

SUPREME COURT OF INDIA

Makhan Singh Tarsikka

Vs.

The State of Punjab

(M.Patanjali Sastri,J., M.C.Mahajan and B.K.Mukherjea,JJ., N.Chandrashekar Aiyar, and S.R.Dass.JJ.,)

10.12.1951

JUDGMENT

M. Patanjali Sastri,C.J.,

1. This is petition under article 32 of the Constitution praying for the release of the petitioner from his alleged unlawful detention. We accepted the petition and, at the conclusion of the hearing, ordered the petitioner to be released. We now proceed to give the reasons for our order.

2. The petitioner was arrested and detained under an order dated 1st March, 1950, made by the District Magistrate, Amritsar, under section 3 (10 of the Preventive Detention Act, 1950 (hereinafter referred to as "the Act") and the grounds of detention were communicated to the petitioner as required by section 7 of the Act on 15th March, 1950. The petitioner challenged the validity of the order on various grounds, but, while the petition was pending after this Court issued a rule nisi to the respondent, the petitioner was served on 6th August with another detention order dated 30th July, 1951, purporting to be made by the Governor of Punjab under sub-section (1) of section 3 and section 4 of the Act as amended by the Preventive Detention (Amendment) Act, 1951, and he was served with fresh grounds of detention on 16th August, 1951. Thereupon the petitioner filed a supplementary petition impugning the validity of the said order on the ground, inter alia, that it directed the detention of the petitioner up to 31st March, 1952, the date on which the Act itself was to expire and that this was contrary to the provisions of the Act as amended. On behalf of the respondent, the Advocate-General of Punjab urged that the said order was not intended to be a fresh order of detention, but was passed only with a view to limiting the period of detention till 31st March, 1952, as it had been held in some cases that an order of detention for an indefinite period was bad. The order runs as follows :-

“WHEREAS the Governor of Punjab is satisfied with respect to the person known as Makhan Singh Tarsikka, son of Gujjar Singh, Jat. of Tarsikka. Police Station Jandiala Amritsar District, that with a view to preventing him from acting in a manner prejudicial to the security of the State, it is necessary to make the following order :

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of section 3 and section 4 of the Preventive Detention Act, 1950 (Act IV of 1950), as amended by the Preventive Detention (Amendment) Act, 1951 (Act IV of 1951), the Governor of Punjab hereby directs that the said Makhan Singh Tarsikka be committed to the custody of the Inspector-General of Prisons, Punjab and detained in any jail of the State till 31st March, 1952, subject to such conditions as to maintenance, discipline and punishment for breaches of discipline and punishment for breaches of discipline as have been specified by a general order or as contained in the Punjab Communist Detenu Rules, 1950.”

3. It will be seen that the terms of the order make it clear that it was intended to operate as a fresh order for the detention of the petitioner and this view is strengthened by the fact that the order was followed by the service of a fresh set of grounds on the petitioner as required by section 7 of the Act; a proceeding which would be wholly unnecessary if no fresh order of detention was intended. Indeed, it was suggested on behalf of the petitioner that the said order followed by service of fresh grounds only four days before the date fixed for the hearing of the petition by this Court was deliberate move by the respondent to circumvent the objections raised by the petitioner to the validity of the earlier order of 1st March, 1950, and thus render the proceeding infructuous. However, that may, be, we are clearly of opinion that the order dated 30th July, 1951, must be regarded as a fresh order made for the petitioner's detention in supersession of the earlier order and the question is whether it was illegal in that it straightway directed that the petitioner be detained till 31st March, 1952, which was the date of the expiry of the Act.

4. Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amended requires that every case of detention, should be placed before an Advisory Board constituted under the Act (section 9) and provides that of the Board reports that there is sufficient case for the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (section 11). It is therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before, The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported. The learned Advocate-General, however, urged that in view of the provision in section 11 (2) that if the Advisory Board reports that there is no sufficient cause for the detention the person concerned would be released forthwith, the direction in the order dated 30th July, 1951, that the petitioner should be detained till 31st March, 1952, could be ignored as mere surplusage. We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from the disadvantage of the person affected.

4. Petition allowed.

