

Netaipada Shah

Vs

The State of West Bengal

Writ Petition No. 18 of 1972

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

18.04.1972

JUDGMENT

SHELAT, J. -

1. The petitioner by this Writ Petition challenges the validity of the order of preventive detention, dated June 29, 1971, passed by the District Magistrate, 24 Parganas under sub-section (1), read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities Act, being President Act XIX of 1970. The said order recites that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. On July 1, 1971, the District Magistrate, as required by the Act, reported about his having passed the said order to the State Government and that Government approved the said order of detention on July 9, 1971. In the meantime, in pursuance of the said order the petitioner was arrested on July 2, 1971 and was served at the time of his arrest with the ground of detention. The said ground stated that, in the early hours of June 1, 1971, at about 1.30 a.m. while committing theft of rice from Wagon No. SE-39751 at Bongaon Railway Station Yard, the petitioner and his associates, when challenged by the members of R. P. F. Then on duty, hurled bombs at them with a view to take their lives and that as a result of the said act SR 3179 Himungshu Bhushan Dhar Sharma of the R. P. F. party sustained burn injury on his person. The ground further stated that by the said act the petitioner and his associates created panic in the Station area and in the adjoining locality and also thereby created disturbance of public order.

2. On July 9, 1971, the Government received the representation made by the petitioner against the said order of detention. The Government rejected the representation on July 30, 1971. Thereafter the Government submitted to the Advisory Board the case of the petitioner together with all the relevant papers connected with it including the said representation. By its report, dated August 21, 1971, the Advisory Board expressed its opinion that there was sufficient cause justifying the issuance of the said order of detention.

3. Mr. Dutta, who appeared for the petitioner amicus curiae, could not find any legal infirmity either in the said order of detention or the various steps taken in pursuance of it under the Act. He, however, raised two contentions. His first contention was that the petitioner was illiterate as evidenced by the fact that when served with the ground of detention he acknowledged the receipt thereof not by his signature, but by affixing his left thumb-impression. His argument was that though the petitioner was served with a Bengali translation of the said ground of detention, such service was of no assistance to him since he was illiterate. Therefore, in the absence of the said ground having been read over and explained to him there was no adequate opportunity given to him to make a proper representation. Mr. Dutta contended that the respondent-State had not stated in the

counter-affidavit that apart from serving the petitioner with the translation of the said ground of detention the said ground was explained to him in his own language. In our view there is no substance in the contention. Neither in his petition before this Court, nor in his representation to the Government had the petitioner raised the aforesaid contention, with the result that there was neither an occasion nor any chances to the respondent to reply to such a contention. It is possible that on realising that the petitioner was an illiterate person the District Magistrate might well have read over and explained to the petitioner the ground of detention as translated in Bengali. Merely because that fact has not been expressly stated in the counter-affidavit, it would not mean that the ground was not explained to the petitioner in Bengali. Had the ground not been read over and explained to him the petitioner would have complained in his representation that he was not in a position to know the precise nature and content of the ground, and that therefore, he was not in a position to make a proper representation. That not being the case, it is impossible to believe that the ground was not read over and explained to him. In the absence of any averment in the petition there was no occasion for the respondent to clarify that the said ground was read over and explained to him.

4. The second contention urged by Mr. Dutta was that the ground of detention was a composite one and fell into three parts, the first part being with regard to the theft of rice from the said wagon, the second part relating to the throwing of bombs at the R. P. F. party and thereby causing injury to one of the said party, and thirdly of creating panic and disturbance of public order in the Station area and the locality adjoining it. Mr. Dutta urged that the first part of the said ground, namely, committing theft of rice from the wagon would not by itself be a ground germane to the objects in respect of which only the detaining authority can pass such an order. Therefore, that ground being irrelevant, the entire order would stand vitiated since it would not be possible to predicate upon which of the three grounds the District Magistrate had arrived at the requisite satisfaction.

5. As stated earlier, the ground of detention served upon the petitioner was a single ground stating the entire transaction which took place in the early hours of June 1, 1971. We do not think that Mr. Dutta would be justified first characterising the said ground as a composite one and then dissecting it into three parts, calling the first part of it as an irrelevant ground. In our view, the ground should be read as a whole and if so read there can be no doubt that the action alleged in the said ground was sufficient to create panic and public disorder in the locality. The aforesaid acts of the petitioner and his associates would fall under Section 3(2)(d) of the Act, namely, committing or instigating any person to commit any offence under the Arms Act, 1959 or the Explosive Substances Act, 1908, where the commission of such offence disturbed or was likely to disturb public order. The acts alleged against the petitioner were that while committing theft of rice from the said wagon he and his associates were not only armed with bombs but that they hurled those bombs at the members of the Railway Protection Force when challenged by them, and in consequence caused burn injuries to one of them. It was not as if the petitioner alone was armed with bombs. He had with him his associates also armed with bombs. It was also not as if the petitioner alone threw a bomb. The ground expressly stated that both the petitioner and his associates hurled bombs at the Police party. Such acts were bound to create panic in the Station area amongst the people residing in or frequenting that area, and must have also caused disturbance of public order. The decision relied on by Mr. Dutta in *Ram Krishna Paul v. State of West Bengal* ((1972) 1 SCC 570.), was given on different facts altogether and cannot give any assistance to the petitioner.

6. Thus, neither of the two contentions raised by Mr. Dutta has any force and the two contentions have, therefore to be rejected. The petition is consequently dismissed.

</html