

Habibullah Khan

Vs

The State of West Bengal

Writ Petitioner No. 1646 of 1973

(H. M. Beg, Y. V. Chandrachud JJ)

20.12.1973

JUDGMENT

CHANDRACHUD, J.

1. By this petition under Article 32 of the Constitution the petitioner challenges the validity of an order of detention dated May 5, 1973, passed by the District Magistrate, 24-Parganas. On the same day that the order was passed, the petitioner was arrested in pursuance of the detention order and the grounds were served on him. The detention was reported to the State Government on May 9, it was approved by the state Government on May 14 and on the day a report in behalf of the petitioner's detention was submitted to the Central Government. The petitioner's representation was received by the State Government on May 29, it was considered on June 1 and on the very next day the matter was placed before the Advisory Board. The Board gave its decision on June 28 and the order of detention was confirmed by the Government on July 30. The communication in regard to the confirmation of the detention order was received by the petitioner on August 14.

2. The order of detention was passed under Section 3 (1) (a)(iii) of the Maintenance of Internal Security Act, 1971, on the ground that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The order is based on the allegation that on April 22, 1973 the petitioner, along with his associates, had cut the over-head return conductor wire in between two railway stations on the Sealdah-Diamond Harbour Section of the Eastern Railway and had committed theft of the wire causing complete dislocation of train services in the particular section.

3. Learned Counsel appearing on behalf of the petitioner contends that the detaining authority has displayed utter callousness in regard to the petitioner's detention and has approached the duties imposed on him by law in a casual manner. This argument is founded on the following facts :

(1) Though the order of detention is based on one ground only, the letter of the District Magistrate communicating to the petitioner the particulars contains a statement that the petitioner was being detained on the "grounds" that he was acting in a manner prejudicial to the maintenance of supplies and services essential to the community, as evidenced by the particulars ..... taken separately and collectively;

(2) though the order of detention is passed by the District Magistrate, the affidavit in answer to the petition has been filed by an officer of the rank only of a Deputy Secretary, Home Department, Government of West Bengal;

(3) the order of confirmation does not mention the period for which the petitioner was to be kept under detention;

(4) the order of detention is based on a solitary ground comprising a stray incident, and

(5) the order of confirmation passed by the State Government was not communicated to the petitioner within a reasonable time.

4. It is not proper that the particulars furnished to the petitioner should have been accompanied by a mechanical recital that he was being detained on the "grounds" mentioned therein, even though the order is founded on single ground. The detaining authority must apply its mind to individual cases and ought not to adopt a mechanical approach to matters involving personal freedom. But the mistake is not so serious a nature as would vitiate the detention. In regard to the statement that the particulars furnished to the petitioner were considered "separately and collectively" we see no error because the particulars mention more than one fact, though they relate to a single incident. The facts mentioned in the particulars are that the petitioner cut the over head wire, committed theft thereof that the wire was of the value of Rs. 1500/- and the theft caused a total dislocation of train services in the particular section.

5. As regards the second ground that the detaining authority should himself make the affidavit in reply, the affidavit filed by the Deputy Secretary offers a satisfactory explanation as to why the District Magistrate could not himself make the affidavit. The District Magistrate was apparently occupied with problems of law and order as also with the problem of procurement of rice in the particular district.

6. In regard to the third ground, we rarely come across an order of confirmation passed by the Government in which the period of detention is not mentioned. But Section 13 of the Act as amended by Section 6(d) of the Defence of India Act, 1971, provides that the maximum period for which any person may be detained shall be twelve months from the date of detention or until the expiry of Defence of India Act, 1971, whichever is later. This statutory provision places an outside limit on period of detention and the Proviso to Section 13 leaves it open to the appropriate Government to revoke or modify the order of detention at any earlier time. It is therefore not possible to say that the failure to mention the period of detention in the order of confirmation constituted an illegality vitiating the order of detention.

7. The fourth ground raises a question which is not within the jurisdiction of this Court because sufficiency of the evidence before the detaining authority is not a matter for the Courts to decide. The particulars furnished to the petitioner show that the facts within the knowledge of the detaining authority bear a rational connection with maintenance of supplies and services essential to the community. The order cannot therefore be said to have been passed on extraneous grounds.

8. On the last point it is not possible to hold that there was in the circumstances of the case, an unfair delay on communicating to the petitioner the confirmation of the detention order of the State Government. The order was confirmed on July 30, 1973, and the affidavit in reply to the petition shows that on the very next day the Additional Superintendent of Police, D.I.B., 24-Parganas, was asked by a written memorandum to serve the confirmation on the petitioner. In *Deb Sadhan Roy v. The State of West Bengal* ((1972) 1 SCC 308 : 1972 SCC (Cri) 45.), this Court observed that though the confirmation should be communicated to the detenu within a reasonable time, what is a

reasonable time must necessarily depend upon the circumstances of each case.

9. For these reasons we dismiss the petition.

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