SUPREME COURT OF INDIA

Jnanendra Nath Roy

Vs.

State of West Bengal

Writ Petition No. 389 of 1971

(H. R. Khanna, J. M. Shelat and K. K. Mathew JJ.)

24.01.1972

JUDGMENT

J.M. SHELAT, J.

1. This petition is for a writ of habeas corpus and is directed against an order of detention passed against the petitioner on April 16, 1971 by the District Magistrate, Burdwan, under Section 3(1) read with Sub-section (3) of the West Bengal (Prevention of Violent Activities) Act, President's Act 19 of 1970. The order recites that it was passed on the District Magistrate being satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order, one of the two grounds provided by the Act for exercise of the power of detention thereunder.

2. In consequence of the said order, the petitioner was placed under arrest on April 21, 1971 and detained in jail. As required by the Act, he was served with the grounds of detention on that very day. The District Magistrate reported the case to the State Government on April 16, 1971 and the State Government thereafter on April 26, 1971 approved the said order. On that day, the State Government also reported the petitioner's detention to the Central Government. On May 19, 1971, the State Government received a representation from the petitioner against his said detention, On May 20, 1971, it referred the petitioner's case together with the said representation to the Advisory Board constituted under Section 9 of the Act. On June 16, 1971, the State Government considered the said representation and rejected it. On June 28, 1971, the Advisory Board, after considering the petitioner's case, made its report to the State Government to the effect that there was sufficient cause for his detention. Thereupon, the State Government on September 6, 1971 confirmed the detention order and the continuation of the petitioner's detention. The petitioner Was informed of the Government's said decision on September 17, 1971.

3. The grounds for detention furnished to the petitioner recited four activities in respect of which the District Magistrate was said to have been satisfied for passing the impugned order. These were :

(a) that on July 5, 1970 at 9.25 p.m. the petitioner and some of his associates trespassed into the projector room of a cinema theatre known as Anuradha Cinema Hall at Benachity, while a picture called 'Tadgar' was being shown, and threw bombs which set tire to the cinema screen, caused other damage to the cinema property and created panic and alarm among those watching the picture, as also the residents of that locality;

(b) that on July 14, 1970, at about 9 p.m. the petitioner and his associatee, armed with explosives, namely, bombs, assembled at the crossing of Ram Mohun Avenue and Dayananda Road, and with a view to cause the murder of Lt. Gol. Chattarsingh, hurled two bombs at him while he was returning home in a jeep from his official duties, thereby causing multiple injuries to the said officer, and fear amongst the people of that locality ;

(c) that on March 8, 1971 at about 9.30 p.m. the petitioner together with his associates, armed with deadly weapons, such as daggers, stabbed a bus conductor near Nehru Stadium at Durgapur and caused his immediate death, the reason for the said murder being the refusal of the conductor Jo fall in line with and promote the cause of the extremist political group to which the petitioner and his associates belonged ; and

(d) that on April 5, 1971, at about 1.30 p.m. the petitioner and his associates, armed again with daggers and other lethal weapons, trespassed into N.E. College Post Office at Durgapur, and forcing the staff thereof at the point of daggers to leave the Post Office, set fire to its records and furniture, thereby creating panic amongst the local inhabitants.

4. Since the impugned order and the various steps taken by the detaining authorities enjoined upon by the Act appear to have been followed up in accordance with and within the specified times laid down in the Act, counsel appearing for the petitioner raised on two contentions. These were (1) that the State Government was in error in referring the petitioner's case together with his representation to the Advisory Board before it decided on the said representation, and that fact rendered the continuation of the petitioner's detention illegal, and (2) that the allegations made in the grounds of detention were motivated, and that therefore, the reasons for detention were extraneous and irrelevant to the Act.

5. In support of his first contention, counsel relied on two decisions of this Court, viz., Abdul Karim v. West Bengal (2) and Jayanaraya Sukul v. West Bengal (2). Both these decisions were under the Preventive Detention Act, IV of 1950, but the provisions of the present Act being almost similar to those of that Act principles laid down in the decisions under the latter Act would undoubtedly apply. It is therefore necessary to ascertain what precisely were the principles laid down in the two decisions referred to above.

6. In Abdul Karim's case : 1969CriLJ1446 the State Government failed to consider the detenu's representation altogether and simply sent on his representation to the Advisory Board constituted under the Act together with the other record of the case. The State Government in that case took up the stand that under the Act it was not incumbent upon it to consider such a representation in a case where the detention was for more than three months and the case had, therefore, to be referred to an Advisory Board. It contended that the Government was bound to consider such representations only in cases where the period of detention was less than three months, and where no reference therefore, had to be made to an Advisory Board. It was in answer to these contentions that Ramaswami, J., at page 488 of the report observed that there was no warrant to differentiate the two types of cases, depending upon whether the period of detention was more or less than three months, and that irrespective of the period of detention, there was implicit in Article 22(5) of the Constitution on obligation on the detaining authority to consider the representation independently of the obligation of an Advisory Board to consider that representation later on at the time of hearing the reference. He added:

It follows, therefore, that even if a reference is to be made to the Advisory Board under Section 9 of the Act, the appropriate Government is under a legal obligation to consider the representation of the detenu before such a reference is made.

What was emphasised in this decision was that whether or not a case had to be referred to the Advisory Board, depending upon whether detention intended was for a period of more than three months or not, there was under Article 22(5) a right of detenu. to make a representation protesting against his detention and a corresponding obligation on the Government to consider it and that it was inherent in the language of Article 22(6) that facility to make such a representation as early as possible should be furnished to such a detenu and to have that representation considered by the Government and not to shelve it until his case was referred to an Advisory Board. It was in this connection and to emphasise that the obligation of the Government to consider such a representation was independent of and distinct from the duty and function of the Advisory Board to once again consider it and not to shelve it till his case was referred to the Board that the learned Judge made the aforesaid observations. In Jayanarayan's case: 1970CriLJ743 , Ray, J., reviewing the Constitutional obligations, both express and inherent, in Article 22(5), laid down four propositions. He once again emphasised the consideration of the representation made by a detenu by the State Government and the Advisory Board as two distinct obligations, and brought out clearly the point that a reference to the Board and consideration by it of the detenu's representation did not dispense with the obligation of the State Government to consider it independently of its consideration by the Board. It was with a view to emphasise that obligation of the detaining authority and its satisfaction independently of the view on it of the Advisory Board and not to delay its consideration till the case was referred to the Board that observations were made in both the decisions that the Government had to consider the representation before reference was made by it to the Board. In a recent decision in Nagendra Math Mondal v. West Bengal Writ Petition No. 308 of 1971 decided on january 13, 1972 we explained that it was with reference to such an obligation of the detaining authority as distinct and independent of a similar obligation of the Board that Ray, J., laid down his fourth proposition, and not to prescribe a rule that it must always be considered before the date of the reference to the Board, for, if that was so, he would not have also said, as he did at page 231 of the report, that no time limit can be laid down within which a representation should be dealt with except that it was a Constitutional right of a detenu to have his representation considered as expeditiously as possible. If the two decisions were to be understood, as counsel urged us to do, it would be impossible in cases, where a detenu sends his representation late, for the State Government to discharge its function. Such a construction could not have been intended either by Ramaswami' J., or by Ray, J., in the two decisions referred to above.

7. As stated earlier, the petitioner was arrested on April 21, 1971. The State Government received his representation on May 19, 1971, that is to say, one day before the expiry of 30 days from the date of his detention within which the Government had to refer his case to the Advisory Board under Section 10 of the Act together with his representation. It is manifest that it was practically impossible for the State Government to properly and bonafide consider that representation and arrive at its decision thereon before it referred the case to the Board. Supposing that instead of the State Government receiving the said representation on May 19, 1971, it had received it a day or two later, the time for referring the case to the Board would have expired and the State Government would have been placed in a quandary, if it were intended that it should consider and come to its decision on the representation before it could refer the petitioner's case to the Board. There can be

no doubt, therefore, that the obligation of the Government under Article 22(5), spelt out in the decisions of this Court, is that consideration by the State Government of a detenu's representation is an obligation distinct from and independent of its consideration by the Board. It need not as a rule be done before the Government refers the detenu's case to the Board. Such consideration, however, must be done without any inordinate delay. But each case must depend upon its own facts. And the question whether the obligation by the Government was discharged properly or not and without any inordinate delay has to be decided upon a consideration of such facts. The first contention of counsel cannot, therefore, prevail.

8. The second contention has no merit. The allegation in the petition that the grounds of detention were motivated is only a bare allegation without its being supported by any facts or particulars. Such an allegation, obviously, could be met only by an equally bare denial which has been done in the counter-affidavit. But counsel contended that the counter-affidavit ought to have been sworn by the District Magistrate himself upon whose satisfaction the impugned order was founded. While there is some force in it, it appears from this petition as well as from other similar petitions which we had recently to deal that the West Bengal Government has given the entire work relating to detention orders to one of its officers, who naturally has to get acquainted with the facts of cases coming to him. The Government, therefore, seems to consider it convenient that the officer, and not the District Magistrate, makes the counter-affidavit. By the time such an affidavit has to be made, the record would have come to the secretariat, and therefore, it has been found more convenient that such an officer, rather than the relevant District Magistrate should make the affidavit. In these circumstances, it is not possible to say that the objections raised by a detenu in his petition cannot be satisfactorily explained or replied to by the officer entrusted with detention cases.

9. Neither of the two contentions raised by counsel on behalf of the petition can be sustained. The result is that the writ petition must be dismissed which we hereby do.