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**Court :** Guwahati

**Decided On :** Apr-03-1952

**Judge :** Ram Labhaya, Ag. C.J.

**Acts :** [Preventive Detention Act, 1950](#) - Sections 8, 11 and 11(1); Preventive Detention (Amendment) Act, 1951

**Appeal No. :** Criminal Misc. Case No. 1 of 1952

**Appellant :** Narayan Saha

**Respondent :** The State

**Advocate for Def. :** D.N. Medhi, Govt. Adv. (Sr.)

**Disposition :** Petition dismissed

**Prior history :** Ram Labhaya, Ag. C.J. 1. This petition is under Article 226 of the Constitution of India. The petitioner has questioned the validity of his detention and has prayed for his release. 2. His case is that he has been in detention since 28th August 1951 in Nowgong Jail. The order of detention in his case was confirmed on the recommendation of the Advisory Board on 25th September 1951. The Advisory Board, it is alleged, was constituted by a Notification of the Government dated 11th April 1950

**Judgement :**

Ram Labhaya, Ag. C.J.

1. This petition is under Article 226 of the Constitution of India. The petitioner has questioned the validity of his detention and has prayed for his release.

2. His case is that he has been in detention since 28th August 1951 in Nowgong Jail. The order of detention in his case was confirmed on the recommendation of the Advisory Board on 25th September 1951. The Advisory Board, it is alleged, was constituted by a Notification of the Government dated 11th April 1950 which was under Section 8, [Preventive Detention Act, 1950](#). He contends that the Board, which examined his case, was not validly constituted, since the Act of 1950 was amended subsequently, and the Board constituted under the Act of 1950 could not function after the Act was amended.

3. The objection raised is misconceived. The Detention Act of 1950 was amended by Act 4 of 1951. The amending Act introduced alterations in Section 8, Detention Act of 1950. The original Act was merely amended. It was not repealed. The Board under the amended Act was constituted by a Notification dated 3rd April 1951. By this Notification the Governor of Assam nominated 3 members who were to constitute the Advisory Board. The Board was constituted under Section 8, Preventive Detention Act of 1950. It was assumed that it was under the Act of 1950 as amended. The omission to state that the Notification was being issued under Section 8 of the Act of 1950 as amended does not detract from the validity of the Notification. It had to be issued under Section 8 of the Act of 1950 as subsequently amended. The Notification took cognizance of the amendment by appointing a Board consisting of 3 members. The Act was amended in February 1951. The Notification under the amended Act constituting a Board was issued in April 1951 and the Board which was constituted validly examined the case of the petitioner. The contention of the petitioner that the Board which reported on his case was constituted on 25-9-1950 is not correct and has to be overruled.

4. There is, however, another point which has to be noticed in this case. The order of detention dated 8-8-1951 was confirmed by the Government acting on the recommendation of the Advisory Board in the exercise of the powers conferred by Section 11, Sub-section (1), Preventive Detention Act of 1950 as amended. In the

order of the confirmation no period of detention is mentioned. The learned C. J. and my learned brother Deka J. both, sitting singly, have come to the conclusion that any order of the appropriate Government which confirms the detention of a person without fixing a definite period for which the detention is to continue does not comply with the provisions contained in Section 11 of the Amended Act and the failure to comply with the provisions contained therein entitles the person detained to his release. My learned brother Deka J. regarded such order as bad in law and able to be set aside as being not in keeping with the provisions of the law and also on the ground of its being opposed to the principles of natural justice.' The learned Chief Justice in his order in criminal Misc. case No. 5 of 1952 has relied on certain observations of Patanjali Sastri C. J. made in *Makhan Singh v. State of Punjab*, A. I. R. 1952 s. c. 27 in support of the view that found favour with him.

5. With great respect to the learned Chief Justice and my learned brother Deka J. and also with some hesitation I regret to have to say that I find it difficult to interpret Section 11 (1) as they have done. It seems to me that the language employed in Clause (1) does not impose any obligation on the appropriate Government to determine the period of detention when confirming an order of detention. All that it requires is that if the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of such person for such period as it thinks fit. The order which may be confirmed under Section 11 is passed under Section 3 of the Act as amended. Section 3 does not require the fixation of any period. In fact, it has been held by their Lordships of the Supreme Court that fixation of the period of detention in the initial order is contrary to the scheme of the Act and cannot be supported. They also thought that the fixation of the period at that stage would tend to prejudice a fair consideration of the petitioner's case. Section 11 requires the confirmation of an order in which no period of detention can be specified. The use of the word 'confirm' gives a clue to the intention of the Legislature. Confirmation of the order passed at the initial stage would not involve fixation of the period. To this extent the meaning of the words used in Clause (1) of Section 11 cannot be mistaken.

The question is whether the words that follow, which are as follows; 'to continue the detention of the person concerned for such period as it thinks fit' by any implication embody a requirement as to the fixation of the period. Even here the use of the word 'continue' would suggest strongly that detention as originally ordered would be continued. The continuance can be for any period that the appropriate Government considers fit. The appropriate Government thus is given the authority to continue the detention subject to the statutory maximum. This would be in conformity with the scheme of the Act. The Act being for a definite period, the appropriate Government could be given the power to keep a person in detention for any period it considered fit, subject to the maximum fixed by the Act, without fixing a shorter period of detention at the confirmation stage.

Whether such a discretion should or should not have been given to the appropriate Government is not the question. The point is whether the language used makes it obligatory on the Government to determine a period. Such a determination of the period at the confirmation stage was, it appears, avoided as this course could have led to complications. At the expiry of the period fixed, the appropriate Government may think that continuance of the detention is necessary. Without any further provision in the Act a fresh order would be necessary and if the passing of a fresh order on facts which provided the basis of the first order was to be allowed, the purpose could be achieved by leaving it to the discretion of the appropriate Government to continue the detention for such period as it thought fit. It can easily be conceived that the Legislature in its wisdom thought that the appropriate course was to leave the discretion to the appropriate Government to continue the detention if sufficient cause was found for it for such period as it thought fit, subject to the prescribed maximum. This intention had no doubt been expressed and it is not possible to read into it a requirement for the fixation of a period. If the intention has been that at the confirmation stage a period of detention should be specified, it should have been expressed in clear terms. Interpreting it to mean that it requires the fixation of a period is adding something which it does not contain.

It may be very desirable that the Provincial Government should be under an obligation to fix a period at the confirmation stage. But if the Legislature has not made it obligatory for the appropriate Government to do so the requirement may

not be read in Section 11, Clause (1) by the process of interpretation. Principles of natural justice, to which reference was made by my learned brother Deka J. may not be invoked for the purpose. The question is simply of the interpretation of Section 11 (1). The intention of the Legislature has to be gathered, and that too from the language employed by it. I cannot discuss in it anything which may go to suggest that the Legislature intended that the appropriate Government should fix a period of further detention at the time of confirmation.

6. The learned Chief Justice relied on the remarks of Patanjaii Sastri G. J. in petition No. 308 of 1951 *Makhan Singh v. State of Punjab* (I) A. I. R. 1952 s. c. 27 to the following effect:

'It is, therefore, plain that it is only after the Advisory Board to which the case has been referred reports that the detention is justified, the Government should determine what the period of detention should be, and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported.'

7. So far as these observations bear on the interpretation of Section 11, they would be obiter. The question whether Section 11 (1) requires the Government to fix the period of further detention was not before their Lordships of the Supreme Court in that case. They merely had to consider and decide the question whether the fixing of the period of detention in the initial order was contrary to the scheme of the Act or not. Besides, the import of the remarks may not be that the appropriate Government is under an obligation to determine and state the period in the order of confirmation. All that the learned Chief Justice said was that the Government should determine what the period of detention should be after and not before the receipt of the report from the Advisory Board. The Government no doubt has got the power to determine for what period a person is to be detained if the Advisory Board has reported that there is sufficient cause for his detention. It may fix the period. If it wants to fix it, it would be after the receipt of the report. But it is a very different thing to say that it is obligatory on it to fix the period and that if it does not, there is necessarily a non-compliance with the requirements of Section 11 (1). The remarks of the learned Chief Justice do not convey all this and for the

obvious reason that the Court was not then determining the significance or the import of Section 11 (1).

8. The view that I take of the matter receives support from *Pralhad Krishna v. State of Bombay*, A. I. R. 1952 Bom. 1. It is a decision of a Division Bench. The learned Judges held that it was not necessary for the State Government when confirming the order of detention to mention the period for which the detention would be continued.

9. I am not oblivious of the fact that on this interpretation the period for which a person may be detained after the confirmation of the initial order would remain uncertain subject to the maximum limit of the duration fixed by the Act. It would also make it possible for the State Government to continue the detention for the maximum which the law permits. Even if this may be regarded as causing hardship, as no non-compliance with the provisions of Section 11 (1) is involved, the legality of the order confirming detention cannot be questioned. This petition, in these circumstances, is disallowed.

10. The rule is discharged.

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