

Golam Hossain Mondal

Vs

State of West Bengal

Writ Petition No. 532 of 1972

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

18.02.1974

JUDGMENT

BHAGWATI, J. -

1. This is a petition under Art. 32 of the Constitution for a writ of habeas corpus for setting the petitioner free from detention. Immediately on the conclusion of the hearing of the petition we passed an order releasing the petitioner from detention and we now processed to give our reasons.
2. The District Magistrate, 24 Parganas, in exercise of the power conferred upon him under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971, passed an order dated August 23, 1972 directing that the petitioner be detained as it was necessary to do so with a view a preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. Pursuant to the order of detention, the petitioner was apprehended on August 29, 1972 and at the time of the apprehension the grounds on which the order of detention was made were served on him by a communication dated August 23, 1972 made under Section 8, sub-section (1) of the Act. There was only one ground set out in this communication and it was that on July 23, 1972 between 02.00 hrs. and 03.00 hrs, the petitioner and his associates broke open wagon No. CR 2820 of Goods Train No. 721 Up at P.F. No. 1 of Dattapurkur Railway Station and when they were removing rice from the wagon, the petitioner was arrested red-handed with one quintal of rice at the spot by the local Railway Guard members. The petitioner made a representation against this ground of detention but it was rejected by the State Government. The State Government in the meantime placed the case of the petitioner before the Advisory Board together with the grounds on which the order of detention was made as also the representation received from the petitioner. The Advisory Board submitted its report stating that in its opinion there was sufficient cause for the detention of the petitioner and on the basis of this report, the State Government confirmed the detention of the petitioner by an order dated October 25, 1972. The petitioner thereupon filed the present petition from jail challenging the legality of his detention.
3. There were several grounds urged on behalf of the petitioner in support of the challenge against the order of detention, but it is not necessary to refer to them since there is one ground which, in our opinion, is sufficient to strike down the order of detention. It is obvious from the communication dated August 23, 1972 that only one ground was disclosed to the petitioner as forming the basis of the order of detention and obviously it was against this ground alone that the petitioner had an opportunity of making his representation. But paragraph 8 of the affidavit filed by the District Magistrate in reply to the petition stated :

"..... it appears from the records that the detenu-petitioner is one of the notorious wagon breakers and was engaged in systematic breaking of railway wagons and committing theft of rice and wheat therefrom. It appears that on the night of 23.7.72 the petitioner along with his associates broke railway wagon No. CR 2820 in Up Goods Train No. 721 at Dattapurkur Railway Station and was engaged in removing rice when he was caught red-handed. The aforesaid activity of the petitioner was prejudicial to the Maintenance of Supplies and Services - Essential to the community and so he was detained under the said Act."

It is clear from this statement that what weighed with the District Magistrate in making the order of detention was not merely one single solitary act of wagon breaking attributed to the petitioner in the grounds supplied to him, but a course of conduct plainly indicated by the allegation that the petitioner was "one of the notorious wagon breakers and was engaged in systematic breaking of railway wagons and committing theft of rice and wheat" from the wagons. The grounds on which the order of detention was really made, therefore, included the ground that the petitioner was a notorious wagon breaker who was systematically engaged in breaking railway wagons and committing theft of rice and wheat. This ground was, however, not communicated to the petitioner and he was not given an opportunity of making a representation against it. This was clearly in breach of the requirement of sub-section (1) of Section 8 of the Act and it also constituted violation of the constitutional guarantee embodied in Art. 22, cl. (5) of the Constitution. The case, therefore, falls within the ratio of the decisions of this Court in *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) and the order of detention must be held to be invalid.

4. We, therefore, allow the petition and make the rule absolute by issuing a writ of habeas corpus quashing and setting aside the order of detention.

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