

Dharman Raj Banshi

Vs

State of West Bengal

Writ Petition No. 613 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 proceed 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 September 20, 1972 directing that the petitioner be detained as it was necessary to do so with a view to 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 September 23, 1972 and immediately on his arrest the grounds on which the order of detention was made were served on him by a communication dated September 20, 1972 made under Section 8, sub-section (1) of the Act. There was only one ground set out in this communication and it was in the following terms :

"That on 14.9.72 at about 13.15 hrs. you and your associates broke open wagon No. S.E. 33850 at Naihati Goods Yard and committed theft in respect of Jute bales. Duty RPF personnel intercepted, when you and your associates attacked the RPF party with stones and attempted to kill them with the help of a pipe-gun. One of the RPF personnel RK/106 R. Pathak opened fire in self defence and injured you. Your associates then fled away leaving the stolen goods near the victimised wagon and you were arrested at the spot."

The fact of the making of the order of detention was reported by the District Magistrate to the State Government on September 23, 1972. The order of detention was thereafter approved by the State Government on September 29, 1972 and on the same day the State Government made the necessary report to the Central Government. The petitioner submitted a representation against the order of detention and the representation was received by the State Government on September 29, 1972. The State Government thereafter placed the case of the petitioner before the Advisory Board on October 5, 1972 together with the grounds on which the order of detention was made and the representation received from the petitioner. The Advisory Board, after giving a personnel hearing to the petitioner, submitted its report to the State Government on October 30, 1972 stating that in its opinion there was sufficient cause for the detention of the petitioner. The State Government thereupon passed an Order dated October 31, 1972 confirming the detention of the petitioner. It is this detention which is

challenged by the petitioner in the present petition submitted from the jail.

3. It is apparent from the communication dated September 20, 1972 that only one ground was disclosed to the petitioner as forming the basis of detention and that ground related to the incident of wagon breaking alleged to have taken place on September 14, 1972. This was the only ground communicated to the petitioner, and therefore, obviously it was against this ground alone that the petitioner had an opportunity of making his representation. But the District Magistrate stated in paragraph 7 of the affidavit filed by him in reply to the petition :

"..... it appears from the records that the detenu-petitioner is one of the notorious anti-social elements of Barrackpore-Naihati Area. He and his associates were indulging in breaking wagons and stealing goods from there. It appears that on 14.9.1972 petitioner and his associates were found breaking wagon at Naihati Goods shed and committing theft of jute bales therefrom and when prevented by RPF party the petitioner and his associates attacked them and attempted to kill them with pipe guns. The aforesaid activity of the petitioner caused hindrance 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 the fact that the petitioner was "one of the notorious anti-social element of Barrackpore-Naihati Area" and "he and his associates were indulging in breaking wagons and stealing goods from there". This was an additional ground which plainly indicated that the District Magistrate had in mind several prior incidents of wagon breaking and stealing and he took into account those incidents for the purpose of reaching the satisfaction that it was necessary to detain the petitioner with a view to preventing him from carrying prejudicial activities. These incidents of wagon breaking and stealing on the basis of which the petitioner was branded as a notorious anti-social element of Barrackpore-Naihati Area and which contributed in no small measure to the making of the order of detention, were, however, not communicated to the petitioner and he was not given an opportunity of making his representation in regard to them. 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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