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Court : Guwahati

Decided On : Feb-08-1952

Judge : Deka, J.

Acts : Prevention Detention Act, 1950 - Sections 11

Appeal No. : Criminal Misc. Case No. 75 of 1951

Appellant : Biswanath Agarwalla

Respondent : State

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

Disposition : Petition allowed

Prior history : Deka, J. 1. This is an application under Article 226 of the Constitution of India by Biswanath Agarwalla for issue of appropriate writ against the Government quashing an order of detention passed against him Under Section 3 of the Preventive Detention Act (Act IV of 1950) as amended by the Preventive Detention (Amendment) Act of 1951. 2. The petitioner was detained mainly for smuggling rice and paddy from the cordoned, area in the district of Nowgong, The order of detention was passed and s

Judgement :

Deka, J.

1. This is an application under Article 226 of the Constitution of India by Biswanath Agarwalla for issue of appropriate writ against the Government quashing an order of detention passed against him Under Section 3 of the Preventive Detention Act (Act IV of 1950) as amended by the Preventive Detention (Amendment) Act of 1951.

2. The petitioner was detained mainly for smuggling rice and paddy from the cordoned, area in the district of Nowgong, The order of detention was passed and served on the petitioner on 8th August 1951 and his case was placed before the Advisory Board constituted under the Preventive Detention Act as amended. After the report from the Advisory Board-was received the Provincial Government acting Under Section 11 of the Preventive Detention Act (as amended) passed an order confirming the detention of the petitioner for an indeterminate period. His main ground for challenging the order of detention was that the Advisory Board was not properly constituted but subsequently he has added another ground by a fresh petition viz.: that the order of detention, for an indefinite period purporting to act under Section 11, Preventive Detention Act is bad in law.

3. A Rule was issued on the Chief Secretary to the Assam Govt., the District Magistrate, Nowgong, and the Superintendent of Special Jail, Nowgong (Assam) to show cause why a writ of habeas corpus or any such writ should not be issued against the order of detention passed against the petitioner. Nobody appears in support of the petitioner. The State was properly represented.

4. I find no substance in the first plea of. the petitioner that the Advisory Board was not legally constituted. But with regard to the second point my view has been that the order of detention for an indefinite period at the time of confirmation as contemplated Under Section 11 of Act IV of 1951 is bad for the reasons I have stated fully in a previous decision of mine--in--'Hari Prosad Agarwalla v. The State: of Assam', Cri. Misc. Case No. 71 of 1951 (Assam), analogous to Criminal Misc Case No. 72 of 1951--'Kishenlal Dhanuka v. The State. I find support to my view from the decision of the Stfpreme Court in--'Makhan Singh Tarsikka v. State of Punjab', Petn. No. 308 of 1951 (SC) the judgment of the Supreme Court being dated 10th Decembers 1951. It has been held by their Lordships of the Supreme

Court that the period' of detention should be determined by the appropriate Government after the report of the Advisory Board constituted Under Section 9 of the Preventive Detention Act approving the detention, is: received. In the words of His Lordship, Patanjali Sastri C. J.-

'Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (Section 9) and provides that if the Board reports that there is sufficient cause

for the detention 'the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.' (Section 11). 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 words 'Government should determine what the period of detention should be' indicate that the Government has to exercise its discretion or bring its decision to bear on the gravity of the offence charged and the risk of releasing the prisoner, on the receipt of the report of the Advisory Board and then determine the period for which the detent should be kept in confinement or under restraint.

5. Mr. Medhi appearing for the State has placed before me a Bombay decision reported in--'Pralhad Krishna v. State of Bombay'. AIR 1952 Bom. 1, and the decision was dated 11th June, 1951. I must very humbly say that I cannot agree with the logic on which the Hon'ble Judges of the Bombay High Court have tried to interpret the relevant words in Section 11, Preventive Detention Act as amended and it is clear that the recent decision of the Supreme Court I have mentioned above, was not before them. I naturally place more reliance on the decision of the Supreme Court and am inclined to abide by my earlier decision and hold accordingly that an order of detention for an indeterminate period is not what is contemplated under Section 11, Preventive Detention Act. Mr. Medhi in view of the Supreme Court's decision did not like to press the matter further. The petition, therefore, succeeds on the second ground.

6. I direct accordingly that the petitioner
be set at liberty forthwith. The petition is
allowed.

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