

Haradhan Saha & Another vs The State Of West Bengal & Ors 1974 AIR 2154

FACTS

The petitioners were detained under the Act for acting in a manner prejudicial to maintenance of supplies and services essential to the community. In the one case, the ground of detention was that the petitioner in collusion with his father had hoarded food grains, that he had no licence as required by the anti-hoarding control Order and that he was likely to withhold or impede the supply of foodstuffs or rationed articles essential to the community. In the other case, the grounds were that the petitioner and his associates had smuggled 115 bags of rice covered by coal by engaging lorry without any valid permit or authority and in violation of control order and tried to frustrate the food and procurement policy of the Govt. and thus acted in a manner prejudicial to the maintenance of supplies and services Annual to the community. The petitioners challenged the respective orders of detention as having been made for a collateral purpose and contended that The Act was violative of Articles 14, 19, 21 and 22 of the Constitution.

PROVISIONS

1. Art 14, 19, 21, 22 of the Constitution

ISSUES

1. Whether the law of preventive detention violates article 19 of the Constitution;
2. Whether it violates article 14;
3. Whether it the Act does not lay down the just procedure for giving effect to Article 22(5);
4. Whether the Act violates Article 21 because the guarantee of a right to be heard is infringed.

RATIO AND RATIONALE

The Act confers power on the Central Government or the State Government to make orders directing detention of persons. Section 3 of the Act provides that when the Central Government or the State Government is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (i) the defence of India, the relations of India with foreign powers, or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community, District Magistrates, Additional District Magistrates or Commissioners of Police can pass orders of detention. The Act provides in sub-sections (3) and (4) of section 3 that when any order is made for detention the officer shall forthwith report the fact to the State Government with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter.

1. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

2. Constitution has conferred rights under Article 19 and also adopted preventive detention to prevent the greater evil of elements imperilling the security, the safety of a State and the welfare of the Nation. It is not possible to think that a person, who is detained will yet be free to move or assemble or form association or unions or have the right to reside in any part of India or have the freedom of speech or expression. Suppose a person is convicted of an offence of cheating and prosecuted after trial, it is not open to say that the imprisonment should be tested with reference to Article 19 for its reasonableness. A law which attracts Article 19 therefore must be such as is capable of being tested to be reasonable under clauses (2) to (5) of Article 19.
3. Merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. The mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. The order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.
For the foregoing reasons, the Act does not suffer from any constitutional infirmity
4. Principles of natural justice are an element in considering the reasonableness of restrictions where Article 19 is applicable. At the stage of consideration of representation by the State Government, the obligation of the State Government is such as Article 22(5) implies. Section 8 of the Act is in complete conformity with Article 22(5) because this section follows the provisions of the Constitution.