Sambhu Nath Sarkar vs The State Of West Bengal & Ors 1973 AIR 1425

FACTS

The Maintenance of Internal Security Act, 1971, was passed on July 2, 1971. On December 3, 1971, a Proclamation of Emergency was issued and on the next day. The Defence of India Act. 1971, was enacted. Section 6 of the Defence of India Act introduced various amendments and a new section. 17A. in the Maintenance of Internal Security Act. Section 17A effectuated 3 main changes: (a) It overrides, by its non-obstante clause, the other provisions of the Act; (b) a person may be detained in a class or classes of cam or under the circumstances set out in 9. 17A (1) (a) and (b)-namely on the ground of prejudicial acts in relation to (i) defence of India, relations with foreign powers and security of India, and (ii) security of the State and maintenance of public order without obtaining the opinion of an Advisory Board for a period longer than 3 months. but not exceeding two years from the date of detention; and (c) the maximum period of detention of such a person can be 3 years or until the expiry of the Defence of India Act, whichever is later. These changes were brought about by Parliament exercising the power contained in Art. 22(4)(b), (7) (a) and (b), in respect of all the heads under Entries 9 and 3 of Lists I and III of the VII Schedule.

The petitioner was an employee of the Government of West Bengal in the Collectorate of Hooghly District. He was arrested on January 29, 1972, pursuant to the order of detention dated January 25, 1972 passed by the District Magistrate, Hooghly under s. 3(2) read with S. 3(1) of the Maintenance of Internal Security Act, 26 of 1971. The said order was passed "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". He was served with grounds of detention on that very day. The said grounds of detention were in connection with certain incidents alleged to have taken place on April 25, 1971, September 14, 1971, October 12, 1971, and January 19, 1972, as set out therein. Pursuant to the said order of detention, the petitioner was detained and is still in Hooghly jail. The mother of the petitioner thereafter filed an application No. 318 of 1972 in the High Court of Calcutta under s. 491 of the Code of Criminal Procedure. In that application the petitioner's detention was challenged only on two grounds, namely, the vagueness of the grounds of detention and their irrelevance. On May 29, 1972, the High Court dismissed the said application. The petition challenges the validity of several provisions of the Act.

PROVISIONS

1. Art. 22 of the Constitution
   When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, 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
2. Art 14 of the constitution
   The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
3. Sec 17

4. (1) Notwithstanding anything contained in the foregoing provisions of this Act, during the period of operation of the Proclamation of Emergency issued on the 3rd day of December, 1971, any person (including a foreigner) in respect of whom an order of detention has been made under this Act, may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention in any of the following classes of cases or under any of the following circumstances, namely:-
(a) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or the security of India; or
(b) where such person had been, detained with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order. (2)In the case of any person to whom sub-section (1) applies, sections 10 to 13 shall have effect subject to the following modifications, namely,
(a) in section 10, for the words "shall, within thirty days", the words "may, at any time prior to but in no case later than three months before the expiration of two years" shall be substituted;
(b) in section 11,-
(i) in sub-section (1) for the words "from the date of detention", the words "from the date on which reference is made to it" shall be substituted;
(ii)in sub-section (2), for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;
(c) in section 12. for the words "for the detention", in both the places where they occur, the words "for the continued detention' shall be substituted;
(d) in section 13, for the words "twelve months", the words "three years" shall be substituted."

ISSUES

1. Does the MISA violate art 14 of the Indian Constitution?
2. What is the scope of powers of the supreme court to review its earlier decision?

RATIO AND RATIONALE

The detention order was quashed.

1. the words "may be detained" in s. 17A(1) go with the words which follow them, namely, "without obtaining the opinion of the advisory board" and in "any of the following classes of cases or under any of the following circumstances The words "may be detained", no doubt, enable the authority to detain a person without obtaining the opinion of an advisory board for a period 'longer than three months, but not exceeding two years therein set out. The words "may be detained" thus are words enabling, the authority to detain without a board's opinion for the period there provided for, but are not words giving a choice to the authority to apply s. 17A(a) or not. Even if the operation of s. 17A and s. 10 side by side were

to result in any difference in the working of the Act, that difference would not seem to amount to any discrimination by reason of the provision in s. 17A(2) to the effect that in the case of a person to whom sub-s.(1) applies s. 10 shall be read subject to the modification, namely, that for the words "within thirty days", the words "at any time prior to but in no case later than three months before the expiration of two years" shall be substituted. In this view, there is no question of discrimination or violation of Art. 14 as a result of any such discrimination. This conclusion is clearly borne out by the combined effect of the non-obstante clause in the commencement of s. 17A(1) and the qualifying words "save as otherwise provided in this Act" in s. 10.

2. The clauses (4) (a) of Art. 22 lays down its rule to which cl. (4) (b) read with cl. (7) (a) is an exception. Upon that view cl. (7)(a) must be construed as a restriction on Parliament's power of making preventive detention laws in the sense that it can depart from the rule laid down in cl. (4)(a) and dispense with reference of cases to an advisory board only by a law which prescribes both the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months without obtaining the opinion of an advisory board in accordance with the provisions of sub-cl. (a) of 61. (4). Sec. 17A of the Act has failed to comply with the requirement of cl. (7)(a), and has, therefore, to be declared bad as being inconsistent with that clause.

   It therefore, follows that s. 17A does not satisfy the requirements laid down in cl. (7) (a) of Art. 22 and is therefore not valid.