Shibban Lal Saksena

Vs

The State of Utter Pradesh and Others

Petition No. 298 of 1953

(B. K. Mukherjea, N. H. Bhagwati JJ)

03.12.1953

JUDGMENT

MUKHERJEA J. -

This is a petition under article 32 of the Constitution praying for the issue of a writ, in the nature of habeas corpus, directing the release of the petitioner, Shibban Lal Saksena, who is said to be unlawfully detained in the District Jail at Gorakhpur.

The petitioner was arrested on the 5th of January, 1953, under an order, signed by the District Magistrate of Gorakhpur, and the order expressly directed the detention of the petitioner in the custody of the Superintendent, District Jail, Gorakhpur, under sub-clauses (ii) and (iii) of clause (a) of section 3(1) of the Preventive Detention Act, 1050, as amended by later Acts. On the 7th of January following, the grounds of detention were communicated to the detenue in accordance with the provision of section 7 of the Preventive Detention Act and the grounds, it appears, were of a two-fold character, falling respectively under the two categories contemplated by sub-clause (ii) and sub-clause (iii) of section 3(1)(a) of the Act. In the first paragraph of the communication it is stated that the detenue in course of speeches delivered at Ghugli on certain dates exhorted and enjoined upon the cane growers of that area not to supply sugarcane to the sugar mills or even to withhold supplies from them and thereby interfered with the maintenance of supply of sugarcane essential to the community. The other ground specified in paragraph 2 is to the effect that by using expressions, some of which were quoted underneath the paragraph, the petitioner incited the cane-growers and the public to violence against established authority and no defiance of lawful orders and directions issued by Government officers and thereby seriously prejudiced the maintenance of public order.

The petitioner submitted his representation against the detention order on the 3rd of February, 1953, and his case was considered by the Advisory Board constituted under section 8 of the Preventive Detention Act at its sitting at Lucknow on the 23rd February following. The Advisory Board gave a hearing to the petitioner in person and after it had submitted its report, a communication was addressed on behalf of the Uttar Pradesh Government to the petitioner on the 13th of March, 1953, informing him that the Government, in exercise of its powers under section 11 of the Preventive Detention Act, had confirmed the detention order against him under sub-clause (ii) of section 3(1)(a) of the Act and sanctioned the continuation of his detention until further orders, or up to a period of 12 months from the date of detention. The second paragraph of this communication runs as follows :

> "The detenu may please be informed that the Advisory Board did not uphold his detention under sub-clause (iii) of clause (a) of sub-section (1) of section 3 of the

> Preventive Detention Act. Government have therefore revoked his detention under this sub-clause."

The petitioner has now come up before up before us with an application under article 32 of the Constitution and Mr. Veda Vyas, who appeared in support of the petition, has challenged the legality of the detention order made against client substantially on two grounds.

It is argued in the first place that from the grounds served upon the petitioner under section 7 of the Preventive Detention Act, it appears clear that the grounds which weighed with the detaining authority in depriving the petitioner of his liberty are that his activities were, in the first place, prejudicial to the maintenance of supplies essential to the community and in the second place were injurious to the maintenance of public order. From the communication, dated the 13th of March, 1953, addressed to the petitioner, it appears, however, that the first ground did not exist as a fact and actually the Uttar Pradesh Government purported to revoke the detention order under sub-clause (iii) of section 3(1)(a) of the Preventive Detention Act. In these circumstances, it is contended that the detention order originally made cannot stand, for if the detaining authority proceeded on two grounds to detain a man and one of them is admitted to be non-existent or irrelevant, the whole order is vitiated as no one can say to what extent the bad ground operated on the mind of the detaining authority.

The other contention raised by the learned counsel is that the particulars, which were supplied to his client in connection with the second ground, are manifestly inadequate and of a partial character and do not enable him to make an effective representation against the order of detention.

We may say at once that the second contention does not impress us. It is true that the sufficiency of the particulars conveyed to a detenu in accordance with the provision embodied in article 22(5) of the Constitution is a justifiable issue, the test being whether they are sufficient to enable the detenu to make an effective representation; but we are not satisfied that the particulars supplied to the detenu in the present case are really inadequate and fall short of the constitutional requirement. We do not think, therefore, that there is any substance in this contention.

The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this court that the power to issue a detention order under section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides (Vide State of Bombay v. Atma Ram Sridhar Vaidya, [1951] S.C.R. 167.). A court of law is not even competent to inquire into the truth or otherwise of the facts which are mentioned are ground of detention in the communication to the detenu under section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself, in its communication dated the 13th of March, 1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which

the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole. This principle, which was recognized by the Federal Court in the case of Keshav Talpade v. The king-Emperor ([1943] F.C.R. 88.), seems to us to be quite sound and applicable to the facts of this case.

We desire to point out that the order which the Government purported to make in this case under section 11 of the Preventive Detention Act is not one in conformity with the provision of that section. Section 11 lays down what action the Government is to take after the Advisory Board has submitted its report. If in the opinion of the Board there is sufficient reason for the detention of a person, the Government may confirm the detention order and continue the detention for such period as it thinks proper. On the other hand, if the Advisory Board is of opinion that there is no sufficient reason for the detention of the person concerned, the Government is in duty bound to revoke the detention order. What the Government has done in this case is to confirm the detention order and at the same time to revoke it under one of the sub-clauses of section 3(1)(a) of the Act. This is not what the section contemplates. The Government could either confirm the order of detention made under section 3 or revoke it completely and there is nothing in law which prevents the Government from making a fresh order of detention if it so chooses. As matters stand, we have no other alternative but to hold that the order made on the 5th of January, 1953, under section 3(1)(a) of the Preventive Detention Act is bad in law and the detention of the petitioner is consequently illegal. The application is allowed and the petitioner is directed to be set at liberty.

Petition allowed.

Agent for the petitioner : Ganpat Rai.

Agent for the respondent : C. P. Lal.

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