

Supreme Court of India

Shri Mritunjoy Pramanik vs The State Of W.B. on 10 July, 1972

Equivalent citations: AIR 1973 SC 847, 1973 CriLJ 670, (1972) 2 SCC 586, 1973 (5) UJ 159 SC

Author: Mathew

Bench: K Mathew

JUDGMENT Mathew, J.

1. The petitioner challenges the validity of an order of detention and prays for the issue of a writ or order in the nature of habeas corpus and for releasing him from custody.

2. The order of detention was passed by the District Magistrate, Nadia, West Bengal, on November 9, 1971, in the exercise of his powers under Sub-section (1) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 (No. 26 of 1971) and the petitioner was arrested on November 10, 1971, in pursuance thereof. The order of detention together with the ground thereof was served on him on the same day. On November 9, 1971, the District Magistrate duly reported to the State Government about the passing of the detention order. The report was considered by the State Government and on November 19, 1971, the detention order was approved by the State Government and on the same day the State Government submitted a report to the Central Government in pursuance to the provisions of Sub-section (4) of Section 3 of the Act together with the ground of detention and the other particulars. On December, 1971, the State Government placed the case of the petitioner before the Advisory Board under Section 10 of the Act. On or about November 29, 1971, the State Government in its Home Department (Special section) received a representation from the petitioner. The representation was considered by the State Government and by its order dated January 14, 1972, the representation was rejected but the Government forwarded it to the Advisory Board for its consideration. The Advisory Board after consideration of the materials placed before it and the representation, submitted its report to the State Government on January 20, 1972. The Advisory Board was of the opinion that there was sufficient cause for detention of the petitioner. By an order January 24, 1972, the State Government confirmed the order of detention and it was communicated to the petitioner by its Memo dated January 24, 1972.

3. Counsel for the petitioner raised several grounds challenging the validity of the detention order and supporting the prayer of the petitioner for release from custody. I think it necessary only to deal with the arguments of counsel in respect of the failure of the Advisory Board to submit its report to the Government within the time prescribed by Section 11 of the Act and the delay in the consideration and disposal of the representation of the petitioner by the State Government.

4. Section 11 of the Act enjoins that the Advisory Board shall, after considering the materials placed before it, submit its report to the appropriate Government within ten weeks from the date of detention. In this case the date of detention was November 10, 1971, the Advisory Board submitted its report only on January 20, 1972. The report was not submitted to the Government within the 10 weeks as enjoined by the section.

5. The representation made by the petitioner was received by the State Government on November 29, 1971, but it was disposed of only on January 14, 1972. There is no satisfactory explanation for

this delay in the counter-affidavit on behalf of the State Government. In the absence of any explanation, I should hold that the representation was not disposed of by the State Government as early as practicable. The detention must be held to be illegal for these reasons.

6. The writ petition is allowed. I have ordered the petitioner to be released from custody on July 5, 1972.