

SUPREME COURT OF INDIA

Tapan Kumar Mukherjee

Vs.

State of W.B.

Writ Petitions Nos. 315, 318, 319 and 324 of 1971

(P. Jaganmohan Reddy and D. G. Palekar, JJ.)

14.12.1971

JUDGEMENT

P. JAGANMOHAN REDDY, J.:-

1. These are four habeas corpus petitions by which the petitioners challenge their detention under the West Bengal (Prevention of Violent Activities) Act, 1970 (Act No.19 of 1970) - hereinafter called 'the Act'.

2. In Writ Petition No. 315 of 1971 the detention order was passed by the District Magistrate, Burdwan, on April 6, 1971 which was reported to the State Government on the same date and the State Government approved it on April 17, 1971. The petitioner was arrested on April 15, 1971 on which date the order of detention and the grounds were served on him. A representation was made by the detenu on April 29, 1971 which was rejected by the State Government on May 11, 1971. The case was placed on the same day before the Advisory Board and it reported on June 22, 1971 that there was sufficient cause for detaining the petitioner. The order of conformation of detention and extension of the period was made by the State Government on July 7, 1971.

3. In Writ Petition No.318 of 1971 the detention order was made by the District Magistrate, 24 Parganas on May 15, 1971 and the petitioner was arrested on May 16, 1971, on which date he was served with the detention order and the grounds. The order was duly approved by the State Government on May 25, 1971 and reported to the Central Government on the same date. The petitioner forwarded his representation on June 26, 1971 which was rejected by the State Government on July 13, 1971. On June 14, 1971 the case was placed before the Advisory Board which considered the grounds of detention sufficient on July 16, 1971. The State Government confirmed the detention order and extended the period upto August 2, 1971.

4. The petitioner in Writ Petition No.319 of 1971 was arrested on February 27, 1971 pursuant to a detention order made by the District Magistrate, Burdwan on February 25, 1971. The petitioner was served with the detention order and the grounds of detention on February 27, 1971. The order was approved by the State Government on March 5, 1971. Representation was received from the detenu which was rejected. The case was placed before the Advisory Board on March 22, 1971, which gave its report on May 6, 1971 that in its opinion there was sufficient cause for detention. The State Government confirmed the order of detention and extended the period on May 11, 1971.

5. In Writ Petition No.324 of 1971 the order of detention was made by the District Magistrate, Jalpaiguri on May 7, 1971 and the detenu was arrested and served with the order and the grounds of detention on the same day, viz., May 7, 1971, on which date also a report was made to the State Government. The State Government approved the order on May 17, 1971 and reported the matter to the Central Government on the same date. The case was placed before the Advisory Board on June 5, 1971, after which the detenu sent his representation dated June 14, 1971 which was rejected on June 28, 1971. The representation was placed before the Advisory Board and it held on July 12, 1971 that there was sufficient cause for his detention. The State Government confirmed the detention and extended the period on July 28, 1971.

6. It is evident therefore that all the mandatory provisions of the Act as well as that in cl. (4) of Art. 22 were complied with. But it is contended by the petitioners that the grounds are irrelevant and vague and, therefore, their detention is invalid as they are unrelated to the maintenance of public order as defined in sub-s. (1) read with sub-s. (3) of S.3 of the Act.

7. The following are the grounds of detention in Writ Petition No.315 of 1971:

"1. That on 5-1-71 at about 17.45 hours you and your associates Dipak Chakrabarti son of Shri Jagannath Chakrabarti of Pabna Colony, P. S. Katwa and others being armed with chopper and other, lethal weapons killed one Baburam Singh alias Pandit a money-lender of Katwa town held to be a class enemy by you and your associates on the bed of the river 'Bhagirathi' near Ferry-Ghat

which caused a serious panic in Katwa town and disturbed the normal flow of public life and in doing so you clamped fear, frightfulness and insecurity in the minds of the public in general of Katwa town.

2. That on 3-2-1971 at about 19.15 hours you along with your associates viz. (1) Bablu Dutta son of Shri Krishna Kanta Dutta of Madhabitala, (2) Hriday Saha son of Shri Kamal Saha of Madhabitala and others threw a bomb in the shop of Shri Jiban Krishna Mukherji son of Shri Dakshina Ranjan Mukherji, a businessman of Madhabitala, P. S. Katwa which exploded in a tremendous sound and caused such a panic in the locality that shops and houses around the place were closed immediately. By such act of your and your associates you threw out of gear the normal life stream of the locality around Madhabitala, Katwa town and disturbed public order.

3. That on 9-2-71 at about 20.45 hours you and your associates Basudey Hazra son of Shri Ramranjan Hazra of Dubopara, P. S. Katwa and others being armed with lethal weapons like daggers, etc. attacked Babulal Goenka aged about 65 years, a businessman of Katwa town and stabbed him to death on Chaul Patty Road, Katwa town with a view to annihilate your so-called class enemy. This act of your's and your associates caused a panic in the locality and doors of all the houses and shops of the locality were closed and normal flow of life was stopped for a considerable long time and your such acts disturbed public order".

8. In Writ Petition No.318 of 1971 the grounds of detention are as follows:

"(1) That, on 2-5-71 between 23.30 and 23.40 hrs. you along with your associates committed robbery in respect of an electric fan and a wrist watch from Shri Bimal Chandra De of 7B, Priya Nath Mullick Road, Calcutta and Shri Sukumar Mukharji of Sagarpara refugee Camp, Murshidabad respectively at the point of daggers in between Ichapore and Barrackpore Rly. Stations, while they were travelling in Down Santipur local train (S.122 Dn.). You created disturbance of public order thereby.

(2) That, on 9-5-71 between 20.10 and 20.15 hrs. you along with your associates committed robbery in respect of cash and wrist watches valued Rs.1037/- from Shri Govinda Patra of Simurali, District Nandia and some others, at the point of daggers, in between Garifa and Naihati Rly. Stations, while they were travelling in Train No. 354 Down (Salar Sealdah Passenger). You created disturbance of public order thereby".

9. In Writ Petition No. 319 of 1971 the grounds for detention were stated to be as under:

"1. On 25-11-70 at 20.30 hrs. you and your associates entered the premises of Sodepur Colliery High School and committed mischief within the meaning of S.425 of the Indian Penal Code by setting fire to the office room, furniture and records of the school and your such acts are disturbing the public order.

2. On 29-12-70 at 19.45 hrs. you and your associates attempted to murder Shri Gugli Rajbhar, an employee of Bengal Coal Company, Sanetoria, P. S. Kulti by means of rods, knives, etc. as he opposed your subversive activities and refused to join hands with you. Your such act terrorised the common men and as such they could not pursue the normal avocations of life. Moreover it disturbed public order.

3. On 7-2-71 at 13.30 hrs. you and your associates had been to the house of Bibhuti Bhusan Ghosh of Ranchi Dhaora, P. S. Kulti and asked him to rub the anti-Naxalite slogans written on the wall of his house. Being refused you threatened to kill him. Your such acts are disturbing the public order".

10. In Writ Petition No. 324 of 1971 the grounds served on the petitioner showed as follows:

"1. On 10-3-70 at about 17.30 hrs. you along with Dhiron Biswas armed with deadly weapons like dagger, stabbed one Basudev Bhattacharjee and assaulted one Manoj Saha with fists and blows at Nutanpara, Jalpaiguri town. Due to the injuries victim Basudev Bhattacharjee had to be removed to Hospital in a dying condition.

2. On 24-11-70 at about 19.25 hrs. you along with your other associates being armed with deadly weapons formed an unauthorised assembly, criminally trespassed into Kotwali P.S. Compound shouting various slogans and threw stones at Kotwali P. S. Office room.

3. On 3-12-70 at about 11.20 hrs. you along with your other associates being armed with lethal weapons like dagger brutally murdered Shri Rathindra Nath Roy, Court Inspector of Police, Sadar Court, Jalpaiguri at Nutanpara Batia Buildings, near his house after inflicting multiple fatal injuries on his person.

4. On 19-4-71 at 09.00 hrs. you along with your other associates Dhiren Biswas, Kala Karmaker and others being armed with deadly weapons like axe etc. and being members of unlawful assembly attacked and assaulted Police Constable No.74 Sahendra Chandra Barmah at Goomti No.4 Jalpaiguri town with axe and caused severe bleeding injuries on his person. Due to the injuries, the constable had to be removed to Hospital in a dying condition where he is still undergoing treatment".

11. In Writ Petitions Nos. 315 and 318 of 1971 a perusal of the grounds will show that they are neither vague nor irrelevant. The acts of the petitioner in Writ Petition No.315 of 1971 have been set out in detail and clearly indicate that the acts set out are prejudicial to the maintenance of public order. The Petitioner and his associates are said to have caused panic and terror by the killing of the money-lender, businessmen and shopkeepers and throwing bombs by which public order was likely to be disturbed. Each one of the grounds individually and collectively is germane and related to the disturbance of public order within the meaning of Section 3(2) of the Act.

12. Similarly in Writ Petition No.318 of 1971 the acts committed by the petitioner are in the travelling trains which create or likely to create disturbance to public order by causing panic among the travelling passengers. It is contended that these grounds related only to law and order but we cannot accept this contention. The innocent passengers would be terror-stricken by the acts alleged to have been committed by the petitioner and his associates. In these circumstances none of the grounds in these two petitions can be said to be irrelevant or vague and as such their detention is not illegal.

13. In Writ Petitions Nos. 319 and 324 of 1971 the detention orders cannot be considered to be valid. In Writ Petition No.319 of 1971 grounds Nos. 2 and 3 are vague and in that there is no indication as to what the subversive activities were which were opposed by the person murdered and how the detenu and his associates were connected with that organisation, or what relevance the anti-Naxalite slogans had which were being written on the wall by Bibhuti Bhusan Ghosh who was threatened by the petitioner. There is nothing in the grounds to indicate what is meant by Naxalite, the aim, objects or the philosophy of the organisation and in what way the petitioner was connected with it. Nor is there anything to indicate what were the subversive activities which the petitioner was indulging in. These grounds being vague and irrelevant, the detention of the petitioner cannot be sustained.

14. Similarly in Writ petition No. 324 of 1971 grounds Nos. 3 and 4 may indicate that the petitioner and his associates are guilty of offences, but they do not show that the acts alleged against them were likely to affect the public order as such. In this view, this detention also cannot be sustained, and is consequently illegal.

15. By our order dated December 9, 1971, the release of the petitioners in Writ Petitions Nos. 319 and 324 of 1971 had been ordered by us. These petitions are accordingly allowed. We, however, dismiss Writ Petitions Nos. 315 and 318 of 1971, because we have held that the detention of the petitioners is not illegal.

Ordered accordingly.

