

SUPREME COURT OF INDIA

Khagen Sarkar

Vs.

State of W.B.

Writ Petn. No, 148 of 1971

(J. M. Shelat, I. D. Dua and S. C. Roy, JJ.)

28.07.1971

JUDGEMENT

SHELAT, J.:-

1. This petition under Art. 32 of the Constitution impugns the validity of the order, dated January 3, 1971, passed by the District Magistrate of Jalpaiguri in exercise of the powers conferred on him under sub-sec. (1) read with sub-sec. (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 directing the detention of the petitioner. The impugned order stated that the District Magistrate was satisfied that it was necessary that the petitioner should be detained with a view to preventing him from acting in any manner prejudicial to the security of the State of the maintenance of public order as provided by Section 3 (1) of the Act. According to the affidavit in reply of the Deputy Secretary, Home (Special) Department to the Government of West Bengal, the order could not be served upon the petitioner and the petitioner could not be arrested and detained till January 30, 1971 as the petitioner till then was absconding.

2. On January 4, 1971, the District Magistrate reported to the State Government the fact of his

having passed the said order together with the grounds of detention and all other particulars having a bearing on the same. These were considered by the Government and on January 13, 1971, the Governor approved the said order as required by Section 3 (4) of the Act. As required by Section 3 (5), the Governor made his report to the Central Government submitting along with it the grounds of detention and other particulars.

3. As aforesaid, the petitioner was arrested on January 30, 1971 and was placed under detention. He was served with the impugned order and the grounds of detention. The petitioner thereafter made his representation, dated February 11, 1971 to the State Government which was received by that Government on February 16, 1971. On February 25, 1971, as is necessary under Section 10 of the Act, the State Government placed the petitioner's case together with the grounds of detention, his representation and other relevant material before the Advisory Board constituted under the Act for its report. On March 23, 1971, the Government rejected the petitioner's representation. On April 5, 1971, the Advisory Board made its report after considering the grounds for detention, the petitioner's representation and, other available materials after hearing the petitioner as desired by him. The report of the Board was that there was sufficient cause for the petitioner's detention. Thereafter, by his order, dated May 24, 1971, the Governor, by virtue of his power under section 12 (1), confirmed the impugned order-and directed the petitioner's detention to continue till the, expiration of twelve months from the date of his detention.

4. Under section 3 (1) of the Act, what is required is the satisfaction of the State Government or the relevant District Magistrate, as the case may be, of the necessity to detain a person with a view to preventing him from acting in a manner prejudicial to the security of the State or the maintenance of public order. As defined by sub-sec. (2) of that section, the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" inter alia means:

(a) "using, or instigating any person by words, either spoken or written, or by signs or by visible representations or otherwise, to use, any lethal weapon" which includes firearms, explosive or corrosive substances, swords, spears, daggers, bows and arrows; or

"(b) committing mischief, within the meaning of Section 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or public building, where the commission of such mischief disturbs, or is likely to disturb, public order;"

5. The grounds for detention furnished to the petitioner stated

(i) that the petitioner had been assisting the C. P. I. (M. L.) in implementing its programme of

burning school records and killing police officers and men, (ii) that in pursuance of that programme the petitioner along with others entered at 3 A. M. on November 23, 1970 the Ananda Middle Higher Secondary School at Jalpaiguri, broke open an almirah and set on fire school records and registers, (iii) that on the same day at about 6.35 P.M. he along with others threw a highly explosive bomb at the Bangala Congress Office in Jalpaiguri with a view to terrorise and prevent the Bangala Congress workers from campaigning a protest against the violent activities of the C. P. I. (M. L.) of which the petitioner was a member, and (iv) that at 11.15 A. M. on November 25, 1971, the petitioner and certain other persons entered the Central Girls School in Jalpaiguri town and breaking open an almirah set on fire certain books and papers belonging to that school. The grounds informed the petitioner that under the Act he was entitled to make a representation to the State Government against the order of detention passed against him, that his case would be put up before the Advisory Board under Section 10 of the Act, and that if he so desired he could appear in person to represent his case before that Board.

6. In his representation dated February 11, 1971, the petitioner denied his or any of the members of his family being connected with C.P. I. (M. L.) or of his being in any way involved in any of the incidents set out in the grounds for detention. His case, on the contrary, was that he and his two maternal uncles were arrested in December 1970 on a false charge of murder, that his uncles obtained their release from jail by obtaining an order of bail, that he could not do so on account of his inability to obtain the necessary funds for security till January 30, 1971 when on his coming out of the jail he was served with the impugned order and once again taken into custody. Similarly, in his affidavit in rejoinder made in these proceedings, he denied once again in answer to the Government's affidavit in reply of his being a member of the C. P. I. (M. L.) or his having been involved in the activities alleged in the grounds of detention. He also denied that he had been absconding, and therefore could not be served with the impugned order till January 30, 1971, and repeated the allegation that he was in jail custody till January 30, 1971 as he could not collect the necessary funds for his release although a bail order had been passed in his favour and that the impugned order was passed only to harass him and to see that he did not come out of the jail under the said bail order. The contention, therefore, was that the impugned order had been passed mala fide on grounds totally extraneous to the provisions of Section 3 of the Act. He also challenged the constitutional validity of the Act, but the challenge was not pressed, and therefore we need not go into that question in this petition.

7. The only contention, therefore, with which we are concerned in this petition and which we have to deal with is whether the impugned order was passed mala fide and for reasons extraneous to the Act as alleged by the petitioner.

8. As already stated, the satisfaction on the basis of which Section 3 enables the State Government or the District Magistrate, as the case may be, to pass an order of detention is the satisfaction of the Government or the District Magistrate and not the satisfaction of this Court. The Act being one for preventive detention, this Court would not sit in appeal against the impugned order, and therefore would not go into the question of sufficiency or otherwise of the material for arriving at the satisfaction by the relevant authority under Section 3. The Court would have, however, no hesitation

to interfere with such an order if, for instance, it were shown that the exercise of power under Section 3 was mala fide or on grounds alien to the Act. The point, therefore, is: has that been shown to be so? Though, no doubt, the petitioner alleged that he was not a member of the C. P. I. (M. L.) nor was he concerned with any of the incidents alleged in the grounds for detention these allegations were denied on behalf of the respondent. Apart from that fact there is the fact that the petitioner's representation was considered both by the State Government and the Advisory Board, both of whom rejected it and the latter body came to the conclusion that there was sufficient ground for his detention. The petitioner has adduced no materials which would show that the impugned order was passed either mala fide or for the reasons alleged by him.

9. That being so, it is not possible for this Court to come to the conclusion that the exercise of power by the District Magistrate was mala fide or for the reason alleged by the petitioner. Even assuming that the petitioner was not absconding and was in jail custody all throughout on the charge of murder and was served with the order and again detained as he came out of the jail in consequence of the bail order passed in his favour, there is no material placed before us from which we can accept the allegation as to mala fides, in face of the report of the Advisory Board arrived at after consideration of the materials before it including the petitioner's representation both oral and in writing, that there were sufficient reasons justifying his detention.

10. In these circumstances and in the absence of any adequate material to establish mala fides, we find no justifiable reason to interfere with the impugned order and accordingly we must reject the petition.

11. Before we part with this case, we must express our appreciation of the assistance given to us by Mr. Dilip Sinha who at the instance of the petitioner volunteered to appear for him.

Petition dismissed.