

Deb Sadhan Roy

Vs

State of West Bengal

Writ Petition No. 218 of 1971

(P. Jagmohan, Reddy, D.G. Palekar JJ)

07.12.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This petition under Article 32 challenges the detention under the West Bengal (Prevention of Violent Activities) Act, 1970 (hereinafter called 'the Act'). It may be mentioned that this and other petitions were adjourned till the decision of this Court on the validity and vires of the Act which has now been decided in the State of West Bengal v. Ashok Dey and Others etc. etc. [(1972) 1 SCC 199 : 1972 SCC (Cri) 128]

2. In that case it has been held that the provisions of the Act do not contravene any of the mandates of the Constitution, as such this petition and the others which had stood over till that decision have come up for consideration as to whether the detentions are legal.

3. In this and other petitions three main contentions have been urged on behalf of the respective petitioners by Shri S. K. Mehta who is assisting us as Amicus Curiae. They are (i) whether the mandatory provisions of the Act have been complied with; (ii) whether the grounds are irrelevant or vague and (iii) whether the State Government has confirmed the opinion of the Advisory Boards that there was sufficient cause for detaining them within three months from the date of the detention and whether the communication to the detenu has been made within that period.

4. We shall give the dates of relevant steps taken in respect of each of the detenues but before we do so it will be convenient to deal with the legal submission in the light of which the facts of each case can be better appreciated.

5. The mandatory requirements under the Act are that the order of detention must be passed by the detaining authority, that it should be forth with communicated under sub-section (4) of Section 3 to the State Government together with the grounds of detention. It is provided by Section 8 that the grounds of detention must be served on the detenu within five days from the date of detention, that these must be approved by the State Government within 12 days from that date and thereafter as soon as may be a report of this fact together with grounds and other particulars on which the order has been made should be made to the Central Government under clause (5) of Section 3 and that under Section 10 the State Government is required to place within 30 days from the date of detention before the Advisory Board (hereinafter called 'the Board') constituted under Section 9, the grounds of detention, the representation of the detenu, if any, along with the report made in cases of a detention by an officer specified in sub-section (3) of Section 3. Thereafter it is incumbent on the Advisory Board after hearing the detenu in person, if he so desires, to report to the State

Government under Section 11 its opinion within ten weeks from the date of detention, as to whether or not there is sufficient cause for the detention of the person concerned. Under Section 12 where the Board is of opinion that there is sufficient cause for detention of a person, the State Government may confirm and detention order and continue the detention of the person concerned for such period as it thinks fit. In case the opinion of the Board is that there is no sufficient cause for detention the State Government shall revoke the detention order and cause the person to be released forthwith. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed shall under Section 13, be twelve months from the date of detention, but the State Government can within that period notwithstanding that the order has been made by an officer specified in sub-section (3) of Section 3 revoke or modify the order of detention, which however, does not preclude it from making a fresh order under Section 3 against the same person in a case where fresh facts come into existence after the date of revocation or expiry provided either the State Government or the officer specified in sub-section (3) of Section 3 as the case may be considered that such an order should be made.

6. The learned advocate for the petitioner contends that the State Government must confirm the opinion of the Board that there is sufficient cause for the detention within three months from the date of detention and that confirmation should also be communicated to the detenu within that period. This submission is based on the analogy of the requirement of sub-section (2) of Section 12 where the State Government on receipt of the opinion from the Board that there is no sufficient cause for the detention has to revoke the order and direct the release of the detenu forthwith, which implies that the State Government should apply its mind immediately as soon as a report is received from the Board irrespective of whether in its opinion there is sufficient cause or not for the detention. The State Government he says has therefore to make up its mind to confirm the opinion and extend the period of detention immediately after the receipt of the report from the Board which under the provisions of the Act has to be within ten weeks from the date of detention and in any case not later than three months. On behalf of the State however it is strenuously contended that there is no warrant for this submission as neither the Act nor clause (4) of Article 22 of the Constitution enjoins on the State Government the duty to confirm the Board's report within three months much less the duty to communicate such confirmation to the detenu. Relying on the decision of this Court in *Dattatraya Moreshwar Pangarkar v. The State of Bombay and Others*, [1952 SCR 612 : AIR 1952 SC 181] he submits that all that is required is for the Board to submit its report within three months and thereafter the State Government may confirm the opinion and extend the period within a reasonable time.

7. It may be pertinent to refer to clause (4) of Article 22 of the Constitution under which no law providing for Preventive Detention shall authorise the detention of a person for a longer period than three months unless a Board consisting of persons who have or have been or are qualified to be appointed as Judges of the High Court, as referred to above, has reported within three months that there is in its opinion sufficient cause for such detention. It is evident from this provision that a law for Preventive Detention up to three months can be made under clause (4) subject to the limitation contained in clauses (5) to (7) of the Article. If a longer period of detention is to be provided for the law must subject to clauses (5) to (7) make provision for a reference to a Board as provided in clause (4) and for it to report on the sufficiency or otherwise of the detention which should be within three months from the date of detention. This requirement however is not insisted upon in cases where a law is made under sub-clause (a) of clause (7) of the said Article. In cases where the law provides for a reference to the Board or the receipt of its affirmative opinion the initial detention is any tentative for three months and only when the Board reports that there is sufficient cause for detention that the question of confirmation and extension of the period beyond three

months will arise. The mere fact that the provision of a law under Article 22(4) requires a reference to be made to the Board within a particular period for the Board to make its report by a specified time is not enough. The State Government has to take action only after a report is received from the Board expressing its opinion as to the sufficient or otherwise of the detention. If the opinion of the Board that there is sufficient cause is received after three months from the detention the detention will be illegal as it is a contravention of the mandatory provision of clause (4). In cases where the report is received within three months that there is no sufficient cause for detention but no action is taken thereon by the State Government to release the detenu or where its opinion is that there is sufficient cause, the detenu is neither automatically released nor is the period of his detention extended. It is therefore a crucial requirement of the Constitutional provision that the appropriate Government has to take action on the report of the Board, because as we said on that action would depend the revocation of the order and his release or the continuance of the detention beyond three months. In other words even where the Board is of opinion that there is sufficient cause the State Government is not bound to confirm that opinion. It can notwithstanding that opinion revoke the order. No doubt such a power can be exercised even after the confirmation of the order but that is not to deny the State Government the power to revoke the order even before confirming it. Viewed from any angle it is essential that the appropriate Government should take positive action on the report of the Board which action alone determines whether the detention is to be terminated or continued. It would therefore prima facie appear that that action should be taken immediately after the receipt of the opinion of the Board or at any rate within three months from the date a person is detained. It is for this reason after the Constitution every legislation dealing with Preventive Detention has made specific provision for confirmation and continuance of detention in view of the Constitutional mandate contained in Article 22(4). A period within which the appropriate Government has to make a reference to the Board, the period within which the Board has to make a report on the sufficiency of the ground for detention is provided for which has been uniformly one month and ten weeks respectively. The period of ten weeks for the submission of the report by the Board where Article 22(4) provides for twelve weeks is designly fixed because that would give the appropriate Governments two weeks to confirm and extend the period or not to confirm. Of course the opinion of the Board need not necessarily be given on the last day of the expiry of the ten weeks. It is quite possible that this information may be submitted to the appropriate Government well within ten weeks. In such cases a question whether the confirmation and extension has to be made by the appropriate Government within a reasonable period may arise for consideration, but in any case failure to confirm and extend the period within three months will result in the detention becoming illegal the moment the three months period has elapsed without such confirmation. Any subsequent action by the appropriate Government after the three months cannot have the effect of extending the period of detention. This view of ours is further fortified by Section 13 of the Act where the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 shall be twelve months from the date of detention. This requirement would suggest that the extension of the period of detention beyond three months up to a maximum of twelve months is from the date of confirmation of the opinion of the Board which if unconfirmed would not extend the period beyond three months. If so at what point of time should that be confirmed ? It would be meaningless to suggest that the confirmation of the Board's opinion can take place beyond three months when the period of detention has come to an end and has not been extended by the want of it. Looking at it in a different way what these provisions amount to is that no person can be detained for any period beyond three months or for any period thereafter up to twelve months unless the Board's opinion is confirmed within three months.

8. A similar view has been taken by the several courts in this Country right from 1952 onwards on Section 11 and 11(A) of the Preventive Detention Act which is analogous to Section 12 and Section 13 of the Act. See *Kaur Singh v. The State*, [AIR 1952 Pep 134 : 53 Cr LJ 1452] *Dhadhal Kanthad Valeg v. Saurashtra State*, [AIR 1953 Sau 138 : 54 Cr LJ 1247] *Umed Singh Narubha v. State*. [AIR 1953 Sau 51 : 54 Cr LJ 503] A Bench of the Mysore High Court in *Sangappa Mallappa Kodli and Others. The State of Mysore and Others*, [AIR 1959 Mys 7 : ILR 1957 Mys 874] referred to these decisions. The learned Advocate General in that case had contended on behalf of the State as was contended in the case before us on behalf of the State of West Bengal that the confirmation mentioned in Section 11 of the Preventive Detention Act was a mere formality and became redundant in view of the fact that the Government had already approved of the order of detention, because the word 'may' in Section 11 does not make the confirmation of the detention mandatory. It was further argued that there was nothing illegal in confirming the order of detention beyond the period of three months from the date of detention either under the Constitution or under the Act itself, because what the Constitution lays down is that unless the Board has made a report to the effect that there is sufficient cause for such detention within three months from the date of detention, there can be no detention of a person under any law for a longer period than three months and nothing more, but it does not however say that the order of confirmation has to be within three months from the date of detention. S. R. Das, C.J., rejecting this contention observed at Page 9 :

"In my opinion having regard to the different provisions of the Preventive Detention Act, the order of confirmation which the Government is required to make under Section 11 of the Act has to be made within a period of three months from the date of detention. In my opinion the contention of the petitioners on this part of their case finds support from the very sections of the Preventive Detention Act and particularly from the wording of sub-section (1) of Section 11 itself. That sub-section, to my mind, makes it clear that the confirmation order in question has to be made if the Government after receipt of the report from the Advisory Board decides to continue the detention and in view of the provisions of clause (4) of Article 22 of the Constitution such confirmation has to be made within three months from the date of detention."

The Calcutta High Court has recently construed the provisions of the Act *Aswini Kumar Banerjee v. The State and Others*, [1970-71 (Col. LXXV), Calcutta Weekly Notes, 866] which we are now construing on the question whether the confirmation under Section 12(1) should be made within three months from the date of detention. It considered the several cases to which we have earlier referred and held that where there is a specified time provided for in clause (4) of Article 22 of the Constitution of India the concept of reasonable time cannot be introduced in interpreting the provisions of sub-section (1) to Section 12 of the Act. The absence of a time-limit in express terms in the body of Section 12(1) of the Act does not render it to be analogous and that the Board cannot be equated with the State Government because it can only advise and not act by way of passing an order of detention or continuing it thereafter. This is left to the over-riding decision of the State Government.

9. We agree with the views expressed in these cases.

10. The case of *Dattatreya Moreshwar Pangarkar*, (supra) does not deal with this aspect. There the two questions which were considered were (1) whether the order of confirmation was to be in writing and should be expressed in the form required by Article 166(1) of the Constitution, and (2) if a confirmation order is made by the appropriate Government what is the period for which the

detention has to be extended, that is does it have the effect of extending the period and if so far what period. That was a case under Section 11(1) of the Preventive Detention Act. The majority Mahajan, J., dissenting, decided that the omission to state the period of further detention while confirming the detention order under Section 11(1) of the Preventive Detention Act could not render the detention illegal. In our view therefore the confirmation of the opinion of the Advisory Board to continue the detention beyond three months must be within three months from the date of detention in conformity with the mandate in clause (4) of Article 22.

11. The next submission is that the confirmation should not only be in writing but it should be communicated to the detenu within the period of three months from the date of detention. While we consider the former submission to be valid the latter has no jurisdiction. No doubt in *Mohammad Afzal Khan v. State of Jammu and Kashmir*, [1957 SCR 63 : AIR 1957 SC 173] this Court had on the construction of Section 14 of the Jammu and Kashmir Preventive Detention Act had held that the Section does not in terms provide for the making of a formal order but that was on the construction of a provision which is not in para material of the provisions of the Act. Section 14 of the Jammu and Kashmir Preventive Detention Act does not provide for the confirmation of the Board's opinion because that was a provision made under Clause 7 of Article 22 where it provides for the detention or continuation in detention of a person without obtaining the opinion of a Board for a period longer than three months but not exceeding five years from the date of detention, where such a person is detained with a view to preventing him from acting in a manner prejudicial to (i) the security of the State, (ii) the maintenance of public order. On the question of the communication to the detenu the decision to continue his detention beyond three months, Das, C.J., said that there is no warrant for the proposition that the decision of the Government must be communicated to the detenu nor has it been shown how the communication of this decision would have been beneficial to the detenu. He referred to the case of *Achhar Singh v. State of Punjab*, [Petition No. 359 of 1951, decided on November 22, 1951] where this Court had said that 'the omission to convey the order under Section 11 of the Indian Preventive Detention Act does not make the detention illegal or result in infringement of the petitioner's fundamental rights'. After referring to this decision this Court however, pointed out, if that be the position under Section 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 Section 14 of the Jammu and Kashmir Preventive Detention Act which does not in terms require any formal order to be made. Whatever may be the position under the Jammu and Kashmir Act under the Act which we are considering as pointed out earlier the State Government has to confirm the opinion of the Board that there is cause for the detention of the person concerned which confirmation cannot purely be a mental act, a subjective one but must result in an objective action namely that it should be recorded in writing. Though there is on provision in the Act an order of confirmation which has the effect of extending the period of detention beyond the mandatory period of three months must be made known to the detenu. In our view there is no warrant or jurisdiction for an order confirming the detention on the opinion of the Board which has the effect of extending the period of detention remaining in the files of the executive without the same being communicated to the person most concerned - the detenu - whose freedom has been subjected to jeopardy. He is entitled to know that the Board had considered his representation as well as his personal submission if he has chosen to appear before it and that it had been found that there was sufficient cause for his detention and that the State Government has agreed with it. *Biren Dutta and Others v. Chief Commissioner of Tripura and Another*, [(1964) 8 SCR 295 : AIR 1965 SC 596] another Constitution Bench of this Court had to consider this matter on the provisions of Rule 30(1)(b) and Rule 30-A(8) of the Defence of India Rules, 1962. Gajendragadkar, J., speaking for the Court held that even under those rules the authority exercising the power under Rule 30-A(8) should

report its decision clearly and unambiguously extending the period of detention beyond six months which was the limit under those rules, for he observed, "After all, the liberty of the citizen is in question and if the detention of the detenu is intended to be continued as a result of the decision reached by the appropriate authority, it should say so in clear and unambiguous terms". While the decision of the Government to confirm the opinion of the Board which according to the decision in Dattatraya Moreshwar Pangarkar, (supra) has the effect of extending the period of detention beyond three months is in consonance with the tenor of the Act as well as the provisions of the Constitution, there is nothing to warrant the submission that the order of confirmation and extension of the period of his detention should also be within three months from the date of detention. Nonetheless the communication must be within a reasonable time. What is a reasonable time must necessarily depend upon the circumstances of each case. The effect of non-communication, however, may be an irregularity which does not make the detention otherwise legal, illegal. In Biren Dutta's case, (supra) the Court was of the view that though under Rule 30-A(8) there is nothing to indicate that the appropriate authority should communicate to the detenu the decision to extend the period beyond three months, "it is desirable and it would be fair and just that such a decision should in every case be communicated to the detenu". In this case there is no allegation that the detenu suffered any prejudice by the delay and in the absence of such an allegation the State is justified in its submission that there may be sufficient grounds for the delay in not communicating it within a reasonable time should the communication itself be considered by this Court to be unduly delayed.

12. We will now examine the merits of the case to determine whether the confirmation was made within three months from the date of the detention and whether the grounds of detention are irrelevant or vague. The order of detention was made by the District Magistrate, Bankura on January 16, 1971, and petitioner was arrested on January 20, 1971. On the same day he was served with the order and the grounds of detention. The District Magistrate made a report on the Government also on the same day which was approved by the State Government on January 27, 1971, so that the mandatory provisions of the Act both in respect of the report to be made to the State Government within five days from the date of the order and the approval of the detention within twelve days from the date of detention were satisfied. On the 27th itself a report was made to the Central Government as required under Section 13. The State Government placed the detention order, the grounds and the report etc. before the Advisory Board on February 18, 1971, which is also within 30 days from the date of detention as required under Section 10. The State Government rejected the representation made by the detenu on March 15, 1971, and the Advisory Board submitted its report that there was sufficient cause for his detention on March 23, 1971, which was confirmed on April 8, 1971. In the note file of the Government which we perused, though confirmation was recorded within three months, the communication was made later on August 26, 1971. The mandatory provisions, therefore, are fully complied with.

13. The next question is whether the grounds are vague and irrelevant. These are as follows :

(i) that on January 7, 1971, night you and your associates including Somesh Chandra Deb mutilated the statue of the eminent Indian Poet Rabindra Nath Tagore installed in a public place at Boilapara in Bishnupur town and thereby caused insult to an object of public veneration.

(ii) That on January 11, 1971, at about 01.45 hrs. you and your associates broke into the Post Office situated at Rashikgunj in Bishnupur town and caused mischief to it by fire by destroying its official records by burning.

It was contended that the associates of the petitioner has not been specified and therefore it will be

difficult for the petitioner to make effective representation in respect thereof. We think there is no validity in this submission. Not only the dates and the time in each of the grounds have been mentioned but the acts of the petitioner have been specified in detail to enable him to make an effective representation. In our view it is not necessary for the petitioner to make an effective representation to specify all his associates because they may not have been known. The petitioner is being detained in respect of his acts and if in association with others he has acted in a manner prejudicial to the maintenance of the public order, his detention cannot be said to be illegal.

14. It is again contended relying on *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and Others*, [1970 (3) SCC 746] and *Dr. Ram Manohar Lohia v. State of Bihar and Others*, [(1966) 1 SCR 709 : AIR 1966 SC 740] that the act specified in each of the grounds do not amount to disturbance of public order though they may effect law and order. This contention is equally untenable because Section 3(2) of the Act defines the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" as given in sub-clause (a) to (e) to the said sub-section. We are here in this case concerned with the definition given in Section 3(2)(c) which makes any act 'causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so. The explanation to this sub-clause includes in the causing of insult to any object of public veneration, any portrait or statue of an eminent Indian, installed in a public place as a mark of respect to him or to his memory. The validity of sub-section (2) of Section 3 of the Act was challenged recently in the case of *State of West Bengal v. Ashok Dey and Others*, (supra) but this Court held that it was valid. The challenge to clauses (a), (b), (d) and (e) dealing with disturbance of a public order in the State with respect to which it was said there can be no two opinions about the Acts covered by those being likely to be prejudicial to the maintenance of public order. In regard to clause (c) the argument that insulting the object of public veneration in privacy without the act causing insult being noticed by anyone who holds them in veneration could have no rational nexus with the disturbance of public order or security of State, was in the abstract described as attractive. In the light of the circumstances in which the Act was passed the mischief intended to be removed by this enactment and the object and purpose of enacting it, this Court held that clause (c) of sub-section (2) considered in the background of sub-section (1) of Section 3 can "be construed to mean, causing insult to the Indian National Flag or any other object of public veneration in such a situation as reasonably exposes the act, causing such insult to the view of those who hold these objects in veneration or to the public view and it would not cover cases where the Indian National Flag or other object of public veneration is mutilated, damaged, burnt, defiled or destroyed completely unseen or when incapable of being seen by anyone whose feelings are likely to be hurt thereby. The act causing insult referred to in clause (c) must be such as would be capable of arousing the feelings of indignation in someone and that can only be the case when insult is caused in the circumstances just explained", and was accordingly restricted to such situation. The challenge there was negatived. In this case what is said to have been defiled by the petitioner and his associates is the statue of Rabindra Nath Tagore, a Poet and sage venerated by all in this country and affords a sufficient ground for detention. The other ground also directly connects the act with the disturbance of public order.

15. Having regard to the various references the detention of the petitioner in our view is not illegal and accordingly we dismiss this petition.

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