

Deben Das

Vs

The State of West Bengal

Writ Petition No. 26 of 1973

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

26.02.974.

JUDGMENT

PALEKAR, J. -

1. In this partition for a writ of habeas corpus under Article 32 of the Constitution the petitioner had been detained by an order dated September 14, 1972 passed by the District Magistrate, 24 Parganas, in exercise of the powers conferred on him by sub-section (1) read with sub-section (2)) of Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971). The order was passed with a view to preventing the petitioner acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

2. There was only one ground for detention and it was as follows :

That on September 10, 1972 in between 06.30 hrs. and 07.30 hours you and your associates broke open wagon Nos. PC 12799, NR 35424 and ERC-97048 loaded with foodgrains (Wheat) and committed theft in respect of the same from Canning Rly. Yard. You were subsequently arrested.

Your action caused disruption of train services affecting supplies and services essential to the community.

3. The affidavit filed by the District Magistrate says as follows :

It appears from the records that the detenu-petitioner is a notorious wagon breaker operating mainly in and around Canning Railway Station, District 24 Parganas.

Then the incident referred to in the grounds stated and the affidavit proceeds to say :

The aforesaid activity of the petitioner was prejudicial to the maintains of supplies and services, essential on the community and so he was detained under the said Act.

4. It is contended by Mr. Arora, amicus curiae on behalf of the petitioner, that there is only one solitary incident of wagon breaking which appears to have taken place on September 10, 1972 and this by itself could never have been sufficient for the Magistrate to describe the petitioner as "a notorious wagon breaker operating mainly in and around Canning Railway Station." Mr. Arora contended that the statement of the District Magistrate would show that there must have been other material before him before he concluded that the petitioner was "a notorious wagon breaker" and the reference to "activity" as "a wagon breaker" was based not merely on the incident mentioned in the

ground, but also other material. Mr. Arora, therefore, submitted that if there were grounds other than those which were communicated to the petitioner on which the Magistrate's satisfaction was based, then it was the duty of the Magistrate to serve such grounds also on the petitioner so that the latter could have had an opportunity to make his representation against the charge. A constitutional safeguard was this violated and, therefore, it was contended the order of detention was bad. We think there is force in this contention. It does appear from the affidavit of the District Magistrate that he had taken into consideration material which was not communicated to the petitioner. This deprived the petitioner of an opportunity to make the representation against the undisclosed material and, therefore, the detention was clearly bad.

5. At the conclusion of the hearing we had passed the order for the release off the petitioner and all that we are doing now is to give reasons for that order.

</html