

Motilal Jain

Vs

State of Bihar & Others

Criminal Appeal No. 34 of 1968

(R. S. Bachawat, C. A. Vaidialingam, S. M. Sikri, K. S. Hegde, V. Bhargava, J. C. Shah, G. K. Mitter JJ)

27.03.1968

JUDGMENT

HEGDE, J.-

In this appeal by special leave, the question for decision is whether the appellant's detention under sub-cl. (iii) of cl. (a) of sub-s. (1) of s. 3 and of s. 4 of the Preventive Detention Act, 1950, (IV of 1950) - to be hereinafter referred to as "the Act", as per order of the Governor of Bihar No. A-DE-Pur-1501/67-6357/G dated September 25, 1967, is unlawful.

The appellant is a partner in the grocery shop by name "Shanti Stores" in Gulab Bagh where sugar, maida, soap, match boxes, kerosene oil and other articles are sold. He is said to have indulged in black-marketing in essential commodities. As per the order of September 27, 1967 grounds in support of the appellant's detention were supplied. They read as follows :-

- "(a) On 10-3-1967 he sold match boxes and soap to a shopkeeper of Purnea Court compound at a price higher than that fixed for these commodities and did not grant any receipt for the same.
- (b) On 15-3-1967 it transpired from one Satyanarain Prasad a shopkeeper of Purnea Bus stand, that he (Shri Motilal Jain) sold him match boxes at Rs. 11/- per gross which was Rs. 2/- higher than the price fixed. This was also substantiated by Nagendra Ramoli, a shopkeeper of Purnea Court compound who had also been supplied match boxes at the higher rate by him (Shri Motilal Jain).
- (c) On 15-4-1967 it transpired from Chandradeb Sao, Shankerlal Modi, and Sitaram Sah, all of Gulab Bagh that they got supplies of sugar and maida from him in excess of the quantity allotted to them on ration cards at a price higher than those fixed by the Government.
- (d) On 7-5-1967 he sold kerosene oil to one Kishun Bhagat of Gulab Bagh at Rs. 12/- per tin (excluding cost of tin) which was higher than the price fixed by the Government.
- (e) On 4-7-1967 he sold sugar at Rs. 2/- per kg. to Shyamsunder Poddar and Jangli Singh of Dhamdaha. The price charged by him was much higher than the rate fixed by the Government in this regard.

(f) On 7-8-1967 it was learnt from Nathu Sah, Chanderdeb Sah, Kusumlal Sah, and Ram Rattan Sah, all of Gulab Bagh, that he (Shri Motilal Jain) indulged in black-marketing of sugar, maida, kerosene oil and other controlled commodities, to deal in which he had obtained licence. It was further learnt from Moti Sah a worker of Gulab Bagh Navayubak Sangh that he (Shri Motilal Jain) obtained supplies of match boxes, vegetable oil from West Bengal to sell them in black market.

Though the appellant made representation against his order of detention to the Advisory Board, the said Board did not recommend his case for release. Thereafter he approached the High Court of Patna in Cr. W.J.C. No. 92 of 1966 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 directing his release from detention. A Bench of that High Court consisting of the learned Chief Justice and B. N. Jha J., refused to entertain that petition with these observations :

"We have also gone through the grounds stated in annexure - 'B' and find that specific instances with full particulars have been given. On the basis of those instances the detaining authority has held that the petitioner has been indulging in black-marketing of essential commodities. Mr. Balbhadra Prasad Singh challenged the correctness of the facts stated in the grounds and also filed affidavits by certain persons and urged that those allegations of facts should not be believed. This Court in its writ jurisdiction cannot sit in second appeal and examine whether specific instances of black marketing were established by satisfactory evidence.

"For these reasons, we are not satisfied that this is a fit case for admission. The application is accordingly dismissed."

It is against that order the appellant has come up in appeal to this Court.

Mr. Chagla, learned counsel for the appellant, contended that each one of the grounds supplied to the appellant in support of the order of detention is either vague or non-existing, and therefore the appellant's detention is clearly illegal. After we have heard the learned counsel for the appellant as well as the learned counsel for the respondents in respect of the grounds mentioned in cls. (a) and (d) of the order September 27, 1967, we did not think it necessary to examine the remaining grounds as we were of the opinion that the ground set out in cl. (a) is vague as well as irrelevant and that set out in cl. (d) is non-existing and as such the impugned order of detention cannot be sustained.

On an examination of facts set out in cl. (a) of the order, it is seen that the name of the shopkeeper to whom the appellant is said to have sold match boxes and soap "at a price higher than that fixed for these commodities" is not mentioned. Neither the price fixed nor the price at which the appellant is said to have sold the match boxes and soap is mentioned. The futility of making representation against an unknown man in respect of an unspecified price can easily be imagined. There was no opportunity to the appellant to satisfy the Advisory Board that the alleged purchaser is a fictitious figure or that he is an enemy of his or that the information given by him should otherwise be not accepted. As things stood the appellant was left to attack a shadow. He could not also make any representation as regards the alleged sale or the price at which the goods were sold excepting making a bare denial of the accusations made against him. That is not all. The appellant definitely averred in his special leave application that the Government neither fixed the sale price of the match boxes or soap nor it had any power to do so. This averment is not controverted; On the other hand

what was stated in reply by the respondents was that the manufacturers had fixed the retail price of those articles and the appellant could not have sold them for a price higher than that fixed by the manufacturers. It is not the case of the respondents that the price fixed by the manufacturers - assuming that there was any such fixation and further assuming that the appellant had sold the articles in question at a price higher than the price fixed - had any legal sanction behind it. A notification issued by the Bihar Government on January 20, 1967 and published on March 1, 1967, in exercise of the powers conferred on it by s. 3 of the Essential Commodities Act, 1955 (10 of 1955), read with the order of the Government of India in the Ministry of Commerce published under notification No. S.O. 1844 dated June 18, 1966, the only provision of law on which reliance was placed by the respondents, prescribes that a dealer should obtain a price list showing the wholesale and retail price of the commodity purchased by him or obtained by him from every manufacturer, importer or distributor where such prices are fixed by the manufacturers and display at a conspicuous part of the place where he carries on his business the price list and stock position of the scheduled commodities specified in Schedules I and II of that Order; further he should not withhold from sale except under specified circumstances any of the commodities mentioned in Schedule II thereto. That Order empowers the State Government by order to regulate the distribution of any scheduled commodity mentioned in Sch. II by any manufacturer, producer or distributor in such area or areas and in such manner as may be specified. It is not the case of the respondents that the appellant had contravened the aforementioned Order in any manner. Hence, the ground set out in cl. (a) of the order of September 27, 1967 is not only vague but also irrelevant.

In clause (d) of that order it is mentioned that the appellant sold kerosene oil to one Kishun Bhagat of Gulab Bagh at Rs. 12/- per tin (excluding cost of tin) which was higher than the price fixed by the Government. In his special leave application, among other things, the appellant asserted that there is no person by the name of Kishun Bhagat in Gulab Bagh. In the reply filed on behalf of the respondents that allegation is accepted as correct. The new case pleaded by the respondents is that the alleged sale was made to Kishun Bhagat of Village Kishanpur, P. S. Dhamdaha, and there was typographical mistake in mentioning the name of the purchaser in the grounds supplied to the detenu. This is a curious explanation. That apart, quite clearly the appellant could not have made any representation in respect of the new allegation levelled against him. Hence the ground mentioned in cl. (d) must be held to be non-existing.

It was strenuously urged on behalf of the respondents that even if the grounds mentioned in cls. (a) and (d) of the order of Government dated September 27, 1967 are ignored, still the detention of the appellant can be justified on the basis of the remaining grounds mentioned in that order. We have no hesitation in rejecting this contention as being wholly untenable.

It must be remembered that in this case we are dealing with the liberty of a citizen of this country. The power given to the State under the Act is an extraordinary power. It is exercisable under special conditions and is subject to definite limitations. The nature of the power is such that the liberty of an individual can be deprived on the subjective satisfaction of the prescribed authority that there is sufficient cause for his detention. A detenu has not the benefit of a regular trial or even an objective examination of the accusations made against him. As observed by this Court in *Dr. Ram Krishan Bhardwaj v. The State of Delhi* [[1953] S.C.R. 708.], preventive detention is a serious invasion of personal liberty and such safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In that case this Court further laid down that under Art. 22(5) of the Constitution, as interpreted by this Court, a person detained under the Act, is entitled, in addition to the right to have the ground of his detention communicated to him, to a further right to have particulars as full and adequate as the circumstances permit

furnished to him as to enable him to make representation against the order of detention and the sufficiency of the particulars conveyed in the second communication is a justiciable issue, the test being whether they are sufficient to enable the detained person to make representation which on being considered may give him relief. It is also laid down in that decision that the constitutional requirement that the grounds must not be vague must be satisfied with respect to each of the grounds communicated to the person detained subject to the claim of privilege under cl. (6) of Art. 22 of the Constitution, and where one of the grounds mentioned is vague, even though the other grounds are not vague the detention is not in accordance with the procedure established by law and is therefore illegal.

The same view was reiterated by this Court in *Shibban Lal Saksena v. The State of U.P.* [[1954] S.C.R. 418.]. There it was found that out of the two grounds served on the detenu one was non-existent. The contention of the State that the detention of Shri Saxena should not be interfered with because one of the two grounds mentioned in the order is a good ground, was rejected by this Court with the observation that 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 and in such cases 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 that would vitiate the detention order as a whole.

In *Dwarka Dass Bhatia v. The State of Jammu and Kashmir* [[1956] S.C.R. 948.], Bhatia was ordered to be detained on the ground that it was necessary to detain him with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The said order was based on the ground of alleged illicit smuggling by Bhatia of essential goods, such as shaffon cloth, zari and mercury to Pakistan. It was found that shaffon cloth and zari were not essential goods. It was not established that the smuggling attributed to Bhatia was substantially only of mercury or that the smuggling as regards shaffon cloth and Zari was of an inconsequential nature. On those facts this Court held that the order of detention was bad and must be quashed. The subjective satisfaction of the detaining authority must be properly based on all the reasons on which it purports to be based. If some out of those reasons are found to be non-existent or irrelevant, the court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reasons. To uphold the order on the remaining reasons would be to substitute the objective standards of the court for the subjective satisfaction of the authority. The Court must, however, be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the authority.

In a recent case, *Rameshwar Lal Patwari v. The State of Bihar* [[1968] 2 S.C.R. 505.] speaking for the Court, Hidayatullah, J. (as he then was) observed :-

"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 the 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."

The defects noticed in the two grounds mentioned above are sufficient to vitiate the order of detention impugned in these proceedings as it is not possible to hold that those grounds could not have influenced the decision of the detaining authority. Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by our Constitution to the citizens of this country. If that right is invaded, excepting strictly in accordance with law, the aggrieved party is entitled to appeal to the judicial power of the State for relief. We are not unaware of the fact that the interest of the society is no less important than that of the individual. Our Constitution has made provision for safeguarding the interests of the society. Its provisions harmonise the liberty of the individual with social interest. The authorities have to act solely on the basis of those provisions. They cannot deal with the liberty of the individual in a causal manner, as has been done in this case. Such an approach does not advance the true social interest. Continued indifference to individual liberty is bound to erode the structure of our democratic society. We wish that the High Court had examined the complaint of the appellant more closely.

For the reasons mentioned above, this appeal is allowed and the order of detention impugned herein is set aside. The appellant is directed to be set at liberty forthwith.

# Appeal allowed##

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