

Shaik Hanif v. State of West Bengal, AIR 1974 SC 679

1) Facts

This case deals with three separate petitions made under Article 32 of the Constitution for issue of a writ in the nature of Habeas Corpus.

Shaik Hanif was detained on February 23, 1973, pursuant to a detention order issued by the District Magistrate of West Dinajpur in West Bengal under the Maintenance of Internal Security Act, 1971 ("Act"). It was alleged that the petitioner and his associates concealed 20 bundles of Telegraph copper wire underground in his court yard with the intention of disposing of them at a convenient time. As a result, he was arrested for acting in a manner that jeopardised the community's ability to maintain essential supplies and services.

Gudma Majhi was arrested on the same charges as Shaik Hanif, and the District Magistrate of Burdwan issued an arrest warrant for their "illegal, anti-social, and prejudiced conduct." Certain documents, such as the detenu's history record, which revealed Majhi's earlier acts, were not disclosed to him.

Kamal Saha was arrested on the grounds that he had disrupted public order by executing a train robbery. It was asserted that he was a seasoned railway criminal, but no information to that effect was communicated to the petitioner.

2) Procedural History

(Procedural History of Shaik Hanif)

On February 19, 1973 the District Magistrate passed an order of detention under sub section (1) read with sub section 3(2) of the Act. This was reported to the state government on the same day which approved the order of detention on March 1, 1973. Representation made by the detenu was rejected on April 5, 1973 by the state government which forwarded the same for the consideration of the Advisory Board. On April 24, 1973 the Board noted that there was sufficient cause for detention. The order was confirmed by the Government under s.12(1) of the Act and the detention would continue "till the expiration of 12 months from the date of his detention or until the expiry of Defence of India Act of 1971 whichever is later."

3) Issues

The following issues were raised by the petitioner:

- i. The counter-affidavit representing the State of West Bengal was sworn incorrectly and therefore was illegal. It was sworn on behalf of the Deputy Secretary and not by the District Magistrate, whose subjective satisfaction was used to issue the detention order.
- ii. The counter-affidavit depicted that there was “reliable information” apart from the singular ground mentioned to the detenu. **Therefore, the detenu was unable to effectively represent themselves. This is violative of Article 22(5) of the Indian Constitution** as the non-disclosure of this information was not justified under Article 22(6).
- iii. The Act is violative of Article 19 and 21 of the constitution as:
 - a. Under Section 3 there is no provision to determine whether the allegations are objectively true. These allegations form the basis of action under Section 3.
 - b. Section 8 does not provide for the detainee to make a representation before an impartial body in accordance with natural justice principles.
 - c. The Advisory Board is to rely on information received from the Officer issuing the order of detention without the detainee making a representation.
 - d. Via Section 11 and 12 the State Government and Advisory Board can take new information into consideration without giving the detainee an opportunity to respond to the same.
- iv. Suspending fundamental rights indefinitely by using an executive fiat (the Emergency) is unconstitutional. Additionally, under Article 352 the president should proclaim an emergency on the basis of objective facts which can be scrutinized by the judiciary.

4) Ratio

The court allowed the petitions quashing the detention order. The court held that the order of detention was violative of Article 22(5) as it did not convey necessary information to the detainee which was crucial for making an effective representation.

The court also considered it improper that the Magistrate who passed the detention order did not file the counter-affidavit without a reasonable explanation and the counter affidavit filed by the Deputy Secretary suffered with infirmity for they did not deal with the case.

5) Rationale

- i. Omission to file necessary affidavits will not vitiate orders of detention however the same can only be allowed in cases where the court is satisfied there are sufficient reasons to do so. In such cases the affidavit is to be undertaken by an individual personally involved in the case or processed the case, etc under the rules framed by the Governor under Article 166 of the Constitution.
- ii. The court noted that the Act curtails personal liberty of citizens and therefore must be construed firmly, in favour of the citizens to the extent practicable, and in a fashion which does not constrain that right beyond what is required to accomplish that objective. It noted that in all 3 of the cases the grounds under which the petitioners were detained were vague. Additionally, the authorities did not use the exception of confidentiality provided under Article 22(6) of the Constitution.