Shibapada Mukherjee vs The State Of West Bengal on 25 January, 1972

Equivalent citations: AIR1972SC1356, 1972CRILJ845, (1974)3SCC50, 1972(4)UJ658(SC), AIR 1972 SUPREME COURT 1356, 1974 3 SCC 50, 1973 SCC(CRI) 715, 1973 2 SCJ 14, 1972 SCD 1028

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Bench: H.R. Khanna, J.M. Shelat, K.K. Mathew

JUDGMENT

J.M. Shelat, J.

1. On April 30, 1971, the District Magistrate, Birbhum District, passed an order directing the detention of the petitioner under Section 3(1) and (3) of the West Bengal (Prevention of Violent Activities) Act, being President's Act 19 of 1970. On that very day, he reported the fact of his having passed the said order to the State Government. The petitioner was arrested on May 4, 1971 and was served at the time of his arrest with the grounds of detention. The State Government gave its approval to the said order on May 11, 1971. It also reported the petitioner's detention to the Central Government. On June 2, 1971, the petitioner's case was referred to the Advisory Board and the Board reported on July 9, 1971 that there was sufficient cause for detention. On August 7, 1971, the State Government gave confirmation under Section 12 of the Act to the detention order and continuation of detention thereunder. -Thus, the order or decision of confirmation and continuation was made after the expiration of the period of three months from the date of the arrest and detention of the petitioner.

2. The grounds for detention served on the petitioner alleged (1) that on January 16, 1971 he and his associates broke open the office room of the Junior Basic Sishu Vidyapith, Dubrajpur, and set fire to the records, books etc. lying there causing damage to its property worth Rs. 500/-, (2) that on February 18, 1971 he and his associates threw crackers in the office room of the temporary election office of the Forward Block party at Dubrajpur, which act endangered the lives of those present in the office at the time, and (3) that on February 20, 1971, he and his associates set fire to the office room of Balijuri Junior High School, Dubrajpur, thereby destroying the school's record, furniture, doors and windows. It appears from the counter-affidavit filed on behalf of the respondent State that certain criminal proceedings were started against the petitioner in respect of his aforesaid acts under the Penal Code, the Explosive Substances Act and the West Bengal Maintenance of Public Order Act, 1970. The police, however, had to submit a final report as the witnesses to the aforesaid incidents were unwilling to come forward to give evidence.

3. Counsel for the petitioner raised three contentions against the validity of the petitioner's detention under the said order. These were (1) that the order of decision, confirming detention order and continuation of petitioner's detention thereunder having been made by the State Government after expiration of three months from the date of his arrest and detention, was, illegal, (2) that the grounds of detention were not germane to and did not establish that the activities of the petitioner alleged therein were prejudicial to either the security of the State or the maintenance of public order, and (3) that the detention order itself showed casualness and non-application of mind by the detaining authority inasmuch as it alleged that the said order had become necessary with a view to prevent the petitioner from acting prejudicially to the security of the State or the maintenance of public order. It was urged that the use of the disjunctive 'or', as aforesaid, showed that the detaining authority was not sure as to whether the petitioner's said alleged activities fell under one head or the other, over which the subjective satisfaction of the authority could be the foundation for the detention.

4. Taking the first contention first, it will be noticed that Section 12(1) of the Act does not lay down in any express terms the time within which the State Government has to confirm the detention order and make a decision to continue the detention of the person concerned in a case where there can be detention for more than three months if an Advisory Board has reported that there is in its opinion sufficient cause for detention. Sub-section (2) of Section 12 and the words "may confirm" in Sub-section (1) indicate three courses which the State can thereunder adopt. Where in the opinion of the Advisory Board there is no sufficient cause for detention, the State Government has to revoke its detention order and release the detenu forthwith. Where, on the other hand, the Advisory Board has reported that there is sufficient cause for detention, the Government may either confirm the detention order and order the continuation of detention or may revoke the order and release the person concerned. The words "may confirm" in Sub-section (1) show that the Government has the discretion either to confirm or not to confirm and continue the detention depending upon whether the circumstances at that date have changed so as not to necessitate any more the continuation of his detention. The question is whether in spite of the absence of any express words in Section 12 laying down any particular period within which the State Government has to make the order or decision confirming the detention and its continuation, there is implicit in the section and such period, that is to say, before the expiry of three months from the date of detention as contended by counsel.

5. In order to determine the correctness or otherwise of this contention, it becomes necessary to examine Article 22 of the Constitution which permits enactment of measures for preventive detention, as also the scheme of the present Act. Under Article 22(4) no law providing preventive detention can authorise detention for a period longer than three months unless an Advisory Board consisting of persons with qualifications set out therein has reported before the expiration of three months that there is in its opinion sufficient cause for such detention. Even where there is such a report, no person can be detained beyond the maximum period prescribed by any law made by Parliament under Clause 7(b) of the Article. A person can, however, be detained in accordance with a Parliament Act passed under Clause 7(a) which has prescribed the circumstances and the class or classes of cases in which a person can be detained for more than three months, but within the maximum period laid down in it, without a report of an Advisory Board as to the existence of a

sufficient cause. It is clear from Clauses (4) and (7) of Article 22 that the policy of Article 22 is, except where there is a Central Act to the contrary passed under Clause 7(a), to permit detention for a period of three months only, and detention in excess of that period is permissible only in those cases where an Advisory Board, set up under the relevant statute, has reported as to the sufficiency of the cause for such detention. Obviously, the Constitution looks upon preventive detention with disfavour and has permitted it only for a limited period of three months without the intervention of an independent body with persons on it of judicial qualifications of a high order. The fact that the report of such an Advisory Board has to be obtained before the expiry of three months from the date of detention shows that the maximum period within which the detaining authority can on its own satisfaction detain a person is three months. If such detention is to continue thereafter, it can be done only where there is the report of the Board certifying the sufficiency of the cause for detention. This-is also the policy underlying Sections 10 and 11 of the present Act, and similar provisions of the Preventive Detention Act, IV of 1950.

6. Section 10 of the present Act requires the State Government to refer the case to the Board within 30 days from the date of detention, and Section 11 requires the Board to submit its report within ten weeks from such date. The reason for prescribing these periods is obvious, that is to enable the State Government to decide, in the event of the Board reporting that there is sufficient cause for detention to confirm the detention order and to continue the detention thereunder "for such period as it thinks fit", (Section 12(1). The significant words in Section 12 are the words "confirm" the detention order and "continue" the detention thereunder, "for such period as" the State Government thinks fit. The order passed or the decision made under Section 12(1) by the State Government, thus, falls into two parts (a) confirming the detention order upon the report of the Board as to the sufficiency of the cause for detention, and (b) deciding to continue the detention under that order. It is clear that without such a report or in the event of the report that there is no sufficient cause for detention, the detaining authority can detain a person for three months only from the date of detention and detention for a period longer than that would clearly be illegal. Thus, detention on the strength of the detention order only can validly continue upto three months. If on receipt of the Advisory Board's report, Government wants to continue the detention for a further period, it has got to make an order or a decision to confirm that order and continue the detention, for, without such an order or decision the detention would not validly subsist beyond the period of three months. Though, therefore, Section 12 does not in express terms lay down that the decision to confirm the detention order and to continue thereunder the detention is to be made before the expiry of three months, such a time-limit is implicit in the section. The reason is plain. As aforesaid, Government cannot keep a person under detention for a day longer than three months if the report of the Board does not justify the detention. The continuation of detention beyond three months can only be made upon the Government obtaining a report showing sufficiency of cause before the expiry of the period of three months. It is to enable the detaining authority to continue detention beyond three months when detention must and that the Act provides 30 days within which reference has to be made and ten weeks within which report has to be obtained. The two weeks left thereafter give him to the Government to decide whether or not the detention order should be confirmed and detention thereunder should be continued. If there is no such decision to confirm the order and to continue the detention thereunder, detention has to come to an end on the expiry of three months from the date of detention. Such an order or decision has, therefore, to be made before the period of three

months for without such an order the detention would otherwise cease to be valid.

7. This was the view taken by Reddy and Palekar, JJ., in Dev Sadhan Roy v. West Bengal Writ Petition No. 218 of 1971 dec. on Dec. 7, 1971. The same question arose before us also in Ujjal Mondal v. West Bengal Writ Petition No. 420 of 1971 dec. on Jan. 21, 1972, wherein the decision in Dev Sadhan Roy v. West Bengal Writ Petition No. 218 of 1971 on Dec. 7, 1971 and the earlier decisions of this Court, as also decisions of certain High Courts on similar provisions of the Preventive Detention Act, IV of 1950 were construed as containing the time limit of three months within which detention has to be confirmed and continued, were considered and followed.

8. It is not disputed that in the present case the order or decision confirming the detention order and the continuation of the petitioner's detention thereunder was made three days after expiration of the period of three months. That being so, there was, in view of the decisions referred to earlier, no valid confirmation and continuation, with the result that the petitioner's detention after the expiry of the period of three months became illegal since it was not in compliance with Section 12(1). In this view it is not necessary to consider the other two contentions urged by counsel.

9. The petition succeeds and is allowed and we direct that the petitioner be set at liberty forthwith.