

Sri Ramayan Harijan

Vs

State of West Bengal

Writ Petition No. 242 of 1972

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

30.10.1972

JUDGMENT

CHANDRACHUD, J. -

1. By an order, dated October 29, 1971, the District Magistrate, 24-Parganas, West Bengal, directed that the petitioner be detained under the Maintenance of Internal Security Act, 26 of 1971, with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The Petitioner was arrested on November 4, 1971, and the grounds of detention were furnished to him on the same date. The representation made by the petitioner was received by the Government on November 19, 1971, and was rejected on December 1, 1971. On the decision of the Advisory Board, dated January 13, 1972, the detention order was confirmed by the Government on January 19, 1972. The correctness of the detention order is challenged by the petitioner by this petition under Article 32 of the Constitution.

2. It is contended that the petitioner was in jail on October 29, 1971, when the detention order was passed, that he was then being prosecuted in respect of the same incidents for which the order of detention was passed and therefore the detention is mala fide. In support of this contention our attention has been drawn by the learned counsel to a decision in Maledath Bharathan Malyali v. The Commissioner of Police. (AIR 1950 Bom. 202 : ILR 1950 Bom. 438 : 51 Cri LJ 1126). This decision, in our opinion, has no application because the detention order was passed in that case while the case was still under investigation. The affidavit filed by Sub-Inspector Monoranjan Ghosal in our case shows that the petitioner was caught red-handed and was arrested on October 20, 1971, and that he was immediately put up before a Magistrate for charges under section 379, 411 and 461 of the Indian Penal Code. The affidavit further shows that witnesses were unwilling to come forward in that case and therefore it was considered expedient not to proceed with the trial. The investigating officer therefore requested the learned Magistrate to discharge the petitioner and it was in anticipation of the order of discharge that the present order of detention was passed on October 29, 1971. In Mohd. Salim Khan v. Shri C. C. Bose, Deputy Secretary to the Government of West Bengal and Another ([1972] 2 SCC 607 : 1973 SCC (Cri) 35) it was held by this Court that the mere fact that the detenu was discharged in a criminal case does not mean that a valid order of detention could not be passed against him in connection with those very incidents or that such an order can be characterised as mala fide.

3. There is no substance in the submission that the State Government had no right to consider the representation made by the petitioner as that right exclusively belongs to the Advisory Board. The detention order was passed under the Maintenance of Internal Security Act, 26 of 1971, and Section 8(1) thereof provides that the detaining authority shall, as soon as may be, communicate to the

detenu the grounds on which the detention order has been made so as to afford him the earliest opportunity to make a representation to the appropriate Government. It would be pointless to give to the detenu the right to make a representation to the Government unless the Government is entitled to consider that representation. It is also difficult to understand how the petitioner has been prejudiced by reason of the fact that his representation was considered by the State Government.

4. One of the grounds on which the petitioner was detained is that he attacked a goods-wagon loaded with brass rods valued at Rs. 50,000/-, with the object of committing theft. It is urged that brass rods are not an essential commodity and therefore the order of detention could not have been passed as it purports to have been passed for the maintenance of supplies and services essential to the community. We cannot accept this submission because, apart from the question whether brass rods are an essential commodity, the detention order has been passed for maintenance of supplies as well as services essential to the community. Breaking open goods-wagons is bound to cause disruption in the maintenance of services essential to the community.

5. In the result the petition is dismissed.

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