

Sasthi Chandra Roy

Vs

The State of West Bengal

Writ Petition No. 465 of 1971

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

24.04.1972

JUDGMENT

SHELAT, J. -

1. This petition under Article 32 of the Constitution is directed against the order of detention, dated May 7, 1971, passed by the District Magistrate, Jalpaiguri under sub-section, (1) read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, being President's Act XIX of 1970. The impugned order recited that the District Magistrate was satisfied that with a view to preventing the petitioner from acting in a manner prejudicial to maintenance of public order it was necessary to detain him. In pursuance of the said order, the petitioner was arrested on May 9, 1971. The said order was thereafter approved by the West Bengal Government under Section 3(4) on May 17, 1971. As provided by the Act, the State Government placed the petitioner's case together with all the relevant materials before the Advisory Board on June 7, 1971. On June 8, 1971, the Government received the petitioner's representation against his said detention. On July 1, 1971, the Government rejected it being satisfied that the order was valid and proper. On July 1, 1971, the Government forwarded the said representation to the Advisory Board. The Petitioner's case in the said representation was that the grounds of detention furnished to him at the time of his arrest were false and were invented for the sole purpose of detaining him without a trial. He also alleged there that in the first information report sent by the Head master of Maynaguri High School, on the basis of which a police case was started against him and certain other persons, there was no mention of his or any other name. The said first information report did not also contain any allegation that he and those others with him had under threats prevented the staff of the said school from offering any resistance to him and his companions. He also forwarded with the said representation a certificate of good conduct, dated May 17, 1971, issued by the Head Master of the said school. The Advisory Board gave a personal hearing to the petitioner but after hearing him and considering the said representation together with the other materials placed before it, submitted its report, according to which there was sufficient cause justifying the issuance of the said order and the petitioner's detention thereunder. Upon receipt of the said report, the Government confirmed by its order, dated July 29, 1971, the said order of detention and the continuation of the petitioner's detention thereunder. That order was communicated to the petitioner on July 30, 1971.

2. The grounds of detention served upon the petitioner were two. The first was that on December 1, 1970, sometime after mid-night, the petitioner along with certain other persons after breaking open the doors entered into the room of the Head Master of the Maynaguri Higher Secondly School and set fire to books, registers, a type-writer, furniture, etc., causing heavy damage to the school, and placed thereafter a bomb in the school premises thereby endangering the lives of the teaching staff and the students. The second was that on April 16, 1971, at about 11 hours the petitioner together

with certain other persons once again made a forcible entry into the said school, preventing under threats the members of the school staff from offering any resistance to him and his companions and then set fire to the school building. The result of the aforesaid acts was that the school had to be closed down for an indefinite period.

3. It appears that in connection with the incident set out in the second ground, the Head Master of the said school had lodged the said first information report that very night, setting out therein the fact of the school having been set fire to by some miscreants, as also the fact that he and the other members of the staff had been to extinguish the fire and thereby save the school building. The said report recited that the school had been reopened that very day after the vacation but had to be closed for an indefinite period owing to the aforesaid incident. It further stated, presumably with reference to the earlier incident of December 1, 1970, set out in the first ground of detention, that repeated acts of arson to the school building had alarmed him and the other teachers and that they apprehended recurrence of such incidents and total destruction of the school building and requested stationing of an armed guard at the school to prevent such incidents.

4. It is true that in the first information report the names of the miscreants were not given. That might be either because the school building was set fire to after the Head Master and the other members of the staff had left or because the Head Master refrained from doing so out of fear. On the filing of the said first information report, however, a police case No. 27, dated April 16, 1971 under Section 436, read with Section 506 of the Penal Code was filed in the Court of the Sub-Divisional Magistrate, Jalpaiguri being G.R. No. 956 of 1971 and five persons including the petitioner had been placed before the Magistrate, who granted them bail on April 21, 1971, on condition that they reported at the police station thrice a week. It is also a fact that the petitioner had obtained a certificate of good character from the Head Master on May 17, 1971, that is to say, after he had been placed under arrest under the impugned order. That certificate, as aforesaid, was attached by him with his said representation which he made to the Government. But neither the fact of the petitioner having been granted bail nor his obtaining the said certificate can affect adversely the validity of the order of detention made on May 7, 1971, when the petitioner was at large and was not in jail custody. Likewise the fact of the petitioner's having obtained a good character certificate after the incidents referred to in the grounds of detention cannot affect the validity of the impugned order. Assuming that the certificate was genuinely given by the Head Master and not out of fear of evil-consequences if it were refused by him, that certificate together with the petitioner's said representation was first before the Government and then before the Advisory Board. Yet, the Government rejected the representation after considering all the materials before it and the Board also, notwithstanding the petitioner's aforesaid allegations in that representation and the said certificate, came to the conclusion that there was sufficient cause justifying his detention. That being the position, neither the fact of the petitioner having been granted conditional bail nor the fact of his having procured the said certificate could by themselves further his contention that the impugned order was passed on baseless or false allegations.

5. The two incidents set out in the grounds for detention would clearly fall under Section 3(2)(b) and (d) of the Act. The alleged setting of fire to the school building on April 16, 1971, accompanied by threats to the members of the school staff to prevent them from offering any resistance, was clearly aimed at seeing that the school did not re-open and carry on its usual educational activity. There can scarcely be any doubt that placing a bomb in the school premises and attempting to destroy the school building himself must obviously cause scare and alarm not only amongst the pupils and the teachers but also amongst the parents and guardians of such pupils who would not venture to send their wards to the school for fear of their personal safety. Such acts must be held to

constitute disturbance of public order or at any rate acts which were likely to disturb public order, thus, falling under Section 3(2)(b) and/or its sub-clause (d).

6. None of the contentions urged on behalf of the petitioner can thus be sustained. The petition must, therefore, stand dismissed.

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