

Shyamal Mondal

Vs

The State of West Bengal

Writ Petition No. 205 of 1971

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

01.09.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This petition Under Article 32 of the Constitution challenges the validity of the order, dated March 2, 1971, passed by the District Magistrate, 24 Pargana, in exercise of the powers conferred on him under sub-section (1) read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent activities) Act, 1970 (Act No. XIX of 1970) (hereinafter to be referred as the Act), directing the detention of the petitioner.
2. The impugned order states that the District Magistrate was satisfied that it was necessary that the petitioner should be detained with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order as provided by Section 3(1) of the Act.
3. According to the affidavit in reply of the District Magistrate, he reported under Section 3(4) of the Act to the State Government on March 3, 1971, regarding the fact of his having passed the order of detention together with the ground of detention and all other particulars having a bearing on the same. It is further stated that the petitioner was arrested on March 5, 1971, and was served on the same day with the order of detention together with the grounds for passing the order of detention. The petitioner was also informed that he is entitled to make a representation to the State Government against the order of detention and that such representation is to be addressed to the assistant Secretary, Home (Special) Department, Government of West Bengal and forwarded through the Superintendent of Jail. He was further informed that his case will be placed under Section 10 of the Act before the Advisory Board within 30 days from the date of the order of detention. He was also informed that under Section II of the Act, the Advisory Board shall, if so desired by him, hear him in person and that the petitioner must intimate the said desire to be heard in the representations that he may make to the State Government.
4. The State Government considered the report of the District Magistrate together with other materials placed before it and approved on March 11, 1971, as required by Section 3(4) of the Act, the order of detention passed by the District Magistrate.
5. On the same day as required by Section 3(5) the State Government sent the necessary report to the Central Government. The state Government on April 3, 1971, placed the case of the petitioner before the Advisory Board.
6. The petitioner sent two representations dated March 17, and April 19, 1971, denying the

allegations made in the ground for passing the order of detention and pleaded that he was innocent. He has admitted in these representations that he was arrested on March 5, 1971. In neither of these representations did the petitioner make a request that he should be provide an opportunity of being heard in person by the Advisory Board. The State Government rejected the representations of the petitioner, but forwarded them to the Advisory Board for being considered. The Advisory Board, after considering the materials placed before it relating to the detention of the petitioner including the representations made by him on March 17, 1971 and April 19, 1971, submitted its report on May 11, 1971 to the state Government stating that it is of opinion that there is sufficient cause for the detention of the petitioner. The State Government passed an order on July 12, 1971, under Section 12(1) of the Act confirming the order of detention dated March 2, 1971, passed by the District Magistrate and directed that the petitioner's detention shall be continued till the expiration of twelve months from the date of the detention.

7. The petitioner has challenged the order of detention on the ground that he has never committed any offence nor has he been involved in any illegal activities as allegations mentioned against him are false and that he never participated in any of the incidents referred to in the grounds of detention. The petitioner has further stated that he is innocent and that he has been illegally detained.

8. It will be noted from his averments in the writ petition that except denying that the allegations are false and that he has never participated in any of those incidents referred to in the grounds of detention, he has not alleged any mala fides nor challenged the jurisdiction of the officer who passed the order of detention or the various proceedings connected therewith.

9. 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 person with a view to prevent him from acting in a manner prejudicial to the security of the State or the maintenance of the public order. In the order of detention dated March 2, 1971, the District Magistrate has stated that he was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to detain the petitioner and that maintenance of public order, it is necessary to detain the petitioner and that the order was being passed in exercise of the powers conferred on the District Magistrate by sub-section (1) read with sub-section (3) of Section 3 of the Act. In the grounds of detention furnished to the petitioner on March 5, 1971 along with the order, dated March 2, 1971 the following particulars have been given :

"(1) That, on January 28, 1971 between 11.00 and 12.31 hours, you along with your associates being armed with bombs, ballasts, pipe guns, Lathis, etc., assembled at Piali Rly. Station and created terror among the passengers by charging bombs and showering ballasts indiscriminately and also moving from compartment to compartment of train Nos. SC 193 UP and SC 195 UP in search of your rivals, shouting that 'if I get the Rascal, I will kill them' and in doing so you caused injury to some innocent passengers and broke the glass panes of driver's cab of SC 195 UP. You created disturbance of the public order thereby.

(2) That, on February 2, 1971 at about 17.39 hours, you along with your associates, being armed with bombs, daggers, etc., attacked and assaulted the guard of train No. SC 199 UP at Champahati Rly. Station and also created terror among the passengers by charging a bomb. You created disturbance of the public order thereby.

(3) That, on February 9, 1971 at about 13.15 hours you and your associates charged bombs and ballasts on duty police party at Jadavpur Rly. Station as they seized 10 bags of rice weighing about 3 quintals from SC 195 UP, while you were taking the said stock to Calcutta rationing area illegally by train. Your attack grew so violent that the Police part had to open fire upon you in self-defence. Your violent activities created serious panic in the station area and the public order was disturbed thereby."

10. In the two representations, dated March 17, and April 19, 1971 made to the State Government, the petitioner after referring to the fact that he was arrested on March 5, 1971 has denied that he was involved in any of the types of violent activities referred to in the grounds for detention. He has further stated that he is leading a very honest life doing the work of a mason and that the allegations made against him are false.

11. As we have already mentioned the petitioner did not ask for an opportunity of being heard in person by the Advisory Board. He has not also alleged in these representations any mala fides in passing the order of detention.

12. The District Magistrate who passed the order of detention has filed a counter-affidavit. The District Magistrate has stated that the petitioner is a rice smuggler operating in Sub-urban Railway trains in Southern Section of Eastern Railway and that he along with his associates armed with bombs and other deadly weapons attacked the passengers and the guard of railway trains and created terror by hurling bombs in Champahati and Piali Railway Stations. The District Magistrate further proceeds to state that the petitioner was detained for acting in a manner prejudicial to the security of the State or the maintenance of public order in the Jadavpur are of the district of 24 Parganas for his having taken a leading and active part in violent activities. It is further stated in the counter-affidavit that the activities of the petitioner disturbed the public order and were so persistent and violent that he become a terror to the residents of the locality and the railway travelling public and that but of his detention he could not have been prevented from acting in a manner prejudicial to the security of the State of Maintenance of public order. It is further stated that the deponent, after receiving reliable information relating to the anti-social and prejudicial activities of the petitioner and after carefully considering those materials, was fully satisfied that the petitioner was engaged and was indulging in activities which were prejudicial to the security of the state or the maintenance of public order, and that his detention was essential. On being thus satisfied, the District Magistrate proceeds to state that he bona fide passed the order of detention on his own satisfaction, judgment and reasoning. The counter-affidavit then proceeds to state about the order of confirmation passed by the State Government and other matters resulting finally in the order passed by the Government on July 12, 1971.

13. It may be pointed out that in Paragraph 6 of the counter-affidavit it has been mentioned that the Advisory Board submitted its report on May 11, 1971, "after hearing the petitioner". This statement is obviously wrong because the petitioner never asked for being heard in person. The Advisory Board also does not say that the petitioner was heard in person. The counsel appearing of the State has expressed his regret regarding this mistaken averments made in the counter-affidavit. But that does not in any manner advance the case of the petitioner, as we will presently show.

14. We have already referred to the fact that the petitioner has merely denied his being associated with the incidents referred to in the grounds of detention. We are satisfied from the averments made by the District Magistrate in the counter-affidavit, which have not been further controverted by the petitioner by filing any rejoinder that the order of detention has been validly and properly passed.

15. Mr. V. Mayakrishnan, amicus curiae, appearing on behalf of the petitioner has urged that every one of the grounds has referred to the activities of the petitioner having resulted in disturbance of public order. But the order of detention refers to the fact that the District Magistrate was of the view that the petitioner should be detained with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order. No ground showing as to how any activity of the petitioner is prejudicial to the security of the State justifying the order of detention has been furnished to the petitioner. Therefore, according to the learned counsel, the order of detention is illegal inasmuch as the petitioner has not been informed of any grounds as to how his activities are prejudicial to the security of the State. Inasmuch as both the matters have been mentioned in the order of detention, it must be that the detaining authority has taken into account extenuous and irrelevant matters in passing the order of detention. In particular, according to the learned counsel, it is only the matters referred to in sub-clause (1) of clause (a) of Section 3(2) of the Act, that will relate to the activities adversely affecting the security of the State. None of those matters have been mentioned in the grounds furnished to the petitioner. Therefore, it is not clear whether the detaining authority passed the order to prevent the petitioner from acting in any manner prejudicial to the security of the state or for maintenance of public order. For all these reasons, the counsel urged, the order of detention is illegal.

16. Mr. S. P. Mitra, learned counsel appearing for the state drew our attention to the provisions contained in Section 3 (2) of the Act and pointed out that the various acts mentioned in the ground of detention comes within the expressions "acting in any manner prejudicial to the security of the state or the maintenance of public order". In particular he relied upon clause (d) of Section 2 and pointed out that the petitioner has committed an offence under the Explosive Substances Act, 1908, (Act No. 6 of 1908) and, therefore, his detention was legal.

17. We are not inclined to accept the contention of the learned Advocate for the petitioner. As already mentioned 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-section (2) of Section 3, the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" 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 -

(i) to promote or propagate any cause or ideology, the promotion or propagation of which affects, or is likely to affect, adversely the security of the state or the maintenance of public order, or

(ii) to overthrow or to overawe the Government established by law in India.

Explanation. - In this clause, 'lethal weapon' includes fire-arms, 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 on any public building, where the commission of

such mischief disturbs, or is likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

Explanation. - In this clause, 'object of public veneration' includes any portrait or statue of an eminent Indian, installed in a public place as a mark of respect to him or to his memory; or

(d) committing, or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959, or the Explosive Substances Act, 1908, where the commission of such offence disturbs or is likely to disturb, public order; or

(e) in the case of a person referred to in clauses (a) to (f) of Section 110 of the Code of Criminal Procedure, 1898, committing any offence punishable with imprisonment where the commission of such offence disturbs or is likely to disturb, public order.

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18. It will be seen that the Act itself furnishes a dictionary meaning for the two expressions and a perusal of clauses (a) to (e) clearly shows that any of the matters referred to therein will be both "prejudicial to the security of the state or the maintenance of public order".

19. We are not inclined to accept the contention on behalf of the petitioner that it is only sub-clause (1) of clause (a) of Section 3(2) which deals with the matters, which adversely affect the security of the State. In fact that very sub-clause refers to the matters mentioned therein as affecting the security of the State or the maintenance of public order. Therefore, in this case the grounds of detention cannot be held to be vague nor can the order of detention be held to be invalid on the ground that the petitioner must have been detained only to prevent him from acting in any manner prejudicial to the maintenance of public order and not to the security of the State. In particular under clause (d) of Section 2, a person will be considered to be acting in a manner prejudicial to the security of the State or the maintenance of public order, if he commits any offence under the Explosive Substances Act, 1908. The various incidents mentioned in the grounds of detention may also come under clause (b) of sub-section (2) of Section 3. Section 3 of the Explosive Substances Act, 1908, is as follows :

"Section 3. - Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added."

20. The various grounds mentioned in the order of detention clearly bring the activities of the petitioner under Section 3 quoted above.

21. The date and the place as well as the time when the incidents occurred and also the train

numbers which were affected as well as the association of the petitioner with those incidents have been fully given in the grounds of detention. No doubt the names of the persons, who are stated to be his associates have not been given. For all the above reasons, we are satisfied that the order of detention is valid.

22. In the result, rule nisi is discharged and this writ petition dismissed.

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