

Kishori Mohan Bera

Vs

The State of West Bengal

Writ Petition No. 47 of 1972

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

04.05.1972

JUDGMENT

SHELAT, J. -

1. On September 24, 1971, District Magistrate, Hooghly, in exercise of the power conferred on him under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971, (hereinafter referred as the Act) passed the order impugned in this petition direction the petitioner's detention, being satisfied that it was necessary to do so "with a view to preventing him acting in a manner prejudicial to the maintenance of the public order or security of the State". Pursuant to the order the petitioner was arrested on that very day and detained in Hooghly Jail.

2. The grounds of detention served on the petitioner on that occasion were as follows :

"(1) On July 8, 1971, at about 21.00 hours you along with your associates held a meeting in a house at village Jagannathpur, P. S. Khanakul, District Hooghly and decided to kill Jotedars and richmen of the locality.

(2) On July 10, 1971, at about 21.30 hours you along with your associates attacked one Sk. Ismail s/o L. Sk. Lakhe of Sathpaitha, P. S. Khanakul, District Hooghly and tried to assault him by Tange and a dagger with intent to kill him.

(3) On August 25, 1971 at about 16.30 hours you along with your associates addressed meeting at Chhabbishpur Bazar in front of Lal Baba Temple and impressed upon the gathering to use arms to establish common people Raj in the country and for the same purpose you urged killing policemen and gun licensees and collection of arms and ammunitions from them. You also disregarded the Indian National Flag by trampling (it) under foot and shouted slogans saying : 'We don't recognise the National Flag. Down with this Government. Let us from a peasant's Raj' etc."

3. In regard to the language used in the impugned order and the grounds of detention, counsel appearing amicus curiae for the petitioner raised two contentions. One was that the recital in the impugned order that the District Magistrate was satisfied of the necessity of the petitioner's detention to prevent him from acting in a manner prejudicial to "the maintenance of the public order or the security of the State" indicated that he had not applied his mind with any seriousness either to the acts alleged in the grounds of the detention against the petitioner or to the question whether they fell within the purview of the expression "the security of the State 'or' the maintenance of public

order" or both. The other contention was that ground No. 2 in any case was not germane to the concept of either the security of the State or the maintenance of public order, in respect of which alone Section 3 authorised him to direct detention. The impugned order, urged counsel, becomes unsustainable on either of his two contentions.

4. The Act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to trial by courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with a limited right of challenge only. There can, therefore, be no doubt that such a law has to be strictly construed. Equally also, the power conferred by such a law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law.

5. Section 3 of the Act empowers the authorities specified therein to detain person on the specific grounds laid down therein, namely, preventing the person concerned from acting in a manner prejudicial to (i) the Defence of India, relations of India with foreign powers or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community. We are not concerned with a foreigner, to whom clause (b) of the section also would apply, and therefore, that clause need not detain us. Section 3 thus clearly lays down that the power of detention conferred thereunder can be exercised on any one or more of the said grounds. Obviously, therefore, if the power is exercised on a ground not enumerated there, or in respect of activities which are not germane to any one of those grounds, such exercise would be beyond the jurisdiction of the detaining authority, and therefore, invalid.

6. As aforesaid, the District Magistrate detained the petitioner, as the impugned order recited, on the ground of preventing him from acting in any manner prejudicial to "the maintenance of public order or the security of the State", here the State of West Bengal. He was sustained of the necessity of detaining the petitioner from the activities alleged against him in the grounds of detention set out earlier. The Act nowhere defines the expressions 'public order' and 'the security of the State', but by a series of decisions, to some of which only we need recall attention, the connotation and the area of each of them has been defined and the meaning to be attached to each of them has by now been well crystallised. So that the authority passing an order of detention can very well know the danger, or the likely danger to any one or more of the objects set out in Section 3 from the activities of the person concerned.

7. In *Dr. Lohia v. State of Bihar* ((1966) 1 SCR 709 : AIR 1966 SC 740 : (1966) 2 SCJ 549 : (1969) 1 SCC 10) this Court explained the difference between three concepts of law and order, public order and the security of the State and fictionally drew three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. These observations clearly bring out the distinction between each of the three concepts and the three imaginary concentric circles help to delineate the respective areas of the three concepts. A similar distinction between law and order and public order was also drawn in *Pushkar Mukherjee v. State of West Bengal* ((1969) 2 SCJ 635), and a caution was there expressed that the expression 'public order' in Section 3(1) of the Preventive Detention Act, 1950 did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power under such a detention law, unless the act in question was such as engaged or was likely to endanger public order. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a

similar kind, may have such an impact that it would disturb the even tempo of the life of the community. (See *Arun Ghosh v. State West Bengal* ((1970) 3 SCR 288 : (1970) 1 SCC 98), also *Nagendra Nath Mondal v. State of West Bengal* ((1972) 1 SCC 498)). This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. In such a case the power can be exercised on both the grounds, namely, disturbance of public order and danger to the security of the State.

8. In the instant case, however, that is not so, because the impugned order states that the detaining authority was satisfied that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to "the maintenance of the public order or the security of the State". The satisfaction of the District Magistrate was on the disjunctive and not conjunctive grounds, which means that he was not certain whether he had reached his subjective satisfaction as the necessity of exercising his power of detention on the ground of danger to the public order or danger to the security of the State. If he felt the necessity to detain the petitioner from the activities described by him in the grounds of detention on the ground that those activities affected or were likely to affect both the public order and the security of the State he would, no doubt, have used conjunctive 'and' and not the disjunctive 'or' in his order. But as the order stands, it would appear that he was either not certain whether the alleged activities of the petitioner endangered public order or the security of the State, or he did not seriously apply his mind on the question whether the said alleged activities fell under one head or the other and merely reproduced mechanically the language of Section 3(1)(a)(ii). When such equivocal language is used in an order and the detenu is not told whether his alleged activities set out in the grounds of detention fell under one head or the other, or both, it is not difficult to appreciate that a detenu might find it hard to make an adequate representation to the Government and the Advisory Board.

9. Counsel for the State, however, argued that a similar order was upheld in *Ananta Mukhi v. State of West Bengal* ((1972) 1 SCC 580). But in that case the majority sustained that order because the West Bengal (Prevention of Violent Activities) Act, 1970, which was there under consideration of the Court, contained a special definition of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" with reference to certain activities enumerated in sub-clause (a) to (e) of sub-section (2) of Section 3 of that Act. At page 592 of the report, the majority, however, observed that if a statute mentioned different grounds for detention of a person, an order of detention should specify distinctly the ground or grounds for which the detenu had been ordered to be detained, and it would not be permissible to state that the detenu had been ordered to be detained for ground (a) or ground (b). The use of the word 'or' would, in cases falling under such a statute, show an element of casualness in the making of the order. In support of this proposition, the majority cited with approval the observations made by this Court in *Jagannath Misra v. State of Orissa* ((1966) 3 SCR 134 : AIR 1966 SC 1140 : (1967) SCJ 641).

10. It is, therefore, clear that before the authority invokes its power under Section 3, it must be satisfied and must expressly say in its order that the alleged activities of the person concerned were such that they endangered or were likely to endanger either the security of the State or public order or both. If the activities are of such potentiality or impact so as to affect both of them, the conjunctive 'and' and not the disjunctive 'or' would be the appropriate word. There is, therefore, considerable force in the argument that the language in which the impugned order is couched demonstrates an element of casualness with which it was made.

11. Besides this difficulty, the grounds of detention present yet another difficulty in sustaining the order. Assuming the activities (1) and (3) set out in the grounds of detention can be said to be germane to public order or the security of the State, it is quite certain that activities set out in ground No. 2 cannot be said to be germane to either of them. For, that ground relates to an assault on an individual, undoubtedly with lethal and dangerous weapons, by the petitioner and his associates. Such an act, as is expressed in ground No. 2, cannot, however, be said to place public order in jeopardy, actual or likely, much less the security of the State. It is clearly an act which infringes the law and order, but cannot be said, being in relation to a particular individual only, to endanger public order. Ground No. 2, therefore, clearly was extraneous to any of the heads, endangering which gives ground for invoking the power under the Act. That being so, in view of the well settled position that an extraneous ground vitiates the order since it is impossible to predicate whether without it the requisite satisfaction could have been reached, the impugned order cannot be upheld.

12. For the reasons aforesaid, the petition succeeds and is allowed. We direct that the petitioner be released from his detention forthwith.

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