Supreme Court of India
Abdul Aziz vs State Of West Bengal & Anr on 21 July, 1995
Equivalent citations: 1995 SCC (6) 47, 1995 SCALE (5)169
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
ABDUL AZIZ

Vs.

RESPONDENT:
STATE OF WEST BENGAL & ANR.

DATE OF JUDGMENT21/07/1995

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 SCC (6) 47 1995 SCALE (5)169

ACT:

HEADNOTE:

JUDGMENT:

O R D E R In this application under Article 32 of the Constitution the constitutional validity of the provisions of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter to be referred to as the TADA Act), particularly the provisions of Section 1 (4) of the Act are sought to be challenged mainly on the ground that the Act having expired the provisions for continuing the trial under the said Act is illegal and it has been contended that this provision violates Articles 14 and 21 of the Constitution.

Mr. Ramaswamy, learned Senior Counsel appearing in support of the application, has submitted that in the Constitution Bench decision rendered in Kartar Singh V. State of Punjab (1994 (3) SCC 569), the constitutional validity of Section 1 (4) has not been specifically gone into but consideration of such question has become important because the trial has been allowed to continue even after the lapse of the said Act. In support of his contention a reference has been made to the decision of this Court in Gopi Chand V. Delhi Administration (1959 Supp. (2) SCR 87). We may only indicate that in Gopi Chand's case this Court specifically noted that in the absence of the saving clause in the Act the

trial which may commence for the offences under the said Act, would not be held valid thereafter. But in the instant case, Specific saving clause has been provided in the Act itself (TADA Act), As such, the decision in Gopi Chand's case does not apply in the facts of this case.

We may only indicate here that in the majority decision in Kartar Singh's case, it has been indicated that if the procedural law is oppressive and violates the principle of just and fair trial offending Article 21 of the Constitution and is discriminatory violating Article 14 of the Constitution, then Section 15 of the TADA Act is to be struck down. As a distinction has been made in TADA Act, grouping the terrorists and disruptionists as a separate class of offenders from ordinary criminals under the normal laws and the classification of the offences under the TADA Act as aggravated form of crimes distinguishable from the ordinary crimes, it has to be tested and determined as to whether this distinction and classification are reasonable and valid within the term of Article 14. Hence, it is assential to examine the classification of `offenders' and `offences' so as to decide whether Section 15 is violative of Article 14. Viewed from this aspect, the majority decision has upheld the vires of the said Section. We may also indicate here that although Section 1 (4) was not specially taken into consideration, the TADA Act was generally held intra vires in Kartar Singh's case.

Mr. Ramaswamy has also relied on another decision of this Court in State of West Bengal Vs. Anwar Ali Sarkar (AIR 1952 SC 284) for contending that accused in cases under TADA Act may be subjected to a different procedure for trial of their cases at the discretion of the State Government and such discretionary power is unconstitutional. We may indicate here that in the instant case the parliament has prescribed the procedure for deciding the cases under TADA Act. Hence, no discretionary option is left to the State Government to choose the procedure for trial. Hence, the decision in the State of West Bengal Vs. Anwar Ali Sarkar, in our view, is not applicable. Mr. Ramaswamy has also submitted that in view of Section 1 (4) of the Act those offenders who have committed offences prior to the expiry of the Act will be treated differently as compared to those offenders who may commit such acts after the expiry of the Act and therefore Section 1 (4) can be said to have made hostile discrimination qua such prior offenders. Even this submission cannot be supported in the light of Anwar Ali's case (supra). In that case, as noted earlier, it was left to the discretion of the executive to pick and choose offenders for the purpose of applicability of warrant procedure or summons procedure for trial of all similarly situated accused. In the present case, the Parliament itself by enacting Section 1 (4) has made a clear distinction between the two classes of offenders - (1) those offenders who have committed offences when the Act was in force and (2) persons who are not offenders under the Act at all as their activities take place after the expiry of the Act. These two classes of persons cannot be treated at par. Consequently, no fault can be found with Section 1 (4) of the Act on that score.

Mr. Ramaswamy has further submitted that the learned Designated Court before whom the trial of the petitioner has commenced, has written an article in a magazine published by the Government of West Bengal and it has been submitted by him that from the said article it may be inferred that the learned Judge is entertaining a biased mind against the petitioner and other persons being tried under the TADA Act. We have looked into the said article. It does not appear to us that any biased view about the accused in a TADA Act case is discernible from such article. Such article, it appears, has been written in an objective way analysing various provisions of the TADA Act and the purpose

of the Act. Mr. Ramaswamy has also submitted that the petitioner had made an allegation before the learned Designated Court by indicating that since the Police had provided cars for the use of the Judge and the family members, he should not hear the matter but such application has been rejected by the Judge. It appears to us that if for ensuring security of the learned Judge and the members of his family when the Judge is hearing some sensitive cases under TADA Act, the police has provided for transport to the Judge and his family members, such supply of car per se cannot be held to be illegal and we are not inclined to proceed on the footing that the Judge will be biased against the petitioner and will be inclined to oblige the police.

In the circumstances, we do not find any merit in this petition and the same is dismissed.