

Bikash Chandra Badury

Vs

The State of West Bengal

Writ Petition No. 421 of 1971

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

02.02.1972

JUDGMENT

SHELAT, J. -

1. The petitioner herein was arrested and detained in jail on May 21, 1971, pursuant to an order passed by the District Magistrate, Howrah, dated May 3, 1971, under Section 3(1) and (3) of the West Bengal (Prevention of Violent Activities) Act, President's Act 19 of 1970. The grounds of detention served upon the petitioner at the time of his arrest disclosed four incidents in which he was alleged to have participated with certain other persons. Those were : (1) that on October 17, 1970, he and some others committed theft of overhead traction wire between Janai Road and Begampore railway stations, that when pursued by the railway personnel on duty, he and those with him threw bombs at them with a view to scare them away, that the aforesaid action on the part of the petitioner and his associates caused serious dislocation of train services which in its turn led to violent demonstrations by the travelling public; (2) that on October 19, 1970, the petitioner and his associates again committed theft of overhead traction wire in between Gobra and Janai Road railway stations, that when chased by the local residents the petitioner and his said associates threw bombs at them, that that resulted in dislocation of train services which ended in violent disturbances by the train-going members of the public; (3) that on October 29, 1970, the petitioner and his associates again stole overhead traction wire between the same railway stations, threw bombs and ballast at the railway staff when they tried to chase them away, that that once again resulted in dislocation of train services and violent demonstrations by the travelling public who resented such dislocation; and (4) that on November 3, 1970 at 23.30 hours, the petitioner and his said associates committed theft of overhead traction wire in between Begampore and Baruipara railway stations, that they were chased by the railway staff on duty, that thereupon the petitioner and his said associates threw bombs and ballast at them, that the incident caused dislocation of train services and violent demonstrations by the travelling public who resented such dislocation of services terminating in public disorder.

2. There is no dispute that the various steps taken by the detaining authorities were taken in accordance with and within the time limits prescribed therefor under the different provisions of the Act. At first, counsel appearing amicus curiae for the petitioner, tried to raise a contention that the report of the Advisory Board was not made within the time prescribed under the Act. But he abandoned that point when he found from the various dates given to him by counsel for the State that the said report was in fact made in time.

3. The only other point urged by him was that ground No. 4 of the grounds of detention relating to the incident said to have taken place on November 3, 1970, could not be true as the petitioner was

actually in Alipore Central Jail from November 1, 1970 to December 15, 1970, as an under-trial prisoner in connection with a criminal case lodged against him by the police. It was urged that being so, the petitioner could not possibly have participated in the said incident, and that therefore, the said allegation as false and no valid order of detention could be said to have been passed against him on the basis of such false allegation.

4. This contention was not specifically raised in the petition. But it was raised by the petitioner in the written arguments submitted by him subsequently from the jail. These arguments were not served on the State Government, and therefore, the respondent-State had no occasion to reply to them or adduce any evidence to controvert them when a counter-affidavit was filed on its behalf. Therefore, when the petition reached hearing before us and the said contention was urged, we gave time to the State Government to produce before us a supplemental affidavit of the Superintendent of the said jail based on entries from the register of that jail on the question as to the date on which the petitioner was admitted in that jail in connection with the said police case.

5. Pursuant to the said direction the State Government filed an affidavit of the Superintendent of the said jail together with the relevant entries from the jail register for undertrial prisoners for the year 1970. The affidavit and the said entries show that the petitioner was admitted in the jail as an undertrial prisoner in connection with a criminal case No. Tiljala -I/C P.R. No. 117/70 on November 9, 1970 and was released on bail from the jail on December 15, 1970. Thus, the petitioner was not in jail on November 3, 1970, as alleged by him and was, therefore, in a position to participate in the incident alleged by the detaining authority. He was also not in jail on May 21, 1971, when the detention order was served on him and was arrested and detained. There is, thus, no substance in the contention raised by him. The result is that the petition has to be dismissed, which we do.

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