or

revoke it completely and there is nothing in law which prevents the Government from making (r) fresh order of detention if it so chooses.

Now the observations of the Supreme Court as stated above are with regard to the Preventive Detention Act, 1950 and in the said case the

detenu was arrested under Sub-clauses (2) and (3) of Section 3(1) of the Preventive Detention Act, 1950. Section 3(1) is reproduced below:

3. (1) The Central Government or the State Government may,

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or,

(b) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946, that with a view to regulating his

continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) ...

(3) ...

(4) ...

The said Sub-section (1)(a) empowers the Central Government and the State Government to detain a person on three grounds. This Act is

repealed and at present for preventive detention three separate Acts. viz. The National Security Act, 1980, The Prevention of Blackmarketing and

Maintenance of Supplies of Essential Commodities Act, 1980 and COFEPOSA are passed. But in COFEPOSA, Section 5A was inserted in

1975. Section 5A in terms provides that the order if invalid on one or two grounds but if valid on the remaining ground or grounds then the

detention order shall not be invalid or inoperative. After introduction of Section 5A in the COFEPOSA when, the detaining authority had passed

detention order and if one ground of detention is bad either because it is vague or based on non-existent or irrelevant material, it could not be said

that the whole detention order is invalid. The section introduces a deeming

provision. By introduction of deeming provision it has been made clear by the Legislature that the detention order shall not be invalid or inoperative merely because one or some of the grounds is or are invalid. It is, therefore, not possible to hold that the Government or officer making such order would not have been satisfied as provided in Sub-section (1) of Section 3 with reference to remaining grounds or ground while making the order of detention. By this deeming provision the Legislature has introduced a legal fiction whereby the Legislature requires that even though the order is invalid on one ground yet it shall not be declared to be invalid with reference to remaining grounds or ground on the basis that the competent authority who had passed the detention order was not satisfied as provided in Sub-section (1) of Section 3 of the Act with regard to the remaining ground.

8. Looking to the object of Section 5-A it is clear that to overcome the difficulty felt by the competent authority as number of detention orders were set aside on the ground that one of the grounds of detention was irrelevant, vague or non-existent or on such other grounds, the Legislature introduced this deeming provision. The object of introducing the said section is as under:

Smuggling, foreign exchange racketeering and related activities have a deleterious effect on the national economy and thereby a serious adverse effect on the security of the State. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, was enacted to immobilise by detention the persons engaged in these operations and to disrupt the machinery established for smuggling and foreign exchange manipulations, with all their ramifications. The effective administration and realisation of the purposes of the Act have been rendered difficult by reason of the clandestine manner in which the persons engaged in these operations carry on their activities and the consequent difficulty in securing sufficient evidence to comply with the rigid standards insisted upon by courts. Some persons against whom orders of detention were made under the Act had to be released because the orders of detention were held to be void as some of the grounds of detention were considered by Courts to be vague, irrelevant or otherwise invalid. In a few cases difficulties were experienced in the administration of Act by reason of the detenus

obtaining release on bail or otherwise.

In the case of State of Gujarat Vs. Chamanlal Manjibhai Soni, with regard to object and reasons of introducing Section 5-A of COFEPOSA, it

has been held as under:

The reason for enacting Section 5-A was the fact that several High Courts took the view that where several grounds are mentioned in an order of

detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicated to what extent

the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It ; was to displace the basis of these

decisions that the Parliament enacted Section 5-A in order to make it clear that even if one of the grounds is irrelevant but the other grounds are

clear and specific that by itself would not vitiate the order of detention,

Further it is well established principle of law that when a legal fiction is created by the Legislature then full effect must be given to the statutory

fiction and it should be carried to its logical conclusion. In East End Dwellings Co. Ltd. v. Finabury Borough Council (1952) AC 109 Lord

Asquith observed as follows:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the

consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have followed from or accompanied it.... The

statute says that you must imagine a certain state of affairs; it doe? pot say that having done so, you must cause or permit your imagination to

boggle when it comes to the inevitable corollaries of that state of affairs.

This passage from the speech of Lord Asquith was cited with approval by the Supreme Court in State of Bombay v. Pandurang Vinayak AIR

1952 S.C. 244. There it was further held by the Supreme Court that when a statute enacts that something shall be deemed to have been done

which in fact and truth was not done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction

is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. While interpreting this

provision of Section 5A of the Act. we have no doubt in our minds about the role of the court in cases of preventive detention which is of eternal

vigilance and that court's writ is an ultimate assurance against illegal detention but at the same time we cannot interpret Section 5A in a manner

which would defeat its object and purpose and do violence to unambiguous language. We can certainly consider how the law stood when the said

section was introduced and the mischief which it tried to cure. In view of this clear provision of Section 5A, we consider that the decision in the

case of *Shibbanlal v. State of U.P.* (Supra) would not in any way help the contention of the petitioner. Therefore, the contention of the learned

Counsel for the detenu that the State Government is required to confirm the detention order as a whole and that it cannot confirm the detention

order on one ground is untenable.

9. The learned Counsel emphasised the words "the detention order" as used in Section 8(f) of the COFEPOSA and submitted that "the detention

order" means the order as a whole, that is to say that the detaining authority has to confirm the previous order in its entirety because the phrase

used in the said section is "the detention order." We consider that the said submission of the learned Counsel is devoid of any substance. As per

the provisions of Section 8(f) of COFEPOSA, after the receipt of the Report of the Advisory Board the Government is required to confirm the

order or to revoke the detention order on the opinion of the Board. The said subsection nowhere deals with the grounds of detention. It merely

requires the government to pass appropriate order on the basis of the opinion in the report of the Advisory Board and it may confirm the detention

order or it may revoke the detention order. Besides this argument overlooks Section 5A. The phrase "the detention order" therefore, means only

the order passed by the appropriate government for detaining the detenu and it does not deal with the grounds mentioned in the detention order.

10. It was further submitted by the learned Counsel on behalf of the petitioner that the petitioner's fundamental right under Article 22 Clause (5) is

also affected if the order is confirmed on one ground because he could have made a representation to the appropriate authority that if the authority

does not rely upon some part of the statement of Witnesses then it should discard the remaining part of the statement also. The said submission of

the learned Counsel is also devoid of any substance, in view of Section 5A of the COFEPOSA. Because of deeming provision if detention order is

made on two or more grounds such order of detention is deemed to have been made separately on each of such grounds. With regard to each ground of detention the petitioner can file his representation before appropriate authority and he could point out to the appropriate authority that particular part of the statement of the witness could not be relied upon on the ground stated by him. Therefore, there is no question of any violation of Article 22 Clause (5) of the Constitution of India.

11. It was further submitted on behalf of the petitioner that the "grounds" of detention mentioned in Section 3, Sub-section (3) and Section 5A of the COFEPOSA are not the same as mentioned u/s 3(1) and its Clauses (i) to (V). According to his submission Clauses (i) to (v) of Section 3(1)

are not different grounds but they are different activities. He submitted that the satisfaction of the appropriate authority that the detention order is

required to be passed say for smuggling activities then the detention order may be passed on different grounds which may be showing the activities

of smuggling carried on by the detenu and, therefore, if the order is passed by the Government with a view to preventing the detenu from smuggling

goods or preventing him from transporting smuggled goods then both are entirely different activities and the said activities cannot be termed as

equivalent to different grounds. For this submission the learned Counsel has relied on the judgment of the Supreme Court in the case of State of

Gujarat Vs. Chamanlal Manjibhai Soni, . He heavily relied upon the following observations of the Supreme Court.

In our opinion, the argument of the High Court with due respect amounts to begging the question because the detention u/s 3 of the Act is only for

the purpose of preventing smuggling and all the grounds whether there are one or more, would be relatable only to various activities of smuggling

and we cannot conceive of any other separate grounds, which could deal with matters other than smuggling because the act of smuggling covers

several activities each forming a separate ground of detention and the Act deals with no other act except smuggling. Indeed, if the interpretation of

the High Court in respect of Section 5-A is accepted, then Section 5-A will become otiose.

We fail to understand how the said decision advances the contention of the learned Counsel. In the same paragraph the Supreme Court has further

observed as under:

It is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by way of preventing further

smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It

would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any

other ground for detention, except the one which relates to smuggling. In our opinion, this is neither the object of the Act nor can such an object be

spelt out from the language in which Section 5-A is couched. What the Act provides is that Where there are a number of grounds of detention

covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is

irrelevant, vague or unspecific, then that" will not vitiate the order of detention.

In view of this judgment of the Supreme Court on the contrary it is clear that one ground of smuggling may be based on a number of activities of

the detenu if one of the activity of the detenu is found to be irrelevant, the said irrelevant, vague or unspecific activity of the detenu would not vitiate

the whole order. But at the same time it is further made clear that the detention order may be based on numerous grounds and it may cover various

activities as mentioned in Section 3, Sub-section (1) such as smuggling, abetting, engaging in transporting, dealing in smuggling goods etc. The

word "grounds" as stated in Sub-section (3) is considered by the Supreme Court in number of cases. In case of Hansmukh Vs. State of Gujarat

and Others, , the expression ""ground"" in. Article 22(5) and for that matter in Section 3(3) of COFEPOSA is considered to be not only conclusive

of fact but also all "basic facts" on which those conclusions are founded, they are different from subsidiary facts or other particulars of these facts.

It has been further held that the distinction between the basic facts which are essential factual constituents of the grounds, and their further

particulars or subsidiary details is important. The word ""grounds"" has been therefore, considered to be of basic facts and materials which influence

the detaining authority in making the order of detention. The basic facts and material particulars, therefore, which are foundation of detention will be

covered as ""grounds"" within the connotation of Section 3(3) of the COFEPOSA,

and it would include any information or material on which the order was passed. It is, therefore, clear that the word ""grounds"" mentioned in Section 3, Sub-section (3) and Section 5A cannot be considered to be different from the activities which may be carried on by the detenu which include the activities as mentioned in Section 3(1) of the COFEPOSA upon which the appropriate authority arrives at the subjective satisfaction before passing detention order.

12. With regard to second contention that the Advisory Board had no jurisdiction to confirm the detention order on one ground, the learned

Counsel has relied upon Section 8(f) of COFEPOSA and has submitted that Advisory Board has to opine about the detention order and not to

substitute it. He has again relied upon the decision of the Supreme Court in *Shibbanlal v. State of U.P.* (Supra). He has submitted that the Advisory

Board cannot resort to the provisions of Section 5A and give its opinion that there is sufficient cause for detaining the detenu with regard to one or

two grounds even though for some ground or grounds there may not be sufficient cause for passing the detention order. The said submission of the

learned Counsel is also untenable. We deal with the submission though the Advisory Board is not a party. u/s 8(c) of the COFEPOSA the

Advisory Board is required to prepare its report specifying in separate paragraph thereof its opinion as to whether or not there is sufficient cause

for the detention. If the Advisory Board arrives at the conclusion that there is sufficient cause for detaining the detenu on any ground then it can

submit its opinion to that effect to the competent authority. The Advisory Board has to consider only one aspect of the matter and that is whether in

its opinion there is sufficient cause for detention or not. It may consider that there is sufficient cause for detaining the detenu on one ground, two

grounds or numerous grounds. As per this sub-section it has merely to opine to the competent authority that in its opinion there is sufficient cause

for detention. The decision referred by the learned Counsel also lays down that u/s 11 of the P. D. Act the Advisory Board had to submit its report

on whether there is sufficient reason for detention of the person. The only function of the Advisory Board is to give its opinion after looking to the

material placed before it whether or not there is sufficient material for detaining the detenu. Hence we hold that the Advisory Board under

COFEPOSA. can give its opinion that there is sufficient cause for passing detention order on any one or more grounds mentioned in the detention

order and also opine that for rest of the grounds there is no sufficient cause for passing detention order.

13. With regard to non-application of mind by the competent Authority on the question whether the prosecution under ordinary criminal law would

have served the purpose or not, the learned Counsel has not pressed this point because the original file of the detaining authority was shown to the

learned Counsel which clearly revealed that the detaining authority was satisfied and that it had applied its mind to the question whether the

prosecution of the detenu was possible and would suffice in the circumstances of the case and after taking into consideration relevant facts it was

satisfied that the prosecution under the ordinary law was not sufficient for preventing the detenu from indulging in similar activities in future.

14. It was submitted on behalf of the detenu that the alleged incident had taken place on August 5, 1982 and the investigation was over in

September, 1982 because the last statement was recorded on September 20, 1982 and the detention order was passed on March 18, 1983.

Therefore, this delay in passing the detention order was fatal, as no prompt action was taken and that there was no reasonable explanation offered

by the detaining authority for this long delay. It was further submitted by him that as the grounds of detention do not disclose the circumstances

showing reasons for delay, his right to make effective representation under Article 22(5) is violated.

15. Both these contentions of the learned Counsel are covered by the decision of the Supreme Court in case of Smt. Hemlata Kantilal Shah Vs.

State of Maharashtra and another, wherein after considering the cases reported in Lakshman Khatik Vs. The State of West Bengal, and Rabindra

Kumar Ghosel alias Buli Vs. The State of West Bengal, , it has been held as under:

Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be

unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

It has been further held in para 7 as under:

The submission of learned Counsel is that his grievance is not so much on the time-lag or delay between the date of arrest and the date of detention; his real grievance is in not furnishing with the information as to the cause of the delay so as to enable the detenu to file proper representation before the Advisory Board for its consideration. In our opinion, the submission is untenable. The detaining authority is in no legal liability to tell or satisfy the detenu as to the cause of delay; it is under an obligation to satisfy the court as to the cause of delay to show that there was no infraction of the constitutional provision laid down under Sub-article (5) of Article 22 of the Constitution.

16. In view of the decision of the Supreme Court on identical submission raised before the Supreme Court by the learned Counsel for the

petitioner, it is not open for us to take different view for ground (b). But the learned Counsel submitted that as the grounds of detention do not

disclose the circumstances showing the delay in passing the order his right under Article 22(5) of making an effective representation is violated. He

has relied upon the decision of the Supreme Court in the case of Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher

alias Iqbal alias Gulam Vs. State of Gujarat and Others, , wherein the Supreme Court has held that neither Article 22(5) nor does the

COFEPOSA contain any provision which casts a duty upon the detaining authority in express terms to inform the detenu anything about the

exceptional circumstances due to which delay might occur or about the fact whether reasons have been recorded in writing or not. It is also true

that the Court will of course go into and satisfy itself about these matters when any issue in that behalf is raised before it. One of such safeguards is

that unless exceptional circumstances really obtain in a case the delay in supply of ground of detention and/or the documents and statements

incorporated therein by reference beyond the normal period of five days Would be fatal to the continued detention of the detenu. It has been

further held, that there is a duty to inform the detenu about the existence of exceptional circumstances and what they were for delay in supplying

grounds of detention and/or documents and statements incorporated therein arises by necessary implication and flows from the right which is

conferred upon the detenu to make representation against his detention. This decision of the Supreme Court deals with the prescribed time limit u/s

3(3) of COFEFOSA i.e. within five days the grounds of detention should be supplied to the detenu and that in exceptional circumstances and for reasons to be recorded in writing it should be supplied within 15 days from the date of detention. The COFEPOSA nowhere prescribes any time limit that if the incident had happened on a particular day then the detention order cannot be passed after lapse of prescribed period and it is nowhere prescribed, that beyond a particular period if the detention order is passed detaining authority should record reasons in writing for the said delay. But at the same time even though no period is prescribed yet the detention order cannot be based on State ground. As the object of the COFEPOSA is to prevent the detenu from indulging in the prejudicial activities alleged against him, prompt action should be taken. Therefore, in each and every case the detaining authority is required to explain the delay, if there is any, for passing detention order. Further in view of the direct decision of the Supreme Court in *Hemlata v. State of Maharashtra* (Supra) on this point, wherein it has been held that the detaining authority is under no liability to tell or satisfy the detenu as to causes of delay, we hold that this submission of the learned Counsel is also untenable.

Therefore, the only question which requires determination is whether the delay has been satisfactorily explained by the State Government. It is well established law that delay ipso facto in passing an order would not vitiate the detention order. If the detaining authority was all throughout alive to the problem but because of certain circumstances if delay has occurred, that would not be a ground for setting aside the detention order. This question has been considered by the Supreme Court in the case of *Ashok Narain Vs. Union of India (UOI) and Others*, , and the relevant part of the Judgment reads as under:

In order to satisfy ourselves that there was no undue or unnecessary delay, in making the order of detention, we sent for the original files and we have perused them. We are satisfied that the matter was examined thoroughly at various levels and the detaining authority applied his mindfully and satisfactorily to the question whether the petitioner should be detained under the COFEPOSA Act. The passage of time from the date of initial apprehension of the detenu and the making of the order of detention was not occasioned by any laxity on the part of the agencies concerned, but

was the result of a full and detailed consideration of the facts and circumstances of the case by the various departments involved.

For explaining delay the Deputy Secretary, Government of Gujarat, Home Department, Sachivalaya has filed affidavit and in para 11 it has been

stated as under:

The sponsoring authority had submitted a proposal for the detention of the detenu on 5-10-1982. The proposal was received by the department

on 7-10-1982. Thereafter certain back references were required to be made and those back references were required to be answered by the

Customs Department for eliciting certain information. The original proposal was made for the purpose, of detention of the detenu on four different

seizures of contraband goods. That proposal was scrutinized carefully. That out of four different seizures on a scrutiny, it was found that one

seizure directly connected the detenu and, therefore, only that seizure and involvement of the detenu with that seizure was taken into consideration

by the detaining authority and the order of detention was passed relying upon the seizure which connected the detenu with that seizure and

smuggling involved in that seizure. I further submit that the matter took some time because the case papers ran into several pages. All those several

pages were carefully considered and the papers connecting the detenu were required to be sorted out which took some time. The incident in

question happened on 5-8-1982. Since the matter required back reference the reply to the last reference was received by the department on 23-

2-1983 and thereafter the proposal to pass an order of detention was considered by the Deputy Secretary, Secretary and the Home Minister

himself. At all levels the matter required to be examined critically and this process took some time which was inevitable and beyond the control of

the detaining authority.

Further additional affidavit was also filed with the permission of the Court by the detaining authority and in para 2 of the affidavit it has been stated

as under:

I say that the Sponsoring Authority had submitted a proposal for detention of the detenu on 5th October, 1982 which was received by the

department on 7th of October, 1982, Thereafter, following back references were required to be made for the purpose of eliciting certain

information. The first back reference was made on 8th of October, 1982 addressed to the Collector of Customs, Ahmedabad. The second back reference was made on 25th of October, 1982 also to the same authority. Both the above referred back references were replied, by the Collector of Customs, Ahmedabad on 5th November, 1982. Again another reference was made to the Collector of Customs on 12th of November, 1982. On 20th of November, 1982, the Collector of Customs was informed that the Secretary to Government of Gujarat Home Department desires to discuss with him certain procedural matters on 6th of December, 1982: After the above referred communication to the Collector of Customs was made, a reply to Government back reference dated 12th of November, 1982 was received on 26th November, 1982 from the Customs, Ahmedabad. Thereafter, after scrutinizing the whole proposal of detaining this person on four different seizures, the Home Department had proposed to hold a conference at higher level namely Home Secretary and the Collector, Customs, Ahmedabad to discuss certain aspects of the matter on 31st of January, 1983. The proposed conference was held on 2-2-1982 and it was held that due to certain lacuna as pointed out in Deputy Secretary's note dated 31st January, 1983, it would not be advisable to issue detention order against this person on three out of four seizures. It was further considered that out of four seizures mentioned in Collector's letter dated 5th October, 1982, seizure shown at serial No. 3 was found to be sufficient for detaining the detenu under COFEPOSA. and for that purpose, records should be bifurcated and detention considered on separate file. Accordingly, documents which were running into about 900 pages were sorted out and furnished by the Collector of Customs, Ahmedabad under his letter dated 21st February, 1983 which was again scrutinized carefully and on the basis of that proposal, the detention order came to be issued on 18th March, 1983. Thus, the matter having been considered carefully at all levels, there is no delay as is contended by the petitioner in para7(c) of the petition.

17. With regard to the affidavit filed by the Deputy Secretary on June 28, 1983 a question was asked by the Court to the learned Advocate Shri Kapadia who was appearing for the detenu on that date whether the petitioner Wants to file any reply to the affidavit filed on behalf of the detaining

authority. The learned advocate stated that as the said affidavit is based on documentary evidence, he has nothing to submit against it, but he submitted that in view of the decision of the Supreme Court as delay is not explained properly the order should be quashed. We consider that the said submission is without any substance because the appropriate authority has taken care to scrutinise all relevant materials and after taking into consideration at various stages it has referred back the matter to the Customs Department and after holding the necessary conference the detention order is passed. The detaining authority was alive to the problem of delay but at the same time as number of grounds for detention were forwarded by the Sponsoring Authority facts were to be verified in detail. The proposal of detention was received on October 5, 1982. Then after processing the materials a final conference was held on February 2, 1983. Again the documents were finally separated as per the affidavit on February 21, 1983 and the detention order was passed on March 18, 1983. In these set of circumstances we do not think that delay is not properly explained by the detaining authority.

18. The submission of the learned Counsel that there is total non-application of mind by the detaining authority in framing the grounds of detention and that the manner in which they are framed is totally inconsistent with the facts and this has resulted in prejudice to the detenu at every stage and particularly in making representation to the Government and to the Advisory Board. Looking to the ground of detention para 2 narrates that on July 30, 1982 an information was received that vessel ""UMR 1477 Krishnaprasad"" was to leave Persian Gulf ports in the morning of July 30, 1982 with huge consignment of contraband goods, and that the goods were likely to be landed on the coast of Dandi around 5-8-1982. It further mentions that in spite of vigil kept by the officers the goods were unloaded, from the said vessel and were taken to the village. It further narrates that the detenu reached at the place where the officers were questioning the crew and for this aspect reliance is placed on the report dated August 10, 1982 of Inspectors Shri Y. C. Shah and N. C. Meena a copy of the same is annexed with the detention order. Thereafter it mentions what investigation was carried on with regard to the movement of the said vessel. The next ground is that on August 6, 1982 the detenu was found in a

mob where persons were having packages of contraband goods and therefore, some rounds were fired by the officers so all the persons of the mob ran away but the detenu remained present there. He was questioned. Thereafter the statements of certain persons which reveal how detenu was involved in transporting the said goods are referred. Thereafter statements of detenu and other persons were considered and finally the detaining authority arrived at its own conclusion. We do not consider that there is any such non-application of mind in framing grounds by the detaining authority.

19. With regard to ground 5(b) that at some stages it is mentioned by the detaining authority that the vessel belongs to the detenu, it was pointed out by the learned Counsel that in the report dated 10-8-1982 in the last paragraph it is mentioned that he had landed 115 packages at about 1-30 hours at night and the goods were taken away and the said vessel was purchased by him last year from Mangal Mama of Nani Daman. This submission of the learned Counsel is also not proper because in the intelligence report dated 30-7-1982 it had been specifically mentioned that the said vessel was under the control of P. D. Navik. Further in the report dated August 2, 1982 it has been specifically mentioned that the owner of the vessel as per declaration filed before the Customs Authorities is Amritbhai Haribhai. It is further mentioned that the said vessel was under the control of Rati Deva Navik of Surat. The detaining authority in the ground has nowhere stated that the detenu was the owner of the said vessel. In these set of circumstances, there is no question of non-application of mind.

20. The learned Counsel further referred to para 2 of the grounds of detention where it has been mentioned as reproduced in paragraph 4(V)(c) of his submissions. It is submitted that in the report dated August 10, 1982 the sequence is altogether different and, therefore, there is non-application of mind on the part of the detaining authority. Now in the report of the said officer it has been mentioned that in the meantime two persons escaped and did not return but after forty five minutes a mob of some 30 persons came there and seeing local people coming they attacked and tried to snatch away the revolver and hence the officers jumped out of the vessel and the people chased to assault them. They threatened to fire on them.

Afterwards Ratilal came there with the persons of the village and on his

command the crowd became peaceful. Thereafter R.D. Navik told the officers that they should go away from that place and should not try to seize the vessel and if they do not listen, then he will not be responsible for the act of the crowd.

21. We do not consider that summary made by the detaining authority in this paragraph of detention order, of the report can be said to be without application of mind. The grounds of detention order only mention that the detenu reached that place", with some of his persons and prevailed upon the officers and he had not allowed them to seize the said vessel. This is completely borne out by the report of the Inspectors which is referred to above. We, therefore, consider that this submission of the learned Counsel is also not proper.

22. It is further submitted that even though the intelligence report dated July 30, 1982 was received by the Customs department which revealed that vessel "UMR 1477 Krishnaprasad" under the Control of R.D. Navik was to land at Dandi between 3-8-1982 and 5-8-1982 and yet no surveillance was kept at Dandi coast and as the officers allowed the said vessel to land at Dandi and the goods were unloaded, it shows that the officers were in hand in-glove with the real owners of the vessel and the owners of the goods and they have falsely roped in the detenu. This submission of the learned Counsel is also of no substance because in this petition we cannot decide whether the Customs Officers were efficient enough to check the smuggling activities at the relevant time. It is for the department to decide whether proper surveillance was kept at the relevant time at Dandi coast or not, because the vessel landed at Dandi coast on 4th midnight and the goods were unloaded. On this ground, it cannot be said that the detention order is bad or that the detenu is falsely roped in. Whether the detenu is involved or not is decided by the detaining authority after considering the material before it and the said material is given to the detenu along with the grounds of detention.

23. It was submitted by the learned Counsel for the detenu that the story that the detenu came to the vessel and informed the Assistant Collector that he had smuggled goods and that he had transported them, is wholly unbelievable. We consider that this submission of the learned Counsel is also without any substance. The detaining authority is entitled to arrive at its

own conclusion after appreciating the evidence which is before it. We cannot appreciate or reappreciate the evidence. As held in the case of Hemlata v. State of Maharashtra (Supra) in paragraph 15 the High Court under Article 226 and the Supreme Court either under Article 32 or under Article 136 do not sit in appeal on the orders of preventive detention. The High Court under Article 226 has to see whether formalities enjoined by Article 22(5) had been complied with by the detaining authority. The Court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act, for, that is the function of an appellate Court. Further in the case of Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, , it has been held as under:

When the legislature has made only the subjective satisfaction of the authority making the order of detention; it is not for the court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority.

24. The next contention of the learned Counsel that the detaining authority had not applied its mind because the whole incident dated 6-8-1982 is based upon the report of Shri Rakesh Kumar and as Shri Rakesh Kumar has filed the complaint before the police for the said incident, the complaint filed by Shri Rakesh Kumar ought to have been taken into consideration. To meet with the said submission of the detenu, Shri Rakesh Kumar, who is the Assistant Collector, B.R.I. Surat, has filed the affidavit wherein he has stated that the statement made by the petitioner in her petition that he had filed the complaint before the police on 6-8-1982 is totally false. No such complaint has been filed by him against the detenu on 6-8-1982. The Superintendent of Customs department has also filed an affidavit dealing with this point wherein it has been stated that Shri Rakesh Kumar had filed a complaint in October, 1981 against the detenu and other persons but the said complaint has no relevance to the facts of the present case as it relates to the incident which had occurred prior to one year. The said complaint has no relevance with the detention in question. Additional affidavit was filed by the petitioner on June 14, 1983, but nothing has been stated with regard to the alleged complaint and the facts stated by the customs authority are not denied by the petitioner. In this set of

circumstances the contention of the learned Counsel is without any substance.

25. With regard to the contention of the learned Counsel that no statement of the real owner of the vessel was recorded nor was he interrogated

by the detaining authority and there was total non-application of mind of the authority, as no proper investigation was carried out by the customs

authority, it has been pointed out in the affidavit-in-reply para 21 that the vessel in question has been seized in connection with the present case

after the detention order was passed. In this set of circumstances it cannot be said that the detaining authority has not taken proper care of

investigating the matter and this can hardly be considered to be a ground for quashing and "setting aside the detention order.

26. With regard to the last submission of the learned Counsel that in the affidavit-in-reply filed on behalf of the detaining authority it has been stated

that the detenu was a "well known smuggler" and as the said fact has entered the mind of the authority for arriving at the subjective satisfaction, for

which there" was no material on record, the detention order is invalid. This submission of the learned Counsel is also without substance because on

behalf of the detaining authority affidavit-in-reply is filed for the contention raised by the petitioner in para 30 that the detenu was the only adult

member in the family who has to look after the family affairs, agricultural operations and the business of his deceased father. The detenu was

operated upon for "hydrocele". The detenu required special food to be supplied by the family and, therefore, the petitioner submitted that the

detenu be transferred to the Surat Sub-Jail. In reply to this contention of the detenu it has been stated in para 39 that the detenu is a "well-known

smuggler" and that he has connections in and around Dandi and he is a native of Dandi.

27. The State of Gujarat has fully considered the place of detention and thought it fit to lodge him in Central Jail, Sabarmati, Ahmedabad. This was

done with a view to see that the detenu does not continue his smuggling activities while from jail in Surat. So the phrase which has been used by the

Deputy Secretary in the affidavit-in-reply that the detenu was a well-known smuggler is not used in connection with the detention order. It is in

relation to the demand of detenu that he should be transferred to Surat Jail. We,

therefore, consider that this submission of the learned Counsel is also untenable.

28. In the result, the petition fails and is dismissed.