
(1989) 03 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 1143 of 1939

Vishnu Prasad Shukla

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

National Security Act, 1980 — Section 3(2), 3(3)

Citation : (1989) MPJR 714 : (1989) MPLJ 546

Hon'ble Judges : S.K. Seth, J; S. Awasthy, J

Bench : Division Bench

Advocate : N.C. Jain with Rajendra Tiwari, for the Appellant; M.V. Tamaskar, Advocate-General with P.V. Pandit, Dy. Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

The District Magistrate, Indore vide his order dated 17-1-1989 directed the detention of petitioner Vishnu Prasad Shukla, aged 45 years, r/o Benganga locality, Indore under sub-section (2) of section 3 read with sub-section (3) of the said section of the National Security Act, 1980 on the ground that it was necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Pursuant to the said order, the petitioner was arrested on the same day i.e. 17-1-1989 and kept under detention in the district jail at Indore. It is being aggrieved by his said detention under the provisions of the National Security Act that the petitioner has filed the present writ petition in this Court on various grounds.

In our opinion, as the petition deserves to be allowed on a preliminary ground it is not necessary to examine other grounds raised in it relating to the merits of the case. It is settled law that "personal liberty" guaranteed under Article 21 of the Constitution being the greatest of human freedoms "preventive detention" provided in Article 22 of the Constitution has to be regarded as some thing of a

necessary evil and has to survive strictly in accordance with the safeguards, whether substantive or procedural, prescribed by clause (4) of the said Article and the relevant law like the National Security Act, 1980 made by the Parliament under clause (7) of the said Article, (See *Kishori Mohan Bera Vs. The State of West Bengal*, , *Shaik Hanif and Others Vs. State of W.B.*, , *Ichhudevi vs. Union of India*, AIR 1983 SC 1983 , *Vijay Narain Singh Vs. State of Bihar and Others*, and *Ayya alias Ayub VS. State of U. P.*, AIR 1980 SC 364). In the present case, as we shall presently see there has been a flagrant violation of one of the crucial constitutional and statutory safeguards as mentioned above and as such the continued detention of the petitioner under the detention order dated 17-1-1989 passed by the District Magistrate cannot be sustained and he has to be set at liberty forthwith.

The Scope of the crucial safeguards with which we are concerned in the present case can be best understood by reading the relevant provisions of Article 22 of the Constitution in conjunction with Sections 10 to 12 of the National Security Act, 1980 i.e. the law enacted by the Parliament under clause (7) of the said Article. It is laid down in sub-clause (a) of clause (4) of Article 22 of the Constitution that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of persons who are or have been, or are qualified to be appointed as, Judges of a High Court, has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention. Clause (7) of Article 22 lays down that the Parliament may by law prescribe -- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

As mentioned above, the relevant law made by Parliament under clause (7) of Article 22 of the Constitution, with which we are concerned in the present case, is the National Security Act, 1960. Section 10 of the said Act lays down that save as otherwise expressly provided in the Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it u/s 7 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section. (Emphasis supplied).

Section 11 of the National Security Act lays down the procedure to be followed

by the Advisory Board in the inquiry made by it under sub-clause (a) of clause (4) of Article 22 of the Constitution. Sub-section (1) of the said Section provides that the Advisory Board shall, after considering the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned. (Emphasis supplied). Sub-section (2) of section 11 provides that the Advisory Board shall specify in separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

Section 12 of the Act relates to the action required to be taken by the appropriate Government on the basis of the report received from the Advisory Board, Sub-section (1) of Section 12 states that in any case where 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 the person concerned for such period as it thinks fit. On the other hand, sub-section (2) lays down that in any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith. It may be mentioned that Section 13 of the Act provides that the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 12 shall be twelve months from the date of detention; provided that nothing contained in the said Section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

The reason as to why the safeguards contained in sub-clause (a) of clause (4) of Article 22 of the Constitution read in conjunction with Section 12 of the National Security Act, 1980 i.e. the law enacted by Parliament in Clause (7) of Article 22 constitutes one of the crucial safeguards against any executive excess in the matter pertaining to preventive detention is not far to seek. Under the mandate of the said safeguard, the Advisory Board constituted u/s 9 of the said Act, and consisting of three persons who are, or have been, or are qualified to be appointed as Judges of a High Court is entrusted with the most important task of examining the veracity of the allegations made against a detenu and submit its report to the appropriate Government within seven weeks from the date of his detention whether or not there is sufficient cause for his detention. It is on the report submitted by the Advisory Board to the appropriate Government within seven weeks from the date of detention of the detenu that his detention for a period longer than the said period depends. It means that the detention of a detenu cannot continue for a period longer than seven weeks from the date of

his detention unless the Advisory Board after making the relevant inquiry into the matter reports to the appropriate Government within the said period that there is in its opinion sufficient cause for his detention.

The particular aspect of the abovesaid crucial safeguard with which we are concerned in the present case relates to the significance to be attached to the two time limits prescribed under Sections 10 and 11 of the Act. As mentioned above, u/s 10 the appropriate Government is enjoined to place the relevant materials before the Advisory Board within three weeks from the date of detention of the person concerned and u/s 11 the Advisory Board is required to submit its report to the appropriate Government after completion of enquiry within seven weeks from such date. The question which arises for our consideration is whether it is not one of the essential and implied conditions of the particular safeguard that an Advisory Board constituted u/s 9 of the Act and competent to deal with the case of the person concerned should continue to exist and remain functional without any break during the entire period intervening the two time limits?

In the above connection, in our opinion, bearing in mind the nature and purpose of inquiry required to be made by the Advisory Board u/s 11 of the Act, it is not unreasonable to assume that the time limits laid down in sections 10 and 11 of the Act represent a reasonable period of time which the legislature thought it necessary to provide to the Advisory Board in order to enable it to perform the task allotted to it in an independent and fair manner. Needless to say, if that is the legislative intention behind providing the two time limits, it has to be regarded as one of the essential and implied conditions of the particular safeguard that the Advisory Board once it is seized of the materials placed before it by the appropriate Government within three weeks from the date of detention of the person concerned should continue to exist and remain functional without any break until it submits its report to the appropriate Government within seven weeks from such date after making the requisite inquiry.

It is not difficult to understand that if the abovesaid be one of the essential and implied conditions of the crucial safeguard against any executive excess in the matter relating to preventive detention of any person under the provisions of the Act it would constitute no valid answer to the contravention of the said condition that in the particular facts and circumstances of a given case it was still possible for the Advisory Board to complete its inquiry and submit its report to the appropriate Government within the curtailed and truncated period available to it. In such a situation, it would be relevant to bear in mind the following observations made by Chinnappa Reddy, J. in *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another*, in the context of similar provisions contained in the Gujarat Prevention of Anti-Social Activities Act, 1985 : "In a habeas corpus proceeding, it is not a sufficient answer to say that the procedural requirements of the Constitution and the statute have been complied with before the date of hearing and therefore the detention should be upheld. The procedural

requirements are the only safeguards available to a detenu since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard. If a reference to an Advisory Board is to be made within three weeks, it is no answer to say that the reference though not made within three weeks, was made before the hearing of the case. If the report of the Advisory Board is to be obtained within three months, it is no answer to say that the report, though not obtained within three months, was obtained before the hearing of the case."

In our opinion, there is another good reason why it should be regarded as one of the essential and implied conditions of the particular safeguard that a duly constituted Advisory Board after being seized of the relevant materials placed before it by the appropriate Government within three weeks from the date of detention of the person concerned should continue to exist and remain functional uninterruptedly till it submits its report to the appropriate Government within seven weeks from such date after making the requisite inquiry. It is not necessary in all cases that the Advisory Board should wait till the last to submit its report to the appropriate Government whether or not there is sufficient cause for the detention of the person concerned. There may be quite a few cases in which it may become apparent to it even at an early stage that there is no sufficient cause for the detention of the person concerned. In such cases, the Advisory Board is expected to send its report to the appropriate Government immediately and the person concerned is entitled to be released from his detention forthwith on the basis of the said report. It is apparent that in case a duly constituted Advisory Board does not continue to exist and remain functional all throughout the rights of such persons are likely to be put into jeopardy.

In the present case, as mentioned above, the order of detention was passed by the District Magistrate, Indore on 17-1-1989 and pursuant to the said order the petitioner was arrested and lodged in the district jail, Indore on the same day. Thus, the period of three weeks from the date of his detention expired on 6-2-1989. It is no doubt true that in accordance with Section 10 of the National Security Act the appropriate Government sent the relevant materials to the Advisory Board on 4-2-1989 and the same was received in the office of the Advisory Board in time on 6-2-1989 i.e. within the expiry of three weeks from the date of detention. But, then, as we shall presently see, there was no Advisory Board in existence during the period 7-2-1989 till 23-2-1989 and this was clearly in violation of one of the essential and implied conditions of the particular safeguard contained in Article 22(4) of the Constitution read in conjunction with Sections 10 to 12 of the Act.

It is not in dispute that the previous Advisory Board consisting of three Judges of this Court i.e. Justice C. P. Sen, Justice B. C. Varma and Justice Faizanuddin with Justice C. P. Sen as its Chairman had been constituted by the appropriate

Government i.e. the State Government vide Notification No. 31-23/80/C-1 dated 17-1-1987 issued by it. The said Advisory Board continued to exist till 6-2-1989 on which date one of the members and the Chairman of the said Board namely C. P. Sen, J. retired as a Judge of this Court. Needless to say, the effect of C. P. Sen, J, ceasing to be one of the members and the Chairman of the said Advisory Board was that the said Advisory Board itself ceased to exist and became non-functional. In the said regard, in our opinion, the provisions of Section 9 of the National Security Act are quite clear and unambiguous. Under the said provisions, a duly constituted Advisory Board can be said to be in existence only when it consists of three persons as mentioned in sub-section (2) of the said section appointed by the appropriate Government as its members and also consists of one of the said members appointed by the said Government as its Chairman. It may be mentioned that after a gap of about sixteen days the present Advisory Board came into existence only on 23-2-1989 vide Notification No. 31-23/80/C-I of the same date.

For the reasons stated above, in our opinion, the continued detention of the petitioner pursuant to the order of detention dated 17-1-1989 passed by the District Magistrate, Indore has to be held as vitiated on account of one of the essential and implied conditions of the precious safeguard contained in Article 22(4) of the Constitution read in conjunction with sections 10 to 12 of the National Security Act having been violated. But, then, we cannot restrain ourselves from mentioning that we are intrigued by the fact that in spite of this Court on its administrative side having reminded the State Government vide letter dated 13-1-1989 that one of the members and the Chairman of the then Advisory Board namely Justice C. P. Sen would be demitting his office on 7-2-1989 on his attaining the age of sixtytwo years and a new Advisory Board as recommended in the said letter be constituted the appropriate Government i.e. the State Government failed to take appropriate steps in the matter creating a situation in which there was no Advisory Board in existence during the period 6-2-1989 to 23-2-1989 and consequently the continued detention of so many detenus under the Act became vitiated on account of one of the essential and implied conditions of the particular safeguard having been violated. We direct that the abovesaid observations made by us be brought to the notice of the Chief Secretary to the State Government.

Accordingly, the petition is allowed. The order of detention dated 17-1-1989 passed by the District Magistrate, Indore in respect of the petitioner is quashed. We direct that the petitioner be set at liberty forthwith unless required to be detained in connection with any other matter.