

Malwa Shaw

Vs

The State of West Bengal

Writ Petition No. 366 of 1972

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

18.02.1974

JUDGMENT

BHAGWATI, J. -

This is a petition filed by the petitioner for a writ of habeas corpus for quashing and setting aside his detention under Maintenance of Internal Security Act, 1971. 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 Act, passed an order dated April 21, 1972 directing that the petitioner be detained as it was necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The fact of the making of the order of detention was reported by the District Magistrate to the State Government of April 24, 1972 as required by sub-section (3) of Section 3 of the Act. The order of detention was approved by the State Government on May 2, 1972 and on the same day the State Government made the necessary report to the Central Government. Pursuant to the order of detention the petitioner was arrested on May 11, 1972 and immediately on his arrest the grounds on which the order of detention was made were served upon him. These grounds were in the following terms :

"(1) That on the night of 5/6.10.71 you along with your associates cut down and stole away copper wire 1133 metres in length from electric post Nos. 80 to 85 at Rly. Colony Radhaballavtala, P. S. Nalhati, causing disruption to the maintenance of supply of power and light which are essential to the community.

(2) That on the night of 5/7.10.71 you along with your associates cut down and stole away copper wire 1070 metres in length from electric posts Nos. 290 to 293 at Rathtala, P. S. Nalhati, causing disruption to the maintenance of supply of power and light which are essential to the community.

(3) That on the night of 30/31.10.71 you along with your associates cut down and stole away 85 kgs. of copper wire from electric post Nos. F/11 to F/13 on Ghoshpara Road, Bhatpara, near Rupasree Cinema Hall, P. S. Jagatdal causing disruption to the maintenance of supply of power and light which are essential to the community. Subsequently, you along with your associate were caught red-handed by Shri Lal Baha Jadav and others of Gouripore, Nalhati while you were in the act of carrying the said stolen copper wire."

The petitioner made a representation against the order of detention and the representation was received by the State Government on May 25, 1972. The State Government thereafter placed the

case of the petitioner before the Advisory Board on May 29, 1972 together with the grounds on which the order of detention was made and the representation of the petitioner and the Advisory Board, after giving a personal hearing to the petitioner, submitted its report dated July 18, 1972 stating that in its opinion there was sufficient cause for the detention of the petitioner. The State Government thereupon passed an order dated July 29, 1972 confirming the detention of the petitioner under sub-section (1) of Section 12 of the Act. This order of detention is challenged by the petitioner in the present petition.

2. Though at the commencement of the arguments three contentions were formulated by learned Counsel appearing on behalf of the petitioner against the validity of the order of detention, two were given up when it became evident in the course of the discussion that they were wholly unfounded and ultimately only one contention was pressed by him on behalf of the petitioner. He contended that all the three grounds on which the order of detention was made related to incidents alleged to have taken place between October 5, 1971 and October 31, 1971 and they could not reasonably form the basis for reaching a satisfaction on April 21, 1972 when the order of detention was made, that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and with a view to preventing him from so acting, it was necessary to detain him. The argument was that the date when the order of detention was made was so far removed from the dates of the alleged incidents that no reasonable person, on the basis of the alleged incidents which took place about five months before, could possibly arrive at the satisfaction leading to the making of the order of detention. The satisfaction of the District Magistrate, which was the foundation of the making of the order of the detention, was therefore no satisfaction at all and the order of detention based on it was invalid. This contention is without force and cannot be accepted. The District Magistrate has filed an affidavit in reply to the petition stating that he was satisfied on the basis of the incidents referred to in the grounds of detention that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and he had, therefore, passed the impugned order detaining the petitioner. Of course this statement made on oath by the District Magistrate merely affirms the recital made in the order of detention and like the recital, it can be shown to be incorrect. But when the District Magistrate has made a statement on oath, the burden would be heavy on the petitioner to show that what is stated by the District Magistrate is not correct. The petitioner would have to establish from the material on record that the District Magistrate could not possibly have arrived at the satisfaction which he claims to have done and that his satisfaction is colourable. Now the only circumstance on which the petitioner has been able to rest his case is the fact that the incidents referred to in the grounds of detention took place between October 5, 1971 and October 31, 1971 while the satisfaction which constitutes the foundation of the order of detention was arrived at by the District Magistrate on April 21, 1972, more than five months after the date of the alleged incidents. But this circumstance cannot avail the petitioner. It is but a reed of straw which cannot support the argument of the petitioner. The time lag between the dates of the alleged incidents and the making of the order of detention is not so large that it can be said that no reasonable person could possibly arrive at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It must be remembered that some time is bound to elapse before the investigation into the alleged incidents is completed and the matter is brought to the notice of the District Magistrate and the District Magistrate applies his mind and arrives at the requisite satisfaction culminating in the order of detention. The period of about five months which elapsed between the dates of alleged incidents and the making of the order of detention cannot be regarded as so unreasonably long as to warrant the inference that no satisfaction was really arrived at by the District Magistrate or that the satisfaction was colourable or no satisfaction at all as required by the statute. The satisfaction which the District

Magistrate is required to reach in order to support the order of detention is that it is necessary to detain the petitioner with a view to preventing him from acting in a particular manner and that satisfaction can obviously be founded only on a reasonably anticipated prognosis of future behaviour of the petitioner made on the basis of past incidents. It is not possible to say that the incidents referred to in the grounds of detention were such that they could not reasonably lead to the satisfaction which the District Magistrate reached when he made the order of detention. This contention urged on behalf of the petitioner must, therefore, be rejected and the order of detention must be held to be valid.

3. The petition, therefore, fails and the rule is discharged.

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