

Satya Narayan Alias Satte Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-16-1992

Reported in : 1994(0)MPLJ175

Judge : T.N. Singh and ;K.K. Varma, JJ.

Acts : [National Security Act, 1980](#) - Sections 3; [Constitution of India](#) - Article 22(5)

Appeal No. : Misc. Petn. No. 524 of 1992

Appellant : Satya Narayan Alias Satte

Respondent : State of Madhya Pradesh

Advocate for Def. : S.B. Mishra, Government Adv.

Advocate for Pet/Ap. : K.S. Shrivastava, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T.N. Singh, J.

1. We have perused the records of the State Government to adjudge the validity of continued detention of the petitioner for the maximum period of twelve months, under the National Security Act, after being taken into custody under order passed

on 14-1-1992. Not on one, but on two different, distinct and serious taints the order suffers in our view which we propose to expound by giving reasons for our decision.

2. At the Bar, latest decision of the Constitution Bench of the Apex Court in K.M. Abdulla Kunhi's case, AIR 1991 SC 574, is cited and we find support therein for the view we have taken. There is no pretension at all about the bias treatment which the petitioner's representation has received and that is where and as such his continued detention gets flawed, faulted and killed. From the file, we find that on 29-1-1992, the representation dated 22-1-1992 it was rejected. The decision was communicated to the petitioner vide letter dated 13-2-1992 (Annexure P/7) contemplated under Article 22(5) of the Constitution was received by the State Government from the petitioner/detenu. It is also not disputed that a single representation was received by the State Government and no separate representation was sent to the Advisory Board separately or through the State Government. The representation which the State Government received was dealt with by the State Government itself and on 10-2-1992 (Annexure P/8). However, we also find a noting in the records that the representation, after being rejected, was sent to the Advisory Board with the information about the same being rejected and to that effect the petitioner was also informed vide said letter dated 13-2-1992. It reached the Advisory Board on 13-2-1992 and the Board, after holding a sitting on 22-7-1992, tendered its opinion that there was sufficient cause for the detention.

3. The question obviously is, if the State Government should have awaited the report of the Advisory Board instead of acting in hot haste to proceed to dismiss petitioner's representation. Whether by resorting to such exercise the State Government disabled itself to independently in an unbiased manner to consider the necessity of detaining the petitioner/detenu for the maximum period of twelve months? We told Shri Mishra, Government Advocate, that the State Government had treated the representation in such a manner that it had foreclosed its option in the inception by dismissing the representation. Government took care to leave no doubt in the mind of the Advisory Board of the fait accompli by communicating to the Board its decision and had communicated to the detenu also before his being

heard by the Board of its decision which was likely to be taken by him as a pointer of Board's hearing being an empty formality. It was meant to convey to him that subsequently Government will not reconsider its decision and for the maximum period he had to continue in detention. The proceedings smack of total arbitrariness and a bias approach which is constitutionally prohibited. What is vocally projected in Abdulla Kunhi (supra) is indeed denouncement of such an approach. It has been held that there is no Constitutional obligation on the State Government to dispose of immediately detenu's representation without awaiting Advisory Board's report.

4. As held in Rattan Singh, AIR 1982 SC 1, the modicum of safeguard which the detenu enjoys under the Constitution is not to be whittled down. He has a right to send representation for the consideration of the Advisory Board, Constitutionally constituted, for that to be dealt with and decided in an unbiased manner. If, in any manner, any pressure is brought upon the Advisory Board to deal with it in any particular manner, or if the detenu is muted and is deprived of reasonable opportunity of making oral submissions in support of his representation in the course of hearing by the Board, legitimate doubt can be entertained by the Writ Court of infraction of the Constitutional guarantee contemplated under Article 22(5). In such circumstances, the Court will have sufficient jurisdiction to declare invalid the continued detention of the petitioner.

5. At para 16, in K.M. Abdulla Kunhi (supra), the law is clearly stated; and we quote :

'The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. It is proper for the Government in such

situations to await the report of the Board'.

The Constitution Bench has retracted its earlier view, overruling the decision in V.J. Jain's case, AIR 1979 SC 1501 that consideration and disposal of representation must precede confirmation and has laid down the law that confirmation cannot be invalidated on the ground of subsequent disposal of the representation. The obsession with the time-imperative bearing on disposal of representation by the Government is now tampered with the requirement of its being given unbiased treatment. Francis Coralie's case, AIR 1980 SC 849, decrying hasty treatment is approved at para 15 of the report. At para 19, the Court stressed categorically necessity of consideration by the Government of 'the representation with an unbiased mind". Obviously, Government has to distance itself from the detaining authority and exercise its function objectively to make the check effective on detaining authority's exercise of powers under National Security Act. In the instant case, we read in the representation detenu's complaint against detaining authority's abuse of power for ulterior purpose.

6. There is another angle of the case which is also to be investigated. From records, we find that a letter was written by the Under Secretary to the State Government on 31-1-1992 to the Chairman of the Advisory Board and in that letter, there is an endorsement that the representation which was received from the detenu was under consideration of the State Government. Apparently, after referring the case for the opinion of the Advisory Board and when the matter was still pending before the Advisory Board, the decision was rendered by the State Government on 10-2-1992 rejecting the representation and then that decision was further communicated to the Advisory Board. After the records had gone to the Board, comments called for were received from the detaining authority and Government Advocate, Shri Mishra, submitted that after due, consideration thereof the representation was disposed of. By what yardstick such disposal can be regarded as objective? We wonder! We have no doubt at all, therefore, that the constitutional guarantee ensured under Article 22(5) is violated by the continued detention of the petitioner.

7. Under order dated 14-1-1992, passed by District Magistrate, Bhind (Annexure P/2), he came to be detained and his detention is confirmed by the State Government under order dated 13-3-1992 (Annexure P/10). In-between, on 13-2-1992, vide Annexure P/8, the detenu was informed that his representation was rejected when he had to appear yet before the Advisory Board for hearing before that Board. His fate was sealed on that date itself by the order, Annexure P/8. We have no doubt that the State Government has dealt with the matter in a contra-Constitutional way as the urgency for disposal in that manner of the representation has not been explained. The communication, Annexure P/8, to the detenu rejecting his representation when he had still to appear before the Advisory Board, was a sort of red signal and apparently misconceived and indeed the decision on his representation when his case was pending disposal before the Advisory Board also suffers Constitutional prohibition, as per Abdulla Kunhi (supra).

8. Before parting with the records, we would like to express our anxiety with respect to the manner of treatment of such representations so that it becomes an eye-opener for the State Government. It must know how such representations are dealt with and disposed of not only at the level of the Advisory Board because at all levels such representations are supposed to receive a fair and unbiased treatment and indeed, as held in K.M. Abdulla Kunhi's case (supra), even at the level of the State Government they are to be dealt with objectively. Here, in this case, when the records had gone to the Advisory Board and there was nothing with the State Government, what materials were there before the State Government except the comments received from the District Magistrate? We do not understand how on the basis merely of comments, without the other records before it, any decision could be rendered by the State Government even if a copy of the representation was retained for disposal. A mechanical exercise is not contemplated treating such disposal as empty rituals. Non-recording of reasons for the decision is permissible. On that account, manner of disposal of such representation is open only to judicial scrutiny and it becomes State Government's duty to satisfy the Court that at its hands the representation received a fair, objective and unbiased treatment. This burden becomes heavier when there is allegation, as in the instant case, of the Detaining Authority abusing its power to fulfil an ulterior object. We are constrained to add this epilogue to the judgment

with the hope, we reiterate, that guidance will be garnered from this Order by the State Government in dealing with other cases in future as the scope of time-imperative is now made clear by the Constitution Bench in Abdulla Kunhi (supra).

9. The petition is allowed. Detenu shall be set at liberty forthwith.

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