

Shri Satya Brata Ghose

Vs

Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat And Others

Writ Petition No. 1461 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 a writ of habeas corpus under Art. 32 of the Constitution. The petition was heard by us on October 30, 1973. After hearing counsel for parties we directed the release of the detenu. We are now setting forth the reasons in support of our order.

2. The petitioner challenges the order of his detention, dated April 2, 1973. The order was made by the District Magistrate, Sibasagar, under Section 3(2) read with Section 3(1)(a) (ii) of the Maintenance of Internal Security Act, 1971 with a view to preventing the petitioner from acting prejudicially to the maintenance of public order. The District Magistrate served the grounds of detention on him on April 3, 1973. There are nine grounds of detention. Ground No. 6 is this :

"That on 29.12.72 he visited Moriani and made secret contacts with Amritlal Sarkar, Kartik Sarkar and others of Moriani and spoke ill of Assamese people and the State Government. At his instance, Moriani Area Council was formed under the C.D.B.A.".

The letters C.D.B.A. stand for the Council of Displaced Bengalis in Assam. This ground refers to three activities of the petitioner in Moriani on December 29, 1972. First, he made secret contacts with Amritlal Sarkar, Kartik Sarkar and others; second, he spoke ill of Assamese people and the State Government; and third, he took initiative of getting formed the Moriani Area Council as an affiliate of the C.D.B.A. It may be assumed that he made contacts with Amritlal Sarkar, Kartik Sarkar and others for the purpose of establishing an affiliate of the C.D.B.A. in Moriani. It appears from ground No. 4 that the C.D.B.A. had decided to raise armed police force of its own and was denying the authority of the State of Assam Government. We shall keep aside the first and third parts of the ground, for they may be relevant to the maintenance of public order. But we are not as assured of the petitioner's mere act of speaking ill of Assamese people and the State Government. This act will not necessarily affect public order, we are of opinion that the detention order is invalid and cannot stand. Whether such an act organisedly conducted in a particular manner may develop into a problem of public order is a different matter with which we are not concerned in this case.

3. It should be observed that at the end of the grounds of detention the District Magistrate has said : "That the prejudicial activities of Sri Satya Brata Ghose (petitioner) and his sinister design of dislodging present administration and hate Assamese campaign has posed a serious threat to the security of the State and to the maintenance of public order in the district of Sibasagar. His being at

large is likely to jeopardise the work of administration and as such it has become imperative to keep him under detention".

4. Some of the grounds given by the District Magistrate are relevant to the security of the State. But the detention order is related to the maintenance of public order only. For the reasons discussed in our judgment in *Bhupal Chandra Ghose v. Mr. Arif Ali and Others*, delivered today, the grounds relating to the security of the State cannot be taken into account in judging the validity of the detention order. We are of opinion that the detention order is bad. Accordingly, the petition is allowed.

</html