Naresh Chandra Ganguli

Vs

The State of West Bengal and Others (and connected petition)

Criminal Appeal No. 59 of 1959.

(B. P. Sinha, Syed Jafar Imam, J. L. Kapur, P.B. Gajendragadkar, K. N. Wanchoo JJ)

20.05.1959

JUDGMENT

SINHA J. –

This appeal, on a certificate of fitness granted by the Calcutta High Court, is directed against the order of that Court, dated January, 8, 1959, in Criminal Miscellaneous Case No. 126 of 1958, refusing to issue a writ in the nature of habeas corpus in respect of one Ram Prasad Das (who will hereinafter be referred to as 'the petitioner'). This Court, by an order dated April 20, 1959, directed that the application of the petitioner under Art. 32 of the Constitution, for a similar writ in respect of the same person, be posted for hearing immediately after the aforesaid criminal appeal, and that it shall not be necessary that the petitioner be produced before this Court at the time of the hearing of the writ petition. Hence, both the matters, relating as they do, to the same subject-matter, have been herd together and will be disposed of by this judgment.

It appears that Naresh Chandra Ganguli, an advocate, practising in the Calcutta High Court, made an application under ss. 491 and 561A of the Code of Criminal Procedure, as a friend, on behalf on the petitioner, in detention in the Dum Dum Central Jail in 24 Parganas, under the orders of the Government of West Bengal. The application was made to the Calcutta High Court on the following allegations : The petitioner is the Secretary of the West Bengal Committee of the Bharatiya Jana Sangha, one of the four big political parties, as recognized by the Election Commission of India. On or about October 7, 1958, towards evening, when the petitioner was coming out of the Basanta Cabin, a tea stall, at the crossing of the College Street and Surya Sen Street, after having addressed a meeting at the College Square, he was stopped on the street by the police and was taken to the office of the Special Branch (Police) on Lord Sinha Road. From there, he was sent to the Dum Dum Central Jail, where he was served with an order, being Order No. 83 dated October 7, 1958, purporting to have been made by the Commissioner of Police, Calcutta, under the provisions of the Preventive Detention Act (No. IV, of 1950) (hereinafter referred to as 'the Act'). The order is in these terms :-

> "ORDER Dated 7-10-58.
>
> No. 83.
>
> > Whereas I am satisfied with respect to the person known as Sri Ram Prasad Das, son of late Bepin Behari Das of Village P-S-P Dist. and of 6, Murlidhar Sen Lane, Calcutta that with a view to preventing him from acting in a manner prejudicial to the maintenance of Public Order it is necessary so to do.

Now therefore in exercise of the Powers conferred by Section 3(2) of the Preventive Detention Act 1950 (IV of 1950) I made this order directing that the said Sri Ram Prasad Das be detained.

Given under my hand and seal of office. Sd/- Illegible, Commissioner of Police, Calcutta."##

On or about October 8, 1958, the petitioner was served, in the Dum Dum Central Jail, with a further order, being Order No. 85 dated October 8, 1958, which is as follows :

"Government of West Bengal. Office of the Commissioner of Police, Calcutta. Dated 8-10-58.No. 85.##

Grounds for detention under clause (ii) of clause (a) of Sub-section (1) of Section 3 of the Preventive Detention Act, 1950 (Act IV of 1950).

To

Sri Ram Prasad Das

S/o Bepin Behari Das,

of 6, Muralidhar Sen Lane,

Calcutta.

You are being detained in pursuance of a detention order made in exercise of power conferred by Section 3(2)(c) of the P.D. Act 1950 (Act IV of 1950) on the ground that you are acting in a manner prejudicial to the maintenance of public order, as evidenced by the particulars given below :-

1. That on 13-9-58 you attended a meeting of Eastern Indian Refugee Council held at the Refugee office at 6 Murlidhar Sen Lane and vilified Prime Minister of India for his allegedly turning a deaf ear to the untold miseries of the refugees and while referring to the recent agreement between the Prime Ministers of India and Pakistan you vented feelings of violence against the Prime Minister of India by emphasising that in order to save the refugees and the territories of the Indian Union, Sri Nehru should be murdered, if necessary and so the need of another Nathuram Godse was felt now.

2. That in course of discussion with members of your party on 17-9-58 at 6, Murlidhar Sen Lane, you stated that the Indian Prime Minister had made a Present of certain Indian enclaves to Pakistan in pursuance of the policy of appeasement which has been initiated by the Late Mahatma Gandhi and called upon the members to build up strong movement against the implementation of Nehru-Noon Pact. You also tried to rouse passions by alleging that the Indian Prime Minister had no sympathy for West Bengal.

3. That on 26-9-58 you attended another meeting of the South Durtolla Branch of the Jana Sangha at Jatin Mitter Park, where you denounced the aforesaid agreement

between the two Prime Ministers and stressed the need of forming a militia with the youths of the country for the safety of the people living in border areas and urged all to enrol themselves for the said purpose.

4. That you intend to proceed to Delhi on 9-10-58 and that you are likely to instigate plans which may adversely affect the personal security of the Prime Minister of India.

Your action above is bound to result in the maintenance of public order being prejudicially affected.

You are hereby informed that you may make a representation to the State Government against the detention order and that such representation should be addressed to the Assistant Secy. Home (Special) Department, Government of West Bengal, and forwarded through the Supt. of the Jail in which you are detained as early as possible.

You are also informed that u/s 10 of the P. D. Act 1950 (IV of 1950) the Advisory Board shall, if you desire to be heard hear you in person and that if you desire to be so heard by the Advisory Board you should intimate such desire in your representation to the State Government.

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Sd/-

Illegible,

Commissioner of Police,

Calcutta

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On or about October 11, 1958, the petitioner was served with another order which is in these terms :

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"Government of West Bengal.

Home Department,

Special Section. Order

Calcutta, 11-10-58.

No. 1882 H.S

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In exercise of the power conferred by Section 3(2) of the Preventive Detention Act,

1950 (IV of 1950), the Governor is pleased to approve order No. 83 dated the 7-10-58 made under Section 3(2) of the said Act by the Commissioner of Police, Calcutta directing that Sri Ram Prasad Das son of Late Bepin Behari Das of 6, Murlidhar Sen Lane, Calcutta be detained.

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By order of the Governor.

Sd/-

Illegible

Dy. Secty. to the Govt. of West Bengal

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The petitioner made a representation in writing against the order of detention aforesaid, denying and refuting the grounds of his detention, set out above. He particularly denied the allegation contained in ground No. 1 aforesaid, as totally false, and stated that there was no meeting, as alleged, on September 13, 1958, and that he had not made any speech attributed to him in the said ground. He also denied that he had advocated in any meeting for the formation of a militia, as alleged. But he claimed that he had a right to express his views about the policy of the Government or the Prime Minister, relating to Pakistan and/or about Nehru-Noon Pact or similar other Agreements. He denied that he indulged in any violent speeches, or that he tried to rouse passions. His further contention was that the ground No. 4 was extremely vague in the absence of any particulars about how, where and when and in what manner, he was likely to instigate any plan which was to adversely affect the personal security of the Prime Minister of India, and the nature or particulars of any such contemplated plan.

In his application to the High Court, the petitioner also submitted that the grounds supplied to him, had no rational connection with the objects mentioned in s. 3 of the Act, and that, therefore, he was deprived of his right to make an effective representation. He also alleged that he was a member of a political party opposed to the party in power, and held definitely pronounced views about the failure of the Government to tackle the problem of refugees, as also about the relationship between the Government and the State of Pakistan. He also, claimed to be a leader of the refugees, and as such, had been relentlessly criticising the policies of the present Government. He further asserted that the order of detention passed against him, was a clear case of political victimisation. He alleged further that the order of detention, on the face of it, was mala fide, and was a clear infringement of his fundamental right to freedom of speech and association, guaranteed by the Constitution.

On November 28, 1958, the petitioner was brought to the Writers' Buildings in Calcutta, and placed before the Advisory Board as constituted under the Act. The petitioner was heard in person by the Advisory Board on that date, and on the next day, that is, November 29, 1958, after the hearing by the Advisory Board, another order, being order No. 1967 H.S., dated November 29, 1958, made by the Governor of West Bengal, was issued, confirming the aforesaid order of detention No. 83 dated October 7, 1958, set out above, and continuing the petitioner's detention till the expiration of 12 months from the date of detention. On those allegations, the petitioner submitted to the High Court that the orders aforesaid, relating to his detention in the Dum Dum Central Jail, were "illegal, invalid, ultra vires, void and inoperative."

An affidavit in opposition, on behalf of the State of West Bengal and other opposite parties, was sworn to by the Commissioner of Police, Calcutta - opposite party No. 3 in the case. In the aforesaid affidavit, the deponent averred that he was satisfied on the records and materials placed before him that the petitioner was a person likely to act in a manner prejudicial to the maintenance of public order, and that with a view to preventing him from doing so, it was necessary to make the order of detention on the grounds mentioned in the Order No. 85 dated October 8, 1958 (set out above). He also averred that the orders of detention aforesaid, together with the grounds and all other relevant particulars, were reported by him to the Government of West Bengal, which, after duly considering the same, duly approved of the orders of detention. It was also stated in the affidavit that the petitioner personally appeared before the Advisory Board on November 28, 1958, and the Advisory Board, upon a consideration of the records and materials placed before it, and the representation made by the petitioner, and after hearing the petitioner in person, reported to the Government of West Bengal that in the opinion of the Advisory Board, there was sufficient cause for the detention of the petitioner. The Commissioner of Police further stated in the affidavit that he had duly passed and signed the orders of detention after considering the records and materials in respect of the petitioner, in exercise of the powers conferred under the Act, bona fide and without any malice whatsoever, on being satisfied about the necessity of the said orders of detention. He also stated that he denied all statements of facts to the contrary, contained in the affidavit in support of the petition, and he undertook to produce the original records in the Court at the hearing. Allegations of victimisation on political grounds, and that the order of detention was mala fide and in infringement of the fundamental rights of the petitioner, were specifically denied.

The matter was heard by a Division Bench of the Calcutta High Court (Guha Roy and H.K. Sen, JJ.), which, by its order dated January 8, 1958, discharged the Rule. In the course of its judgment, the High Court made the following observations :

> "On a reading of the order however, it is quite clear to us that paragraphs 1, 2, 3 and 4 do not state the grounds of the order. There is only one ground of the order and that is that the petitioner was acting in a manner prejudicial to the maintenance of public order and the remaining paragraphs of the order make it quite clear that what are stated in paragraphs 1, 2, 3 and 4 constitute different pieces of evidence by which the authority making the order came to the conclusion that the petitioner was acting in a manner prejudicial to the maintenance of public order and therefore should be detained under the Act."

Hence, the High Court, on a construction of s. 3 of the Act, came to the conclusion that the grounds of detention in respect of the petitioner, were not vague, and that the statement in para. 4 of the detention order No. 85 dated October 8, 1958, quoted above, was not a ground but only a piece of evidence out of several such pieces of evidence on which the ground of detention was based. It was further pointed out that para. 4 aforesaid, was not by itself a ground of the order, but merely an inference of fact which had some bearing on the ground of the order. The High Court also pointed out that there was no ambiguity in the recitals, including these in para. 4 aforesaid. In that view of the matter, the order of detention of the petitioner was upheld, and the Court further held that the question whether the whole order was bad on the ground that one of the grounds was too vague, did not rise in the case.

The petitioner moved the Calcutta High Court for a certificate that the case was a fit one for appeal to this Court. The Chief Justice of the High Court, delivering the order of the Division Bench of that Court granting the necessary certificate, observed that the view of the High Court that para. 4

aforesaid, was not a ground of detention but only one of the items of evidence in support of the ground, raised a serious question to be determined by this Court, particularly because a view contrary to the one taken by the High Court in the instant case, appeared to have been taken by this Court and by the Calcutta High Court itself in a number of decisions. That is how this appeal has come to this Court. Besides preferring the aforesaid appeal, the petitioner moved this Court under Art. 32 of the Constitution, praying for a writ in the nature of habeas corpus, and a Constitution Bench, by its ode dated April 20, 1959, directed that this appeal be posted for hearing by a Constitution Bench, on May 11, 1959, on a cyclostyled paper book, and that the filing of the petition of appeal and the statements of cases be dispensed with. The Court further ordered that the application under Art. 32 of the Constitution, be posted for hearing immediately after the criminal appeal. That is how both the matters have been placed one after the other for hearing before us.

The order under appeal takes the view that the various grounds of detention, are stated in s. 3(1)(a)(i)(ii)(iii) and (b) of the Act, and that there can be no grounds apart from those. The High Court then, on a reading of the Order No. 85, set out above, has held that paragraphs 1, 2, 3 and 4 are not the grounds of detention, as contemplated by s. 3 of the Act, but that they only constitute different pieces of evidence by which the authority making the order came to the conclusion that the petitioner was acting in a manner prejudicial to the maintenance of public order, which was the only ground on which the order of detention in question was founded. The High Court was right in its literal construction of the order impugned in this case, which proceeds to recite the four numbered paragraphs, preceded by the introductory clause "as evidenced by the particulars given below." But the case of The State of Bombay v. Atma Ram Sridhar Vaidya [(1951) S.C.R. 167], has laid it down that cl. (5) of Art. 22 of the Constitution, confers two distinct though inter-related rights on the petitioner, namely, (1) the right to be informed of the grounds on which the order of detention has been made, and (2) the right to be enabled, at the earliest opportunity, to make representation against the order. This Court further pointed out in that case, that the grounds which have a rational connection with the objects mentioned in s. 3, have to be supplied. As soon as that is done, the first condition of a valid detention is complied with. The second condition of such a detention is fulfilled only after the detenu has been supplied with such information as will enable him to make a representation. If the information supplied in order to enable a detenu to make a representation, does not contain sufficient particulars, the detenu is entitled to ask for further particulars which will enable him to make a representation. Therefore, if there is an infringement of either of the two rights, and any one of the two conditions precedent to a valid detention, as aforesaid, has not been fulfilled, the detenu has a right to approach this Court for a writ in the nature of habeas corpus. In other words, the grounds for making an order of detention, which have to be communicated to the detenu as soon as practicable, are conclusions of facts, and are not a complete recital of all the relevant facts. Therefore, the grounds, that is to say, those conclusions of facts, must be in existence when the order of detention is made, and those conclusions of facts have to be communicated to the detenu as soon as may be.

This Court, and naturally, the High Courts, have treated the recitals in the orders of detention, with particular reference to the several clauses and sub-clauses of s. 3(1)(a) and (b) of the Act, as stating the object to be achieved in making the order of detention. The order of detention may also contain recitals of facts upon which it is based. If the order of detention also contains the recitals of facts upon which it is founded, no further question arises, but if it does not contain the recitals of facts which form the basis of the conclusions of fact, justifying the order of detention, then, as soon as may be (now, under s. 7, within a maximum period of five days from the date of detention), the person detained has to be informed of those facts which are the basic facts or the reasons on which the order of detention has been made. Section 3 of the Act requires the authority making an order of

detention, to state the fact of its satisfaction that it necessary to make the order of detention of a particular person, with a view to preventing him from acting in a manner prejudicial to one or more of the objects contained in clauses and sub-clauses of s. 3(1)(a) and (b) of the Act. Section 7 requires that the person detained should be communicated the grounds on which the order of detention has been made, so as to afford him the earliest opportunity to make a representation against the order, to the appropriate Government. The statement of facts contemplated by s. 7 would, thus, constitute the grounds, and not the matters contained in one or more of the clauses and sub-clauses under s. 3(1)(a) and (b) of the Act. Section 3 also requires that when an order of detention has been made, the State Government concerned has to be apprised of the order of detention as also of the grounds on which the order of detention has been made, together with such other particulars as have a bearing on the order and the grounds. And finally, after the order has been approved by the State Government, that Government, in its turn, has to report to the Central Government the fact of the detention, together with the grounds on which the order of detention had been made; and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order. Thus, on a consideration of the provisions of ss. 3 and 7 of the Act, it may be observed that the detenu has to be served with a copy of the order passed by the authority contemplated by sub-s. (2) of s. 3, containing, firstly, recitals in terms of one or more of the sub-clauses of cl. (a) and (b) of s. 3(1), which we may call the 'preamble', and secondly, the grounds contemplated by s. 7, namely, the conclusions of fact which have led to the passing of the order of detention, informing the detenu as to why he was being detained. If the grounds do not contain all the particulars necessary for enabling the detenu to make his representation against the order of his detention, he may ask for further particulars of the facts, and the authority which passed the order of detention is expected to furnish all that information, subject, of course, to the provisions of sub-s. (2) of s. 7; that is to say, the person detained shall not be entitled to the disclosure of such facts as the authority making the order, considers against public interest to disclose. Thus, the order of detention to be served upon the person detained would usually consist of the first two parts, namely, the preamble and the grounds, but it may also consist of the third part, namely, the particulars, if and when they are required or found to be necessary. But it has to be noted that the particulars referred to in sub-ss. (3) and (4) of s. 3, would not be identical with the particulars which we have called the third part of the order. The State Government, as also the Central Government, would, naturally, be placed in possession of all the relevant facts and particulars on which the order of detention has been passed. But those particulars may contain such details of facts as may not be communicated, in public interest, to the person detained.

From what has been said above, it is clear that the High Court was in error in so far as it treated what we have called 'the preamble' as the grounds of detention contemplated by s. 7 of the Act. But this error, as will presently appear, has not affected the legality, propriety or correctness of the order passed by the High Court in the habeas corpus proceedings before it. The High Court, as already indicated, after making those observations which we have held to be erroneous, proceeded further to say that there was no ambiguity in the recitals of facts, as the High Court characterised them and which we have called the grounds.

The contention raised before the High Court has been repeated before us, that the grounds contained in para. 4, are vague and indefinite, not enabling the person detained to make his representation. It will appear from the paragraph aforesaid that the petitioner intended to proceed to Delhi on October 9, 1958, with a view to instigating plans against the personal security of the Prime Minister. It is clear that the place, date and purpose of the planned nefarious activity, have all been stated as clearly as could be expected. But it was argued that it was also necessary to state the details of the plan to be hatched in Delhi. There are several answers to this contention. Paragraph 4 has reference

to something which was apprehended but lay in the womb of the future. From the nature of the fact that it was not an event which had already happened but what was apprehended to be in the contemplation of the detenu and has associates, if any, no further details of the plan could possibly be disclosed. As was observed in the decision of this Court in The State of Bombay v. Atma Ram Sridhar Vaidya [(1951) S.C.R. 167] (at pp. 184 and 185), vagueness is a relative term. Its meaning must vary with the facts and circumstances of each case. What may be said to be vague in one case, may not be so in another, and it could not be asserted as a general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation, it cannot be said that it is vague. Further, it cannot be denied that particulars of what has taken place, can be more definitely stated than those of events which are yet in the offing. In the very nature of things, the main object of the Act is to prevent persons from doing something which comes within the purview of any one of the sub-clauses of cl. (a) of s. 3(1) of the Act.

It was next contended that some of the grounds at least are irrelevant. This was not said of the first paragraph of the grounds, set out above. It was said of paragraphs 2, 3 and 4 that they are irrelevant to the main object of the order of detention, namely, the "maintenance of public order". In our opinion, there is no substance in this contention either. All the statements in the four paragraphs of the grounds, which have to be read together as being parts of a connected whole, calling upon persons to "build up strong movement against the implementation of Nehru-Noon Pact", and to "rouse passions by alleging that the Indian Prime Minister had no sympathy for West Bengal", cannot be said to be wholly unconnected with the maintenance of public order. Similarly, denouncing the agreement between the two Prime Ministers and stressing the need of forming a militia with the youths of the country, cannot be said to have no repercussions on the maintenance of public order. And lastly, any instigation against the personal safety of the Prime Minister of India cannot but have a deleterious effect on the maintenance of public order.

It was sought to be argued that any weak link in the chain of facts and circumstances, said to have been the basis of the order of detention, would affect the legality of the whole order. This argument postulates that there are many grounds which are either vague or irrelevant. In this connection, particular reliance was placed on the observations of this Court in Dwarka Dass Bhatia v. The State of Jammu and Kashmir [(1956) S.C.R. 948], to the effect that if some of the reasons on which the order of detention had been based, acre found to be non-existent or irrelevant, the Court ought to quash the order, because it is not in a position to know which of the reasons or the grounds, had operated on the mind of the authorities concerned, when they decided the pass the impugned order. As already pointed out, no such situation arises in this case, because, in our opinion, none of the grounds is either vague or irrelevant. It may also be pointed out that the ground of irrelevance was not urged before the High Court, but even so, we allowed the petitioner's counsel to urge that ground before us, and having heard him on that aspect of the matter, we have no doubt that there is no justification for the contention that any of the matters taken into consideration by the authorities concerned in the matter of the detention of the petitioner, was irrelevant.

For the reasons given above, it must be held that there is no merit in this appeal or in the application under Art 32 of the Constitution. They are, accordingly, dismissed.

Appeal and application dismissed.

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