

Arun Kumar Ghosh

Vs

State of West Bengal

Writ Petition No. 226 of 1971

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

25.01.1972

JUDGMENT

SHELAT, J. -

1. By his order, dated April 7, 1971, the District Magistrate, Howrah, directed the detention of the petitioner under Section 3 of the West Bengal (Prevention of Violent Activities) Act, President's Act 19 of 1970 on his being satisfied that it was necessary to do so with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. Accordingly, the petitioner was arrested and detained in jail on May 3, 1971, when he was served with grounds for his detention as required by the Act.

2. The grounds so served upon him alleged that at a secret meeting held on January 14, 1971, at Balak Sangha Maidan in Tantipara Lane, Shibpur, the petitioner volunteered to be a member of the Action Squad of what is commonly known as the Naxalite party and assured the members of that party present there "to supply pipe guns, ammunition and bomb-making materials to the Action Squad". He also "urged the members to select school teachers, supporting the CPI (M) and responsible for making anti CPI (ML) propaganda among the students and remove them from the party's way by killing them, to continue raids on educational institutions, post offices, police pickets etc. and to annihilate jotedars, police personnel, business men and members of the rival political parties", and "took resolutions to stop the ensuing mid-term election in Howrah District, particularly in Shibpur area, raid educational institutions, post offices, police camps and other Government offices and to annihilate jotedars, business men, police personnel etc". The second ground was that during a raid by the police on January 28, 1971 at about 2 a.m. the petitioner along with another associate was found in a room which was used as a miniature workshop for manufacturing pipe guns and one complete and one incomplete pipe guns together with some implements for manufacturing improvised fire-arms etc., were seized. The said room stood in the petitioner's name and he and his said associate were working there as engineers of the said workshop. The petitioner and his said associate were arrested by the police during the said raid.

3. There can be no doubt that the allegations contained in these grounds fell under clause (d) of subsection (2) of Section 3 of the Act which defines the expression "acting in any manner prejudicial to the maintenance of public order", one of the grounds upon the satisfaction in respect of which the detaining authority under the Act can pass on order of detention.

4. Counsel appearing amicus curiae for the petitioner urged one contention against the petitioner's detention. That was that ground No. 1 in the grounds for detention was vague, in that, it contained numerous, alleged acts, including some which would not fall within clause (d) of Section 3(2), that

those which did not fall within that clause would be extraneous and irrelevant and that their inclusion in that ground vitiated the impugned order. It was urged that volunteering to become a member of the Action Squad of the party and resolving or deciding to prevent the mid-term election from being held, particularly in Shibpur area, were matters which did not strictly fall under clause (d), and that their inclusion in ground No. (1) along with matters which did fall under that clause was fatal to the detention order in the sense that it would be impossible to say on which part of the petitioner's activities, whether on relevant or irrelevant activities, the District Magistrate's satisfaction was arrived at.

5. In support of this contention, counsel sought assistance from the decision of this Court in *Dwarka Das Bhatia v. State of Jammu and Kashmir* (1956 SCR 948 : AIR 1957 SC 164 : 1957 Cr LJ 316). That was a case under the Jammu and Kashmir Preventive Detention Act, 2011, under which a detention order was made against the petitioner therein on the ground that his detection became necessary with a view to prevent him acting in a manner prejudicial to the maintenance of supplies and services essential to the community and was based on alleged smuggling by him to Pakistan of certain essential goods, such as shaffon cloth, zari and mercury. Shaffon cloth and zari were, however, not essential goods, and as regards mercury, which was essential goods, it was not established that the smuggling as regards attributed to the petitioner consisted substantially of mercury only or that smuggling as regards shaffon cloth and zari was inconsequential. On these facts, the detention order was set aside on the ground that 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, were found to be non-existent or irrelevant, the Court could not 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.

6. The question is whether this decision can apply to the grounds of detention in the present case. In other words, is it possible to say that ground No. (1) contains both relevant and irrelevant matters, so that it would not be possible to predicate that the District Magistrate would have reached his satisfaction if the irrelevant matters in that ground were excluded.

7. Ground No. (1) if properly read, first describes a secret meeting of the member of Naxalite party held on January 14, 1971 and then its proceeding. These proceedings, as narrated in the ground, fall into four parts, namely, (1) that the petitioner volunteered to become a member of its Action Squad, which presumably carries out and implements the decisions taken by the party and assured the members present there to supply pipe guns, ammunition and materials for manufacturing bombs to the Action Squad, (2) that he urged the members to select teachers who supported the CPI (M), and who were responsible for propaganda against the Naxalite party among students and to remove them from the way of the party by killing them, (3) that the party should continue its raids in educational institutions, post offices, police pickets etc. and to annihilate jotedars, police personnel, businessmen and members of rival political parties, and (4) that the petitioner and those present at the meeting resolved to prevent the mid-term election from being held, particularly in Shibpur area, to achieve which educational institutions, post offices, police camps and other Government offices should be raided and jotedars, businessmen, police personnel etc. should be killed.

8. It could perhaps be urged that becoming a member of the Action Squad of a party or even attempting to prevent a mid-term election from being held would be activities which, taken by themselves, might not fall under clause (d) of Section 3(2), and therefore, would be irrelevant for the purpose of reaching the subjective satisfaction under Section 3(1). But the grounds must be read

as a whole and not in parts, one isolated from the rest. If read as a whole, it is perfectly clear that while volunteering to become a member of the Action Squad, the petitioner also offered to supply guns and ammunition to carry out the objectives resolved upon in that meeting, which frankly were to remove those who came in the way of the party by killing them with firearms and ammunition, which the petitioner offered to supply. The other objective was to prevent the mid-terms election, particularly in Shibpur area. That was sought to be achieved by raids on educational institutions, post offices, police camps and other Government offices and by killing jotedars, businessman, police personnel etc., and creating by such activities such confusion and chaos that holding of the election would become impossible. It is clear, thus, that the elimination of those who carried on propaganda against the interests of the party and preventing the election from being held were to be achieved by means of killing with guns and ammunition which the petitioner volunteered to supply and by destroying educational institutions, Government offices, police camps and thereby creating disorder, in Shibpur area particularly, so that, no election could possibly be held. Read as a whole, it is impossible to find any irrelevant or extraneous matter mixed up with relevant matter in ground No. (1). There is, thus, no analogy between the present case and that of Dwarka Das Bhatia's case (supra) from which counsel sought support. In our view ground No. (1) does not suffer from the infirmity for which the detention order in that case was held to be bad.

9. That being the position, it is impossible to uphold the contention urged by counsel. The petition must, therefore, fail and is dismissed.

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