

Babul Mitra Alias Anil Mitra

Vs

State of West Bengal and Others

Writ Petition No. 253 of 1972

(J. M. Shelat, S. N. Dwivedi, Y. V. Chandrachud JJ)

21.09.1972

JUDGMENT

DWIVEDI, J. -

This is a habeas corpus petition under Article 32 of the Constitution. The petitioner, Babul Mitra was detained in jail by an order of the District Magistrate, Jalpaiguri, dated October 5, 1971. The order was made under Section 3(2) of the Maintenance of Internal Security Act, 1971. The District Magistrate reported to the State Government about his detention on October 6, 1971. The grounds of detention were served on him on the same date. The State Government approved his detention on October 15, 1971. He made a representation to the State Government against his detention. The representation was received by the State Government on October 30, 1971. The State Government rejected it on November 30, 1971. On the same date the Government sent the representation to the Advisory Board for its consideration. On November 4, 1971, the Government had already placed his case before the Advisory Board for consideration. The Advisory Board was satisfied that there was sufficient cause for his detention. So by order, dated December 11, 1971, the State Government confirmed the order of detention. Confirmation of the order was communicated to the petitioner on December 13, 1971.

2. The grounds of detention, insofar as they are material, are set out her :

"You are being detained ..... on the ground that you have been acting in a manner prejudicial to the maintenance of public order as evidenced by the particulars given below, taken separately and collectively :

(1) On April 16, 1971, at about 11.00 hours you along with Shri Barun Chowdhury of Debinagar, Police Station Moynaguri and others forced into Moynaguri Higher Secondary School, Moynaguri, prevented the school staff from giving you any resistance with threat of violence and set fire to the school building. As a result of arson caused by you the school had to be closed down since die.

(2) On June 29, 1971, at about 22.00 hours Police arrested you at Debinagar, Police Station Moynaguri with a bomb in your hand. You also made attempt to throw the bomb on the Police personnel at the time of your arrest with a view to killing them."

3. Shri A. K. Gupta has appeared as amicus curiae on behalf of the petitioner. He has urged that the case was referred to the Advisory Board for its consideration on November 4, 1971, while the detenu's representation was sent to it on November 30, 1971. But this time-lag is only an

irregularity, not going to the root of the matter, for no prejudice has been caused to the detenu. The Advisory Board has considered his representation before making its report on December 3, 1971.

4. Another submission is that the State Government considered his representation a month after its receipt. It is said that there was inordinate delay in considering his representation and that accordingly the detention is illegal. Shri Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal, has filed an affidavit on behalf of the State Government. He has explained the delay satisfactorily. He has stated that due to the influx of refugees from East Pakistan at that time most of the officers of the Home Department of the State Government were busy with the serious problem concerning refugees. He has further said that there was an abrupt increase in the number of detention cases at that time as there was a spate of anti-social activities by Naxalites and other political extremists in the State. It is said that on account of those two special reasons the State Government not give early attention to the detenu's representation.

5. It has been held by this Court in a series of cases that the representation of the detenu should be considered as soon as possible. The question is whether in the instant case the petitioner's representation was considered by the Government as soon as possible. It seems to us that having regard to the averment of Shri Sukumar Sen, the representation was considered as soon as possible. It is common knowledge that the State of West Bengal was at the relevant time pre-occupied with the colossal refugee problem. There was also a spurt of extremists' activities which engaged the attention of the Government at that time. These two baffling problems pre-empted the attention of the Government. In *Shri Amiya Kumar Karmakar v. The State of West Bengal*, ((1972) 2 SCC 672 : 1972 SCC (Cri) 68) the petitioner was detained on December 1, 1971, pursuant to the order of detention, dated November 22, 1971, by the District Magistrate, Nadia, West Bengal. The representation sent by the detenu was considered by the State Government after 21 days of its receipt. This Court held that the delay of 21 days could not be held to be inordinate. The Court said :

"It cannot be gainsaid that begin 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".

6. The facts of that case are similar to the facts of this case. The only difference is that instead of there begin war between India and Pakistan, the attention of the Government of West Bengal was focussed in the complex refugee problem. In the circumstances of this case, we find it difficult to take the view that on account of the delay of 30 days the representation cannot be said to have been considered as soon as possible.

7. The last argument is that the grounds of detention are not connected with 'public order : at worst they may be connected with 'law and order'. The distinction between "law and order" and "public order" has been pointed out succinctly in *Arun Ghosh v. West Bengal*. ((1970) 3 SCR 288 : (1970) 1 SCC 98) According to that decision the true distinction between the areas of "law and order" and "public order" is "one of degree and extent of the reach of the act in question upon society". The

Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different." So it is to be seen in the instant case whether the petitioner's acts have any impact upon the local community or, to put it in the words of Hidayatullah C.J. in the aforesaid case, "disturb the even tempo of the life of the community of that specified locality."

8. Taking the first ground of detention, the petitioner along with other persons is alleged to have trespassed into the Moynaguri Higher Secondary School by threats of violence to the school staff. The threats of violence paralysed resistance by the school staff. The petitioner set fire to the school building. In the result, the school was closed down sine die. The impact of the petitioner's activity is not confined to the school building. The teaching staff was intimidated by threats of violence. It may be presumed that the students were then present in the school. They must also have been scared by threats of the petitioner. The act of setting fire to the school building would scare the parents and guardians and deter them from sending their wards to the school for reading for fear that the school building might again be the scene of violent activities, jeopardising the safety of their wards. The petitioner's activity has thus affected an indefinitely large number of persons in the locality. We venture to think that the first ground is accordingly connected with 'public order'.

9. In Nagendra Nath Mondal v. The State of West Bengal, ((1972) 1 SCC 498) Moynaguri Higher Secondary School was the scene of the activity of the detenu. In that case it was alleged that he broke open the doors and set fire to books, registers, a typewriter, furniture, etc., and caused heavy loss to the school. He also placed a bomb in the school premises endangering the life of the teaching staff and students. On another date he set fire to the office room and the Head Master's room in the school. He threatened the teaching staff of the school with death if they would offer resistance or divulge his name to the authorities. It was urged in that case that the grounds were not connected with 'public order'. The argument was not accepted. The Court said : "The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies. The parents dare not henceforth send their wards for fear that the school might be set on fire while they are in it".

10. In Sasthi Chandra Roy v. The State of West Bengal (W.P. No. 465 of 1971, decided on 24-4-1971) the aforesaid school was again the scene of the activity of the detenu in that case. The grounds in that case were similar to the grounds in Nagendra Nath Mondal (supra), and the court reiterated the view taken in that case. These two cases support our view.

11. The second ground is that on June 29, 1971, at about 10 p.m. he was arrested by the police personnel at Debinagar which is within the police station Moynaguri. At the time of his arrest he had a bomb in his hand. He made an attempt to throw the bomb on the police personnel at the time of his arrest with a view to killing them. It may be recalled that in the preamble to the grounds of detention it is stated that he has been acting in a manner prejudicial to the maintenance of public order as evidenced by the grounds "taken separately and collectively." So it would be legitimate to assess the community impact of the second ground in the background of the first ground. The scene of the activity of the petitioner in the first ground is a public school. We have already held that that ground is connected with public order. The victims of the petitioner's activity in the second ground are the police personnel. They are public servants in charge of maintenance of law and order in the community. The scene of action in the second ground is located within the area of the Police Station Moynaguri. The scene of action in the first ground is also Moynaguri. The two grounds, read together, disclose the petitioner's concerted scheme of making public institutions and public servants the target of his violence. This scheme sheds light on the potentiality of the second ground. The

activity specified in the second ground is bound to affect public order. The object of throwing bomb on the police personnel was to cause intimidation and confusion in their minds in order to facilitate his escape. Creating panic in the minds of the police personnel by throwing the bomb would scare the police personnel of the State from performing their legitimate duties in the maintenance of law and order in the State. That would disturb the even tempo of the community life. Accordingly, we think that the second ground is also connected with 'public order'.

12. No other points have been raised in this petition. There is no force in this petition and it is hereby dismissed.

</html