

Tulshi Kahar

Vs

The State of West Bengal

Writ Petition No. 99 of 1973

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

18.06.1974

JUDGMENT

PALEKAR, J. -

1. This is a petition under Article 32 of the constitution for a Writ or Order in the nature of habeas corpus. The petitioner was detained by an order dated November 23, 1972 passed by the District Magistrate, 24 Parganas, in exercise of the powers conferred by sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 since the District Magistrate was satisfied that with a view to [prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community it was necessary to detain him. The petitioner was arrested on November 27, 1972 and was served with the order of detention and also with the ground of detention together with a vernacular translation thereof on the same day. The ground of detention is as follows :

(2) That on November 12, 1972 at about 02.00 hours, you and your associates cut and stole away copper return feeder wire measuring about 60 meters valued at Rs. 648 from electric masts in between Post Nos. 34/140 to 34/160 on Dn. Main Line of Kankinara Yard. You were challenged by local R.G. members near Incheck Gate of the yard when you fled away leaving the stolen property near Dholabada Mandir of Kankinara and properties were then recovered. You were subsequently arrested.

Your action disrupted communication and train services for a considerable period there then affecting supplies and services.

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

2. This is the only ground which was communicated to the petitioner.

3. It is contended on behalf of the petitioner that the ground referred to above was not the only ground on which the petitioner had been detained. Para 7 of the affidavit which is filed by the Deputy Secretary on behalf of the district Magistrate, who is not available, goes to show that there were other considerations which weighed with the district Magistrate in making the order. The Deputy Secretary affirms as follows :

I further state that it appears from the records that the detenu petitioner is a notorious criminal and was indulging in wagon breaking and stealing railway stores and equipments. It

appears that on November 12, 1972 the petitioner along with his associates stole away 60 meters of feeder copper wire from the electric masts in Kankinara Railway yard

4. It would appear from the above that this act of stealing 60 meters of feeder copper wire was not the only ground on which the District Magistrate had made up his mind to detain the petitioner. It appears that he had before him the records relating to the petitioner which disclosed that he was also a notorious criminal indulging in wagon breaking and committing theft of railway stores and equipments. Since the District Magistrate himself has not filed any affidavit to show that only the ground mentioned above had prevailed with him in making the detention order and the affidavit purports to be made on behalf of the Government and also the District Magistrate concerned, there can be hardly any doubt that apart from the ground mentioned above there was other strong material which had been taken into consideration by the detaining authority at the time it made the order. Since the other material was not communicated to the petitioner and he was not given a fair opportunity to explain the grounds which were uncommunicated to him, the order of detention is rendered invalid.

5. We have already directed that the petitioner should be released forthwith. The reasons which prevailed with us in making that order are stated above.

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