Supreme Court of India
Sk. Salim vs The State Of West Bengal on 27 January, 1975
Equivalent citations: AIR 1975 SC 602, (1975) 1 SCC 653, 1975 3 SCR 394
Bench: A Gupta, M Beg, Y Chandrachud
JUDGMENT

1. The petitioner, Skq. Salim, challenges by this petition under Article 32 of the Constitution an order of detention passed by the District Magistrate, 24-Parganas, under the Maintenance of Internal Security Act, 1971. The order was passed on June 13, 1972 avowedly with a view to preventing the. petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The particulars furnished to the petitioner refer to two incidents of theft dated January 31 and February 23, 1972. The former relates to a theft of underground copper cables and the latter to a theft of A.C.S.R. ConductOrs. The particulars further mention that on February 24, 1972 the petitioner and two of his named associates were found in possession of 30 K. Gs of stolen A.C.S.R. ConductOrs.

2. Section 3(1) of the Act empowers the Central Government and the State Governments to pass orders of detection for the reasons therein mentioned. Section 3(2) confers power on District Magistrates, specially empowered Additional District Magistrates and Commissioners of Police to pass orders of detention for reasons specified therein. If an order of detention is passed by any of these officers.

he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government :

That is the clear mandate of Section 3(3).

3. The District Magistrate, in the instant case, made the detention order on June 13, 1972 and on the 15th he reported the fact of making the order to the State Government. The question for consideration, which has been argued with some favour by the learned Counsel appearing amicus curiae for the petitioner, is whether the District Magistrate can be said to have reported the making of the order "forthwith" as required by Section 3(3).

4. Laws of preventive detention by which subjects are deprived of their personal liberty without the safeguards available in a judicial trial ought to be construed with the greatest strictness. Courts must therefore be vigilant to ensure that the detenu is not deprived of the modicum of rights and safeguards which the preventive law itself affords to him. The Maintenance of Internal Security Act contains what is evidently thought to be a scheme of checks and counter-checks by which the propriety or necessity of a detention order may at various stages be examined by various authorities. If an order of detention is made by a District Magistrate or a specially empowered Additional District Magistrate or a Commissioner of Police, he is required by Section 3(3) to report "forthwith" to the State Government about the making of the order. The order cannot remain in force for more

than 12 days or in the circumstances mentioned in the Proviso to Section 3(3), for more than 22 days unless in the meantime it has been approved by the State Government. If the order is made or approved by the State Government it must under Section 3(4) report the fact to the Central Government within 7 days. By Section 10, save as otherwise expressly provided in the Act, the appropriate Government shall within 30 days from the date of detention under the order, place before the Advisory Board constituted under Section 9 the grounds on which the order has been made, the representation if any made by the detenu and in case where the order has been made by any of the officers specified under Section 3(2), the report made by the officer under Section 3(3). Section 11(1) requires the Advisory Board to submit its report to the appropriate Government within 10 weeks from the date of detention. This time-schedule, evolved in order obviously to provide an expeditious opportunity at different levels for testing the justification of the detention order has to be observed scrupulously and its rigour cannot be relaxed on any facile assumption that what is good if done within 7. 12 or 30 days could as well be good if done, say, within 10, 15 or 35 days.

5. The requirement that the District Magistrate or the other officers making the order of detention shall forthwith report the fact of making the order to the State Government can therefore admit of no relaxation, especially because it has a distinct and important purpose to serve. The 12 days' period which the Act in normal circumstances allows to the State Government for approving the detention order is evidently thought to be reasonably necessary for enabling the Government to consider the pros and cons of the order. Delay on the part of the District Magistrate or the other officers in reporting to the State Government the fact of making the detention order would inevitably curtail the period available to the State Government for approving the detention order. The period of 12 or 22 days, as the case may be, which is referred to in Section 3(3) runs from the date on which the order of detention is made and not from the date on which the fact of making the order is reported to the State Government. Such a delay may conceivably lead to a hurried and cursory consideration of the propriety or justification of the order and thereby impair a valuable safeguard available to the detenu. A liberal construction of the requirement that the officer making the order of detention shall forthwith report the fact to the State Government is therefore out of place.

6. Contending for the acceptance of the literal meaning of the word 'forthwith', counsel for the petitioner argues that administrative exigencies cannot ever be allowed to explain away the delay between the making of the detention order and the report of it to the State Government. It is an established rule of construction that unless the language of the statute is ambiguous, the words used by the legislature ought to be given their plain, literal meaning. But it is equally important that by no rule of construction may the words of a statute be so interpreted as to bring about absurd situations in practice. The stranglehold of stark literalness has therefore to be avoided in order to give a rational meaning and content to the language used in the statute. Thus, though the word 'forthwith' cannot be construed so as to permit indolence or laxity on the part of the officer charged with the duly of reporting the detention to the State Government, reasonable allowance has to be made for unavoidable delays, always remembering that the detaining authority must explain any long delay by pointing out circumstances due to which the report to the State Government could not be made with the greatest promptitude.

7. The dictionary meaning of 'forthwith' is : "Immediately, at once, without delay or interval". A typical instance of the use of the word cited in the dictionary is : "When a defendant is ordered to plead forthwith, he must plead within twenty-four hours" (See Shorter Oxford English Dictionary, Third Edition, Vol. I, p.740). This shows that the mandate that the report should be made forthwith does not require for its compliance a follow-up action at the split-second when the order of detention is made. There ought to be no laxity and laxity cannot be condoned in face of the command that the report shall be made forthwith. The legislative mandate, however, cannot be measured mathematically in terms of seconds, minutes and hours in order to find whether the report was made forthwith. Administrative exigencies may on occasions render a post-haste compliance impossible and therefore a reasonable allowance has to be made for unavoidable delays. This approach does not offend against the rule formulated in Kishori Mohan Bera v. State of West Bengal , and followed in Bhut Nath Mete v. The State of West Bengal , that a law depriving a subject of personal liberty must be construed strictly. The rule of strict construction is no justification for holding that the act to be performed 'forthwith' must be performed the very instant afterwards without any intervening interval of time or that it should be performed simultaneously with the other act. Citing Sameen v. Abeyewickrema [1963] A.C. 597, Maxwell says that where something is to be done forthwith, a Court will not require instantaneous compliance with the statutory requirements ("The Interpretation of Statutes" 12th Ed., pp. 101-102).

8. In Keshav Nilkanth Joglekar v. The Commissioner of Police, Greater, Bombay [1956] S.C.R. 653, a Constitution Bench of this Court had to deal with a similar contention founded on Section 3(3) of the Preventive Detention Act IV of 1950, which was in terms identical with Section 3(3) of the Act under consideration. The order of detention was passed in that case on January 13, 1956 but the report to the State Government was made on January 21. Accepting the explanation offered by the detaining authority in his affidavit as to why he could not make the report earlier, the Court held that the question to consider under Section 3(3) was whether the report was sent at the earliest point of time possible and when there is an interval of time between the date of the order and the date of the report, whether the delay could have been avoided. The test which the Court applied for determining whether the report was made forthwith was whether the act was done "with all reasonable despatch and without avoidable delay."

9. In Bidya Deb Barma Etc. v. District Magistrate, Tripura, Agartala , the same problem arose for consideration. The District Magistrate had passed the order of detention under the Preventive Detention Act, 1950 on February 9, 1968 but made his report to the State Government on February 13. While explaining the delay, the District Magistrate stated in his affidavit that 10th and 11th February were closed days and he was during the particular period "extremely busy" due to "heavy rush of work." This explanation was accepted by the Court as satisfactory. In coming to the conclusion that there was no violation of the requirement that the report should be made 'forthwith', the Constitution Bench relied on Joglekar's case and on the following passage which occurred in Maxwell's 11th edition at page 341 :

When a statute requires that something shall be done "forthwith", or "immediately" or even "instantly", it should probably be understood as allowing a reasonable time for doing it.

10. Thus, 'forthwith' does not connote a precise time and even if the statute under consideration requires that the report shall be made forthwith, its terms shall have been complied with if the report is made without avoidable or unreasonable delay.

11. In Hillingdon London Borough Council v. Cutler [1968] 1 Q.B. 124. at p. 135, Harman L.J. while holding that the concept of 'forthwith' does not exclude the allowance of a reasonable time for doing the act, qualified his formulation by adding the rider "provided that no harm is done." Applying that test, no prejudice has been caused to the petitioner by the late making of the report. The State Government could approve the detention any time before June 25, the order having been passed on June 13. The report was made to the State Government on June 15 which still left to it a margin of about 10 days to consider the merits of the order. It cannot be said that the delay in making the report left to the State Government insufficient time to consider whether the order of detention should be approved. The order was in fact approved on June 21, much before the expiry of the statutory period of 12 days.

12. The District Magistrate, it must be stated, has not explained in his affidavit why he did not report the fact of detention to the State Government promptly. The order is dated June 13 and if not on the 13th itself, he should have in normal circumstances made his report on the 14th. Such remisness on the part of detaining authorities is not to be encouraged but it ought to be stated that counsel for the State Government had asked for an adjournment to enable the District Magistrate to file a supplementary affidavit for explaining the delay. We did not grant the adjournment as we were inclined to the view that the interval between the date of the order and the date of the report is not so long as to require an explanation on oath. The date on which the order was passed may, even according to the petitioner's counsel be left out of the reckoning. That accounts for the 13th. The report was made on the 15th and there is some authority for the proposition that an act may be taken as done "at the first moment of the day on which it was performed" (See Maxwell, 12th Ed. pp. 311-312). That takes care of the 15th. All that can therefore be said is that there was one day's delay in making the report. We are not inclined to dismiss as untrue the oral explanation offered on behalf of the District Magistrate that he could not make the report on the 14th due to administrative difficulties. As it cannot be said that the District Magistrate had slept over the order or was "lounging supinely" over it and since the explanation of one day's delay may be accepted as reasonable, there is no violation of the requirement that the report to the State Government shall be made forthwith.

13. A few other contentions were raised on behalf of the petitioner but we see no substance in any one of them. It is contended that Section 3(4) has been violated because the State Government did not make a report to the Central Government within 7 days of the date of the order of detention. The short answer to this contention is that the period of 7 days has to be reckoned from the date on. which the State Government approved the order and not from the date on which the District Magistrate passed the order. If the order were made by the State Government, the report would have been required to be made to the Central Government within 7 days of the date of the order; but the order in the instant case was approved and not made by the State Government. It was then said that there was no proximity between the incidents leading to the detention and the order of detention as there was a gap of about 4 months in between. The explanation of the interval is that the petitioner

was being prosecuted and an order of discharge had to be obtained on June 17, 1972. The order of detention was passed 4 days before the order of discharge was passed. It is next contended that the State Government having rejected the petitioner's representation the very next day that it was received, it must be held that it did not apply its mind to the representation. We dc not suppose that the length of time which a decision takes necessarily reflects the care or openness brought to bear upon it. The answer to yet another contention that the entire material which influenced the subjective satisfaction of the Magistrate in passing the order of detention was not supplied to the petitioner is that according to the countered affidavit of the District Magistrate, nothing apart from what is stated in the grounds and the particulars was taken into account while passing the order of detention. The last submission that the petitioner could have been prosecuted for the acts attributed to him has been answered by this Court in numerous cases by saying that the availability of an alternate remedy is not by itself an effective answer to the validity of the detention.

14. In the result we dismiss the petition and discharge the rule.