Dwarka Dass Bhatia

Vs

The State of Jammu and Kashmir

Petition No. 172 of 1956

(B. Jagannath Das, B. P. Sinha, Syed Jafar Imma JJ)

01.11.1956

JUDGMENT

JAGANNADHADAS J.

1. This is an application under article 32 of the Constitution for the issue of a writ in the nature of habeas corpus against the State of Jammu and Kashmir by the petitioner who was under detention by virtue of an order dated the 5th September, 1956, issued by the Government of the State of Jammu and Kashmir under sub-section (2) of section 3 taken with sub-section (1) of section 12 of Jammu and Kashmir Preventive Detention Act, 2011 (hereinafter referred to as the Act). The petitioner was first placed under detention by virtue of an order passed by the District Magistrate, Jammu, under sub-section (2) of section 3 of the Act on the 1st May, 1956, and that order was confirmed and continued on the 5th September, 1956, under sub-section (1) of section 12 of the Act by the Government after taking the opinion of the Advisory Board. The two orders of detention, one of the District Magistrate dated the 1st May, 1956, and the other of the Government dated the 5th September, 1956, recited that the petitioner is directed to be detained because it was necessary to make such an order "with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community". The grounds of detention as communicated to the petitioner on the 31st May, 1956, by the District Magistrate, Jammu, are as follows :

> "1. That you carried on smuggling of essential goods to Pakistan through the Ferozpur and Amritsar border, but since the tightening of said borders you have recently shifted your smuggling activities to Ranbirsinghpura Pakistan borders in the State of Jammu and Kashmir and are carrying on illicit smuggling of essential goods such as cloth, zari and mercury to Pakistan through this border (thus affecting the economic condition of the public in Kashmir State adversely).
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> 2. That for the said purpose of smuggling of goods to Pakistan you went to village Darsoopura on 7th April, 1956, and contacted Ghulam Ahmed son of Suraj Din resident of Darsoopura Tehsil Ranbirsinghpura and one Ram Lal son of Frangi resident of Miran Sahib Tehsil Ranbirsinghpura and others who similarly are addicted to carrying on such a smuggling business and with their aid made arrangements for export of Shaffon cloth worth Rs. 2,500 to Pakistan through Ranbirsinghpura Pakistan border.
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> 3. That on 11-4-1956, you booked 3 bales of silk cloth through Messrs Jaigopal Rajkumar Shegal of Amritsar to Jammu Tawi and got these bales on address of

> yourself, and on the same day you got one package of Tila booked through S. Kanti Lal Zarianwalla of Amritsar and got this package also addressed "To self" for Jammu Tawi.

That after booking these packages as aforesaid you came over to Jammu and waited for their arrival and contacted Ghulam Ahmed and Ram Lal the above mentioned persons.

That on the 15th April, 1956, you tried to get the transport receipt from the Punjab National Bank but did not succeed in doing so as it was a public holiday. Meanwhile your activities leaked out and the goods were seized by the Central Customs and Excise Department of India.

2. There are other facts also but those cannot be given as I consider their disclosure would be against the public interest.

That by resorting to the above activities you have been and are acting in a manner prejudicial to the maintenance of the supplies and services essential to the community".

It will be seen from the above grounds that the reason for the detention is the alleged "illicit smuggling of essential goods such as cloth, zari and mercury to Pakistan through the border, thereby affecting the economic condition of the public in Kashmir State adversely". From the particulars set out in paragraph 2 of the grounds, it appears that the cloth referred to in paragraph 1 is Shaffon cloth. The High Court of Jammu and Kashmir, to whom a similar application was filed by this petitioner along with a number of others similarly detained for illicit smuggling of goods, has in its judgment dated the 21st June, 1956, held that Shaffon cloth is not within the category of an essential commodity as defined in the Essential Supplies (Temporary Powers) Ordinance of Jammu and Kashmir. There is no indication in the High Court judgment whether zari is or is not an essential commodity in the same sense. But in answer to a query from this Court, Shri Porus Mehta who appeared before us on behalf of the State of Jammu and Kashmir has stated, on instructions, that zari which is obviously a luxury article is not one of the commodities declared essential under the above Ordinance. The High Court, when it dealt with the batch of applications, of which the application of the petitioner before us was one, set aside the detention of number of others on the ground that the smuggling attributed to the individuals concerned in those cases was not of essential goods. So far as this petitioner is concerned the High Court held as follows :

> "The case of Dwarika Das Bhatia stands on a different footing altogether. The allegation against him is that he smuggled into Pakistan some goods such as cloth and zari along with a certain quantity of mercury. Mercury is a non-ferrous metal and according to the definition of an essential commodity given in the Essential Supplies (Temporary Powers) Ordinance, mercury is an essential commodity. This being so, Dwarika Das Bhatia's detention cannot be challenged".

The point raised before us is that since the detention is based on the assumption that Shaffon cloth and zari as well as mercury are all essential goods and since two out of the three categories of the goods with reference to the smuggling of which the detention has been directed, are found not to be essential goods, the entire order is illegal, although one of the items, viz., mercury is an essential commodity. In support of this contention, the cases of this Court in Dr. Ram Krishan Bhardwaj v. The State of Delhi [[1953] S. C. R. 708.], and Shibban Lal Saksena v. The State of U. P. [[1954] S. C. R. 418.] are relied upon. Learned counsel for the State of Jammu and Kashmir contends that the principle of these decisions has not application to the present case, and attempts to distinguish the

same. In order to understand the principle underlying these two cases, it is necessary to examine them in some detail.

In Dr. Ram Krishan Bhardwaj's case (supra) the two points that were raised were (1) whether an order of detention is invalid if the grounds supplied in support thereof are vague, and (2) whether the vagueness of one or some of the various grounds vitiates the entire order. The argument advanced in that case was based on the view adopted by this Court in the decision in Atma Ram Sridhar Vaidya's case [[1951] S. C. R. 167.], viz., that the obligation cast on the detaining authority to supply grounds is for the purpose of enabling a detenue to make a fair representation to the authority concerned and to the Advisory Board, against the order of detention. The argument was that in a case where one or more of the grounds are vague, the petitioner is handicapped in making an adequate representation as regards that ground and his representation even if effective in respect of the other grounds, may fail to carry conviction as regards the ground which is vague and that this might result in the detention being confirmed. The Court stated that that argument was not without force and held as follows :

> "The question however is not whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representation, but whether his constitutional safeguard has been infringed. Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. ..... We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of the privilege under clause (6) of article 22. That not having been done in regard to the ground mentioned,..... the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of article 21".

Shibban Lal Saksena v. The State of U. P. (supra) is a case where the question arose in a different form. The grounds of detention communicated to the detenu were of two-fold character, i. e., fell under two different categories, viz., (1) prejudicial to maintenance of supplies essential to community, and (2) injurious to maintenance of public order. When the matter was referred to the Advisory Board, it held that the first of the above grounds was not made out as a fact but upheld the order on the second ground. The question before the court was whether this confirmation of the original order of detention, when one of the two grounds was found to be non-existent by the Advisory Board, could be maintained. Their Lordships dealt with the matter as follows :

> "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. A Court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under section 7 of the Act."

Posing the situation which arises in such cases where one of the grounds is found to be irrelevant or unsubstantiated, the Court stated as follows :

> "The question is, whether in such circumstances the original order made under section 3(1) (a) of the Act and 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 recognised 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".

In Keshav Talpade's case [[1943] F. C. R. 88.] the learned Judges stated as follows :

> "If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them".

The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the validity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged.

In this case, the order of detention is based on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities, cloth, zari and mercury of which two are found not to be essential articles. No material is placed before us enabling us to say that the smuggling attributed to the petitioner was substantially only of mercury and that the smuggling as regards the other two commodities was of an inconsequential nature. On the other hand the fact that the particulars furnished to the detenu on the 31st May, 1956, relate only to cloth and zari (we understand that tila referred to in paragraph 3 is zari) indicates that probably the smuggling of these two items was not of an inconsequential nature.

We are, therefore, clearly of the opinion that the order of detention in this case is bad and must be quashed. We have accordingly quashed the order and directed the release forthwith of the detenue on the conclusion of the hearing on the 29th October, 1956.

Petition allowed.

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