BALMUKAND

v.

DIST. MAGISTRATE, DELHI & ANOTHER

August 17, 1964

(RAGHUBAR DAYAL, J. R. MUDHOLKAR, AND S. M. SIKRI JJ.)

Defence of India Rules, 1962, *r.* 30*A*—*Detention—Review before expiry of six months—Whether reckoned from detention order or from confirmation of detention order.*

The petitioner whose detention order was issued by the respondent on February 25, 1963 under r. 30(1)(b) of the Defence of India Rules, filed a petition under Art. 32 of the Constitution for a writ of *habeas corpus*. The detention order was confirmed by the Administrator on March 26, 1963. The Administrator reviewed the order on September 25, 1963 and on March 11, 1962, each time deciding to continue the detention order. The petitioner contended that the detention order had to be reviewed by the Administrator before the expiry of six months from the date of the detention order, while the respondents contention was that the period of six months for the purpose of the review of the detention order was to be reckoned from the date on which the Administrator confirmed the detention order.

HELD : The review of a detention order made by an officer empowered by the State Government or the Administrator was to be at intervals of not more than six months from the date of the detention order in the first instance and from the date of each subsequent order of the reviewing authority for the detention to continue. [63D].

Biren Dutta v. *The Chief Commissioner of Tripura,* (*Cr. App. Nos.* 37—91 *of* 1964 *decided July* 23, 1964), referred to.

ORIGINAL JURISDICTION : *Habeas Corpus* Petition No. 85 of 1964

Petition under Art. 32 of the Constitution for enforcement of Fundamental Rights.

Bawa Gurcharan Singh and *Harbans Singh,* for the petitioner.

S. V. Gupte, Additional Solicitor-General and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

Raghubar Dayal J. Balmukand *alias* Balu has presented this writ petition under Art. 32 of the Constitution for the issue of a writ of *habeas corpus*. He is detained under a detention order issued by the District Magistrate, Delhi, on February 25, 1963 under r. 30(1)(b) of the Defence of India Rules, 1962, hereinafter called the rules. The District Magistrate was empowered to issue such orders, by the Administrator. The petitioner was arrested on February 27, 1963. The order of the Magistrate was confirmed by the Administrator of the Union Territory of Delhi on March 26, 1963. The Administrator reviewed the

order on September 25, 1963 and on March 11, 1964, and each time decided that the detention order should be continued. The orders passed on review were communicated to the petitioner, each time.

The validity of the detention order is not questioned for the petitioner. The facts noted above are also not disputed. It is contended for the petitioner that the detention order had to be reviewed by the Administrator before the expiry of six months from the date of the detention order *i.e.*, February 25, 1963. On behalf of the respondents it has been urged by the learned Additional Solicitor General that the period of six months for the purpose of the review of the detention order is to be reckoned from the date on which the Administrator confirmed the detention order *i.e.*, the 26th of March 1963 and not from the date of the detention order. It is also urged that the order of confirmation itself should be taken as the first order of review as such an order is made under the provisions of r. 30A of the rules which deals with review of detention orders. We are of opinion that the contention for the petitioner is sound.

Sub-rule (1) of r. 30A provides that in that rule 'detention order' means an order made under cl. (b) of sub-r. (1) of r. 30. Sub-rule (4) mentions the authorities which have to review the detention order made by an officer empowered by the State Government or the Administrator. The Administrator is the authority to review the order when made by an officer empowered by him to make a detention order under r. 30(1)(b). Sub-rule (5) enjoins that the officer empowered by the State Government or the Administrator to make the detention order shall forthwith report the fact of his making the detention order to the reviewing authority or, as the case may be, to the Administrator. Sub-rule 6(a) lays down what the reviewing authority has to do on receipt of a report under sub-r. (5). The reviewing authority for the review of an order made by an officer empowered by the State Government has, after taking into account all the circumstances of the case, to recommend to the State Government whether the detention order is to be confirmed or cancelled and the State Government, on receipt of the recommendation, has either to confirm or cancel the order as it may deem fit. Under sub-r. (b) of r. 6, the Administrator too in regard to orders made by an officer empowered by him to make such detention orders, has to take into account all the circumstances of the case and thereafter either confirm the detention order or cancel it. Sub-rules (7) and (8) provide for the reviewing authority or the Administrator to review the detention order made by the officers empowered by the State Govern-

ment or the Administrator respectively at intervals of not more than 6 months. The reviewing authority has to send its recommendation to the Government which has to decide whether the detention order be continued or cancelled. The Administrator has himself to decide whether that detention order be continued or cancelled. Sub-rule (9) deals with the review of detention orders made by the Central and the State Governments respectively. Such orders are to be reviewed at intervals of not more than 6 months by the Government making the detention order.

The contention that the order of confirmation be treated as the order of review is based on what is stated in sub-r. (2) which directs that every detention order shall be reviewed in accordance with the provisions thereinafter contained. It is urged that the provisions about the review of the detention orders are contained in the provisions following sub-r. (2) and that therefore the act of confirming the order should be considered to be equivalent to the act of reviewing the order as contemplated by the various provisions of r. 30A. We do not consider this to be the correct view about the order of confirmation.

Sub-rule (1) of r. 30 empowers the Central Government or the State Government to make an order directing that the person be detained in certain circumstances. The expression 'State-Government' used therein means, in relation to the Union Territory, the Administrator thereof. The State Government and the Administrator confer on officers power to make such orders. The power so delegated to them is in a way subject to the supervision of the State Government and the Administrator, and for the exercise of supervision by these authorities, sub-rr. (5) and (6) provide the procedure to be followed for the confirmation of the detention order made by the officer empowered to make it. It may be said that the orders of such officers, though valid from the time they are made, are subject to the approval of the State Government or the Administrator by way of those authorities confirming them.

Sub-rule 6(a) gives the power of confirming or cancelling the detention order made by an officer empowered by the State Government to the State Government and not to the reviewing authority mentioned in sub-r. (4) of r. 30A. This indicates that the order of confirmation is not really an order of review. The review is done by the reviewing authority. The order of confirmation or cancellation is passed by the authority primarily empowered to make the detention order in sub-r. (1) of r. 30.

other; for sub-section (3)(b) of section 9 provides in the latter case both for publication in the Gazette and presentation to the Legislative Assembly."

Based on this passage, it was urged that the notification of the Reserve Bank, dated November 8, 1962 could not be deemed to be in force, at least not on November 28, 1962 when the respondent landed in Bombay and that consequently he could not be held guilty of the contravention of s. 8(1). This argument cannot, in our opinion, be accepted. In the first place, the order of the Minister dealt with by the Privy Council was never "published" since admittedly it was transmitted only to the Immigration official who kept it with himself. But in the case on hand, the notification by the Reserve Bank varying the scope of the exemption, was admittedly "published" in the Official Gazette—the usual mode of publication in India, and it was so published long before the respondent landed in Bombay. The question, therefore, is not whether it was published or not, for in truth it was published, but whether it is necessary that the publication should be proved to have been brought to the knowledge of the accused. In the second place, it was the contravention of the order of the Minister that was made criminal by s. 6(2) of the Immigration Ordinance. That is not the position here, because the contravention contemplated by s. 23(1-A) of the Act is, in the present context, of an order of the Central Government issued under s. 8(1) of the Act and published in the Official Gazette on November 25, 1948 and this order was in force during all this period. No doubt, for the period up to the 8th November, the bringing of gold by through passengers would not be a contravention because of the permission of the Reserve Bank exempting such bringing from the operation of the Central Government's notification. It was really the withdrawal of this exemption by the Reserve Bank that rendered the act of the respondent criminal. It might well be that there is a distinction between the withdrawal of an exemption which saves an act otherwise criminal from being one and the passing of an order whose contravention constitutes the crime. Lastly, the order made by the Minister in the Singapore case, was one with respect to a single individual, not a general order, whereas what we have before us is a general rule applicable to every person who passes through India. In the first case, it would be reasonable to expect that the proper method of acquainting a person with an order which he is directed to obey is to serve it on him, or so publish it that he would certainly know of it, but there would be no question of individual service of a general notification on every member of the public, and all that the subordinate law-

considering the circumstances of the case including the nature of activities of the detenu on which the order is founded, for the purpose of confirming or cancelling the order till about six months after the making of the order and thus defeat the purpose behind the provisions for confirmation of the orders. The authority empowered to confirm or cancel such orders will fail in its duty to consider the propriety of the order made by an officer empowered by it within a reasonable time of the making of the order, an order which affects the fundamental right of a citizen with respect to his personal liberty.

It is also urged that sub-rr. (7) and (8) speak of the review of every detention order made by an officer empowered by a State Government or the Administrator and confirmed by it or him as the case may be and that therefore the further expression in these sub-rules referring to the intervals after which a reviewing authority is to review should be taken from the date of confirmation of the detention order and not from the date of the detention order. We do not agree. The use of the expression 'and confirmed' with respect to the detention order to be reviewed is merely descriptive of the order which is to be reviewed and has nothing to do with the further provision about the interval within which the detention order is to be reviewed. No question of reviewing an order which is not confirmed arises as, in that case, the order of the appropriate authority would be to cancel the detention order. It is only in cases where the detention order is confirmed by that authority that the question of a subsequent review at intervals of not more than six months arises.

The review is of the detention order and therefore the interval mentioned in sub-rr. (7) and (8) must relate to the interval between the making of the detention order and its review. It is to be noticed that the provisions of sub-rr. (7), (8) and (9) provide for the review of detention orders at intervals of not more than six months. The Central or the State Government has not to confirm an order made by itself. Sub-rule (9) therefore does not use the expression 'and confirmed' which is used in connection with the detention order in sub-rr. (7) and (8). The provisions of sub-r. (9) therefore enjoin upon the Central or the State Government to review the detention order at intervals of not more than six months. The interval has to commence necessarily from the date of the detention order. It follows therefore that this common interval of 'not more than six months' for the review of the detention order should, in each case, be taken to refer to the interval beween the making of the detention order and the

first review and, subsequently, to the intervals between dates of consecutive reviews. It is to be noted that there is no provision in the Defence of India Act or the rules framed thereunder which provides for the detention order to specify the period of detention. The detention order should not therefore be deemed to be for a period of six months in the first instance. When a reviewing authority reviews a detention order, it orders that the detention be continued and as there is no specific date when the original detention is to come to an end, the order of the reviewing authority justifies the further detention from the date of the order made by it for the continued detention of the detenu. The further orders on review for the continuation of the detention order would therefore be effective from the date of the orders and not after the expiry of the sixth month from the date of the detention order or from that of any subsequent review order.

We therefore hold that the review of a detention order made by an officer empowered by the State Government or the Administrator is to be at intervals of not more than six months from the date of the detention order in the first instance and from the date of each subsequent order of the reviewing authority for the detention to continue.

Reference may now be made to the following observations in *Biren Dutta* v. *The Chief Commissioner of Tripura,*(1) where this Court had to consider whether a certain detention order had been reviewed in accordance with the provisions of r. 30A:

> "It is necessary to emphasize that the decision recorded under r. 30A(8) is in the nature of an independent decision which authorises the further detention of the detenu for a period of six months. In other words, the initial order of detention is valid for six months and the detention of the detenu thereafter can be justified only if a decision is recorded under r. 30A(8)."

These observations clearly indicate that the review order under r. 30A(8) is to be within six months from the date of the initial order of detention which will not be valid after six months if no order for the continued detention is made in accordance with r. 30A(8).

We therefore hold that the detention of the petitioner under the detention order made by the District Magistrate, Delhi, on

February 25, 1963, became illegal after the expiry of six months from that date as it had not been reviewed by the Administrator within that period as required by sub-r. (8) of r. 30A and, accordingly, direct that the petitioner be set at liberty at once. A

Petition granted.