

Abdul Karim v. State of West Bengal, 1969 AIR 1028

1) Facts

This case deals with a petition made under Article 32 of the Constitution wherein the legality of a detention order is challenged on the grounds that the petitioners' representations made to the State Government were not considered.

Abdul Karim and others were detained on January 15, 1969, by the District Magistrate of Hooghly in West Bengal under Section 3(2) of the Preventive Detention Act, 1950 (" the Act") on the grounds that the petitioner was carrying 60 kgs of rice without authority with the intent of despatching it by train to some statutory rationing areas on February 2, 1968. Three additional instances of subsequent smuggling involving the petitioner's associates were cited in the order, in which they were discovered carrying unauthorised rice bags.

Subsequently, the petitioners appealed the order to the State Government, and the Advisory Board, pursuant to Section 10 of the Act, issued a report stating that there was sufficient cause for detention, which was later confirmed by the Governor of West Bengal pursuant to Section 11(1) of the Act.

The petitioners contended that the respondent Government of West Bengal did not consider their representations but merely forwarded them to the Advisory Board without consideration, and thus the detention was illegal.

The respondent's counter affidavits claimed that there was no legal requirement under Section 8 of the Act that the petitioner's representations be considered by the State Government prior to being forwarded to the Board, and that the State Government refrained from expressing its views on the representations made to it in order to ensure an impartial examination of the petitioner by an independent Statutory Authority.

2) Procedural History

The Court rendered its decision earlier because the petitioners obtained a rule compelling the respondent to give reasons why a writ of habeas corpus directing their release from detention must not be granted under Article 32 of the Constitution. The respondent established cause. On January 15, 1969, at the end of the hearing, the court

ordered the petitioners' release, stating that the reasons would be provided later. The present judgement furnishes these reasons.

3) Issue

Whether the State Government is under an obligation to consider representations made by the detenu before forwarding them to the Advisory Board under Article 22(5) of the Constitution of India along with provisions of the Act.

4) Ratio

The court noted that the order of detention against the petitioners were illegal and ultra vires in violation of Article 22(5) of the Constitution. The court held that it is the State Government's legal obligation to consider the detenu's representations before forwarding them to the Advisory Board.

5) Rationale

- i. The court interpreted Article 22 of the Constitution stating that while Article 22(5) does not expressly say to whom the representation is to be made and how, it is necessarily implicitly in the language of the clause that the State Government to whom the representations is made should properly consider the representation as quickly as possible. The right to representation guaranteed by clause is a vital constitutional right, not a mere formality; otherwise, it becomes illusory. Therefore, the State Government should not wait for the Advisory Board's report to make a decision.
- ii. Another response to the Respondent's argument given by the court was that under Article 22(4), Parliament may enact legislation authorising preventive detention for less than 3 months without an Advisory Board investigating the reason for detention. This demonstrates that the constitutional right to representation under Article 22(5) is not contingent on the duration of the detention period and that even if the period is less than three months, the detainee has a constitutional right to representation.

- iii. The court stated that under Article 22(7), the Parliament may by law prescribe the circumstances under which a person may be detained for a period longer than three months in preventive detention without Advisory Board's opinion. This does not mean that if the Parliament makes such a law, the detaining authority is under no legal obligation to consider the detenu's representations. There is no dichotomy under Article 22(5) – all representations must be considered by the detaining authority.
- iv. The court concluded that all the procedural requirements of Article 22 are mandatory and even if one of them is not complied with, the order would be called illegal as the issue of personal freedom is at stake.