

Joydeb Gorai

Vs

State of West Bengal

Writ Petition No. 39 of 1972

(J. M. Shelat, I. D. Dua, H. R. Khanna JJ)

24.07.1972

JUDGMENT

SHELAT, J. –

1. The District Magistrate, Burdwan passed the order impugned in this petition on July 14, 1971, directing the petitioner's detention 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, on the ground that such detention was necessary "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". In pursuance of the order the petitioner was arrested on August 6, 1971, when he was furnished, as required by the Act, the grounds of detention.

2. There is no dispute that consequent upon the passing of the said order the Government of West Bengal and the other relevant authorities under the Act duly took all consequential steps, such as the reporting to and obtaining the Government's order of approval, reporting to the Central Government, disposal of the petitioner's representation, referring the petitioner's case to the Advisory Board and obtaining its opinion, etc., within the respective times prescribed by the Act.

3. Two grounds questioning the validity of the said order and the detention thereunder were, however, urged by Mr. Lakshminarasu, appearing for the petitioner amicus curiae. The first was that the first ground in the grounds of detention was irrelevant and therefore vitiated the entire order. The second was that there was undue delay in the confirmation by the State Government of the detention under and the continuance of detention thereunder after the expiry of three months of detention.

4. The first ground in the grounds of detention runs as follows :

"That on February 7, 1971, at 13.30 hours you and your associates had been to the house of Shri Bibhuti Bhusan Ghosh of Ranchi Dhowrah. Police Station Kulti, and asked him to rub [out] the anti-naxalite slogans written on the wall of his house. Being refused you threatened to kill him. Your such act terrorised the common public and as such they could not pursue the normal avocations of life. Moreover, it disturbed public order."

5. The question is whether threat to kill the said Bibhuti Bhusan Ghosh amounted to "acting in any manner prejudicial to.... the maintenance of public order" as defined in Section 3(2)(d) of the Act. Clause (d) amongst other things provides that committing any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the

commission of such offence disturbs or is likely to disturb public order, would fall within the said definition of the expression "acting in any manner prejudicial to the maintenance of public order". Section 506 of the Penal Code provides that a threat to cause death or grievous hurt or to cause an offence punishable with death or imprisonment for life shall be punishable with imprisonment of either description for a term which may extend to seven years or with fine or both. That being so, the offence said to have been committed by the petitioner clearly was one of the offences enumerated in clause (d) of Section 3(2) of the Act. Ground No. (1) further alleges that the threat to kill the said Ghosh administered to him on account of his refusal to rub out the anti-naxalite slogans written on the wall of his house "terrorised the common public and as such they could not pursue the normal avocations of life" and furthermore, disturbed public order. This assertion coupled with the other requirement of clause (d) of Section 3(2), namely, the committal of the offence of threatening to kill, would bring the act in question within the expression "acting in any manner prejudicial to the maintenance of public order" as defined in Section 3(2). It cannot, therefore, be argued that ground No. (1) was extraneous or irrelevant to the objects set out in Section 3 of the Act and in respect of which a valid order of detention could be made under the Act.

6. The second contention also is not such as can be sustained. There is no dispute that the petitioner was arrested on August 6, 1971, and the order of confirmation and the impugned detention thereunder beyond the period of three months was passed by the State Government on October 28, 1971, that is within three months from the date of his arrest. Counsel, however, argued that though the decisions of this court have laid down that such an order of confirmation has to be passed within three months from the date of arrest, the appropriate Government has to pass such an order as soon as possible and cannot delay in doing so until the expiry of three months. In *Deb Sadhan Roy v. State of West Bengal* ((1972) 1 SCC 308.), a case under the President's Act XIX of 1970, this Court laid down that it was essential that the appropriate Government should take positive action on the report of the Advisory Board, which action alone would determine whether the detention was to be terminated or continued, that it would, therefore, prima facie, appear that that action should be taken immediately after the receipt of the opinion of the Board, or at any rate, within three months from the date a person was detained, and that failure to confirm or extend the period within three months would result in the detention becoming illegal, the moment the three months period elapsed without any such confirmation. This decision, thus, makes it clear that the legality of a detention order or the detention thereunder would not be affected if an order of confirmation is passed before the expiry of three months from the date of detention. Similarly, in *Ujjal Mandal v. State of West Bengal* ((1972) 1 SCC 456.), Mathew, J., speaking for the Court, observed, at page 459 of the report as follows :

"To put the matter in a nutshell : the State Government has power under the Act to detain a person without trial beyond a period of three months, but limited to a period of one year. This power the State Government may exercise on receipt of the Board that there is sufficient cause for the detention. When the State Government received that opinion, it has still the option to exercise the power and to continue the detention beyond the period of three months or not. Confirmation is the exercise of the power to continue the detention after the expiry of three months. Unless that power is exercised within the period of three months from the date of detention, the detention after the expiry of that period would be without the authority of the law."

7. Therefore, if the order of confirmation has been passed, as it has been done in the present case, within three months' time from the date of arrest, neither the legality of the detention order nor the continued detention thereunder is affected.

8. Both the contentions raised by counsel thus having failed, the petition also must fail and is consequently dismissed.

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