

Shri Ujjal Mandal

Vs

The State of West Bengal

Writ Petition No. 420 of 1971

(J. M. Shelat, H. R. Khanna JJ)

21.01.1972

JUDGMENT

MATHEW, J. -

1. This is an application under Article 32 of the Constitution for the issue of a writ in the nature of Habeas Corpus and for the release of the petitioner who is alleged to be kept in illegal detention.

2. On May 11, 1971, the petitioner was arrested under an order made on April 29, 1971, by the District Magistrate, 24 Parganas, in the exercise of his power under sub-section (1) read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), hereinafter called the Act. A copy of the grounds of detention was served on the petitioner as requirement by Section 8 of the Act on May 11, 1971. The District Magistrate reported to the State Government on May 4, 1971 about the passing of the order of detention and the detention order was approved by the State Government on May 10, 1971. The case of detenu was placed before the Advisory Board (hereinafter called the Board) on June 9, 1971. Two representations were received by the State Government from the petitioner. They were rejected by orders, dated June 8, 1971, and July 7, 1971. The representations were also forwarded to the Board. The Board was of the opinion that there was sufficient cause for the detention and it submitted its report to the State Government on July 12, 1971. The State Government confirmed the order of detention on June 17, 1971 and that was communicated to the detenu on August 21, 1971.

3. The only point taken on behalf of the petitioner in this writ petition is that since the detention order was confirm by the State Government only on August 17, 1971, it was beyond three months from the date of detention namely May 11, 1971, and therefore, the detention of the petitioner after the expiry of three months from the date of detention was illegal.

4. It is necessary to examine the provisions of Article 22(4) of the Constitution and the relevant sections of the Act to decide this question.

Article 22(4) of the Constitution provides :

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless -

(a) an Advisory Board consisting of persons who are, or have been or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7) 1; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clauses (7) 1."

Section 10 of the Act provides that in every case where a detention order has been made under the Act, the State Government shall, within thirty days from the date of detention under the order, place before the Board, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer specified in sub-section (3) of Section 3, also the report made by such officer under sub-section (4) of Section 3. Section 11 prescribes the procedure to be followed by the Board. It says that the Board shall, after considering the materials placed before it and after hearing the detenu in person, if he desires to be heard, submit its report to the State Government within ten weeks from the date of detention. Section 12 reads as follows :

"Action upon the report of Advisory Board. - (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith."

Section 13 provides that the maximum period for which a person may be detained in pursuance to any detention order under Section 12 shall be twelve months from the date of detention. Section 14 provides that the State Government may, at any time, revoke or modify the detention order.

5. Since the appropriate Government has to make the reference to the Board within a period of thirty days from the date of the detention one month under Section 10 and the Board has to submit its report within ten weeks from the date of detention under Section 11, there would be ample time for the appropriate Government to consider the report and confirm the detention order within three months of the date of detention, if it decides to continue the detention.

6. Now the Board has got to express its opinion only on the point as to whether there is sufficient cause for detention of the person concerned. It is neither called upon nor is it competent to say anything regarding the continuance of the detention beyond three months. Once the Board expresses its view that there is sufficient cause for detention, what action is to be taken subsequently is left entirely to the appropriate Government. If the report records the opinion that there is no sufficient cause for detention but no action is taken by the Government to release the detenu, the detenu is not automatically released. Likewise, if the opinion of the Board is that there is sufficient cause for detention, but the Government does not confirm the order of detention, the period of detention is not automatically extended beyond three months. So when the report of the Board is received - and that must be within three months - the appropriate Government must apply its mind and make an order or take an executive decision whether to confirm the order of detention or revoke it.

7. Section 11 of the Preventive Detention Act, 1950, where the phraseology employed is the same as

in Section 12, came up for consideration in *Dattatreya Moreshwar Pangarkar v. State of Bombay*, [(1952) SCR 612, 626 : AIR 1952 SC 181 : 1952 SCJ 235 : 1952 Cr LJ 955] before this Court and this is what Mukherjea, J., said :

"In my opinion, the words 'for such period as it thinks fit' pre-suppose and imply that after receipt of the report of the Advisory Board the detaining authority has to make up its mind as to whether the original order of detention should be confirmed and if so, for what further period the detention is to continue. Obviously, that is the proper stage for making an order or decision of this description as the investigation with regard to a particular detenu such as is contemplated by the Preventive Detention Act is then at an end and the appropriate Government is in full possession of all the materials regarding him."

8. Article 22(4) of the Constitution has specified the maximum limit of initial detention, and detention for a longer period than three months can only be made on the basis of the report of the Board. The Act authorises a possible detention of more than three months. It is because the appropriate Government wants to detain a person for more than three months that the matter is referred to the Board and it is only when the Board makes its report that the appropriate Government can fix the period of detention under subsection (1) of Section 12. So, when the Government receives the report of the Board stating that there is sufficient cause for detention of a person, if the Government wants to detain him for a period beyond three months, it has to pass an order or make a decision under Section 12(1) to confirm the order of detention. The confirmation of the detention order without anything more would result in an automatic continuation of the detention, even if there is no separate decision to continue the detention for any specific period as held by this Court in *Dattatreya Moreshwar Pangarkar v. State of Bombay* (supra), When Section 12(1) of the Act speaks of "and continue the detention of the person concerned for such period as it thinks fit", it can only mean continuance of detention from the point of time at which detention would become illegal if the order of detention is not confirmed, namely, the expiry of three months from the date of detention. It would not be necessary to confirm the order of detention even after the receipt of the report of the Board by the Government if the Government only wants to continue the detention for the period of three months from the date of detention, as the initial order of detention would authorise the continuance of detention for that period without any confirmation. Confirmation is necessary only to continue the detention after the expiry of three months. If that be so, it stands to reason to hold that the order of detention must be confirmed before the expiry of the three months.

9. To put the matter in a nut-shell : the State Government has power under the Act of detain a person without trial beyond a period of three months but limited to a period of one year. That power the State Government may exercise on the receipt of the opinion of the Board that there is sufficient cause for the detention. When the State Government receives that opinion, it has still the option to exercise the power and to continue the detention beyond the period of three months or not. Confirmation is the exercise of the power to continue the detention after the expiry of three months. Unless that power is exercised within the period of three months from the date of detention, the detention after the expiry of that period would be without the authority of the Law.

10. In *Aswini Kumar Banerjee v. The State and Others*, [1970-71 (75) CWN 866] the Calcutta High Court, in considering the point in question has analysed the relevant provisions of the Act in the light of Article 22(4) of the Constitution and came to the conclusion that the sine qua non for continuance of the detention made under sub-section (1) read with sub-section (3) of Section 3 of

the Act beyond the period of the three months are (a) a report by the Board submitted to the State Government within ten weeks from the date of detention recording its opinion that there is sufficient cause for detention of the person concerned, and (b) the confirmation thereafter of the said order of detention by the State Government within three months from the date of detention.

11. The question was considered by the High Court of Pepsu in *Kaur Singh v. The State*, [AIR 1952 Pepsu 134] with reference to the provisions of Sections 10 and 11 of the Preventive Detention Act, 1950, which are in pari material with Sections 11 and 12 of the Act, and the Court came to the conclusion that without confirming the detention order within three months of the date of detention, the detention of a person cannot be continued after the three months. The Court said :

"The argument that the law does not enjoin that there must be an order of confirmation and that the mere fact that it continues to detain the person means that the Government had decided to confirm the initial detention order, ignores a very important and the most effective part of Section 11. What Section 11 provides is that the Government 'may confirm' and 'continue detention' have their own significance and they obviously mean that if the Government decided to continue the detention it must confirm the order of detention, and that the non-confirmation of the order would result in its revocation and termination of the detention. The verb 'may' only indicates that it is not obligatory on the Government to confirm the detention order even though the Advisory Board has reported in favour of the necessity of continuing the detention. The phrase, read in its context, undoubtedly signifies that the Government, if it decides to continue the detention, must confirm the detention order."

12. In *Sangappa Mallappa v. State of Mysore*, [AIR 1959 Mys 7] the High Court of Mysore held, after considering the provisions of Section 11 of the Preventive Detention Act, 1950, which, as already stated, are identical with those of Section 12 of the Act, that to continue the detention of a detenu after the expiry of three months from the date of detention, it is essential that the order of detention must be confirmed within the three months.

13. In *Bhupati Goswami v. C. R. Krishnamurti and Others*, [AIR 1959 Ass 14] the High Court of Assam, after considering the scheme of the Preventive Detention Act, 1950, held that although the provisions of Section 11(1) of that Act do not in terms mention any time-limit for confirming the order of detention, the time-limit of three months is implicit in the entire scheme of the Act.

14. The question was considered by this Court in *Deb Sadhan Roy v. The State of West Bengal*, [(1972) 1 SCC 308 : 1972 SCC (Cri) 45] and the Court took the view that the order of detention beyond that period would become illegal. We see no reason to doubt the correctness of this decision and we follow it.

15. We think that the detention of the petitioner is illegal and that he has to be released forthwith. We order accordingly.

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