

Shri Amiya Kumar Karmakar

Vs

The State of West Bengal

Writ Petition No. 190 of 1972

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

31.07.1972

JUDGMENT

SHELAT, J. -

1. By his order, dated November 22, 1971, the District Magistrate, Nadia, directed the detention of the petitioner under and by virtue of power conferred upon him by sub-section (1), read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act 26 of 1971. The order recites that it was issued with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. Consequent upon the passing of the said order, the petitioner was arrested on December 1, 1971, and he has since then been detained in Dum Dum Central Jail.

2. The grounds of detention furnished to the petitioner at the time of his arrest stated as follows :

"(1) On the night of July 30, 1971, at about 20.00 hours you along with your associates entered into the Toddi Shop of Shri Gopinath Behara, s/o late Ram Behara at Gangnapore, P. B. Ranaghat, District Nadia, and stabbed Shri Gopinath Behara with daggers causing severe bleeding injuries on his person. You also terrorised the local people by exploding bombs. Subsequently, the said Gopinath Behara succumbed to his injuries at Saktinagar Hospital. Such action created terror and panic in the minds of the local peace-loving people and cause disruption to their normal work.

(2) On July 31, 1971, at about 21.30 hours at Rameswarpur, P. S. Ranaghat, District Nadia, you along with your associates armed with lethal weapons attacked Ajahar Ali Khan, s/o Late Jabber Khan of the said village and killed him by causing severe injuries on his person. You did this with a view to promoting your political ideology. Such action terrorised the local peace-loving people who out of fear and panic had to suspend their free movements and normal work."

3. As required by the Act, the District Magistrate reported the fact of his having passed the said order to the State Government and the Government approved his said action. The matter was also reported to Government. The petitioner's case was then referred to the Advisory Board. In the meantime the petitioner made his representation which was received by the State Government on January 3, 1972, and was disposed of by that Government on January 25, 1972. The Board gave its opinion after considering the said representation forwarded to it by the Government together with other documents relating to the petitioner's case that there was sufficient cause for the detention. Finally, the State Government passed its order, dated February 18, 1972, confirming the said order

and the petitioner's detention thereunder. It would, thus, appear that the relevant authorities under the Act took all steps, consequential to the passing of the said order, as prescribed by the Act.

4. Two points, however, were urged by counsel appearing amicus curiae for the petitioner. One was that ground No. 2 of the said grounds of detention pertained to the problem of law and order and not to that of public order, the act there attributed to the petitioner being a matter between two specific individuals only, and was therefore irrelevant to the objects in respect of which only detention could be directed under the Act. The other was that there was delay of twenty-one days on the part of the State Government in disposing of the petitioner's representation, which, in the circumstances of the case, was inordinate, and therefore, fatal to the validity of the order and the petitioner's detention thereunder.

5. Ground No. 2 of the grounds for detention contains three statements of facts : (1) the assault on and the killing of Ajahar Ali Khan, (2) the motive for causing his death, viz., the promotion of the political ideology held by the petitioner and his associates, and (3) the immediate effect of the killing upon the members of the public living in that locality. The question is whether the incident as narrated in this ground can properly be said to fall within the field of public order and not merely law and order in relation to the maintenance of which the Act does not authorise orders of the kind we have before us.

6. As to the proper connotation and the scope of the concept of public order, as distinguished from the concepts of law and order and security of State, the Act furnishes no dictionary. But these three concepts have by now been matters of discussion in several judgments of this Court wherein a clear differentiation of one from the other has been elucidated. Such differentiation was illustrated in some cases by means of three imaginary concentric circles, the narrowest of them being that relating to security of the State, the next being that pertaining to public order, and the third, the largest, being that pertaining to law and order. (See *Lohia v. State* ((1966) 1 SCR 709 : AIR 1966 SC 740 : (1966) 2 SCJ 549.)) In other cases, the differentiation was sought to be made on the basis of the degree of disorder affecting, in one case the community at large, and in other, specific individuals, and only in a secondary sense public order, in other words, between crimes against specific individuals and crimes against the public. Such a distinction appears at first sight attractive by reason of the simplicity of its test, but on a closer examination of it it fails to cover cases which are marginal and sometimes overlapping. As pointed out in *Arun Ghosh v. West Bengal* ((1970) 3 SCR 288 : (1970) 1 SCC 98.), the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The Act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. On the basis of such a distinction, an attack on an educational institution, in the course of which its registers and other papers were destroyed by acts of arson, was held to fall within the area of public order although it was aimed at an individual entity (See *Nagendra Nath Mondal v. West Bengal* ((1972) 1 SCC 498 : 1972 SCC (Cri) 227.)) The criterion thus being the potentiality of the Act in question or the degree of its impact on members of the community in the locality in which the act in question is committed, examination of ground No. 2 from that angle would appear to be more appropriate.

7. The act in ground No. 2, no doubt, was an attack resulting in the death of the victim, and though it was said to have been committed by the petitioner along with his associates it would prima facie

appear to be an act against a specific individual, involving infraction of law and order only. The act in question was similar in nature and quality to other such acts committed by one or more individuals against another resulting in the death of the latter. But it was not committed on account of any animus against the victim or for a motive such as personal vendetta. As the ground of detention asserts, it was committed with a view to promote a particular political ideology, that is to say against one who did not subscribe to the ideology and as a warning against those who did not agree with or subscribe to such ideology. Obviously, it was intended to and did in fact terrorise those who did not conform to that ideology, who out of panic abandoned their normal activities for fear that any one or more of them would be the target of such an attack. Viewed from this angle it is difficult to regard such an act as a mere infraction of law and order, for, such an act committed with such an intent and object and in such circumstances is one which strikes at the normal, orderly life of the community in that locality. Its impact and potentiality thus affect public order in the sense that it was aimed at bringing about disorder and chaos upsetting the even tempo of life in that locality. It is, therefore, not possible to agree with the proposition that it affected the problem of law and order only and was for that reason extraneous or irrelevant to the object specified in Section 3 of the Act, in relation to which only a valid order of detention thereunder could be made.

8. As to the point of delay in the Government in disposing of the petitioner's representation, it is clear that between its receipt by the Government and its disposal by it twenty-one days elapsed. The decisions of this Court lay down that such representations have to be dealt with by the appropriate Government independently of the Advisory Board and as expeditiously as possible. None of them, however, lays down any particular period within which Government must deal with such representations. In *Jayanarayan Sukul v. West Bengal* ((1970) 3 SCR 225 : (1970) 1 SCC 219.), the Court said that while there should be no delay in dealing with such representations no hard and fast rule could be laid down as regards the time within which they should be considered and that each case, where such delay is alleged, has to be examined from its own facts and circumstances. The Court, however, emphasised that an inordinate delay would defeat the very purpose of the provisions of Article 22(5) of the Constitution and would therefore affect the validity of the order and the detention directed thereunder. Thus, in *Nagendra Nath Mondal's case* (supra), though thirty-four days had elapsed between the receipt by the Government and the disposal by it of the representation of the detenu there that time-gap was not regarded on the facts and circumstances of that case as constituting inordinate delay.

9. In the present case, two reasons explaining the delay have been put forward in the counter-affidavit filed on behalf of the State : (1) the declaration of emergency consequent upon the break-out of the Indo-Pakistan war in December, 1971, and (2) abrupt increase in detention cases both under the present Act as also under the Prevention of (Violent Activities) Act XIX of 1970 consequent upon the said declaration of emergency and the war, which delayed the regular movement and disposal of files. The question is : whether in the circumstances set out in the affidavit the lapse of twenty-one days can be characterised as inordinate delay ?

10. In two writ petitions recently disposed of, *Mathew, J.*, held that there was inordinate delay by the Government in dealing with such representations and directed their release. In the case of *Amulya Chandra Dey v. West Bengal* (W.P. No. 118 of 1972, decided on July 10, 1972.), the delay was of eighteen days. That was sought to be explained on the ground of dislocation of work in Government offices due to demonstrations by Government employees, including those of the Home Department (Special Section), from September 12, 1971, to the end of November, 1971, which prevented the regular work and the movement of files. The learned Judge held that this was not a satisfactory explanation inasmuch as the representation was received by the Government in that case

on December 3, 1971, that is to say, after the agitation by the Government employees had ended. In *Mritunjoy Pramanik v. West Bengal* (W.P. No. 83 of 1972, decided on July 10, 1972 : (1972) 2 SCC 586.), decided also on the same day, a similar explanation was held to be unsatisfactory, since the representation was received on November 29, 1971, that is, after the said demonstrations had ended and disposed of on January 14, 1972. It is strange that the Government there did not plead, as it has done in the instant case, the emergency and the resultant abrupt spurt in detention cases in that State and remained content with pleading its inability to dispose of the representations expeditiously owing to the demonstrations by its employees. The two cases offer no analogy to the present case especially as the representations in those two cases were received after the said demonstrations had terminated and no reason thereafter remained for the omission to dispose of those representations expeditiously.

11. As stated earlier, the representation in the present case was received on January 3, 1972, shortly after the war had ended. It cannot be gainsaid that being the border State, the State Government was faced during the period of war at least with an extraordinary situation when it had to focus all its attention to problems arising from that situation. Obviously, some time had to elapse before normalcy in the working of its departments could return. But apart from this consideration, there was also an abrupt spurt in detention cases presumably on account of the declaration of emergency which required the Government to take a number of precautionary measures. In these circumstances we find it difficult to persuade ourselves that the delay of twenty-one days could rightly be treated as inordinate, invalidating the detention order and the petitioner's detention thereunder.

12. These were the only points raised before us. Both of them fail. In the result the petition has to be dismissed.

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