

Supreme Court of India

Hansaben Jayantilal Shah (Smt) vs Union Of India (Uoi) And Ors. on 12 May, 1994

Equivalent citations: 1994 (2) Crimes 996 SC, 1994 (2) SCALE 917, (1994) 4 SCC 148, 1994 (2) UJ 225 SC

Bench: K J Reddy, Y Dayal

ORDER

1. In Ibrahim Bachu Baffin and Anr. v. State of Gujarat and Ors. and in Amir Shad Khan and Anr. v. L. Haminglina and Ors. , two Benches consisting of three Judges in each of these two cases held that the detaining authority under the COFEPOSA Act has also "the power to revoke the detention order made by it by virtue of the power conferred by Section 21 of the General Clauses Act read with Section 11 of the COFEPOSA Act and that the power of revocation conferred by Section 11 of the Act has nexus with the right of representation conferred on the detenu by Article 22(5) of the Constitution. Thus, according to the view taken in these two cases, the power of revocation can be exercised by the three authorities namely the officer of the State Government or that of the Central Government and the State Government as well as the Central Government and such power of revocation is independent of the power of revocation conferred by Section 8(f) on the appropriate government after the opinion is rendered by the advisory board.

2. In State of Maharashtra and Anr. v. Smt. Sushila Mafatlal Shah and and Ors. (1988) 3 SCC 490 a Bench of two Judges has taken a contrary view. It appears that Ibrahim Bachu Baffin's case (supra) decided by a Bench of three Judges which was earlier in point of time was not brought to the notice of the Bench of two Judges which decided the above case. The Bench of two Judges held that even if an order of detention is made by a specially empowered officer of the State Government or the Central Government, such order of the specially empowered officer acquires "deemed approval" of the State Government or the Central Government, as the case may be, automatically and therefore the representation can be made only to the State Government or the Central Government, as the case may be and not to the officer making the order of detention.

3. There appears to be an apparent conflict between the two views. Since this is an important question, we think that the conflict has to be resolved by a larger Bench. Consequently the papers may be placed before Hon'ble the Chief Justice of India for referring this matter to a Bench of five Judges.

4. Learned counsel for the petitioner submits that since the matter is not going to be decided by the larger Bench in the near future, the period of detention of one year will come to an end even by the end of July, 1994 since the detenu is in jail for the last eight months. He therefore submits that the petitioner may be granted interim bail or may be released on parole till the matter is decided by the larger Bench. In such matters of detention, we are of the view that it is not appropriate for this Court to grant interim bail or parole. It is open to the petitioner to approach the Government or the appropriate authority and seek parole.