

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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W.P.Nos.20895, 26968, 27021 and 29059 of 2015

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COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

In all these four Writ Petitions, the orders of detention passed by the Collector and District Magistrate, Y.S.R.Kadapa District, are under challenge, among others, on the ground that the detenus were not informed that they had a right to make a representation, to the detaining authority, against the orders of detention.

On a perusal of the orders of detention, it is evident that, while the detenus were informed that they had a right to make a representation to the Government and the Advisory Board against their detention, and they also had a right to be heard personally by the Advisory Board, if they so desired, under Section 10 of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, they were not informed that they also had a right to make a representation to the detaining authority.

Notwithstanding the fact that the detaining authority is required to forthwith report the factum of detention, together with the grounds and material, to the State Government, and notwithstanding that the Act provides for making a representation to the State Government, the officer under Section 3(2) continues to be the detaining authority until the orders of detention issued by him are approved by the State Government. He can, until then, entertain a representation from a detenu and, in exercise of his powers under the General Clauses Act, can amend, vary or rescind the order. Non-communication of the fact to the detenu, that he can make a representation to the detaining authority as long as the order of detention has not been approved by the State Government, would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution. (**State of Maharashtra v. Santosh Shankar Acharya**).

The right to make a representation carries within it a corresponding obligation

on the authority, making the order of detention, to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation. This right, necessarily, implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation, and failure to do so results in denial of the right of the person detained to make a representation (**Kamleshkumar Ishwardas Patel**²¹; **Nutan J. Patel v. S.V. Prasad**). The representations made by the detenu are required to be considered both by the detaining authority as also the State Government. They are required to be considered on their own merit upon application of independent mind on the part of the authorities concerned. (**Harshala Santosh Patil v. State of Maharashtra**).

Reliance is placed by the Learned Advocate-General on **Amin Mohammed Qureshi v. Commissioner of Police, Greater Bombay**, wherein a two Judge Bench of the Supreme Court held that the detaining authority is not under an obligation to tell the detenu that he can make a representation to the detaining authority also. In the light of the subsequent Constitution Bench judgment of the Supreme Court, in **Kamleshkumar Ishwardas Patel v. Union of India**, holding to the contrary, reliance placed on the earlier two Judge Bench judgment, in **Amin Mohammed Qureshi**⁴, is of no avail. Failure on the part of the detaining authority to inform the detenus, of their right to submit a representation to the detaining authority, would vitiate the orders of detention.

As the detenus were not informed that they had a right to make a presentation to the detaining authority also, the impugned orders of detention must be, and are accordingly, set aside. All the Writ Petitions are allowed, the orders of detention are quashed, and the detenus shall be set at liberty forthwith, provided they are not required to be kept in custody in connection with any other case/cases registered against them. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date:08.12.2015.

Note: Issue C.C. by 10.12.2015.

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