

Beni Madhab Shaw Alias Benia

Vs

The State of West Bengal

Writ Petition No. 94 Of 1972

(I.D. Dua, K.K. Mathew JJ)

01.05.1973

JUDGMENT

DUA J. -

1. This is a petition for Habeas Corpus under Article 32 of the Constitution.
2. The petitioner, Beni Madhab Shaw alias Benia, was ordered to be detained by the District Magistrate, 24-Parganas under Section 3(1) and (2) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971), as per order, dated May 10, 1972. He was arrested on the same day.
3. The grounds of detention were also served on the petitioner on that very day at the time of his arrest. Those grounds read :

"1. That on March 24, 1972, at about 2.25 hours, you along with your associates committed theft of 4 bags of rice, of breaking open wagon No. 40765 of running goods train No. 733 Up between Naihati R/S and Baroda Bridge, being challenged by duty RPF patrol party you escaped leaving one bag of rice. Your action affected supplies and services then and there.

You have thus acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

2. That on April 26, 1972 at about 05.30 hours you along with other 12/14 associates attacked and broke open wagon No. NR-84506 of running foodgrain special train No. 731 Up on the Naihati Station Yard in between Naihati R/S and Baroda Bridge. The R.P.F Train escort parties challenged you and your associates when you attacked the R.P.F. party with ballasts and pelted stones and in self-defence R.P.F Party fired back. You and your associates then fled away. The train service was disrupted then an there and one bag of wheat was recovered from the spot.

Your actions affected supplies and services there. You have thus acted in a manner prejudicial to the maintenance of supplies essential to the community.

4. The petitioner was duly informed that he could make a representation to the State Government against the detention order and that such representation should be addressed to the Assistant Secretary Home (Special) Department, Government of West Bengal and forwarded through the Superintendent of the Jail in which the petitioner had been detained. All other formalities required for valid detention appear to have been duly complied with.

5. The petitioner's learned counsel, Mrs. Urmila Sirur, contended that in the counter-affidavit filed on behalf of the respondent, the State of West Bengal, it is stated, that from the records it appears that, after receiving reliable information relating to the illegal, anti-social and prejudicial activities of the petitioner relating to the maintenance of supplies and services essential to the community, the impugned order of detention had been passed against him under the provisions of the Maintenance of Internal Security Act, 1971. The counsel complained that the details of these activities had not been disclosed to the petitioner and this has seriously prejudiced him in making his representation to the Government.

6. The submission appears to us to be misconceived. This assertion in the counter-affidavit, in answer to the present petition, merely suggests that the two grounds on the basis of which the impugned order was made and which were duly supplied to the petitioner, were founded on reliable information received by the authorities concerned. It has not been shown on behalf of the petitioner that it was necessary under the law to disclose the sources of the information or the exact words of the information so long as the activities which formed the foundation of the impugned order were actually disclosed to the petitioner. Under Section 8 of the aforesaid Act only grounds of order. Those grounds in the present case were actually disclosed. They are neither vague nor ambiguous. They furnish adequate information for enabling the petitioner to make effective representation against his detention. It was not contended and indeed it could not be contended that those grounds are not germane to the purpose of detention under the aforesaid Act.

7. The learned counsel drew our attention to *Mintu Bhakta v. The State of West Bengal*, ((1973) 4 SCC 85 : 1973 SCC (Cri) 732 : AIR 1972 SC 2132 but that decision is of no assistance in the present case. In *Mintu Bhakta's* case (supra), the detenu had in his representation to the Government and again in the writ petition, contended that on that date of the incident, upon which the detaining the detenu, he was actually in police custody, and the only answer to such a specific defence of the detenu, was a bare denial of the facts and the allegations stated by the detenu with an equally bare assertion that the detention order was bona fide. Such a vague answer was considered by this Court to be neither cogent, nor proper nor adequate to disprove the specific allegations made twice by the detenu. One of the grounds for detention being factually baseless the whole order was held in that case to be liable to fail because it could not be predicated upon which of the grounds the detaining authority had reached its satisfaction or whether it had reached satisfaction irrespective of or without the ground which failed. It is obvious that the problem which arose in *Mintu Bhakta's* case (supra). There is no analogy between the two cases.

8. It was also suggested that the petitioner could have been prosecuted for the alleged activities on the basis of which he has been detained and that the order of detention must, for this reason, be considered to be mala fide. This contention is also without substance. As held in *Mohd. Subrati v. State of West Bengal*, ((1973) 3 SCC 250 : 1973 SCC (Cri) 245) non-prosecution for past activities which amount to an offence does not operate in law as a bar to the order of detention on the basis of those activities. The two jurisdictions, one for punishing a person after a regular trial for the commission of an offence and the other for detaining him to prevent repetition of objectionable activities are different. Non-exercise of one does not by itself bar the exercise of the other.

9. There being no other point raised on behalf of the petitioner and there being no other infirmity discovered by us on the present record, we have no option but to dismiss the petition which we hereby do.

</html