Ram Adhar Misra vs State on 14 September, 1950

Equivalent citations: AIR1951ALL18, AIR 1951 ALLAHABAD 18

JUDGMENT

Harish Chandra, J.

1. In these criminal Miscellaneous cases the point that arises is whether an order of detention passed under Section 3, Preventive Detention Act, 1950 (Act IV [4] of 1950) which does not specify the periods of detention is valid. In the case of M. M. Bashir v. State, 1950 A. L. J. 518: (A. I. R. (38) 1951 ALL. 357) a learned single Judge of this Court took the view that such an order was not legally valid. He has based his finding on the analogy of the sections of the Penal Code which prescribe punishments for various offences. It is pointed out that although in all these sections only the maximum periods of imprisonment to which the offender may be sentenced are specified, still Courts while convicting offenders under these sections pass sentences of imprisonment upon them for definite terms. In these sections the words generally used are to the effect that the offender "shall be punished with imprisonment.... which may extend to...." These words, in my view, indicate that the sentence of imprisonment must be for a definite term which in no case is to exceed the maximum term of imprisonment prescribed for that particular offence. There are provisions in the Penal Code as well as the Code of Criminal Procedure (e.g. Section 73, Penal Code and Sub-section (2) of Section 367, Criminal P. C.) which cleanly indicate that the imprisonment to which offenders may be sentenced under the Penal Code must be for a specific term. But the position under Section 3, Preventive Detention Act, 1950, seems to be entirely different and it does not seem necessary under that section that the order of detention should specify the period during which the detenu would be kept under detention. An examination of the scheme of the Act would also indicate that this is so. Section 3 gives power to the Central Government or the State Government in certain circumstances to "make an order directing that Such person be detained." The same power is also given to the District Magistrate and the Sub-Divisional Magistrate as also to the Commissioner of Police in a presidency town under certain conditions. Under Section 7, when a person is detained in pursuance of a detention order, the authority making the order is required to communicate to him, as soon as may be, the grounds on which the order has been made and to afford him the earliest opportunity of making a representation against the order. Under Section 9, in every case where a detention order has been made under Section 3, the Government is required within six weeks from the date of detention to place before an Advisory Board the grounds on which the order has been made and the representation, if any made by the person affected by the order. According to Section 10, the Advisory Board after considering the materials placed before it and, if necessary, after calling for such further information from the Government or from the person concerned, as it may deem necessary, submits its report to the Government within ten weeks from the date of detention under the detention order. Under Section 11, after the Advisory Board has reported that there is in its opinion sufficient cause for the detention of the person concerned, the Government "may confirm the detention order and continue the detention of the person concerned for such period as it thinks

fit."

It would thus be seen that according to the scheme of the Act the period of detention need not be fixed and that after the Advisory Board has reported that there is in its opinion Sufficient, cause for the detention of the person concerned the Government is authorised to continue the detention of such person "for Such period as it thinks fit" and in my view an order of detention which does not specify the period of detention is by no means illegal. Certain observations made in the case of A.K. Gopalan v. State of Madras, A. I. R. (37) 1950 S. C. 27 : (51 Cr. L. J. 1383) decided by the Supreme Court of India also seem to indicate that under the provisions of the Preventive Detention Act, 1950, it is not necessary that the period of detention should be specified in the detention order. Kania C. J., in the course of his judgment observes :

> "It was argued that Section 11 of the impugned Act was invalid as it permitted the continuance of the detention for such period as the Central Government or the State Government thought fit. This may mean an indefinite period. In my opinion this argument has no substance because the Act has to be read as a whole. The whole life of the Act is for a year and therefore the argument that the detention may be for an indefinite period is unsound. Again, by virtue of Article 22 (7) (b), the Parliament is not obliged to fix the maximum term of such detention. It has not so fixed it, except under Section 12, and therefore it cannot be stated that Section 11 is in contravention of Article 22 (7)."

The following also occurs in the judgment of Mahajan J.

> "Section 11 of the Act was also impugned on the ground that it offended against the Constitution inasmuch as it provided for preventive detention for an indefinite period. This section, in my opinion, has to be read in the background of the provision in Sub-clause (3) of Section 1 of the Act which says that the Act will cease to have effect on 1-4-1951. Besides, the words 'for such period as it thinks fit' do not in any way offend against the provisions of Article 22 wherein Parliament has been given the power to make a law fixing the maximum period for preventive detention. It has to be noted that Parliament has fixed a period of one year as the maximum period for the duration of detention where detention has to be without reference to an Advisory Board. In my opinion, there is nothing in Section 11 which is outside the constitutional limits of the powers of the Supreme Legislature."

An order of detention, which does not specify, the period of detention cannot thus be regarded as illegal or invalid.

2. In Cri. Misc. Case No. 1334 of 1950 (Ram Adhar Misra v. State) a further point has been taken that the grounds of detention communicated to the applicant under Section 7 of the Act are vague and indefinite and our attention has been drawn to the case of Rex v. Durga Das, 1948 A. L. J. 491 : (A. I. R. (36) 1949 ALL. 148 : 50 Cr. L. J. 214 F. B.) in which a Full Bench of this Court took the view that the grounds and particulars communicated to the detenu "must not be vague, indefinite or

incomplete and must convey sufficient information to the detenu to enable him to make a representation that the detaining authority was wrong in its belief that his detention was necessary in the interest of public safety etc."

That decision was based on the provisions of the U. P. Maintenance of Public Order (Temporary) Act, 1947 (U. P. Act IV [4] of 1947). But in my view the law applies equally to a case falling under the Preventive Detention Act, 1950, under which too the grounds of detention have to be communicated by the authority making the order of detention to the detenu as soon as may be and such authority is further required to afford him an opportunity of making a representation against the order. A perusal of the application, however, shows that this point has hot been taken in it on behalf of the applicant. A perusal of the application further shows that even if it be conceded that the grounds of detention communicated to the detenu were vague, he himself knew what incidents were being referred to and was therefore hot prejudiced by any defect in the grounds themsleves. In Durga Das's case, (1948 A. L. J. 491 : A. I. R. (36) 1949 ALL. 148 : 50 Cr. L. J. 214 F. B.), the Court while considering the case of Amir Hasan found that the particulars supplied to the detenu did not contain all the necessary particulars and that details of the date, time and place etc., when certain arms and ammunition were said to have been recovered from his house, had not been given. But it appealed from an affidavit filed in the High Court that the applicant himself knew what incident was being referred to and was not prejudiced. The Court therefore held that there had been a substantial compliance with the provisions of the Act. I, therefore, see no reason to hold that there has not been in this case a substantial compliance with the provisions of Section 7, Preventive Detention Act, 1950.

3. Some of the detenus, namely, Bhagwan Prasad, Ram Dularey, Sami Ullah Khan, Hargend Singh and Acharya Deepankar were present in person and were given an opportunity of addressing this Court personally with respect to their respective cases. But apart from the fact that their orders of detention did not specify the period of detention, which matter has already been dealt with above, the points raised by them are not relevant to the matters which are before us and need not be discussed.

4. A further point has been raised in Cr. Misc. case No. 1464 of 1950 (Puttu Singh v. State) on behalf of Puttu Singh. It appears that the applicant was originally detained under Section 3 (2), U. P. Maintenance of Public Order (Temporary) Act, 1947, for a period of fifteen days under the order of the District Magistrate of Kanpur dated 30-11-1949. Before the expiry of this period, the Government of Uttar Pradesh by its order dated 13-12-1949, ordered the detention of the applicant for a further period of six months under Section 3 (i) (a) of the Act. The grounds of detention were duly communicated to him on 30-1-1950. While the detenu was under detention, a detention order under Section 3, Preventive Detention Act, 1950, was served upon him on 1-3-1950, converting his detention under the U. P. Maintenance of Public Order (Temporary) Act, 1947, into one under the Preventive Detention Act, 1950. The grounds of detention communicated to him under Section 7 of the Act were presumably the same as the grounds which had been communicated to him previously in connection with his detention under the 1947 Act. The matter went up in due course before the Advisory Board under Section 9 of the Act and on the report of the Advisory Board the Government confirmed his detention order and directed that he be detained for a period of eleven months with

effect from 24-4-1950. It is pointed out that the applicant was all along in prison and that the detention order which was served upon him under the Preventive Detention Act 1950, was in the nature of a 'routine' order and was not based upon any fresh matter and is therefore illegal. It is also pointed out that although under the first detention order his period of detention would have expired on 13-6-1950, the fresh order of detention that was passed against him would keep him under detention up to 24-3-1951, although no fresh facts have come to light which would justify an extension of his period of detention as originally fixed by the detention order passed under the 1947 Act. The learned Government Advocate has drawn our attention to the case of Basanta Chandra Ghose v. Emperor, A. I. R. (32) 1945 P. C. 18 : (46 Cr. L. J. 559) decided by the Federal Court of India on 19-1-1945. In that case the appellant had been arrested on 27-3-1942, under an order dated 19-3-1942 purporting to have been made by the Governor of Bihar in exercise of the powers conferred by Rule 26, Defence of India Rules. On 3-7-1944, the Governor of Bihar passed two orders, by the first he cancelled the order of detention dated 19-3-1942 and by the second he directed the detention of the appellant on the ground that it was necessary so to do "with a view to preventing him from acting in a manner prejudicial to the maintenance of public order and the efficient prosecution of the war"

> under Ordinance III [3] of 1944, which had been promulgated on 15-1-1944. One of the contentions was that the fact of the cancellation of the order of 19-3-1942, by the order of 3-7-1944, and the passing of a fresh order of detention on the same date showed mala fides. Spens C. J., by whom the judgment of the Court was delivered observes:
>
> "It was said that the orders of 3-7-1944 were passed pending the further hearing before the High Court, in order to burke an enquiry into the circumstances connected with the order of March 1942. We are unable to draw any such inference from the sequence of these orders. Reports of the decisions of this Court and of the High Courts show that during 1943 and 1944 different views were held in different quarters as to the formalities necessary for a valid order of detention and as to the authority entitled to pass such an order. If in view of possible defects of this kind in connection with the order of 19-3-1942 a fresh order of detention was passed in July 1944 so as to avoid any argument based on such defects, such a course will not justify any inference of fraud or abuse of power."

5. The further contention that once the order of 19-3-1942 had been cancelled there was no power to pass a fresh order of detention except on fresh materials was also considered by the Court and the following is reproduced from the judgment:

> "It was next argued as a matter of law that once the order of 19-3-1942 had been cancelled, there was no power to pass a fresh order of detention except on fresh materials and it was contended that the learned Judges of the High Court were not justified in presuming that fresh materials must have existed when the order of July 1944 was made. The first step in this argument seems to us unwarranted. The observations of the Court of Appeal in R. v. Home Secretary; Ex Parte Budd, (1942) 1

> All. E. R. 373 : (1942-2 K. B. 14) show that in this broad form the proposition is untenable. It may be that in cases in which it is open to the Court to examine the validity of the grounds of detention, a decision that certain alleged grounds did not warrant a detention will preclude further detention on the same grounds. But where the earlier order of detention is held defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the Courts. There is equally no force in the contention that no order of detention can be passed against a person who is already under detention. The decision of the Patna High Court in Kamla Kant Azad, v. Emperor, 23 Pat. 252: (A.I.R. (31) 1944 Pat. 354) cannot be understood as laying down any such proposition as a general proposition of law. The learned Judges seem to have drawn an inference of fact from the circumstances of the case that the order then in question was not one made in the bona fide exercise of the Governor's powers."

In my view this case disposes of the first contention of learned counsel for the applicant.

6. In regard to the contention that the period of detention of the applicant could not be legally enhanced by substituting the previous order of detention by one under the Preventive Detention Act, 1950, our attention has been drawn to the case of Zamir Qasim v. Emperor, A.I.R. (35) 1948 ALL. 285: (49 Cr. L. J. 358). But the decision in that case was based mainly upon the provisions of the U. P. Maintenance of Public Order (Temporary) Act, 1947, before Section 4 of that Act was amended by the addition of a further proviso. Once it is found that it was lawful for the Government to cancel the previous order of detention passed under the U. P. Act, 1947 and to substitute it by a fresh order under the Preventive Detention Act, 1950 it is obvious that it would be lawful for the Government to act thereafter in accordance with the provisions of the Preventive Detention Act, 1950. After such order of detention had been made, the case was referred to the Advisory Board under Section 9 of the Act. The Advisory Board submitted a report that there was in its opinion sufficient cause for the detention of the detenu and thereafter the Government passed an order under Section 11 of the Act confirming the detention order and fixing the period of detention as eleven months. The procedure was perfectly legal although it had the effect of extending the original period of detention. The original period of detention fixed under the detention order under the 1947 Act was six months and that could have been extended under the new proviso to Section 4 of that Act by a further period of six months, that is, up to 13-12-1950. Under the present order, the applicant will have to remain under detention, unless the Government chooses to revoke the detention order under Section 13 of the Act at an earlier date up to 24-3-1951. This is no doubt unfortunate so far as the applicant is concerned. But the order being strictly in accordance with the provisions of the Preventive Detention Act, 1950, it cannot be said to be illegal or invalid.

7. For the reasons given above, I would dismiss all the nine applications.

Sankar Saran, J.

8. I agree.

9. By the Court. -- The applications in Cr. Misc. Cases Nos. 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1376 and 1464 of 1950 are dismissed.