

Parimal Sarkar

Vs

The State of West Bengal

Writ Petition No. 28 of 1972

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

03.05.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This is a petition under Article 32 of the Constitution by which the petitioner challenges his detention under the West Bengal (Prevention of Violent Activities) Act, 1970 (hereinafter called the Act).

2. An order of detention was made by the District Magistrate, 24 Parganas under sub-section (3) of Section 3 of the Act directing the petitioner to be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. A report in this regard was made to the State Government as required under the Act on July 22, 1971. The petitioner was arrested on July 21, 1971, and was served with the grounds of detention on the same date. The State Government approved the detention on July 29, 1971, and on the same day it reported to the Central Government in accordance with the provisions contained in sub-section (5) of Section 3 of the said Act together with the grounds of detention and other particulars having a bearing on the necessity of the order. On August 3, 1971, the State Government received the representation from the petitioner which after full consideration, it rejected on August 16, 1971 and forwarded it to the Advisory Board for its consideration. On or about August 17, 1971, a second representation was received from the petitioner. In this second representation, the petitioner inter alia stated that he had been absent from Gobordanga, Police Station Habra and was away at Hooghly where he had fallen ill. He produced a medical certificate in support of his contention. The State Government considered the representation after due examination of the medical certificate and the contentions raised by the petitioner in his said representation and rejected it on September 6, 1971. It, however, forwarded this representation of the petitioner also to the Advisory Board for its consideration. The Advisory Board considered the representation placed before it and after hearing the petitioner in person submitted its opinion to the State Government on September 10, 1971, that there was sufficient cause for detention of the petitioner. By an order, dated October 16, 1971, the State Government in exercise of the powers conferred by sub-section (1) of Section 12 of the said Act confirmed the said order of detention which was communicated to the petitioner on October 29, 1971.

3. It will thus appear from the various steps taken from the time the Order of detention was made to the time of confirmation by the State Government, of the opinion of the Advisory Board, and its communication to the detenu that the mandatory provisions of the Act have been fully complied with in that the serving of the grounds on the petitioner, the report made to the State Government, its approval, the receipt of the representations, their consideration, placing of the petitioner's case before the Advisory Board, the report of the Advisory Board to the State Government and the

confirmation by the State Government have all been done within the time specified in sub-sections (4) and (5) of Section 3, Section 8, Section 10, sub-section (1) of Section 11 and Section 12. The confirmation by the State Government is also within three months of the date of detention. The sole ground upon which the detention of the petitioner for acting in a manner prejudicial to the maintenance of public order has been stated as under :

"That on the night of June 19/20, 1971, in between 23.45 and 00.40 hrs., you along with your associates looted away bags of the rice by breaking open Wagon No. ER 21427 at Gobardanga Railway Station and when challenged by the on-duty R. P. F. party you and your associates charged bombs and ballasts on them in order to kill them. Your attack grew so violent that RK/AW 661 Ghanashyam Pandey of the R. P. F. party had to fire one round upon you in self-defence, which resulted in death of one of your associates named Kalipada Sarkar on the spot when you and others fled away. You created disturbance of public order thereby."

It is contended by the learned advocate that this ground does not constitute the necessary requisite under Section 3(2) of the Act which justifies the detention of a citizen for "acting in a manner prejudicial to the security of the State or the maintenance of public order" for the purposes of sub-section (1) of that section; secondly that the order made against the petitioner was mala fide in that he was arrested on July 16, 1971, but has been shown to be arrested on July 21, 1971 and thirdly the police were actuated by a improper motive because six or seven years prior to his detention he had made a complaint that the final report given by the Police Officer in respect of the first information given by him in connection with an incident at Sealdah, the accused was punished and departmental action was taken against the investigating Police Officer. In view of this grudge the police have often threatened the petitioner and tried to harass him in various ways which culminated in this false allegation made against him.

4. Whether the act committed by the petitioner on the sole ground communicated to him would amount to a disturbance of public order or is likely to disturb public order has been considered in several decisions of this Court one of which was pronounced only yesterday, in *S. K. Kader v. State of West Bengal*, to which both of us were parties. In that case also the grounds were similar to the ground on which the petitioner has been detained. In fact the second ground in that case is almost identical. It was there observed by Mathew, J. :

"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 order 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 a specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of the law and order. In the final analysis, one must always return to the facts of the case to see whether the acts perpetrated are of such a nature or 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 the impact of actuality and thereby saves it from the hazards of generalisation."

5. By the application of the principles set out above, we held that the acts alleged against the detenu in the grounds served on him had the potentiality of affecting the even tempo of the life of the community in the locality by their reverberations and were sufficient to sustain the order of detention on the ground that the acts of the petitioner would disturb or would be likely to disturb the maintenance of public order.

6. The ground in this case as we said earlier being similar, we must hold likewise that the acts alleged to have been committed by the petitioner are prejudicial to the maintenance of public order. Similar grounds have been considered in the other cases of this Court where it has been held that they disclose that the act or acts alleged against the detenu would disturb or would be likely to disturb public order : (See Nandlal Roy alias Nanda Dulal Rao alias Pagla v. State of West Bengal. Netaipada Shah v. The State of Bengal and Jagannath v. State of West Bengal.

7. The second and third grounds are those set out in the latter of the petitioner from jail to this Court, dated March 14/16, 1972, long after the Advisory Board had met. Even so on a perusal of that letter and the second representation, it will appear that the petitioner had made similar allegations in the said second representation, which was considered by the Advisory Board after giving him a personal hearing. In that petition also he has stated that on June 15, 1971, he went to his father-in-law's house at Bhadreswar in Hooghly. After going there he fell ill and was under medical treatment from June 16, 1971, till June 22, 1971. In view of the illness he had even lost the power to walk. He also stated therein the circumstances in which he had incurred the wrath of the police for making a complaint against them because they had sent a final report : as a result of that complaint the accused was prosecuted, convicted and sentenced and the Sub-Inspector who was investigating was also departmentally punished. Ever since, the police has been angry with him, had threatened him in various ways and was harassing him. While he stated in the letter of March 14/16, 1972 that he was arrested on July 16, 1971, by the C. R. P. which if true makes the statement in the counter-affidavit that he was arrested on July 21, 1971, to be false, he did not complain about it in any of his representations to the State Government. As these were sent to the Advisory Board, it would have enquired into it. No doubt, the allegation that he had attracted the ill-will of the police as well as the fact of his illness were stated in those representations and the Board must have gone into it because it appears from the affidavit filed by the Assistant Secretary of the Home Department of West Bengal that the question of his illness at the relevant time and the medical certificate was considered by the State Government and also by the Board. What this Court has to be satisfied with is that the mandatory provisions of the Act have been complained of prejudicial to the maintenance of public order and the detenu has been given an opportunity to make his representation to the Advisory Board which after full consideration has formed an opinion that the detention is justified.

8. In the view we have taken, we are satisfied that there is no merit in this petition and it is therefore dismissed.

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