

S.K. Kedar

Vs

State of West Bengal

Writ Petition No. 35 of 1972

(G. K. Mitter, P. Jagmohan Reddy, K. K. Mathew JJ)

02.05.1972

JUDGMENT

MATHEW, J. -

1. This is an application filed under Article 32 of the Constitution for the issue of a writ in the nature of habeas corpus and to release the petitioner who alleged to be in illegal custody.

2. In the exercise of the power conferred under sub-section (1), read with sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970), hereinafter referred to as the 'Act', the District Magistrate, 24 Parganas, passed an order on July 10, 1971, detaining the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. Thereafter the petitioner was arrested on July 13, 1971, and was served with the order of detention as also with grounds of detention together with a vernacular translation thereof on the same day. On July 14, 1971, the District Magistrate reported to the State Government about passing of the detention order. The report was considered by the State Government on July 21, 1971, and the Government approved the order of detention passed by the District Magistrate. On the same day, the State Government submitted a report to the Central Government in accordance with the provisions of sub-section (5) of Section 3 of the Act together with the grounds of detention and other particulars as required. On August 11, 1971, the State Government placed the case of the petitioner before the Advisory Board under Section 10 of the Act. The State Government received a representation from the petitioner on September 8, 1971. The representation was considered as by the Government and it was rejected by an order, dated September 10, 1971. The representation was, however, forwarded to the Advisory Board for consideration of the same by the Board. The Advisory Board, after consideration of the materials placed before it, submitted its report to the State Government on September 6, 1971, incorporating its opinion that there was sufficient cause for the detention of the petitioner. The petitioner prayed, to the Advisory Board, by means of a representation, dated September 6, 1971, that he might be given an opportunity of being heard in person. This representation was received by the Advisory Board on September 8, 1971, and the Board heard the petitioner on September 18, 1971. Therefore, the Board sent a supplementary report to the State Government on the same day, stating that the Board did not find any reason to revise its previous opinion. The State Government confirmed the order of detention on October 7, 1971, and the order of confirmation was communicated to the detenu on the same day.

3. The grounds of detention communicated to the petitioner stated :

"(1) That on July 5, 1971 at about 05.30 hrs. you along with your associates, while removing Brake Blocks, Vertical Levers and other railway materials from wagon

Nos. NEP 1820 and PW 3471 at Chitpur Rly. Yard, charged bombs and ballasts upon the on-duty R.P.F. party, when challenged by them. Your attack grew so violent that RK 6448 Ram Bachan Rai of the R.P.F. party had to fire one round in self-defence, when you all fled away. You created disturbance of public order thereby.

(2). That on July 5, 1971, night again at 20.30 hrs., you along with your associates, while removing iron rods from B.F. Wagon No. ER 99155 at Chitpur Rly. Yard, charged bombs and ballasts upon the on-duty R.P.F. party at Chitpur post, when challenged by them. Your attack grew so violent that RK 6756 Madan Mohan Prasad of the R.P.F. party had to fire two rounds upon you in self-defence culminating (in) death of one of your associates on the spot, when you all fled away, you created disturbance of public order thereby."

4. Section 3(2) of the Act defines the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" for the purpose of sub-section (1) of that section. Clauses (b) and (d) of sub-section (2) of Section 3 read as follows :

"(b) Committing mischief, within the meaning of Section 425 of the Indian Penal Code (45 of 1860) by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building, where the commission of such mischief disturbs, or is likely to disturb, public order;"

"(d) 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 (54 of 1959) or the Explosive Substances Act, 1908 (6 of 1908) where the commission of such offence disturbs, or is likely to disturb, public order,".

5. The question is, whether the offences alleged to have been committed by the petitioner in the grounds communicated to him would amount to commission of the offences which would disturb public order which are likely to disturb public order.

6. The relevant criteria to distinguish in the abstract between acts prejudicial to maintenance of law and order and those which are prejudicial to maintenance of public order are laid down in a number of rulings of this Court (see Pushkar Mukherjee and Others v. The State of West Bengal ((1969) 2 SCR 635 : (1969) 1 SCC 10). Sudhir Kumar Saha v. Commissioner of Police, Calcutta and Another (AIR 1970 SC 814 : (1970) 1 SCC 149 : (1970) 3 SCR 360), and Nagendra Nath Mondal v. The State of West Bengal ((1972) 1 SCC 496). The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines the disturbance amounts only to a breach of the law and order (see Arun Ghosh v. State of West Bengal) (AIR 1970 SC 1228 : (1970) 1 SCC 98 : (1970) 3 SCR 228).

7. In the final analysis, one must always return to the facts of case to see whether the acts perpetrated are of such a nature of such potentiality as to travel beyond the immediate victims and affect the general or local public. A case by case adjudication gives the judicial process impact of actuality and thereby saves it from the hazards of generalisation.

8. We think that the acts attributed to the petitioner are such as would bring him within the ambit of clause (b) and (d) of Section 3(2) of the Act. Attacking the R.P.F. party with bombs at the Chitpur railway station yard was bound to cause scare among all the members of the public who would be resorting the station yard and interfere with their activities in getting the goods loaded and unloaded. The acts attributed to the petitioner had the potentiality affecting the even tempo of the life of the community in the locality by their reverberations. We therefore, overrule the contention of counsel for the petitioner that the grounds communicated to the petitioner did not disclose that he indulged in any activity which was prejudicial to the maintenance of public order.

9. It was contended that the petitioner was not given an opportunity of being personally heard by the Advisory Board before it sent the report incorporating its opinion that there was sufficient cause for the detention of the petitioner. We do not think that there is any substance in this contention either. Section 11 of the Act, so far as it is relevant, provides :

"11. Procedure for Advisory Boards. - (1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if in any particular case considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government within ten weeks from the date of detention."

In this case, the Board did not consider it essential to hear petitioner in person before submitting its report. So, unless the petitioner requested for a personal hearing, there was no obligation on the part of the Board to give a personal hearing to him. The Board considered all the relevant materials relating to the case of the petitioner and it came to a conclusion that there was sufficient cause for the detention of the petitioner in its report, dated September 6, 1971. On the same day the petitioner sent a representation to the Board that he may be heard in person. That representation reached the Board only September 8, 1971. Thereafter the Board heard the petitioner in person on September 18, 1971, but found no reason to revise its previous opinion. So it submitted a supplementary report to the Government on September 18, 1971, to that effect.

10. We, therefore, dismiss the petition.

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