

Jagannath Misra

Vs

State of Orissa

Writ Petition No. 97 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, V. Ramaswami - I, R. Satyanarayan Raju JJ)

17.12.1965

JUDGMENT

WANCHOO, J. -

This petition for writ of habeas corpus under the Art. 32 of the Constitution was heard by us on December 7, 1965. We then directed the release of the petitioner and indicated that reasons will follow later. We proceed to do so now.

The petitioner was detained by an order issued under r. 30 (1)(b) of the Defence of India Rules (hereinafter referred to as the Rules) by the Government of Orissa on December 29, 1964. He raised number of grounds challenging his detention. It is unnecessary to refer to all the grounds raised by the petitioner. It is enough to say that one of the grounds raised by him was that the order of the detention passed by the State Government was not based upon the satisfaction of the Government. The order was in these terms :-

"Order No. 8583/C, Bhubaneswar, the 29th December, 1964.

"WHEREAS the State Government is satisfied that with a view to preventing Shri Jagannath Misra, son of Biswanath Misra, vill. Bhandarisahi, P. S. Parlakemedi, District Ganjam, from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India or the efficient conduct of military operations, it is necessary so to do, the Governor of Orissa in exercise of the powers conferred by rule 30 (1)(b) of the Defence of India Rules, 1962, is pleased to direct that the said Shri Jagannath Misra shall be detained until further orders.

By order of the Governor,

Sd. Secretary to Government".

It will be noticed that the order mentions six grounds on the basis of which the petitioner was ordered to be detained, namely, acting in any manner prejudicial to (i) the defence of India and civil defence, (ii) the public safety, (iii) the maintenance of public order, (iv) India's relations with foreign powers, (v) the maintenance of peaceful conditions in any part of India, and (vi) the efficient conduct of military operations. As the petitioner had raised the contention that the order

had not been passed on the satisfaction of the State Government we ordered the Minister concerned to file an affidavit in this behalf. Consequently, the Home Minister of the Government of Orissa who deals with matters of detention, has filed an affidavit to show that the order in question was passed after the State Government was satisfied of necessity thereof.

It is stated in this affidavit that the petitioner was ordered to be detained on December 29, 1964, by the order in question and was actually detained on December 30, 1964. The affidavit then goes on to say that after the outbreak of hostilities between China and India and the declaration of emergency by the President a close watch was set on the movements and activities of the persons who either individually or as a part of an organisation were acting or were likely to act in a manner prejudicial to the safety of India and maintenance of the public order, and in this conduction particular attention was paid to the activities of the members of that section of the Communist Party which came to be known as the pro-Peking faction of the Party. The petitioner was a member of the pro-Peking faction of the Party. The Petitioner was a member of the Pro-Peking faction and was under close and constant watch. From the reports received regarding the activities of the petitioner the Home Minister stated in the affidavit that he was personally satisfied that it was necessary to detain the petitioner under the Rules "with a view to prevent him from acting in a manner prejudicial to the safety of India and maintenance of public order, etc." The affidavit goes on to say that the decision to detain the petitioner was made on the personal satisfaction of the Minister and that the satisfaction was based on several reports placed before the Minister with respect to the activities of the petitioner.

The principle contention on behalf of the petitioner in relation to and against the affidavit of the Home Minister is that it is clear from a perusal of the affidavit that the Minister did not apply his mind in the matter of the detention of the petitioner. It is urged that the order in question contains six grounds of the detention. These six grounds practically cover all the grounds specified in s. 3 (2)(15) of the Defence of India Act (hereinafter referred to as the Act) except two, namely - (i) the security of the State and (ii) of being of a hostile origin. It is therefore urged that the order was made copying out practically all the grounds specified in s. 3 (2)(15) of the Act without the application of the mind of the Minister whether those grounds were made out the in this case. Reliance in this connection is placed on the affidavit of the Home Minister where he has stated that he was personally satisfied that it was necessary to detain the petitioner in order to prevent him from the acting in a manner prejudicial to the safety of India and maintenance of public order, etc. It is urged that the affidavit shows that the Minister did not the really apply his mind to the question of the detention of the petitioner and grounds for doing so and acted in a casual manner in approving the detention of the petitioner. It is urged that while the grounds specified in the order are six in number, the Minister when speaking of his satisfaction has mentioned only two, namely, safety of India (which may be assumed to be the same as the public safety) and maintenance of the public sector.

There is in our opinion force in this contention on behalf of the petitioner. The order of detention under r. 30 (1)(b) of the Rules deprives a citizen of this country of his personal liberty and in view of the suspension of some of the fundamental rights by the President on account of the emergency, a citizen has very limited opportunity of challenging an order or detention properly passed under the Rules. It seems to us therefore necessary where detention is made under the Rules that the authority ordering detention should act with a full sense of responsibility keeping in mind on the one hand the interests of the country in the present emergency and on the other hand the importance of the liberty the citizen in a democratic society. That this is so is also emphasised by s. 44 of the Act which lays down that "any authority or person acting in pursuance of this Act shall interfere with the ordinary

avocations of the life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and Civil defence." In view of this specific provision in the Act it is incumbent upon the authority which is passing an order under r. 30(1)(b) of the Rules taking away the liberty of a citizen of this country that it should act with due care and caution and see that the person detained is so detained on grounds which justify the detention in the interest of the country. Further the proceedings in the matter of detention and the order of detention should show that it had acted with all due care and caution and with the sense of responsibility necessary when a citizen is deprived of his liberty without trial. We have therefore to see whether in the present case the authority concerned has acted in this manner or not. If it has not so acted and if it appears that it did not apply its mind properly before making the order of detention the order in question would not be an order under the Rules and the person detained would be entitled to release.

Now we have pointed out that the order of detention in this case refers to six out of eight possible grounds on which a person can be detained under s. 3(2)(15). Of these eight grounds under s. 3(2)(15) one refers to foreigners i.e., of being of hostile origin. Therefore in the present case the order really mentions six out of seven possible grounds which can apply to an Indian whose detention is ordered under s. 3(2)(15). We do not say that it is not possible to detain a citizen on six out of the seven possible grounds under s. 3(2)(15); but the if that is done it is necessary that the authority detaining a citizen should be satisfied about each one of the grounds that the detention is necessary thereon. But if it appears that though the order of detention mentions a large number of grounds the authority concerned did not apply its mind to all those grounds before passing the order, there can in our opinion be no doubt in such a case that the order was passed without applying the mind of the authority concerned to the real necessity of detention. In the present case as we have already pointed out six grounds out of the possible seven grounds on which a citizen can be detained have been mentioned in the order; but in the affidavit of the Minister we find mention of only two of those grounds, namely, safety of India (which may be assumed to be the same as public safety) and the maintenance of public order. In these circumstances there can be little doubt that the authority concerned did not apply its mind properly before the order in question was passed in the present case. Such a discrepancy between the grounds mentioned in the order and the grounds stated in the affidavit of the authority concerned can only show an amount of casualness in passing the order of detention against the provisions of s. 44 of the Act. This casualness also shows that the mind of the authority concerned was really not applied to the question of detention of the petitioner in the present case. In this view of the matter we are of opinion that the petitioner is entitled to release as the order by which he was detained is no order under the Rules for it was passed without the application of the mind of the authority concerned.

There is another aspect of the order which leads to the same conclusion and unmistakably shows casualness in the making of the order. Where a number of grounds are the basis of a detention order, we would expect the various grounds to be joined by the conjunctive "and" and the use of the disjunctive "or" in such a case makes no sense. In the present order however we find that the disjunctive "or" has been used, showing that the order is more or less a copy of s. 3(2)(15) without any application of the mind of the authority concerned to the grounds which apply in the present case.

Learned counsel for the State however relies on the word "etc." appearing in the affidavit. His contention is that as the order of detention had already been mentioned in an earlier part of the affidavit of the Home Minister, the word "etc." used in the later part of the affidavit means that though the affidavit was only mentioning two grounds, namely, the safety of India and the

maintenance of public order, it really referred to all the grounds mentioned in the order. We are not prepared to accept this. If anything, the use of the words "etc." in the affidavit is another example of casualness.

It was also urged in behalf of the State that the order in question was not actually written out by the Minister and that after the satisfaction of the Minister such orders are prepared by his subordinates in the Secretariat and that therefore the Minister was not responsible for the discrepancy between the order and the affidavit. We are not prepared to accept this explanation, for it is the duty of the Minister to see that the order is issued in accordance with his satisfaction and carries out his directions. Though the Minister may not write out the order himself he is as much responsible for it as if he had done so himself, for no order of detention can be passed without the satisfaction of the authority empowered under the Act and the Rules. The authority cannot take refuge in saying that it was really satisfied about, say, one ground but the person who later on wrote out the order of detention added many more grounds which the authority never had in mind. It is the duty of the authority to see that the order of detention is in accordance with what the authority was satisfied about. If it is not so, the inference of casualness is strengthened and the Court would be justified in coming to the conclusion that the order was passed without the application of the mind of the authority concerned.

Petition allowed.

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