

Rameshwar Lal Patwari

Vs

State of Bihar

Criminal Appeal No. 183 of 1967

(M. Hidayatullah, C. A. Vidialingam JJ)

01.12.1967

JUDGMENT

HIDAYATULLAH, J. -

The appellant (Rameshwar Lal Patwari) applied under Art. 226 of the Constitution and s. 491 of the Code of Criminal Procedure for a writ or order in the nature of habeas corpus for his release from detention in Bhagalpur Central Jail in pursuance of an order of detention passed by the Governor of Bihar on July 4, 1967 under s. 3(1)(a)(iii) of the Preventive Detention Act, 1950. He was arrested under the order on July 11, 1967 and was served on July 13, 1967 with a copy of the grounds on which his detention was based to enable him to make a representation. He made a representation but his release was not recommended. His application in the High Court was also dismissed. He now appeals by special leave.

The order of the Governor recites that it is necessary to make an order for his detention to prevent him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The grounds which were furnished to him were as follows :

- (1) He is a prominent businessman of Dumka and with the association of Sarvashri Mulchand Choudhury, Kanhaiya Choudhury, Fulchand Modi, Pir Mohammad (Bengaria P.S.) Shikaripara and others he indulges in black-marketing of foodgrains. He has four trucks, one jeep and a car which have been registered in the names of his relatives Truck No. BRL 1331 which is registered in the name of his brother-in-law (sala). Sri Harichandra Agarwala was caught on 29th December, 1966 at Ranibahal near Mashanjor while carrying 95 bags of peddy for illegal trade. In this connection a case under the Essential Commodities Act has been instituted. He is on bail in this case.
- (2) His trucks always take to wicked routes to Saithia (West Bengal) and he himself pilots them.
- (3) A businessman of Barahiya disclosed that he (Rameshwar Lal Patwari) visited Barahaiya on several occasions and purchased gram, gramdal under various names and smuggled them to West Bengal.
- (4) On the night of 2-2-66, Sri R. S. Singh, 1st Class Magistrate along with Sub-Divisional Officer Sadar, other Magistrate and police officers, raided the house of Sri Rameshwar Lal Patwari and found all kinds of foodgrains in huge quantity. His stock

register was maintained in irregular way. He could not produce the sale register and took the plea that it was produced before the Income Tax Officer. It was found that he has been dealing in foodgrains without any licence. A case has been instituted in this connection in which he is on bail.

(5) "Shri Babu Ram Bikaneria, owner of a Rice Mill at Saitha District Birbhum (West Bengal) visited Dumka on 26-11-66 and told him (Sri Rameshwar Lal Patwari) promised to supply gram and gramdal. He (Sri Rameshwar Lal Patwari) promised to supply gram and gramdal. On 7/8-12-66 Sri Mulchand Choudhury of Rameshwar, who is his agent sent his truck No. BRJ 2029 loaded with gram and gramdal to Saitha through Mahesh Kola Check post. His truck No. BRL 1366 and van BRL 2005 were found at Rameshwar on 7-12-1966 wherefrom he smuggles foodgrains to West Bengal. He purchases gram and gramdal through Gopal Mandal of Lakhisarai (District Monghyr) and smuggles them to West Bengal.

In the circumstances, the State Government are satisfied that if Shree Rameshwar Lal Patwari is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of supplies and services essential to the community. For prevention of such activities, the State Government consider his detention necessary.

Shri Rameshwar Lal Patwari is informed that he may make a representation in writing against the order under which he is detained. His representation, if any, may be addressed to the Under Secretary to Government, Political (Special) Department, Bihar, Patna and forwarded through the Superintendent of the Jail as soon as possible.

By order of the Governor of Bihar."

These grounds were challenged by the appellant in the High Court. According to him some of them did not exist in fact and others were vague or irrelevant. The High Court scrutinised them and came to the conclusion that his complaint had no substance. In this appeal he urges the same contentions and submits that the High Court was in error in its conclusion.

Before we consider these grounds in the light of arguments before us, we may say a few words about the Preventive Detention Act and the extent to which the exercise of powers under that Act can be questioned before courts. Article 22(1) and (2) of the Constitution lay down that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice and further that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and no person shall be detained beyond the period (excluding time necessary for the journey to the court of the Magistrate) without the authority of the Magistrate. To this there is an exception in sub-cl. (b) of cl. (3) of the article. It says that these provisions shall not apply to any person who is arrested or detained under any law providing for preventive detention. There are, however, other safeguards. Clause (4) of the article provides that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board had reported before the expiration of that period of three months that there is in its opinion sufficient cause for such detention. There are other provisions prescribing other checks with which we are not presently concerned.

In pursuance of this power Parliament has enacted the Preventive Detention Act, 1950. The

Preventive Detention Act by its third section enables the Central Government or the State Government, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, to make an order that such person be detained. There are other grounds on which the power to detain may also be exercised but they do not apply here. This power is also conferred on some officers named in the section. When an officer makes an order he has to report to the State Government together with the grounds on which the order is based and in the like manner the State Government has to report to the Central Government. Section 11 then provides that where an Advisory Board reports sufficient cause for the detention of a person, Government may confirm the detention and continue it for such period as it thinks fit. If the Advisory Board reports that there is no sufficient cause Government must revoke the order and release the detenu. Section 11-A now prescribes the maximum period of detention.

It will thus be seen that the report of the Advisory Board plays an important part. In the present case the report of the Advisory Board has been produced. It reads :

"In our opinion, the grounds of detention served on the detenu also are fairly particular and generally well founded. It cannot, therefore, be said that there is no material for his detention in the way in which he had been indulging in the transport of foodgrains from Bihar to West Bengal frequently. It cannot be held that the order of detention passed upon him is unreasonable. The order in his case also cannot be disturbed.

Sd/- S. C. Mishra 25-8-67. Sd/- R. K. Choudhury. Sd/- U. N. Sinha.###

The appellant contends that the Advisory Board has failed to notice also that the grounds furnished to him were vague and irrelevant and some of them did not exist in law.

Now the law on the subject of Preventive Detention has been stated over and over again and it is not necessary to refer to all that has been decided by this Court on numerous occasions. We shall refer to what concerns this case. The formation of the opinion about detention rests with the Government or the officer authorised. Their satisfaction is all that the law speaks of and the courts are not constituted an appellate authority. Thus the sufficiency of the grounds cannot be agitated before the court. However, the detention of a person without a trial, merely on the subjective satisfaction of an authority however high, is a serious matter. It must require to closest scrutiny of the material on which the decision is formed, leaving no room for errors or at least avoidable errors. The very reason that the courts do not consider the reasonableness of the opinion formed or the sufficiency of the material on which it is based, indicates the need for the greatest circumspection on the part of those who wield this power over others. Since the detenu is not placed before a Magistrate and has only a right of being supplied the grounds of detention with a view to his making a representation to the Advisory Board, the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention. Similarly, if a vital ground is shown to be non-existing so that it could not have and ought not to have played a part in the material for consideration, the court may attach some importance to this fact. Thus it was in *Shibban Lal Saksena v. U.P.* [[1954] S.C.R. 418] that when Government itself confirmed the order on one ground rejecting the other, the order was held unsustainable. This Court applied the case of the Federal Court in *Keshav Talpade v. The King Emperor* [[1943] F.C.R. 88] and held that the detention on the ground which survived could not be allowed to stand. The following observations may be quoted :

".....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 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 case is strongly relied upon by Mr. Setalvad for reasons which will soon appear. The other side relies upon observations in *Bhim Sen v. State of Punjab* [[1952] S.C.R. 19] where blackmarketing was considered a sufficient ground for detention. No doubt blackmarketing has at its base a shortening of supplies because blackmarket flourishes best when the availability of commodities is rendered difficult. It has a definite tendency to disrupt supplies when scarcity exists or scarcity is created artificially by hoarding to attain illegitimate profits. Indulging in blackmarketing is conduct which is prejudicial to the maintenance of supplies. It is hardly necessary to read supplies conjunctively with services as was contended although cases may exist where supplies and services may both be affected. The word 'and' is not used conjunctively but disjunctively. If sweepers strike, no question of disrupting supplies arises but serviced essential to the life of the community will certainly be disrupted.

Looked at from this angle, can we say that the detenu was supplied grounds which were not vague or indefinite or irrelevant or non-existing ? The grounds are five in number. Putting aside the first and fifth grounds for the time, we may refer to the second, third and fourth grounds first. The second ground says that "his trucks always take to wicked routes to Saithia (West Bengal) and he himself pilots them." This ground is extremely vague. It does not mention a single instance of a truck taking a particular route so that the detenu could prove to the satisfaction of the Advisory Board that the statement was false. In *Bhim Sen's* case the conduct of the black-marketer was shown in an appendix. Here no particulars are furnished and beyond denying the allegation, the detenu cannot make effective representation. The details could not be such as were required to be concealed in the public interest under s. 7(2) of the Act. The third ground that "a businessman of Barahiya disclosed that he (Rameshwarlal Patwari) visited Barahiya on several occasions and purchased gram, gramdal under various names and smuggled them to West Bengal" is equally vague. Learned counsel for the State admitted that some details were necessary to give the detenu an opportunity. It is obvious that without the names of shops, dates of purchase, etc. it is next to impossible to controvert such an allegation. The fourth ground speaks of a pending case in which the appellant is said to be on bail. The grounds were furnished in July 1967. The appellant was tried for the offence and acquitted as far back as February 1967. This ground discloses carelessness which is extremely disturbing. That the detaining authority does not know that the appellant was tried and acquitted months before, and considers the pendency of the case against him as one of the grounds of detention shows that due care and attention is not being paid to such serious matters as detention without trial. If the appellant was tried and acquitted, Government was required to study the judgment of acquittal, to discover whether all these allegations had any basis in fact or not. One can understand the use of the case if the acquittal was technical but not when the case was held to be false. In any event, even if there was no need to consider the result of the case the case could not be referred to as a pending case.

What is still more disquieting is the attempt to avoid admitting frankly that there has been a mistake in including this ground. In the return this is what is said :

"That the facts stated in paragraph 4 of the ground of detention are not non est. Those facts stated in paragraph 4 even existed after acquittal. In regard to the facts stated in paragraph 4 the prosecution failed to prove the prosecution case and, therefore, he was acquitted. The detenu had full knowledge of the facts that he was acquitted by the Court in regard to the facts stated in paragraph 4 of the grounds of detention and, therefore, he was not handicapped in making a representation to the Advisory Board."

This means that anything wrong or even false may be stated in the grounds leaving the detenu to deny it and prove his version. The attempt to cover up the mistake is as futile as it is disingenuous.

This leaves over the first and fifth grounds. The first charges the appellant with blackmarketing of foodgrains in conjunction with certain named persons. No facts are mentioned and this part of the ground is equally vague. No incident is cited except one. The ground goes on to say that his trucks, jeep and car are registered in the names of his relatives. One such truck is mentioned, namely, truck No. BRL 1331. It is said to be registered in the name of his brother-in-law and it is further stated that it was caught on December 29, 1966 at Ranibahal (near Mashanjor) while carrying 95 bags of paddy for 'illegal trade' and that in this connection a case under the Essential Commodities Act has been instituted against 'him'. It is not clear who is meant the appellant or his brother-in-law. In a notice from the District Supply Officer, Dumka it was stated :

"It was learnt from your driver that on 29-11-66 (sic) at 3.50 a.m., ninety five bags of paddy (190 mds.) was coming from Ranibahal to Dumka in your truck BRL 1331 belonged to you..."

The appellant has denied that the paddy belonged to him. He pointed out that in the notice it was admitted that the paddy was being taken to Dumka in Bihar, while in the grounds it was stated that it was on its way to West Bengal and that carrying of goods from Ranibahal to Dumka (both in Bihar) was no offence. In his reply to the District Supply Officer the appellant had stated :

"1. I am a retail dealer in food-grains holding foodgrain Licence No. 204 of 1966.

2. The truck bearing No. BRL 1331 does not belong to me.

3. The said 95 bags of paddy loaded on the said truck No. BRL 1331 does not belong to me. The fact is that the said 95 bags of paddy belong to Shri Prahlad Rai Giluka of village Banskuli, P. S. Ranishwar who is a cultivator which he had agreed to sell to me on condition that the delivery of the said paddy will be made to me at Dumka.

I, therefore, request that the cause shown above be accepted and the proceedings, if any, may kindly be dropped."

It appears that Prahlad Rai Giluka of Mouza Banskuli P. S. Ranishwar confirmed this before the District Supply Officer by stating as follows :-

"1. That your petitioner is a cultivator and owns more than 100 bighas of Dhani lands at Mouza Murgani Ranibahal and Kumirdaha and other villages which are contiguous

villages.

#2..... ##

3. That the petitioner's son Prabhudayal Giluka is to start a business and as such there was necessary (sic) of fund and the petitioner proposed to sell 95 bags of paddy to one Rameshwar Lal Patwari of Dumka from his Murgani and Ranibahal land.

4. That it was agreed that the paddy will be delivered at Dumka where the price will be paid.

5. That the petitioner accordingly engaged the truck of one Haris Chandar Agarwala, his BRL 1331 and asked his Munshi Mahadev Pal to load 95 bags of paddy in the truck.

#6..... ##

7. That when the paddy in question was in the process of loading at Ranibahal the paddy was seized by the District Supply Officer on 29-12-66.

#8.....9..... ##

10. That the paddy in question is not involved in any offence the same should be released forthwith."

When these documents came to be filed, the return of the State Government made the following reply and avoided the issue :

"4.... It appears that the notice was issued on the statement of the driver of the truck who stated that he was bringing 95 bags of paddy from Ranibahal to Dumka in the truck belonging to the appellant. The statement of the driver clearly shows that the truck belonged to the appellant. The driver did not tell any thing about the facts stated in annexure 'D' to special leave paper book (Page 49 to 51)."

This shows that there was no inquiry at all. The alleged statement of the driver was accepted and it was assumed that the paddy was being taken to West Bengal. At least the explanation of the persons concerned could have been obtained. This is clearly a case of jumping to a conclusion which is being lamely justified, when it is questioned with written record. In these circumstances there is much reason to think that this ground probably did not exist although we are not in a position to say that it is non-existing.

The fifth ground mentions that one Babu Ram Bikanaria wanted gram and gramdal at his Rice Mill at Saitha District Birbhum (West Bengal) and visiting Dumka contacted the appellant. The latter promised to supply gram and gramdal. On 7/8 December 1966 one Mulchand Choudhury sent truck No. BRJ 2029 loaded with gram and gramdal to Saitha through Mahesh Kola checkpost. Further Mulchand's truck No. BRL 1366 and van BRL 2005 were found at Raneshwar on December 7, 1966 from where 'he' smuggles foodgrains to West Bengal. 'He' purchases gram and gramdal through Gopal Mandal of Lakhisarai (Dist. Monghyr) and smuggles them to west Bengal. It is again not clear who this 'he' is. The appellant has denied that he does business in gram and gramdal and has any connection with Gopal Mandal of Lakhisarai or knows him. He has denied all contact with such

persons. No reply to this was given in the return filed in this Court.

It appears that there may be suspicion that the appellant may be connected with some blackmarketing. We are not concerned with the sufficiency or the reasonableness of the grounds. In this case at least two grounds are vague, one ground is found to be false and of the remaining in one there is no explanation and in the other there is a lame excuse that the driver of the truck did not furnish the full information. The case is thus covered by our rulings that where some grounds are found to be non-existing or are cancelled or given up, the detention cannot be justified. It is further covered by our decisions that if the grounds are not sufficiently precise and do not furnish details for the purpose of making effective representation the detention can be questioned. This case displays both these defects and it is a matter of great regret that powers of detention without a trial, which should be exercised with the greatest care and attention have been exercised in this case with such disregard for truth and accuracy. We accordingly allow the appeal and hold the detention of the appellant to be illegal and order his release.

Appeal allowed.

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