
(1996) 09 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No's. 77, 78 and 89 of 1996

Smt. Ranjana Prashant Rathi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 11

Constitution of India, 1950 — Article 22

General Clauses Act, 1897 — Section 21, 3

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 12, 67

National Security Act, 1980 — Section 14

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 12, 2, 3

Succession Act, 1925 — Section 29, 31

Citation : (1997) 99 BOMLR 284

Hon'ble Judges : R.G. Vaidyanathan, J; M.B. Ghodeswar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.B. Godehswar, J.—The petitioners in all these three petitions, Smt. Ranjana Prashant Rathi - wife of detenu Prashant Rathi, Smt. Durga Ramesh Kumar Kaliya @ Agrawal - wife of detenu Ramesh Kumar Agarwal and Smt. Godavaribai Chaturbhaj Rathi - mother of detenu Kamalkishore Rathi, have challenged the order of detention dated 29.3.1996 passed by Respondent No. 2 Shri C.D. Singh, Principal Secretary to the Government of Maharashtra (P.D.), Home Department (Special) Mantralaya, Bombay under Sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988) hereinafter referred to for short as "PITNDPS Act". As identical questions of law are involved, we propose to decide all these three petitions by common judgment and order.

We have heard in all six writ petitions. These three petitions and Criminal Writ Petition Nos. 87, 88 and 134 all of 1996 together. The learned Counsel relied on

number of authorities of various High Courts and Apex Court. Criminal Writ Petition Nos. 87, 88 and 134 of 1996 are being disposed of by a separate judgment.

2. Shortly stated, the facts are as under:

The officers of D.R.I. Mumbai Zonal Unit, in association with officers from Central Excise, Amravati searched the factory premises of M/s Vineet Organics (P) Ltd., Ujjwal Baug, Badnera Road, Amravati on 23.11.1995 and 24.11.1995. It was found that the unit was manufacturing Methaqualone Powder in large quantities. 1215.900 Kgs. of Methaqualone Granuals valued at Rs. 1,21,51,000 (I.M.V.) and 1500 Litres of Mathaqualone in liquid stage valued at Rs. 1,45,00,000/- (I.M.V.) and various raw materials which were being used for the manufacture of Methaqualone and Indian currency of Rs. 4,42,450/- were recovered and seized under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as "NDPS Act", under the panchanama dated 24.11.1995.

In the follow-up action, another premises at Garden (Manish Garden) Survey No. 98/1, Kumbhari village, Taluka and District Akola belonging to Ramesh Agarwal was searched on 24.11.95. It was found that Mandrax tablets were being manufactured in the said premises and the owner Ramesh Agarwal alias Ramesh Kaliya was himself present and supervising the manufacture of Mandrax tablets. During the search,

- (a) 1932 Kgs, of Mandrax Tablets valued at Rs. 1,93,20,000/- (I.M.V.).
- (b) 506.200 Kgs of Mathaqualone Powder valued at Rs. 50,62,000/-,
- (c) 57 Kgs of Magnesium steroid I.P. valued at Rs. 877/-,
- (d) 609.500 Kgs. of Talcum powder valued at Rs. 6090/-,
- (e) Tablet making machine valued at Rs. 40,000/-.
- (f) Other accessories and materials used in the manufacture of Mandrax Tablets valued at Rs. 46,150/-, and
- (g) The vehicles used for transportation of raw material and Mandrax tablets valued at Rs. 5 lakhs.

were seized under a panchanama dated 24.11.1995. Another factory premises M/s Prabha Pipes situated at Plot No. J-74, Phase-3, M.I.D.C. Akola which was used by Ramesh Agarwal was searched on 23.11.1995 and certain documents were seized under a Panchanama dated 23.11.1995. The residential premises of the father of detenu Prashant Rathi were searched and certain documents were recovered and seized under Panchanama dated 23.11.1995. Similarly, search was taken of the residential premises of Ramesh Agarwal @ Ramesh Kaliya at room No. 7, Rajiv Co-operative Housing Society, Bandra Kurla Complex, Bandra (E), Mumbai on 24.11.1995 and certain documents were recovered and seized under the panchanama. Search of residential premises of Kantilal Jogani was

taken on 27.11.1995. Some documents were recovered and seized as per panchanama dated 27.11.1995. The residential premises of Kamalkishore Rathi, Prakash Nagar, Mahim, Mumbai-16 was searched and some documents were recovered under Panchanama dated 6.12.1995. The statements of the detenu u/s 67 of the NDPS Act were recorded. The detenu Prashant Rathi and Kamal Kishore were arrested on 24.11.1995 in Mumbai and Chief Judicial Magistrate, Mumbai remanded them both to DIR custody and ordered their production before Sessions Court, Amravati on or before 1.12.1995. For the seizures made in Akola, both detenu were arrested by Central Excise Department under NDPS Act, on 17.12.1995 and produced before the Chief Judicial Magistrate, Akola. R.K. Kalia @ Agarwal, N.S. Gawade, R.D. Ahire, B.N. Anilkumar and Anil Section Zade were arrested under NDPS Act on 24.11.1995 at Akola by the Central Excise Department and they were in Magisterial custody. K.D. Jogani was arrested on 26.11.1995 under NDPS Act at Mumbai. He was ordered to be produced before the Sessions Judge, Amravati. He was produced on 28.11.1995 and remanded to judicial custody. He was arrested by the Central Excise Department on 17.12.1995 in Akola for the seizure made in Akola. The Sessions Court remanded him to Magisterial custody from time to time. Suresh Punamchand Sharma was arrested on 27.11.1995 and produced before Amravati Sessions Court and was remanded to Judicial Custody. He was arrested on 17.12.1995 for offences committed in Akola and he was remanded to judicial custody by the Chief Judicial Magistrate, Akola. Suresh Kumar Mulchand Seth Alias Jain and Kasam alias Kasambhai are absconding from the date of seizure of the drugs. The Central Excise Department filed a complaint on 14.2.1996 against the detenu Prashant Rathi, S.P. Sharma, K.K. Rathi, K.D. Jogani and R.M. Kalia @ Agarwal before the Sessions Court, Amravati, and they were all in judicial custody under the NDPS Act. The Central Excise Department also filed another complaint of 16.2.1996 before the Sessions Court, Akola. From the material and evidence, the detaining authority has concluded that the detenues are involved in a big racket and indulged in illegal trafficking of psychotropic substances by a syndicate, recorded his satisfaction that the detenus need to be detained under the provisions of PITNDPS Act, 1986 to prevent them from engaging in illicit traffic in psychotropic substances.

3. Earlier the detaining authority has passed the detention order on 16.3.1996 and by his order dated 29.3.1996 revoked the earlier order dated 16.3.1996 and on the same day passed the impugned orders.

4. The petitioners have raised several grounds of challenge:

(i) The impugned order i.e. the second order could not have been issued on the same facts. The impugned order is per-se mala fide and ab initio null and void.

(ii) Detaining Authority had no legal authority to revoke his own order u/s 12 of PITNDPS Act. The earlier order being revoked u/s 21 of the General Clauses Act, the detaining Authority has no authority to issue impugned order u/s 12(2) of the NDPS Act. The impugned order is, therefore, a nullity.

(iii) The detaining Authority had failed to record the requisite satisfaction. Detention is thus mala fide in law.

(iv) The detaining authority has not disclosed all the reasons which weighed with him for revoking the earlier order and for issue of fresh order. Hence the impugned order is violative of Article 22(5) of the Constitution.

(v) The reasons given by the detaining authority are incoherent, anomalous and nubulous. The order is void.

(vi) The material on which the conclusion is drawn by the detaining authority is not furnished to the detainee. Order violative of both the facts of Article 22(5) of the Constitution.

(vii) The detaining authority has not drawn the and

(viii) requisite satisfaction and the satisfaction recorded is not in conformity with law. Order, therefore, bad.

(ix) Though the detaining authority was aware that the complaints are filed, he failed to consider whether the order was still warranted to be issued. The order is, therefore, bad.

(x) The representation to the detaining authority and the State Government not considered expeditiously without any avoidable delay. Detaining authority has violated Article 22(5) of the Constitution.

5. The respondents have filed their return. We have allowed the sponsoring authority to file affidavit and assist the Court. We have heard the learned Counsel for the petitioner Shri Karmali and Smt. Mane, Advocates, Shri Aney, Senior Counsel for respondents and Shri Pagey, the learned Counsel for sponsoring authority for a considerable length of time. Smt. Mane has adopted the arguments of Shri Karmali. During the hearing, the learned Counsel for the petitioners have given up the ground of challenge No. 10, "Representation not being considered expeditiously." We have given our anxious consideration to the arguments advanced before us and in our view the petitioners can succeed on ground of challenge No. (ii) that the impugned order of detention as issued is a nullity, and therefore, it is not necessary to refer the other grounds of challenge. Ground No. (ii) of challenge in the petitions is as under:

The petitioner says and submits that assuming whilst: denying that the impugned subsequent order of detention, in law, could have been issued on the basis of the same facts, on revocation of the said earlier order of detention, even then, in that case; the said earlier order of detention having been revoked by the said Shri C.D. Singh, the detaining authority himself, who had issued the said earlier order of detention, in his capacity as the officer specially empowered to act for the purpose of Section 3(1) of the PITNDPS Act; the said revocation order; in law, thus, amounts to revocation of the said earlier order of detention u/s 21 of the General Clauses Act and not u/s 12 of the said PITNDPS Act though

the said Shri C.D. Singh had purported to have revoked the said earlier order of detention u/s 12 of the said PITNDPS Act. The detaining authority, in law, could not have revoked the said earlier order of detention u/s 12 of the said PITNDPS Act as he had no legal authority to revoke the said earlier order of detention u/s 12 of the said Act at all. The petitioner says and submits that u/s 12 of the said PITNDPS Act, the said earlier order of detention, in law, could have been revoked only by the State Government and/or the Central Government and not by the said Shri C.D. Singh the specially empowered officer, who could revoke the said order issued by him, only u/s 21 of the General Clauses Act and not u/s 12 of the said PITNDPS Act. The petitioner says and submits that thus, irrespective of what the detaining authority has stated in the said revocation order that he was revoking the said order of detention u/s 12 of the PITNDPS Act; which purported exercise of the power u/s 12 of the said Act, had no efficacy in law, and, thus the said order of revocation, in law, operated as the revocation of the said order u/s 21 of the General Clauses Act. In the premises, the petitioner says and submits that the earlier order of detention, in law, thus, having been revoked u/s 21 of the General Clauses Act, the impugned subsequent order of detention, in law, could not have been issued at all as the impugned subsequent order of detention, assuming that it could have been issued on the same facts, could have been so issued u/s 12(2) of the PITNDPS Act only if the earlier order of detention was revoked by the authorities named therein other than the detaining authority; and such authorities exercising their powers u/s 12(1) of the said Act and not if the same was revoked or if, in law, it amounted to revocation u/s 21 of the General Clauses Act by the detaining authority himself. The impugned subsequent order of re-detention thus, in law, is a nullity. It has no efficacy in law, at all. The detention effected pursuant to the impugned order of detention is thus, patently illegal and without the authority of law. It is accordingly per se mala fide and ab initio null and void.

The detaining Authority in his affidavit sworn on dated 16.7.1996 has given the following reply;

With reference to paragraph 7(ii) of the petition, I say that I had revoked the earlier order of detention dated 19.3.96 by virtue of the power vested in me as per Section 21 of the General Clauses Act, 1897 which has been expressly saved by Section 12 of the PITNDPS Act. I say that while issuing the said order of revocation I had exercised the power of revocation vested in me as set out hereinabove read with Section 12 of the PITNDPS Act. That I have powers to revoke my order is laid down in Kamleshkumar Ishwarlal Patel (Supreme Court Cri. Appeal No. 764-765 of 1994). I once again deny that I was revoking the order of earlier detention u/s 12 of the PITNDPS Act alone simpliciter. I deny that as the earlier order of detention having been revoked by me I should not have issued the impugned subsequent order of detention as alleged. I deny that the subsequent order of detention could be issued only if the earlier order of detention had been revoked by the authorities named in Section 12 of the said Act as alleged. I deny that I am precluded in law from issuing the fresh order of

detention in the circumstances alleged or otherwise. I deny that the impugned order of detention is a nullity and/or had no efficacy in law as alleged. I deny that the detention of the detenu in pursuance of the impugned order of detention is illegal and/or without authority of law as alleged and/or that the same is mala fide and null and void as alleged. I say that the contentions raised in the said para under reply are argumentative in nature and shall be dealt with further at the time of hearing of the petition.

6. Section 21 of General Clauses Act is reproduced below;

Where, by any Bombay Act or Maharashtra Act, a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or by-laws, so issued.

Section 12 of the PITNDPS Act is reproduced below;

Revocation of detention Orders.- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 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.

(2) The revocation of detention order shall not bar the making of another detention order u/s 3 against the same person.

The learned Counsel for the respondents has canvassed that Section 12 of PITNDPS Act must be read in the light of Sections 2(a) and (c) and Section 3 of the Act. He urged that;

(i) the main clause of Section 12(1) provides that basic power to revoke or modify the order. This is not limited only to Central or State Government, as impression occurs in Clauses (a) and (b) of Sub-section (1).

(ii) The power under Sub-section (1) of Section 12 is without prejudice to the power in Section 21 of the General Clauses Act. The phrase "without prejudice" means the provision of Section 12 do not have the effect of affecting the operation of Section 21 of the General Clauses Act. In other words, both operate severally and if necessary simultaneously. It also means that they cannot be read inconsistently. In Section 12, the operation of Section 12 is independent of and coextensive with the operation of Section 21 of the General Clauses Act.

The authorities specified in Section 3 are armed with both powers. The use of powers u/s 12 cannot prejudice the existence or use of power u/s 21 of the General Clauses Act. It would be incorrect to say that the moment powers u/s 12

are invoked, Section 21 cannot operate or vice versa.

The authorities u/s 3 while exercising powers u/s 12 are armed with powers u/s 21. They are not denuded of powers u/s 12.

7. He further urged that reference to Section 21 of the General Clauses Act and Section 12(1) is legislation by incorporation. Section 21 of the General Clauses Act would always be available for a governmental authority for the purpose of invoking a power to issue orders and for the further exercise of that power to add, amend, vary or rescind that order. General Clauses Act itself is a central Enactment which operates as repository or store house of general powers when juxtaposed to specific enactments. Thus, where a specific enactment is silent on a point of use of power, the provisions of Section 21 would be read *mutatis mutandis*.

In the instant case, Section 12 of the PITNDPS Act specifically refers to power u/s 21 of the General Clauses Act thereby incorporating bodily the provisions of Section 21 into Section 12. This is legislation by incorporation. The Parliament in its wisdom made available u/s 12 of the PITNDPS Act powers of Section 21 of the General Clauses Act. Therefore, Section 12 must be read as though it contains the entire contents of Section 21 of the General Clauses Act also. According to him, it is, therefore, incorrect to argue that the authorities u/s 3 separately exercise powers u/s 12 of PITNDPS Act and Section 21 of the General Clauses Act and it is also incorrect to argue that exercise of powers u/s 21 exclude exercise of powers u/s 12 of PITNDPS Act and vice versa.

He further argued that Section 3 itself specifies four authorities. A close reading would show that these four authorities exist independent of each other but officers of State or Central Government draw their powers of detention from their respective governments by notifications. They have to be; empowered specifically.

There is thus an act of delegation of authority contemplated in the Scheme of Section 3 itself. Therefore, although the two non-obstante clauses namely Clauses (a) and (b) of Sub-section (1) of Section 12 do provide the power for the State and/or Central Government to revoke the orders passed by their officers, the power must be seen to be the necessary function of the delegation itself. The author of the delegation, the delegator State or Central Government can always revoke the order of the delegates. The additional power which manifests itself in the two non obstante clauses is that under Clause (a), the Central Government can revoke the order passed by an officer of the Central Government as well as by the State Government itself. The two non obstante clauses therefore specify a special power apart and separate from the normal operation of delegated powers.

The power under Sub-section (2) of Section 12 comes into existence after a revocation is made. It is a power to issue a fresh order of detention. This can be exercised again by the authorities in Section 3 in the manner provided for by Section 3. Thus, even an officer can again issue a fresh order. Nothing in the

language of Section 12 militates against this. He further urged that Sub-section (2) of Section 12 is an independent sub-section dealing with a total power uncontrolled by the operation of Sub-section (1) of Section 12. Section 12(1) does not govern Section 12(2). Section 12(2) operates after Section 12(1) has exhausted itself. The petitioner's argument that Section 12(2) can only be utilised by the authorities who operate u/s 12(1), is incorrect. There is no express bar in Section 12(2), limiting its operation to authorities referable u/s 12(1).

The limit of the boundaries of Section 12 stand extended by the enlargement of area by Section 21. Section 12(1) deals with revocation and Section 12(2) with issuance of fresh orders. The authorities exercising these powers have further powers generally available u/s 21 to read the two powers of Section 12 and Section 21, to be mutually exclusive would be to do violence to the language i.e. of Section 12.

If the petitioners argument of exclusion of Section 12 by Section 21 were to be accepted, no meaning could be given to Sub-section (2) of Section 12. Sub-section (2) specifically refers to issuance of fresh orders u/s 3. Section 3 contains four possible authorities who can issue the orders. If Section 21 is seen to extinguish the power u/s 12(1), then no meaning can be attributed to Sub-section (2). No interpretation can be permitted by which some portion of an enacted law become redundant or meaningless. If the petitioner's argument that the officer has no power to revoke an order u/s 12(1) is correct, then there is no legal revocation of the earlier order. Assuming though not admitting that the fresh detention order is illegal, since the first order itself could not have been revoked by an officer making it, that order would still hold the field. The petitioner's argument in this regard is not only self defeating, but renders his petition a nullity.

7. Shri Karmali, the learned Counsel for the petitioner has placed reliance on the following decisions. Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, ; Amir Shad Khan and another Vs. L. Hmingliana and others, , one unreported case of Bombay High Court in Criminal Writ Petition No. 269/93 Smt. Mangala Madhukar Sarpotdar v. A.S. Samra and 2 Ors. Criminal Writ Petition No. 269/93 decided on 22.4.1996. Mohd Hussain Ibrahim Bachu Bafan v. Union of India and Ors. Criminal Writ Petition No. 97/85 decided on 31.7.1996 decided on 31.7.1996.

Shri Aney, the learned Counsel has submitted that the cases relied on by the petitioner viz. Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, ; Amritlal Shah v. State of Maharashtra and Ors. 1986 Cri.L.J. 1587 and Amir Shad Khan and another Vs. L. Hmingliana and others, are distinguishable. He further placed reliance on the following decisions. Ram Parvesh Singh v. District Magistrate 1985 All. L.J. 570; Haradhan Saha v. State of West Bengal 1995 (3) SCC 198 : 1974 SCC (Cri) 816, Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others, , Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, ; Mrs. Mary Roy v. State of Kerala AIR 1986 S.C. 1911; Ram Sarup Vs. Munshi and Others, ;

Bhe Ram Vs. State of Haryana, ; The Income Tax Officer, "A" Ward, Indore Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd., Birlagram, Nagda, ; Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, ; The State of Orissa Vs. Dabaki Devi and Others, , and Amir Shad Khan and another Vs. L. Hmingliana and others, .

8. The authorities relied on by the learned Counsel for the petitioners are under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974) i.e. COFEOSA Act and National Securities Act. Section 11 of COFEOSA Act and Section 14 of the National Security Act are identical with Section 12 PITNDPS Act. The Apex Court in the case of Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, , while dealing with the question when the orders of detention have been quashed by orders of Court, whether fresh orders of detention could be passed against the same persons under Sub-section (2) of Section 11 of the COFEOSA Act, have held that quashing of the orders of detention by Court did not amount to revocation of the order by any of the authorities u/s 11(2) of the COFEOSA Act. There is no dispute that the detaining authority can revoke the earlier order, to rectify the mistake and pass subsequent order. The question that is posed before us by the learned Counsel for petitioners is, whether second respondent is empowered to pass fresh order of detention against the same persons after revocation of the earlier order on the same facts u/s 12(2) of the PITNDPS Act. The learned Counsel for the petitioners placed reliance on the decision of Ibrahim Bachu Bafan v. State of Gujarat (cited supra). It is observed in para 6 as under:

We agree with the submission of Mr. Jethamalani that the words "without prejudice to the provisions of Section 21 of the General Clauses Act 1897" used in Section 11(1) of the negative expression to the legislative intention that without affecting that right which the authority making the order enjoys u/s 21 of the General Clauses Act, an order of detention is also available to be revoked or modified by authorities named in Clauses (a) and (b) of Section 11(1) of the Act. Power conferred under Clauses (a) and (b) of Section 11(1) of the Act could not be exercised by the named authorities u/s 21 of the General Clauses Act as these authorities on whom such power has been conferred under the Act are different from those who made the orders. Therefore, conferment of such power was necessary as Parliament rightly found that Section 21 of the General Clauses Act was not adequate to meet the situation. Thus, while not affecting in any manner and expressly preserving the power u/s 21 of the General Clauses Act of the original authority making the order, power to revoke or modify has been conferred on the named authorities.

It is held in para 7 as under:

The rule relating to interpretation of statutes is too well settled to be disputed that unless a contrary intention is expressly or by necessary implication available, words used in a statute should be given the same meaning. This position is all the more so where the word occurs in two limbs of the same

section. We, therefore, agree with the contention advanced by counsel for the petitioners that the word "revocation" in Sub-section (2) has the same meaning and covers the same situations as provided in Sub-section (1) of Section 11 of the Act. This would necessarily mean that the power under Sub-section (2) would be exercisable in cases covered by Sub-section (1).

In para 9 it is held as under:

The power conferred under Clauses (a) and (b) of Sub-section (1) of Section 11 is in fact extension of the power recognised u/s 21 of the General Clauses Act and while under the General Clauses Act, the power is exercisable by the authority making the order, the named authorities under Clauses (a) and (b) of Section 11(1) of the Act are also entitled to exercise the powers of revocation.

In para 10, it is observed further:

The pronounced judicial view of this Court was that repeated orders of detention are not to be made. Parliament while making provision in Section 11(2) of the Act, must be taken to have been aware of such view and in conferring the power of making repeated orders, safeguards have been provided under Sub-section (1) by confining the exercise of power to limited situations.

The Division Bench of this Court in the case of *Amritlal Shah and etc. v. State of Maharashtra* 1986 Cri.L.J. 1587 : (1986) 2 BCR 545 : 88 Bom. L.R. 175, relying on the authority of *Ibrahim Bachu Bafan Vs. State of Gujarat and Ors*, , has held that the power of revocation contained in Sub-section 2 of Section 11 of COFEPOS A Act must be confined to the situations mentioned in Sub-section (1) of Section 11. In another unreported case of this Court in Criminal Writ Petition No. 269/93 *Smt. Mangala Madhukar Sarpotdar v. A.S. Samra and 2 Ors.*, on the point of jurisdiction of the detaining authority for passing a fresh impugned order of detention under the National Security Act, it is stated in para 5 as under:

Shri Manohar, learned Advocate General, fairly states that the impugned order cannot be legally supported in view of the fact that the revocation of earlier order was u/s 21 of the General Clauses Act and not u/s 11(1) of the N.S. Act and the observation of the Supreme Court made in paras 12 and 14 in the case of *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, , (in which earlier decision of the Supreme Court, in the case of *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another*, .

and in view of the statement, the impugned order was quashed and set aside.

On the other hand, the contention of the learned Counsel Shri Aney in short is that, the second respondent is empowered and has passed the order of revocation u/s 12(1) of the PITNDPS Act and has relied on the decision reported in *Amir Shad Khan and another Vs. L. Hmingliana and others*, . It is observed in para 3 as under:

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. 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 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 411 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 under Section 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, viz, officer of the State Government or the Central Government, the State Government as well as the Central Government, Shri Aney has therefore argued that by conjoint reading of Section 21 of General Clauses Act and Section 12 of the PITNDPS Act, the power of revocation can be exercised by respondent No. 2 u/s 12(1) of the Act. This argument is not acceptable, because the Apex Court has made it clear that 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 with the power to revoke it and that power has to be traced u/s 21 of the General Clauses Act.

Shri Aney has led much emphasis on the point of legislation by incorporation contending that Section 21 of the General Clauses Act is incorporated in Section 12 of PITNDPS Act. He relied on the decision of Mary Roy and Others Vs. State of Kerala and Others, . It is held in para 7 as under:

The legislative device of incorporation by reference is a well-known device where the legislature instead of repeating the provisions of a particular statute incorporates such provisions in the latter statute by reference to the earlier statute. It is legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of an earlier statute in a later statute. But when the legislature intends to adopt this legislative device, the language used by it is entirely distinct and different from the one employed in Section 29, Sub-section (2) of the Indian Succession Act. 1925. The opening part of Section 29, Sub-section (2) is intended to be a qualificatory or excepting provision and not a provision for incorporation by reference.

He further relied on the decision reported in Union of India and others Vs. Giriraj Sharma, , it is observed:

Thus, the intention of the legislature in using the expression "without prejudice to the provisions of Section 29 of the Act" clearly appears to be that recourse to the provisions of Section 29 of the Act is not prohibited, where an order or decree u/s 31 of the Act obtained by the Corporation has not been complied with or honoured by the defaulting concern or is otherwise insufficient to satisfy the dues of the Corporation.... The two provisions must be so harmonised as to facilitate from the defaulting party.

9. It is not necessary to refer to the other authorities relied. The Court cannot lightly brush aside the arguments advanced by Shri Ancy that second respondent has passed order u/s 12(1) of PITNDPS Act as Section 21 of the General Clauses Act is bodily incorporated by the doctrine of legislation by incorporation in Section 12 of PITNDPS Act. Even if assuming that Section 21 of the General Clauses Act is bodily incorporated in Section 12 of the PITNDPS Act for the sake of convenience the legal position that emerges is that the second respondent has power to revoke the earlier order of detention only u/s 21 of the General Clauses Act and not u/s 12(1) of PITNDPS Act. Moreover the point raised by the learned Counsel Shri Aney is no longer res integral in view of the decisions of Ibrahim Bachu Bafan v. State of Gujarat; Amritlal Saha and etc. v. State of Mah. and unreported decision of Smt. Mangala Madhukar Sarpotdar v. A.S. Samra and 2 Ors. in Writ Petition No. 269/93 (cited supra). In view of these decisions there is no substance in the contentions raised by the learned Counsel for respondents. There is no merit in the contentions raised by the learned Counsel for the petitioners that as the respondent No. 2 is not empowered to revoke the earlier detention order u/s 12(1) he has no authority to pass fresh order on the same facts u/s 3 of PITNDPS Act.

10. In the result, the writ petitions are allowed. The impugned detention orders of the detenus are quashed and set aside. The respondents are directed to release the detenu forthwith if not required in any other case.