

Bhupal Chandra Ghose

Vs

Mr. Arif Ali and Others

Writ Petition No. 1520 of 1973

(S. N. Dwivedi, P. K. Goswami, Y. V. Chandrachud JJ)

15.11.1973

JUDGMENT

DWIVEDI, J. –

1. It is a petition for a writ in the nature of habeas corpus under Art. 32 of the Constitution. The petitioner alleges that he is the acting President of the Council of the Displaced Bengalees living in the State of Assam. On April 2, 1973, the District Magistrate, Sibsagar, Jorhat, in the said State, passed an order under Section 3 (2) read with Section 3 (1) (a) (ii) of the Maintenance of Internal Security Act, 1971 for detaining the petitioner in the Jorhat jail. Accordingly, he was so detained. On April 3, 1973 the District Magistrate served the grounds of detention on him. The State Government approved the order of detention.

2. The petition was heard by us on October 30, 1973. After hearing Counsel for the parties we were of opinion that the petition should be allowed. Accordingly; y, we passed an order directing the release of the petitioner. The reasons in support of the order are now set forth in the judgment.

3. The District Magistrate has detained the petitioner with a view to preventing him from acting in any manner prejudicial to "maintenance of public order". The sole argument before us is that some of the grounds served on him by the District Magistrate have got no relevance to public order. Grounds of detention are 16 in number. Some of the grounds do relate to public order, and it is not necessary to set them out here. We shall mention only such grounds as in our opinion, have no relevance to public order. Those grounds are :

" (2) That he spoke ill of the State government and the Assamese people in a camera meeting in the last part of March, 1961 held at the residence of Shri Hemendra Kishore Roy, Jorhat. Then he was Secretary of the Refugee Association; Assam

(3) That he issued a Press Statement on 6-12-71 on the Pak atrocities in East Pakistan (Bangla Desh) blaming General Yahaya Khan and the American government. Another telegram was sent on 20-11-1971 to Mr. Kenneth Keating American Ambassador in India to stop mass killing in East Pakistan.

(6) That he challenged the census operation in Assam and stated that the figures of Assamese population were shown highly inflated at the cost of Bengalis.

(11) That he sent a telegram on 10-10-1972 to the Prime Minister, India on the language movement in Assam. The contents of the telegram were highly exaggerated and false.

(12) That he sent another exaggerated telegram on 31-12-1972 to the Prime Minister, India requesting her not to enter into any language settlement with Cachar leaders. He signed the telegram as the council's acting President."

4. Counsel for the respondent could not satisfy us as to how many one of these five grounds could have a rational connection with public order. Some of them may perhaps have some connection with "Law and order". But it has been held in a series of decisions of this Court that the concept of law and order is not identical with the concept of public order. Public order is a aggravated form of disturbance of public peace. It affects the general current of public life. In the result, five out of 16 grounds are not shown to have any rational relation with public order. In other words, one third of the grounds are irrelevant. The detention order is based on the subjective satisfaction of the detaining authority. Accordingly we cannot assess how far these five grounds have swayed the mind of the District Magistrate and tilted his judgment against the detenu. To the intertwining of relevant and irrelevant grounds of detention the rule of severality would not apply, and the whole order of detention will fall down.

5. There is yet another aspect which we cannot overlook, as already stated, the detention order is passed in order to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. Professedly, it is not made with a view to preventing into from acting prejudicially to the security of the State. But in the grounds of detention the District Magistrate specifically relies on security of State. He says "the above prejudicial activities... and the sinister design of dislodging the present administration and hate Assamese campaign has passed a serious threat to the security of the State and the maintenance of public order in the District of Sivasagar". Grounds Nos. 4, 8, 9 and 16 are indeed connected with the security of the State.

6. A conjoint reading of the detention order and the grounds of detention is suggestive of the inference that the District Magistrate had either no information of the grounds relevant to the security of the State at the time of the passing of the detention order, or that, if he had information of those grounds, he did not believe them to be factually correct and accordingly did not bottom his detention order on them. In the first event, he cannot seek to buttress his detention order by those grounds, because the detention order is made for the maintenance of public order only; in the second event also, those grounds should be totally ignored. If he did not think it proper to rely on them while making the detention order, he cannot deploy them now as another string to the bow. There is difference between public order and security of the State. Every breach of public order will not necessarily affect the security of the State.

7. In *dr. Ram Manohar Lohia v. State of Bihar*, Hidayatullah, J., has expressed this difference thus :

"One has to imagine three concentric circles. Law and order represents the largest circle within is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may effect law and order but not public order just as an act may affect public order but not security of the State."

8. Turning to cases cited at the Bar, *The State of Bombay v. Atma Ram Sridhar Vaidya*, is distinguishable on facts. It is not concerned with the question of relevancy of the grounds of detention. In *Shibban Lal Saksena v. The State of Uttar Pradesh*, this Court observed :

"The detaining authority gave here two grounds for detaining the petitioner. We can

neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order would be to substitute decision of the executive authority which is against the legislative policy underlying the statute. In such case we think the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

9. In *Motilal Jain v. State of Bihar*, the detenu was detained for the maintenance of supplies and services essential to the community. The detention order was based on six grounds. This Court held that two of the grounds could not be considered in judging the validity of the detention order. When asked by the government to maintain the detention order on the basis of the four remaining grounds, the Court declined to do so, and said :

"The defects noticed.... are sufficient to vitiate the order of detention impugned in these proceedings as it is not possible to hold that those grounds could not have influenced the decision of the detaining authority."

10. It will follow from these observations that the detention order in the present case cannot be upheld on the basis of the remaining grounds, as we have taken the view that five of the grounds served on the detenu have got no rational connection with maintenance of public order.

11. In *Pushkar Mukherjee v. The State of West Bengal*, Ramaswami, J., said :

"But there is no doubt that if any of the grounds furnished to the detenu are found to be irrelevant.... the satisfaction of the detaining authority on which the order of detention is based to challenge and the order is liable to be quashed."

12. In *Ananta Mukhi alias Ananta Hari v. State of West Bengal*, this Court held by majority that the grounds of detention were relevant to the maintenance of public order and security of the State.

13. In *Masood Alam v. Union of India*, the detenu's argument was that the grounds of detention were irrelevant to the maintenance of public order and security of the State. But the Court did not accept the contention.

14. As a result of the foregoing discussion, we are of opinion that the order of detention is invalid and cannot stand.

15. The petition is accordingly allowed.

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