

Topic: Standard Consideration Laid Down By Supreme Court For Using Power Of Preventive Detention Under Article 22

Name of the case: AK Roy v. UOI, AIR 1982 SC 710

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice V.D. Tulzapurkar, Justice D.A. Desai

Facts of the Case: The procedure laid down in Section 10 and 11 of the National Security Act 1980, was challenged as being not in consonance with natural justice on at least three grounds;

The detenu has not been given the 'right to cross-examine' the detaining authority and the person on whose statement the order of detention is founded;

The Act does not give the detenu 'right to present' before advisory board, oral and documentary evidence, in rebuttal of the allegations made against him;

The Act does not furnish to the detenu the 'right to be presented by a lawyer' before the advisory board.

Ratio: The Supreme Court upheld the Act on all these grounds. The Court did recognize the importance of these three rights. They constitute the core of just causes because without them, it is difficult for any person to disprove the allegation made against him and to establish the truth. But two important considerations must be borne in mind in this regard:

1. There is no prescribed standard of reasonableness and, therefore, what kind of procedural rights 'should be made available' to a person depends upon the nature of the proceeding in relation to which the rights are claimed,
2. The question as to what kind of rights are visible to the detenu in the proceeding before the advisory board has to be decided in the light of constitutional provisions, and statutory provisions to the extent they do not offend the Constitution.

The court ruled that a detenu should not claim the 'right of cross examination' of witness in the proceeding before the advisory board. The rules of natural justice are not rigid norms of unchanging content. The ambit of those rules must vary according to the context and they have to be tailored to suit the nature of proceedings in relation to which the particular right is claimed as a component of natural justice.

Cross-examination may be necessary in the proceeding in which witness examined or documents are adduced in evidence in order to prove a point. Cross examination is a powerful weapon to expose the untruthfulness of such evidence. But the question of consideration of the advisory board is not whether the detainee is guilty of any charge but whether there is a recent cause for the detention.

The detention is based not on the fact proved either by applying the test of preponderance of probabilities or of reasonable doubt, but on the subjective satisfaction of detaining authority. The proceeding of the advisory board has, therefore, to be structured differently from the proceeding of judicial or quasi-judicial tribunals. In case of preventive detention, witness is either unwilling to come forward, or the source of information of the detaining authority cannot be disclosed without detriment to the public interest. Therefore, in the very nature of things, it is not possible to give to the detenu the right of cross-examination of witness.

Further, the court said that there is no objection in granting to the detenu right to lead evidence in rebuttal before the advisory board. There is no provision in the Constitution or the National Security Act denying to the detenu the right to present his own evidence but to rebut the allegation made against him. As the board is to complete its proceeding within a limited period, it can regulate its own procedure within the limits of Constitution and the statute and limit the time within which the detenu must complete the evidence.