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HARU DAS GUPTA

v.

STATE OF WEST BENGAL

February 1, 1972

B

[J. M. SHELAT AND H. R. KHANNA, JJ.]

West Bengal (Prevention of Violent Activities) Act, (President's Act 19 of 1970), ss. 12 and 13—Period of three months from the date of detention—Method of computation.

C

The petitioner was arrested and detained on February 5, 1971 under s. 3 of the West Bengal (Prevention of Violent Activities) Act, 1970. After receipt of the report of the Advisory Board, the State Government confirmed the detention order on May 5, 1971.

On the question whether the confirmation was made one day after the expiration of the period of 3 months from the date of detention.

D

HELD: The effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day; and therefore, in the present case, the order of confirmation was made before the expiration of the period of three months from the date of detention. [331 E-F]

E

Young v. Higgon, 6 M & W 50 = 151 E.R. (Ex.) 317, *Radcliffe v. Bartholomew*, [1892] 1 Q.B. 161, *Williams v. Burges* 10 L.J.O.B. 10, *Hardy v. Rlye*, 9 B & C 603, *English v. Cliff*, [1914] 2 Ch. 376, *Goldsmiths' Co. v. West Metropolitan Rly. Co.* [1904] 1 K.B. 1, 5, *Cartwright v. MacCormac*, [1963] 1 All E.R. 11; 13, *Marren v. Dawson Bentley & Co. Ltd.*, [1961] 2 Q.B. 135, *Stewart v. Charman*, [1951] 2 K.B. 792, *In re: North, Ex parte Hasluck*, [1895] 2 Q.B. 264 and Halsbury's *Laws of England* 3rd ed. Vol. 37, pp. 92 and 95) refered to.

ORIGINAL JURISDICTION : Writ Petition No. 287 of 1971.

F

Under article 32 of the Constitution of India for a writ in the nature of *habeas corpus*.

N. N. Goswami, for the petitioner.

D. N. Mukherjee, Sukumar Basu and G. S. Chatterjee, for the respondent.

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The Judgment of the Court was delivered by

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Shelat, J. The petitioner was arrested and detained on February 5, 1971 in pursuance of an order of detention passed on that very day by the District Magistrate, 24 Parganas under sec. 3(1) and (3) of the West Bengal (Prevention of Violent Activities) Act, President's Act 19 of 1970.

There is no dispute that, as required by the Act, his case was referred to the Advisory Board and on receipt of its report that

there was sufficient cause for his detention, the State Government under sec. 12 of the Act made an order or decision confirming the said detention order and continuing his detention thereunder. The order of confirmation and continuation was made on May 5, 1971.

The only contention raised in this petition was that the order or decision of confirmation of the said detention order was made one day after the expiration of the period of three months from the date of detention, that the said period of three months would end on the midnight of May 4, 1971, and that any confirmation and continuation of detention made thereafter would not be valid.

The question is when can the period of three months from the date of detention be said to have expired. When a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purpose for which the computation has to be made. (Halsbury's *Laws of England*, (3rd. ed.) vol 37, p. 92). There is, however, a volume of authority in England showing that where a certain thing has to be done within a specified period, the day on which the cause of action arose is to be excluded from computation and the day on which such action is taken is to be included. As early as 1840, Parke, B. laid down this rule in *Young v. Higgon*⁽¹⁾. In *Radcliffe v. Bartholomew*⁽²⁾, Wills, J., relying on *Williams v. Burgess*⁽³⁾ and *Hardy v. Ryle*⁽⁴⁾, held that a complaint under the Prevention of Cruelty to Animals Act, filed on June 30, in respect of an act alleged to have been committed on May 30, was "within one calendar month after the cause of such complaint shall arise". He held so on the principle that the day on which the cause for the complaint arose had to be excluded while computing the period within which under the Act the complaint had to be filed. In *Williams v. Burgess*,⁽³⁾ the statute directed warrants of attorney to be filed "within twenty-one days after their execution", and it was held that a warrant executed on the 9th day of the month would be regarded as having been filed in proper time if filed on the 30th, the day of execution being one which had to be excluded. On the other hand, in a case where a settler by a settlement, dated May 13, 1892, conveyed real estate unto and to the use of the trustees upon trust thereafter declared and it was thereby declared that they should stand possessed of the said premises during the term of twenty-one years from the date thereof upon trust to apply the rents and

(1) 6 M & W 50-151 English Reports (Ex) 317.

(2) [1892] 1 Q.B. 161.

(3) 10 L.J. Q.B. 10.

(4) 9 B. & C. 603.

A profits as therein mentioned and it was further declared that the trustees should at the expiration of the said term of twenty-one years sell the said premises and pursuant to the said trust for sale the trustees contracted to sell the real estate on June 20, 1913, it was held that the term of twenty-one years commenced from the midnight of May 12, 1892, and therefore, the trust was not void for remoteness on the ground of exceeding a term of twenty-one years from its creation. [see *English v. Cliff*(¹)].

B These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. [see *Goldsmiths' Company v. The West Metropolitan Railway Company*(²)]. This rule was followed in *Cartwright v. McCormack*(³), where the expression "fifteen days from the date of commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in D *Marren v. Dawson Bentley & Co. Ltd.*(⁴) a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. [see also *Stewart v. Chanman*(⁵) and *In re North, Ex parte Halsluck*(⁶)]. Thus, as a general rule the effect of defining a period E from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. (see *Halsbury's Laws of England*, (3rd ed.) vol. 37, pp. 92 and 95) There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here.

F In computing the period of three months from the date of detention, which was February 5, 1971, before the expiration of which the order or decision for confirming the detention order and continuation of the detention thereunder had to be made, the date of the commencement of detention, namely, February 5, 1971, has to be excluded. So done, the order of confirmation was made before the expiration of the period of three months G from the date of detention.

The contention raised on behalf of the petitioner, thus, cannot be sustained. Accordingly the writ petition is dismissed.

H V.P.S.

Petition dismissed.

(1) [1914] 2 Ch 376.

(2) (1904) 1K.B. 1, at p. 5.

(3) [1963] 1 All E.R. 11 at p. 13.

(4) [1961] 2 Q.B. 135.

(5) [1951] 2 K.B. 792.

(6) [1895] 2 Q.B. 264.