

Pradip Kumar Das and Others

Vs

State of West Bengal and Others

Writ Petitions Nos. 961, 1339, 1622, 1636, 1656 and 1666 of 1973

(A. Alagiriswami, K. K. Mathew, P. K. Goswami JJ)

29.04.1974

JUDGMENT

RAY, C.J. -

1. This Court on April 22, 1974, passed an order for release of the detenus. The reasons were to be given later. The reasons are as follows.
2. In Writ Petition No. 961 of 1973, the petitioner was detained pursuant to an order of detention, dated January 15, 1972. He was released by the State Government pursuant to an order, dated April 23, 1973. On April 25, 1973, there was another order of detention. The petitioner was detained pursuant to that order.
3. In Writ Petition No. 1339 of 1973 the petitioner was detained pursuant to an order of detention, dated March 27, 1972. He was released by the State Government pursuant to an order, dated April 24, 1973. He was detained again under an order, dated April 26, 1973.
4. In Writ Petition No. 1622 of 1973 the petitioner was detained under an order, dated November 6, 1972. The State Government released the petitioner on April 28, 1973. He was detained again pursuant to an order, dated April 26, 1973.
5. In Writ Petition No. 1636 of 1973 the petitioner was detained pursuant to an order of detention dated January 11, 1972. He was released by the State Government on April 27, 1973, pursuant to an order of release. The petitioner was detained again on April 27, 1973 pursuant to an order dated April 24, 1973.
6. In Writ Petition No. 1656 of 1973 the petitioner was detained pursuant to an order of detention, dated January 7, 1973. He was released by the State Government pursuant to an order dated April 23, 1973. He was detained again by the State Government pursuant to an order dated April 24, 1973.
7. In Writ Petition No. 1666 of 1973 the petitioner was detained pursuant to an order dated October 26, 1972. He was released by the State Government on April 28, 1973. He was detained again on April 28, 1973 pursuant to an order dated April 26, 1973.
8. The common feature in all these cases is that the petitioners were released by the State Government after the decision of this Court in Sambhu Nath Sarkar v. State of W. B. ((1973) 1 SCC 856 : 1973 SCC (Cri) 618) The judgment in Sambhu Nath Sarkar case was given by this Court on

April 19, 1973.

9. The petitioners challenged the orders of detention after their release. The grounds of challenge are two-fold. First, the orders of release of the petitioners amounted to and were orders of revocation or expiry of earlier detention orders. Second, the State was not competent to pass subsequent orders of detention on the same facts and grounds as in the earlier orders of detention.

10. The contentions of the State were these. The orders of release were made by the State pursuant to the decision of this Court in Sambhu Nath Sarkar case (supra). The State had no option but to order release only because of the decision in Sambhu Nath Sarkar case. The earlier detention orders because of the decision in Sambhu Nath Sarkar case could not be said to be orders with the authority of law. Therefore, the orders of detention subsequent to their release were new orders on fresh facts and had no relation to the previous orders.

11. The Maintenance of Internal Security Act, 1971, hereinafter referred to as the Act, confers power on the Central Government or the State Government to make orders detaining persons as mentioned in Section 3 of the Act. The present petitions turn on the interpretation of the provisions contained in Section 14 of the Act. Broadly stated, Section 14 of the Act provides that a detention order may, at any time, be revoked or modified and the revocation or expiry of the detention order shall not bar the making of a fresh detention order where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government is satisfied that such an order should be made.

12. This Court in Sambhu Nath Sarkar case (supra) held that Section 17A of the Act which was introduced in 1971, did not satisfy the requirements of Article 22(7)(a) of the Constitution. Section 17A of the Act was held to offend the provisions of the Constitution. The petitioner was released in that case.

13. This Court in Sambhu Nath Sarkar case (supra) did not express any opinion on the question whether the maximum period of detention which was prescribed by Section 13 as amended were that the prevention could be for twelve months from the date of detention or until the expiry of the Defence of India Act whichever is later.

14. This Court in Fagu Shaw v. State of W. B. ((1974) 4 SCC 152 : 1974 SCC (Cri) 316) held that the maximum period of detention fixed with reference to the duration of an emergency is the maximum period fixed by Parliament in accordance with the provisions of the Constitution.

15. The orders of release indicate that the State Government put the orders of detention out of the way. The petitioners could not be released if the detention orders were considered by the State Government to be authority for detention. The orders of release also show that the Government did not approve of the orders of detention. The release orders further establish that the State Government found that the orders of detention were not effective.

16. The contention of the State that the previous orders of detention were non est is insupportable. The stark reality of the detention of the petitioners cannot be effaced. It is apparent that the orders of detention after the release contain identical grounds as in the earlier orders of detention. The subsequent orders of detention are not based on fresh facts after the orders of release.

17. There can be no casuistry with the orders of release. These orders of release amount to revocation of the orders of detention. The contention of the State that the previous orders were

illegal and therefore the release orders did not amount to revocation is utterly unsound. If, according to the State, the previous order were illegal it cannot be denied that the petitioners were in fact detained. The expression "revocation" has been held by this Court in *Haribandhu Das v. District Magistrate* ((1969) 1 SCR 227 : AIR 1969 SC 43) to include not only revocation of an order which is otherwise valid and operative but also orders which are invalid. Revocation means cancellation of the previous orders.

18. In four recent decisions of this Court in *Ujjal Mandal v. State of W. B.* ((1972) 3 SCR 165 : (1972) 1 SCC 456 : 1972 SCC (Cri) 212); *Masood Alam v. Union of India* ((1973) 1 SCC 551 : 1973 SCC (Cri) 435); *Mrinal Roy v. State of W. B.* ((1973) 2 SCC 822 : 1973 SCC (Cri) 1081) and *Chotka Hembram v. State of W. B.* ((1974) 3 SCC 401 : 1973 SCC (Cri) 966) this Court considered the meaning of 'revocation' or 'expiry'. In *Ujjal Mandal* case the order of detention was not confirmed before the expiry of three months. This Court, therefore, held that non-confirmation would amount to revocation of the earlier order. In *Masood Alam* case the orders of release were held to amount to revocation or expiry of the earlier orders of detention. In *Mrinal Roy* case the orders of release were construed by this Court to amount to revocation of previous orders. In *Chotka Hembram* case the orders of release consequent on the decision of this Court in *Sambhu Nath Sarkar* case were held to be revocation of the previous order of detention.

19. The word "revocation" means annulling, rescinding, withdrawing. In the facts and circumstances of the case orders of release cancelling orders of detention amount to revocation of orders of detention. The word "expire" means to come to an end or to put an end to, or to terminate or to become void, or to become extinct. The orders of release show that the Government accepted the position that the previous orders terminated and came to an end and the petitioners were released.

20. For these reasons we hold that the orders of release were revocation of the previous orders of detention. The previous orders of detention also expired when the Government passed orders of release. The second orders of detention are in violation of the provisions of Section 14 of the Act.

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