

Asgar Ali

Vs

District Magistrate Burdwan and Others

Writ Petition No. 1289 of 1973

(H. R. Khanna, V. R. Krishna Iyer JJ)

27.02.1974

JUDGMENT

KHANNA, J.-

1. This is a petition under Article 32 of the Constitution by Asgar Ali for a writ of habeas corpus. The respondents impleaded in the petition are the District Magistrate Burdwan, the Superintendent Burdwan Jail and the State of West Bengal.
2. The District Magistrate, Burdwan passed an order on February 7, 1972 under Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) for the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The petitioner in pursuance of the detention order was taken into custody on February 11, 1972. Report about the passing of the detention order was sent by the District Magistrate to the State Government and the said Government approved the detention order on February 18, 1972. On March 8, 1972 the State Government placed the case of the petitioner before the Advisory Board. The State Government received a representation from the petitioner against his detention on March 16, 1972. The said representation after being considered was rejected by the Government on March 23, 1972. The representation was thereafter forwarded to the Advisory Board. The Advisory Board after considering the material placed before it sent a report on April 19, 1972 to the State Government. Opinion was expressed by the Board that there was sufficient cause for the detention of the petitioner. The State Government thereafter on May 10, 1972 confirmed the order for the detention of the petitioner.
3. The affidavit of Shri Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.
4. The petitioner in the course of his petition has stated that he was arrested on February 5, 1972 and that the grounds of detention were not explained to him at the time of his arrest. These allegation have been denied on behalf of the respondents and it would appear from the affidavit filed on their behalf that the petitioner was arrested not on February 5, 1972 but on February 11, 1972. It is further stated that the grounds of detention were clearly explained by the police officer in Bengali and Hindi to the petitioner who understood the contents thereof. He also signed the grounds and took a copy thereof. Mr. Chibber who has argued the case amicus curiae in view of the above averments in the affidavit filed on behalf of the respondents has not agitated this aspect of the matter. He has, however, raised two contentions and we shall now deal with them.
5. It has been argued by Mr. Chibber that Shri A. K. Chatterjee, District Magistrate of Burdwan who

passed the detention order has not filed his affidavit. Such an affidavit, according to the learned Counsel, was essential for sustaining the validity of the detention order. We find ourselves unable to accede to this contention. Although normally the affidavit of the person actually making the detention order should be filed in a petition for a writ of habeas corpus, the absence of such an affidavit would not necessarily be fatal for the case of the respondents. It would indeed depend upon the nature of allegations made by the detenu in the petition for determining whether the absence of affidavit of the person making the detention order introduces a fatal infirmity. In case an allegation is made that the officer making the detention order was actuated by some personal bias against the detenu in making the detention order, the affidavit of the person making the detention order would be essential for repelling that allegation. Likewise such an affidavit would have to be filed in case serious allegations are made in the petition showing that the order was mala fide or based upon some extraneous considerations. In the absence of any such allegation, in the petition, the fact that the affidavit filed on behalf of the respondents is not that of the District Magistrate but that of the Deputy Secretary, Home (Special) Department of the Government of West Bengal would not by itself justify the quashing of the detention order. The affidavit of Shri Sukumar Sen shows that the District Magistrate was not available at the time of the filing of the affidavit and Shri Sukumar Sen has made the various averments in his affidavit on the basis of information derived from the records of the case.

6. Mr. Chibber has next argued that in the affidavit filed on behalf of the respondents it is stated that the petitioner was a "notorious stealer of electric wire". It is pointed out that this fact was not mentioned in the grounds of detention and that circumstance prevent him from making an effective representation. In this connection we find that the following particulars of the grounds of detention were supplied to the petitioner :

(1) That on 13-12-71 about 02.30 hrs. you along with your associates including (1) Fogla alias Nandalal Bhuiya, son of Shri Mongree Bhuiya. (2) Dugai alias Nandalal Bhuiya, son of Shri Mongree Bhuiya, both of Chapkahat, P. S. Kulti, Dist. Burdwan committed theft in respect of overhead electric copper wire (about 700 feet in length) from six poles in between Quarter Nos. 139 to 144 in New Colony, Sitarampur Railway Colony, P. S. Kulti, Burdwan. When challenged by the local peoples you were recognized by them. As a result of this theft, electric supply in the area was totally disrupted causing immense inconvenience to the people of the locality.

(2) That on 7-1-72 at about 04.00 hrs. you along with your associates including (1) Fogla alias Nandalal Bhuiya, son of Mongroo Bhuiya. (2) Dugai Bouri alias Korban, son of late Abdul Latif, both of Chapkahat, R. S. Kulti, Dist. Burdwan committed theft in respect of overhead electric copper wire (about 650 feet in length) from the poles in Block Nos. 117, 107 and 126, 125 in New Colony, Sitarampur Railway Colony, P. S. Kulti, Dist Burdwan. When challenged by the local people, you were recognized by them. As a result of this theft, electric supply in the area was totally disrupted causing immense inconvenience to the people of the locality.

The material on record which was brought to our notice at the time of the hearing shows that it were only the above two grounds which were taken into account by the District Magistrate in making the detention order. No other circumstance was taken into account by the District Magistrate in ordering the detention of the petitioner. As such, it cannot be said that the petitioner was in any way handicapped in making an effective representation against his detention. The decision of this Court in the case of Shaik Hanif v. State of West Bengal ((1974) 1 SCC 637 : 1974 SCC (Cri) 292), to

which one of us was a party, cannot be of much assistance to the petitioner. In that case the District Magistrate took into account a theft committed by the detenu on November 3, 1973 but that fact was not committed to the detenu. It was in view of this circumstance as well as the other facts of the case that this Court held that the detenu had not been able to make an effective representation. As mentioned earlier, the petitioner was not in the present case prevented from making an effective representation.

7. As a result of the above, the petition fails and is dismissed.

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