Biren Dutta and Others

Vs

Chief Commissioner of Tripura and Another

Criminal Appeal Nos. 87 - 91 of 1964

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, J. C. Shah, N. Rajgopala Ayyangar JJ)

23.07.1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

These Criminal Appeals and Writ Petitions have been placed for hearing together in a group because they raise common questions of law.

As is well-known, after the Chinese attacked the northern border of India on the 8th September, 1962, the President issued a Proclamation under Art. 352 of the Constitution on the 26th October, 1962. This proclamation declared that a grave emergency existed which posed a threat to the security of India. On the same day, an Ordinance was promulgated by the president. This Ordinance was subsequently modified by Ordinance No. 6 of 1962 on the 3rd of November, 1962. The President also issued an Order under Art. 359(1) suspending the rights of citizens to move any court for the enforcement of the rights conferred by Articles 21 and 22 during the pendency of the emergency proclamation. On the 26th October, 1962, the Rules framed by the Central Government under the Defence of India Act (hereinafter called 'the Rules') were published. Rule 30 of the Rules as originally framed was subsequently modified on the 6th December, 1962 and Rule 30-A was added. Later, an Act was passed on the 12th December, 1962, and s. 48(1) of this Act provided for the repeal of the earlier Ordinances. Even so, s. 48(2) provided for the continuance of the Rules framed under the Ordinances, so that the relevant Rules framed under the Ordinances have to be taken as Rules framed under the latter Act.

It appears that Mr. Mukerjee who was the Administrator of the Union Territory of Tripura at the relevant time, considered the material placed before him as such Administrator and was satisfied that a group of Communists had been agitating amongst the tribals residing in the area and inciting them against the Government, and he came to the conclusion that their activities were likely to endanger the security of the State. Acting on this view, he directed that 68 persons should be detained under the Rule 30(1)(b) and passed appropriate orders in that behalf. Later, he was satisfied that 45 out of these 68 persons need not be detained any longer; and so, he ordered their release from time to time. That left 23 persons under detention and it is with the cases of these 23 persons that we are concerned in the present group of criminal appeals and writ petitions.

12 out of these 23 persons moved the Judicial Commissioner of Tripura under Art. 226 of the Constitution and prayed that the orders of detention under which they continued to be detained at the time of their petitions were illegal and should be set aside and they should be ordered to be released forthwith. These applications were heard together by the learned Judicial Commissioner and were ultimately dismissed. Against his decision, Criminal Appeals Nos. 87 - 91 of 1964, and

106 and 107 of 1964 have been filed by the detenues, with special leave granted to them by this Court on petitions made by them in that behalf. It appears that the detenues Mohan Chaudhury and Jagabrata Sen Gupta who have joined in Cr. As. Nos. 87-91/1964, have also preferred separate criminal appeals Nos. 106 and 107/1964 individually. That is how this group of appeals is concerned with the cases of 12 detenues who had moved the Judicial Commissioner under Art. 226; and their grievance is that the view taken by the Judicial Commissioner in regard to the points of law raised by them before him, is not correct.

The Writ Petitions deal with cases of 11 remaining detenues and they joined the detenues who have preferred appeals before us by special leave in contending that the continuance of their detention is invalid and that a similar plea raised by the appellants before the Judicial Commissioner should have been upheld by him. That is how the criminal appeals and the writ petitions between them raise common questions of law.

Mr. Garg who appeared for the appellants and the petitioners, as well as the learned Solicitor-General who appeared for the respondent, the Chief Commissioner of Tripura, agreed that it would not be necessary to consider the facts in each individual case for the purpose of deciding the common questions of law raised by them. It would be enough if we refer to the facts in one case, because facts in other cases are exactly similar and there would be no point of distinction on facts as such. We would, therefore, refer to the facts relevant to the case of the detenu Biren Dutta.

Biren Dutta was detained on the 25th December, 1962, and an order issued in that behalf was duly served on him. On the 26th December, 1962, he was transferred to the Hazaribagh Jail. The respondent's case is that on the 15th February, 1963, the case of Biren Dutta was reviewed under R. 30A(8) and it was decided to continue his detention. Subsequently, his case was reviewed on the 3rd July, 1963, 5th September, 1963, and 11th March, 1964, and on each occasion, it was decided to continue his detention.

On the other hand, Biren Dutta's contention before the Judicial Commissioner was that an order of review had not been passed as required by R. 30A(8) and had not been communicated to him. It was urged on his behalf that Rule 30A(8) requires that the decision to continue the detention of a detenu must be reduced to writing and must be communicated to the detenu, and the argument was that since these two conditions prescribed by the relevant Rule had not been complied with, the continuance of the detenu's detention was invalid in law.

The Judicial Commissioner has negatived the contentions thus raised by the detenu. He has found that the decision to continue the detenu's detention reached by the respondent under R. 30A(8) had in fact been reduced to writing, and in support of this contention, he had referred to the fact that the original file containing a record of the decision had been produced on behalf of the respondent before the Judicial Commissioner, but since the respondent's learned Advocate was apparently not prepared to allow the lawyer of the detenu inspection of the said record, the court did not consider the evidence supplied by it. The argument urged by the detenu that the said record may have been subsequently manufactured, was rejected by the Judicial Commissioner. The judicial Commissioner also considered the fact that the affidavit made on behalf of the respondent showed that when the cases of the detenues were considered by him from time to time, he actually ordered the release of some of them. This fact, according to the Judicial Commissioner, showed that the respondent had applied his mind to the cases of all the detenues and since he released some of them, it followed that in regard to the rest he was satisfied that their detention should be continued. The Judicial Commissioner was apparently inclined to take the view that the relevant Rule did not seem clearly

to require that the decision reached by the appropriate authority under R. 30A(8) should be reduced to writing, but he thought it unnecessary to make a definite finding on this issue, because he was satisfied that in the case of Biren Dutta, the decision in question had been reduced to writing. The argument that R. 30A(8) requires that the said decision should be communicated to the detenu was rejected by the learned Judicial Commissioner. It is on these findings that he rejected the petition filed by Biren Dutta and 11 others detenues and held that the continuance of their detention was justified in law.

When these matters were argued before this Court on the 6th May, 1964, an interim order was passed directing that the Chief Secretary to the Tripura Administration should forthwith transmit to this Court the original files in respect of the detenues concerned and that the Minister, or the Secretary or the Administrator who reviewed the cases of the detenues and had arrived at a decision that their detention should be continued, should file an affidavit in this Court on or before the 8th June, 1964, and that the affidavit should state all material facts and should indicate whether the decision arrived at was duly communicated to the detenues or not. Accordingly, the original files have been produced before us and additional affidavits have been filed. The learned Solicitor-General fairly conceded that he would allow Mr. Garg for the appellants an opportunity to inspect the files inasmuch as he was not going to raise any question of privilege in respect of them. It is in the light of the minutes made on these files that the principal points raised before us now fall to be considered.

Mr. Garg contends that the scheme of the Rules clearly shows that the original order of detention passed under R. 30(1)(b), as well as the decision to continue the detention of the detenues reached by the appropriate authority under R. 30A(8) must be recorded in writing and must comply with the provisions of Art. 166 of the Constitution. He also urges that R. 30A(8) further requires that the relevant decision reached by the appropriate authority must be communicated to the detenu. In support of his argument that the relevant decision under R. 30A(8) must comply with Art. 166 and must be communicated to the detenu, Mr. Garg has relied on the decision of this Court in Dattatreya Moreshwar Pangarkar v. The State of Bombay [[1952] S.C.R. 612], and Bachhittar Singh v. State of Punjab [[1962] Supp. 3 S.C.R. 713]. He has also invited our attention to the observations made by Raghubar Dayal J. in S. Partap v. State of Punjab [A.I.R. 1964 S.C. 72].

The learned Solicitor-General has conceded that the order directing the detention of a citizen under R. 30(1)(b), as well as the order incorporating the decision to continue the detention under R. 30A(8) must be in writing. He, however, challenges the correctness of Mr. Garg's contention that these orders must comply with Art. 166, and he disputes his case that the decision reached under R. 30A(8) must be communicated to the detenu. In support of his case he has referred us to the decision of this Court in Mohammad Afzal Khan v. State of Jammu and Kashmir [A.I.R. 1957 S.C. 173], as well as the decision of the Bombay High Court in Pralhad Krishna Kurne v. The State of Bombay [I.L.R. 1952 Bom. 134] and that of the Allahabad High Court in Nandan Singh Bhist v. State of U.P. [A.I.R. 1964 All. 327].

We do not think it necessary to consider the question as to whether the orders passed under R. 30(1)(b) and the record of the decision reached under R. 30A(8) should comply with Art. 166 of the Constitution or not. It also appears to us to be unnecessary to decide in the present group of cases whether the decision recorded under R. 30A(8) should be communicated to the detenu. We are satisfied that the decision to continue the detention of the detenues which, it is urged on behalf of the respondent, was reached by him under R. 30A(8), has not been recorded in writing as required by the said Rule; and there is no other evidence on record to show that such a decision had then

been reached and reduced to writing. It will be recalled that in the present proceedings, it is common ground between the parties that there has to be an order in writing indicating the decision of the appropriate authority reached by him after reviewing the case of the detenu that the continuance of his detention should be ordered. Rule 30A(8) provides that every detention order made by an officer empowered by the Administrator and confirmed by him under clause (b) of the sub-rule (6) and every detention order made by the Administrator himself shall be reviewed at intervals of not more than six months by the Administrator who shall decide upon such review whether the order should be continued or cancelled. The question which we have to decide is whether it is shown by the minutes made on the file produced before us by the respondent that he did decide that it was necessary to continue the detention of the detenues before us. The minutes made on the file are no doubt a written record of his decision, and so, the requirement that whatever is decided under R. 30A(8) should be reduced to writing is satisfied; but the question is do these minutes show that the cases of the detenues before us were considered and a decision to continue their detention was reached by the respondent on the relevant occasion, and that presents a very narrow problem for our decision in relation to the construction of the said minutes.

The first occasion on which the respondent claims to have reviewed the cases of the detenues before us was on the 15th February, 1963. On that date, he made the following order :-

> "On review of the detention order in respect of all detenus CC decided to cancel detention orders in respect of detenues at S. No. 1, 3, 4, 5, 6, 7, 8, 9, 12 and 13."

It is urged by the learned Solicitor-General that this order shows that the appropriate authority considered the cases of all the detenues and decided to cancel the detention of some of them, and that, he suggests, should be construed to mean that he decided to continue the detention of detenues other than those whose release he ordered. There is no doubt that this order makes a reference to the review of all detenues and, prima facie, it would be open to the Solicitor-General to contend that this part of the order shows that the cases of all the 68 detenues must have been considered by the appropriate authority. In this connection, we would like to emphasise the fact that in exercising its power under R. 30A(8), the appropriate authority should record its decision clearly and unambiguously. After all, the liberty of the citizen is in question and if the detention of the detenue is intended to be continued as a result of the decision reached by the appropriate authority, it should say so in clear and unambiguous terms. But assuming that an order passed by the appropriate authority under R. 30A(8) can in a proper case be construed to mean his implied decision to continue the detention of some detenues, while releasing some others, we find it difficult to hold that such an implied decision can be inferred from the present order. It is relevant to remember that this order was passed on the 15th February, 1963, and the six months' period within which review had to be made under R. 30A(8) would have expired on the 25th June, 1963. It is quite likely that even before the six months' period expired, the authority considered the matter and came to the conclusion that any further detention of the detenues specified in the order was not justified, and so, even before the six months' period expired, he directed that they should be released. That undoubtedly shows that the authority was considering the question very carefully and as soon as he felt satisfied that further detention of the said detenues would be unnecessary, he ordered their release forthwith; but this very consideration suggests that he may have considered the cases of only such detenues as should be released forthwith. Besides, there is nothing to show that after the 15th February, 1963, and before the 25th June, 1963, he considered the matter in respect of the detenues before us and held that the continuance of their detention was justified after the expiration of six months. It is necessary to emphasise that the decision recorded under R. 30A(8) is in the nature of an independent decision which authorises the further detention of the detenu for a period of six

months. In other words, the initial order of detention is valid for six months and the detention of the detenu thereafter can be justified only if a decision is recorded under R. 30A(8). That being the nature of the decision which is required to be recorded under R. 30A(8), we are unable to hold that the memorandum in question can be reasonably said to include a decision that the continuance of the detention of the detenues before us was thought to be necessary by the appropriate authority after the expiry of the period of six months.

It is true that in the additional affidavit filed by the respondent it has been stated as a submission by him that "as a result of the said review (15/2/63) the detention of Biren Dutta as well as others whose detention orders were not cancelled, continued." This undoubtedly is a matter of argument; it being the respondent's contention that since the order detaining some detenues was cancelled, logically it follows that the detention of the others was ordered to continue. But even assuming that the respondent had stated in his additional affidavit clearly and unambiguously that he had decided on the 15th February, 1963, that the detention of the detenues before us should be continued, we would not have attached much significance to such a statement, because what we have to consider is the order passed on the 15th February, 1963, and not what the authority making the order thought it meant or intended it to mean; and so, it comes back to the question of the construction of the order itself. We have carefully considered the arguments urged before us by the Solicitor-General, but we are unable to hold that this order can be said to satisfy the requirements of R. 30A(8) at all. We are satisfied that this order cannot be construed to contain a written record of the decision of the respondent that the detention of the detenues before us should be continued after the expiry of six months from the date of the original order of detention.

Then as to the next order passed on the 3rd July, 1963, the position is still worse. It appears that on the 15th May, 1963, the Superintendent of Police, Tripura recommended that some of the detenues should be released, because the thought there was no longer any justification for their continued detention. This matter was discussed between the Superintendent of Police and the Chief Secretary on the 6th June, 1963, and eventually as a result of the conference held between the Chief Minister and the Chief Commissioner an order was passed on the 3rd July, 1963. This order shows that the cases of the persons whose release had been recommended by the Superintendent of Police were considered. These detenues were 25 in number. During the course of the discussion between the Chief Minister and the Chief Commissioner, the Chief Minister appears to have suggested that instead of releasing all the aforesaid 25 detenues together it would be better if they were released in batches, but ultimately, the order passed by the Chief Minister which was assented to by the Chief Commissioner was that all of them may be released at the same time on the 6th July, 1963. In other words, reading the letter written by the Superintendent of Police to the Chief Commissioner on the 15th May, 1963, and the record of the discussion that took place between the Chief Secretary, the Chief Minister and the Chief Commissioner on the 3rd July, 1963, it is clear that the only cases which the authorities considered were the cases of 25 detenues whose release had been recommended by the Superintendent of Police. It is common ground that the detenues before us were not included in the said list of 25 detenues, and so, there is no scope for suggesting that at this time the cases of the detenues other that those who were released were concerned. That being so, we must hold that like the earlier order passed on the 15th February, 1963, the order passed on the 3rd July, 1963, is also of no assistance to the respondent, because neither order can be reasonably construed as containing a decision of the appropriate authority reached under R. 30A(8) to continue the detention of the detenues before us. This conclusion necessarily means that the requirement of R. 30A(8) has not been complied with and that inevitably makes the continuance of the detention of the detenues before invalid in law. The fact that those cases were reviewed subsequently on the 25th September, 1963 and 11th March, 1964, and the decision of the authority was in fact communicated

to them, would not validate the illegal continuance of the detention of the detenues after six months had expired from the date of their original detention.

We have already indicated that we do no propose to consider in these proceedings the two other points of law urged by Mr. Garg; but before we part with these matters, we would like to emphasise that even assuming that the decision recorded by the appropriate authority under R. 30A(8) is not, as a matter of law, required to be communicated to the detenu, it is desirable and it would be fair and just that such a decision should in every case be communicated to the detenu. If the appropriate authority considers the question about the continuance of the detention of a particular detenu and decides that such continuance is justified, we see no justification for failing to communicate the said decision to the detenu concerned. If the requirement as to such communication were held to be necessary as a matter of law, non-communication would render the continuance of the detention invalid; but that is a matter which we are not deciding in these cases. We are only emphasising the fact that it would be fair that such a decision should be communicated to the detenu.

In the result, the appeals and writ petitions are allowed and the detenues concerned ordered to be set at liberty at once.

Appeals and Writ Petitions allowed.

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