Nishi Kanta Mondal

Vs

State of West Bengal

Writ Petition No. 7 of 1972

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

18.04.1972

JUDGMENT

KHANNA, J. -

This is a petition through jail for the issuance of a writ of habeas corpus by Nishi Kanta Mondal who has been ordered by the District Magistrate, 24-Parganas to be detained under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), hereinafter referred to as the Act. The order of detention reads as under :

"GOVERNMENTS OF WEST BENGAL OFFICE OF THE DISTRICT MAGISTRATE 24-PARGANAS ORDERNo. 352/71 Dated July 6, 1971##

Whereas I am satisfied with respect to the person known as Shri Nishi Kanta Mondal, son of Shri Radhenath Mondal of Daccapara, P. S. Benagaon, Dt. 24-Parganas that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, I therefore in exercise of the powers conferred by sub-section (1), read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), make this order directing that the said Nishi Kanta Mondal be detained.

Given under my hand and seal of office.

(Sd.) DISTRICT MAGISTRATE 24-PARGANASSeal July 6, 1971."##

2. In pursuance of the above order, the petitioner was arrested on July 8, 1971 and was served with the order as well as the grounds of detention on the same day. On July 10, 1971 the District Magistrate sent report to the State Government about his having passed the order for the detention of the petitioner. The grounds of detention and other necessary particulars were also sent along with the report. The State Government, after considering the report and other particulars, approved the detention order on July 17, 1971. Representation made by the petitioner against his detention was received by the State Government on July 30, 1971. The representation was considered by the State Government and rejected on August 5, 1971. The case of the petitioner was placed before the Advisory Board on August 6, 1971. The petitioner's representation was also sent to the Advisory Board. The Advisory Board, after considering the material placed before it as well as the representation sent by the petitioner and after giving him a hearing in person, submitted its report to the State Government on September 14, 1971. Opinion was expressed by the Advisory Board that there was sufficient cause of the detention of the petitioner. The State Government passed an order on October 5, 1971 confirming the order for the detention of the petitioner. The confirmation order

was thereafter communicated to the petitioner.

3. The petition has been resisted by the State of West Bengal and the affidavit of Shri Chandi Charan Bose, Deputy Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

4. Mr. Puri has addressed arguments amicus curiae on behalf of the petitioner, while the respondent State has been represented by Mr. G. S. Chatterjee. The first contention which has been advanced by Mr. Puri is that the Act was enacted by the President in exercise of the powers conferred by Section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970. According to Section 3 of the last mentioned Act, the power of the Legislature of the State of West Bengal to make laws, which had been declared by the Proclamation to be exercisable by or under the authority of Parliament, was conferred on the President. In the exercise of the said power, the President could, from time to time whether Parliament was or was not in session, enact, as a President's Act, a Bill containing such provisions as he considered necessary. Some other formalities, detailed in Section 3, were also required to be complied with by the President, but it is not necessary for the purpose of this case to refer to them. Section 2 of the aforesaid Act defined "proclamation" to mean the proclamation issued on March 19, 1970, under Article 356 of the Constitution by the President, and published with the notification of the Government of India in the Ministry of Home Affairs No. G. S. R. 490 of the said date. It is urged by Mr. Puri that the above mentioned proclamation was revoked by the President by another proclamation in the beginning of this month. On Account of the revocation of the proclamation, the President's Act No. 19 of 1970, according to the learned counsel, ceased to have effect. As such, the petitioner could not be kept in detention in pursuance of the order made under that Act.

5. There is, in our opinion, no force in the above contention because it is based upon the assumption that the Act made by the President ceases to operate immediately upon the revocation of the proclamation. This assumption is not correct and runs contrary to clause (2) of Article 357 of the Constitution. According to that clause, "any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a proclamation under Article 356, have been competent to make shall, to the extent of the incompetence, cease to have effect on the expiration of a period of one year after the proclamation has ceased to operate except as respects thing done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature". The above provision makes it plain that the period for which a law made under Article 356(1) remains in force is not co-terminus with the duration of the proclamation. It has not been disputed that the President was competent under clause (1) of Article 356 of the Constitution of enact Act No. 19 of 1970. The said Act, in view of the provisions of clause (2) of Article 357, shall continue to remain in force in spite of the revocation of the proclamation, dated March 19, 1970, and would ceases to have effect only on the expiry of one year after the proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions of the Act are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature. As the aforesaid period of one year has not expired and as the provisions of the Act have not been repealed or re-enacted with or without modification by Act of the appropriate Legislature, the impugned Act should be held to be still in force.

6. In view of our finding that the Act (Act No. 19 of 1970) is still in force, it is not necessary to

consider the question as to what would be the legal position in respect of subsisting detentions after the Act ceases to have effect in accordance with Article 357(2) of the Constitution.

7. Argument has been advanced by Mr. Puri that the impugned detention order was not in conformity with Section 10 of the Act as it did not specify the date of detention. Section 10 reads as under :

> "10. In every case where a detention order has been made under this Act, the State Government shall, within thirty days from the date of detention under the order, place before the Advisory Board, constituted by it under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer specified in sub-section (3) of Section 3, also the report made by such officer under sub-section (4) of Section 3."

According to the learned counsel, the words "within thirty days from the date of detention under the order" in the section indicate that it is imperative on the part of the detaining authority to specify the date of detention in the order. We find ourselves unable to accede to this submission. All that Section 10 contemplates is that the State Government should within 30 days from the commencement of the detention place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where an order has been made by an officer specified in sub-section (3) of Section 3, also the report made by such officer under sub-section (4) of Section 3. There is nothing, however, in the section which makes it obligatory on the part of the detaining authority to specify the date of the commencement of detention. Detention starts from the time a detenu is taken into custody in pursuance of the detention order. In most of the cases it may be difficult to state in the detention order as to when the detention would commence because the detaining authority cannot be certain at the time of the making of the detention order about the date on which the person ordered to be detained would be taken into custody. The possibility of the person ordered to be detained avoiding or delaying his apprehension by absconding or concealing himself cannot be ruled out. In case the contentions advanced on behalf of the petitioner were to be accepted, the detention order would cease to be enforceable in case person ordered to be detained cannot somehow be apprehended on the date mentioned in the order. We find it difficult to draw such an inference from the language of Section 10 of the Act. The words "from the date of detention under the order", in our opinion, have reference to the date of the commencement of the detention in pursuance of the detention order.

8. Lastly, it has been argued by Mr. Puri that the grounds of detention are not germane to the objects for which a person can be ordered to be detained under the Act. In this connection, we find that, according to the grounds of detention which were furnished to the petitioner, he was being detained as he was acting in a manner prejudicial to the maintenance of public order as evidenced by particulars given below :

> "On February 12, 1971 at about 02.00 hrs. you and some of your associates being armed with bombs and other lethal weapons attacked Shri K. K. Naskar, I. A. S., S. D. O. Bongaon and his guard by hurling bombs and thereby causing injuries to the guard constable when they came out on hearing sounds of explosion of bombs near the quarters of Shri S. C. Sarkar, Magistrate 1st class, Bongaon, at Amlapara near Bongaon Court. You, thereby, created a panic in the locality and disturbed the public order.

> (2) On February 23, 1971, between 01.45 hrs. and 02.15 hrs. Bongaon Police on receipt of a secret information searched a house at Subhaspalli, Bongaon and recovered three high explosive bombs and some explosive materials from you and your associates possession."

According to Section 3 of the Act, the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in may manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. District Magistrates and some other officers under sub-section (3) of Section 3 of the Act have been empowered, if satisfied as provided in sub-section (1), to exercise the powers conferred by the said sub-section. According to clause (d) of sub-section (2) of Section 3 of the Act, for the purposes of sub-section (1) of expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" inter alia means :

> "Committing or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 or the Explosive Substances Act, 1908, where the commission of such offence disturbs, or is likely to disturb, public order."

It is manifest from the above definition that the expression "acting in any manner prejudicial to the maintenance of public order" would include the commission of an offence under the Explosive Substances Act, 1908, when the commission of such offence disturbs or is likely to disturb public order. Particulars supplied to the petitioner regarding the incident of February 12, 1971 show that the petitioner and his associates burled bombs near the quarter of the S. D. O. Bongaon and caused injuries to his guard, as a result of which panic was created in the locality and public order was disturbed. The particulars regarding the incident of February 12, 1971 clearly bring the case within ambit of clause (d) of sub-section (2) of Section 3 of the Act. As regards the second incident of February 23, 1971 we find that the particulars show that three high explosive bombs and explosive materials were recovered from the possession of the petitioner and his associates on search of a house. The particulars thus show that the petitioner was guilty of an offence under the Explosive Substances Act. It is also obvious that the use of high explosive bombs was likely to disturb public order. The fact that the high explosive bombs were recovered from the petitioner and his associates and taken into possession before they could be used would not take the case out of the purview of clause (d). The earlier incident of February 12, 1971 gives a clear indication of the propensity of the petitioner to use and explode such bombs. The recovery of the high explosive bombs from the possession of the petitioner prevented him from using and exploding the bombs and disturbing public order. As the object of detention is to prevent the detenu from acting in any manner prejudicial to the security of the State or the maintenance of public order, the grounds of detention supplied to the petitioner, in our opinion, should be held to be germane to the purpose for which detention order can legally be made under the Act. In order to detain a person with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order, as contemplated by Section 3(2)(d) of the Act, it is sufficient that the detaining authority considers it necessary to detain him in order to prevent him from doing any of the acts mentioned in clause (d). If the past conduct and antecedents of the person concerned reveal a tendency to do the acts referred to in clause (d), the order of detention would be upheld, even though because of some supervening cause like prompt action by the police, the public order is not actually disturbed.

9. We therefore, find so infirmity in the impugned detention order. It also cannot be said the

detention of the petitioner is not in accordance with law. The petition consequently fails and is dismissed.

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