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MAKHAN LAL GOKUL CHAND
v.
THE ADMINISTRATOR, UNION TERRITORY
OF DELHI AND ANR.

B

NOVEMBER 2, 1999

[DR. A.S. ANAND, CJ., G.T. NANAVATI, K.T. THOMAS, D.P.
WADHWA AND S. RAJENDRA BABU, JJ.]

C

Preventive detention:

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Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974/General Clauses Act, 1897 s.11/s.21—Order of detention—Challenged thrice—Challenge failed everytime—Order challenged fourth time—Representation rejected—Writ petition filed under Article 32 of the Constitution on the ground that State government failed to constitute a fresh Advisory Board to consider the fourth representation—Held, in the absence of “fresh grounds”, “fresh material” or any “subsequent event”, there was no obligation on the State to get the representation considered by fresh Advisory Board, and, therefore, the exercise of discretion by State in rejecting the representation and not constituting a ‘fresh’ Advisory Board cannot be faulted—Making the fourth representation without any fresh cause being available to the detenu was apparently designed to file yet another writ petition—Attitude of detenu is disapproved—Writ petition dismissed—However, detenu need not be taken into custody to undergo remaining period of detention—Constitution of India—Article 32.

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ORIGINAL CRIMINAL JURISDICTION: Writ Petition (CRL.) No. 608 of 1983.

(Under Article 32 of the Constitution of India.)

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Harijinder Singh, Ms. Rani Jethmalani, Ms. Gauri Karuna Dass and Ms. Leena Prasad for the Petitioner.

Ms. Rekha Pandey for the Respondents.

The following Order of the Court was delivered :

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On 27th September, 1983 a three Judge Bench of this Court doubted the correctness of the 'wide observations' made in the case of *Ram Bali Rajbhar v. The State of West Bengal & Ors.*, [1975] 3 SCR 63, and being of the opinion that the view expressed in *Pushpa v. Union of India & Ors.*, AIR (1979) SC 1953, ran in the teeth of the judgment of *Rajbhar's* case (supra) referred the matter to a larger Bench. The referring Bench noticing that the detenu had already suffered detention for a period of 10 months out of the 12 months period of detention imposed by the order dated 15th December, 1982, directed the detenu to be released on parole.

Mr. Harjinder Singh, learned counsel appearing for the petitioner has taken us through the judgments in *Rajbhar's* case and *Pushpa's* case (supra). A careful perusal of both the judgments, however, shows that there is no conflict between the two. The view expressed in *Rajbhar's* case (supra), in our opinion, lays down the correct law and does not call for any reconsideration. Insofar as the view expressed in *Pushpa's* case (supra) is concerned, it deserves to be noticed that the learned Single Judge, deciding the petition during the vacation, did not say anything which may be considered as running contrary to the view expressed in *Rajbhar's* case (supra). On facts it was found in that case that two representations had been made by the detenu against the order of detention and both the representations were placed before the same Advisory Board when it met and the Board considered the representations at that sitting. The argument raised in that case that the second representation had not been considered by an Advisory Board was thus found, on facts, as not valid. The Court, under those circumstances, declined to examine the contention whether personal appearance of the detenu to explain his case before the Advisory Board, since he had filed detailed written representation, infringed any of the rights of the detenu.

Learned counsel appearing for the parties have been unable to point out any area of conflict between *Rajbhar's* case and *Pushpa's* case. In fairness to the learned counsel it must be noticed that they submitted that the reference does not require to be answered. We agree.

Coming, however, to the facts of the present case. It is found that representations had been made by the petitioner against the order of detention which were considered by the detaining authority and the Advisory Board. The representations were rejected. The order of detention and the order of rejection or the representations was challenged through writ petition No. 6/

A 1983, which was dismissed by the Delhi High Court on 1st February, 1983. The order of the Delhi High Court was challenged through Special Leave Petition No. 379/1983 in this Court. Together with the Special Leave Petition No. 379/1983, another writ petition, being Writ Petition (Crl.) No. 182/1983, was also filed under Article 32 of the Constitution of India, once again putting in issue the same order of detention which had been upheld by the
B Delhi High Court. The Special Leave Petition as well as the Writ Petition stood dismissed by a three Judge Bench of this Court on 23rd February, 1983. The petitioner thereafter filed yet another writ petition being Writ Petition (Crl.) No. 363/1983 challenging the order of detention on some
C 27th April, 1983. After dismissal of the third writ petition on 27th April, 1983 the petitioner appears to have sent a representation, on 7th May, 1983, to the first respondent invoking powers under Section 21 of the General Clauses Act read with Section 11 of the COFEPOSA. The petitioner also requested for the constitution of a fresh Advisory Board to consider his representation. On 23rd May, 1983, the representation of the petitioner was rejected by the Delhi
D Administration after due consideration. This fourth writ petition has been filed thereafter challenging the same order of detention, the validity of which had been upheld earlier as noticed above. Mr. Harjinder Singh appearing for the detenu submitted that the failure of the State to constitute a fresh Advisory Board to consider the representation dated 7th May, 1983, rendered the order
E of detention bad.

After perusing the record and hearing learned counsels for the parties, we are of the opinion that there is no merit in the submission made by the learned counsel for the detenu. As already noticed, the petitioner had three times earlier, challenged the order of detention and failed. In the
F representation filed by the petitioner on 7th May, 1983, we find that neither any fresh material was brought on record nor any subsequent events were pointed out which may have warranted a 'fresh' consideration of the representation made by the detenu. It was only change in the language of the representation. The Delhi Administration was, therefore, justified in rejecting
G the representation dated 7th May, 1983 by the order communicated to the petitioner on 23rd May, 1983. Since, there were no "fresh grounds" nor any "fresh material" or "subsequent events" brought out in the representation dated 7th May, 1983, there was no obligation on the State to get that representation considered by a "fresh Advisory Board" and, therefore, the exercise of discretion by the State in rejecting the representation and not
H constituting a 'fresh' Advisory Board cannot be faulted. The detenu had, as

already noticed, unsuccessfully challenged the same order of detention thrice. Making of the representation on 7th May, 1983., without any fresh cause being available to him, was apparently designed to file yet another writ petition. We, cannot but disapprove this attitude of the detenu. There is no merit in this writ petition, which fails and is hereby dismissed. A

Learned counsel for the petitioner then lastly submitted that since the detenu had already remained under detention for a period of ten months, before being enlarged on parole, he may not be sent back to jail, to undergo the remaining period of detention. B

The petitioner was detained, as already noticed, by an order made on 15th December, 1982. After he had suffered detention for a period of about 10 months, he was directed to be released on parole by this Court on 27th September, 1983. More than 16 years have now gone by. In our opinion, in the peculiar facts and circumstances of this case, it would now not be in the interest of justice to cancel the order of parole and direct the petitioner to undergo the remaining period of detention of about two months. C D

We, therefore, while dismissing the writ petition, direct that the detenu need not now be taken into custody to undergo the remaining period of detention.

R.P.

Petition dismissed. E