

Fogla and Another

Vs

The State of West Bengal

Writ Petitions Nos. 1956 And 2007 of 1973

(M. H. Beg, Y. V. Chandrachud, R. S. Sarkaria JJ )

28.02.1974

JUDGMENT

CHANDRACHUD, J. -

1. These petitions for the issuance of the writ of habeas corpus concern two different detenees and arise out of detention orders passed on different dates. But the orders of detention suffer from a common vice and it would be convenient to dispose of the two petitions by one judgment.

WRIT PETITION No. 1856 OF 1973

2. The petitioner Fogla alias Nandulal Bhuiya was detained by the District Magistrate, Burdwan, under an order of detention dated January 3, 1972 passed under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. The petitioner was detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The particulars of the grounds were furnished to the petitioner on the same date. They show that the allegation against the petitioner is that on November 17, 1971 he and his associates were caught red-handed while attempting to commit theft on overhead electric copper wire and that on December 13, 1971 the petitioner and his associates committed theft of an overhead electric copper wire.

3. In answer to the rule nisi issued by this Court an affidavit has been filed by the Deputy Secretary, Home (Special) Department, Government of West Bengal. In paragraph 7 of that affidavit it is stated that the record discloses that the petitioner is a person of "dangerous and desperate habits". It is obvious that this was one of the reasons for which the petitioner was detained but that was never communicated to the petitioner. He had therefore no opportunity to make an effective representative to the Government against the order of detention. The detention is therefore violate of Article 22(5) of the Constitution and must be set aside.

WRIT PETITION NO. 2007 OF 1973

4. The order of detention in this case was passed on July 4, 1972 on a ground similar to the one mentioned in the petition which we have just disposed of. In the particulars furnished to the petitioner it was mentioned that he had committed theft of an electric copper wire and of an aluminium conductor wire on April 16 and April 24, 1972. In the affidavit filed in this Court by the Deputy Secretary, Home (Special) Department, Government of West Bengal, it is stated in paragraph 8 that the record showed that the petitioner was "a notorious anti-social and criminal indulging in wagon breaking and theft of over head electric copper wire". The particulars furnished

to the petitioner do not refer to any incident of wagon breaking and therefore the petitioner had no opportunity of making an effective representation to the Government. It is clear from the affidavit that the detaining authority was influenced by the consideration that the petitioner was concerned with incidents involving breaking of wagons. This order is also in violation of Article 22(5) of the Constitution and must therefore be set aside.

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