

Bidhan Chandra Biswas

Vs

The State of West Bengal

Writ Petition No. 267 of 1971

(J. M. Shelat, H. R. Khanna, K. K. Mathew JJ)

24.01.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail under Article 32 of the Constitution of India for the issuance of a writ of habeas corpus by Bidhan Chandra Biswas who has been ordered to be detained by the District Magistrate, 24 Parganas under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970, (President's Act No. 19 of 1970).
2. According to the order of detention which was passed by the District Magistrate on April 3, 1971, the order was made as it was considered necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. The petitioner in pursuance of the detention order was arrested on April 25, 1971, as earlier, according to the affidavit filed on behalf of the respondents, he was found to be absconding. Grounds of the detention were served upon the petitioner on the day he was arrested. In the meanwhile, on April 8, 1971, the District Magistrate sent a report to the State Government about the passing of the detention order along with the grounds of detention and other necessary particulars. The said report and particulars were considered by the State Government and the order of detention was approved on April 13, 1971. The same day the State Government submitted a report to the Central Government along with the grounds of detention and other necessary particulars. On May 24, 1971, the State Government placed the case of the petitioner before the Advisory Board. A representation, dated May 31, 1971, was received by the State Government from the petitioner on June 4, 1971. The State Government considered the representation and rejected the same on July 1, 1971. The representation was also forwarded to the Advisory Board. The Advisory Board after considering the material placed before it as well as the representation and after hearing the petitioner in person, submitted its report to the State Government on July 3, 1971. Opinion was expressed by the Advisory Board that there was sufficient cause for the detention of the petitioner. By an order, dated July 16, 1971, the State Government confirmed the detention order.
3. The petition has been resisted by the respondents and the affidavit of Shri Manoranjan Dey, Assistant Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.
4. We have heard Mr. Goswami who has argued the case amicus curiae on behalf of the petitioner and Mr. Mukherjee on behalf of the respondents and are of the opinion that there is no merit in the petition. Mr. Goswami has invited our attention to the grounds of detention which were supplied to the petitioner and read as under :

"(1) On February 1, 1971, at about 10.35 hours you and some of your associates being armed with daggers and other sharp-cutting weapons made murderous attack on Sachindra Nath Banerji, Advocate, Basirhat Court, while he was proceeding to Basirhat Court and thereby created panic and terror in the locality. Shri Banerji sustained grievous injuries.

(2) On February 11, 1971, at about 18.30 hours, you and some of your associates exploded bombs at Surya Kanta Park, P. S. Basirhat, where an election meeting was in progress and caused injuries to some of the persons and disrupted the meeting. By this Act you created considerable panic in the locality which was likely to disturb the public order."

It is urged by Mr. Goswami that reports were lodged with the police in respect of the two incidents mentioned in the grounds of detention. It is urged that the Investigating Officer after investigating the cases relating to those incidents submitted a report that "nothing could be had against the petitioner". The petitioner was, therefore, discharged in those cases. The order of detention, in the circumstances, according to the learned counsel, should be held to be mala fide.

5. We find that no ground was taken by the petitioner in the petition under Article 32 of the Constitution regarding the police reports and his discharge in the two cases. Reference was, however, made to these facts in the written arguments which were sent by the petitioner from Jail. In our opinion, even if it may be assumed that cases were registered against the petitioner by the police in respect of the two incidents mentioned in the grounds of detention and the police as a result of the investigation could not procure evidence to sustain the conviction of the petitioner, that fact would not be sufficient to hold that the detention order made against the petitioner was mala fide. The matter is indeed concluded by a decision of this Court in the case of Sahib Singh Dugal v. Union of India ((1966) 1 SCR 313 : AIR 1966 SC 340 : 1966 Cri LJ 305.). The petitioner in that case was arrested on December 6, 1964, for offences under the Official Secrets Act. On March 11, 1965, the Investigating Officer made a report to the Court to the effect that the petitioner and others involved in that criminal case might be discharged as sufficient evidence for their conviction could not be discovered during the investigation. The Magistrate consequently discharged the petitioner and others. Immediately after the petitioner came out of the Jail, he was served with an order for his detention under Rule 30(1)(b) of the Defence of India Rules. One of the contentions which was advanced on behalf of the petitioner in petition under Article 32 of the Constitution was that the detention order was mala fide inasmuch as it had been made after the authorities had decided to drop criminal proceedings because of inability to get sufficient evidence to secure conviction. This contention was repelled by this Court and it was held that the above circumstance was not sufficient to lead to the inference that the action of the detaining authority was mala fide. This Court observed :

"We cannot infer merely from the fact that the authorities decided to drop the case under the Official Secrets Act and thereafter to order the detention of the petitioner under the Rules that the order of detention was mala fide."

6. In view of the above, we hold that the order for the detention of the petitioner has not been shown to be mala fide. The petition consequently fails and is dismissed.

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