

ARUN KUMAR ROY *alias* KATU

v.

THE STATE OF WEST BENGAL

May 3, 1972

[P. JAGANMOHAN REDDY, K. K. MATHEW AND G. K. MITTER, JJ.]

Maintenance of Internal Security Act 26 of 1971—Detention under—Whether justified when grounds disclosed only facts amounting to theft which could be proceeded with under ordinary law—Delay in consideration of detenue's representation by State Government whether renders detention illegal.

The petitioner was detained in pursuance of an order under the Maintenance of Internal Security Act 26 of 1971. The order of detention was passed by the District Magistrate on August 24, 1971. The order was approved by the State Government under s. 3(3) of the Act on September 4, 1971. The petitioner who was absconding after the making of the detention order was arrested on September 9, 1971. Soon after he was served with grounds of detention. On October 7, 1971 a representation made by the petitioner was received in the offices of the State Government. The representation was rejected by the State Government on November 17, 1971. On the same date the Advisory Board before which the representation had been placed by the State Government under s. 10 of the Act reported that there was sufficient cause for the petitioner's detention. On November 26, 1971 the State Government confirmed the order of detention in exercise of its powers under s. 12(1) of the Act. In a petition under Art. 32 of the Constitution the petitioner urged that (i) the theft of overhead copper-wire by him mentioned in the grounds of detention was an offence under the Indian Penal Code which could be tried under the ordinary law; (ii) there was undue delay in the consideration of his representation by the State Government which rejected it only on November 17, 1971 after having received it on October 7, 1971.

Dismissing the petition,

HELD: (i) Undoubtedly the State Government could if it had chosen, have proceeded to put the ordinary criminal law in motion. But conditions in West Bengal were far from normal when the acts imputed to the petitioner were committed. Wagon-breaking and removal of overhead traction wire posed a major problem to the maintenance of supplies and services essential to the community. If therefore the authorities concerned felt that the trial of such cases under the ordinary law of the land would not meet the requirements of the situation and particularly in the case of activities of the kind mentioned in the grounds which were committed in the middle of the night when there could be few eye witnesses and even those who viewed such incidents would be apprehensive of their own safety if they were asked to give evidence against such dangerous persons who went about arming themselves with swords and daggers not only to prevent their apprehension but also to terrorise persons who might feel inclined to put up any obstruction, the State would not be unjustified in proceeding in the way it did. [555 G—556 B]

No doubt the removal of overhead traction wire would be a case of theft but that is not to say that such removal would not also be

A prejudicial to the maintenance of supplies and services essential to the community, specially when indulged in on a large scale. [556 C]

(ii) The alleged delay in the consideration of the petitioner's representation by the State Government did not render the detention illegal under the provisions of the Act or of the Constitution. The Act does not make it obligatory on the State Government itself to consider the representation of the detenu but makes it obligatory on the **B** part of the State Government to place the case before the Advisory Board along with the representation if any made by the person affected by the order. Although s. 15 of the Act gives the appropriate government power to release a detenu for a temporary period with or without conditions, the Act does not empower the Government to release a detenu finally except after the report of the Advisory Board.

[560 H—561 D]

C Further, the detenu made no grievance in his writ petition about the delay in the consideration of his representation. If any such plea had been taken the Court would have had to consider whether Government had any explanation to offer for the delay. In this case the Government had approved of the order of detention as early as September 4, 1971 and submitted the report to the Central Government. There was nothing in the representation of the petitioner apart from the bare denial of his commission of any offence which necessitated the **D** immediate consideration of his representation. As the Act did not empower the Government to release the detenu on the strength of the representation without sending the matter to the Advisory Board, the Government's consideration of the representation, after its prior approval of the detention order would have little significance or import.

[561 E—F]

E *K. J. Singh v. State of Manipur*. A.I.R. 1972 S.C. 438, distinguished.

ORIGINAL JURISDICTION : Writ Petition No. 52 of 1972.

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

F *Shiva Pujan Singh*, for the petitioner.

S. N. Mukherjee, for the respondent.

The Judgment of the Court was delivered by

G **Mitter, J.** The petitioner who was detained in pursuance of an order under the Maintenance of Internal Security Act, 1971 (26 of 1971) hereinafter referred to as the 'Act') has presented this petition under Art. 32 of the Constitution. He states therein that the detention order originating from the District Magistrate of Howrah is baseless, *mala fide* and motivated, that he was never involved in any kind of violent or anti-social activities, that he is a first fireman of the South Eastern Railway and by his detention **H** irreparable prejudice will be caused to himself and members of his family. He states further that he had gone to the Advisory Board on November 17, 1971 and that his detention was confirmed and communicated to him on December 8, 1971. His grievance is

that no first information was lodged against him as was necessary in the circumstances of the case and his detention is not warranted by law. A

From the affidavit affirmed by the District Magistrate of Howrah in opposition to the petition the following facts emerge :—

(1) The order was made against the petitioner on 24th August 1971 in exercise of the Magistrate's power conferred by sub-s. (1) read with sub-s. (2) of s. 3 of the Act with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. B

(2) The grounds for the order of detention bearing the same date show that on 23rd May 1971 at about 2.15 a.m. the petitioner along with some associates armed with swords, daggers etc. had cut down and stolen away 40 meters of copper contact wire from the over head traction wires from K. M. Post No. 9/31x to 10/1x in the Up line in between Hourigram and Andual railway stations causing disruption in train services on the Howrah Khargapur section and that he had acted in a similar manner in company with some associates being similarly armed on the night of 7th June 1971 at about 2 a.m. and had cut down copper contact wire from K.M. Post Nos. 9/25 and 9/27 on the Up Line in between Santragachi and Mourigram railway stations on the Howrah Khargapur section and his acts were considered prejudicial to the maintenance of supplies and services essential to the community. C D E

(3) On August 24, 1971 the District Magistrate had reported to the State Government about the passing of the detention order together with the grounds of detention and all other particulars bearing on the same. The said report and particulars were considered by the State Government and on September 4, 1971 the detention order was approved by the State Government under sub-s. (3) of s. 3 of the Act. E

(4) Soon after the passing of the order of detention the petitioner was found to be absconding and could be arrested only on 9th September 1971 when he was served with the order of detention and the grounds thereof. He was also informed that he could make a representation to the State Government against his detention order and that his case would be placed before the Advisory Board within 30 days from the date of the detention order. G

(5) On September 4, 1971 the State Government submitted a report to the Central Government in accordance with the provisions contained in sub-section (4) of s. 3 of the Act together with the grounds of detention and other particulars. H

A (6) On 7th October 1971 a representation from the detenu petitioner was received in the Home Department (Special Section) of the State Government forwarded by the Superintendent of the Dum Dum Central Jail.

B (7) On 8th October 1971 the case of the detenu petitioner was placed before the Advisory Board.

(8) On November 17, 1971 the representation of the petitioner was considered by the State Government. The State Government rejected it by an order of the same date.

C (9) On November 17, 1971 the Advisory Board after consideration of the materials placed before it and the said representation and after giving a personal hearing to the detenu petitioner submitted its report to the State Government to the effect that there was sufficient cause for the detention.

D (10) By an order dated November 26, 1971 the State Government in exercise of its powers under sub-s. (1) of s. 12 of the Act confirmed the order of detention.

(11) The confirmation of the order was communicated by the State Government to the detenu petitioner by letter dated December 7, 1971.

E A copy of the representation of the petitioner to the Advisory Board is one of the annexures to the counter affidavit. The case made by him therein was that the allegations about the removal of over head traction wire were not true, that in any event they also disclosed commission of the offences of theft which are cognizable offences and any such incident, if true in fact, should have been reported to the police under the provisions of the Code of Criminal Procedure and in the circumstances of the case the grounds of detention notified in the order made against him were not tenable under the law.

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H Counsel for the petitioner put forward a two-fold argument before us. His first submission was that even if the grounds of detention supplied to the petitioner were true in substance, they constituted cases of theft for which ample provision was made in the ordinary criminal law of the country and there was no necessity to resort to the Act for detaining the petitioner. Undoubtedly the State could if it had chosen, have proceeded to put the ordinary criminal law in motion. But as is well known the conditions in some parts of West Bengal were far from normal at the time when the acts imputed to the petitioner were committed. Wagon-breaking and removal of overhead traction wire posed a major problem to the maintenance of supplies and services essential to the community. If therefore the authorities concerned felt that the trial of such cases under the ordinary law of the land

would not meet the requirements of the situation and particularly in the case of activities of the kind mentioned in the grounds which were committed in the middle of the night when there could be few eye witnesses and even those who viewed such incidents would be apprehensive of their own safety if they were asked to give evidence against such dangerous persons who went about arming themselves with swords and daggers not only to prevent their apprehension but also to terrorise persons who might feel inclined to put up any obstruction, the State would not be unjustified in proceeding in the way it did.

No doubt the removal of overhead traction wire would be a case of theft but that is not to say that such removal would not also be prejudicial to the maintenance of supplies and services essential to the community, specially when indulged in on a large scale. We have therefore no hesitation in rejecting the first contention advanced on behalf of the petitioner.

The second contention urged was that there was inordinate delay in the consideration of the petitioner's representation and as such, apart from any other consideration, the petitioner was entitled to an order of release. Reliance was placed on the decision of this Court in *K. I. Singh v. State of Manipur*⁽¹⁾. In that case orders had been passed against the petitioners by the District Magistrate Manipur under sub-s. (2) of s. 3 read with sub-s. (1) of the Orissa Preventive Detention Act, 1970 as extended to Manipur. The orders had been passed with a view to preventing them from acting in any manner prejudicial to the maintenance of public order. The grounds of detention were furnished to the detainees on the day they were taken into custody. The District Magistrate had made the necessary report to the Administrator of Manipur under sub-s. (3) of s. 3 on February 10, 1971. The Administrator approved the orders of detention of the District Magistrate passed on January 31, 1971 and the orders of approval were also communicated to the detenu. The petitioners had made a joint representation on 1st March 1971 which was received by the Government on 3rd March, 1971. The Administrator considered the representations and rejected the same on March 20, 1971. The petitioners were informed about such rejection by communication dated March 22, 1971. The Advisory Board considered the matter and sent its report on April 12, 1971 expressing its opinion that the detention of the petitioners was justified. The ground advanced on behalf of the petitioners in that case with which we are concerned was that there was an inordinate delay of 17 days in the Administrator disposing of the representation made by the petitioners and as

(1) A.I.R. 1972 S.C. 438.

A such there was a violation of the provisions of Art. 22(5) of the Constitution. This ground was specifically taken in the writ petition in which it was expressly pleaded :

B “.....even assuming that any information had to be collected by the Government the period of 17 days as stated by the Government was not at all necessary and any information could have been got easily from the Jailor, Manipur Central Jail, Imphal, within a few minutes as the jail was located within a very short distance from the Secretariat.”

C The explanation offered in the counter affidavit of the State in that case was not accepted as in the view of this Court the respondent did not state what steps, if any, had been taken in between March 3, 1971 and March 20, 1971 and there was only “a very bald statement that enquiries were sought from jail authorities through Sub-Deputy Collector, Headquarters and the Jail authority sent a letter on March 18, 1971.” The Court referred to the fact that there was no averment in the counter affidavit that the enquiries referred to therein had been made orally and in the absence of such averment the court was of opinion that it would be reasonable to presume that there would be official communication in writing on the subject. In the result the Court held that there was an unexplained delay of 17 days in the Government disposing of the representation of the detenues.

E The four principles which this Court formulated in that case to be followed in regard to representation of detenues were :

F “First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the

Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of the release of the detenu the Government will release the detenu."

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On the facts of that case as the Court was not satisfied with the explanation of the delay in the counter affidavit it directed the release of the petitioners holding that the unexplained delay by itself was a sufficient ground for treating the orders of detention as illegal.

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We must consider the provisions of the Act in the background of the constitutional provisions. Under Art. 22(4):

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"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

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This is subject to the proviso that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of cl. (7). Cl. (5) of Art. 22 provides that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

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The Act in this case is a Parliamentary Act under which the Central Government or the State Government may in terms of s. 3(1), if satisfied with respect to any person with a view to preventing him from acting in any manner prejudicial to . . . the maintenance of supplies and services essential to the community, . . . it is necessary so to do, make an order directing that such person be detained. Under sub-s. (2) of the section any of the officers mentioned including the District Magistrate may, if satisfied as provided in sub-cl. (ii) and (iii) of cl. (a) of sub-s.(1) exercise the power conferred by the said sub-section. S.3(3) provides as follows :—

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"When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government to which he is

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A subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government :

B Provided that where under section 8 the grounds of detention are communicated by the the authority making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days" the words "twenty-two days" shall be substituted."

C Under s. 8(1)

D "When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

E Under s. 9(1) the Central Government and each State Government has to constitute one or more Advisory Boards for the purpose of the Act. Sub-s. (2) deals with the constitution of Advisory Boards. Under s. 10

F "Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 9 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, also the report of such officer under sub-section (3) of section 3."

G Under s. 11(1) :

H "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 con-

cerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.”

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Under subs- (2) the report of the Advisory Board must contain in a separate part thereof the opinion as to whether or not there is sufficient cause for the detention of the person concerned. Under s. 12

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“(1) 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 or continue the detention of the person concerned for such period as it thinks fit.

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(2) 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 shall revoke the detention order and cause the person to be released forthwith.”

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Under s. 13 the maximum period for which any person is detained in pursuance of any detention order which has been confirmed under s. 12 shall be twelve months from the date of detention.

The Act shows that if a detention order is made by an officer such as the District Magistrate it cannot remain in force for more than 12 days after the making thereof unless in the meantime it is approved of by the State Government. The State Government is also under a duty to communicate the order made and its approval of the order within 7 days to the Central Government. Under s. 10 the appropriate Government must place the case within 30 days from the date of detention before the Advisory Board. As the case was placed before the Advisory Board on 8th October, 1971, all the provisions of the Act from sections 3 to 10 were undoubtedly given effect to within time. The only complaint which is now raised though not made in the petition is that the representation was considered by the Government as also by the Advisory Board only on 17th November 1971, i.e. one month and ten days after the date of the receipt of the representation. As the Advisory Board has to consider the case within ten weeks from the date of detention which in this case was 9th September, 1971, there has been no violation of the provisions of section. The question is, can the order of detention be upheld on the facts of this case in the background of the constitutional provisions.

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It will be noticed that the Act does not make it obligatory on the State Government itself to consider the representation of

A the detenu but makes it obligatory on the part of the State Government to place the case before the Advisory Board along with the representation if any, made by the person affected by the order and where the order has been made by an officer also the report of such officer under sub-s. (3) of s. 3. The Advisory Board must consider the materials placed before it and may call for
B further information as it may deem necessary from the appropriate Government or from the person concerned and submit its report to the appropriate Government after hearing the detenu in person if he desires to be heard or in any case where the Board considers it essential to give him a hearing. The Board must
C make its report to the appropriate Government within ten weeks from the date of detention. Although s. 15 of the Act gives the appropriate Government power to release a detenu for a temporary period with or without conditions, the Act does not empower the Government to release a detenu finally except after the report of the Advisory Board. When the Advisory Board reports that there is no sufficient cause for the detention of the person concerned, the Government must give effect to it and revoke the detention order.
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The main hurdle against the petitioner in this case is that he made no grievance in his writ petition about the delay in the consideration of his representation. If any such plea had been taken, we would have had to consider whether Government had any explanation to offer for the delay. In this case, as already
E noted, the Government had approved of the order of detention as early as September 4, 1971 and submitted its report to the Central Government. There was nothing in the representation of the petitioner, apart from a bare denial of his commission of any offence which necessitated the immediate consideration of the representation. As the Act did not empower the Government to release the detenu on the strength of the representation without sending the matter to the Advisory Board, it appears to us
F that Government's consideration of the representation, after its prior approval of the detention order would have little significance or import.

Whether or not Government took any steps to enlighten itself more about the representation of the petitioner, we do not know and on the facts of this case, we are not called upon to consider.
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In the result, we are not satisfied that this is a case where the detention order should be quashed. The petition is accordingly dismissed.
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