

Olia Mallick Alis Oliruddin Mallick

Vs

The State of West Bengal

Writ Petition No. 569 Of 1972

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

26.02.1974

JUDGMENT

PALEKAR, J. -

1. In this petition for a writ of habeas corpus under Art. 32 of the Constitution the petitioner is detained by the District Magistrate, Midnapore, by his Order March 29, 1972. The Order was passed 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) with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

2. The grounds communicated to the petitioner are :

" (1) On 3.10.71 at about 02.00 hrs., you along with your associates committed theft in respect of 1200 feet of overhead aluminium conductor wire worth about Rs. 1,000 from Power Supply line of the West Bengal State Electricity Board near Hategeria village under Keshiary P.S., District Midnapore. Due to such act of yours electric supply from Hizli Power Station to Egra remained suspended for 12 hours and a chaos was created.

Thus you acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

(2) On 11.10.71 at about 02.00 hrs., you along with your associates committed theft in respect of 3000 feet of overhead aluminium conductor wire worth about Rs. 2500 from Hizli-Egra Power Supply line of the West Bengal State Electricity Board near Hategeria, P. S. Keshiary, District Midnapore. Due to such act of yours, electric supply from Hizli Power Station to Egra remained suspended for 14 hours and a chaos was created.

Thus you acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

(3) On 3.11.71 at about 03.35 hrs., you along with your associates made an attempt to cut overhead aluminium conductor wire from Hizli-Belda Power Supply line of the West Bengal State Electricity Board at Dasasarisa, P. S. Keshiary, - District Midnapore. As soon as your associates touched the electric line, there has been one spark and your associates fell down from the post when the Police party who was in ambush petrol duty hastened to the place, arrested you and one of your associates

with some instrument for cutting wire.

Subsequently, as per your statement police recovered 19 kgs. of overhead aluminium conductor wire from under the ground of the courtyard of your associate.

Thus you acted in a manner prejudicial to the maintenance of supplies and services essential to the community."

3. The petitioner had made his representation to the Advisory Board but after the same was rejected the State Government, acting on the opinion of the Advisory Board, confirmed the detention order on October 3, 1972. It must be noted that though the detention order itself had been passed on March 29, 1972 the petitioner could not be apprehended and served with the detention order till July 29, 1972 on which day he was also served with the grounds of detention.

4. Mr. Mittal, who appeared as amicus curiae for the petitioner, relied principally on the fact that there has been a delay of about 5 months before the order of detention was passed. He pointed out that there were in all 3 incidents of conductor wire cutting and while the first 2 occurred in October, 71 the third occurred in November, 1971. Thereafter, it is pointed out, the detention order had been passed 5 months later. It is, therefore, contended that this very delay in passing the order would show that the order was passed not because the District Magistrate was satisfied that the detention was necessary but because he felt that the petitioner deserved to be punished as the police had failed to prove the criminal cases against him. In our opinion, mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. The activities of the petitioner were extremely dangerous. The first ground shows that the petitioner along with his associates committed theft in respect of 1200 feet of overhead aluminium conductor wire due to which electric supply from Hizli Power Station to Egra remained suspended for 12 hours and there was complete chaos. The second incident is similarly of theft of 3000 feet of overhead aluminium conductor wire and this resulted in the stoppage of electric supply for 14 hours. Similarly in November, he and his associates made an attempt to cut overhead aluminium conductor wire from Hizli Belda Power Supply line and on this occasion the police caught him and his associates. It appears that the police filed criminal cases but without any results. Since the activities of the petitioner marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been very well satisfied, even after the lapse of 5 months that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. We are not, therefore, inclined to interfere in this matter merely because there has been a delay of 5 months before the detention order was passed.

5. Mr. Mittal, thereupon, pointed out that the petitioner is under detention from July 29, 1972 and still continues to be in detention. It is undoubtedly true that a very long period has elapsed since the date of his internment. We, however, assume that the cases of all detenu are being periodically reviewed by the State Government with a view to see if the petitioner should be required to continue in detention. It should not happen that once a person is detained and the Court has also though that the detention is not invalid, the detenu should continue in detention indefinitely without his case being periodically reviewed.

6. In this case, however, the detention not being shown to be invalid, the petition must be dismissed.

</html