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Court : Kolkata

Decided On : Apr-17-1961

Reported in : AIR1962Cal119

Judge : S.K. Sen and ;K.C. Sen, JJ.

Acts : Preventive Detention Act, 1950 - Sections 3, 3(1), 7, 11, 11(1), 11A and 12; ;Constitution of India - Articles 22(7) and 227

Appeal No. : Criminal Misc. Case No. 37 of 1961

Appellant : Madan Shaw

Respondent : State and ors.

Advocate for Def. : S.N. Banerjee, Dy. Legal Remembrancer and ;Anil Kumar Sen, Adv.

Advocate for Pet/Ap. : S.S. Mukherji and ;Arun Kumar Dutt, Advs.

Judgement :

S.K. Sen, J.

1. This application under Section 491 of the Code of Criminal Procedure is directed against the detention of the petitioner Madan Shaw alias Thatera, under the provisions of the Preventive Detention Act, 1950. On 29th Of November, 1960,

the District Magistrate of Burdwan issued an order on the petitioner Madan Shaw alias Thatera that with a view to preventing him from acting in a manner prejudicial to the maintenance of the public order, it was necessary to detain the petitioner. On the same day, 29th November, 1960, another order was issued by the District Magistrate, Burdwan, directing that the petidoner be detained in the Burdwan jail and on the same date, 29-11-60, the grounds of detention under Sub-section (2) of Section 3 of the Preventive Detention Act, 1950 were served upon the petitioner. The Government of West Bengal by an order dated 7th December, 1960 approved of the order made by the District Magistrate, Burdwan, on the 29th November, 1960. The papers together with the representation of the petitioner were then referred to an Advisory Board which heard the petitioner in person. After the Advisory Board had given the opinion that there was sufficient cause for the detention of the petitioner. Government passed an order on the 2nd February, 1961, directing that the petitioner be detained until the expiry of 12 months from the original date of the detention. It is against that order that the petitioner has moved this court.

2. Mr. S. S. Mukherji, appearing for the Petitioner, has urged that the grounds are vague and that some of the grounds are false and, therefore, the order of detention cannot be supported. It has been held in a number of cases decided by the Supreme Court that if the grounds are so vague that no reply to the grounds is possible, the order of detention must be considered bad and cannot be sustained. In the present case, having gone through the grounds served on the petitioner, we find that each of the six grounds contains definite allegations of fact and it cannot be said that any of the grounds is so vague that no reply was possible. Thus the first ground urged by Mr. Mukherji on behalf of the petitioner must be rejected.

3. The next ground urged is that some of the grounds are false. In the first ground it is mentioned that on 29-11-58 at 11-30 p. m. when one Jagadish Singh, son of late Murat Singh o Chabka, P. S. Kulti, district Burdwan, found the petitioner loading stolen Railway materials and Telegraph copper wire into a truck on the G.T. Road at Neamatpur, the petitioner threatened the aforesaid Jagadish Singh with a dagger, telling him that he would be killed if the fact was disclosed to the police. According to the petitioner, no such Jagadish Singh exists at Chabka and

that a registered letter was addressed to Jagadish Singh at the address given in the ground, but the letter was returned with the endorsement 'not known'. The Government, in its affidavit in reply, has explained' that there is a floating industrial population in that area of Burdwan district and that there was one G. D. entry made by one Jagadish, son of Murat Singh of Chabka on 29-11-58 mentioning the fact of the above threat by the petitioner, and that it was possible that the aforesaid Jagadish had, thereafter, moved out of the area mentioned in the ground, namely, Chabka, P. W. Kulti.

4. We are not, however, concerned with the truth or otherwise of the facts mentioned in any of the grounds served on the petitioner. It is for the Government to be satisfied as to the truth or otherwise of the facts contained in the grounds; and thereafter, it is for the petitioner-detenue to make his representation before the Advisory Board, and then it is for the Advisory Board to consider the representation and the evidence produced by the State Government in support of the allegations and the evidence if any to the contrary, and then come to its decision. The satisfaction being a subjective satisfaction of the Government and of the Advisory Board, it is not open to this Court to inquire into the truth or otherwise of the facts mentioned in any of the grounds.

5. Similarly, Mr. Mukherji has urged that some of the persons whom the petitioner is said to have threatened or assaulted, according to the facts stated in the other grounds, swore affidavits stating that they were not threatened or assaulted in any manner by the petitioner, but our reply must be the same, namely, it is not for us to inquire into the truth or otherwise of the facts stated in the grounds, and it is for the Government and the Advisory Board to be satisfied as to the truth or otherwise of the facts stated in the grounds. It is not a case of judicial determination of the truth or otherwise of the facts, in which case such judicial determination would be open to revision by this Court: it is a case of subjective satisfaction of the Government and that is not open to review or revision by this Court.

6. Mr. Mukherji has next urged that this Court should call for the report submitted by the Advisory Board after consideration of the representation made by the petitioner. Mr. Mukherji has urged that since the Advisory Board is to consider the

materials placed before it, including the representation of the detenue, and it may call for such further materials as it may deem necessary from the appropriate Government or from any other person called for the purpose through the appropriate Government and hear the detenu in person, the decision of the Advisory Board is practically the decision of a tribunal and therefore, the decision is subject to revision by the Court under Article 227 of the Constitution. Mr. Mukherji has pointed out that under Section 11 (2) of the Preventive Detention Act, in any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government is bound to revoke the order of detention, though under Section 11 (1) when the Advisory Board reports that in its opinion there is sufficient ground for the detention of the person, the appropriate Government may confirm the detention order or may not do so if it is so inclined. Mr. Mukherji has urged that for all practical purposes the opinion of the Advisory Board has as much binding force as a decision of a tribunal and therefore, the proceeding before the Advisory Board must be deemed to be subject to revision by the High Court under Article 227 of the Constitution.

7. We must, however, reject this argument, because, in our opinion, the Advisory Board is not in the position of a tribunal. It does not give any decision which by its own force is binding, particularly when it reports that there is in its opinion sufficient cause for the detention of the person concerned. The provision for reference to the Advisory Board which is contained in Article 22 of the Constitution, is a safeguard against the arbitrary action of the executive authorities. The Advisory Board consists of persons who have been or are qualified to be the Judges of the High Court. 'They consider the materials placed before them including the representation made by the detenu and then come to a decision as to the propriety or otherwise of the order of detention and they make a report accordingly. Though the Advisory Board may be assessing the materials before it more or less like a tribunal, still it is not a] tribunal and it is the subjective satisfaction of the tribunal that is reported to the Government. The opinion of the Advisory Board is not, therefore, subject to revision by the High Court under the provision of Article 227 of the Constitution.

8. Mr. Mukherji has next urged that Section 11(1) of the Act read with Section 11A is ultra vires of Article 22(7) of the Constitution, because the Parliament has not by law prescribed the circumstances under which or the class or classes of cases in which a person may be detained for more than three months without obtaining the opinion of an Advisory Board. Now, Article 22(7)(a) provides that Parliament may by law prescribe the circumstances under which or the class or classes of cases in which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board. It is true that the Preventive Detention Act, 1950 does not provide for any circumstance under which and the class or classes of cases in which a person may be detained for a period longer than three months without a reference to an Advisory Board, but the omission of such a provision cannot make Section 11(1) or Section 11A of the Preventive Detention Act ultra vires. Failure of the Legislature to define the circumstances and the classes of cases referred to in Article 22(7)(a) would only mean that at present no Government can detain a person for a period longer than three months without obtaining the opinion of an Advisory Board. In the present case, the opinion of the Advisory Board had been obtained and the final order Of detention made within three months from the date of the original order of detention. The final order, after obtaining the opinion of the board in this case was made on 2-2-1961, whereas the original order was made on 29-11-1960. In the circumstances, therefore, invalidity of the present order or the question of Section 11(1) or 11A of the Preventive Detention Act being ultra vires of Article 22(7) of the Constitution, cannot arise.

9. Mr. Mukherji has next urged that the period of detention should be fixed by the Board and not by the Government after receiving the opinion of the Board. It is, however, not provided by any law that it is for the Advisory Board to fix the period of detention. Section 11(1) provides that in any case where the Advisory Board has reported that there is in its opinion sufficient case for the detention of a person, the appropriate Government may confirm the detention order and continue detention of that person for such a period as it thinks fit the period, of course, is subject to a maximum period of 12 months fixed by Section 11A of the Act. There is nothing in the Act to indicate that it is for the Advisory Board to fix the period of detention; the Advisory Board will simply report whether or not in its opinion there

is sufficient material to justify an order of detention of the person concerned. There is also nothing in the terms of Article 22 of the Constitution to indicate that it is for the Advisory Board to give its opinion as to the period of detention; it only provides that it is necessary to refer to an Advisory Board when the appropriate Government considers it necessary to detain' a person for a period longer than three months.'

10. Lastly, Mr. Mukherji has urged that the six grounds with which the detenue was served 'relate to individual acts of violence or threat of violence by the petitioner and that such acts of violence or threat of violence cannot constitute disturbance of the public order; and that since an order of preventive detention 'is justified only on the ground of the maintenance of public order, the grounds served on the petitioner cannot be considered relevant to the purpose of the detention. It should be noted, however, that maintenance of public order has been, distinguished from security of the State or public safety. Security of the State may be endangered only by widespread public disorder, but public order may be disturbed even by an ordinary case of breach of public tranquillity or an ordinary case of the breach of the peace. In this connection we may refer to a decision by another Division Bench of this Court in Srinibash Naidu v. The State of West Bengal, Criminal Misc. Case No. 6 of 1960, D/- 29-1-1960 : AIR1962 Cal162 (infra). The following observation was made after referring to the cases Umraomal v. The State of Rajasthan, AIR 1955 Raj 6 and Ramesh Thappar v. State of Madras : 1950 CriLJ1514 , to which reference has also been made before us-

'In our view public order is certainly vulnerable to individual acts of lawlessness, some of which may be of a less serious character, others of an aggravated nature'.

Further, it may be pointed out that on six known occasions mentioned in the grounds served on the petitioner, the petitioner was known to have been acting in a violent manner or threatening to act in violent manner by killing or causing grievous hurt to certain persons. The grounds taken collectively are certainly relevant to the question whether or not the conduct of the petitioner constitutes a threat to the maintenance of the public order. It should be mentioned that we are only concerned with the question whether the grounds are relevant to the object of

the detention. The question whether the grounds are sufficient is not for us to consider, because the order of detention is made on the subjective satisfaction of the Government as to the sufficiency of the grounds, which subjective satisfaction is reinforced by the subjective satisfaction of the Advisory Board which is constituted of persons having sufficient judicial experience. That being so, we find no reason to hold that the petitioner has been illegally or improperly detained.

11. This Rule is, therefore, discharged.

K.C. Sen, J.

12. I agree.