1951 INSC 5

SUPREME COURT OF INDIA

Tarapada De & Ors.

Vs.

State of West Bengal

C.A.No.24 of 1950

(H.J.Kania,CJI., Saiyid Fazal Ali,J., M.Patanjali Sastri and B.K.Mukherjea,JJ., N. Chandrashekar Aiyar and S.R.Dass,JJ.,)

25.01.1951

JUDGMENT

H.J.Kania,C.J.,

1. This is an appeal under article 132 of the Constitution of India from the judgment of the High Court at Calcutta, which rejected the habeas corpus petitions of the appellants. The detention orders under the Preventive Detention Act, 1950, in all cases were served on the appellants on the 26th February, 1950 and the grounds for the detention were served on the 14th March, 1950. By way of specimen we quote one of them :

> "You are being detained in pursuance of a detention order made under sub-clause (ii) of clause (a) of sub-section (1) of section 3 of the Preventive Detention Act, 1950, (Act IV of 1950), on the following grounds :-
>
> (1) That you have been assisting the operations of the Communist Party of India, which along with its volunteer organisations has been declared unlawful by Government under section 16 of the Indian Criminal Law Amendment Act (Act XIV of 1908), and which has for its object commission of rioting with deadly weapons, robbery, dacoity, arson and murder and possession and use of arms and ammunitions and explosives and thus acting in a manner prejudicial to the maintenance of public order and that it is necessary to prevent you from acting in such manner.
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> (2) That as a member of the C.P.I. on its Kishan front, you have fomented trouble amongst the peasants of Howrah District and incited them to acts of lawlessness and violence :
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> and have thereby acted in a manner prejudicial to the maintenance of public order :
> That as a worker of the C.P.I. you have tried to foment trouble amongst the tramways men and other workers at Calcutta and in speeches which you delivered at the University Hall and other places you actually incited them to resort to acts of violence

and lawlessness; and have thereby acted in a manner prejudicial to the maintenance of public order."

2. On the 16th of July, 1950, the Government of West Bengal served on the appellants "in continuation of the grounds already furnished on the 14th of March, 1950, supplementary grounds" for their detention a specimen of which is in the following terms :-

"In continuation of the grounds already furnished under order No. 6163 H.S. dated 14th March, 1950, you are being informed of the supplementary grounds for your detention which are as follows :-

You as the Secretary of the Bengal Chatkar Mazdoor Union, as a member of the Executive Committee of the Federation of Mercantile Employees' Union, as the honorary reporter of the 'Khabar' newspaper (C.P.I. organ) carried on the disruptive programme of the C.P.I. On the 29th July, 1948, you along with others led a procession at Howrah preaching discontent against Government and have been thus acting in a manner prejudicial to the maintenance of public order."

3. As in the case of the first grounds, these "supplementary grounds" were also served on each appellant separately. The appellants applied for a Rule of habeas corpus separately under section 491 of the Criminal Procedure Code and on the 21st July, 1950, the High Court issued a Rule in each case on the Chief Secretary to the Government of West Bengal. A second set of grounds were communicated to the appellants on the 22nd or 23rd of July, 1950. A specimen of one is in the following terms :-

"In continuation of the grounds already furnished under order No. 12820 dated 14th July, 1950, you are being informed of the supplementary grounds for your detention which are as follows :-

1. That in a meeting held at the University Institute on the 19th March, 1947, under the auspices of the Calcutta Tramway Workers' Union, you held out the threat that any attempt to take out tram cars on the 20th March, 1947, would be inviting disaster and you further said that if the authorities tried to resume the tram service you and your friends would not hesitate to remove the tram lines and cut the wires.

2. That on the 13th June, 1948, you presided over a meeting under the auspices of the Students' Federation (C.P.I. controlled) and delivered speech advocating withdrawal of ban on the Communist Party of India and its organ Swadhinta."

4. The High Court after considering the whole matter rejected the petitions of the appellants and the appellants have thereupon come in appeal before us.

5. In the High Court, it was first contended on behalf of the appellants that the communication of the grounds dated the 14th March was not a compliance with article 22(5) of the Constitution of India, as those grounds were not communicated "as soon as may be."

The High Court rejected this contention. Under the circumstances of the case, we agree with the High Court and are unable to hold that in furnishing the grounds dated the 14th March, 1950, the authorities had failed to act in accordance with the procedure laid down in article 22(5) of the Constitution. Under the Bengal Criminal Law Amendment Act, 1930, a very large number of persons were detained. The validity of that Act was being challenged in the High Court and the judgment was expected to be delivered towards the end of February, 1950. The Preventive Detention Act, 1950, was passed by the Parliament of India in the last week of February, 1950, and these orders on all those detenus were served on the 26th of February, 1950. Having regard to the fact that the Provincial Government had thus suddenly to deal with a large number of cases on one day, we are unable to accept this contention of the appellants.

6. On behalf of the appellants it was next urged that there has been a non-compliance with the procedure laid down in article 22(5) of the Constitution and section 7 of the Preventive Detention Act in the manner of supplying grounds to the appellants resulting in not providing to the appellants the earliest opportunity to make a representation, which they had a right to make. In the judgment delivered today in Case No. 22 of 1950 [Supra, p.167] we have discussed in detail the nature of the two rights conferred under article 22(5). We have to apply those principle to the facts of this appeal for its decision.

7. When the authorities sent their second communication dated 16th July, 1950, to the appellants they described it as "in continuation of the grounds already furnished" and as the "supplementary grounds for your detention". Relying on the wording of this communication it was argued that these were additional grounds which were furnished to the detenu and therefore the procedure prescribed under article 22(5) had not been followed. It was argued that the obligation to communicate grounds "as soon as may be" was absolute. The grounds for detention must be before the Provincial Government before they could be satisfied about the necessity for making the detention order. If the grounds before the detaining authorities on the 26th of February, 1950, were only those which they communicated on the 14th of March, they cannot support the detention on additional grounds which were not before them on that day and which they set out in the second communication four months later. It was also contended that the fact of this communication showed that the authorities were not satisfied on the original grounds and had therefore put forth these supplementary grounds as an afterthought. In our opinion these arguments cannot be accepted. A description of the contents of the second communication as "supplementary grounds" does not necessarily make them additional or new grounds. One has to look at the contents to find out whether they are new grounds as explained in our judgment in Case No. 22 of 1950 [Supra, p. 167]. Examining the contents of the later communication in that way we find that they only furnish details of the second heads of the grounds furnished to the appropriate appellant on 14th March, 1950, in respect of his activities. We are unable to treat them as new grounds and we agree with the High Court in its conclusion that these are not fresh or new grounds. We do not think it proper to consider the true effect of the communication only by reading its opening words. The whole of it must be read and considered together. The contention that the authorities were not satisfied on the original grounds and therefore put forth this communication as the supplemental grounds is again unsound. The fact that these details

were communicated later does not necessarily show that they were not within the knowledge of the authorities when they sent the communication dated the 14th of March. The contention that this communication of the 16th of July, 1950, was not "as soon as may be", has to be rejected having regard to the principles set out in our judgment in Case No. 22 of 1950. The facts in each case have to be taken into consideration and if the detained person contends that this part of the procedure prescribed in article 22(5) was not complied with, the authorities will have to place materials before the court to refute that contention. In the present case the High Court has considered that there has been no infringement of this procedural law and we see no reason to come to a different conclusion.

8. It was next argued that the grounds being vague, they could not be considered as grounds at all and therefore they could not be sufficient "to satisfy" the authorities. On this point we have nothing to add to what we have stated in our judgment in Case No. 22 of 1950. We are unable to accept the contention that "vague grounds" stand on the same footing as "irrelevant grounds". An irrelevant ground has no connection at all with the satisfaction of the Provincial Government which makes the order of detention. For the reasons stated in that judgment we are also unable to accept the contention that if the grounds are vague and no representation is possible there can be no satisfaction of the authority as required under section 3 of the Preventive Detention Act. This argument mixes up two objects. The sufficiency of the grounds, which gives rise to the satisfaction of the Provincial Government, is not a matter for examination by the court. The sufficiency of the grounds to give the detained person the earliest opportunity to make a representation can be examined by the court, but only from that point of view. We are therefore unable to accept the contention that the quality and characteristic of the grounds should be the same for both tests. On the question of satisfaction, as has been often stated, one person may be, but another may not be, satisfied on the same grounds. That aspect however is not for the determination of the court, having regard to the words used in the Act. The second part of the enquiry is clearly open to the court under article 22(5). We are therefore unable to accept the argument that if the grounds are not sufficient or adequate for making the representation the grounds cannot be sufficient for the subjective satisfaction of the authority.

9. As regards the grounds furnished by the Government in each case in its first communication, it is sufficient to notice that while the first ground is common to all the appellants, the second ground is different in most cases. The High Court has considered the case of each appellant in respect of the communication dated the 14th of March, 1950, sent to him. In their opinion those grounds are not vague. They have held that the procedural requirement to give the detained person the earliest opportunity to make a representation has not been infringed by the communication of the grounds of the 14th of March and by the subsequent communication made to the appellants in July. This point was not seriously pressed before us. After hearing counsel for the appellant we see no reason to differ from the conclusion of the High Court on this point. The result is that the appeal fails and is dismissed.

M.Patanjali Sastri,J.,

10. This appeal was heard along with Case No. 22 of 1950 (The State of Bombay v. Atma Ram Sridhar Vaidya) [Supra, p. 167], as the main question involved was the same. In the view I have expressed on that question in my judgment delivered today in that case, this appeal cannot succeed and I agree that it should be dismissed.

S.R.Das,J.,

11. The same important questions have been raised in this appeal by 100 detenus against an order of a Bench of the Calcutta High Court as were raised by the detenu in the appeal of the State of Bombay in which judgment has just been delivered. One additional point raised in this appeal was that the fact that a large number of fresh orders of detention were made "overnight" indicates bad faith on the part of the authorities, for the authorities could not have applied their minds to each individual case. I am unable to accept this contention as correct. The authorities had already applied their minds to the suspected activities of each of the detenus and were satisfied that with a view to prevent them from doing some prejudicial act of a particular kind it was necessary to make an order of detention against them under the local Acts. There being doubt as to the validity of the local Acts and the Preventive Detention Act having been passed in the meantime the question was to make a fresh order under the new Act. The minds of the authorities having already been made up as to the expediency of making an order of detention against them, an elaborate application of mind, such as is now suggested, does not appear to me to be necessary at all. I do not think there was any failure of duty on the part of the authorities which will establish bad faith on their part. In my view, for reasons stated in my judgment in the other appeal, there being no proof of any mala fides on the part of the authorities, no fundamental rights of the petitioners have been infringed. In the case of each of the detenus, apart from the common ground, there were one or more specific grounds of detention which are quite sufficient to enable the detenu concerned to make his representation. Therefore, the question of supplementary particulars does not arise at all. In my opinion the conclusions arrived at by Roxburgh J. were correct and well-founded, and, therefore, this appeal should be dismissed.

12. Appeal dismissed.