

SHER MOHAMMAD @ SERU

v.

THE STATE OF WEST BENGAL

January 8, 1975

[V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

Maintenance of Internal Security Act (26 of 1971), s. 3(4)—Communication of District Magistrate's order by State Government to Central Government before approval by State Government—If sufficient compliance with statutory requirement.

Section 3 of the Maintenance of Internal Security Act, 1971, indicates that the State Government may directly issue an order of detention or, if it is done by a lesser authority, approve of such detention order as provided. Section 3(4) obligates the State Government to communicate, *within 7 days of the order of detention it makes or approves*, that fact to the Central Government, together with the grounds and other relevant particulars. The procedural mandate is inviolable except on peril of the order being avoided.

In the present case, the order of detention was made by the Dt. Magistrate on November 21, 1972 and the order was approved by the State Government on December 2, 1972. The order was however communicated to the Central Government on December 1, 1972.

HELD: There was no strict compliance with statutory formalities and since there has been an infringement of the procedural safeguard, the order of detention is invalid. [155H-156A]

(a) The communication to the Central Government by the State Government of its approval was not within 7 days *after* its approval, as required by s. 3(4), because, the approval by the State Government was only a day *after* the communication to the Central Government. [155G]

(b) If what is communicated is only the order of the District Magistrate, this was not sufficient compliance with the statutory requirement, and it further was also beyond the 7 days' period [155 G-H]

ORIGINAL JURISDICTION: Writ Petition No. 522 of 1974.

Petition under Article 32 of the Constitution.

H. S. Marwah for the petitioner.

S. C. Majumdar, G. S. Chatterjee and Sukumar Basu for the respondent.

KRISHNA IYER, J. The detenu petitioner, challenges his detention on various rounds but Shri H. S. Marwah, appearing as amicus curiae, has raised big contentions and small, some of which do not merit consideration and others need not be dealt with since, on a short point, the petition must succeed.

The scheme of the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971) (hereinafter called the MISA, for short) is in keeping with Art. 27 of the Constitution and emphasizes the various stages at which there will be consideration of the need for the detention by different authorities, such as the District Magistrate, the State Government and, ultimately, the Central Government. For the effective exercise of this power a scheme has been built into the statute.

A We are concerned at present with the power to direct release of the detenu. We may extract the provision here :

14(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified—

B

* * * *

(b) notwithstanding that the order has been made by a State Government, by the Central Government.”

With a view to posting the Central Government with the detention and the grounds therefor, s. 3(4) provides thus :

C

“3. *Power to make orders detaining certain persons.*

* * * *

(4) When any order is made or approved by the State Government under this section, the State Government shall, *within seven days*, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order.” (emphasis, ours)

D

A fair reading of s. 3 indicates that the State Government may directly issue an order of detention or, if it is done by a lesser authority, approve of such detention order as provided in the statute. Sub-s. (4) of s. 3, which we have extracted, obligates the State Government to communicate, *within seven days* of the order of detention it makes or it approves, that fact to the Central Government, together with the grounds on which the order has been made and other relevant particulars. Even assuming that the order is made by the District Magistrate and is approved by the State Government, the communication has to be made to the Central Government within the time specified. This procedural mandate is inviolable except on peril of the order being voided.

E

F

In the present case it is obvious that the detention order was made on November 21, 1972 by the District Magistrate and approved by the State Government on December 2, 1972. It is curious that on the State's own showing the communication to the Central Government in compliance with s. 3(4) of the MISA has been made on December 1, 1972. This date is beyond seven days of the District Magistrate's order and it could not have been in compliance with the seven days' spell after the approval by the State Government, that having been done only a day *after* the alleged communication to the Central Government. It is thus plain that the State Government *before* the approval itself was made. Secondly, if what it communicated was the order of the District Magistrate, it was not sufficient compliance with the statutory requirement. Moreover, it was beyond the seven days' period.

G

H

In short, there has been an infringement of the procedural safeguard. This Court has, in several rulings, held that the liberty of the citizen is a priceless freedom, sedulously secured by the Constitution. Even so, during times of emergency, in compliance with the provisions of the Constitution, the said freedom may be curtailed, but only in strict compliance with statutory formalities which are the vigilant concern of the Courts to enforce.

A

B

We have pointed out how in the present case there has been a failure on the part of the State Government to comply with s.3(4). Judicial engineering prevents breaches of constitutional dykes protecting fundamental freedoms.

The order of detention is invalid and the detenu is liable to be released. The rule is made absolute.

Petition allowed.

V. P. S.