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KSHETRA GOGOI

v.

STATE OF ASSAM

September 19, 1969

B [J. M. SHELAT, V. BHARGAVA, C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

Preventive Detention Act, 1950, s. 13(2)—Fresh Order of detention after expiry of earlier order—Requirements.

C Section 11-A(2) of the Preventive Detention Act lays down in part that the maximum period of detention under s. 3 should be 12 months and no more, and after the expiry of that period, that order of detention would lapse. A fresh detention order under s. 13(2) can be made on the revocation or expiry of a previous detention order only in cases where fresh facts have arisen after the date of revocation or expiry. The petitioner was put in detention in pursuance of an order dated August 29, 1968. He presented a petition under Art. 32 of the Constitution for the issue of a write of *habeas corpus*, while this petition was pending, another order of D detention was issued on August 28, 1969, a day before the expiry of the previous order. The grounds of detention in this latter order was identical to that of August 28, 1968 excepting the charge that the petitioner, though in preventive custody was maintaining links with certain named hostile persons through friends and relatives and that his liberty would jeopardise the security of the State and public order in the region. The petitioner challenged the latter order of detention by adding additional grounds.

E HELD : The order of detention dated August 28, 1969 was not justified under s. 13(2) of the Act, being in violation of the provisions of the Act, and was invalid. Under sec. 13(2) what is required is that fresh facts should have arisen after the expiry of the previous detention. Facts arising during the period of detention, are, therefore, not relevant when applying the provisions of s. 13(2). In the present case, the fresh order was passed on 28th August, 1969, a day before the expiry, and it was obvious that F no fresh facts could by that date arise and yet be held to have arisen after the date of expiry. It is very difficult to appreciate how a person in preventive custody could continue to maintain links with his associates outside jail, who had gone underground, even through his friends and relatives. If the petition was able to maintain such links, it cast a sad reflection on the persons in charge of him while he was in custody and, in any case, it would appear that his detention could serve no useful purpose. Even if it be accepted that such links were maintained, this addi- G tional ground mentioned did not satisfy the requirements of s. 13(2) of the Act, because the only allegation was that the links were maintained during the period of preventive detention.

ORIGINAL JURISDICTION : Writ Petition No. 211 of 1969.

Petition under Art. 32 of the Constitution of India for a writ H in the nature of *habeas corpus*.

Hardev Singh, for the petitioner.

Naunit Lal, for the respondent.

The Judgment of the Court was delivered by

Bhargava, J. The petitioner in this petition under Article 32 of the Constitution was arrested and detained under an order made under section 3(1)(a)(ii) of the Preventive Detention Act, 1950 (hereinafter referred to as "the Act") on 24th April, 1968. On 30th August, 1968, he filed a petition in the High Court of Assam under Art. 226 of the Constitution for issue of a writ of *habeas corpus*. The same day he was released by the Government and, according to him, without being set at liberty, he was again put in detention in pursuance of a fresh order dated 29th August, 1968 passed under s. 3(1)(a)(ii) of the Act. The grounds of detention were also served on the same day. He made his representation on 17th September, 1968 and his case was referred to the Advisory Board also on the same date. The report of the Advisory Board was received on 28th October, 1968. On 7th November, 1968, his order of detention was confirmed by the Government on the basis of the report of the Advisory Board. This petition was then received in this Court from the petitioner in July, 1969. challenging his detention under the order dated 29th August, 1968. The petition came up for hearing before a Bench of this Court on 29th August, 1969 when, at the request of the counsel for the State of Assam, time was granted by the Court till 8th September, 1969 to send for full material. Meanwhile, it appears that a fresh order for his detention under s. 3(1)(a)(ii) of the Act was issued on 28th August, 1969 and this order was served on the petitioner in Delhi on 29th August, 1969, after the adjournment had been obtained from this Court. Thereupon, the petitioner, on 1st September, 1969, filed an application for amendment of the writ petition and for adding additional new grounds so as to challenge the validity of his detention under the order dated 28th August, 1969. The grounds of detention under this new order were also served on the petitioner on 29th August, 1969. When this petition came up for hearing before us on 9th September, 1969, learned counsel for the State of Assam stated that no material had been received from hte Government and wanted time to be granted to meet the facts put forward in the application dated 1st September, 1969. It appears that, though an officer was sent by the Government of Assam to Delhi to serve the order dated 28th August, 1969 on the detenu which he did on 29th August, 1969, no attempt was made to obtain the material for which time had been obatined from the Court on 29th August, 1969. If a fresh order had been passed and had been served on the petitioner in supersession of the previous order which was challenged in the writ petition, the State Government should have sent full material relating to this order, which it became necessary for the petitioner to challenge by amending his writ peti-

A tion. Detention of a person without trial, even for a single day, is a matter of great consequence and, hence, we did not consider that, in the circumstances mentioned above, there was any justification for granting further time to the State Government to obtain material and file a reply to this application dated 1st September, 1969.

B In view of the facts mentioned above, it is clear that the validity of the order of detention dated 29th August, 1968, which was first challenged in the petition, has become immaterial because the petitioner is now under detention by virtue of the fresh order dated 28th August, 1969 served on him on 29th August, 1969. In the counter-affidavit filed it was stated that C the first order of detention dated 24th April, 1968 had automatically lapsed, because that order did not receive the approval of the State Government within 12 days as required by section 3(3) of the Act. This admission would indicate that, after the expiry of those 12 days, the petitioner's detention was not justi- D fied by any valid order passed in law until the second detention order was served on him on the 30th August, 1968 after releasing him from custody. However, in the present writ petition, we are not concerned with the effect of this procedure adopted by the State Government, because, even if it be assumed that the second order of detention was validly served on the petitioner E on 30th August, 1968, the period of that detention expired on 28th August, 1969 in view of section 11-A of the Act which prescribes a maximum period of 12 months for detention under the Act on the basis of an order passed under s. 3 of the Act. On 29th August, 1969, the detention under the second order dated 29th August, 1968 having expired, the State Government passed this third order of detention and served it on the peti- F tioner while he was still in custody in Delhi. The question is whether the further detention under this third order is valid.

The provision contained in section 11-A(2) of the Act clearly lays down the intention of Parliament that, on the basis of grounds found to exist at one time, the maximum period of deten- G tion under section 3 should be 12 months and no more. On the expiry of that period, that order of detention would lapse; but a fresh order of detention is permitted to be passed under section 13(2) of the Act which is as follows :—

> "13. (2) The revocation or expiry of a detention order shall not bar the making of a fresh detention H order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government

or a State Government or an officer, as the case may be, is satisfied that such order should be made."

This provision clearly lays down that a fresh detention order can be made on the revocation or expiry of a previous detention order only in cases where fresh facts have arisen after the date of revocation or expiry. This principle was explained by this Court in *Hadibandhu Das* v. *District Magistrate, Cuttack and Another*(1) where it was held :—

> "On January 28, 1968, the State of Orissa purported to revoke the first order and made a fresh order. The validity of the fresh order dated January 28, 1968, made by the State of Orissa is challenged on the ground that it violates the express provisions of Section 13(2) of the Preventive Detention Act. In terms that subsection authorises the making of a fresh detention order against the same person against whom the previous order has been revoked or has expired in any case where fresh facts have arisen after the date of revocation or expiry, on which the detaining authority is satisfied that such an order should be made. The clearest implication of Section 13(2) is that after revocation or expiry of the previous order, no fresh order may issue on the grounds on which the order revoked or expired had been made. In the present case, the order dated December 15, 1967 passed by the District Magistrate, Cuttack was revoked on January 28, 1968, and soon thereafter a fresh order was served upon the appellant. It is not the case of the State that any fresh facts which had arisen after the date of revocation on which the State Government was satisfied that an order under Sec. 3(1)(a)(ii) may be made. There was a fresh order, but it was not based on any fresh facts."

In view of this decision, we have to see whether, in the present case, the requirements laid down by s. 13(2) of the Act for making a fresh order were or were not satisfied. The main requirement is that the order must be made not merely on the past grounds, but no fresh facts which have arisen after the date of expiry.

In the present case, we have compared the grounds of detention served in pursuance of the order dated 28th August, 1969, with the grounds of detention which were served on the petitioner in pursuance of the second detention order dated 29th August, 1968, and we find that the two are identical, except that two

(1) A.I.R. 1969 S.C. 43.

small paragraphs have been added when serving the grounds of detention in respect of the detention order dated 28th August, 1969. These paragraphs are as follows :

> "That though in preventive custody, he has been maintaining links with Shah Syed Hussain and other associates, who went underground in Nagaland, through his friends and relatives. Shah Syed Hussain and his gang since received some arms and explosives from Naga rebels for committing acts of sabotage and creating large scale disturbances, particularly in the plains areas along Assam Nagaland border.
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> That, in the circumstances, Shri Khetra Gogoi's being at large will jeopardise the security of the State and the maintenance of public order in this region."

The first one of these two paragraphs is the only one that purports to mention some ground in addition to the grounds which were included amongst the grounds which were the basis of the order dated 29th August, 1968. We have found it very difficult to appreciate how a person in preventive custody could continue to maintain links with his associates outside jail who had gone underground even through his friends and relatives. If the (present) petitioner was able to maintain such links, it casts a sad reflection on the persons in charge of him while he was in custody and, in any case, it would appear that his detention could serve no useful purpose. It appears (to us) to be, in fact, very doubtful whether any such contacts could possibly have been maintained. However, even if we accept that such links were maintained, this additional ground mentioned does not satisfy the requirements of s. 13(2) of the Act, because the only allegation is that the links were maintained during the period of preventive detention.

Under s. 13(2) what is required is that fresh facts should have arisen after the expiry of the previous detention. Facts arising during the period of detention are, therefore, not relevant when applying the provisions of s. 13(2). In the present case, the fresh order was passed on 28th August, 1969, a day before the expiry, and it is obvious that no fresh facts could by that date arise and yet be held to have arisen after the date of expiry.

The order dated 28th August, 1969 was, therefore, not at all justified under s. 13(2) of the Act and that order being in violation of the provisions of the Act has to be held to be invalid, so that the detention under that order is illegal. The petition is allowed. The petitioner shall be set at liberty forthwith.

Y.P. *Petition allowed.*