Abdul Jabar Butt vs State Of Jammu & Kashmir(With Connected ... on 13 November, 1956

Equivalent citations: 1957 AIR 281, 1957 SCR 51, AIR 1957 SUPREME COURT 281, 1957 SCC 149, 1957-1 MADLJ(CRI) 83, 1957 S C J 184

Bench: Natwarlal H. Bhagwati, Bhuvneshwar P. Sinha, S.K. Das

PETITIONER:
ABDUL JABAR BUTT

Vs.

RESPONDENT:
STATE OF JAMMU & KASHMIR(with connected petition)

DATE OF JUDGMENT:
13/11/1956

BENCH:
DAS, SUDHI RANJAN (CJ)
BENCH:
DAS, SUDHI RANJAN (CJ)
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.
DAS, S.K.

CITATION:
1957 AIR 281 1957 SCR 51

ACT:
Preventive Detention-Legality-Time Prescribed for communi-cating grounds of detention to the detenue-'As soon as may be', Meaning of-Declaration enabling Withholding of such communication, if must be made by Government before expiry of such time-- Jammu and Kashmir Preventive Detention Act (IV of Sambat 2011),S. s (1), Proviso.

HEADNOTE:
The two petitioners were detained under S.- 3 (1) Of the Jammu and Kashmir Preventive Detention Act on April 26, 1956, with a view to preventing them from acting in a manner prejudicial to the security of the State. No grounds were communicated to them under s. 8 (1) of the Act and no declarations were made under the proviso of that section. The petitioners applied to the High Court under s. 491 of

the Code of Criminal Procedure and during the pendency of those applications, on June 30, 1956, declarations under the proviso were made by the Government to the effect that it would be against the public interest to communicate to the petitioners the grounds on which the orders of detention had been made against them. On July 28, 1956, the High Court rejected the applications. The cases of the petitioners were

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reviewed by the Government under s.14(2) of the Act in consultation with a person nominated for that purpose on June 4, 1956, and it was satisfied that the petitioners should continue to be detained and, accordingly, passed orders to that effect under s. 14 of the Act on September 26, 1956. The question was whether the declarations were made within the time prescribed by s. 8 (1) of the Act for communicating the grounds of detention and, if not, whether the petitioners had been lawfully detained.

Held, that the expression 'as soon as may be' in sub-s. (1) of s. 8 of the Jammu and Kashmir Preventive Detention Act, whereby the Act prescribed the time within which the Government must communicate to the detente the grounds of his detention, meant within a reasonable time, with the understanding to do the act within the shortest possible time, from the date of detention.

King's Old Country, Ltd. v. Liquid Corbonic Can. Corpn. Ltd. (1942) 2 W.W.R. 603, followed.

Ujagar Singh v. The State of the Punjab, [1952] S.C.R. 756 and Keshab Nilkanth Joglekay v. The Commissioner of Police, Gyeater Bombay, Petition No. 602 Of 1956, decided on September 17, 1956, referred to.

Although it might not be possible in many cases to compute the span of time thus indicated by hours, days or months, what was possible and the Court had to do in the facts and circumstances of each particular case, was to find whether the act was or was not done within the time which was reasonably convenient or reasonably requisite.

The proviso to the sub-section clearly implied that the power it vested in the Government to exclude from the operation of the sub-section certain class of detenues by making the required declaration, must be exercised and such declaration made before the expiry of the time prescribed by the sub-section for communicating to the detenue the grounds on which the detention order against him had been made.

Hissam-Ud-Din Bandy and Others v. The State, A.I.R. 1935 J.& K. 7, overruled.

Consequently, as in the instant cases the affidavits filed on behalf of the Government disclosed no particular circumstance or reason why the declarations under the proviso could not have been made before more than two months had elapsed from the dates when the orders of detention had become effective, the detenues must be held to have been deprived of their liberty otherwise than in accordance with

the procedure established by the Act, embodying as it does the fundamental right guaranteed under Art. 22 (5) of the Constitution of India, and must be released forthwith.

JUDGMENT:

ORIGINAL JURISDICTION : Petition Nos. 173 & 174 of 1956.

Under Article 32 of the Constitution for a writ in the nature of Habeas Corpus.

J.B. Dadachanji, Amicus Curiae, for the petitioners. M.C. Setalvad, Attorney-General for India, Porus A. Mehta and R.H. Dhebar, for the respondent.

1956. November 13. The Judgment of the Court was delivered by DASC.J.-These two petitions raise a common question of interpretation of s. 8 of the Jammu and Kashmir Preventive Detention Act, 2011, being Act IV of (Sambat) 2011 (hereinafter referred to as the Act). Both the petitions have been filed under Art. 32 of the Constitution of India, complaining that the petitioners have been and are being wrongfully detained under the Act and praying for their immediate release.

By two separate orders made by the Jammu and Kashmir Government on April 26,1956, in exercise of the powers conferred on it by sub-s. (1) of s. 3 of the Act the Government ordered that the petitioners be detained. Each of the orders recited that the Government had been satisfied with respect to each of the petitioners that with a view to preventing him from acting in a manner prejudicial to the security of the State, it was necessary to make an order that he be detained. No grounds having been supplied to either of the petitioners nor any declaration having been made under the proviso to s. 8 (1) of the Act for a considerable time, each of the petitioners applied to the High Court of Jammu and Kashmir under s. 491 of the Code of Criminal Procedure for an order in the nature of a writ of habeas corpus. During the pendency of those applications on June 30, 1956, that is to say, more than two months after the date of the original order of detention, a declaration was made by the Government under the proviso to s. 8 (1) to the effect that it would be against the public interest to communicate to the detenues the grounds on which the detention orders had been made. On July 28, 1956, both the petitions were dismissed by the High Court. It appears that the case of each of the detenues had been reviewed by the Government under sub-s. (2) of s. 14 of the Act in consultation with a person nominated by the Government for that purpose on June 4, 1956, and the Government was satisfied that the detenues should continue to be detained. Accordingly on September 26, 1956, in exercise of the powers conferred by s. 14 of the Act the Government issued two separate orders directing that the said two detenues do continue to be detained. In the meantime on September 19, 1956, the two present applications were filed before this Court. The question is whether the declaration under the proviso to s. 8 (1) of the Act was made within the time fixed by s. 8 (1) of the Act for the communication to the detenues of the grounds on which the orders of detention had been made, and 'if not, whether the detention became illegal.

These two petitions came up for hearing before a Division Bench of this Court on October 20,1956,

when the attention of the Court was drawn to a Full Bench decision of the Jammu and Kashmir High Court in Hissam-Ud-Din Bandy and Others v. The State (1), where it was held that though it was highly undesirable that a detenue should remain in suspense, there was no time limit fixed by the proviso for making a declaration and that, therefore, where the detention was for reasons of security of State, the mere fact that the declaration' had been delayed beyond a reasonable time after the date of detention did not vitiate the detention. As the decision of a Full Bench consisting of three Judges required consideration, the Division Bench took the view that the petitions should be placed before a larger Bench. Hence the petitions have come up before us for final disposal.

Some of the provisions of the Constitution of India, subject to some exceptions and modifications, were extended to the State of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir) Order, 1954, made by the President in exercise of the, powers conferred on him by cl. (1) of Art. 370 of the Constitution. Amongst other things in Art. 35 as (1) A.I.R. 1955 J. & K. 7.

extended to Jammu and Kashmir a new clause was added, namely, " (c) no law with respect to preventive detention made by the legislature of the State of Jammu and Kashmir, whether before or after the commencement Of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof."

Therefore, the detention of the petitioners cannot be questioned for five years from the date of the President's order on the ground that the Act is inconsistent with any of the fundamental rights guaranteed under Part III of the Constitution. The legality of the petitioners' detention will, therefore, depend on and have to be considered on a true construction of the provisions of the Act. Turning now to the Act we come to s. 3, which gives to the Government and some of its officers specifically enumerated therein the power to make an order of detention against certain persons. The condition precedent to the making of such order is that the Government must be satisfied with respect, to any person that with a view to preventing him from acting in any manner prejudicial to certain enumerated objects it is necessary to make an order of detention. The enumerated objects include 4 items, namely, (i) security of the State or (ii) the maintenance of public order or(iii)the maintenance of the loyalty of and discipline among the members of the police forces of the State or (iv) the maintenance of supplies and services essential to the community. There is also a provision in cl. (b) of sub-s. (1) relating to a foreigner to which it is not necessary for the present purposes to refer. As soon as an order. is. made under s. 3, the provisions of S. 8 come into play. Section 8 on a true construction of which our decision of these petitions will depend runs as follows

8. (1) When a person is detained in pnrsuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the Government:

> Provided that nothing contained in this subsection shall apply to the case of any person detained with a view to preventing him from acting in any manner prejudicial to the security of the State if the Government by order issued in this behalf declares that it would be against the public interest to communicate to him the grounds on which the detention order has been made.
>
> (2) Nothing in sub-s. (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Sub-section (1) without the proviso is only a reproduction in substance of the provisions of cl. (5) of Art. 22 of the Constitution.

Sub-section (1) imposes on the Government two duties, namely, (1) the duty of communicating to the detenue the grounds on which the order has been made and (ii) the duty of affording him the earliest opportunity of making representation against the order to the Government. The first duty is to be performed " as soon as may be'. Quite clearly the period of time predicated by the phrase 'as soon as may be' begins to run from the time the detention in pursuance of the detention order begins. The question is- what is the span of time, which is designated by the words "

> as soon as may be'? The observations of Dysant, J., in King's Old Country, Ltd. v. Liquid Carbonic Can. Corpn., Ltd. (1), quoted in Stroud's Judicial Dictionary, 3rd edition, vol. 1 page 200, are apposite. Said the learned Judge, " to do a thing I as soon as possible means to do it within a reasonable time, with an understanding to do it within the shortest possible time." Likewise to communicate the grounds 'as soon as may be' may well be said to mean to do so (1) (1942) 2 W.W.R. 603, 606 within a reasonable time with an understanding to do it within the shortest possible time. What, however, is to be regarded as a reasonable time or the shortest possible time?

The words 'as soon as may be' came for consideration before this Court in Ujagar Singh v. The State of the Punjab (1). At pages 761-762 this Court observed that the expression meant with a " reasonable despatch " and then went on to say that "what was reasonable must depend on the facts of each case and no arbitrary time limit could be set down." In Keshav Nilakanth Joglekar v. The Commissioner of Police Greater Bombay and 2 Other8 (2) the word " forthwith "

> occurring in s. 3(3) of the Indian Preventive Detention Act (IV of 1950) came up for consideration. After observing that the word "forthwith " occurring in s. 3(3) of that Act did not mean the same thing as "as soon as may be " used in s. 7 of the same Act and that the former was more peremptory than the latter, this Court observed that the time that was allowed to the authority to communicate the grounds to the detenue and was predicated by the expression 'as soon as may be' was what was "reasonably convenient" or "reasonably requisite." Whenever the question of reasonableness arises in computing the period of time the Court has perforce to have regard to the particular circumstances of the case in which the question arises for decision. It may not be possible in many cases to affirmatively say or to precisely

quantify the period of time by reference to hours, days, or months; nevertheless, it is possible having regard to the circumstances of the case, to say whether the thing done was or was not done 'as soon as may be i.e., within the time which was reasonably convenient or requisite. It cannot be disputed and indeed it has not been disputed by the learned Attorney-General that sub-s. (1) does prescribe a period of time within which the communication is to be made and this time begins to run from the date the detention under the order takes effect.

(1) [1952] S.C.R. 756.

(2) Supreme Court Petition No. 102 of 1956, decided on September 17,1956.

The proviso to sub-s. (1), however, makes the entire sub-s. (1) inapplicable in certain circumstances, namely, (1) where a person is detained with a view to preventing him from acting in any manner prejudicial to the security of the State and (ii) the Government by order issued in that behalf declares that it would be against the public interest to communicate to him the grounds on which the detention order has been made. The learned Attorney-General contends that the proviso in terms does not specify any time within which this power is to be exercised by the Government, that is to say, it does not specify any time within which the Government must make the declaration and he contends that there is no reason to import the time limit laid down in sub-s. (1) into the proviso. So also it has been held by the Full Bench of the Jammu and Kashmir High Court in the case referred to above. Learned Attorney-General urges that this omission to specify the period of time in the proviso was deliberate and is in consonance with the scheme of the Act. He starts with the contention that the object of com-

muilicating the grounds is to afford the detenue an opportunity to make a representation to the Government against the order. He then refers to s. 10 which directs that the Government shall within 6 weeks from the date of detention under the order place before an Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the detenue and in a case where the order has been made by an officer, also the report made by the officer under sub-s. (3) of s. 3. He next points out that this requirement of s. 10 is $'subject to the provisions of s. 14." Then he takes us to s. 14 of the Act. That section provides that not- withstanding anything contained in this Act any person detained under a detention order made in any of the classes of cases or in any of the circumstances therein mentioned may be detained or continued in detention without obtaining the opinion of the Advisory Board for a period longer than 3 months but not exceeding five years from the date of detention. The two classes of persons who may be detained without obtaining the opinion of the Advisory Board comprise persons who have been detained with a view to preventing them from acting in any manner prejudicial to (1) the security of the State and (ii) the maizitenance of public order. The cases of persons falling under these,, two classes are by sub-s. (2) of s. 14 to be reviewed within a period of 6 months from the date of detention and thereafter at intervals of every months if the detention continues, in consultation with a person possessing certain qualification who may be nominated in

that behalf by the Government. Going back then to the proviso sub-s. (1) of s. (8) the Attorney-General points out that the declaration contemplated by the proviso can only be made in the case of a person detained with a view to preventing him from acting in any manner prejudicial to the security of the State. By virtue of s. 14 the case of such a person will not go to the Advisory Board, but will have to be reviewed in consultation with the person nominated by the Government under s. 14. Therefore, it will be enough if the grounds are communicated to such a detenue within 6 months from the date of detention when his case will be reviewed under sub-s. (2) of s. 14. We are unable to accept this line of reasoning as sound.

In the first place it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. Therefore, the proviso in question has to be construed harmoniously with the provisions of sub-s. (1) to which it is a proviso. As we have already mentioned, immediately after the making of the order, sub-s. (1) of s. 8 begins to operate. If the grounds are not communicated to the detenue within the period of time described by the expression 'as soon as may be' the detenue becomes deprived of his statutory right under sub-s. (1) and his detention in such circumstances becomes illegal as being otherwise than in accordance with procedure prescribed by law. In order to prevent this result in certain specified cases the proviso authorises the Government to issue the requisite declaration so as to exclude entirely the operation of sub-s. (1). It, therefore, stands to reason and is consistent with the principle of harmonious construction of statutes that the power of issuing a declaration so as to prevent the unwanted result of the operation of sub-s. (1) should be exercised before that very result sets in.

In the second place it will be recalled that the order of detention may be made under s. 3(1)(a) of the Act against a person with a view to preventing him from acting in any manner prejudicial to the four objects enumerated therein. As soon as an order of detention is made under s. 3(1)(a), the authority making the order is by s. 8(1) placed under the obligation to communicate the grounds of the detention 'as soon as may be.' If no declaration is made under the proviso, s. 8(1) will operate in the case of every detenue to whichever of the four categories he may belong. The proviso enables the Government to prevent the application of sub-s. (1) to certain class of detenues only. It follows that the detenues who do not fall within that clause must have the grounds communicated to them and there is no power given to the Government to exclude the operation of sub-s. (1) from those cases. It will be noted that under the proviso the Government may exclude the application of sub-s. (1), only in the case of a person who has been detained with a view to prevent him from indulging in activities prejudicial to the security of the State and only if the Government declares that it will be against the public interest to communicate the grounds to him. Even if a person has been detained on account of his activities being prejudicial to the security of the State the Government cannot exclude the operation of sub-s. (1) from his case unless the Government is prepared to declare and declares that it would be against the public interest to communicate to him the grounds on which the detention order has been made. Therefore, those persons who have been detained on account of their activities being prejudicial to the security of the State, but with regard to whom the Government cannot or does not think fit to declare that it would be against the public interest to communicate to them the grounds, will continue to be governed 'by sub-s. (1) and such persons, like the persons belonging to the other three categories, will be entitled to have the grounds com- municated to them 'as soon as may be.' As such persons will be governed by sub-s. (1), it becomes clearly incumbent upon the

Government to decide within the time envisaged by sub-s. (1) whether it should make, the requisite declaration or not, for otherwise such persons will be seriously prejudiced. Suppose the Government does not make a declaration with regard to persons falling within that class within that time but subsequently decides that it would not be against the public interest to communicate to them the grounds, then the absence of such a declaration under the proviso will brings about the unfortunate result that those persons will be deprived of their valuable right of having the grounds communicated to them 'as soon as may be' and to have the earliest opportunity afforded to them of making a representation. In the context of the liberty of the subject we must adopt a construction which would have the effect of preventing such' an undesirable result. Further under section 14 the person falling under the two categories mentioned therein "may" be detained or continued in detention without obtaining the' opinion of an Advisory Board for a period longer than 3 months. There is nothing to suggest that the cases of all persons falling within the two categories must necessarily not be referred to the Advisory Board, but must be reviewed under sub-s. (2). Persons against whom orders of detention are made with a view to preventing them from acting in any manner prejudicial to the security of the State and with respect to whom' the Government does not consider that it would be' against the public interest to communicate to them the grounds, will be entitled, under sub-s. (1), to have their grounds 'as soon as may be' and there is nothing to prevent the Government from sending their cases together with the grounds and their representations, if any, to the Advisor Board under s. 10 of the Act.' Therefore, with respect to such persons the grounds' must be supplied 'as soon as may be' under sub-s. (1)' and cannot be postponed for 6 months referred to in section 14.

Finally the review contemplated by sub-s. (2) of s. 14 is to be made "within" a period of 6 months from the date of detention. There is no reason to hold that in every case such a review will be held on the last day of that period of 6 months. With regard to a person falling within the category of persons whose activities are prejudicial to the security of the State but with respect to whom the Government does not think fit to make any declaration under the proviso, he would be entitled to have the grounds communicated to him 'as soon as may be' and he may immediately make such cogent and convincing representation to the Government as may induce the Government to release him forthwith without waiting for the last day of the 6 months.

For reasons stated above we see no difficulty in construing the proviso as implying that the time for making the declaration should be co-terminous with the time fixed for communicating the grounds under sub-s. (1). When the detaining authority makes the order of detention, it specifies in the preamble to the order why IV-he order is made, namely, whether it is made with a view to preventing the detenue from acting in any manner prejudicial to one or other of the four objects enumerated in s. 3(1)(a). If the Government can makeup its mind that the detention order is made against a particular person on account of his activities being Prejudicial to the security of the State, there is no reason why the Government should not at the same time or 'as soon as may be' thereafter make up its mind as to whether or not it would be against the public interest to communicate to such person the grounds on which the detention order is made. In our)pinion the authority vested in the Government to make a declaration contemplated by the proviso must be exercised before the expiry of the span of time Predicated by the expression 'as soon as may be' occuring in sub-s. (1). Such a construction will ensure Harmonious operation of ss. 8, 10 and 14. These aspects of the

matter do not appear to have been pointedly bought to the notice of the Full Bench of the Jammu and Kashmir High Court and in our opinion that decision cannot be accepted as correct.

There is nothing in the affidavits filed by the respondent showing that there was any particular circumstance or reason for which the declarations could riot have been made earlier than June 30, 1956, when they were actually made. For reasons stated above the detention of the petitioners became illegal and they may well complain of having been deprived of their liberty otherwise than in accordance with procedure established by the Act, which embodies the fundamental right guaranteed under Art. 22(5) of the Constitution. In the premises the petitioners are entitled to the relief they pray for. We accordingly allow both the petitions and direct the petitioners to be released forthwith. Applications allowed.