

S. K. Hasan Ali

Vs

State of West Bengal

Writ Petition No. 116 of 1972

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

28.07.1972

JUDGMENT

KHANNA, J. -

1. Hasan Ali, petitioner was ordered by the District Magistrate, Midnapore as per order, dated October 11, 1971, to be detained under Section 3 of the Maintenance of Internal Security Act "with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community". In pursuance of that order, the petitioner was arrested on October 24, 1971, and was served with the order of detention along with the ground of detention together with vernacular translation thereof. The petitioner has approached this Court through jail under Article 32 of the Constitution for issuing a writ of habeas corpus.

2. The District Magistrate sent report to the State Government on October 13, 1971, about the making of the detention order together with necessary particulars. The said Government approved the detention on October 21, 1971. Sometime after November 10, 1971, the State Government received representation, dated November 8, 1971, from the petitioner. The said representation after being considered was rejected by the Government on December 16, 1971. In the meanwhile, on November 11, 1971, the State Government placed the case of the petitioner before the Advisory Board. The representation of the petitioner after being rejected too was sent to the Advisory Board. The Advisory Board, after considering the material placed before it, sent its report to the State Government on December 20, 1971. Opinion was expressed by the Board that there was sufficient cause for the detention of the petitioner. The State Government thereafter confirmed the order for the detention of the petitioner on December 22, 1971.

3. The petition has been resisted by the State Government and the affidavit of Shri. Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

4. Mr. Prashar has argued the case amicus curiae on behalf of the petitioner, while the State has been represented by Mr. Mukhoti.

5. The first contention which has been raised by Mr. Prashar is that the petitioner was not produced before the Advisory Board and, as such, was deprived of an opportunity of making oral submissions to the Board. In this respect we find that in the ground of detention which was served upon the petitioner along with the order of detention, he was informed that he could make a representation to the State Government against the detention order and that his case would be placed before the Advisory Board within thirty days from the date of detention. The petitioner was also told that in

case he desired to be heard in person by the Advisory Board, he should intimate such desire in his representation to the State Government. The petitioner in pursuance of that submitted a fairly long representation. It was, however, nowhere stated by the petitioner that he desired to be heard in person by the Advisory Board. It would, thus, follow that in spite of being told that he could have personal hearing before the Advisory Board the petitioner failed to intimate that he desired such a hearing. No grievance can consequently be made by the petitioner on the score that he was not afforded a personal hearing by the Advisory Board.

6. It has been next argued by Mr. Prashar that the ground of detention was vague as it did not specify the name of his associates. According to the ground of detention, the petitioner was ordered to be detained on the ground that he had been acting in a manner prejudicial to the maintenance of supplies and services essential to the community as evidenced by the particulars given below :

"On March 27, 1971, at about 10.10 hrs., you along with your associates were found engaged in smuggling rice by train No. 110 DN at Radhamohanpur Railway Station under Kharagpur G. R. P. S. Shri N. G. Saha, Inspector of Police, cordoning Midnapore was there on duty to prevent smuggling of rice from the cordoned areas of Midnapore district to the statutory rationing areas of Howrah and Calcutta. He secured arrest of some smugglers and seized huge quantity of rice there, when you along with your associates attacked the police party, assaulted some of them, snatched away a portion of the seized rice and rescued some of the arrested smugglers.

Thus you acted in a manner prejudicial to the maintenance of supplies and services essential to the community."

7, Perusal of the above goes to show that the date, time and place of the incident was specified. Particulars were also given regarding the nature of the activity of the petitioner. The facts stated in the ground of detention were sufficient to apprise the petitioner of the precise activity on account of which the order for his detention had been made and, in our opinion, it cannot be said that the petitioner was in any way handicapped in making an effective representation against the detention order. What has to be seen by the Court is that the ground of detention supplied to the petitioner was not so vague as to prevent him from making an effective representation. In the present case, as mentioned earlier, the ground of detention does not suffer from any infirmity of vagueness. The fact that the names of the associates of the petitioner were not given in the ground of detention would not make the ground to be vague. A similar contention was advanced in the case of *Deb Sadhan Roy v. State of West Bengal* ((1972) 1 SCC 308, 316.), and was repelled by this Court in the following words :

"It was contended that the associates of the petitioner have not been specified and therefore it will be difficult for the petitioner to make effective representation in respect thereof. We think there is no validity in this submission. Not only the dates and the time in each of the grounds have been mentioned but the acts of the petitioner have been specified in detail to enable him to make an effective representation. In our view it is not necessary for the petitioner to make an effective representation to specify all his associates because they may not have been known. The petitioner is being detained in respect of his acts and if in association with others he has acted in a manner prejudicial to the maintenance of the public order, his detention cannot be said to be illegal."

8. Lastly, it has been argued that the representation made by the petitioner was received by the State Government sometime after November 10, 1971. The said representation was disposed of by the State Government on December 16, 1971. There was, according to Mr. Prashar, inordinate delay in disposing of the petitioners' representation and this circumstance was sufficient to invalidate the petitioner's detention. In this respect we find that no such ground was taken by the petitioner in the writ petition. On June 16, 1972, when the above ground was urged, the State Government was given an opportunity to file an affidavit to explain the delay. Shri Sukumar Sen thereafter filed a further affidavit. According to that affidavit, the representation of the petitioner could not be considered earlier than December 16, 1971, mainly because of the fact that there were constant demonstrations of the State Government employees, including those of Home (Special) Department. As a result of that, there was no regular work and movement of files. It is also stated that during the above period a large number of detention cases had to be dealt with by the Government. The period of sixteen days taken by the State Government after the agitation of its employees had come to an end, in our opinion, was not so inordinately long as to show laches on the part of the State Government. It is significant that during the above period Indo-Pak hostilities had broken out and we see no ground to question the averment in Shri Sen's affidavit that a very large number of detention cases had to be looked into and examined during these days by the State Government. The delay in disposing of the petitioner's representation has, in our view, been satisfactorily explained.

9. The petition consequently fails and is dismissed.

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