

Mohammad Afzal Khan

Vs

State of Jammu & Kashmir

Petition No. 181 of 1956

(CJI S. R. Dass, S. K. Das, N. H. Bhagwati, B. P. Sinha, T. L. Venkatarama Ayyar JJ)

13.11.1956

JUDGMENT

DAS C.J. -

This is a petition under Art. 32 of the Constitution of India praying for an order that the petitioner's detention be declared illegal and that he be set at liberty. The facts are shortly as follows :

On June 30, 1954, the petitioner was arrested in pursuance of an order of detention made on the same day under the Jammu and Kashmir Preventive Detention Act No. 4 of (Sambat) 2011. On July 1, 1954, the grounds on which the order had been made were communicated to the petitioner. On July 12, 1954, the petitioner submitted his representation to the Government. Not having heard anything further in the matter, the petitioner made an application to the High Court of Jammu and Kashmir under s. 491 of the Code of Criminal Procedure. It appears that the Government had reviewed the case of the petitioner under sub-s. (2) of s. 14 in consultation with a person nominated for the purpose on August 23, 1954, and was satisfied that he should continue to be detained. Accordingly during the pendency of the habeas corpus petition before the High Court the Government on December 23, 1954, made an order under s. 14 continuing the detention of the petitioner. Thereafter the petitioner moved the Vacation Judge of this Court under Art. 32. The learned Vacation Judge was not satisfied that there was any prima facie ground for interference on the assumption that the Jammu and Kashmir Preventive Detention Act was valid. As, however, the constitutionality of that Act was challenged the learned Judge directed a Rule to issue. On September 9, 1955, however, the petitioner, alleging that a certain decision had been made by the Jammu and Kashmir High Court which covered his case, asked for permission to withdraw the petition, which was accordingly dismissed as withdrawn. In the meantime and thereafter the petitioner's case was reviewed by the Government and orders extending his detention were made from time to time, the last of such orders having been made on June 8, 1956. On May, 25, 1956, he made a second petition before the Jammu and Kashmir High Court. That petition was dismissed on June 21, 1956, by the High Court. Thereafter the present petition under Art. 32 was presented before this Court on September 26, 1956.

The learned Attorney-General has taken a preliminary objection that in view of the observations of the Vacation Judge as to the merits of the case referred to above the present petition in so far as it raises any question other than the constitutional point was not maintainable. Shri T. R. Bhasin, who has assisted us in this matter as amicus curiae, draws our attention to a fresh petition filed by the

petitioner and assures us that he does not desire to raise any of the questions of fact raised in the first petition, which had been withdrawn, but will confine his arguments to the new points of law raised in the supplementary petition. In view of the fact that this petition is concerned with the liberty of a subject, we have considered it right to hear Shri T. R. Bhasin on the new points sought to be raised by him.

Shri T. R. Bhasin raises two points, namely :-

(1) that the detention has become wrongful and illegal inasmuch as the order under s. 14 was not made before the expiration of a period of three months after the order of detention; and

(2) that the second ground of detention is wrong inasmuch as the Chief Secretary has admitted that there is no such hotel as Guest House hotel at Amira Kadal, where the detenu is alleged to have attended a meeting therein referred to.

The second point was raised on account of the typographical error in the copy of the Chief Secretary's affidavit, which was available to the learned counsel, In point of fact Chief Secretary has maintained that there is a Guest House hotel at Amira Kadal. The original affidavit having been shown to the learned counsel, he has abandoned the second point. He, however, presses the first point.

Learned counsel draws our attention to Art. 22(4) of the Constitution. That clause lays down that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months except in the circumstances therein specified. Sub-cl. (b) makes it quite clear that cl. (4) does not apply to a person who is detained in accordance with the provisions of any law made under sub-cl. (a) and (b) cl. (7) by Parliament, which in the case of Jammu and Kashmir has been substituted by the word "legislature of the State' by the Constitution (Application to Jammu and Kashmir) Order, 1954, made by the President. The question is whether the petitioner's detention has been properly continued beyond the period of three months by virtue of the provisions of s. 14 of the Jammu and Kashmir Preventive Detention Act.

Shri T. R. Bhasin maintains that an order must be made under s. 14 before the expiry of the period of three months after the date of the order of detention. Turning to s. 14 we find that it does not in terms provide for the making of any formal order. It only says that notwithstanding anything contained in the Act any person detained under a detention order made in any of the two classes of cases 'may' be detained or continued in detention without obtaining the opinion of an Advisory Board for a period longer than three months. There is no specific provision in the section for making any order or even such a declaration as is contemplated by the proviso to s. 8(1). Shri T. R. Bhasin then contends that at any rate the word used being 'may' it implies that the Government must make up its mind and when the Government so makes up its mind to deal with the petitioner's case under s. 14, the fact of such decision should be communicated to the petitioner. In point of fact we find that the Government had appointed Shri A. H. Durani for purposes of consultation under s. 14(2) on August 23, 1954, which was within two months from the date of the order of detention. It is, therefore, clear on the record that the Government had come to a decision with regard to this particular detenu against whom the order of detention was made on the ground of his activities being prejudicial to the maintenance of public order that he should be dealt with under s. 14 and that his case should not go to the Advisory Board. We see no warrant for the contention that this decision of the Government must be communicated to the detenu. It has not been shown how the

communication of this decision would have been beneficial to the detenue. Indeed in the case of Achhar Singh v. The State of Punjab [Petition No. 359 of 1951, decided on October 22, 1951.] this Court has expressed the opinion that the omission to convey the order made under s. 11 of the Indian Preventive Detention Act does not make the detention illegal or result in infringement of the petitioner's fundamental right. If that be the position under s. 11 of the Indian Preventive Detention Act, which provides for the making of a formal order, all the more must the position be the same under s. 14 of the Jammu and Kashmir Preventive Detention Act, which does not in terms require any formal order to be made. In our opinion there is no substance in this application, which must accordingly be dismissed.

Application dismissed.

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