Supreme Court of India
Akshoy Konai vs State Of West Bengal on 27 October, 1972
Equivalent citations: AIR 1973 SC 300, 1974 CriLJ 405, (1973) 1 SCC 297
Author: I Dua
Bench: I D Shelat, Y Chandrachud
JUDGMENT I.D. Dua, J.

1. The petitioner, Akshoy Konai, in this petition under Article 32 of the Constitution prays for his release from detention in the Dum Dum Central Jail, Calcutta. He was arrested on February 14, 1972 pursuant to the order of detention made by the District Magistrate, Birbhum on February 11, 1972 in exercise of the powers conferred on him by Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called as the Act). The detention order dated February 11, 1972 the legality of which is assailed herein reads:

Government of West Bengal Order No. 728C Dated Suri, the 11-2-1972 Whereas I am satisfied with respect to the person known as Shri Akshoy Konai s/o Kelu Konai of Karkaria, P. S. Rampurhat, Dist. Birbhum that with view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do;

Now, therefore, in exercise of the powers conferred by Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) I hereby make this order directing that the said Shri Akshoy Konai, be detained.

Given under my hand and seal of office, Sd/- M. Gupta 11-2-72 District Magistrate, Birbhum.

The grounds on which the impugned order was made and which were duly served on the petitioner at the time Of his arrest are:

1. On 7-6-71 at about 18-30 hrs. you and some of your associates being armed with shot-gun, pipe-guns, daggers and other lethal weapons forcibly en-tered into the house of gun licensee Shri Sisir Kumar Ghosh of Tarapur, P. S. Rampurhat and compelled him (Shri Ghosh) to make over his D.B B.L. gun No. 445 at the point of shot-gun and daggers. You thereby created a great panic in the locality.

2. On 12-6-71 at about 1830 hrs. you and some of your associates being armed with pistol, shot-guns and other lethal weapons entered into the house of gun licensee Shri Gopal Chandra Mandal of Jundipur, P. S. Rampurhat and compelled the wife of Shri Mandal gun licensee at the point of pistol and shot-gun to make over the gun. The wife of Shri Mandal out of fear pointed out the place where the gun and cartridges were kept. Accordingly you and your associates took away the D.B. B.L. gun with 7 live cartridges. You, thereby created a great panic in the area and disturbed the public order.

The fact of making the impugned order was reported to the State Government on the very day it was made and the State Government approved of it on February 12, 1972 on which date the necessary report was also sent to the Central Government. The petitioner's case was placed before the Advisory

Board on March 13, 1972 and the Board gave its report on April 17, 1972. The State Government confirmed the order on May 10, 1972 which was communicated to the petitioner the same day. The petitioner's representation had been received by the State Government on April 4, 1972 which was considered by it two days later on April 6, 1972.

2. The first objection against the petitioner's detention raised by Shri B. Dutta, the learned Counsel appearing as amicus curiae in support of the writ petition, is that though the petitioner had been heard in person by the Advisory Board the decision of the Board was never communicated to him. This omission, according to the counsel, Invalidates the petitioner's detention as he was not able to take any step to have this opinion scrutinised by any judicial tribunal. This submission is, in our opinion, difficult to accept. Under Section 11 of the Act the Advisory Board is required only to submit its report to the appropriate Government (There is no obligation imposed by the Act on the Board to communicate its decision to the detenu. The mere fact that under Section 11 the Board hears the person affected by the detention order In case he desires to be so heard, would not for that reason alone impose on the Board a legal obligation to communicate its decision to the detenu. Our attention has not been drawn to any provision of law or to any principle which would imply any such obligation. In any event omission on the part of the Advisory Board to do so cannot invalidate the petitioner's detention. On receipt of the report of the Advisory Board the appropriate Government is empowered to confirm the detention order and to continue the detention of such person for such period as it thinks fit subject to the maximum period fixed by Section 13. In the present case the State Government communicated to the petitioner-detenu its confirmation of the detention order on May 10, 1972, the very day his detention was confirmed. This was a clear indication to the petitioner that according to the report of the Advisory Board there was sufficient cause for his detention, for, had the Board reported that there was in its opinion no sufficient cause for his detention, the appropriate Government would have revoked the impugned order of detention and caused the petitioner to be released because under Section 12(2) of the Act it was obligatory on the part of the appropriate Government to do so.

3. The submission that the Advisory Board should have communicated its opinion to the petitioner so as to enable him to question its legality is also misconceived. In the" first instance the Advisory Board constituted under Section 9 of the Act, as its name connotes, is only required to function in an advisory capacity. Its opinion which is merely an advice is binding on the appropriate Government only if according to it there is no sufficient cause for the detention in question: in that eventuality the detenu cannot possibly have any grievance. When the Board reports that there is sufficient cause for the detention in question, the appropriate Government is not bound under the law to confirm the order of detention. It may or may not do so. The advisory opinion of the Board is merely intended to assist the appropriate Government in determining the question of confirming the detention order and continuing the detention. It is binding on the appropriate Government only when it favours the detenu and not when it goes against him. Such advisory opinion can scarcely be an appropriate subject matter of review or scrutiny by the judicial courts or tribunals. Secondly the proceedings of the Board and its report are expressly declared by Section 11(4) of the Act to be confidential except that part of the report in which its opinion is specified. This provision clearly indicates that the advisory opinion is never intended to be open to challenge on the merits before any tribunal. So far as the final opinion of the Board is concerned the communication of the

confirmation of the detention order by the State Government clearly informed the petitioner that the opinion of the Board was against him.

4. It was then contended by Shri Dutta that there was no application of mind by the District Magistrate, Birbhum when he made the impugned order of detention. According to the submission the use of the disjunctive "or" in that order indicates that the District Magistrate was not sure in his mind about the precise ground for detaining the petitioner and that he had mechanically reproduced the language used in Section 3(a)(ii) of the Act. Reliance for this submission was placed on a recent decision of this Court in Kishori Mohan v. The State of West Bengal which the earlier decision of this Court in Ananta Mukhi v. State of West Bengal , dealing with a detention order made under the West Bengal (Prevention of Violent Activities) Act, 19 of 1970 was distinguished.

5. The present case is directly covered by the decision in Kishori Mohan, (supra) and no serious attempt was made on behalf of the State to support the legality of the impugned order by either distinguishing Kishori Mohan (supra) or otherwise by reference to the relevant statutory provisions A faint suggestion was no doubt thrown that in the two enactments the relevant provisions providing for detention for preventing the persons concerned from acting in any manner prejudicial to the security of the State or the maintenance of public order are substantially identical but the argument was not developed. Our attention was merely invited to the case of Ananta Mukhi, (supra). The majority view in that case certainly upheld the validity of the order of detention made with a view to preventing the detenu "from acting in any manner prejudicial to the security of the State or the maintenance of public order". But in that case the order was made under the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970) enacted by the President in exercise of the powers conferred by Section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970. The decision in Ananta Mukhi, (supra) was distinguished in Kishori Mohan, (supra) on the ground that in the President's Act there was a statutory definition o "acting in any manner prejudicial to the security of the State or the maintenance of public order" in Section 3(2). '

6. It appears that in the present case the District Magistrate, Birbhun did not realise the distinction between the two enactments and apparently made the order relying on the form o the orders under the President's Act 1970. As the present case is directly covered by Kishori Mohan, (supra) we must allow this petition and setting aside the impugn ed order of detention direct that the petitioner be set at liberty.