

Lakshman Khatik

Vs

The State of West Bengal

Writ Petition No. 344 Of 1972

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

26.02.1974

JUDGMENT

PALEKAR. J. -

1. This is a petition under Art. 32 of the Constitution for a writ in the nature of habeas corpus. The petitioner was detained by an Order dated March 22, 1972 passed by the District Magistrate, Howrah in exercise of the powers conferred in 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 from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.,

2. The grounds on which the order was passed are as follows :

(1) On 3.8.71 at about 18.45 hours, you and your associates K. Mali, Baidyanath Sadhukhan and others were found by Watcher Constable 1609 Bipad Bhanjan Burman and were Watcher Constable 1368 Anath Bandhu Karmakar of Howrah D.E.B., who were on plain cloth duty to unload 5 bags of rice from lorry No. WBL 366 on Netaji Subhas Road near Allahabad Bank under Howrah P. S. and to dispose of the stock forthwith to the retailers of Naba Kumar Nandy Lan @Rs. 1.60 paise per kg. As a result of this unloading 306 kgs. of rice were received short at the destination.

You and your associates by your such activities of removal of rice from the F.C.I. account and by selling the same in the Statutory Rationing Area frustrated the policy of the Government with regard to the supply and distribution of essential commodities to the community.

(2) On 5.8.71 at about 16.00 hours, you and your associates Tinkeri Seth and others assembled in front of Allahabad Bank on Netaji Subhas Road, P. S. Howrah (within S.R. area) and removed 1090 kgs. and 1065 kgs. rice respectively from lorry No. WBK 1751 and WBL 2691 loaded with rice on F.C.I. account. You and your associates fled away on the approach of the police and 1180 kgs. of rice were recovered from the place of occurrence and adjacent places. The short age of 2155 kgs. of rice from the lorry were reported by the F.C.I. Agent at Belgachia Food Godown. You and you associates by your such activities frustrated the policy of the Government with regard to the supply and distribution of essential commodities on the community.

(3) On 20.8.71 at about 19.30 hours, you and your association Kani Mali, Balai and others assembled in front of Allahabad Bank on Netaji Subhas Road in S. R. Area, P. S. Howrah and

removed 690 kgs. of rice from lorry No. WGE 1780 loaded with 110 bags of rice on F.C.I. account. On the same day the entire quantity of rice were recovered from a house at no. 2 Harcourt Ist Bye Lane, P. S. Howrah under occupation of your associate Keshab Ch. Das. This shortage was reported to the Agent at Foreshort Godown. Your such activities of removal of rice from the F.C.I. account are highly prejudicial in the interest of maintenance of proper supply and service of essential commodities to the community.

3. The petitioner had an opportunity to make a representation to the Advisory Board. In due course the detention order was confirmed by the State Government on May 30, 1972 and communicated to him to June 1, 1972.

4. Several objections were raised to the detention order. But it is not necessary to deal with all of them because the petitioner is bound to succeed on the ground that it does not appear that the District Magistrate could have been, in the circumstance of the case, reasonably satisfied that it was necessary to order the detention of the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supply and service essential to the community.

5. All the three grounds on which the District Magistrate purports to have reached the required satisfaction are based on incidents which took place in rapid succession in the month of August, 1971. The first incident of unloading 5 bags of rice took place in the afternoon of August 3, 1971. The second incident took place on August 5, 1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of August 20, 1971 also at the same place. That also related to the removal of some rice from loaded trucks. It is not clear from the record whether the petitioner was prosecuted for the theft, especially when it is seen that the first incident of removal of rice was witnessed by two constables. However, that might be, it appears to us that the District Magistrate could not have been possibly satisfied about the need for detention on March 22, 1972 having regard to the detenu's conduct some 7 months earlier. Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think the prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion, the order of detention is invalid.

6. We have already passed orders after the conclusion of the hearing of the case that the petitioner should be released forthwith and we are now merely giving the reasons for that order.

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