

## **Abdul Latif Abdul Wahab Sheikh v B.K. Jha & Anr 1987 AIR 725**

### **FACTS**

The appellant, Abdul Latif Wahab Sheikh, was in jail from November 12, 1985 onwards awaiting trial on a charge of murder. He was acquitted on May 26, 1986. He was due for release from prison on June 23, 1986. However he was not released on the scheduled date. Instead an order for his detention was made under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985. It has to be noted that on the date when the detention order was made, there was no Advisory Board in existence to which a reference could be made under sec. 11 of the Act and in accordance with Art 22(4) of the Constitution. The period of three weeks having exhausted, the petitioner was entitled to be released on July 14, 1986 in absence of the reference from the advisory board. But he was not so released. the order of detention dated June 23, 1986 had been challenged by filing a writ petition in the High Court After this, the order of detention dated June 23, 1986 was revoked and a fresh order of detention was made on the same facts on the same day. Consequent on the revocation of that order that writ petition was withdrawn as having become infructuous and another writ petition was filed questioning the second order of detention dated August 7, 1986. The Advisory Board was constituted on August 18, 1986. Reference to the Advisory Board was made on August 20, 1986. The Advisory Board made its report on September 26, 1986.

### **PROVISIONS**

1. Sec 11 of GPASAA In every case where a detention order has been made under this Act the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 10 the grounds on which the order has been made and the representation, if any, made by the person affected by the order and where the order has been made by an authorised officer, also the report made by such officer under sub-section (3) of section 3.
2. Sec 15  
(1) Without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time for reasons to be recorded in writing, be revoked or modified by the State Government, notwithstanding that the order has been made by an authorised officer. (2) The expiry or revocation of a detention order (hereinafter in this sub-section referred to as "the earlier detention order") shall not bar the making of Another detention order (hereinafter in this sub-section referred to as "the sub-sequent detention order") under section 3 against the same person: Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall in no case extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

3. Art 22(4) of the constitution

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

## ISSUES

1. Was there contravention of constitutional principle under art 22 of Indian constitution?
2. Should sec. 15(2) of the Gujarat Prevention of Anti-Social Activities Act be read down to avoid conflict with the constitutional principles?

## RATIO AND RATIONALE

1. Sec 15 was conflicting with the constitutional provisions.

The court held that sec 15 provision, if to be sustained, as constitutionally valid, must be read down so that it does not offend the mandate of Art. 22(4) 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 the Advisory Board has reported within the period of three months that there is in its opinion sufficient cause for such detention.

2. Sec 15 of the act has to be read down to avoid conflict with the constitution and if the report of the Advisory Board is not made within three months of the date of detention, the detention becomes illegal notwithstanding that it is within three months from the date of the second order of detention.

This was because not reading down would allow for a fresh order of detention to be made every 89th day making it unnecessary to obtain the report of the Advisory Board within three months of the detention. Court made reference to the case of *Shibapada Mukherjee v. State of West Bengal*, [1974] 3 SCC 50, where the court referring to clauses 4 and 7 of Art. 22 observed that the policy of Article 22 has been to permit detention for a period of three months only, and detention in excess of that period is permissible only in those cases where an Advisory Board set up under the relevant statute, has reported as to the sufficiency of the cause for such detention. It held that the Constitution looks upon preventive detention with disfavour and has permitted it only for a limited period of three months without the intervention of an independent body with persons on it of judicial qualifications of a high order. The court was of the opinion that the facts that the report of such an Advisory Board has to be obtained before the expiry of three months from the date of detention shows that the maximum period within which the detaining authority can on its own satisfaction detain a person is three months.

