

Madhab Roy Alias Madha Roy

Vs

State of West Bengal

Writ Petition No. 506 of 1972

(D. G. Palekar, V. R. Krishna Iyer, P. N. Bhagwati, P. K. Goswami JJ)

16.02.1974

JUDGMENT

BHAGWATI J. -

The petitioner, who was filed this petition for a writ of habeas corpus from jail, was detained pursuant to an order dated May 23, 1972 passed by the District Magistrate 24 Parganas under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 on the ground that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The communication dated May 23, 1972, which was served on the petitioner at the time of his arrest, intimated to him the following ground on which the order of detention was made by the District Magistrate.

That on December 18, 1971 at about 20.00 hours you along with your associates with a view to commit theft of copper return feeder wire of Railway Traction cut the end of the wire of traction at Post No. 28/23 in between Shyamnagar and Ichhapur. During the operation your associates Shri Lakshman Ch. Das died of Electrocutation at the post. You and other associates then left the place without picking up the wires which rolled up in a running goods train passing on the line and caused serious damaged to post No. 28/23 resulting disruption of train services.

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

Though only one single incident was referred to in the communication dated May 23, 1972 as forming the basis of the making of the order of detention, the District Magistrate in paragraph 7 of the affidavit filed by him in reply to the petition stated what according to him was something much more than this single incident :

I further state that the detenue-petitioner is was one of the notorious anti-social elements of Shyamnagar P. S. He was indulging in committing theft of copper feeder wires from Railway tractions. It appears that on December 18, 1971, the petitioner along with his associates cut the end of feeder traction wires from the post No. 28/23 between Shyamnagar and Ichhapur Railway Stations with a view to commit theft of the said copper feeder wire and during the said operation one of the associates Lakshman Chandra Das died as a result of electrocution. It further appears that on February 12, 1972 the petitioner and his associates also committed theft of 48.5 meters of overhead copper traction wires between the said railway stations. Due to the aforesaid acts running of trains in the Sealdah Division was dislocated and disrupted for a considerable period causing

hardship to travelling public and delay in movement of supply and services. The activities of the petitioner were prejudicial to the maintenance of supply and services essential to the community and so he was detained under the said Act.

The argument of the petitioner was that in arriving at his subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from carrying on prejudicial activities, the District Magistrate took into account not only the solitary incident intimated to the petitioner in the communication dated May 23, 1972, but also the fact that the petitioner was "one of the notorious anti-social elements of Shyamnagar P.S." and that "he was indulging in committing theft of copper feeder wires from railway tractions." This additional circumstance, which went into the formation of the satisfaction of the District Magistrate, was not communicated to the petitioner and the petitioner had, therefore no opportunity of making his representation against it. This, contended the petitioner, constituted violation of the constitutional safeguard in Article 22(5) which has been translated into statutory enactment in Section 8 of the Act. Now, there can be no doubt - and that has been repeatedly laid down by this Court in a series of recent decisions commencing from Shaik Hanif v. State of West Bengal ((1974) 1 SCC 637 : 1974 SCC (Cri) 292) and Bhut Nath Mete v. State of West Bengal ((1974) 1 SCC 645 : 1974 SCC (Cri) 300) - that if any factual components constituting the real grounds for detention have not been fairly and fully put across to the detenu so as to enable him to make an effective answer, the order of detention would be invalid as being contravention not only of the statutory safeguard under Section 8 of the Act, but also of the constitutional guarantee under Article 22(5). It, therefore, becomes necessary to consider whether in the present case any facts or circumstances, in addition to the single solitary incident communicated to the petitioner, were taken into account by the District Magistrate in arriving at the requisite satisfaction for making the order of detention. The District Magistrate admittedly took into account the fact or circumstance that the petitioner was one of the notorious anti-social elements of Shyamnagar police station and was indulging in committing theft of copper feeder wires from railway tractions. The question is : does this prejudicial activity attributed to the petitioner go beyond the ground based on the single fugitive incident communicated to the petitioner, or is comprised within it ?

2. To answer this question it is necessary to understand the real nature of the activity of the petitioner as disclosed by the incident communicated to him. This incident must be judged in its correct setting, grave proportions and clear implications. It must be noticed that this was not an ordinary incident of theft of wheat, rice or jute bags. It was a daring act of robbery of copper return feeder wire of railway tractions which resulted in the death of one of the associates of the petitioner by electrocution and brought about serious disruption of the railway services. Now, cutting and removal of copper return feeder wire of railway traction is a sophisticated and complex operation which requires technical skill and expertise and is not the work of a lay man or a novice. It postulates experience acquired as a result of a course of such or similar activities and also suggests that it is a part of an organised activity of "a complex of agencies collaborating to remove, secret and sell" such stolen goods. This activity has very serious and disturbing consequences and it can well be part of a plan of sabotage which brings to a grinding halt the movement of trains. Therefore, it is obvious that though the incident referred to in the communication served on the petitioner is a single solitary incident, it cannot be looked upon as an isolated act. It necessarily connotes a course of previous conduct of such or similar activities where specialized experience has been acquired and specialised kind of mischief has been planned to be perpetrated. The allegation that the petitioner was one of the notorious anti-social elements indulging in committing theft of copper feeder wires from railway tractions is, therefore, really nothing but an elaboration of what is already implied in the apparently single solitary incident communicated to the petitioner. To quote the words of one of us in Anil Dey v. State of West Bengal, ((1974) 4 SCC 514 : 1974 SCC (Cri) 550) "the very

proficiency and daring displayed by the petitioner, with his associates, in doing what he did, amounts to the attribution of a series of activities" more fully put down in paragraph 7 of the affidavit of the District Magistrate. It is, therefore, not possible to say that in arriving at the requisite satisfaction the District Magistrate relied on any ground not communicated to the petitioner, or that in making the order of detention he was guilty of any violation of the statutory provision in Section 8 or of the constitutional safeguard in Article 22(5).

3. This was the only contention urged on behalf of the petitioner and since there is no substance in it, the petition fails and the rule is discharged.

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