

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(Crl.).No. 248 of 2014 (S)

PETITIONER(S) :

**RADHIKA B., AGED 29 YEARS,
W/O.MANOJ, 14, POTTAYIL VEEDU,
MANNANTHALA, THIRUVANANTHAPURAM- 695 015.**

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM- 695 001.**
- 3. THE DEPUTY COMMISSIONER OF POLICE (L& O),
THIRUVANANTHAPURAM CITY, THIRUVANANTHAPURAM- 695 001.**
- 4. THE SECRETARY, ADVISORY BOARD.
ANTI SOCIAL ACTIVITIES (PREVENTION) ACT 2007,
PADAM ROAD, ELAMAKKARA, ERNAKULAM- 682 017.**

BY DIRECTOR GENERAL OF PROSECUTION SRI.T.ASAF ALI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 09-10-2014, ALONG WITH WP(Crl.).No.296 OF 2014, THE COURT
ON 09-03-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: THE TRUE COPY OF THE ORDER DATED 10/03/2014 ISSUED BY
THE GOVERNMENT OF KERALA.
- EXT.P2: TRUE COPY OF THE ORDER DATED 03/05/2014 ISSUED BY
THE GOVERNMENT OF KERALA.
- EXT.P3: TRUE COPY OF THE DETENTION ORDER DATED 14.02.2014 OF
THE 2ND RESPONDENT.
- EXT.P4: TRUE COPY OF THE GROUNDS OF DETENTION SERVED ON
THE DETENU.
- EXT.P5: TRUE COPY OF THE ORDER DATED 04.12.2013 IN C.M.P.NO.6381/2013
OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
THIRUVANANTHAPURAM.
- EXT.P5(A): A LEGIBLE COPY OF THE ORDER DATED 04.12.2013 IN EXHIBIT P5.
- EXT.P6: TRUE COPY OF THE REPORT DATED 30.01.2014 OF
THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

“CR”

Thottathil B.Radhakrishnan,

C.T.Ravikumar

&

Babu Mathew P.Joseph, JJ.

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WP(Crl.).Nos.248 & 296 of 2014

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Dated this the 9th day of March, 2015

Judgment

Thottathil B.Radhakrishnan, J.

- 1.The issues for consideration in these references to the Full Bench relate to some of the provisions regarding preventive detention under the Kerala Anti-Social Activities (Prevention) Act, 2007, for short, the “Act”. The second among the captioned matters is referred and tagged along, in view of the order of reference in the former.
- 2.Heard the learned counsel for the parties in both the matters, including the State Government’s counsel.

3. The reasoned order of reference is made doubting the correctness of the judgment of the Division Bench of this Court in Praseetha v. State of Kerala [ILR 2009(4) Ker.896]. The short issue for consideration is as to whether the alleged occurrences taken into consideration while passing an order of detention, which was revoked by the Government under Section 10(4) of the Act on the advice of the Advisory Board, could be counted along with the later prejudicial acts, for issuance of another detention order under Section 3 of the Act in terms of Section 13(2) thereof.

4. The learned counsel appearing for the petitioner in WP(CrI.)No.248 of 2014 argued that Praseetha was decided correctly and hence it does not call for variation on reconsideration. Per contra, the learned State Government's counsel supported the views expressed in the order of reference and argued that the ratio of Praseetha is wrong to

the extent it holds that the occurrences which were counted for the purpose of the earlier detention order, which was revoked on the advice of the Board cannot thereafter be counted along with other prejudicial acts which are alleged to have been committed after the revocation. He, therefore, pleaded that the ratio in *Praseetha* is to be overruled.

5.Sub-section 4 of Section 10 of the Act enjoins that in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of a person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.

6.Sub-section 1 of Section 13 of the Act provides

for revocation or modification of detention order by the State Government. Section 13(2) provides, among other things, that the revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under Section 3 of the Act, if the person concerned continues to be a person falling within the definition of 'known rowdy' or 'known goonda' as defined in the Act, and if any of the situations enumerated in clauses (i), (ii) and (iii) of that sub-section occurs.

7.To resolve the controversies raised in these matters, particularly as to the effect of the Board's recommendations, in the first instance, it is profitable to examine the jurisdiction of the Board constituted in terms of Section 8 of the Act. Section 9 of the Act provides that in every case where a detention order has been made under the Act, the Government shall place the matter for consideration of the Board in accordance with the prescriptions of that provision. Section 10 lays down the procedure of

the Board and further action. Sub-section 4 of that section provides, among other things, that where the Board has reported that, in its opinion, there is no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and shall cause the person to be released forthwith. The domain of consideration by the Board in terms of the provisions of Section 10 of the Act is such that, the only question for decision and advice by it is as regards the particular detention order which went to it for opinion. The Board's authority was to opine whether the order of detention before it then, was founded on sufficient cause; on the basis of the cases which were made the foundation of that particular order of detention. The statutory jurisdiction of the Board in that regard is confined to consideration of the sufficiency or otherwise of the cause, as regards that particular detention order which went for the opinion of the Board. It will be too far-fetched; nay, impermissible; to say that the consideration by the Board at that stage is

something that could be treated as one amounting to diffusing the prejudicial nature of the alleged criminal acts reckoned to pass the detention order which was before the Board for such statutory scrutiny.

8. When subsequent conduct of the same person results in prejudicial activity or activities reckonable in terms of the Act, that will trigger and maintain a live-link with the earlier prejudicial activities, though such earlier prejudicial activities, by themselves, would not have weighed as sufficient enough to sustain the earlier detention order. The advice of the Board in relation to an earlier detention order is only as regards the sufficiency of the cause as to that detention order, on the basis of those prejudicial activities which were reckoned to pass that particular detention order. Such advice of the Board does not purge the efficacy of those prejudicial activities or their vigor as to criminality, to exclude them from being counted when the person concerned involves in prejudicial

activities subsequent to the revocation of that detention order. When those earlier prejudicial activities are followed by subsequent prejudicial activity or activities, all of them ought to be taken as a string of potent activities which will sustain with continuity of live-link for the purpose of another order of detention. If the competent authority enters satisfaction as to the requirement to issue another detention order, taking into consideration all or any of the earlier prejudicial activities along with the subsequent prejudicial activities, there is no illegality in that. That is undoubtedly within terms of the Act.

9. A detention order may, at any time, be revoked or modified by the Government. That power under Section 13(1) of the Act is a statutory one. It is a statutory power; so positioned that it ought to be exercised maintaining the requisite constitutional and statutory balance, bearing in mind the constitutional rights of the person against whom the detention order is issued vis-a-

vis the powers to detain and the grounds of detention as are provided for in the Act; without forgetting the object and purpose of the Act. Therefore, the issuance of an order of revocation under Sub-section 1 of Section 13 cannot be made in derogation of the constitutional principles governing the repository of that statutory power; which is nothing short of fairness in action, both in relation to the detenu, as also the public at large; bearing in mind the mischiefs sought to be prevented by such statutory provisions authorising detention orders. Remember; the Act enacted in 2007, stands now with no successful challenge to its constitutional validity.

10. Looking at Sub-section 4 of Section 10, all that can be seen is that the Government have the obligation to revoke a detention order on the advice of the Board on consideration of the grounds of that particular detention order which is compulsorily liable for such scrutiny in terms of sections 8 to 10 of the Act. That is an

obligatory process in terms of the constitutional provisions governing preventing detention.

11. What emerges from the aforesaid discussions is that once an order of detention is revoked either as a measure of obligatory revocation referable to Section 10(4) of the Act or by recourse to revocation under Section 13(1), the resultant revocation is, qualitatively, of no distinction among themselves as regards their impact on the prejudicial activities counted for the purpose of the earlier detention order. This means that notwithstanding whether it is an obligatory revocation under Section 10(4) or a voluntary revocation under Section 13(1), the prejudicial activities which were reckoned for the purpose of an earlier detention order can nevertheless be counted, providing the live-link to issue another order of detention against the same person in the light of sub-section 2 of section 13; which provision is only to the effect that the revocation or expiry of a detention order shall not be a bar for the issuance of another

detention order under Section 3. Therefore, the power to issue the detention order is always under Section 3 and all that sub-section 2 of Section 13 does is to enumerate the situations where another detention order under Section 3 can be issued against the same person who was covered by an earlier detention order.

12. In the aforesaid view of the matter, clearly emanating out of the provisions of the Act themselves, it was not necessary to make reference to the decisions rendered by the Hon'ble Supreme Court on the basis of the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSAA), referred to in *Praseetha*(supra); more particularly because, the provisions of COFEPOSAA are not in pari materia with those of the Act in hand.

13. Having regard to the conclusions arrived at above, we hold that the ratio of *Praseetha* (supra) is erroneous to the extent it is contrary

to what is stated herein. We, therefore, answer the reference in both the cases by declaring that the revocation of an order of detention under the Act on the basis of the advice of the Board under Section 10(4) does not take away the efficacy of the alleged acts counted for the detention order so revoked, to exclude them from being reckoned to impose another detention order as provided under Section 13(2) of the Act. The revocation of a detention order by the Government, either on the basis of the advice of the Board or otherwise, makes out no qualitative distinction; and, therefore, the quality of revocation of the detention order under Sub-section 4 of Section 10 is, in no way, different from the quality of revocation under Sub-section 1 of Section 13 of the Act. *Praseetha (supra)* is hereby overruled to the extent of declaration of law made herein.

14. We have also considered the particular facts of both the cases referred to the Full Bench. We do not see any ground as to lack of due application of mind or any other vitiating factor that could

be upheld to interfere with the detention orders impugned in these writ petitions. All grounds raised against the detention orders fail. These writ petitions are liable to be dismissed repelling the plea extended on behalf of the detenus covered by the orders impugned.

In the result, answering the reference as above and holding that there are no grounds to interfere with the impugned orders of detention, these writ petitions are dismissed.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
C.T.Ravikumar
Judge

Sd/-
Babu Mathew P.Joseph
Judge

Sha/

-true copy-

P.S.to Judge