

Haru Sarkar

Vs

The State of West Bengal

Writ Petition No. 54 of 1973

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

26.02.1974

JUDGMENT

BHAGWATI, J. -

This is a petition for a writ of habeas corpus preferred by the petitioner from jail from quashing and setting aside an order of detention dated July 18, 1972 passed against him. The order of detention was passed by the District Magistrate, 24 Parganas under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 on the ground that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to be community. The grounds on which the order of detention was made were intimated to the petitioner by a communication dated July 18, 1972 served on the petitioner at the time of his arrest. These grounds referred only to one incident which was described in the following terms :

"That on 28-4-72 at about 21.35 hrs. you and your associates broke open location box No. 15/6, 6 TROMT situated near K. M. Post No. 16/13 at Sodepur Rly. Yard and committed theft in respect of costly equipment therefrom and damaged the box and as a result electric signaling devices went out of order disrupting train communication for a considerable period. The day R.P.F. intercepted in your operation and with the help of the member of public arrested two of your associates on the spot with some stolen battery-charger. You escaped but subsequently arrested.

Your actions effected services and supplies essential to the community.

You have thus acted in a manner prejudicial to the maintenance of supplies and services essential to the community."

Though only this single solitary incident was referred to in the communication dated July 18, 1972 as forming the basis of the making of the order of detention, the District Magistrate in paragraph 7 of the affidavit filed by him in reply to the petitioner stated what according to the petitioner was something much more than this single incident :

"I further state that the detenu-petitioner is a notorious railway criminal. It appears that on 28-4-72 the petitioner and his associates broke open Location Box 15/6, 6 TROMT situated near K.M. Post No. 16/13 at Sodepur Railway Yard and committed theft in respect of costly signaling equipments therefrom and damaged the box and in consequence whereof electric signaling devices of the said area went out of order and

disrupted train communications. The activities of the petitioner affected services and supplies essential to the community and so he was detained under the said Act."

The argument of the petitioner was that in arriving at his subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from carrying on prejudicial activities, the District Magistrate took into account not only the solitary incident intimated to the petitioner by the communication dated July 18, 1972, but also the fact that the petitioner was a notorious railway criminal. This additional ground of notoriety signified a course of conduct consisting of a series of similar activities and though it clearly went into the formation of the satisfaction of the District Magistrate, it was not communicated to the petitioner and the petitioner had, therefore, no opportunity of making his representation against it. This, contended the petitioner, constituted violation of the constitutional safeguard in Art. 22, cl. 5, which finds its counterpart in statutory enactment in Section 8 of the Act. Now, there can be no doubt - and that has been repeatedly laid down by this Court in a series of recent decisions commencing from 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) -that if any factual components constituting the real grounds for detention have not been fairly and fully put across to the detenu so as to enable him to make an effective answer, the order of detention would be invalid as being in contravention not only of the statutory protection under Section 8 of the Act but also of the constitutional guarantee under Art 22. cl. (5). We do not think it is possible to say on the facts of the present case that anything more was relied upon by the District Magistrate than what was already contained in the communication dated July 18, 1972. The facts of this case are identical in material respects with those of Anil Dey v. State of West Bengal, ((1974) 4 SCC 414 : 1974 SCC (Cri) 550) and the reasons which prevailed with this Court in holding that there was no defect or infirmity in the communication of the real grounds for detention must apply equally in reaching the same conclusion in the present case. We need not repeat what has been stated by this Court in Anil Dey v. West Bengal. We affirm the ratio of that decision and, for the same reasons, hold that in arriving at the requisite satisfaction the District Magistrate did not rely on any grounds not communicated to the petitioner and in the making of the order of detention there was no violation of the statutory provision in Section 8 or of constitutional safeguards in Art. 22, cl. (5).

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

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