

Ashok Kumar

Vs

State of J&K

Writ Petitions Nos. 5734 and 6438 of 1980

(Syed M. Fazal Ali, A. Varadarajan JJ)

22.01.1981

JUDGMENT

FAZAL ALI, J. –

These two writ petitions under Article 32 of the Constitution have been filed by one ASHOK Kumar from jail and the other through Shri Bhim Singh. The petitioner was detained under the provisions of Section 8 of the J & K Public Safety Act, 1978. It appears that the petitioner was arrested on September 26, 1980 by an order of preventive detention passed under Section 8 of J & K Public Safety Act, 1978. The grounds of detention were served on him on September 29, 1980. On September 30, 1980 the detenu made a representation to the government from the jail which admittedly does not appear to have been considered at all so far. In the counter-affidavit it is averred that the representation of the detenu was sent to the advisory board and after receiving the opinion of the Advisory Board the detention was confirmed on December 19, 1980. There is, however, no averment in the counter-affidavit filed by the State as to whether or not the representation of the detenu was ever considered by the order of detention is void for two reasons. In the first place, as pointed out by this Court, a representation has to be considered by the government within a reasonable time without waiting for the opinion of the advisory Board of secondly as the representation was rejected on December 19, 1980 i. e. almost two months after the date of detention without any reasonable explanation that is sufficient to vitiate the order of detention. In fact Mr. Altaf Ahmed, learned counsel for the State of J & K has frankly conceded that there is no material on the record to show that the representation of the detenu was in fact considered at all by the government or by the detaining authority. For these reasons the constitutional safeguards enshrined in Article 22(5) have been clearly violated and the continued detention of the detenu that the detenu be released forthwith.

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