Supreme Court of India
Veeramani vs State Of T.N on 4 February, 1994
Equivalent citations: 1994 SCR (1) 616, 1994 SCC (2) 337
Author: K J Reddy
Bench: Reddy, K. Jayachandra (J)

PETITIONER:
VEERAMANI

Vs.

RESPONDENT:
STATE OF T.N.

DATE OF JUDGMENT04/02/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 SCR (1) 616 1994 SCC (2) 337
JT 1994 (1) 350 1994 SCALE (1)363

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- The petitioner, who is himself the detenu, was detained under the provisions of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug- Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 ('Tamil Nadu Act' for short). He challenged the detention order before the High Court by filing a writ of habeas corpus and the same was dismissed. Questioning the same, he has filed SLP (Crl.) No. 2685 of 1993 in this Court. He has also filed Writ Petition (Crl.) No. 364 of 1993 under Article 32 of the Constitution in this Court and both are being disposed of together by a common judgment.

2. The petitioner is a resident of Madras city. On February 16, 1993 he was detained under Section 3 of the Tamil Nadu Act in order to prevent him from acting in any manner prejudicial to the maintenance of public order, by an order passed by the Commissioner of Police, Madras. The grounds of detention in support of the order were served on the petitioner in 'ail on February 20,

1993. In both these petitions, common grounds challenging the detention have been advanced. Before we proceed to consider the same, it 'is necessary to refer to the relevant portions of the grounds which also came under severe attack by the learned counsel for the petitioner. After referring to the subject it was mentioned thus "Thiru Veeramani, male, aged 35, s/o Kalappan, No. 28/1,Ayodhiyakuppam, Madras-5 is a Goonda. He has come to adverse notice in the following cases:

S. No.	Police Station and Crime No.	Sections of law	Disposal/ Present Stage
(1)	(2)	(3)	(4)
1.	D-5 Marina P.S. Crime No. 14/91 and 109	341,323, r/w 34 506(ii)	On January 8,1991
2.	D-5 Marina P.S. Crime No. 41/91 & 109 IPC	341,324,336,426 506(ii) r/w	On January 17,
3.	D-5 Marina P.S. Crime No. 379/91	448, 324 and 307 IPC	On May 18,
4.	D-5 Marina P.S. Crime No. 380/91	341, 324 IPC	On May 18, 199

5. R-7 K.K. Nagar P.S. 141,341,302 &On February 10, Crime No. 288/93 506(ii) IPC1993

6. B-2 Esplanade P.S. 147,148,120-B,On February 10, Crime No. 237/93 341, 307, 506(ii)1993 and 109 IPC r/w 149 IPC"

After listing the above crimes, in paragraph 2 of the grounds, it is just mentioned that the detention order has been made against the petitioner under Section 3(1) of the Tamil Nadu Act on February 16, 1993. In paragraph 3, reference is made to the occurrence on February 10, 1993. It is stated that on February 10, 1993 a special police party headed by the Inspector of Police, Law and Order along with a police party consisting of a number of constables was constituted for the purpose of apprehending the petitioner and his associates connected with Crime No. 288 of 1993 of K.K. Nagar Police Station under Sections 148, 341, 302 and 506(ii) IPC and also in connection with Crime No. 237 of 1993. On February 11, 1993 at about 3 p.m. the aforesaid special police party proceeded to Ayodhiyakuppam, Madras to apprehend the petitioner and others. While they were so proceeding, the petitioner and his associates shouted at them and when the police party surrounded the petitioner and his associates to apprehend them, the members of the police party were challenged and were attacked and the petitioner aimed a cut on the head of the Inspector with a patta knife but which fell on his left forearm causing a bleeding injury and similarly some of the associates of the petitioner inflicted injuries on the constables and stones were pelted against them which caused injuries. However, they were apprehended but the petitioner threatened the general public and thereby instilled a sense of fear and panic in their minds. Some more details of the crime were mentioned and finally it was concluded that from this material, the authority was satisfied that the petitioner and his associates acted in a manner prejudicial to the maintenance of public order.

Towards the end of paragraph 3, it was mentioned as under:

> "In arriving at my subjective satisfaction I have not taken into account the bootlegging activities of Tr. Veeramani or his connection and sentence in the murder case, as revealed in his confessional statement recorded by the Inspector of Police during the course of investigation of Cr. No. 61 of 1993 on the file of the D-5 Marina Police Station." Paragraph 4 of the grounds reads thus: "I am aware that Thiru Veeramani is now in remand, he is likely to file a ball application and come out on bail. I am also aware that bail is usually granted by the courts in such cases and hence there is imminent possibility that he will come out on ball. If he comes out on bail, he is likely to indulge in such further illegal activities in future which will be prejudicial to the maintenance of public order..... Relevant portion of paragraph 5 reads thus :
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> "Thiru Veeramani is informed that he has a right to make representation in writing against the order by which he is kept in detention. If he wishes to make such a representation he should address it to the Secretary to Government, Prohibition and Excise Department, Madras 9 and forward it through the Superintendent of Prison in which he is confined as expeditiously as possible."

3. At the outset, the learned counsel in general way submitted that the first six crimes referred to are of 1991 and they are remote and it appears as though the detaining authority has taken them also into consideration and they are not of that magnitude as to disrupt public order and the other two incidents of February 10, 1993 mentioned in the grounds can be only prejudicial to the maintenance of law and order and therefore the detaining authority has not properly applied its mind and also the minor incidents which are mentioned in the grounds would show that they also formed part of the material considered by the detaining authority in arriving at the necessary satisfaction. We have carefully gone through the grounds. It may be mentioned here that the Act provides for preventive detention of bootleggers, goondas, immoral traffic offenders etc. for preventing their dangerous activities prejudicial to the maintenance of public order. Therefore first the authority must be satisfied that the person sought to be detained comes within the meaning of one of these categories namely bootlegger, goonda and immoral traffic offender. Section 2(f) of the Tamil Nadu Act defines 'goonda' thus :

> " goonda' means a person, who either by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860);"
>
> Relevant portion of Section 3 under which the order of detention is made, reads thus "3. Power to make orders detaining certain persons. (1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or forest-offender or goonda or immoral traffic offender or slum-grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

* * * *"

It can therefore be seen that at first the authority must be satisfied that the person comes within the meaning of goonda'. The relevant part of the grounds which is noted above would show that the petitioner Veeramani has come to adverse notice in the six cases mentioned. Then thereafter as required under Section 3(1) of the Act, the detaining authority must satisfy himself that it is necessary to detain such a person. The detaining authority in paragraph 3 has mentioned that the two incidents and the attack on police party by the petitioner and his associates on February 11, 1993 certainly affected the maintenance of public order. Therefore it cannot be said that the activities mentioned in the grounds are not prejudicial to the maintenance of public order.

4. The next point urged is that on the date of order of detention the petitioner was already in custody under the orders of the Magistrate who remanded him on February 11, 1993 in connection with Crime Nos. 288 of 1993 and 237 of 1993 being accused of offences punishable under Sections 147, 148, 302, 307 IPC etc. and there was no question of his being released on bail and that as a matter of fact the petitioner did not apply for bail. Therefore, the detention was unwarranted and it shows that there is no genuine satisfaction regarding the detention as required under the Act and therefore the order is illegal. As extracted above the detaining authority noted in paragraph 4 that he was aware that the petitioner is on remand and that he was likely to file a bail application and that bail is usually granted by the courts in such cases and that if he comes out on bail, he is likely to indulge in such further illegal activities prejudicial to the maintenance of public order. The learned counsel, however, contended that the petitioner who was involved in a murder case punishable under Section 302 IPC would not be released so casually as is being stated by the detaining authority and that only shows that it has not applied its mind.

5. On the question whether the detaining authority has properly applied its mind in such cases where the persons sought to be detained are already in custody, there are a number of cases decided by this Court. The learned counsel, however, placed considerable reliance on a judgment of this Court in Rameshwar Shaw v. District Magistrate, Burdwan'. In this case the Constitution Bench considered the question : "Can a person in 'ail custody be served with an order of detention whilst he is in such custody?" In this context the Bench observed as under :

> "The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in 'ail custody, how can it rationally be postulated that if he is not detained,

> he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it 1 AIR 1964 SC 334: (1964) 4 SCR 921: (1964) 1 Cri LJ 257 must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under Section 3(1)(a), and this basis is clearly absent in the case of the petitioner."

But in the same judgment it was also observed in paragraph 12 that as an abstract proposition of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ. In an earlier paragraph it was further observed thus :

> "[W]hether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released.
>
> * * * Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case."

But in later case this question has been considered further and this Court has clearly laid down that no decision of this Court has gone to the extent of holding that no order of detention can validly be passed against a person in custody under any circumstances and that the facts and circumstances of each case have to be taken into consideration in the context of considering the order of detention passed in the case of a detenu who is already in jail. (Vide Sanjay Kumar Aggarwal v. Union of India2, N. Meera Rani v. Government of TN.3, Dharmendra Suganchand Chelawat v. Union of India4, Kamarunnissa v. Union of India5 and Abdul Sathar Ibrahim Manik v. Union of India6).

6. From the catena of decisions of this Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down.

2 (1990) 3 SCC 309: 1990 SCC (Cri) 473
3 (1989) 4 SCC 418: 1989 SCC (Cri) 732
4 (1990) 1 SCC 746: 1990 SCC (Cri) 249: AIR 1990 SC 1196
5 (1991) 1 SCC 128: 1991 SCC (Cri) 88: AIR 1991 SC 1640
6 (1992) 1 SCC 1: 1992 SCC (Cri) 1

7. Learned counsel, however, submitted that by making a sweeping statement that the petitioner is likely to be released on bail, the detaining authority cannot pass a detention order and when there is no likelihood of his being released on bail from custody, the order of detention is illegal inasmuch as there is no proper application of mind. In this context the learned counsel also submitted that since the detenu was in actual custody in connection with the murder case, no reasonable person can arrive at the conclusion that he was likely to be released on bail and that the statement of the detaining authority in the grounds that the detenu is likely to file a bail application and come out on bail and that he was aware that bail is usually granted by the courts in such cases, is illogical and unsound. In this context the learned counsel relied on an unreported judgment of this Court in Rivadeneyra Ricardo Agustin v. Government of the National Capital Territory of Delhit. In that case in the grounds it was only mentioned that there was a 'possibility' of the detenu being released in case he moves a bail application. This Court observed that since the grounds did not indicate that such release was likely or that it was imminent and that on a mere possibility the detention order could not have been passed. The bench also examined the relevant file and observed that there was no material indicating that the release of the petitioner was likely.

8. But in the instant case what we have to mainly see is whether there was awareness in the mind of the detaining authority that the detenu is in custody and that he had reason to believe that he is likely to be released. The grounds do disclose that the detaining authority was aware that the detenu is in custody and it is further mentioned that he was also aware that bail is usually granted by the courts in such cases and it is further emphasised that there is 'imminent possibility' of the detenu coming out on bail. As a matter of fact the High Court in its judgment while considering this aspect also observed thus :

> "The grounds indicate that the detenu, who was in remand, was likely to file a bail application and come out on bail. This shows the subjective satisfaction of the detaining authority not only of the awareness of the petitioner being in remand, but his subjective satisfaction of the likelihood of the petitioner coming out on bail by filing bail application. Of course, the detaining authority need not have stated that he was also aware that bail is usually granted by courts in such cases and hence there is imminent possibility that he will come out on bail if it has to be held to be a sweeping statement, but on facts, it cannot be said that the statement is of a sweeping nature for, it is well known that in offences punishable under the sections listed above, bail orders are usually granted after some time and most certainly except in rarest of rare cases after the final report is laid."

Therefore it cannot be said that the detaining authority has not applied its mind to this aspect. It is also submitted that the detenu, as a matter of fact, Ed.: Now reported at 1994 Supp (1) SCC 597: 1994 SCC (Cri) did not file any bail application. But it must be noted that the detenu was arrested on February 11, 1993 and remanded to custody and on February 16, 1993 itself the detention order was passed. Therefore there was no opportunity for him to file a bail application within this short interval.

9. The next submission is that the detaining authority has relied on some documents which were not supplied to the detenu. It is submitted that under the Act, the authority himself first be satisfied that the detenu comes within the meaning of 'goonda' and then he should be further satisfied that he was likely to indulge in activities prejudicial to the maintenance of public order and that the detaining authority while satisfying himself that the detenu was a 'goonda' has mentioned only the FIRs in those six cases which by themselves do not constitute sufficient material to declare him to be a 'goonda' and that the authority must have been influenced by some unproved and irrelevant material. In this context reliance is also placed on some of the averments in the counter-affidavit filed by the detaining authority. In paragraph 10 of the counter- affidavit the detaining authority stated that besides the first information reports, the statement of witnesses under Section 161, the confessional statement of the detenu and various other materials relating to those six cases had been placed and considered and it is also stated that it has not taken into account the bail application or the bail orders in any of the earlier cases nor relied upon. The learned counsel submitted that the material relied upon by the detaining authority has not been supplied to the detenu and that he could not make an effective representation. Therefore the detention is illegal. Learned counsel placed reliance on the judgments of this Court in Debu Mahato v. State of W.B.7 and Khudiram Das v. State of W.B.8 wherein it was held that the grounds may not include all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention which must be communicated to the detenu. But the real question is whether those materials which have just been placed before the detenu also formed basis for arriving at the necessary satisfaction and whether they thus constitute part of the grounds. In paragraph 3 of the grounds, it is clearly stated that:

> "In arriving at my subjective satisfaction I have not taken into account the bootlegging activities of Tr. Veeramani or his connection and sentence in the murder case, as revealed in his confessional statement recorded by the Inspector of Police during the course of investigation of Cr. No. 61 of 1993 on the file of the D-5, Marina Police Station."

The grounds further disclose that the serious incidents of February 10, 1993 and February 11, 1993 alone formed the grounds of detention. The earlier incidents were only referred to for showing that the detenu has been indulging habitually in committing offences and to that extent all the FIRs have been referred to and the copies of the same have been supplied to the 7 (1974) 4 SCC 135: 1974 SCC (Cri) 274 8 (1975) 2 SCC 8 1: 1975 SCC (Cri)435 detenu and the copies of statement under Section 161 and the connected materials which were simply placed before the detaining authority and which were looked into to verify whether the contents of the FIR were substantial, cannot be held to be the real material forming the basis of the grounds as mentioned above. Under the Act, the authority must be satisfied that the detenu comes within the meaning of 'goonda'. No doubt even as against that the detenu has to make his representation stating how he does not come within the meaning of 'goonda'. To that extent lie has been put on sufficient notice by referring to the FIRs in six consecutive cases which could show that he has been habitually indulging in offences and which by themselves form sufficient material to show that he comes within the meaning of I goonda'. Even otherwise the non-supply of the statement under Section 161 etc. which are only 'In support of the contents of FIRs did not cause any prejudice to the detenu and as a matter of fact while making the

representation the detenu did not ask for any such document.

10. The next submission is that though the grounds were prepared on February 15, 1993 and signed on February 16, 1993 itself, they were served on the detenu only on February 20, 1993 and according to the learned counsel the grounds ought to have been served along with the detention order and the authority ought not to have just waited for five days because the same have to be served "as soon as may be" as required under the statute. Learned counsel for the petitioner, however, relied on a judgment of this Court in A. K. Roy v. Union of India9 wherein it was observed that the normal rule is that grounds of detention must be communicated to the detenu without avoidable delay. It is not in dispute that as provided under the Act the grounds can be served within five days. In the counter-affidavit it is stated that the grounds were served within the period prescribed. It is not in dispute that as provided under the Act the grounds were served within five days. In A.K. Roy case9 it was also observed that in order to meet practical exigencies of administrative affairs, the authorities are permitted to communicate the grounds of detention not later than five days ordinarily but not later than IO days if there are exceptional circumstances which are to be recorded. It can therefore be seen that if the grounds are served beyond five days then the reasons for delay ought to be recorded. The words "as soon as may be" should be understood in the context in which they are used. If the grounds are served within five days, it must be construed that they are served as soon as possible. In the counter- affidavit it is stated that the grounds were served within five days from the date of passing the order.

11. The further submission of the learned counsel for the petitioner is that the detaining authority has the power to revoke the detention and such power is preserved as provided under Section 14 of the Act and that in the grounds it is not indicated that he can make representation for such revocation by the detaining authority himself and that on the other hand it is mentioned in the grounds that the detenu has a right to make representation 9 (1982) 1 SCC 271: 1982 SCC (Cri) 152 in writing addressed to the Secretary to the Government through the Superintendent of Prisons as expeditiously as possible and such representation would duly be considered by the Government and would also be placed before the Advisory Board which according to the learned counsel is a wrong advice. His further submission is that at any rate when the representation reached the detaining authority it should have examined the same and considered whether it could exercise its power under Section 14 and revoke the detention and that failure to do so vitiated the detention itself. Section 14(1) of the Tamil Nadu Act, which is relevant in the context, reads thus :

> " 14. Revocation of detention orders.- (1) Without prejudice to the provisions of Section 15 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act I of 1891) a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of Section 3."

Section 15 of the Tamil Nadu General Clauses Act referred to herein corresponds to Section 21 of the Central General Clauses Act. Section I I of the COFEPOSA Act is also the same as Section 14 of the Tamil Nadu Act and it reads thus :

"11. Revocation of detention orders.- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified

(a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under Section 3 against the same person."

12. In Ibrahim Bachu Bafan v. State of Gujarat10 a Bench of three Judges of this Court considered the scope of Section 11(1) of COFEPOSA Act and observed thus : (SCC p. 28, para

7) "That section provides that a power to issue orders includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind such orders. Under Section 21 of the General Clauses Act, therefore, the authority making an order of detention would be entitled to revoke that order by rescinding it."

Relying on this observation, the learned counsel submitted that the detaining authority should have mentioned in the grounds that there is such power of 10 (1985) 2 SCC 24: 1985 SCC (Cri) 49 revocation vested in it and that the detenu could make representation to the detaining authority also.

13. We see no force in this submission. In Ibrahim Bachu Bafan case10 nothing is mentioned about the right of the detenu to make representation to the detaining authority itself on the basis of the language of Section I I of COFEPOSA Act. It is important to note that in COFEPOSA Act, there is no provision to the effect that when an authorised officer of the State Government passes detention order, he should report the fact to the State Government along with the grounds and that no such order shall remain in force for 12 days after making thereof unless in the meantime it has been approved by the State Government. In other words, tile approval of the State Government is not contemplated under COFEPOSA Act and what all Section 3(2) lays down is that when any order of detention is made by the State Government or by an officer empowered by the State Government, the State Government within I 0 days shall forward to the Central Government a report in respect of the order. There is no provision specifically mentioning that such an order of detention should get the approval of any of the respective Governments. Therefore the above observations in Ibrahim Bachu. Bafan case10 do not apply to cases arising under other Preventive Detention Acts including the Tamil Nadu Act where there is a specific provision for such approval by the Government within 12 days from the date of making the order and in the instant case where the detention is made under the Tamil Nadu Act, the State Government approved the detention. Further in the counter-affidavit it is stated that the question whether the detaining authority should consider the representation by itself did not factually arise inasmuch as no representation either by the detenu or by his wife

addressed to it reached within 12 days from the date of order of detention and that in the meanwhile the Government approved the detention and therefore the question of revocation by the detaining authority itself after such approval did not arise.

14. Learned counsel for the petitioner, however, submitted that the power of the detaining authority even after the approval by the Government as required under Section 3(3) of the Tamil Nadu Act, does not cease to exist and that to the same effect is the observation in Ibrahim Bachu Bafan case10. In the said case no doubt it was observed that as provided under Section 11(2) of the COFEPOSA Act the revocation of detention order shall not bar the making of a fresh order against the same person and that all the three authorities namely the detaining authority, the State Government and the Central Government had the power to revoke or modify. This observation was made while considering the question whether a fresh detention order can be passed after the High Court quashed the order of detention under Article 226 of the Constitution and it was observed as under : (SCC p. 30, para 10) "It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-section (2) of Section I I is not applicable and the detaining authority is not entitled to make another order under Section 3 of the Act on the same grounds."

From this observation, we find it difficult to agree that even after the approval by the Government, as provided under the other Acts the detaining authority can competently revoke the detention by itself independently.

15. Yet another judgment of this Court relied upon in this context in Amir Shad Khan v. L. Hminglianal 1. That was also a case under COFEPOSA Act where the detaining authority as well as the State Government failed to forward the representation of the detenu to the Central Government. In that context this Court after having examined the provisions of Section I I of COFEPOSA Act observed thus : (SCC pp. 48- 49, para 3) "It is obvious from a plain reading of the two clauses of sub-section (1) of Section I I that where an order is made by an officer of the State Government, the State Government as well as the Central Government are empowered to revoke the detention order. Where, however, the detention order is passed by an officer of the Central Government or a State Government, the Central Government is empowered to revoke the detention order. Now this provision is clearly without prejudice to Section 21 of the General Clauses Act which lays down that where by any Central Act a power to issue orders is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to rescind any order so issued. Plainly the authority which has passed the order under any Central Act is empowered by this provision to rescind the order in like manner. This provision when read in the context of Section I I of the Act makes it clear that the power to rescind conferred on the authority making the detention order by Section 21 of the General Clauses Act is saved and is not taken away. Under Section I I an officer of the State Government or that of the Central Government specially empowered under Section 3(1) of the Act to make a detention order is not conferred the power to revoke it; that power for those officers has to be traced to Section 21 of the General Clauses Act.

Therefore, where an officer of the State Government or the Central Government has passed any detention order and on receipt of a representation he is convinced that the detention order needs to

be revoked he can do so by virtue of Section 21 of the General Clauses Act since Section I I of the Act does not entitle him to do so. If the State Government passes an order of detention and later desires to revoke it, whether upon receipt of a representation from the detenu or otherwise, it would be entitled to do so under Section 21 of the General Clauses Act but if the Central Government desires to revoke any order passed by the State Government or its officer it can do so only under clause (b) of Section I I (1) of the Act and not under Section 21 of the General Clauses Act. This clarifies why the power under Section I I is conferred without prejudice to the provisions of Section 21 of the General Clauses Act. Thus on a conjoint reading of Section 21 of the General Clauses Act and Section I I of the Act it becomes clear that the 11 (1991) 4 SCC 39: 1991 SCC (Cri) 946 power of revocation can be exercised by three authorities, namely, the officer of the State Government or the Central Government, the State Government as well as the Central Government. The power of revocation conferred by Section 8(f) on the appropriate Government is clearly independent of this power. It is thus clear that Section 8(f) of the Act satisfies the requirement of Article 22(4) whereas Section I I of the Act satisfies the requirement of the latter part of Article 22(5) of the Constitution. The statutory provisions, therefore, when read in the context of the relevant clauses of Article 22, make it clear that they are intended to satisfy the constitutional requirements and provide for enforcement of the right conferred on the detenu to represent against his detention order. Viewed in this perspective it cannot be said that the power conferred by Section I I of the Act has no relation whatsoever with the constitutional obligation cast by Article 22(5)."

Thereafter referring to the judgment of this Court in Raziya Umar Bakshi (Smt) v. Union of Indial2 it was further observed as under : (SCC p. 50, para 4) " This observation would show that the power of revocation conferred by Section I 1 of the Act has a nexus with the right of representation conferred on the detenu by Article 22(5) and, therefore, the State Government when requested to forward a copy of the representation to the Central Government is under an obligation to do SO."

Relying on these observations it is also contended that it must be presumed that the detenu can make representation to the detaining authority also independently and the said authority has to consider the same irrespective of the decision of the State Government or the Central Government on the representation made to them. The above observations made in Amir Shad Khan case' I also do not go to that extent. In any event Ibrahim Bachu Bafan case 10 and Amir Shad Khan case arose under the COFEPOSA Act where there is no specific provision for approval by the State Government. Therefore the question whether the detaining authority namely the empowered officer of the Government can act independently and revoke the detention order even after the State Government has approved and affirmed the detention as provided under the other Acts did not arise directly. In those two decisions, the ratio is that the detaining authority 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 in that context it was further observed 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) and that the State Government when requested to forward a copy of the representation to the Central Government, is under obligation to do so. Therefore the above mentioned observations in the cases arising under the COFEPOSA Act do 12 1980 Supp SCC 195: 1980 SCC (Cri) 846 not squarely apply to cases where factually the detention order made by an empowered officer has been approved by the State Government as provided for under the other

enactments. In such cases, in our view, the question of detaining authority revoking the order after such approval does not arise and the power preserved by virtue of the provisions under General Clauses Act is no more exercisable.

16.However, as a direct authority on this aspect, we find a judgment of a Bench of two Judges of this Court in State of Maharastra v. Sushila Mafatlal Shah13 which is directly on the point, where scope of Section I I of COFEPOSA Act in conjunction with Section 21 of the Central General Clauses Act as mentioned therein has been considered. In this case Shri D.N. Kapur, Officer on Special Duty and Ex-Officio Secretary to Government of Maharashtra passed an order under COFEPOSA Act against the detenu. While in the grounds it was mentioned that the detenu had a right to make a representation also to the Government of India against the order of detention, he did not specifically mention that the detenu had also a right to make a representation to the detaining authority itself. On the ground that the constitutional safeguards under Article 22(5) had been violated inasmuch as the detenu had been deprived of his right to make a representation to the detaining authority itself before availing of his right to make further representation to the State Government or the Central Government, the detention order was quashed by the High Court. After considering these relevant provisions, it was held as under : (SCC pp. 501-02, para 19) "Lastly, Section I 1, which deals with the powers of revocation of the State Government and the Central Government provides that notwithstanding that an order of detention had been made by an officer of a State Government, the concerned State Government as well as the Central Government are entitled to revoke or modify the order of detention. Similarly, as per clause (b) notwithstanding that an order of detention has been made by an officer of the Central Government or by a State Government, the Central Government has been empowered to revoke or modify an order of detention. The section does not confer any power of revocation on an officer of the Central or State Government nor does it empower the Central or State Government to delegate the power of revocation to any of its officers. We may further add that even though Section I I specifies that the powers of revocation conferred on the Central Government/State Government are without prejudice to the provisions of Section 21 of the General Clauses Act, this reservation will not entitle a specially empowered officer to revoke an order of detention passed by him because the order of the specially empowered officer acquires 'deemed approval' of the State or Central Government, as the case may be, automatically and by reason of such deemed approval the powers of revocation, even in terms of Section 21 of the General Clauses 13 (1988) 4 SCC 490: 1989 SCC (Cri) 1 Act will fall only within the domain of the State Government and/or Central Government." (emphasis supplied) It was further observed as under : (SCC pp. 502-03, para 20) "Consequently, the resultant position emerging from the Act is that even if an order of detention is made by a specially empowered officer of the Central Government or the State Government as the case may be, the said order will give rise to obligations to be fulfilled by the Government to the same degree and extent to which it will stand obligated if the detention order had been made by the government itself. If that be so, then it is the concerned Government that would constitute the detaining authority under the Act and not the officer concerned who made the order of detention, and it is to that Government the detenu should be afforded opportunity to make representation against the detention order at the earliest opportunity, as envisaged under Article 22(5) and not to the officer making the order of detention in order to provide the detenu an opportunity to make a further representation to the State Government and thereafter to the Central Government if the need arises for doing so. Though by reason of Section 3(1) a specially empowered

officer is entitled to pass an order of detention, his constitutional obligation is only to communicate expeditiously to the detenu the grounds of detention and also afford him opportunity to make representation to the appropriate Governments against his detention. The only.further duty to be performed thereafter is to place the representation made by the detenu before the concerned officer or the Minister empowered under the Rules of Business of the Government to deal with such representation if' the detenu addresses his representation to the officer himself" (emphasis supplied) It is thus held that under the provisions of the COFEPOSA Act, an order of detention passed by the specially empowered officer acquires a deemed approval of the State Government or the Central Government, as the case may be, automatically and by reason of such deemed approval, the powers of revocation even in terms of Section 21 of the General Clauses Act will fall within the domain of the State Government or the Central Government. In making these observations this Court has also taken note that unlike any other preventive detention Acts the COFEPOSA Act does not provide for any approval by the Government, of an order passed by an officer specially empowered to make the order. That being the legal position, as held by the bench, a fortiori, the detention order passed under the other enactments where there is specific provision for such approval by the Government, cannot be revoked by the detaining authority after such approval.

17. However, there may be scope to contend that even within 12 days, the detaining authority has the power to revoke and therefore in view of the safeguards provided under Article 22(5) the detenu if told, can make a representation within that period to the detaining authority in which case it would be under an obligation to consider the same. It may be noted that Article 22(5) casts an obligation on the detaining authority to communicate to the detenu the grounds and to afford to the detenu the earliest opportunity of making the representation. The article does not say to whom such representation is to be made but the right to make a representation against the detention order undoubtedly flows from the constitutional guarantee enshrined therein. The next question as to whom such representation should be made, depends on the provisions of the Act and naturally such a representation must be made to the authority who has power to approve, rescind or revoke the decision. To know who has such power, we have to necessarily look to the provisions of the Act. So far as the Tamil Nadu Act with which we are concerned, we have already noted that any detention order made by the empowered officer shall cease to be in operation if not approved within 12 days. Therefore, it is clear that the Act never contemplated that the detaining authority has specific power to revoke and it cannot be inferred that a representation can be made to it within the meaning of Article 22(5). The provisions of the Act are clear and lay down that the detention order has to be approved within 12 days and where there is no such approval, it stands revoked. Therefore the representation to be made by the detenu, after the earliest opportunity was afforded to him, can be only to the Government which has the power to approve or to revoke. That being the position the question of detenu being informed specifically in the grounds that he had also a right to make a representation to the detaining authority itself besides the State Government does not arise.

18. A contention has also been put forward that in view of the observations made by the two benches consisting of three Judges in Ibrahim Bachu Bafan case10 and Amir Shad Khan case", the matter should be referred to a larger bench. As already mentioned both these decisions deal with provisions of COFEPOSA Act where there is no provision for approval and these observations were made in a different context. We may also point out that the judgment in State of Maharashtra v. Sushila

Mafatlal Shah13 was not brought to the notice of the court in Amir Shad Khan case, 1. Therefore, we do not think that the present matter which arises under the Tamil Nadu Act provisions of which on this aspect are similar to National Security Act or Maintenance of Internal Security Act, providing for approval of the detention order by the Government and which are different from COFEPOSA Act, requires to be referred to a larger bench.

19. In Raj Kishore Prasad v. State of Biharl4 which was a case arising under the Prevention of Detention Act, considering the question as to who is the competent authority to consider the representation, this Court held as under: (SCC pp. 13-14, para 6) "When Parliament permitted the Central or State Government to permit exercise of power by the officers like the District Magistrate or Commissioner of Police, it thought it prudent to provide that even if the officers like District Magistrate or Commissioner of Police exercise this 14 (1982) 3 SCC 10: 1982 SCC (Cri) 530 power, the detenu must have an opportunity to make representation to Central or State Government as the case may be so that the functionary on whom Parliament chose to confer power must apply its mind to the representation of the detenu. Therefore, Section 8 made a statutory departure and provided for making representation to the appropriate Government. The contention is that constitutionally speaking a duty is cast on the detaining authority to consider the representation. That is of course true. But in view of the scheme of the Act, Parliament has now made it obligatory on the appropriate Government to consider the representation. This is done presumably to provide an effective check by the appropriate Government on the exercise of power by subordinate officers like the District Magistrate or the Commissioner of Police. Therefore, if the appropriate Government has considered the representation of the detenu it cannot be said that there is contravention of Article 22(5) or there is failure to consider the representation by the detaining authority." (emphasis supplied)

20. Therefore even in the context of Article 22(5) the scheme of the particular Act has to be examined to find out the authority to whom a representation can be made. The observations made in Ibrahim Bachu Bafan case10 and Amir Shad Khan case' I under COFEPOSA Act do not change the legal scenario under the other Acts where the legal implications in the context of Article 22(5) are of different nature but in conformity with the spirit and avowed object underlying Article 22(5).

21. For all these reasons both the writ petition and the special leave petition are dismissed.