

Nadar Chandra Karar Alias Nade

Vs

The State of West Bengal

Writ Petition No. 34 of 1972

P. Jagmohan Reddy, K. K. Mathew, G. K. Mitter JJ )

02.05.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This is a Habeas Corpus petition challenging the order detaining the petitioner under sub-section (1), read with sub-section (2) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970) hereinafter called the Act. The District Magistrate of Howrah passed an order on July 8, 1971, for the detention of the petitioner and reported having passed such an order on the same day to the State Government. On July 13, 1971, the petitioner was arrested and on the same day the grounds of his detention with its vernacular translation was also served on him and he was informed that if he desires to be heard in person he should intimate that fact when he makes his representation. The State Government approved the making of the order on July 19, 1971.

2. On the same day the State Government submitted a report with the necessary particulars as referred under Section 3(5) of the Act to the Central Government. On August 6, 1971, the State Government received the petitioner's representation which was considered by the Government on August 10, 1971, and it was rejected. After this the case along with the representation of the detenu was sent to the Advisory Board on August 11, 1971, which reported to the Government on September 17, 1971, that there was sufficient cause for the petitioner's detention. The State Government confirmed the order of October 11, 1971, and communicated it to the detenu on November 15, 1971.

3. It is contended on behalf of the petitioner that the District Magistrate as well as the State Government were not satisfied that the petitioner should be detained, that the Advisory Board which under the provisions of the Act must consist of the three members was not constituted as only one had signed the decision of the Advisory Board and the decision of the Advisory Board should not only be given within a period of three months but also the confirmation by the State Government should also be within that period which in this case, it is contended, has not been complied with.

4. In our view, none of these contentions are justified under the provisions of the Act, it is the detaining authority that has to be satisfied before an order of detention is made. The order passed by the District Magistrate clearly on the face of it shows that he was satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order that he was being detained. The grounds served on him also show that the District Magistrate applied his mind. By an order of the Governor of West Bengal on July 19, 1971, under sub-section (4) of the Section 3, the order made by District Magistrate on July 8, 1971, was approved. The provisions of the Act have, therefore, been complied within the period specified therein. On the

second question, viz., that the decision of the Board was not a decision by three members but only by one is equally untenable because it is based on a communication said to have been made by the Chairman alone. What is required under the Act is that the Board should consider the representation and must decide whether there are sufficient grounds for the detention of the petitioner which the Board did. We have perused the original file and found that it was considered by all the three and their decision to reject the representation and approve the detention of the petitioner was signed by all the three. It is, however, contended that the signature of the third member was undecipherable in that it looks as if it is just a line on the paper and, therefore, that decision is not a decision by all the three members. This contention is farfetched because the signature is not just a stroke but appears to be a typical signature of that member.

5. The last contention has also no validity because what the provisions of the Act require is that the decision of the Board should be made within three months from the detention and not from the detention order as is sought to be contended by the learned Advocate. Even the decision of the Board is within three months so is the confirmation by the State Government. It is again faintly contended that the communication to the detenu should also be within three months from the date of the detention. We do not find that there is any justification for this submission under any provision of the Act. As long as the communication is made within a reasonable time, the detenu cannot complain.

6. In our view, the detention of the petitioner does not suffer from any infirmity and accordingly this petition is dismissed.

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