

Supreme Court of India

Bablu Hembram And Ors. vs State Of West Bengal And Ors. on 28 May, 1974

Equivalent citations: AIR 1974 SC 2279, 1974 CriLJ 1308, (1975) 3 SCC 339

Author: M Beg

Bench: M Beg

JUDGMENT M.H. Beg, J.

1. A common question of law arises, on similar facts, in each of the eleven Habeas Corpus petitions which have to be allowed as a result of the judgment of the Constitution Bench of this Court in Pradip Kumar Das v. State of West Bengal W.P. 961 of 1973, etc. D/-29-4-1974 : .

2. The hearing of the petitions now before me was adjourned to await the judgment of the Constitution Bench which has held that, in view of the provisions of Section 14, Sub-section (2) of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as 'the Act'), a second detention order cannot be made without fresh facts after a revocation or expiry of the first detention order. The question considered by the Constitution Bench was whether a revocation of an order by the detaining authorities made because of the decision of this Court in Writ Petition No. 266 of 1972 - Shambhu Nath Sarkar v. State of West Bengal. , on the assumption that the revoked detention order was void or "non est", prevents the passing of another detention order on the same facts. It has held that it does. It rejected the contention that the term "revocation", as used in Section 14, Sub-section (2) of the Act, would not cover a case where a previous detention order was only "revoked" formally but was substantially and actually treated as "non est" by the detaining authorities. It was not prepared to countenance "casuistry" in such cases involving claims to personal liberty. What is prima facie a "revocation" whatever may be the grounds for it, does not cease to be one merely because the detaining authorities realised that the revoked order was contrary to provisions of law. Section 14, Sub-section (2) of the Act, does not restrict the ambit of revocations to those made on any particular grounds. An order, even if treated as "non est" which was given actual effect, had been actually "revoked". This was enough. It was, according to the Constitution Bench, a revocation in fact of a detention order actually passed, irrespective of the validity of the detention order in the eye of law or the reasons for the revocation which were immaterial. The mere fact that the first detention order could, in the eye of law, be held to be "non est" would not, on the view taken by the Constitution Bench, prevent it from being an order which was actually "revoked" within the meaning of that term as used in Section 14, Sub-section (2) of the Act. This provision of Jaw, on the view adopted by the Constitution Bench, deals with the actual passing of detention orders and their actual revocation or expiry and not with their legal validity. We are only concerned with the legal consequences of certain facts in existence and not with a fictitious assumption, wiping out actual facts, made after determining the legal validity of the actual facts of a detention order passed, enforced, and then revoked. This interpretation of Section 14(2) of the Act is binding upon me. I will, therefore, state only the relevant facts, which entitle the petitioner in each case to regain his personal liberty.

3. In Bablu Hembram v. The State of West Bengal Writ Petition No. 1466 of 1973, the petitioner was detained under an order passed by the District Magistrate, Burdwan, on 3-7-1972, which was revoked on 28-4-1973 (sic). The petitioner was again detained, without fresh grounds by a detention

order dated 26-4-1973 which is hereby quashed.

4. In Nitya Nanda Datta v. The State of West Bengal Writ Petition No. 1500 of 1973, the petitioner was first detained by an order dated 19-2-1973 which was revoked on 26-4-1973. The petitioner was again detained without fresh facts, by an order dated 28-4-1973 which is hereby quashed.

5. In Bimal Das v. The State of West Bengal Writ Petition No. 1519 of 1973, the petitioner was first detained by an order dated 31-1-1972 which was revoked on 23-4-1973. The petitioner was detained again, without fresh grounds, by an order dated 27-4-1973 which is hereby quashed.

6. In Ajoy Kumar Biswas v. The State of West Bengal Writ Petition No. 1534 of 1973, the petitioner was first detained by an order dated 10-8-1972 but released on 28-4-1973 under a revocation order dated 26-4-1973. The petitioner was again detained without any fresh grounds by another order dated 28-4-1973 which is hereby quashed.

7. In Chandi Charan Karmakar v. The State of West Bengal Writ Petition No. 1611 of 1973, the petitioner was detained under an order dated 3-2-1972, but was released on 26-4-1973 by a revocation order dated 23-4-1973. He was detained once again, without any fresh grounds, by an order dated 24-4-1973, served on him on 26-4-1973, which is hereby quashed.

8. In Tharpa Murmu v. The State of West Bengal Writ Petition No. 1623 of 1973, the petitioner was detained under an order dated 24-12-1971. He was released on 28-4-1973 by a revocation order dated 25-4-1973. He was detained again without any fresh grounds, by an order dated 27-4-1973, served upon him on 28-4-1973, which is hereby quashed.

9. In Kesto Pattanayak alias Oriaa alias Kartick v. The State of West Bengal Writ Petition No. 1629 of 1973, the petitioner was detained, under an order dated 8-12-1971, which was revoked and the petitioner released on 26-4-1973 by an order dated 23-4-1973. He was again detained without fresh grounds, by an order dated 24-4-1973, served upon him on 26-4-1973, which is hereby quashed.

10. In Ajit Kumar Das alias Nagin v. The State of West Bengal Writ Petition No. 1651 of 1973, the petitioner was first detained by an order dated 9-10-1972 which was revoked by an order 26-4-1973. He was only formally and technically released on 28-4-1973 but taken into custody immediately after that on that very date under a fresh order of detention dated 26-4-1973 without any fresh grounds. His detention order dated 26-4-1973 is hereby quashed.

11. In Methar Mandi v. The State of West Bengal Writ Petition No. 1654 of 1973, the petitioner was detained by an order dated 9-12-1971, which was revoked on 27-4-1973. The petitioner was brought out of Jail on 30-4-1973, but, without any fresh grounds, he was served with another detention order dated 23-4-1973 and detained. It will be noticed that, in this case, the second detention order was passed even before the revocation of the first detention order. The second detention order dated 23-4-1973 is hereby quashed.

12. In Mantu Roy alias Bag v. The State of West Bengal Writ Petition No. 1889 of 1973, the petitioner was detained under order dated 29-9-1972, which was revoked on 27-4-1973. The petitioner was formally, released on 4-5-1973, but, immediately thereafter, he was detained again under a detention order dated 28-4-1973, without any fresh grounds, which is hereby quashed.

13. In Becharam Sarkar alias Umesh v. State of West Bengal Writ Petition No. 2032 of 1973, the petitioner was detained under an order dated 21-9-1972, but he was released on 25-4-1973 owing to a revocation order dated 23-4-1973. He was detained again on 25-4-1973, without any fresh grounds, under another detention order dated 24-4-1973, which is hereby quashed.

14. For the reasons given above these Habeas Corpus Petitions are allowed. Each of the petitioners will be released forthwith and set at liberty unless wanted in some other connection in accordance with law.