

Saifuddin Sood Etc.

Vs

State of Jammu and Kashmir

Writ Petitions Nos. 15 to 17 of 1971

(C. A. Vaidilingam, A. N. Ray JJ)

29.03.1971

JUDGMENT

RAY, J. -

1. The petitioners in these three writ petitions asked for orders in the nature of habeas corpus.
2. The petitioner Saifuddin alleges that he was arrested by the police on October 4, 1970, without any order of arrest or detention. He also alleges that he was not given any cause of arrest or detention at the time of his arrest or thereafter. He therefore, challenges that his arrest under the Jammu and Kashmir Preventive Detention Act, 1964 (hereinafter referred to as the Act) is illegal.
3. The answer is filed by A. R. Khajuria, Deputy Secretary to the Government of Jammu and Kashmir. It is stated there that the petitioner was detained by the orders of the Secretary to the Government, dated June 20, 1969. He was detained under Section 3(1)(a)(i) read with Section 5 of the Act. The orders specifically stated that the Government was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the security of the State, it was necessary to detain him. The order was served on the petitioner on June 20, 1969, he reading over the same and explaining to him in Urdu language. The Government on June 28, 1969, passed an order pursuant to Section 8 read with Section 13-A of the Act that it was against the public interest to disclose the facts or to communicate to the petitioner the grounds on which his detention order was made. The petitioner was informed of the order.
4. The petitioner thereafter filed a petition bearing No. 307 of 1970 in this Court challenging the detention order. The petition was dismissed by this Court on November 3, 1970.
5. The answer filed by the Government is that the petitioner was detained under the order, dated June 20, 1969. It is denied that he was detained under any order of detention on October 4, 1970. The affidavit evidence of the Government is that the petitioner Saifuddin is a Pakistan agent and was deputed for collecting information pertaining to vital defence installations in the State which he has been transmitting to Pakistan intelligence authorities.
6. The provisions contained in Section 8 of the Act specifically empower the Government not to disclose the facts which may be against the public interest. Under Section 13-A of the Act the duration of detention may not be longer than six months from the date of detention without obtaining the opinion of any Advisory Board. The present case is covered by the proviso to sub-section (1) of Section 13-A. The proviso to Section 13-A(1) states that where any person is detained with a view to preventing him from acting in any manner prejudicial to the security of the State and

the grounds on which the detention order has been made or not communicated to him under the proviso to Section 8(1), such person may be detained for a period of two years from the date of detention without obtaining the opinion of the Advisory Board.

7. Further the detention order of the petitioner Saifuddin was not required under Section 3 of the Act to be approved by the Government because the order of detention was itself made by the Government. It is only when the Divisional Commissioners and the District Magistrates in exercise of powers conferred by sub-section (2) of Section 3 make an order that report of the fact is made to the Government together with the grounds on which the order has been made and such other particulars and no such order shall remain in force for more than twelve days unless in the meantime the order is approved by the Government. Therefore in the present case the order being made by the Government under sub-section (1) of Section 3, the approval of the Government was not necessary.

8. The detention of the petitioner Saifuddin is lawful and void.

9. The petitioner Biro Khan challenges his detention on the month of May, 1970, having undergone a sentence of six months rigorous imprisonment in a criminal case, and his detention is challenged as illegal.

10. The affidavit answer to Biro Khan's petition is that he was detained by an order, dated June 16, 1970. The order was passed under Section 3(2) read with Section 5 of the Act. The order was served on the petitioner June 17, 1970. He was said to be a national of the Pakistan occupied Kashmir. The order further stated that in exercise of power under Section 8 read with Section 13-A of the Act, it was against the public interest to disclose the grounds of detention. The petitioner was informed of the order. The order of detention was placed before the Government under Section 3(3) of the Act. The Government approved the detention. The petitioner was informed of the said approval on July 6, 1970. There is no valid reason to hold that detention is unlawful.

11. The third petitioner Baily Ram also challenges his detention on the ground that he was arrested on August 4, 1970 and the detention is challenged as unlawful for the reasons mentioned by the other petitioners.

12. The affidavit answer is that the petitioner was served with orders on August 14, 1970. The order, dated August 13, 1970, by which he was arrested stated that it was necessary to detain the petitioner in exercise of the powers conferred by Section 3(2) read with Section 5 of the Act. The order further states that under Sections 8 and 13-A of the Act the communication of the grounds would be against the public interest. The order of detention was placed before the Government under Section 3(3) of the Act. The Government by an order, dated September 3, 1970 approved the order of detention. There is no valid reason to hold that the detention is unlawful.

13. The answer given by the Government to all the three petitions indicate that the order of detention is valid in each case a period of two years from the date of order of detention under the proviso to Section 13-A(1) of the Act without approval of the Advisory Board.

14. The petitions are therefore dismissed.

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