

Mintu Bhakta

Vs

The State of West Bengal

Writ Petition No. 6 of 1972

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

25.04.1972

JUDGMENT

SHELAT, J. -

1. This writ petition came up for hearing before us on April 20, 1972. After the arguments were heard, we directed immediate release of the petitioner from the jail where he had been detained. We said at that time that we would give reasons for our said order later on. We now proceed to give those reasons.

2. The petitioner was detained under an order, dated August 17, 1971, passed by the District Magistrate, 24 Parganas in exercise of powers conferred by sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, XXVI of 1971. The order stated that the District Magistrate was satisfied with regard to the petitioner that it was necessary to detain him under the said Act with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In consequence of the said order the petitioner was arrested on August 31, 1971 and detained in jail. At the time of the arrest he was served with the grounds for his detention. On August 19, 1971, the District Magistrate reported the petitioner's case to the State Government and the State Government approved of the said order on August 24, 1971. On September 21, 1971, the Government placed the petitioner's case before the Advisory Board. On that day, the Government received a representation made by the petitioner, which representation was considered by the Government and was rejected by it, on October 8, 1971. The Advisory Board submitted its report to the Government, on November 5, 1971, holding that there was sufficient cause justifying the said order and the petitioner's detention thereunder. The Government thereafter confirmed the said detention order on November 18, 1971 and communicated that decision to the petitioner the next day.

3. On these facts Mr. Goswami, appearing amicus curiae for the petitioner, frankly conceded that he was not in a position to discover any legal infirmity either in the said order or the various steps taken by the detaining authorities following that order.

4. He, however, raised two contentions in his challenge to the validity of the impugned order and the petitioner's detention thereunder. His first contention was that ground No. 2 of the grounds of detention did not relate to the question of maintenance of public order and at best could have relation to the question of maintenance of law and order. Ground No. 2 runs as follows :

"On June 28, 1971 at about 19.30 hours you and some of your associates being armed with deadly weapons raided the houses of Jitendra Nath Ghosh and Bankim

Chandra Dutta both of Natun Bazar, P. S. Bashirhat and forcibly snatched away their D. B. guns after putting the inmates of the house into instant fear of death and grievous hurt. You thereby created much panic in the locality and disturbed public order."

The argument was that these allegations amounted at best to threats to individuals with a view to rob them of their double barrelled guns and that since the said alleged acts were committed not in any public place but within the two houses, they could not fall within the realm of public order. That ground therefore, was extraneous to the act, and being so, vitiated the subjective satisfaction said to have been reached by the detaining authority. In support of the argument counsel relied on *Pushkar Mukherjee v. State of West Bengal* ((1969) 2 SCR 635 : (1969) 1 SCC 10). and *Nagendra Nath Mondal v. State of West Bengal* ((1972) 1 SCC 498 : AIR 1972 SC 665).

5. In the view, however, we take on the second contention raised by counsel, which we will immediately set out, it is not necessary for us to examine and decide this contention.

6. As stated earlier, the second ground for detention was in respect of the incident alleged to have taken place on June 28, 1971 when the petitioner accompanied by some of his companions was said to have raided the houses of the said Jitendra Nath Ghosh and Bankim Chandra Dutta and snatched away guns belonging to them. The petitioner's contention was that this allegation was false and baseless since he could not have committed the aforesaid acts as he was actually in police custody on that day. This factual contention was first taken by him in his representation to the Government in which he had specifically stated that he was arrested by the police on June 27, 1971 and was in police custody on June 28, 1971, the day when he was supposed to have committed the acts alleged in ground No. 2 of the grounds for detention. In the present writ petition, he once again raised the identical contention stating that he was arrested on June 27, 1971 by Bashirhat police was sent to Bashirhat jail and from there to Alipore jail, and finally to the Dun Dum Central Jail.

7. The State Government had thus clear notice of the factual contention raised by the petitioner, first, in his representation and again in this writ petition. If the petitioner's contention were to be accepted, ground No. 2 must necessarily be held to be baseless as it would be obviously impossible for the petitioner to have committed the acts alleged in that ground, a ground upon which the detaining authority was said to have reached his subjective satisfaction that it was necessary to detain him with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. That satisfaction was clearly arrived at inter alia from the acts alleged to have been committed by the petitioner on June 28, 1971.

8. The only answer to such a specific plea in the Government's counter-affidavit was a bare denial of "various facts and allegations stated by the petitioner in his writ petition", and an equally bare assertion that the impugned order was made bona fide and in accordance with law. Such a vague answer is neither a proper nor an adequate reply in disproof of the specific allegation made twice by the petitioner. That allegation, therefore, remains unanswered and must consequently be accepted in the absence of any cogent reply thereto.

9. Ground No. 2, consequently, must be held to be one upon which the District Magistrate could not possibly base his subjective satisfaction required by the Act. It is by now well-settled that in cases dependent on subjective satisfaction if it is found that one of the grounds for detention is extraneous or is factually baseless, the order must fail, since it is impossible in such cases to predicate upon which of the grounds the concerned authority had reached its satisfaction or whether it would have

reached the satisfaction without or irrespective of the ground which fails. That being the position, we must sustain the petitioner's contention that the order was bad and so too his detention.

10. For the reasons aforesaid, the writ petition is allowed and the impugned order and the petitioner's detention thereunder are declared to be bad in law.

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