



H.C.P.(MD).Nos.1111, 1350 and 1382 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : **25.04.2023**
Pronounced on : **12.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **K.K.RAMAKRISHNAN**

H.C.P.(MD).Nos.1111, 1350 and 1382 of 2022

H.C.P.(MD).No.1111 of 2022

Ganeshkumar

... Petitioner / Detenu

Vs.

1. The Principal Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate,
Virudhunagar District.
3. The Superintendent of Prison
Madurai Central Prison,
Madurai District.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, to call for the entire records, connected with the detention order of the Respondent No.2 in Cr.M.P.No.21/2022 (Goonda), dated 05.06.2022 and quash the same and direct the respondents to produce the body or



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person of the detenu by name Ganeshkumar, son of Paramasivam aged about 30 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

H.C.P.(MD).No.1350 of 2022

Ammu
W/o. Madasamy

... Petitioner / Wife of
the detenu

Vs.

1. The Government of Tamil Nadu
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate
Theni District, Theni.
3. The Superintendent
Central Prison,
Madurai District, Madurai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, to call for the order, dated 15.06.2022 made in Detention Order No.56/2022 on the file of the 2nd Respondent and quash the same and consequently direct the respondents to produce the petitioner's husband namely Madasamy, S/o. Moorthy, aged about 37 years who is now detained as a detenu at Central Prison, Madurai, Madurai District or his corpus or body before this Court and set him at liberty forthwith.

H.C.P.(MD).No.1382 of 2022

Sendhurmurugan @ Jeya Sendhurmurugan

... Petitioner / Detenu



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Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate
Office of the District Magistrate and District Collector,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, seeking to call for the entire records, connected with the detention order of the Respondent No.2 in H.S (M) Confdl.No.137/2022, dated 15.07.2022 and quash the same and direct the Respondents to produce the body or person of the detenu by name Sendhurmurugan @ Jeya Sendhurmurugan, son of Jeyapal, aged about 50 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani in H.C.P.(MD).Nos.1111
and 1382 of 2022
Mr.J.Sankara Pandian
in H.C.P.(MD).No.1350 of 2022

For Respondents : Mr.A.Thiruvadi Kumar, APP
Mr.B.Kumar, Senior Counsel
(Amicus Curiae)
Mr.C.Arul Vadivel @ Sekar,



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Senior Counsel (Amicus Curiae)
Mr.K.Prabhakar (Amicua Curiae)
in all the three HCPs

COMMON ORDER

Since the grounds raised in these Habeas Corpus Petitions are similar and it requires indepth consideration with regard to the legal position on the right of the detenu under Act 14 of 1982, viz-a-viz, the duties and responsibilities of the stakeholders, namely, the Detaining Authority, State Government as well as the Advisory Board, these HCPs were heard together and disposed of by this common order.

2. In fact, out of these three Habeas Corpus Petitions, H.C.P.No.1111 of 2022 came up for hearing before us on 20.03.2023, where a ground was raised stating that, in the ground case, though there were three accused, out of whom, the Act 14 was slapped only against two accused, when they were referred to the Advisory Board, the Board has given opinion in respect of one detenu that there is no sufficient cause to continue the detention, whereas in respect of other detenu, the opinion was that the detention can be continued.



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3. Since it was an important ground that was raised on behalf of the detenu, we felt that, this require some deeper appreciation of the issue, therefore, on 20.03.2023, we passed the following order :

" Heard the learned counsel appearing for the petitioner, who has raised a ground that in the ground case, there are three accused. Out of which, Act 14 of 1982 was slapped only against A1 and A3. When this was referred to the Advisory Board, on the basis of the Advisory Board's recommendation, the detention order was revoked in respect of A3. Insofar as A1 ie., the present detenu in this Habeas Corpus Petition is concerned, it has been confirmed by the Government and what was the comparative reason between these two is not known.

2.In this context, the learned Additional Public Prosecutor for the respondents submits that what has been recommended by the Advisory Board would be made available only to the Government and the detaining authority may not have any access to that.

3.In these circumstances, we feel that the original file in respect of these two people ie., the present detenu as well as A3 in the ground case in whose favour the detention order has been revoked, of course, pursuant to the recommendations of the Advisory Board, is to be produced before this Court for perusal, for which, the learned Additional Public Prosecutor for the respondents seeks time till 23.03.2023.



4.Post the matter on 23.03.2023."

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4. Pursuant to the said order, dated 20.03.2023, relevant files had been produced by the learned Additional Public Prosecutor. On perusal of the same, we found that, insofar as the detenu, viz., Ganesh Kumar is concerned, he has been branded as Goonda and detention order has been passed on 05.06.2022. The said order was considered by the Advisory Board and in their report, dated 06.07.2022, the Advisory Board had given the following opinion “ The Advisory Board is of the unanimous opinion that there is sufficient cause for the detention of Ganesh Kumar”.

5. On seeing this report, we passed the following order on 23.03.2023:

" 3. On seeing this report, we wanted to know that, for giving such opinion what materials have been considered by the Board and on what basis such a conclusion has been reached, of course, unanimously by the Board as stated. However, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the respondents has relied upon a decision of the Hon'ble Supreme Court in the matter of State of Rajasthan v. Shamsheer Singh reported in 1985 SCC (Cr) 421, where he



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relied on paragraphs 12 and 13.

4. By relying upon this judgment, especially, at paragraph No.13, learned Additional Public Prosecutor would submit that, the Board is not required to write out a judgment, wherein one would expect mentioning of the respective pleas, materials produced by the parties, specification of contentions advanced and reasons for the conclusion as may have been drawn and what is required is the unbiased and impartial conclusion on the materials available with reference to the grounds of detention as to whether there is sufficient cause for the detention order, when made, and the continued detention of the person concerned are justified.

5. Making further submission, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor would submit that therefore, no detailed judgment like the order can be expected from the Advisory Board and invariably in every case referred to the Advisory Board, this kind of opinion alone is sent by way of report or recommendation or advise of the Board to the Government and that is the basis for the Government to act upon either to confirm the order of detention or to revoke the order of detention.

6. In this context, we looked the relevant provision of the Tamil Nadu Act 14 of 1982, Section 11 deals with the procedure of Advisory Board. In Section 11(1), it is stated that the Advisory Board after hearing the detenu in person, if



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necessary or essential, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

7. Sub-section (2) of Section 11 also makes it clear that, the report may also specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

8. Sub-section (4) of Section 11 states that, the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

9. Therefore, the proceedings of the Board, which culminated in the opinion, which is made in short by one line or two lines, are made confidential and that has not even been revealed to the Government.

10. However, we understand that, so far, in no such proceedings, this Court seems to have called for the proceedings of the Board for its perusal for a satisfaction that, the Board has applied its mind even though the Chairman and Members of the Board are the retired High Court Judges and in every case, if this kind of plea is raised on behalf of the detenu that the material placed before the Board was not considered or not considered in proper perspective that cannot be looked into and decided by this Court when the Habeas Corpus Petitions are moved.



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11. This situation, in the minds of us, leads to an arbitrariness as the very provisions of the Act 14 of 1982 is only within the limitations of Article 22 of the Constitution. Therefore, whether the procedure to be followed in conducting the proceedings of the Board and how the Advisory Board has dealt with the matters when it is referred for its advise or opinion meet out the component or element that has been inherently indicated in Article 22 of the Constitution as it touches upon the personal liberty of a citizen, has to be necessarily brought into the purview of judicial review.

12. Therefore, having considered all these aspects, we are of the considered opinion that, a relook and revisit is required on this issue, as so far this issue has not been dealt with in detail as to how the proceedings to be conducted by the Board and the proceeding conducted by the Board has to be placed before this Court for perusal and judicial review, in case, if specific ground is raised in this regard making allegations against the Board that, the Board has not considered the materials placed before it and to that extent the power of the Board vis-a-vis the jurisdiction of this Court under Article 226 of the Constitution in dealing with the HCP matters are to be clearly demarcated and spelt out so that these kind of issues can be sorted out and then only the justice sought for could be rendered for any citizen, whose personal liberty if it is at stake.

13. Therefore, we are inclined to hear the matter in detail



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and in order to assist this Court apart from counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents, these following counsel are appointed as Amicus Curiae, who shall make their submissions after having research on this subject to assist the Court.

- (i) Mr.B.Kumar,
Senior Advocate,
New No.8, Old, No.170, Eldams Road,
Alwarpet, Chennai – 600 018
- (ii) Mr.C.Arul Vadivel @ Sekar,
Senior Advocate,
No.123, KK Nagar, Madurai – 625020.
- (iii) Mr.K.Prabakar,
Advocate,
Malhothra House (2A-Second Floor),
New No.294 (Old No.186),
Thambu Chetty Street,
(Opposite to Dhanalakshmi Bank),
Chennai – 600 001.

14. That apart any other interested counsel at the Bar can also address this Court on this issue for which the case is posted for such hearing on 30.03.2023 at 2.15 p.m.

15. Registry is directed to circulate the copy of this order to all the Bar Associations at this Bench as well as the Principal Seat for the information of the members of the Bar."

6. Subsequently, the case came up on 30.03.2023, where arguments



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were advanced by the learned Amicus Curiae and the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor.

7. On hearing the arguments, we passed the following order on 30.03.2023 :

" 2. In the meanwhile, it is the submission of almost all the learned counsel, including the two learned Senior Counsel, who made submissions before this Court that, after the business is completed in respect of a particular detention order before the Board, the Advisory Board would always sent all the documents to the State Government for further action at their end, which means, the entire records, including the proceedings of the Board, the report as well as the final opinion. These are all the three different documents / orders of the Board, as has been contemplated under Section 11 of the Act 14 of 1982.

3. However, insofar as the present Habeas Corpus Petition is concerned, we had already called for the records from the respondent State, pursuant to which, the learned Additional Public Prosecutor produced the records, where we are able to find that, on 07.07.2022, the Chairman of the Board has sent a covering letter to the Deputy Secretary to Government, Home, Prohibition and Excise (IX) Department, Secretariat, Chennai – 9 for the subject - preventive detention -



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Tamil Nadu Act, 14 of 1982 - reports and opinions of the Advisory Board Meetings - sent, wherein the covering letter further states that, “I am to forward herewith the reports and opinions of the Advisory Board Meeting held on 06.07.2022 to the Government for the following cases”. There are 27 cases enumerated in the said covering letter for which such records might have been forward by the Board to the Government.

4. The petitioner's case is also one among the 27. Insofar as the records connected with the petitioner's case is concerned, the confidential Advisory Boards' communication or letter or report dated 06th July, 2022 has been forwarded, which has simply recorded that, “The Advisory Board perused the grounds of detention, the report of the detaining authority to the Government and connected records and also heard the detenu. The detenu has requested to hear the detenu's sister Tmt.Sivaneswari. The Board has also heard the representation of Tmt.Sivaneswari. The opinion of the Board is given separately.”

5. Apart from this, another communication considered to be the opinion of the Board dated 06th July, 2022 has also been sent to the Government, which says the following:-

“The Advisory Board is of the unanimous opinion that there is sufficient cause for the detention of Ganesh Kumar.”

6. Citing these two documents, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the



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respondent State would contend that these are all the two documents along with other materials forwarded by the Board to the Government and the first document is to be considered as a report and the second document is to be considered as the opinion, that is what the Board also had construed and sent it. Apart from these two documents, no other document like separate proceedings or separate report has been sent to the Government.

7. However, still we have a doubt in our mind that whether the two line or four line proceedings in the name of the report had been sent by the Board and based on which only the opinion was formed by the Board that we want to ascertain, so that we can proceed in this matter further.

8. In this context, it is the further submission of the learned Additional Public Prosecutor appearing for the respondent State that, insofar as the Advisory Board is concerned, it is having a separate Secretariat and Office at Chennai, where permanent staff are working and the records of various cases dealt with by the Board are being maintained or kept in record room.

9. If that being so, the main records and proceedings etc., are being kept at the record room of the Board Secretariat and only the selected documents like the one referred to above alone are sent to the Government is also to be ascertained and



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reported.

10. Otherwise, as has been stated by the learned Additional Public Prosecutor, as per the instructions given to him if only these two kinds of documents alone are send in each and every case as a report or opinion, whether that alone can be treated as a report within the meaning of Section 11(4) of the Act 14 of 1982 is also to be examined by this Court.

11. In view of the aforestated, we wish to give the following directions to the respondent State to reply in writing for the following queries:-

(i) Whether the Advisory Board under Act 14 of 1982 is having a permanent Secretariat or Office at Chennai as claimed by the learned Additional Public Prosecutor through his instructions and if so, the detail of the same shall be furnished. In that Secretariat of the Board, whether there is a Record Room, where the entire records of cases dealt with or being dealt with by the Board are kept also to be ascertained and reported.

(ii) Insofar as the forwarding of the documents after completion of the case by the Board is concerned, as contemplated under Section 11(2) read with 11(4) of the Act, whether separate proceedings, report and opinion are being sent in every case to the State Government, if so, the details.

(iii) If no such proceedings are being received by the Board and only report and opinion are received and the report



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also though it is styled as report no detailed report are being sent by the Board to the State Government, that also to be ascertained and reported by the State Government through the reply.

(iv) In this context, a detailed report by way of an affidavit shall be filed with necessary particulars as indicated above by a responsible Officer of the Home Department of Government of Tamil Nadu not below the rank of Deputy Secretary to Government, before this Court.

(v) As per letter of the Chairman of the Board dated 07.07.2022, details about 27 detention orders / cases had been sent to the Government with their report / opinion. The relevant files containing the said records and particulars of the 27 cases sent along with the covering letter also shall be produced before this Court for perusal of this Court.

(vi) Apart from these queries raised hereinabove, if any other further information are to be brought before this Court on behalf of the State Government in this regard, that can also be brought before this Court containing the same in the affidavit or reply to be filed as required.

(vii) That apart a detailed statistical report to the extent that for the past five years till December, 2022, how many detention orders were passed? How many Board's opinions have been obtained? Where in how many cases positive opinion had come not to extend the detention order and in how



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many cases negative opinion had come that their detention orders can be confirmed, from the Board by the State Government shall be filed before this Court.

12. With these details, a detailed reply and statistical report as indicated above shall be filed by the respondent State on or before the next hearing date. For the said purpose, post the matter on 12.04.2022."

8. In response to the queries that we have raised by our order, dated 30.03.2023 in para 11, each and every query raised by us were answered by the reply filed by the State, which reads thus :

"3. With reference to query No. 11(i) of the Hon'ble Court, it is respectfully submitted that the Advisory Board is having its permanent Office in the Ground Floor, Singaravelar Maligai, Chennai Collectorate, Rajaji Salai, Chennai 600 001. The sanctioned staff of the Advisory Board is one Section Officer, one Principal Private Secretary, one Typist, two Office Assistants and three Drivers. The posts of Section Officer, Principal Private Secretary, Typist and Office Assistants are filled up from the Home, Prohibition and Excise Department on deputation periodically. It has been decided in the year 2022 to revive the post of Typist, if the need arises. The incumbents now in the Advisory Board are all belonging to the Home, Prohibition and



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Excise Department. The posts of Drivers (3) were appointed by the Chairman after getting permission from the Government. There is a Record Room in the Advisory Board, where the Booklets along with the representations received from the Government are stored, after hearing is over.

4. With reference to query No.11(ii) of the Hon'ble Court, it is respectfully submitted that, after completion of hearing of a case by the Board, the Board will send a Report and Opinion of the said case to the Government with a separate covering letter listing the cases heard on that day. The Board will go through the entire Booklet forwarded by the Government and consider the oral representations and written representations if any, given by the detenu. After consideration by the Board, the representations, which are received on behalf of the detenu by post/representation of the detenu received through the Superintendent Central Prison/presented in person by the detenu or by his/her relative at the time of hearing, they will be forwarded to the Government with a separate covering letter. The Reports and Opinions and the representations are forwarded to the Government mostly on the next working day. No other proceedings except the Report and Opinion are sent to the Government. The Booklets (3 copies) and the representations forwarded by the Government are retained and kept in the record room

5. With reference to query No.11(ii) of the Hon'ble Court, it is respectfully submitted that the Advisory Board is constituted



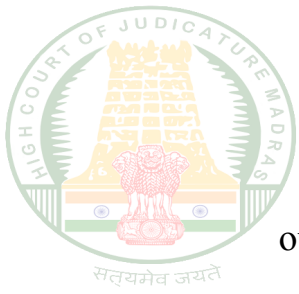
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as per the provisions of a statute- Tamil Nadu Act 14 of 1982 to safeguard the constitutional guarantee envisaged in Article 22 of Constitution of India and as such a full fledged enquiry is conducted by giving personal audience to the detenu by hearing orally and by receiving the representations of the next friend and after getting clarification of the information given from the sponsoring authority and after considering the materials in the form of booklets and after perusal of the grounds of detention, the three Judges constituting the Advisory Board discuss in detail to form an opinion as to whether the detention made by the detaining authority is in conformity with allegations made in the detention order and whether there is sufficient cause to believe that the detenu must be detained. After such consultative decision, Opinion is given by the Board either for confirmation of the detention or for revocation. Thereafter, the Report is sent to the Government through a special messenger keeping confidentiality in mind within the statutory time limit Apart from these, no separate proceedings or any separate report are sent to the Government.

While forming an Opinion, the Advisory Board takes into consideration the materials placed before it, hears the detenu and his or her next-in-friend, considers the materials placed by the detenu if any, and also takes into account the complicity of the detenu in the crimes alleged to have been committed by him, his presence in the scene of crime, the first information report, his



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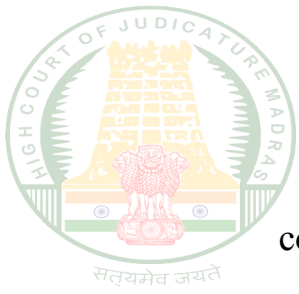
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overt act in the commission of the offence, the gravity of his criminal background, his age and physical condition like sickness or infirmity and also the triviality of the offences. On the basis of the above considerations, the Advisory Board gives its opinion either for confirmation or for revocation of the detention order.

The detention is not case-oriented but person-oriented. One detenu whose detention was confirmed cannot challenge the revocation of the detention of another detenu, since the detention of each of them is based on the materials available against each. In so far as revocation of the detention is concerned, it has become final and there is no scope for agitating the revocation.

Further In A.K. Roy Vs Union Of India AIR 1982 SC 710 The Hon'ble Supreme Court has been pleased to hold. "The proceedings of the Advisory Board has to be structured differently from the proceedings of Judicial or Quasi Judicial tribunals before which there is a list to adjudicate upon.

On the recommendations of the sponsoring authority that a person must be prevented from indulging in a manner prejudicial to the disturbance of public peace, the detaining authority formulates the reasons for detention and arrives at a subjective satisfaction and passes an order of detention. In case, the Advisory Board after enquiry agrees with the reasoning of the detaining authority and comes to an opinion that the detention of the particular person has to be continued it will be communicated to the Government by stating that there is sufficient cause for



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continuation of the detention. In such case, separate reasons need not be given by the Board. However, if the Board disagrees with the detaining authority then the reasons may be spelt out for revocation. But in the past, the question never arose regarding giving of opinion containing reasons, since the Report sent by the Board to the Government is not appealable and it is only a confidential communication to the Government. Keeping in mind, the Constitutional guarantees of the citizens, the High Court has been pleased to call for the Reports and proceedings of the Board and if a new look on constitutional guarantees have been evolved the Judges of the Board will appreciate and follow the procedure to be established.

6. With reference to query No. 11(v) of the Hon'ble Court, it is respectfully submitted that the original files pertaining to the 27 cases, which had been sent to the Government with the report of the Chairman, Advisory Board dated: 07.07.2022 are produced before the Hon'ble Court along with this reply affidavit.

7. With reference to query No.11(vii) of the Hon'ble Court, it is respectfully submitted that the detailed statistical report with regard to the detention orders passed in the past five years till December 2022 is as follows:-



Year	Total Number of Detention Orders received by the Government	Number of cases revoked by the High Court vide HCP before Advisory Board Hearing	Number of cases not approved by Government	Number of cases sent to the Advisory Board	Number of cases confirmed by the Advisory Board	Number of cases Revoked by the Advisory Board
2018	2969	140	2	2827	2207	620
2019	2884	1	1	2882	2232	650
2020	2871	1	-	2870	2235	635
2021	3292	1	8	3283	2553	730
2022	4315	3	3	4309	3089	1220
Total	16331	146	14	16171	12316	3855

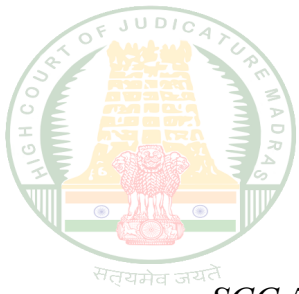
9. With these factual background and the materials that was placed before this Court by the State, we heard the arguments further of the Amicus Curiae and the learned counsels.

10. The learned Senior Counsel, Mr.B.Kumar has relied upon the following decisions :

(i) *A.K.Gopalan Vs. State of Madras reported in 1950 SCC 228*

(ii) *A.K.Roy Vs. Union of India and others reported in (1982) 1 SCC 271*

(iii) *Union of India Vs. Nisar Pallathukadavil Aliyar reported in (2020) 20 SCC 252*



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(iv) *Kavita Vs. State of Maharashtra and others reported in (1981) 3 SCC 558*

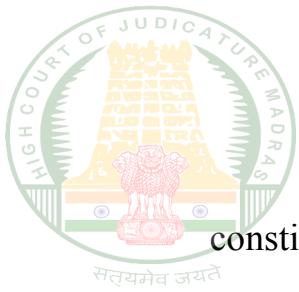
(v) *Sanjay Kanubhai Tanti Vs. Superintendent and others reported in (2021) 5 SCC 486*

(vi) *T.O.M.Sariba Begum Vs. Government of Tamil Nadu reported in 1984 SCC Online Mad 137*

(vii) *Nand Laj Bajaj Vs. State of Punjab and another reported in (1981) 4 SCC 327*

11. The learned Senior Counsel Mr.C.Arul Vadivel @ Sekar has submitted the following :

(a) The formation of Advisory Board under Article 22(4)(a) is a safeguard provided by the Constitution to the detenu and it is only on the opinion of the Advisory Board, further detention may continue for more than 3 months. Hence the role of Advisory Board is very important. The procedural requirement is the only safeguard available to the detenu, since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are to be strictly complied with, if the value is to be attached to the liberty of the person and the



constitutional right guaranteed to him.

WEB COPY (b) Sec. 11 of the Act 14 deals with the procedures to be followed by the Advisory Boards. The very reading of sub clauses (2), (3) and (4) of Section 11 would clearly reveal that there must be three parts in the full report of the Advisory Board. They are (i) the proceedings of the Board (ii) the report and (iii) the opinion. As per Sub Clause (4) of Sec.11, except the opinion of the Advisory Board, the remaining part of the report and the proceedings should be confidential.

(c) The Oxford dictionary meaning of "confidential" is "Secret, not to be shown or told to other people". A confidential document means "a confidential record, which contains information which should only be disclosed to specific people or group, for one or more reasons". From these definitions, it can be easily inferred that any confidential matter is always between two persons. (i.e.) the person who says the secret and to whom it is conveyed.

(d) The dictionary meaning as well as Sec.11(4) of the Act, clearly indicates that except the opinion of the Advisory Board, the remaining part namely the report and the proceedings should be a confidential communication between the Board and the State Government. The detenu



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cannot claim the copy of the report and not even peruse the same. They cannot be furnished to anyone under RTI Act and should not be placed in public domain.

12. There is no dispute with regard to the proposition that the High Court cannot act as an Appellate Court and decide the opinion of the Board on merits, while hearing a HCP under Article 226 of the Constitution. At the same time, if there is violation of procedure in the proceedings of the Advisory Board, it is a ground for interference.

13. If there is any violation of the procedures contemplated in Sec. 11 of the Act, the detention order is liable to be set aside. Though there is no necessity to pass a detailed order as a judgment of a court, the Advisory Board has necessarily to give its opinion containing the reasons justifying the order of detention or not approving the order of detention. The reading of clause (2) of Sec.11 of the Act makes it unambiguous that in the opinion of the Advisory Board either for approving or disapproving the detention, there must be sufficient cause.



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14. The term "sufficient cause" is not defined in Act 14 of 1982. The ordinary dictionary meaning for "sufficient cause" is "adequate" or "enough". "sufficient cause" is an expression, which is found in various statutes such as Limitation Act, Customs Act, Minimum Wages Act, 1948 and in civil procedure code."

15. He submits that recently in the case of Madhyamam Broadcasting Ltd. Vs. Union of India and others (Civil Appeal No.8129 of 2022 dated 05.03.2023, the Hon'ble Supreme Court elaborately discussed about the constitutionalizing principles of natural justice, Standard to test reasonableness of procedure, natural justice and national security, sealed cover procedure, immunity of non discloser of correspondence etc. The Hon'ble Supreme Court held that while there may be material on serious concerns of national security, which cannot be disclosed, the constitutional principle of procedural guarantees is equally important and it cannot be turned into a dead letter.

16. He further submits that the reply affidavit filed by the Deputy Secretary to Government Home department reveals that, presently the



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Advisory Board is giving reasons only in the cases, where the Board disagrees with the detaining authority and for continuation of detention no such reasons are given by the Board. Such distinction followed by the Advisory Board is not in line with Sec.11(2) of the Act. The sufficient cause is necessarily to be recorded for revocation and also for continuation.

17. He further submits that the statistics furnished by the Government in the reply affidavit reveals that the number of cases sent to Advisory Board is increasing every year and there is only one Advisory Board available in the State. It seems that the time spent by the Advisory Board to each case would be less than half an hour. Sec.9(1) of the Act gives power to the Government to constitute one or more Advisory Boards based on the necessity. Constituting more Advisory Boards would definitely reduce the burden of the existing Board and increase the quality of functioning. Further if more Boards are constituted and uniform procedures to be followed by the Advisory Boards are formulated, it will reduce the number of filing Habeas Corpus petitions before this Hon'ble Court.

18. He would also submit that it is unfortunate that though Article 22(7)(c) of the Constitution empowers the parliament to make law to



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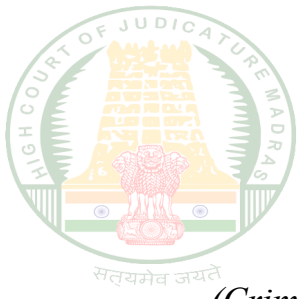
prescribe the procedure to be followed by an Advisory Board, till date no such law or rule has been enacted. Recently, based on the discussion made in the meeting of the Hon'ble Committee for Revision of Criminal Rules of practice of the High Court of Madras, the Government of Tamil Nadu vide G.O.(Ms).No.30, Home, Prohibition and Excise (XVI) Department dated 19.08.2021 formulated the procedure to be adopted for grant of temporary release to the detenus under the Tamil Nadu Act, 14 of 1982 to attend the death/funeral of their close relative U/s. 15 of the Act, till the amendment made to Section 15 of the Act. Likewise, as an interim measure, a separate Government order may be issued with regard to the procedures to be followed by the Advisory Board, till the enactment of the procedure.

19. In support of his submission, he relied upon the following judgments:

(i) *Nader Chand Karar Vs. The State West Bengal* reported in AIR 1972 (SC) 1871

(ii) *Bhut Nath Mate Vs. The State of West Bengal* reported in AIR 1974 (SC) 1806

(iii) *Nand Lal Bajaj Vs. State of Punjab and another* reported in 1981 (4) SCC 327



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(iv) *A.K.Roy Vs. Union of India and others reported in (1982) SCC (Criminal) 152*

(v) *Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and others reported in (1983) 2 SCC 392*

(vi) *State of Rajasthan and another Vs. Shamsheer Singh reported in 1985 SCC (Cri.) 421*

(vii) *Harbans Lal Vs. M.L.Wadhawan and others reported in (1987) 1 SCC 151*

(viii) *Choith Nanikram Harchandani Vs. State of Maharashtra and others reported in (2015) 17 SCC 688*

(ix) *Kavitha Vs. State reported in (1981) 3 SCC 558*

(x) *Union of India Vs. Nisar Pallathu Kadavil Aliyar reported in (2020) 20 SCC 252*

(xi) *T.O.M. Sariba Begum Vs. Government of Tamil Nadu reported in 1986 Cri.LJ 578*

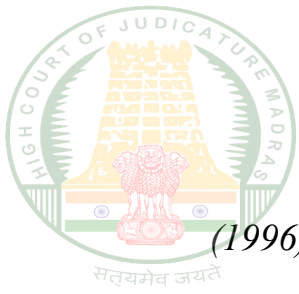
(xii) *Sanjay Kanubhai Tanti Vs. Superintendent and others reported in (2021) 5 SCC 486*

(xiii) *Assistant Collector of Customs Vs. Charandas Malhotra reported (1971) 1 SCC 697*

(xiv) *Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and another reported in AIR (1968) SC 222*

(xv) *Surinder Singh Sibia Vs. Vijay Kumar Sood reported in (1992) 1 SCC 170*

(xvi) *State of Haryana Vs. Chandramani and others reported in*



(1996) 3 SCC 132

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(xvii) *Ramnath Sao alias Ramnath Sahu and others Vs. Gobardhan Sao and others* reported in (2002) 3 SCC 195

(xviii) *Arun Singh Vs. Mohindra Kumar and others* reported in AIR (1964) SC 993

(xix) *Madanlal Vs. Shyamlal* reported in (2002) 1 SCC 535

(xx) *Union of India Vs. Mohanlal Capoor and others* reported in (1973) 2 SCC 836

(xxi) *Ramavarma Bharathan Thampuram Vs. State of Kerala and others* reported in (1979) 4 SCC 782

(xxii) *S.N.Mukherjee Vs. Union of India* reported in AIR 1990 (SC) 1984

(xxiii) *Raj Kishore Jha Vs. State of Bihar and others* reported in (2003) 11 SCC 519

(xxiv) *Kranti Associates Private Limited and another Vs. Masood Ahmad Khan and others* reported in (2010) 9 SCC 496

(xxv) *Vijay Kumar Vs. Union of India and others* reported in (1988) 2 SCC 57

(xxvi) *Viji alias Vijayan alias Vijayakumar Vs. The Commissioner of Police, Greater Chennai and another* reported in (2003) M.L.J. (Cri.) 571

(xxvii) *A Judgment of this Court in H.C.P.No.29 of 1995 dated 18.04.1995 in the case of N.Selvaraj Vs. The District Magistrate and Collector of Nagai Quaid-e-Milleth District and another*

(xxviii) *A Judgment of the Allahabad High Court in Service Single*



No.18642 of 2018 dated 20.02.2019 in the case of *Rakesh Kumar Pandey Vs. State of U.P. Through Principal Secretary Department of Revenue Lko. and others.*

20. The learned counsel Mr.Alagumani has relied upon the following decisions :

(i) *Dharam Singh Rathi Vs. State of Punjab and others* reported in AIR 1958 SC 152

(ii) *Nader Chand Karar Vs. The State of West Bengal* reported in AIR 1972 SC 1871

(iii) *Bhut Nath Mate Vs. The State of West Bengal* reported in AIR 1974 SC 806

(iv) *Nand Laj Bajaj Vs. State of Punjab and another* reported in (1981) 4 SCC 327

(v) *A.K.Roy Vs. Union of India and others* reported in (1982) SCC (Cri) 152

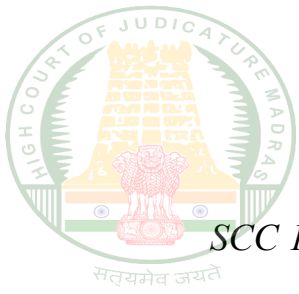
(vi) *Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and others* reported in (1983) 2 SCC 392

(vii) *State of Rajasthan and another Vs. Shamsher Singh* reported in 1985 SCC (Cri) 421

(viii) *T.O.M. Sariba Begum Vs. Government of Tamil Nadu* reported in 1986 Cri.L.J. 578

(ix) *Satar Habib Hamdani Vs. K.S.Dilipsinhji and others* reported in (1986) 1 SCC 544

(x) *Harbans Lal Vs. M.L.Wadhawan and others* reported in (1987) 1



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(xi) *S.Venkatraman Vs. Union of India and others reported in 1988 Cri.L.J.975*

(xii) *State of Punjab Vs. Sukhpal Singh reported in (1990) 1 SCC 35*

(xiii) *A Judgment of this Court in H.C.P.(MD).No.909 of 2008 in the case of Pathumuthu Vs. The State of Tamil Nadu and others*

(xiv) *Murugaswari Vs. State of Tamil Nadu and others reported in 2009 SCC Online Mad 830*

(xv) *A Judgment of this Court in H.C.P.(MD).No.444 of 2014 in the case of John Vs. The State represented by the Secretary to Government and others*

(xvi) *Bhaskar Vs. The Commissioner of Police, Chennai City Sub-Urban Area and another reported in 2012(1) MWN (Cr.) 143 (DB)*

(xvii) *A Judgment of this Court in H.C.P.(MD).No.1232 of 2020 in the case of Muneeshwaran @ Root Muneesh*

(xviii) *State of Maharashtra and others Vs. Zubair Haji Qasim reported in (2008) 12 SCC 792*

(xix) *Choith Nanikram Harchandani Vs. State of Maharashtra and others reported in (2015) 17 SCC 688*

(xx) *A Judgment of this Court in H.C.P.(MD).No.1682 of 2015 in the case of Dhayalu Vs. The Principal Secretary to Government and another.*

21. The learned counsel Mr.Pinaygash has relied upon the following decisions :



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(i) *Muthuramalinga Thevar Vs. The State of Madras represented by*

the Chief Secretary to Government of Madras and another reported in AIR

1958 MAD 425

(ii) *Bhut Nath Mete Vs. The State of West Bengal reported in (1974) 1*

SCC 645

(iii) *A.K.Roy Vs. Union of India and others reported in 1982 SCC*

(Cri) 152

(iv) *State of Rajasthan and another Vs. Shamsheer Singh reported in*

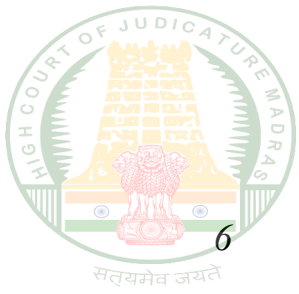
1985 SCC (Cri) 421

(v) *Bhaskar Vs. The Commissioner of Police, Chennai City Sub-*

Urban Area and another reported in 2012(1) MWN (Cr.) 143 (DB)

22. The learned counsel Mr.K.Prabhakar has submitted the following:

S.No	Date	Case/material
1	10.04.2023	<i>Pramod Singla Vs. Union of India 2023 SCC Online SC 374</i>
2	29.08.1949	<i>Constituent Assembly Draft Making Debates Volume-IX Page Nos.727 to 730</i>
3	03.09.1949	<i>Constituent Assembly Draft Making Debates Volume-IX Page Nos.926 to 931</i>
4	15.09.1949 16.09.1949	<i>& Constituent Assembly Draft Making Debates Volume-IX Page Nos.1561</i>
5	25.02.1950	<i>Parliamentary Debates of Lok Sabha on Preventive Detention Bill 1950 Page 874</i>



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| 6 | 04.08.1952 | <i>Parliamentary Debates on the Preventive Detention (Second Amendment) Bill, 1952; Page No.5382</i> |
| 7 | 08.08.1952 | <i>Debates on the Preventive Detention (Second Amendment) Bill, before the Rajya Sabha</i> |
| 8 | 10.02.1982 | <i>Tamilnadu Legislative Assembly, Seventh Legislative Assembly, in the First meeting of the Fourth Session on 10.02.1982 Resume of Business</i> |
| 9 | 17.09.1957 | <i>Puranlal Lakhanpal Vs. Union of India (UOI) AIR 1958 SC 163</i> |
| 10 | 27.10.1988 | <i>State of Andhra Pradesh and another Vs. Balajangam Subbarajamma reported in 1989 AIR 389, (1989) 1 SCC 193</i> |
| 11 | 06.10.1989 | <i>State of Punjab Vs. Sukhpal Singh reported in 1990 AIR 231</i> |
| 12 | 07.04.1986 | <i>Suman and Etc. Vs. State of Tamil Nadu and another etc., reported in AIR 1986 Mad 318</i> |
| 13 | 11.07.2008 | <i>State of Maharastra Vs. Zubair Haji Qasim reported in (2008) 12 SCC 792</i> |
| 14 | 21.08.1974 | <i>Haradhan Saha and another Vs. The State of West Bengal and others reported in 1974 AIR 2154, (1975) 3 SCC 198</i> |
| 15 | 01.05.1985 | <i>State of Rajasthan and another Vs. Shamsher Singh reported in 1985 AIR 1082</i> |
| 16 | 15.09.1981 | <i>Nand Lal Bajaj Vs. The State of Pubjab and another reported in 1981 AIR 2041</i> |
| 17 | 12.12.2000 | <i>R.Keshava Vs. M.B.Prakash and others reported in AIR 2001 SC 301, 2001 (2) SCC 145</i> |
| 18 | 27.10.1972 | <i>Akshoy Konai Vs. State of West Bengal reported in AIR 1973 SC 300, (1973) 1 SCC 297</i> |
| 19 | 21.08.2019 | <i>Union of India Vs. Nisar Pallathukadavil Aliyar reported in (2020) 20 SCC 252</i> |



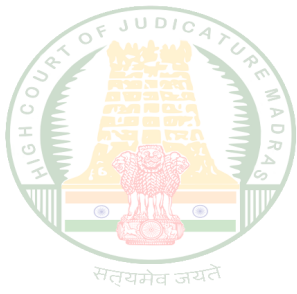
WEB COPY 23. The learned Amicus Curiae Mr.Prabhakar in his written submission elaborated the history of the Preventive Detention Act by culling out extract of constitutional debate from 1949 and also Preventive Detention Act Bill, 1950 and Tamil Nadu Preventive Detention Act Bill and finally upon relying the above material, he categorized the argument in the following headings:

(i) Tracing of history

(ii) Purpose of Advisory Board

(iii) Procedure of Advisory Board comprising the power vested with the Advisory Board to frame the procedures, right of detenu to appear before the Advisory Board, material to be placed before the Board, cross-examination of the witnesses, procedure before the Advisory Board with satisfaction of fairness, number of the Advisory Boards, time schedule for the Advisory Board, assistance of the legal practitioner, report and opinion of the Board and the opinion must be fair and by an impartial conclusion, confidentiality of report and judicial review of the Board opinion. He finally, submitted the following conclusive submission :

"(a) The Advisory Board opinion is never intended to open to



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challenge on the merits, but the proceedings before the Advisory Boards must be fair, just and reasonable which shall satisfy the Principles of Natural Justice.

(b) Board has to consider all the materials in all fairness and shall forward the entire records at the least the relevant records with the report containing opinion, otherwise the forwarding of the report will become meaningless as it will not be helpful for the government while acting under Section 12 of the Tamil Nadu Act No.14 of 1982.

(c) The report of the Advisory Board sent to the State Government under Section 11(a) of the Act shall at the least contain the happenings of the hearings in nutshell and also the materials on which the observations made thereon.

(d) Procedural propriety of the Advisory Board are subject to judicial review, as in most of the cited case, records were called for and scrutinized by the Hon'ble Apex Court and various High Courts.

24. In the Judgment of the Constitutional Bench of the Hon'ble Supreme Court in **K.M. Abdulla Kunhi & B.L. Abdul Khader v. Union Of India & Ors.**, reported in (1991) 1 SCC 476, it has been held that “*The consideration by the Board is additional safeguard*”.



25. In **Bhut Nath Mete v. State of W.B.**, reported in (1974) 1 SCC

645: 1974 SCC (Cri) 300, it has been held as follows :

" 23. *We are not persuaded that a speaking order should be passed by the Government or by the Advisory Board while approving or advising continuance of detention although a brief expression of the principal reasons is desirable. The communication of grounds, the right to make representation and the consideration thereof by the Advisory Body made up of men with judicial experience, the subject-matter being the deprivation of freedom, clearly implies a quasi-judicial approach. Indeed, where citizen's rights are affected by an authority, the question is not so much the mould into which the nature of the act should be fitted but the nature of the consequence which obligates impartiality, judicial evaluation and reasoned conclusion on facts, as distinguished from policy formulation and zealous implementation regardless of two sides and weighing of evidence. The bare bones of natural justice in this context need not be clothed with the ample flesh of detailed hearing and elaborate reasoning. It must be self-evident from the order that the substance of the charge and the essential answers in the representation have been impartially considered. We do not think that a*



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speaking order like a regular judicial performance is either necessary or feasible. Article 22(5) also does not compel us to reach a different conclusion. After all, we must remember that a harmonious reconciliation between the claims of security of the nation and the liberty of the citizen through the process of effective representation before deprivation and fair consideration by the Executive and the Advisory Board are the necessary components of natural justice. Not more....

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26. ... Executive care and Advisory Board's vigilance are the hopeful sentinels checking on the misapplication of the MISA, unwittingly to rob the people of the Republic of civil liberties."

26. In Ram Bali Rajbhar v. State of W.B., reported in (1975) 4 SCC

47 : 1975 SCC (Cri) 321, it has been held as follows :

" 16. We, however, must observe here that some of the facts noticed above are enough to put the detaining authorities and the Advisory Board on their guard so that they should also examine the possibility of having been misled by mechanically



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reproduced assertions made by subordinate police officers acting at the instance of persons with questionable motives. The detaining authorities and the Advisory Board are the best judges of that. They are armed with ample power and means to lift the cast iron curtain of impeccable form behind which this Court does not, in the absence of good and substantial reasons, try to peep in an attempt to discover mala fides or misuse of drastic powers meant to be used honestly, carefully, reasonably and fairly. This Court presumes that they are being so used unless and until the contrary is palpable; but, no such presumption need hamper the efforts which the detaining authorities and the Advisory Boards ought to make to discover the real or the whole and unvarnished truth before determining the need for a preventive detention."

27. In State of Punjab v. Sukhpal Singh reported in (1990) 1 SCC

35, the Hon'ble Supreme Court has held as follows :

" 22. Admittedly, the detenu was arrested on May 28, 1988. The total period of Advisory Board's report under Section 14-A(2)(d)(i) was five months and three weeks. Reference to Advisory

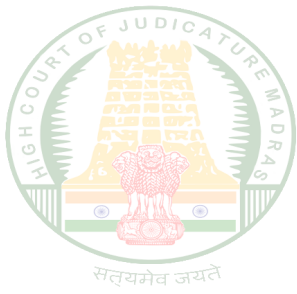


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Board was made on August 26, 1988. So the period would expire on or about November 19, 1988. The Board fixed November 12, 1988 for its sitting. The detenu prayed for adjournment as because of frozen joint he was unable to perform ablution and tie his turban. Whether that was a lame excuse or not need not be decided. The fact remained that he was told of another sitting of the Board. Having a week in hand it would perhaps have been possible to hold another sitting of the Board and give the detenu an opportunity which however, did not come. Of course the decision was that of the Advisory Board and not of the State Government. The High Court rightly observed that there was a communication gap. It is true that the Advisory Board is not a judicial body. It is charged with the responsibility of advising the executive government. But when it advises in favour of the detenu, namely, that there was no sufficient cause for detention, it would be binding upon the government under Section 12(2) of the Act to release the detenu forthwith. The detenu in this case did not have that opportunity to show that there was no sufficient cause for his detention. Expressing inability to appear once



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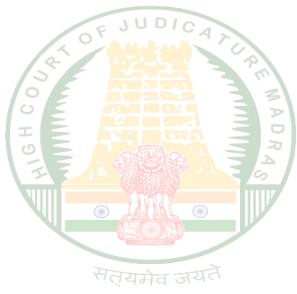
could not have been treated as the detenu's not desiring to be heard under Section 11(2) of the Act. In fact he desired to be heard and to produce his witnesses. The result was that despite the State Government's communication he was deprived of this opportunity. What then would be the result?"

(Emphasis supplied)

28. In **Puranlal Lakhanpal v. Union of India** reported in **1958 SCR**

460 : AIR 1958 SC 163 : 1958 Cri LJ 283, it has been held as follows :

" 10. ...The Advisory Board is to report whether there is sufficient cause for such detention. If the Advisory Board reports that the detention is justified, then only the detaining authority determines the period of detention. On the other hand, if the Advisory Board reports that the detention is not justified, the detained person must be released. Clause (4) of Article 22 does not state that the Advisory Board has to determine whether the person detained should be detained for more than three months. What it has to determine is whether the detention is at all justified. The setting up of an Advisory Board to determine whether such detention is justified is considered as a sufficient safeguard against arbitrary



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detention under any law of preventive detention which authorises detention for more than three months. The matter before the Advisory Board is the subject of detention of the person concerned and not for how long he should be detained. Clause (7) of Article 22 is an exception to clause (4) of that Article. It authorises Parliament alone to pass a law of preventive detention authorising detention of a person for more than three months without obtaining the opinion of an Advisory Board so long as the circumstances under which and the class or classes of cases in which a person may be detained for a longer period than for three months are set out in the enacted law. The Constitution evidently does not contemplate detention of the person for a period of three months or less as sufficiently serious to have the safeguard of a report by an Advisory Board to the effect that there is sufficient cause for detention. Under the Constitution an Advisory Board is to be set up for all cases of detention under a law authorising detention for more than three months. When the case of a detained person is placed before the Advisory Board under such law it must be assumed that the Advisory Board knows that if



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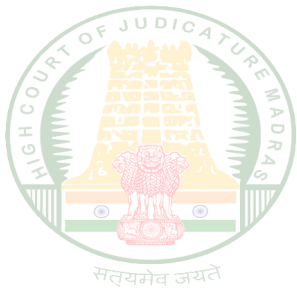


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it reports that the detention is justified, the detenu may be detained for more than three months and upto the maximum period provided by the law. The expression "such detention" in Article 22(4) (a) refers to preventive detention and not to how long the person is to be detained."

29. In **Nand Lal Bajaj Vs. State of Punjab and another** reported in **1981 (4) SCC 327**, the Hon'ble Supreme Court has held as follows :

" 6. ...The functions of the Advisory Board are purely consultative. It is an independent body constituted under Section 9 of the Act consisting of a sitting judge as the Chairman and not less than two other members, who may be sitting or retired judges of the High Court. It is expected that the Advisory Board would act in a fair and impartial manner in making a report whether or not there is, in its opinion, sufficient cause for the detention of a person. In coming to that conclusion, the Board has to make an objective determination on the question as to whether there was sufficient material on which the subjective satisfaction of the detaining authority could be based. Under sub-section (1) of Section 11 of the Act, the Board



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is not only entitled to look into the record and see whether there was any material on which the order of detention could be passed under Section 3 of the Act, but may also call for such further information as it may deem necessary from the appropriate Government or from the person concerned and if, in any particular case, it considers essential to do so or if the person concerned desires to be heard, shall hear him in person. The Board is entitled to devise its own procedure."

30. In a Judgment of this Court in H.C.P.(MD).No.444 of 2014 dated 18.08.2014, it has been held as follows :

"19.Here is a case, where the detenu had no sufficient time to even inform his friend or relative. The issue before us is not whether the Advisory Board had denied him the opportunity, violating the principles of natural justice. But whether the competent authority did provide sufficient opportunity and reasonable time to seek for the assistance of his friend or relative or not.

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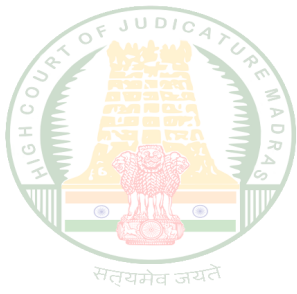
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22. Thus from the above judgment, it could be seen that if there was a case of belated intimation and thus the detenu was not given adequate time, then it could have been a ground to canvass on the denial of reasonable opportunity. Yet another fact considered by the Apex Court was that the detenu did not orally represent before the detaining authority that he wanted the services of a friend and that he had been shown the radiogram belatedly.

23. Let us now consider the decision made in *Dharman v. The State of Tamil Nadu* reported in 2002 (1) CTC 477. It is a short judgment and therefore, the same is extracted hereunder:

“1. The point that is taken in this HCP is that the detenu was informed only on 27.08.2001 at 4.40 P.M., about the meeting of the Advisory Board on 29.08.2001 and by reason of which the detenu has lost his opportunity to make an effective representation before the Advisory Board. We find considerable force in the submission made by the learned counsel for the petitioner. We heard the learned Additional Public Prosecutor as well and we do not accept the submission that the detenu had sufficient time to make a proper and effective representation.

2. In this view of the matter, the HCP is allowed. The order of detention, dated



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30.07.2001, passed by the 2nd respondent is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in some other case.”

24.In an unreported decision made in HCP.No.996 of 2011, dated 12.01.2012, dated 12.01.2012 [K.Mayilammal v. The State of Tamil Nadu], one of the grounds for issuance of writ of Habeas Corpus was that sufficient time was not given to the detenu, to prepare an effective representation to be submitted before the Advisory Board. Following Dharman's case (cited supra), at Paragraph 8, held as follows:

“The third ground is that the State Advisory Board meeting was fixed on 03.10.2011 at 12.00 Noon and the intimation regarding the same was given to the detenu only on 30.09.2011, giving only two days time in between and therefore, the detenu was not given sufficient time to prepare effective representation to be submitted before the State Advisory Board. In the decision of this Court reported in 2002 (1) CTC 477 (Dharman v. State of Tamil Nadu) giving only two days time to make effective representation was found as insufficient time to make proper and effective representation and on that ground, the habeas corpus petition was allowed. Thus, the said ground is also held in



favour of the detenu.”

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26.The contention that 09.05.2014 was a Friday and the ensuing dates, i.e., 10.05.2014 and 11.05.2014 were Saturday and Sunday, is not disputed. In between 09.05.2014 and 12.05.2014, there were three days. The further contention that persons detained under the Preventive Laws, are not permitted to have visitors on Saturdays and Sundays, though not specifically proved by any documents, but the same has not been disputed by the respondent, by placing any material document. From the above, it could be seen that there are telephone facilities to contact a friend/relative/advocate, subject to certain conditions. As per the instructions, at the most, a prisoner, in a month, can converse with his friend/relative/advocate, for not more than 30 minutes. The conversation should not exceed 10 minutes. In between each call, there should not be a gap of 10 days. The maximum permitted calls are 3. Therefore, even taking it for granted that the prisoners are given telephone facilities to talk to their friends/relatives/advocates, in view of the restrictions stated, and considering the voluminous pages in the booklet and grounds of detention, there will not be sufficient time to discuss with any friend or relative, about the details of the order, and



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get his assistance. At best, he can only intimate. But he may or may not have adequate time to discuss. Therefore, in order to brief his friend/relative, the detenu must have sufficient time.

27.Relevancy of the materials considered by the Detaining Authority or the legal aspects, which required to be placed before the Advisory Board, comprising of a Retired High Court Judge and two other Hon'ble members, in all probabilities, may not be expected to be known to the detenu. If adequate and reasonable time is given to the detenu, to have a discussion with his friend or relative, who is permitted to be present, before the detaining authority, then, it can be said that the detenu has been given sufficient time or reasonable opportunity to put forth his case before the Advisory Board. A right conferred on the detenu should not be mere reproduction of words, which is always made in every detention order. But it should enable the detenu to have any discussion with his friend or relative, on the entire materials considered against him, by the Detaining Authority and for that purpose, the detenu should have sufficient time.

28.As per Section 10 of the Act, the State Government shall within three weeks from the date of detention of a person, place before the Advisory Board, the grounds of detention the order has been passed and the representation, if any, made by the detenu. Though in the detention order, it is stated that the detenu has a right to make a representation to the Government,



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as well as to the Advisory Board, nowhere, it is stated that the Advisory Board would consider his case within three weeks from the date of detention order, so that he can make his arrangement within such time. In such circumstances, he may not know, as to when, his case would be placed before the Advisory Board. His friend or relative may not be available at all times. Therefore, between the date of such intimation, and the date scheduled by the Advisory Board, there should be a reasonable time, so as to enable him, to contact his friend or relative. The assistance should be of some use to the detenu, at the time of personal hearing by the Advisory Board and not mere presence. Grounds of detention merely reads that he can make a representation to the Advisory Board and if he is desirous of availing the assistance of a friend or relative, he can do so, and that he must make his own arrangements. A contention can also be raised that even if the detenu is not in a position to make any effective representation, in person, to the Advisory Board, still the Board comprising of a Retired High Court Judge and others would on their own, would consider the merits of each case, from their opinion as to whether there is sufficient cause for the detention certainly concerned. The Advisory Board would consider the representation, if any, made along with the oral submission of the detenu. But when an opportunity of being heard, is statutorily provided, exercise of that right should be meaningful.



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32. Assistance meant to be provided to the detenu is not merely to be present, at the Advisory Board. It is to assist or help a person, who is in need. Friend or relative of the detenu is not only to make his physical presence, before the proceedings before the Advisory Board, where an opportunity of being heard, is provided, but to assist him, and it is not a mere ceremony or ritual. Assistance means an act to assist or help the one, who is desirous of taking assistance. When the detenu is statutorily deprived of assistance of an advocate before the Advisory Board, then, he must atleast be provided with a reasonable or sufficient time to brief his friend or relative to get his help. At this juncture, it is also to be noted that the booklet contains many pages. Invariably, in all cases, when the materials are furnished to the detenu, the contents thereof are read over and explained to the detenu. Not in all cases, the detenus can read and understand, and therefore, the exercise of reading and explaining of all the materials the contents is warranted. In such circumstances, unless sufficient time is given to the detenu, he cannot even discuss with his friend or relative, about the materials or even, such friend or relative may not have time to go through.

33. The word “sufficient” means adequate, enough, as



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much as may be necessary to answer the purposes intended. It embraces no more than that which provides a plenitude which, when done, suffice to accomplish the purpose intended in the light of the existing circumstances and when viewed from reasonable standard of practical and reasonable man. Sufficient time should receive liberal construction, so as to advance substantial justice.

34.As stated supra, reasonable opportunity of being heard has two elements. Firstly, an opportunity of being heard must be given and secondly, that opportunity should be reasonable. Reasonable time depends upon the circumstance of each case. Whether the detenu had a reasonable time to contact friend or relative, from the date of intimation, as to when the Advisory Board would consider his case, court has to examine the same, with reference to time permitted during the visitation days, in prisons, so as to enable the detenu to have atleast a brief discussion on the entire materials, furnished, and whether, within the length of time, permitted to visit, he could discuss the matter with his friend or relative, with the materials considered by the Detaining Authority and extend his assistance, before the Advisory Board.

35.In that context, a reasonable time should be so much time, as is necessary, under the circumstances, with reference to the various factors, stated supra. It should be such time, as permissible and not unreasonable, with reference to the



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Constitutional right of the detenu to place all the materials before the Advisory Board, with the assistance of his friend or relative. Therefore, we are of the humble view that between the date of intimation to the detenu and the proposed Advisory Board meeting, there should be sufficient time. Merely because in the grounds of detention, the detenu had been already informed of his right to take the assistance of a friend or relative, that does not mean that by stroke of intimation, he must be ready with his friend or relative, on any date.

...

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37.(1) The detenu should be informed, well in advance, of his right to have the assistance of his friend or relative, at the time, when his case is being considered by the Advisory Board.

(2) Adequate time should be given to the detenu to contact his friend or relative to discuss the matter with him.

(3) Make his own arrangements for appearance, before the Advisory Board.

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44. Instead of finding fault with the detenu, who had not represented before the Advisory Board that he was not given



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adequate time, considering the right conferred on him, we are of the humble view, it is for the competent authorities, to give sufficient time, between the date of intimation and the date scheduled for the meeting of the Advisory Board, so as to enable him to either discuss the matter with anyone through the Superintendent of Prisons. The detenu has to inform his friend or relative, the nature of accusation made against him, discuss with him, for which, adequate time has to be given. Opportunity given should be real and not ritualistic. It should be effective and not illusory. A mere ritual would be an empty formality and not an opportunity. It would be a pretence or make belief. Opportunity given also includes reasonable notice of hearing, to avail the assistance of a friend or relative.

45.No doubt, the Advisory Board presided over by a Retired High Court Judge and other Hon'ble members, is obligated to consider the materials on record and from its opinion as to whether there is sufficient cause for detention, and to consider the representation, but that alone cannot be equated to personal hearing. In a given case, a representation would have been sent immediately, after the service of grounds of detention and other materials on the detenu, but lateron, if he is given sufficient notice of hearing, then probably, he may discuss the matter with his friend or relative, understand the entire contents and able to make out a case, during the personal hearing.



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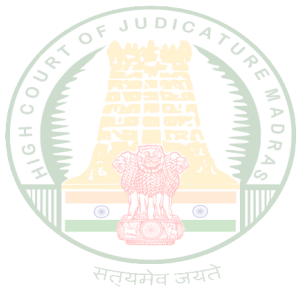


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46.Reverting back to the case on hand, though the Advisory Board had fixed the personal hearing on 12.05.2014 at 12.00 Noon, the detenu had been intimated only on 09.05.2014 at 13.50 Hours, by the Additional Superintendent of Police, Central Prison, Madurai. As 09.05.2014 was a Friday and the ensuing days, 10.05.2014 and 11.05.2014 were Saturday and Sunday, we are of the view that the detenu was not given sufficient time to contact any of his friends or relatives to assist him, to putforth his case, before the Advisory Board."

31. In **Mohd. Shakeel Wahid Ahmed v. State of Maharashtra** reported in **(1983) 2 SCC 392 : 1983 SCC (Cri) 509**, the Hon'ble Supreme Court has held as follows :

"7. It is urged by Shri Jethmalani that one of the grounds on which Shamsi was detained being the same as ground 1 in this case, the fact that the Advisory Board had reported that there was no sufficient cause for Shamsi's detention ought to have been placed before the detaining authority which passed the order of detention against the petitioner. According to the learned counsel, the failure of the State Government to place a highly

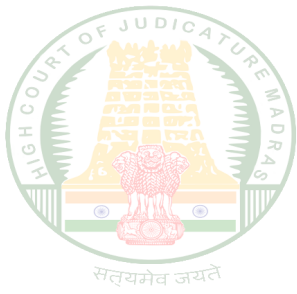


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relevant and important piece of material before the detaining authority vitiates the order of detention. If the detaining authority in the instant case were apprised that the Advisory Board had reported on examining, inter alia, an identical ground that there was no sufficient cause for detention of another person involved in the same transaction, it may not have passed the order of detention against the petitioner, which is based on similar facts. This submission is well-founded and must be accepted. It is clear that Shamsi was detained for engaging in a smuggling activity arising out of the same incident and transaction which forms the subject-matter of ground 1 in the instant case. The opinion of the Advisory Board that there was no sufficient cause for Shamsi's detention may not have been binding on the detaining authority which ordered the detention of the petitioner but, it cannot be gainsaid that the fact that the Advisory Board had recorded such an opinion on identical facts involving a common ground was at least a relevant circumstance which ought to have been placed before the detaining authority in this case. Since three out of the four grounds on which the petitioner was



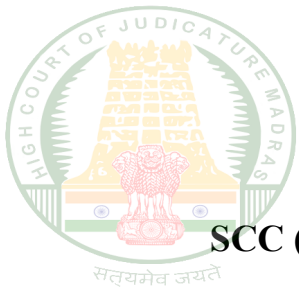
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detained have been held to be bad by the High Court, we have to proceed on the basis that the petitioner was detained and could validly be detained on the remaining ground only. That ground is similar to one of the grounds on which Shamsi was detained, the transaction being one and the same, as also the incident on which the two orders of detention are based. That is why the opinion of the Advisory Board in Shamsi's case becomes relevant in the petitioner's case. The failure of the State Government to place before the detaining authority in the instant case, the opinion which the Advisory Board had recorded in favour of a detenu who was detained partly on a ground relating to the same incident deprived the detaining authority of an opportunity to apply its mind to a piece of evidence which was relevant, if not binding. In other words, the detaining authority did not, because it could not, apply its mind to a circumstance which, reasonably, could have affected its decision whether or not to pass an order of detention against the petitioner."

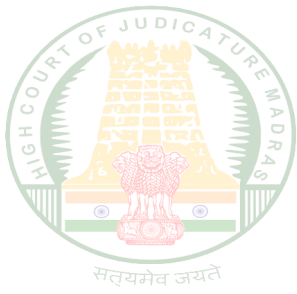
32. In *Safiya v. Govt. of Kerala*, reported in (2003) 7 SCC 46 : 2004



SCC (Cri) 920 : 2003 SCC Online SC 759, it has been held thus :

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" 10. In regard to Contention 1, the answering respondent submitted that the case against the detenu was not built upon the statement of Mohammed Mustaffa alone. The records clearly show that Mohammed Mustaffa was dealing in gold biscuits and distributing tube money as instructed by Kunjumon and that the business between Kunjumon and the detenu was not done through Mohammed Mustaffa. In our opinion, the revocation of the detention order issued against Mohammed Mustaffa has no relevance as far as the detenu T.P. Moideen Koya is concerned. The detenu was personally heard by the Advisory Board. After hearing the detenu and perusing the records, the Advisory Board opined that there were sufficient grounds for the detention of the detenu. Under the circumstances, we are of the opinion that the non-placing of the order revoking the detention order of Mohammed Mustaffa before the Advisory Board does not vitiate the detention order issued against the detenu. The detention order was issued after perusing the relevant and material documents and after arriving at the subjective satisfaction of the



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authorities. We are, therefore, of the view that the High Court has rejected the said contention, rightly so, in our opinion."

33. In **Union of India v. Nisar Pallathukadavil Aliyar**, reported in **(2020) 20 SCC 252**, it has been held by the Hon'ble Supreme Court thus:

14. In Akshoy Konai [Akshoy Konai v. State of W.B., (1973) 1 SCC 297 : 1973 SCC (Cri) 317] the submission raised on behalf of the detenu was that the decision of the Advisory Board was never communicated to him. The further submission was that the opinion of the Advisory Board should have been communicated to the detenu so as to enable him to question the legality of the said opinion. These submissions were rejected by a Bench of three Judges of this Court as under : (SCC pp. 299-300, paras 4-5)

"4. The first objection against the petitioner's detention raised by Shri B. Dutta, the learned counsel appearing as Amicus Curiae in support of the writ petition, is that though the petitioner had been heard in person by the Advisory Board the decision of the Board was never communicated to him. This omission, according to the counsel, invalidates the petitioner's detention as he was not able to take any step to have this opinion



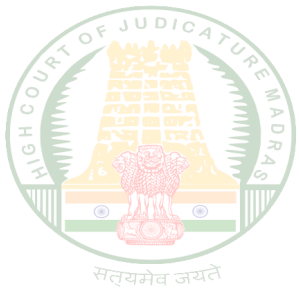
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scrutinised by any judicial tribunal. This submission is, in our opinion, difficult to accept. Under Section 11 of the Act the Advisory Board is required only to submit its report to the appropriate Government. There is no obligation imposed by the Act on the Board to communicate its decision to the detenu. The mere fact that under Section 11 the Board hears the person affected by the detention order in case he desires to be so heard, would not for that reason alone impose on the Board a legal obligation to communicate its decision to the detenu. Our attention has not been drawn to any provision of law or to any principle which would imply any such obligation. In any event omission on the part of the Advisory Board to do so cannot invalidate the petitioner's detention. ...

5. The submission that the Advisory Board should have communicated its opinion to the petitioner so as to enable him to question its legality is also misconceived. In the first instance the Advisory Board constituted under Section 9 of the Act, as its name connotes, is only required to function in an advisory capacity. Its opinion which is merely an advice is binding on the appropriate

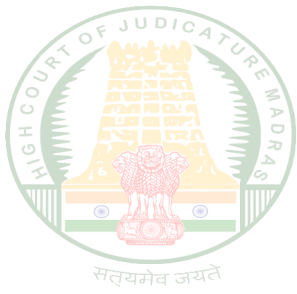


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Government only if according to it there is no sufficient cause for the detention in question : in that eventuality the detenu cannot possibly have any grievance. When the Board reports that there is sufficient cause for the detention in question the appropriate Government is not bound under the law to confirm the order of detention. It may or may not do so. The advisory opinion of the Board is merely intended to assist the appropriate Government in determining the question of confirming the detention order and continuing the detention. It is binding on the appropriate Government only when it favours the detenu and not when it goes against him. Such advisory opinion can scarcely be an appropriate subject-matter of review or scrutiny by the judicial courts or tribunals. Secondly the proceedings of the Board and its report are expressly declared by Section 11(4) of the Act to be confidential except that part of the report in which its opinion is specified. This provision clearly indicates that the advisory opinion is never intended to be open to challenge on the merits before any tribunal. So far as the final opinion of the Board is concerned the communication of the confirmation of the



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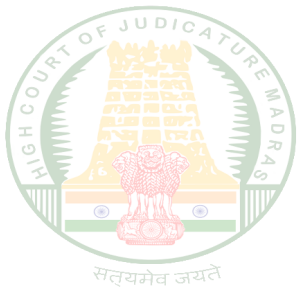
detention order by the State Government clearly informed the petitioner that the opinion of the Board was against him.”

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17. According to the aforesaid decisions the nature of opinion given by the Advisory Board is neither judicial nor quasi-judicial; that it would be erroneous and unsafe to treat the opinion expressed by the Advisory Board as amounting to a judgment of a criminal court; that the Advisory Board does not try the question about the propriety or validity of the citizen's detention as a court of law would, but, its function is limited. As stated in Akshoy Konai [Akshoy Konai v. State of W.B., (1973) 1 SCC 297 : 1973 SCC (Cri) 317] , the opinion is merely intended to assist the Government and it is binding on the appropriate Government only if it favours the detenu and not when it goes against him. It was laid down in the said decision that the opinion of the Advisory Board cannot be subject-matter of review or scrutiny by the judicial courts/tribunals. The element of confidentiality was also taken note of and it was observed that the Advisory Board opinion is never intended to be open to challenge on the merits before any tribunal.



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21. *But the basic issue in the present matter is the nature of power exercised by the Advisory Board when an opinion is given by it pursuant to a reference made to it under Section 8(b) of the COFEPOSA Act. The report of the Advisory Board, excepting its opinion, is strictly confidential and the nature of the power so exercised by the Advisory Board in giving its report and the opinion, has already been pronounced upon by this Court in the cases referred to above viz. Dharam Singh Rathi [Dharam Singh Rathi v. State of Punjab, AIR 1958 SC 152 : 1958 SCR 998 : 1958 Cri LJ 282], Akshoy Konai [Akshoy Konai v. State of W.B., (1973) 1 SCC 297 : 1973 SCC (Cri) 317], A.K. Roy [A.K. Roy v. Union of India, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Calcutta Dock Labour Board [Calcutta Dock Labour Board v. Jaffar Imam, (1965) 3 SCR 453 : AIR 1966 SC 282 : 1966 Cri LJ 189]. We follow these decisions and hold the present petition seeking to challenge the opinion dated 22-7-2019 of the Advisory Board as not maintainable.*

34. In **Akshoy Konai v. State of W.B.**, reported in **(1973) 1 SCC 297 : 1973 SCC (Cri) 317**, the Hon'ble Supreme Court has held as follows :

" 5. ... *The advisory opinion of the Board is*



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merely intended to assist the appropriate Government in determining the question of confirming the detention order and continuing the detention. It is binding on the appropriate Government only when it favours the detenu and not when it goes against him. Such advisory opinion can scarcely be an appropriate subject-matter of review or scrutiny by the judicial courts or tribunals. Secondly the proceedings of the Board and its report are expressly declared by Section 11 (4) of the Act to be confidential except that part of the report in which its opinion is specified. This provision clearly indicates that the advisory opinion is never intended to be open to challenge on the merits before any tribunal. So far as the final opinion of the Board is concerned the communication of the confirmation of the detention order by the State Government clearly informed the petitioner that the opinion of the Board was against him."

35. The Report of independent Researcher Mrs.Akila, Advocate :

An independent report had been uploaded in the website from where we have taken a report filed by the independent Research Scholar,

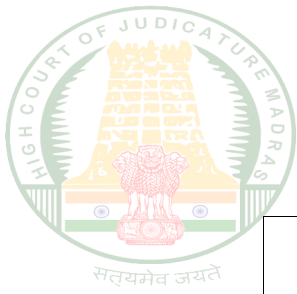


one Mrs.Akila, Advocate about the details of the Advisory Board from 2006 till 2019 in the State of Tamil Nadu constituted under Act 14 of 1982 and certain views expressed on the basis of the law laid down by the Hon'ble Supreme Court in A.K.Roy v. Union of India are usefully referred to hereunder :

“VI. Advisory Board

Tamil Nadu has a single Advisory Board consisting of three members for preventive detentions under the National Security Act and the TN Goondas Act. The State has a separate advisory board under COFEPOSA comprising of sitting judges of the High Court.

The Advisory Board under TN Goondas Act comprises of retired judges of the High Court. Though the Act states that any person qualified to be a judge of the High Court may be appointed as a member, as per data received from queries made under the Right to Information Act, only former judges of the High Court have been appointed as members. There is no fixed tenure of the Advisory Board and it has been reconstituted periodically. It is notable that only a handful of retired judges have been appointed and re-appointed as members of the Advisory Board since 2006.



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GO Number constituting the Advisory Board	Date	Names of members and Chairperson of the Advisory Board
G.O.Ms.No.7	16.01.2006	Mr.Justice S.S.Subramani (Chairman) Mr.Justice Malai Subramanian Mr.Justice S.Thangaraj
G.O.Ms.No.48	27.07.2006	Mr.Justice.K.M.Natarajan (Chairman) Mr.Justice S.M.Sidickk Mr.Justice M.Maruthamuthu
G.O.Ms.No.25	26.04.2011	Mr.Justice K.M.Natarajan (Chairman) Mr.Justice S.M.Sidickk Mr.Justice P.Shanmugam
G.O.Ms.No.41	28.07.2011	Mr.Justice A.Raman (Chairman) Mr.Justice T.V.Masilamani Mr.Justice R.Regupathi
G.O.Ms.No.33	17.09.2019	Mr.Justice Malai Subramanian (Chairman) Mr.Justice T.V.Masilamani Mr.Justice R.Regupathi

Through RTI queries, it was found that the Advisory Board considered 2662 cases in the year 2019, 2809 cases in 2020 and 2405 cases in 2021 (as on 27.10.2021) of detentions under the TN Goondas Act. Budgetary allocation for the year 2020-21 for the Advisory Board is Rs.36,78,000. The members of the Advisory Board do not hold full-time positions and may hold additional responsibilities/office of profit. Each member is paid Rs.9,000/- per sitting. The Advisory Board held 156 meetings in the years of 2018, 2019 and 2020. In the year 2021, 117 meetings were held upto



September 2021.

In A.K.Roy v. Union of India, the Supreme Court held that though there is no fundamental right to consult a legal practitioner in preventive detention by virtue of Article 22, it is "necessary for the procedure prescribed by law for the proceedings before the Advisory Board must be fair, just and reasonable." In State of A.P. v. Balajangam Subbarajamma", the Supreme Court held that there should be an equal treatment by the Advisory Board in considering rival representations of the detenu and the State. Where high-ranking officials represented the State, an opportunity should have been provided for the detenu to be represented "though not by a lawyer at least by someone equally competent like those who appeared for the State". It further observed that "it is the duty of the Advisory Board to see that the case of detenu is not adversely affected by the procedure it adopts. It must be ensured that the detenu is not handicapped by the unequal representation or refusal of access to a friend to represent his case."

The Advisory Board under the TN Goondas Act has not formulated any standard procedural rules which is made available to the public or to the detenus. No review of the functioning of the Advisory Board has been carried out by the State."

36. What is the procedure in general to be adopted by the Advisory Board constituted under the Act 14 of 1982 has been specified under



Section 11 of the Act which reads thus :

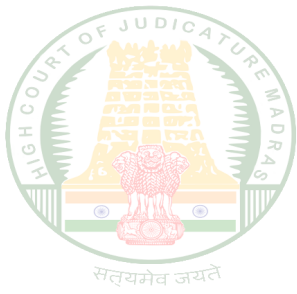
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" 11. Procedure of Advisory Boards - (1) The Advisory Board shall, after considering the materials placed before it and after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of the report, excepting



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that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with reference to the Advisory Board."

37. If we compare with various preventive detention laws, the safety mechanism that has been underlined by makers of the Constitution under Article 22(3) to 22(7) of the Constitution having been taken into account by various legislatures including Parliament and those preventive detention laws were enacted.

38. What are all the provisions, especially the procedure to be adopted by the Advisory Board available in Act 14 of 1982 parimateria is available in all preventive detention laws like The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and The National Security Act, 1980.

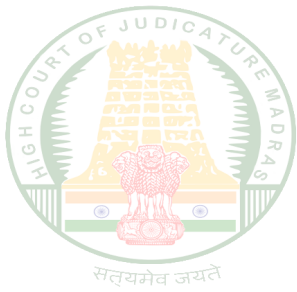


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39. Insofar as Act 14 of 1982 is concerned, the State Government for

the past several years have constituted only a single Advisory Board to whom, all such preventive detention cases under Act 14 of 1982 are referred. The statistics for the past five years starting from 2018 to 2022 have already been filed before this Court by the State Government in their reply to our query which we have extracted herein.

40. If we compare with the statistics, the number of cases under Act 14 is getting steadily increased from year to year. For instance in 2018, the total number of cases were 2969, whereas in 2022, it is 4315. The Government revoked only very few cases, all remaining cases were referred to the Advisory Board. As per the statistics for the said five years period, total number of cases were 16331, Government revoked 146 cases and Government not approved 14 cases, therefore, the remaining 16171 cases were referred to the Advisory Board. Out of 16171 cases, the Advisory Board has confirmed the detention order insofar as 12316 cases, remaining 3855 cases were revoked by the Government as per the advice of the Advisory Board.



41. Constitution of Sufficient number of Board.

Section 9 of the T.N. Prevention of... Video Pirates Act, 1982

reads as follows:

“9. Constitution of Advisory Boards.- (1) the State Governments shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of a Chairman and two other members, who are, or have been Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.”

42. So far as the details of cases dealt by Advisory Board is concerned, the Advisory Board periodically held 13 meetings per month. As per the report furnished by the Advisory Board through the Secretary to Government, except August 2022, in all the months they held 13 meetings.

Year	Total Number of Detention Orders received by the Government	Number of cases revoked by the High Court vide HCP before Advisory Board Hearing	Number of cases not approved by Government	Number of cases sent to the Advisory Board	Number of cases confirmed by the Advisory Board	Number of cases Revoked by the Advisory Board
2018	2969	140	2	2827	2207	620
2019	2884	1	1	2882	2232	650



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Year	Total Number of Detention Orders received by the Government	Number of cases revoked by the High Court vide HCP before Advisory Board Hearing	Number of cases not approved by Government	Number of cases sent to the Advisory Board	Number of cases confirmed by the Advisory Board	Number of cases Revoked by the Advisory Board
2020	2871	1	-	2870	2235	635
2021	3292	1	8	3283	2553	730
2022	4315	3	3	4309	3089	1220
Total	16331	146	14	16171	12316	3855

43. From the above data, we can find that in the year 2022, 4315 detention orders are passed. Among them, 4309 are sent to the Advisory Board to get confirmation. The Advisory Board revoked the 1220 cases and confirmed the 3089 cases. Approximately on each hearing date, the Advisory Board has considered 27 cases. It is submitted by the counsel on either side, more particularly by the Public Prosecutor that, the Board will start the business on each hearing day after 1.30 PM and closed the hearing before 5.30 PM. Thus approximately 9 minutes they allotted for each case. Further, as per the communication to the Government from the Advisory Board, they sent notice to the 27 detenus. So they approximately allotted 9



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minutes for each detenu. In the said circumstances, a legitimate question raised before this Court was whether the Board has applied its mind to each case upon hearing the detenu, his representative and all the records relating to the detention order. Even they have done some homework relating to all the files, it is impossible to apply its mind to each case more particularly the hearing of detenu as well as his friend. The Board has duty bound to consider not only the material but also the representation submitted by the detenu, examination of the witnesses, if any, on the side of the detenu, case of the friend of detenu and any other records produced by the detaining authority. This Court on each day allow number of HCPs on the ground of procedural irregularities, non-application of mind on the part of the detaining authority and also delay in considering the representation. The Advisory Board considered the procedural irregularities and the non-application of mind and also the representation of the detenu, the ratio of the disposal of the Advisory Board to decline the approval is probably more. This Court cannot expect much more result from the existing one Board which was already over burdened with number of cases and hence there may be lack of proper functioning of the Board. Moreover, the detenu from various places from Tirunelveli Central Jail, Cuddalore Prison, Coimbatore



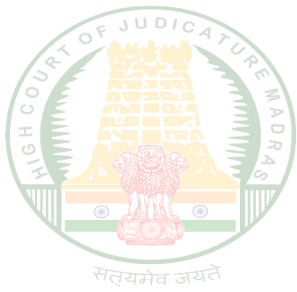
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Prison, Madurai Prison, Vellore Prison are assembled in the Advisory Board with huge expenditure as well as at the cost of man power. So it is the timely requirement to constitute at least one more Board with all infrastructures and the same was expressly stated in the Act itself. Not only the Act as well as the Constitution also provided the same. In all fairness, at least 2 Boards to be constituted, i.e., one for North Division at Chennai and another one for South Division at Madurai. Even otherwise, the Preventive Detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. So in order to safeguard the detenu's constitutional right, the Government should come forward to take necessary steps to constitute another Board at Madurai and allot the Districts come under the purview of the Madurai Bench of Madras High Court.

44. Regarding the submission of the report of the Advisory Board to the Government, the following case laws can be usefully referred :

In **R. Keshava v. M.B. Prakash** reported in **(2001) 2 SCC 145 : 2001 SCC (Cri) 289 : 2000 SCC Online SC 1765**, the Hon'ble Supreme Court has held as follows :

"12. A perusal of the aforesaid section and other relevant provisions of the Act makes it abundantly clear that no duty is



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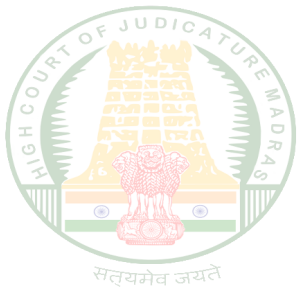
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cast upon the Advisory Board to furnish the whole of the record and the representation addressed to it only to the Government along with its report prepared under Section 8(c) of the Act. It may be appropriate for the Board to transmit the whole record along with the report, if deemed expedient but omission to send such record or report would not render the detention illegal or cast an obligation upon the appropriate Government to make inquiries for finding out as to whether the detenu has made any representation, to any person or authority, against his detention or not. We are of the opinion that in *Gracy case* [(1991) 2 SCC 1 : 1991 SCC (Cri) 467] it was not held that any such duty was cast upon the Board but even if the observations are stretched to that extent, we feel that those observations were uncalled for in view of the scheme of the Act and the mandate of the Constitution.

13. In *Nand Lal Bajaj v. State of Punjab* [(1981) 4 SCC 327 : 1981 SCC (Cri) 841] this Court made the following observations: (SCC p. 334, para 11)

“11. The matter can be viewed from another angle.

We were informed that the Advisory Board did not forward the record of its proceedings to the State Government. If that be so, then the procedure adopted was not in consonance with the procedure established by law. The State Government while confirming the detention order under Section 12 of



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the Act has not only to peruse the report of the Advisory Board, but also to apply its mind to the material on record. If the record itself was not before the State Government, it follows that the order passed by the State Government under Section 12 of the Act was without due application of mind. This is a serious infirmity in the case which makes the continued detention of the detenu illegal.”

14. In view of the constitutional and legal position, as noted by us, we find it difficult to agree with the reasoning in the aforesaid observations. In the absence of constitutional or statutory provisions, we are unable to observe that the Advisory Board was under an obligation to forward the whole of the record of its proceedings to the State Government. The State Government while confirming the order of detention has to peruse the report of the Advisory Board along with other records, if any, in its possession, and cannot determine the legality of the procedure adopted by the Advisory Board. Under clause (f) of Section 8 of the Act, the Government is not bound by the report of the Advisory Board and in every case where the Advisory Board reports that there is, in its opinion, sufficient cause for the detention of a person, may confirm the detention order. The word “may” used in this clause does not cast duty upon the appropriate Government to necessarily accept the



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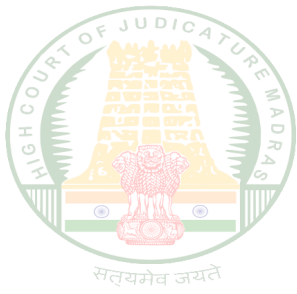


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opinion for further detention. However, where the Board reports that there is, in its opinion, no sufficient cause for the detention of the person concerned, the appropriate Government has no option but to revoke the detention order and cause the person to be released forthwith. When the report of the Advisory Board opining that there exists sufficient cause for detention of a person is not binding upon the appropriate Government, there is no infirmity in its order passed without consideration of the proceedings of the Advisory Board. The obligation of the appropriate Government is restricted to the extent of examining the report conveying the opinion of the Board regarding further detention of the detenu. Similarly the observations made by this court in *Harbans Lal v. M.L. Wadhawan* [(1987) 1 SCC 151 : 1987 SCC (Cri) 47] to the effect that the non-submission of the entire record being the requirement of law, cannot be held to be good law on the point.

15. In *Jasbir Singh case* [(1999) 4 SCC 228 : 1999 SCC (Cri) 517] similar argument based upon *Gracy case* [(1991) 2 SCC 1 : 1991 SCC (Cri) 467] was considered and disposed of by observing: (SCC Headnote)

“But the question for consideration is when the representation has not been addressed to the Central Government but is addressed to the Advisory Board can it be said that the Central Government also owes an obligation to consider



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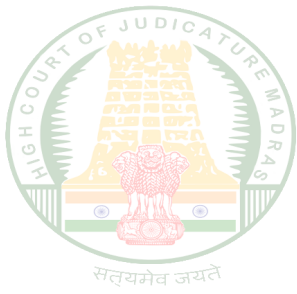
the same and decide one way or the other. The detaining authority was the Lt. Governor of Delhi. In such a case if the representation had not been addressed to the Central Government even though indicated in the grounds of detention then it cannot be said that any representation made by the detenu to the Advisory Board ought to have been considered by the Central Government.”

16. The reliance of the learned counsel of the appellant on the judgment of this Court in *Rahamatullah (Dr) v. State of Bihar* [(1981) 4 SCC 559 : 1981 SCC (Cri) 871] is misplaced inasmuch as in that case the point of law as canvassed before us, was not in issue. The detention in that case was quashed on the ground of non-consideration of the report by the appropriate Government and delay in the compliance with the provisions of the Act."

45. Regarding the jurisdiction of the Advisory Board, the following cases are referred :

45.1. In **Ujagar Singh v. State of Punjab** reported in **1951 SCC 170 : 1951 SCC Online SC 14**, the Hon'ble Supreme Court has held as follows :

" 5....See Article 22 clause (4), sub-clause (a) of the Constitution. Under clause (7)(a) of the same Article, Parliament may by law prescribe:



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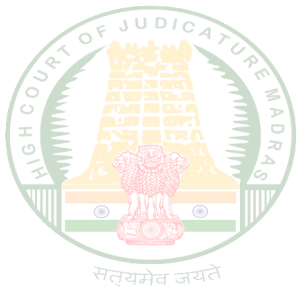
“22. (7)(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);”

Therefore, detention for more than three months can be justified either on the ground of an opinion of the Advisory Board sanctioning or warranting longer detention or on the ground that the detention is to secure the due maintenance of public order, in which case it cannot exceed one year in any event, as stated in Section 12 of the Preventive Detention Act.

45.2. In **Rajasthan v. Shamsher Singh** reported in **1985 Supp SCC**

416 : 1985 SCC (Cri) 421, the Hon'ble Supreme Court has held thus :

" 7. When the reference is received and the grounds of detention are available, the Board proceeds to fix a date of hearing for consideration of the justification of detention. The procedure of the Advisory Board contained in Section 11 of the Act indicates that the Board is to consider the materials placed before it and is entitled to call for such information as it may deem necessary from the appropriate Government or from any other person concerned and after hearing the detenu, if he



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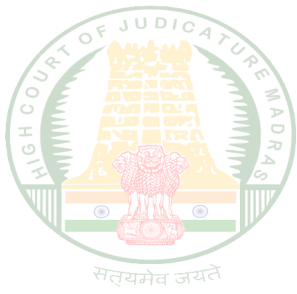
wants to be heard in person, has to report to the appropriate Government within seven weeks from the date of detention in the manner indicated in the remaining sub-sections of that section. While dealing with this aspect of the matter it is to be borne in mind that Section 10 requires the reference to be placed before the Board within three weeks and Section 11 requires the report to be submitted to the appropriate Government within seven weeks. The legislative scheme in fixing the limit of three weeks in Section 10 and the further limit of seven weeks in Section 11 allows at least four weeks' time to the Board to deal with the matter.

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10. Mr Jethmalani placed before us a passage from *Broom's Legal Maxims* (p. 162), 10th Edn., where the doctrine of impossibility of performance (*lex non cogit ad impossibilia*) has been discussed. It has been indicated therein that however mandatory the provision may be, where it is impossible of compliance that would be a sufficient excuse for non-compliance, particularly when it is a question of the time factor. Keeping the attendant circumstances of this case in view, we find it difficult to hold that the time taken by the State Government can amount to withholding of the representation which resulted in non-compliance of Section 10 of the Act so



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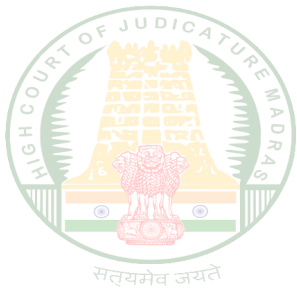


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as to vitiate the detention. It is useful to refer to a paragraph from a judgment of this Court in *Frances Coralie Mullin v. W.C. Khambra* [(1980) 2 SCC 275 : 1980 SCC (Cri) 419 : (1980) 2 SCR 1095] while we are on this point. A Division Bench was dealing with a COFEPOSA detention. Section 8 of the COFEPOSA requires the appropriate Government to make a reference to the Board within five weeks from the date of detention. "

45.3. In **State of Punjab v. Sukhpal Singh** (*cited supra*), it has been held as follows :

"23. As was observed in *Dr. R.K. Bhardwaj v. State of Delhi* [1953 SCR 708 : AIR 1953 SC 318 : 1953 Cri LJ 1241] preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the court. Following *D.S. Roy v. State of West Bengal* [(1972) 1 SCC 308 : 1972 SCC (Cri) 45 : (1972) 2 SCR 787] it can be said that Article 22(4) provides that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless the



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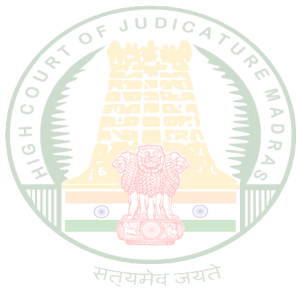
Advisory Board has reported within that period that there is in its opinion sufficient cause for such detention. Law therefore mandates a reference to a Board and for it to report on the sufficiency or otherwise of the detention which should be within three months from the date of detention. In this case it is for this reason that after the Constitution every legislation dealing with preventive detention has made specific provision for confirmation and continuance of detention in view of the constitutional mandate in Article 22(4). In this case, Section 11 of the Act prescribes 5 months 3 weeks. Unless the Board has made a report to the effect that there is a sufficient cause for such detention within that period from the date of detention there can be no detention of a person under any law for a longer period than that.

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The protection of personal liberty is largely through insistence on observance of the mandatory procedure. In cases of preventive detention observance of procedure has been the bastion against wanton assaults on personal liberty

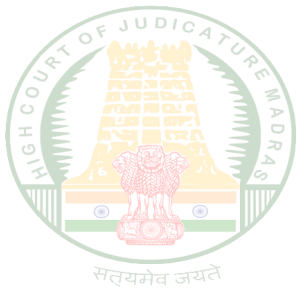


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over the years. Social security is no doubt the most important goal of the State but it is not the only goal of a good society. There are other important values in a society. One of the foremost and fundamental right guaranteed in the Constitution is personal liberty and one cannot be deprived of it except by the procedure prescribed by law. *Libertas inestimabilis res est*. Liberty is an inestimable thing above price. *Libertus omnibus rebus favorabilier est*. Liberty is more favoured than all things (anything). It would be ironic if, in the name of social security, we would sanction the subversion of this liberty. When a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, we think it our duty to see that that procedure is strictly observed. As long back as in *N.P. Umrao v. B.B. Gujral* [(1979) 2 SCC 637, 641, 642 : 1979 SCC (Cri) 557 : (1979) 2 SCR 315, 321] it was held to be well settled that in case of preventive detention of a citizen, the Constitution by Article 22(5) as interpreted by this Court, enjoins that the obligation of the appropriate government is to afford the detenu the opportunity to make a representation and to consider that representation

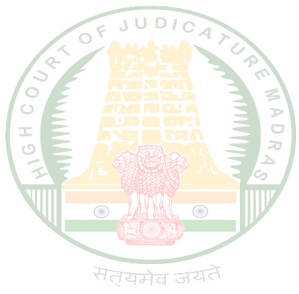


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and there is the government's obligation to constitute a Board and to communicate the representation, amongst other materials, to the Board to enable it to form its opinion and to obtain such opinion. It was also reiterated that when liberty of the subject is involved under a preventive detention law it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law. Two of these safeguards under Article 22 which relate to the observance of the principle of natural justice and which a fortiori are intended to act as a check on the arbitrary exercise of power, are to be found in Article 22(5) of the Constitution. These safeguards might be designated as a regulative postulate of respect, that is respect for the intrinsic dignity of the human person. The detention of individuals without trial for any length of time, howsoever short, is wholly inconsistent with the basic ideas of our government. As was pointed out in *V.C. Jawantraj Jain v. Pradhan* [(1979) 4 SCC 401 : 1980 SCC (Cri) 4 : (1979) 3 SCR 1007] one of the

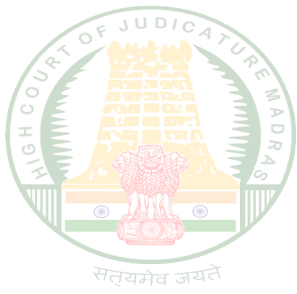


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two safeguards provided to a detenu is that his case must be referred to an Advisory Board for its opinion if it is sought to detain him for a longer period than three months and the other is that he should be afforded the earliest opportunity of making a representation against the order of detention and such representation should be considered by the detaining authority as early as possible before any order is made confirming the detention. Neither safeguard is dependent on the other and both have to be observed by the detaining authority. It is no answer for the detaining authority to say that representation of the detenu was sent by it to the Advisory Board and that the Board has considered the representation and then made a report expressing itself in favour of detention. Even if the Advisory Board has made a report stating that in its opinion there is sufficient cause for the detention, the State Government is not bound by such opinion and it may still on considering the representation of the detenu or otherwise, decline to confirm the order of detention and release the detenu. It is imperative for the State Government to consider the representation of the detenu before making the



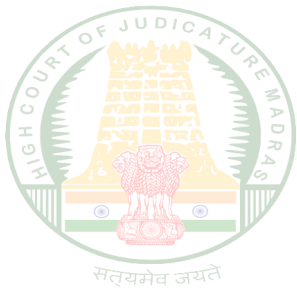
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order confirming the detention. Fazal Ali, J. emphasised in *Bal Chand Choraria v. Union of India* [(1978) 1 SCC 161 : 1978 SCC (Cri) 77 : (1978) 2 SCR 401] that in matters where the liberty of the subject is concerned and a highly cherished right is involved, the representation made by the detenu should be construed liberally and not technically so as to frustrate or defeat the concept of liberty which is engrained in Article 21 of the Constitution of India. In *Smt. Kavita v. State of Maharashtra* [(1981) 3 SCC 558 : 1981 SCC (Cri) 743 : (1981) 2 Cri LJ 1262 : AIR 1981 SC 1641] it was emphasised that the Advisory Board is charged with the task of submitting the report within the prescribed period after hearing the detenu, specifying its opinion as to whether or not there is sufficient cause for the detention of the person concerned.

24. The Advisory Board, as was held in *A.K. Roy v. Union of India* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : (1982) 88 Cri LJ 340] , is to consider the question whether there is sufficient cause for the detention of the person concerned and not where the detenu is guilty of any charge. The detenu may therefore present his own

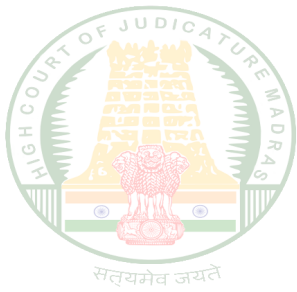


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evidence in rebuttal of the allegations made against him and may offer other oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. If the detenu desires to examine any witnesses, he shall keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other Tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. If report is submitted by the Advisory Board without hearing the detenu who desired to be heard it will be violative of the safeguards provided under Article 22 of the Constitution and Sections 10 and 11 of the Act. Failure to produce the detenu, unless it is for wilful refusal of the detenu himself to appear, will be equally violative of those provisions. In *State of Rajasthan v. Shamsher Singh* [1985 Supp SCC 416 : 1985 SCC (Cri) 421 : 1985 Supp 1 SCR 83] the importance of the proceedings before the Advisory Board was highlighted. In fact it is the only opportunity for the detenu of being heard along with his representation for deciding whether there was sufficient cause for his



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detention.

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29. Thus as a result of these amendments applicable to the State of Punjab and the Union territory of Chandigarh we find on one hand addition to the grounds of detention and on the other, extension of the period during which a person could be detained without obtaining the opinion of the Advisory Board. There is, however, no amendment as to the safeguards provided under Article 22 and Sections 9, 10 and 11 of the Act.

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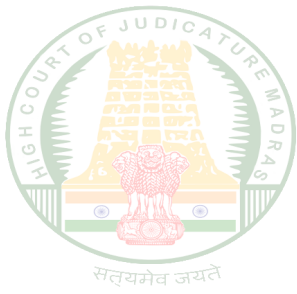
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45.4. In **Ram Bali Rajbhar v. State of W.B.**, reported in **(1975) 4**

SCC 47 : 1975 SCC (Cri) 321, the Hon'ble Supreme Court has held thus :

"3... The legal position on this subject has been recently clarified by a Constitution Bench of this Court in *Haradhan Saha v. State of W.B.* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : AIR 1974 SC 2154, 2160] where it was pointed out (p. 2160): [SCC p. 208 : SCC (Cri) p. 286, para 32]



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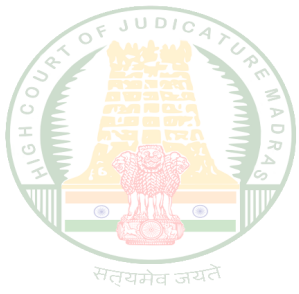
“The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.”

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16. We, however, must observe here that some of the facts noticed above are enough to put the detaining authorities and the Advisory Board on their guard so that they should also examine the possibility of having been misled by mechanically reproduced assertions made by subordinate police officers acting at the instance of persons with questionable motives.



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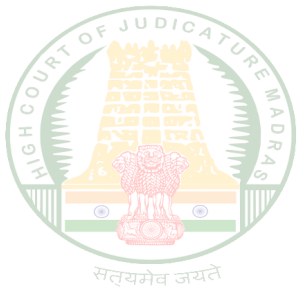
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The detaining authorities and the Advisory Board are the best judges of that. They are armed with ample power and means to lift the cast iron curtain of impeccable form behind which this Court does not, in the absence of good and substantial reasons, try to peep in an attempt to discover mala fides or misuse of drastic powers meant to be used honestly, carefully, reasonably and fairly. This Court presumes that they are being so used unless and until the contrary is palpable; but, no such presumption need hamper the efforts which the detaining authorities and the Advisory Boards ought to make to discover the real or the whole and unvarnished truth before determining the need for a preventive detention. At any rate, no mere *amour propre* or self esteem or any police officer should be allowed to stand in the way of an honest, careful, and impartial investigation and decision."

45.5. In **Raisuddin v. State of U.P.**, reported in **(1983) 4 SCC 537** :

1984 SCC (Cri) 16, it has been held thus :

"5. It is to be remembered that the Advisory Board is not an entity subordinate to the Government. It is a wholly independent body consisting of persons who are or have been or are qualified to be appointed as Judges of a High Court. It is entirely for the Advisory Board to regulate its schedule of



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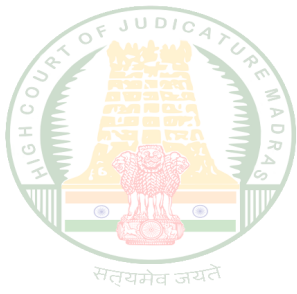


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holding meetings and conducting its business in accordance with the procedure laid down under Section 11 of the Act which has specified a time limit of seven weeks from the date of detention for the submission of the Board's report to the appropriate Government. It is, therefore, wholly wrong to interpret the words "*place before*" as meaning anything more than forward to or submit before the Advisory Board the relevant papers relating to the detention of the detenu. In the present case, the Advisory Board has disposed of the petitioner's case well within the period of seven weeks specified in sub-section (1) of Section 11 of the Act."

46. Whether a public hearing is to be conducted by the Advisory Board was answered by the Supreme Court in A.K.Roy's case. The relevant portion reads thus :

"106. We are not inclined to accept the plea made by the learned Counsel that the proceedings of the Advisory Board should be thrown open to the public. The right to a public trial is not one of the guaranteed rights under our Constitution as it is under the 6th Amendment of the American



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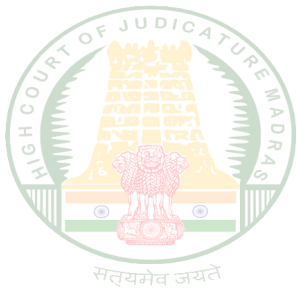
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Constitution which secures to persons charged with crimes a public, as well as a speedy, trial. Even under the American Constitution, the right guaranteed by the 6th Amendment is held to be personal to the accused, which the public in general cannot share. Considering the nature of the inquiry which the Advisory Board has to undertake, we do not think that the interests of justice will be served better by giving access to the public to the proceedings of the Advisory Board."

47. With regard to the right of the detenu of personal hearing before the Advisory Board, the following cases are referred :

47.1. In **Ram Krishan Bhardwaj (Dr.) v. State of Delhi**, reported in **1953 SCR 708 : AIR 1953 SC 318 : 1953 Cri LJ 1241**, the Hon'ble Supreme Court has held thus :

5. ...The Attorney General drew attention to the recent amendment of Section 10 of the Preventive Detention Act as a result of which the petitioner would be entitled to be heard in person before the Advisory Board if he so desires and, it was said, that he would thus have the opportunity of getting the necessary particulars through the Board who could call upon the appropriate Government to



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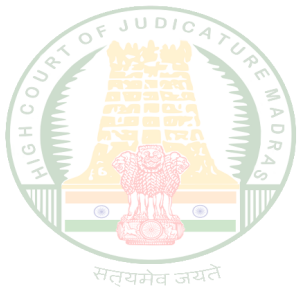
furnish particulars if the Board thought that the demand for them was in the circumstances just and reasonable.

47.2. In **State of A.P. v. Balajangam Subbarajamma** reported in **(1989) 1 SCC 193 : 1989 SCC (Cri) 75**, the Hon'ble Supreme Court has held as follows :

"6. The Act thus by Section 11(4) expressly denies representation through a legal practitioner. The Board may hear any person if necessary. If the detenu desires to be heard, the Board may hear him also. But no person has a right to be represented by a lawyer much less the detenu. This provision is in conformity with Article 22(3)(b) of the Constitution, the scope of which has been explained by a Constitution Bench of this Court. In *A.K. Roy v. Union of India* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : (1982) 2 SCR 272, 339]"

48. Like that, whether the detenu has a right to have assistance of his friend and relative, the Courts have held in the following cases :

- (i) (1982) 1 SCC 271,
- (ii) (1982) 2 SCC 222,
- (iii) (1988) 1 SCC 116,
- (iv) (1989) 1 SCC 193,



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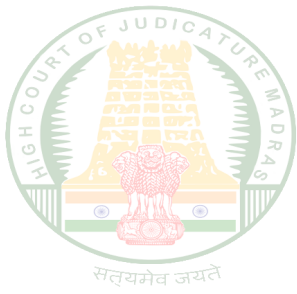
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- (v) AIR 1986 SC 687,
- (vi) AIR 1991 SC 979,
- (vii) (1999) 5 SCC 642,
- (viii) (1989) 1 SCC 736.

All the above Hon'ble Supreme Court Judgments clearly laid down the law that the detenu has every right to appear through his friend. In this aspect, the following law of the Supreme Court is relevant to a fact.

49. In **Sharad Kumar Tyagi v. State of U.P.**, reported in **(1989) 1 SCC 736 : 1989 SCC (Cri) 294**, the Hon'ble Supreme Court has held as follows :

"21. Mr.Jain argued that in a number of decisions commencing from *A.K. Roy v.Union of India* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : AIR 1982 SC 709] it has been consistently held that even though a detenu will not be entitled to have legal assistance, he does have a right to have the assistance of a friend at the time his case is considered by the Advisory Board and hence denial of opportunity to have the assistance of a friend would vitiate the detention. This principle is undoubtedly a well-settled one. It has however to



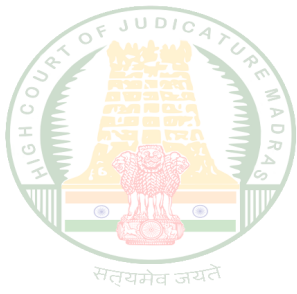
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be noticed that though the Advisory Board had permitted the detenu to appear along with a friend the detenu had failed to take a friend with him. He did not also represent to the Advisory Board that he did not have adequate time to get the services of a friend and that he required time to have the services of a friend. Such being the case, he cannot take advantage of his own lapses and raise a contention that the detention order is illegal because he was not represented by a friend at the meeting of the Advisory Board. This position is a settled one and we may only refer to the observation of this Court in *Vijay Kumar v. Union of India*, AIR '1988 SC 934 at 939: .."

“It appears from the observation made by the High Court that the appellant, without making any prayer before the Advisory Board for the examination of his witnesses or for giving him assistance of his friend, started arguing his own case, which in all probability, had given an impression to the members of the Advisory Board that the appellant would not examine any witness. The appellant should have made a specific prayer



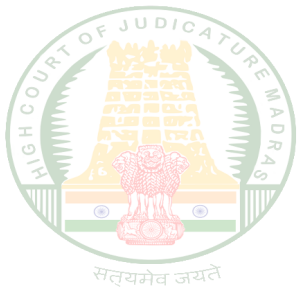
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before the Advisory Board that he would examine witnesses, who were standing outside. The appellant, however, did not make any such request to the Advisory Board. There is no reason for not accepting the statement of the detaining authority that the appellant was permitted by the Advisory Board to have the assistance of an advocate or a friend at the time of hearing, but the appellant did not avail himself of the same. In the circumstances, we do not think that there is any substance in the contention made on behalf of the appellant that the Advisory Board acted illegally and in violation of the principles of natural justice in not examining the witnesses produced by the appellant at the meeting of the Advisory Board and in not giving permission to the appellant to have the assistance of his friend.”

22. From the materials on record, we are satisfied that the appellant was accorded permission to have the services of a friend and the radiogram sent by the Government was duly



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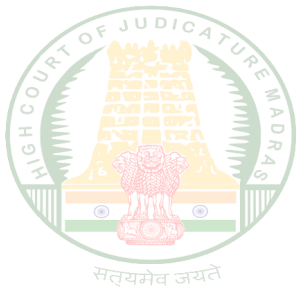
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communicated to him but for some reason he had not availed the services of a friend. He did not also choose to represent to the Advisory Board that he was not given sufficient time to secure the services of a friend. Consequently, the third contention also fails.

50. In **Johney D'Couto v. State of T.N.**, reported in (1988) 1 SCC

116 : 1988 SCC (Cri) 70, it has been held thus :

"6. The rule in *A.K. Roy case* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : (1982) 2 SCR 272] made it clear that the detenu was entitled to the assistance of a 'friend'. The word 'friend' used there was obviously not intended to carry the meaning of the term in common parlance. One of the meanings of the word 'friend', according to the *Collins English Dictionary* is "an ally in a fight or cause; supporter". The term 'friend' used in the judgments of this Court was more in this sense than meaning 'a person known well to another and regarded with liking, affection and loyalty'. A person not being a friend in the normal sense could be picked up for rendering assistance within the frame of the law as settled by this Court. The



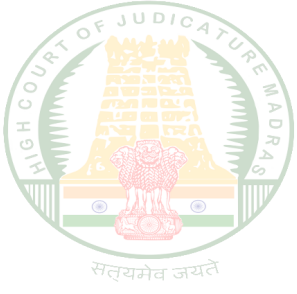
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Advisory Board has, of course, to be careful in permitting assistance of a friend in order to ensure due observance of the policy of law that a detenu is not entitled to representation through a lawyer. As has been indicated by this Court, what cannot be permitted directly should not be allowed to be done in an indirect way. Sundararajan, in this view of the matter, was perhaps a friend prepared to assist the detenu before the Advisory Board and the refusal of such assistance to the detenu was not justified. It is not for this Court to examine and assess what prejudice has been caused to the detenu on account of such denial. This Court has reiterated the position that matters relating to preventive detention are strict proceedings and warrant full compliance with the requirements of law.

7. In view of the position of law and the facts of the case, we must hold that the refusal by the Advisory Board to permit the detenu to be assisted by Sundararajan as a friend was bad and continued detention of the detenu became vitiated. Accordingly, this appeal is allowed and the order of detention is quashed. The detenu is directed to be set at liberty forthwith."



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WEB COPY 51. During the course of the hearing, it is represented by the various counsels that the date of the hearing of the Advisory Board has not informed to the relative of the detenu. To verify the same, this Court asked the Additional Public Prosecutor to produce the relevant record of intimation sent to the detenu's relative/friend. Upon the perusal of the records, it is clear that there was no proper written intimation sent to the detenu's relative/friend. As on date, the hearing date is informed to the detenu through the Jailer and the detenu through the phone informed to his relative. The said procedure is not in compliance with the principles of natural justice and hence, this Court wish to give a direction to send the intimation of the hearing date of the Advisory Board in the following format:

”(i) கடிதம் எண்.-----/-----

பெறுநர்

த/பெ.------(தடுப்பு காவல் சிறைவாசி-தடுப்பு காவல் ஆணை எண்)

முகவரி

ஐயா/அம்மா,

தங்களின் மகனுக்கு எதிராக தடுப்புக்காவல் ஆணை எண்
----- தமிழ்நாடு கள்ளச்சாராயக்காரர்கள், கணினிவெளிச் சட்டக்
குற்றவாளிகள், மருந்து சரக்குக் குற்றவாளிகள்,

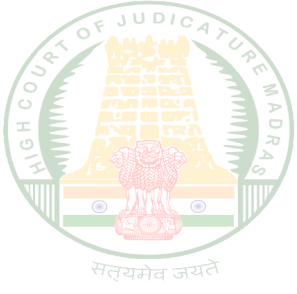


வனக்குற்றவாளிகள், குண்டர்கள், விபச்சாரத்தொழில் குற்றவாளிகள், மணல் குற்றவாளிகள், பாலியல் குற்றவாளிகள், குடிசைப் பகுதி நில ஆக்கிரமிப்பாளர்கள் மற்றும் காணொலித் திருடர்கள் ஆகியோரின் அபாயகரமான நடவடிக்கைகள் தடுப்புச்சட்டம், 1982-ன் படி பிறப்பித்து தடுப்புக்காவல் சிறைவாசியாக ----- சிறையில் இருந்து வருகிறார். அந்த தடுப்புக்காவல் நடவடிக்கை தொடர்பான விசாரணை தலைவர், அறிவுரைக் கழகம், சிங்காரவேலர் மாளிகை, தரை தளம், சென்னை மாவட்ட ஆட்சியர் அலுவலகம் எண்.32, இராஜாஜி சாலை, சென்னை-1 முகவரியில் ----- தேதியில் ----- நேரத்தில் நடைபெறவுள்ளது. தடுப்புச்சட்டத்தின் கீழ் தங்களின் மகன் / கணவர் / நண்பர் / சகோதரர் / மகள் / மருமகன் / மருமகள் / சகோதரி தடுப்புக்காவலில் வைக்கப்பட்டுள்ளது தொடர்பாக தலைவர், அறிவுரைக் கழகம், சிங்காரவேலர் மாளிகை, தரை தளம், சென்னை மாவட்ட ஆட்சியர் அலுவலகம் எண்.32, இராஜாஜி சாலை, சென்னை-1 முகவரியில் ----- தேதியில் ----- நேரத்தில் விசாரணை நடைபெறவுள்ளது. அந்த விசாரணையில் தடுப்புக்காவல் சிறைவாசி சார்பாக கலந்து கொள்ள தங்களுக்கு உரிமை உள்ளது. மேலும் தாங்கள் எழுத்து மூலமான விளக்கங்கள் கொடுக்கவும், வாய்மூலமான தங்கள் கருத்துக்களை தெரிவிக்கவும் உரிமை உள்ளது. ஆகவே, அன்றைய தினம் விசாரணையில் தாங்கள் கலந்துகொள்ள இந்த அறிவிப்பு கொடுக்கப்படுகிறது.

தங்கள் நம்பிக்கையுள்ள,

அரசு துணைச் செயலாளருக்காக,

எண்.---



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சிறை கண்காணிப்பாளர் அலுவலகம்,

மத்திய சிறை, மதுரை-16.

நாள்.....

பொருள்: சிறைகள் - மத்திய சிறை, மதுரை-
டிபிடிஎ/என்.எஸ்.ஏ/காபிபோசா தடுப்புக் காவல் சிறைவாசி எண்.
-----, த/பெ.----- சிறையில் ----- அன்று
அனுமதிக்கப்பட்டது-தகவல் தெரிவித்தல்.

தங்கள் மகன் திரு.-----, த/பெ.----- என்பவர் -----
சிறையில் ----- அன்று தடுப்புக் காவல் சிறைவாசியாக
அனுமதிக்கப்பட்டுள்ளார். இவரை ----- மற்றும் -----
கிழமைகளில் வேலை நாட்களில் நேர்காணல் புரியலாம் என்ற
விவரம் தெரிவிக்கப்படுகிறது.

சிறைக் கண்காணிப்பாளர்,

மத்திய சிறை, மதுரை-16.

பெறுநர்

கடிதம் எண்.-----/-----

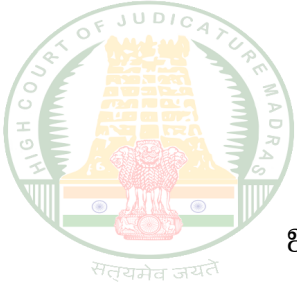
பெறுநர்

(தடுப்பு காவல் சிறைவாசி-தடுப்பு காவல் ஆணை எண்)

மத்திய சிறை,

----- (சிறை கண்காணிப்பாளர் மூலமாக),

முகவரி



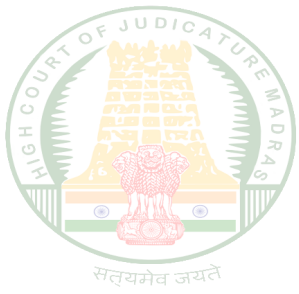
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ஐயா/அம்மா,

தங்களுக்கு எதிராக தடுப்புக்காவல் ஆணை எண் ----- தமிழ்நாடு கள்ளச்சாராயக்காரர்கள், கணினிவெளிச் சட்டக் குற்றவாளிகள், மருந்து சரக்குக் குற்றவாளிகள், வனக்குற்றவாளிகள், குண்டர்கள், விபச்சாரத்தொழில் குற்றவாளிகள், மணல் குற்றவாளிகள், பாலியல் குற்றவாளிகள், குடிசைப் பகுதி நில ஆக்கிரமிப்பாளர்கள் மற்றும் காணொலித் திருடர்கள் ஆகியோரின் அபாயகரமான நடவடிக்கைகள் தடுப்புச்சட்டம், 1982-ன் படி பிறப்பித்து தடுப்புக்காவல் சிறைவாசியாக தாங்கள் ----- சிறையில் இருந்து வருகிறீர்கள். அந்த தடுப்புக்காவல் நடவடிக்கை தொடர்பான விசாரணை தலைவர், அறிவுரைக் கழகம், சிங்காரவேலர் மாளிகை, தரை தளம், சென்னை மாவட்ட ஆட்சியர் அலுவலகம் எண்.32, இராஜாஜி சாலை, சென்னை-1 முகவரியில் ----- தேதியில் ----- நேரத்தில் நடைபெறவுள்ளது. அந்த விசாரணையில் தடுப்புக்காவல் சிறைவாசியாக தாங்கள் சார்பாக தங்கள் உறவினர்கள் கலந்து கொள்ள உரிமை உள்ளது. ஆகவே, தாங்கள் தங்கள் உறவினருடன் மேற்குறிப்பிட்ட விசாரணை தேதியில் தாங்கள் தங்களின் எழுத்து மூலமான விளக்கங்கள் கொடுக்கவும், வாய்மூலமான தங்கள் கருத்துக்களை தெரிவிக்கவும் உரிமை உள்ளது. மேலும், தங்கள் சார்பாக வாய்மொழி சாட்சியம் கொண்டுவர உரிமை உள்ளது. ஆனால், வாய்மொழி சாட்சியத்தை ஏற்றுக்கொள்வது குறித்து அறிவுரைக்கழகத்தின் முடிவு இறுதியானது என்பதை தெளிவுப்படுத்திக்கொள்கிறோம். ஆகவே, ----- தினம் ----- மணிக்கு தங்களை நேரடி விசாரணை செய்யவுள்ளது என்பதைத் தெரிவித்துக்கொள்கிறேன்.

தங்கள் நம்பிக்கையுள்ள,



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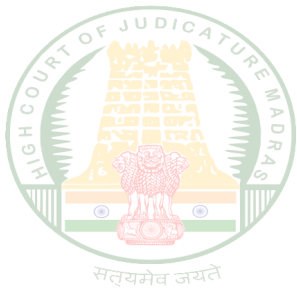
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அரசு துணைச் செயலாளருக்காக,”

52. With regard to the right to legal representation, again we can refer

A.K.Roy's case which reads thus :

" 92. In *Francis Coralie Mullin* [(1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746 : 1981 Cri LJ 306] , the petitioner, while in detention, wanted to have an interview with her lawyer, which was rendered almost impossible by reason of the stringent provisions of clause 3(b)(i) of the 'Conditions of Detention' formulated by the Delhi Administration. In a petition filed in this Court to challenge the aforesaid clause, inter alia, it was held by this Court that the clause was void, since it violated Articles 14 and 21 by its discriminatory nature and unreasonableness. The court directed that the detenu should be permitted to have an interview with her legal adviser at any reasonable hour during the day after taking an appointment from the Superintendent of the Jail and that the interview need not necessarily take place in the presence of an officer of the Customs or Central Excise Department. The court also directed that the



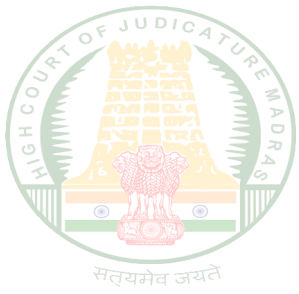
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officer concerned may watch the interview but not so as to be within the hearing distance of the detenu and the legal adviser. This decision has no bearing on the point which arises before us, since the limited question which was involved in that case was whether the procedure prescribed by clause 3, governing the interviews which a detenu may have with his legal adviser, was reasonable. The court was not called upon to consider the question as regards the right of a detenu to be represented by a legal practitioner before the Advisory Board. We would, however, like to affirm our respectful agreement with the decision in this case to the effect that the detenu has a right to consult a lawyer of his choice for the purpose of preparing his representation, advising him as to how he should defend himself before the Advisory Board and preparing and filing a habeas corpus petition or other proceedings for securing his release.

93. We must therefore hold, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board. It is, however, necessary to add an important caveat. The reason

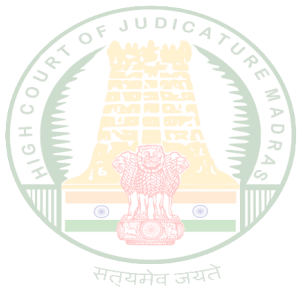


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behind the provisions contained in Article 22(3)(b) of the Constitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we



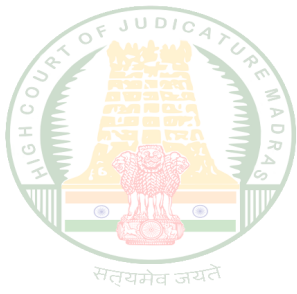
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must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not “legal practitioners” or legal advisers. Regard must be had to the substance and not the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assists or advises on facts or law must be deemed to be in the position of a legal adviser. We do hope that Advisory Boards will take care to ensure that the provisions of Article 14 are not violated in any manner in the proceedings before them. Serving or retired Judges of the High Court will have no difficulty in understanding this position. Those who are merely “qualified to be appointed” as High Court Judges may have to do a little homework in order to appreciate it.

94. Another aspect of this matter which needs to be mentioned is that the embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose interests are adversely affected as a result of

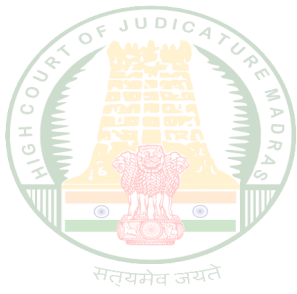


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the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend. A detenu, taken straight from his cell to the Board's room, may lack the ease and composure to present his point of view. He may be “tongue-tied, nervous, confused or wanting in intelligence”, (see *Pett v. Greyhound Racing Association Ltd.* [(1969) 1 QB 125]), and if justice is to be done, he must at least have the help of a friend who can assist him to give coherence to his stray and wandering ideas. Incarceration makes a man and his thoughts dishevelled. Just as a person who is dumb is entitled, as he must, to be represented by a person who has speech, even so, a person who finds himself unable to present his own case is entitled to take the aid and advice of a person who is better situated to appreciate the facts of the case and the language of the law. It may be that denial of legal representation is not denial of natural justice per se, and therefore, if a statute excludes that facility expressly, it would not be open to the tribunal to allow it. Fairness, as said by Lord Denning M.R., in *Maynard v. Osmond* [(1977) 1 QB 240, 253 : (1977) 1 All ER 64] can be obtained without legal representation. But, it is



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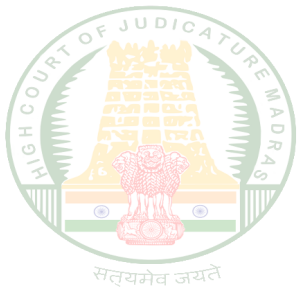
not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. Whenever demanded, the Advisory Boards must grant that facility."

53. In **Harbans Lal v. M.L.Wadhawan**, reported in (1987) 1 SCC 151 : 1987 SCC (Cri), it has been held as follows :

" 5. In support of the first contention, the learned counsel for the petitioner relied upon the following observation by a Constitution Bench of this Court in *A.K. Roy v. Union of India* [(1982) 1 SCC 271 : (1982) 2 SCR 272] . In that case this Court had to consider the extent of the "trinity of rights" which was available to the detenu before the Advisory Board. These rights are:

- (i) The right of legal representation,
- (ii) The right of cross-examination, and
- (iii) The right to present his evidence in rebuttal.

We are here concerned with the third right, namely the right of the detenu to lead evidence in rebuttal before the Advisory Board. The Constitution Bench repelled the plea that the detenu had a right to cross-examine either the persons on the basis of whose statements the order of detention was made or the detaining authority but observed as follows on the third right: (SCC pp. 340-41, para 104)

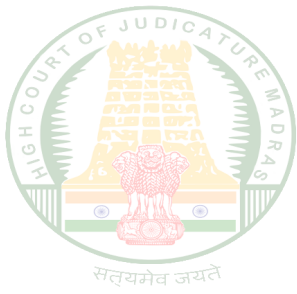


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“The last of the three rights for which Shri Jethmalani contends is the right of the detenu to lead evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the National Security Act contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may therefore offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. We would only like to add that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power, to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that the Advisory Board is under an obligation under Section 11(1) of the Act to submit its report



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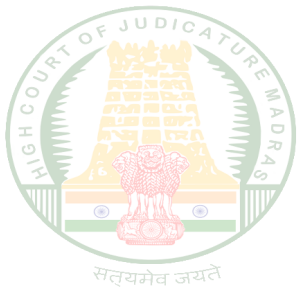
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to the appropriate Government within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have therefore to be completed with the utmost expedition.”

(Emphasis supplied)

The law laid down thus recognises the right in a detenu to lead evidence in rebuttal of the allegation against him before the Advisory Board. All that is necessary is that the detenu should keep the witnesses ready for examination at the appointed time. There is no obligation cast on the Advisory Board to summon them. This Court recognises a right in the Advisory Board to regulate its own procedure within the constraints of the Constitution and the statute and this procedure is referable to the time limit within which the Advisory Board must complete its enquiry. It is in the light of the law laid down by this Court in the above decision that the first question, raised by the learned counsel, has to be considered.

6. We have not been told that the Advisory Board has regulated any procedure that oral evidence will not be permitted when it enquires into orders of detention. Even if there is any such procedure it will be of no legal consequence after the law in this behalf had been laid down by this Court in *A.K. Roy case* [(1982) 1 SCC 271 : (1982) 2 SCR 272] . The right to adduce oral evidence by examining witnesses is a right



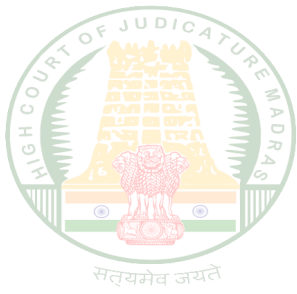
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available to a detenu under the above decision and this should be deemed to be incorporated in the statute dealing with detention without trial. Support for this position was sought by the learned counsel for the petitioner from a decision of this Court in *Narendra Purshotam Umrao v. B.B. Gujral* [(1979) 2 SCC 637 : 1979 SCC (Cri) 557] . In that case, this Court was dealing with the absence of any express provision in Section 8(b) of the COFEPOSA Act placing an obligation to forward the representation made by a detenu along with the reference to the Advisory Board unlike those contained in Section 9 of the Preventive Detention Act, 1950 and Section 10 of the Maintenance of Internal Security Act, 1971. It was contended in that case that in the absence of an express provision in this behalf no obligation was cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board or to forward the same to the Advisory Board. After discussing the scope of Article 22(5), this Court held (SCC p. 644, para 23) “the constitutional safeguards embodied in Article 22(5) of the Constitution, as construed by this Court, must, therefore, be read into the provisions of Section 8(b) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 to prevent any arbitrary executive action”.

7. This decision rendered by a three Judge Bench of this Court has laid down that the constitutional safeguards



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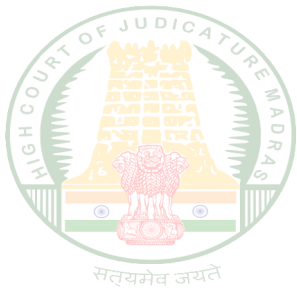


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embodied in Article 22(5) of the Constitution as understood by this Court must be read into Section 8(b) of the COFEPOSA Act. Therefore, the right in a detenu to adduce oral evidence in rebuttal, being a right in the nature of a constitutional safeguard embodied in Article 22(5) of the Constitution as construed by this Court in *A.K. Roy case* [(1982) 1 SCC 271 : (1982) 2 SCR 272] has necessarily to be read into Section 8(b) and (c) of the COFEPOSA Act. If this right is denied to a detenu, the necessary consequence must follow. Article 22(7)(c) enables Parliament to prescribe by law the procedure to be followed by an Advisory Board an enquiry under Article 22(4)(a). Section 8 of the COFEPOSA Act is a sequel to this prescription. There is nothing in Section 8 prohibiting oral evidence of the witnesses tendered by a detenu being taken. The concept of enquiry by the Advisory Board takes within its ambit this aspect of “hearing” also. This right has received the seal of approval in *A.K. Roy case* [(1982) 1 SCC 271 : (1982) 2 SCR 272] .

54. Also in **State of Maharashtra v. Ramachandra Rammilan Mishra** reported in **(2004) 4 SCC 509 : 2004 SCC (Cri) 1329 : 2004 SCC Online SC 364**, the following has been held :

" 6. Detenu was free to produce the witnesses before the Advisory Board in order to rebut the



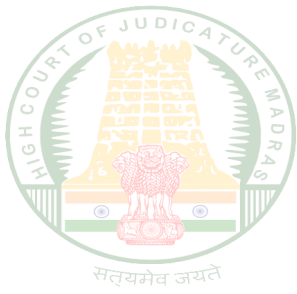
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allegations levelled. There was no obligation on the Advisory Board to summon witnesses and it was for the detenu to keep his witness present at the appointed time.

7. The undisputed position, therefore, is that the detenu did not produce any witness for examination and even did not state before the Advisory Board that he wanted to examine the witness or that the witness was present. The High Court seems to have proceeded on the basis that once a representation is made indicating the desire to examine witness, there was no necessity for any oral prayer. That may be so. But as noticed in *A.K. Roy case* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] it was for the detenu to keep his witness ready for examination. The specific statement of the Secretary to the Advisory Board on affidavit is that the detenu did not produce any witness for examination. It was not for the Advisory Board to summon any witness. When the detenu did not produce any witness for examination, there was no necessity for the Advisory Board to require the detenu to produce witnesses. The approach of the High Court which proceeded on the basis as if there was such an obligation on the Advisory



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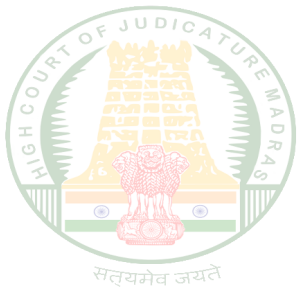


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Board, therefore, is not right. That apart, the Court had nothing concrete before it to surmise that any witness was present, and the failure on the part of the Advisory Board to verify about the same constituted denial of an opportunity. We set aside the judgment of the High Court."

55. As to whether the detenu has got a right of cross-examination is concerned, again in A.K.Roy's case, it has been held as follows :

"98. We do not suggest that the principles of natural justice, vague and variable as they may be, are not worthy of preservation. As observed by Lord Reid in *Ridge v. Baldwin* [1964 AC 40, 64-65 : (1963) 2 All ER 66 (HL)] , the view that "natural justice is so vague as to be practically meaningless" is tainted by "the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist". But the importance of the realisation that the rules of natural justice are not rigid norms of unchanging content, consists in the fact that the ambit of those rules must vary according to the context, and they have to be tailored to suit the nature of the proceeding in relation to which the

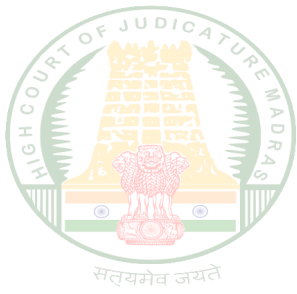


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particular right is claimed as a component of natural justice. Judged by this test, it seems to us difficult to hold that a detenu can claim the right of cross-examination in the proceeding before the Advisory Board. First and foremost, cross-examination of whom? The principle that witnesses must be confronted and offered for cross-examination applies generally to proceedings in which witnesses are examined or documents are adduced in evidence in order to *prove* a point. Cross-examination then becomes a powerful weapon for showing the untruthfulness of that evidence. In proceedings before the Advisory Board, the question for consideration of the Board is not whether the detenu is *guilty* of any charge but whether there is sufficient cause for the detention of the person concerned. The detention, it must be remembered, is based not on facts proved either by applying the test of preponderance of probabilities or of reasonable doubt. The detention is based on the subjective satisfaction of the detaining authority that it is necessary to detain a particular person in order to prevent him from acting in a manner prejudicial to certain stated objects. The proceeding of the



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Advisory Board has therefore to be structured differently from the proceeding of judicial or quasi-judicial tribunals, before which there is a lis to adjudicate upon.

...

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103. We are therefore of the opinion that, in the proceedings before the Advisory Board, the detenu has no right to cross-examine either the persons on the basis of whose statement the order of detention is made or the detaining authority."

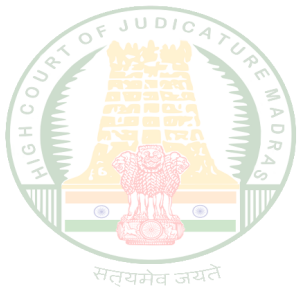
56. As the personal liberty of a citizen is involved in case preventive detention laws are invoked against him, as per the Constitutional safeguards that has been indicated and mandated under Article 22(3) to 22(7) of the Constitution even though the preventive detention laws including Act 14 of 1982 were enacted, insofar as transacting the business by the Advisory Board to whom every such detention is being referred, are to be undertaken by strictly following the procedure.

57. In this context, Article 22(7)(c) of the Constitution makes it clear



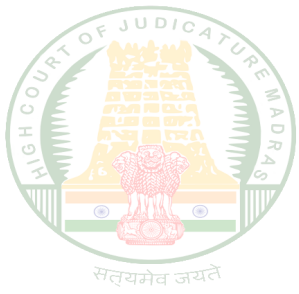
that the procedure to be followed by an Advisory Board in inquiry under sub-clause (a) of clause (4) shall be enacted by Parliament. Even though such a constitutional mandate has been provided to frame a law as to how to conduct the proceedings by the Advisory Board, so far the Legislature has not come forward to make any such procedural law within the meaning of Article 22(7)(c) of the Constitution to conduct the business or the procedure to be adopted by the Advisory Board constituted under Act 14 of 1982.

58. Because of the absence of such a definite codified procedure made by the legislature, every time when a new Board is constituted, it adopts its own procedure thereby lot of such complaints and grounds are being raised whenever such kind of HCPs are filed before this Court raising the ground or making the complaint that, there has been no proper intimation from the Advisory Board with regard to the date and time of the hearing. Also on the date of hearing, since number of detention cases are taken up by the Board, where not even 10 minutes time is provided to the detenu to present his case and also whenever the representative or next friend of the detenu were present and seeks permission of the Board to represent the case, that kind of permission sought for are denied.



WEB COPY 59. This kind of grounds and representations since have been raised in number of cases on behalf of the detenu, there has been no mechanism so far evolved to verify or cross-check the veracity of such complaints and grounds raised on behalf of the detenu. The reason being that, the report and opinion sent by the Board to the Government in respect of each of the detention order are kept in confidential and moreover in selective cases, when Court calls for record and if it is produced, there would be a two line opinion recorded by the Board in respect of the detention order for revoking the same or to recommend to extend the same.

60. Insofar as the revocation is concerned, it is binding the Government, whereas if the opinion goes against the detenu and in favour of the detaining authority to extend the detention beyond three months period, though it is the discretion of the State to accept or not to accept the advise of the Board, in practical almost in all the cases except one or two, the Government accepts the advise or opinion given by the Board and accordingly, detention orders are extended.



WEB COPY 61. When such is the procedure being followed by the Advisory Board, whether it is in consonance with the aforesaid legal principle, that has been enunciated in various Judgments of the Hon'ble Apex Court or not, are to be looked into.

62. In this context, the Constitution also, since mandated under Article 22(7)(c) to frame a law with regard to the procedure to be adopted by the Advisory Board under the Preventive Detention Act and in the absence of any such law, in order to streamline this anomaly and also to ensure that fair opportunity is being given to every detenu before the Advisory Board at the time of hearing and further ensure that, the personal liberty of any citizen in the name of Preventive Detention Act has not been violated, especially in the context of making the hearing by the Advisory Board before extending the period of detention beyond three months period, we feel that, it requires a procedure so that the Advisory Board can adopt and act upon on the basis of such legal procedure which ought to be framed by the State Legislature.

63. However, insofar as in the State of Tamil Nadu especially in the

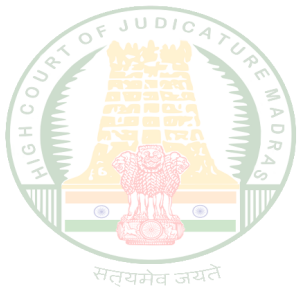


context of Act 14 of 1982, since no such legislation has been enacted or no statutory rule has been framed with the concurrence of the legislature, it become necessary to indicate a mandatory procedure to be adopted by the Advisory Board under Act 14 of 1982. Therefore, we are inclined to give a set of directions to the State so that, a comprehensive compendium of procedure to be adopted by the Advisory Board constituted under Act 14 of 1982 can be pressed into service until the State legislature come forward to replace this mandatory compendium of procedure by giving a suitable legislation or statutory rule within the meaning of Article 22(7)(c) of the Constitution.

64. In order to strengthen our contention as stated supra, what has already been held in some of the decisions held by the Hon'ble Apex Court in the following Judgments are usefully referred to hereunder :

64.1. In **State of A.P. v. Balajangam Subbarajamma** reported in **(1989) 1 SCC 193 : 1989 SCC (Cri) 75**, it has been held as follows :

" 11. These are the two important constitutional safeguards. The Advisory Board is a constitutional imperative. It has an important function to perform. It has to form an opinion whether there is sufficient cause for the detention of the person

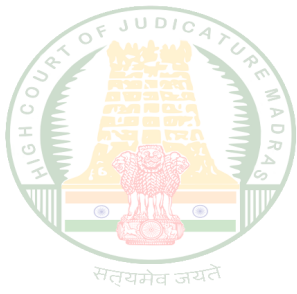


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concerned. There is no particular procedure prescribed for the Advisory Board since there is no lis to be adjudicated. Section 11 of the Act provides only the broad guidelines for observance. The Advisory Board however, may adopt any procedure depending upon varying circumstances. But any procedure that it adopts must satisfy the procedural fairness. We need not deal with this aspect in detail since the Advisory Board consists of persons who are, or have been or are qualified to be appointed as judges of a High Court. They are men of wisdom and learning. Their report as envisaged under Section 11(2) of the Act should provide specifically in a separate part whereof as to “whether or not there is sufficient cause for the detention of the person concerned”. That opinion as to sufficient cause is required to be reached with equal opportunity to the State as well as the person concerned, no matter what the procedure. It is important for laws and authorities not only to be just but also appear to be just. Therefore, the action that gives the appearance of unequal treatment or unreasonableness — whether or not there is any substance in it — should be avoided by Advisory Board. We consider that it must be



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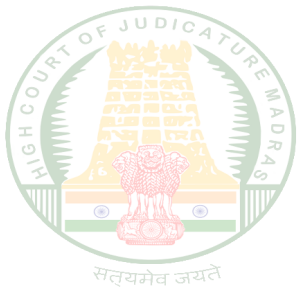


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stated and stated clearly and unequivocally that it is the duty of the Advisory Board to see that the case of detenu is not adversely affected by the procedure it adopts. It must be ensured that the detenu is not handicapped by the unequal representation or refusal of access to a friend to represent his case.

12. In the instant case, since the Advisory Board has heard the high ranking officers of the Police Department and others on behalf of the Government and detaining authority, it ought to have permitted the detenu to have the assistance of a friend who could have made an equally effective representation on his behalf. Since that has been denied to the detenu, the High Court, in our opinion, was justified in quashing the detention order.

13. It was, however, sought to be made out for the State that the police officers were present before the Board only to produce the record and they did not do anything further. But the record shows otherwise. The officers were not there only to produce the records. They were in fact heard by the Advisory Board obviously on the merits of the matter and that makes all the difference in the



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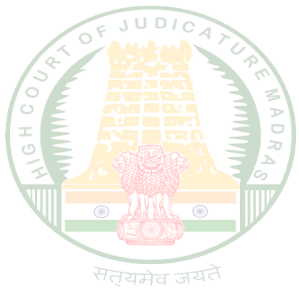
instant case."

(Emphasis supplied)

64.2. In **Hamida Sarfaraz Qureishi v. M.S. Kasbekar** reported in **(1980) 4 SCC 478 : 1981 SCC (Cri) 17**, it has been held as follows :

" 6. Section 12(2) of the Act provides that in any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention, the appropriate Government shall revoke the detention order and cause the detenu to be released forthwith.

7. In the instant case, the detenu had through his representation dated June 27, 1980 to the detaining authority, expressed a desire to appear before the Advisory Board and be heard in person. Under Section 11(1) of the PREBLACT, therefore, the Authority concerned was peremptorily required to afford to the detenu a proper opportunity to be heard in person by the Advisory Board. But in the instant case, such an opportunity was not given to the detenu, despite request. Firstly, no reasonable notice about the date of meeting of the Advisory Board was given



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to the detenu. It was only about one or two hours before the scheduled time of the meeting of the Advisory Board that a police officer went to the hospital in which the detenu was confined, to inform about the meeting of the Board. Even that information was given only to the wife of the detenu for further transmission to the detenu who was then precariously ill and disabled from doing anything. Thus, the so called opportunity of being heard in person by the Advisory Board, was a farce, and amounted to a negation of the right conferred on him under Section 11(1) of the Act."

65. Judicial review over the Board opinion :

65.1. The Board as an additional safeguarding machinery not only to consider the material produced by the Government but also will have the power to call for further report from the Government and consider the material adduced on behalf of the detenu to form a conclusion and furnish his opinion that either the detention order contain sufficient cause for detention of the person or not, independently. In the said circumstances, as stated above, the Advisory Board act as a constitutional safeguarding authority to check the excessive administrative action of passing the

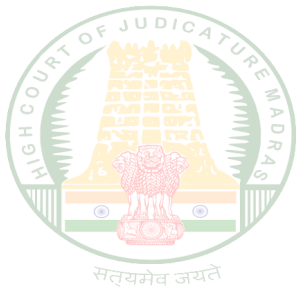


detention order. In the said circumstances, the constitutional obligation vested in the Advisory Board is more than the review power conferred upon this Court in deciding the validity of the detention order under Article 226 of the Constitution of India. In the said circumstances, passing of single line order by way of opinion does not meet the requirement of the Constitutional obligation.

65.2. The Advisory Board is the first Constitutional authority to check the infraction of the constitutional right of detenu. So the Advisory Board need not pass a judgment but as held by the Hon'ble Supreme Court as well as the effective word incorporated in Section 11, 12 of the Act as well as the provision in the Constitution it clearly demands that the conclusion must be based on the collective perusal of the documents and oral evidence and the operative portion of the conclusion in the form of opinion is to meet out the requirement of “**sufficient cause**”.

66. In this aspect, it is relevant to extract the meaning of opinion as stated by the Hon'ble Supreme Court in the case of ***Dolgobinda Paricha Vs. Nimai Charan Misra and others*** reported in ***AIR 1959 SC 914***:

"Opinion means something more than mere retailing of



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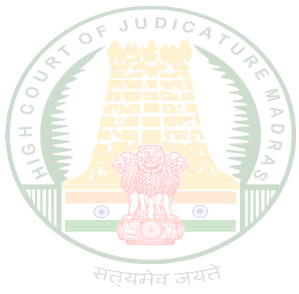


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gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the "belief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion"

67. In the said circumstances, if the Advisory Board fail to discharge the duty, there is no impediment to review the opinion of the board by this Court by exercising judicial review which is a basic structure of the Constitution. More particularly, after the decision of the **Coelho**, constitutional bench of 9 Judges in (2007) 2 SCC 1, the judicial review is a living organism of the Constitution of India. In the case of disparity of the Board in deciding the issues not in similar manner in similar cases, certainly the judicial review of this Court is very much available. If the detenu specifically made averment that the Board failed to consider the materials and failed to give the fair hearing, then this Court is duty bound to exercise the power of judicial review for the reason that the detenu are confined in prison without any trial.

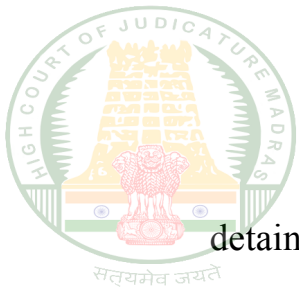
68. Period of the members of the Advisory Board :



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68.1. As per the Act, even though the Government has power to appoint sitting Judges of the High Court, they entrusted the function of the Advisory Board with the retired Judges of the High Court. From the records available, it is seen that there is no period of holding the membership of the Advisory Board either fixed in the Constitution or the Act. The above said procedural lapse has been continued due to the absence of the rule for the period of holding the post. All the Act specifically provided the duration of the period. The fixation of the period itself has own meaning. It is also the submission made by the members of the Bar that, due to the availability of same members for number of years in the Board it leads to the discharge of the duty in a particular format. So there was a request made by the members of the Bar that, the period of the members is to be limited either to 3 years or maximum of 5 years. The said submission has some force for the reason that, in all the similar Acts there is a limitation of period of office. Hence, this Court wish to indicate that the tenure can be fixed as 3 years either as a member of the Board or the Chairman of the Board.

68.2 Further, the Advisory Board is independent authority to decide the detention order not only on the basis of the material adduced by the



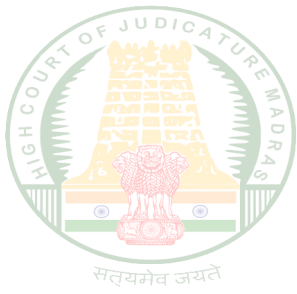
detaining authority, also the Board have power to call further information from the Government or any other authority to form an opinion by giving sufficient cause for the invocation of the detention order and also duty bound to consider the detenu's case by receiving the document and oral evidence to rebut the allegation made in the detention order and also is duty bound to hear the detenu's friend's case also. In the said circumstances, a constitutional responsibility is fixed on the shoulders of the Advisory Board.

69. Confidentiality of the Report :

69.1. In this context, the learned counsel cited the decision in Muthuramalinga Thevar Vs. The State of Madras, represented by The Chief Secretary, to Govt. of Madras, Fort St., George, Madras, and another reported in AIR 1958 SC 425.

69.2. During the Parliamentary Debates on the Preventive Detention Act 1950 in the Lok Sabha 25.02.1950, it was relied by the then Minister of Home Affairs and the States, Mr. Sardar Patel as follows:

"Sardar Patel: The proceedings of the Advisory Board are not supposed to be judicial or semi-judicial proceedings. The detenu himself knows



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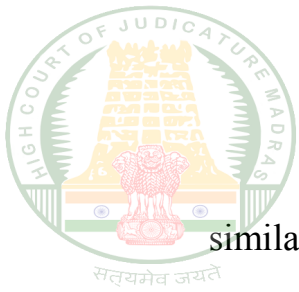


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what has happened. But my hon. friend hardly knows that the publication of these proceedings would be of a most dangerous character and give rise to a most dangerous propaganda. It is likely to disclose the source of information or, by inference, the source of information is likely to be known, My hon. friend does not know how many informants have been killed during recent months. Therefore the sacred nature of the proceedings is its secrecy and it should not be disturbed."

69.3. The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers And Video Pirates Act, 1982 (Tamil Nadu Act No. 14 of 1982) deals with the confidentiality of facts and particulars in Section 8(2) and Section 11(2) of the Act.

69.4. The Section 8(2) of the Tamilnadu Act No.14 of 1982 reads that "2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose, which is



similar to the Clause (6) of Article 22 of the Constitution of India.

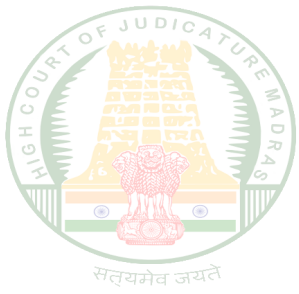
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69.5. The Hon'ble Supreme Court in the case of Madhyamam Broadcasting Limited Vs Union of India in Civil Appeal No. 8129 of 2022 had dealt about the Confidentiality and the Public Interest Immunity. In the same manner, the High Court may also determine whether there is any material available in the said Report constituting confidentiality, as the same cannot be in each and every case and depends upon the facts thereon.

70. In view of the foregoing discussions and the legal position that has been discussed herein above arising out of various decisions of the Hon'ble Supreme Court on the preventive detention laws, we are inclined to pass the following orders in this batch of cases :

(i) The proceedings, report and opinion rendered by the Advisory Board under Section 11 of the Act is amenable to Judicial Review.

(ii) The Advisory Board being constituted by the State Government under the Act, on assumption of charge, must take all pending detention orders which has been referred to them under the provisions of the Act and shall take



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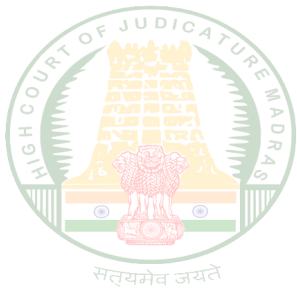
endeavour to decide those cases as early as possible within the statutory period that has been provided under the Act.

(iii) Before taking up every detention case, the Advisory Board shall ensure that proper notice / summon, in the format that we have indicated herein above, are served on the detenu as well as family member / next friend providing ten days time in advance from the date of hearing.

(iv) The Secretariat to the Advisory Board shall ensure that, all representations received in respect of detention order on behalf of the detenu are put up along with the paper book / detention order and be placed before the Advisory Board Members in advance preferably at least three days prior to the hearing.

(v) The concerned Jail authorities, where the detenu is detained, shall take responsibility to bring the detenu on the date of hearing before the Advisory Board at least 2 hours prior to the business hour / office hour of the Board.

(vi) At the time of hearing, the Board shall give reasonable opportunity of hearing to the detenu. In this process, if the detenu wants any of his relative / friend to be enquired in order to



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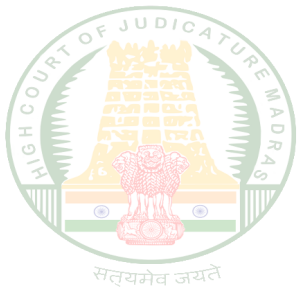
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record the supporting documents, if any, in favour of the detenu, such an opportunity also shall be given by the Board.

(vii) During the hearing, if any specific materials, documents or representations are referred by the detenu or his family member / friend, that shall be considered by the Board.

(viii) The Board at its convenience either on the same day or on the subsequent dates shall take a decision on the basis of the hearing in respect of the detention order and record the proceedings, out of which a report be drafted at least precisely consisting of the case of detaining authority as well as the reply and defence or the grounds projected by the detenu including the representation or evidence recorded by the Board from the detenu as well as the family member / friend and accordingly, giving reasons shortly for coming to a conclusion to render opinion. Based on such reasoning which consisted in the report, the opinion shall be rendered by the Board.

(ix) The record of proceedings in respect of each detention order dealt with by the Board shall be maintained at the Secretariat of the Board for the purpose of future reference and also for



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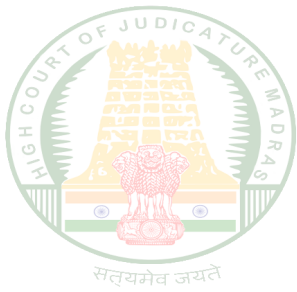
Judicial Review.

(x) The report and the opinion shall form part of the documents to be forwarded to the State Government within the time frame as has been fixed under the provisions of the Act.

(xi) The State Government on receipt of such report and opinion that there is sufficient cause for the detention of the person, shall act upon and pass final order confirming or otherwise of the detention order within the statutory period and the same shall be communicated to the detenu as well as the family member or next friend of the detenu within seven days.

(xii) The report and the opinion received from the Advisory Board in respect of each detention case shall be kept in confidential by the State Government.

(xiii) The State Government shall take endeavour to constitute atleast one more Advisory Board at Madurai or any other place under Section 9 of the Act, covering the southern and central Districts of Tamil Nadu as the present Board functioning from Chennai can be entrusted with the jurisdiction of northern and western



Districts.

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71. In view of the aforestated grounds and reasoning the detenus are entitled to succeed in these HCPs as the respective detention orders are liable to be set aside. In fact, earlier we have passed orders directing the release of the detenus as the period of detention would be over by one year period from the date of detention.

72. Hence, all these Habeas Corpus Petitions are allowed with aforestated compendium of procedure to be adopted by the Advisory Board.

73. We make it clear that, since the legislature has not come forward to prescribe, by law, the procedure to be followed by an Advisory Board, in an enquiry under sub-clause (a) of Clause (4) of Article 22 of the Constitution, we are constrained to issue this mandatory guidelines by way of compendium of procedure to be adopted by the Advisory Board constituted under the provisions of Act 14 of 1982. This compendium of procedure shall be strictly followed by the State Advisory Board. This compendium of procedure shall be in force until the State Legislature makes



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a law within the meaning of Article 22(7)(c) of the Constitution.

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74. Before parting with the case, we record our appreciation for the valuable assistance rendered by the learned Amicus Curiae, learned Additional Public Prosecutor and other learned counsels in this case.

(R.S.K., J.) (K.K.R.K.,J.)

12.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes / No

tsvn

To

1. The Principal Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,

133/139

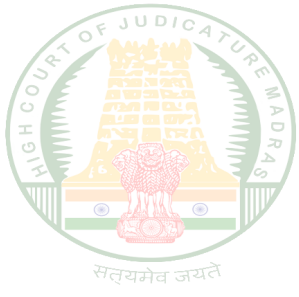


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Secretariat, Chennai - 600 009.

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2. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The District Collector and District Magistrate
Office of the District Collector and District Magistrate,
Virudhunagar District.
4. The District Collector and District Magistrate
Theni District, Theni.
5. The District Collector and District Magistrate
Office of the District Magistrate and District Collector,
Thoothukudi District,
Thoothukudi.
6. The Superintendent of Prison
Madurai Central Prison,
Madurai District.
7. The Superintendent of Prison
Palayamkottai Central Prison,
Tirunelveli District.



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**R.SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

tsvn

**Common order in
H.C.P.(MD).Nos.1111,
1350 and 1382 of 2022**

12.12.2023