

Ajit Kumar Kaviraj

Vs

District Magistrate, Birbhum and Another

Writ Petition No. 1880 of 1973

(P. Jagmohan Reddy, P. K. Goswami JJ)

06.09.1974

JUDGMENT

GOSWAMI, J. -

1. By this application under Article 32 of the Constitution for a writ of habeas corpus the petitioner challenges the validity of the order of detention passed by the District Magistrate, Birbhum, on March 21, 1973, under Section 3 of the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971). The order of detention is passed on the ground that the petitioner has been acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The impugned order is specifically founded on two grounds communicated to the petitioner. These are as follows :

(1) On January 28, 1973 at about 4.30 p.m. you as a Direct Purchasing Agent of the Food Corporation of India sold out four quintals of paddy from the stock held in the account of the F.C.I. to Sk. Subhan, Sk. Rakib and Sk. Ambur of Sahapur, P. S. Khoyrasole and by such clandestine deal in paddy you hindered the procurement of paddy and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

(2) On January 28, 1973 at about 10.30 p.m. a stock of 12 quintals 15 Kg. of paddy was found in your godown but the failed to show any record or account book to justify the stock in your godown. By much surreptitious business as a District Purchasing Agent you impeded the progress of procurement of paddy by the F.C.I. and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

2. Mr. H. C. Mittal, learned Counsel for the petitioner appearing as amicus curiae, has made several submissions but it is sufficient to confine our decision to one principal ground, namely, that the grounds are so vague and uncertain that it is not reasonably possible for the detenu to make an effective representation against the order of detention. Mr. Chatterjee, appearing on behalf of the State of West Bengal, seeks to support the order on the ground that the detenu fully understood the import of the allegations mentioned in the grounds of detention and submitted a long representation to the Government which was, however, rejected. It is well settled that in a case of preventive detention under the Act it is absolutely necessary to communicate the grounds of detention to the detenu in clear and unambiguous terms giving as such particulars as will facilitate making of an effective representation in order to satisfy the detaining authority that the order is unfounded or invalid.

3. Before we proceed further we may note that the petitioner was arrested by the police on January 28, 1973, and was produced before the Magistrate for prosecution under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (Act No. X of 1955) for violation of condition of West Bengal Rice and Paddy Movement Order 1968. The first information report of that case being Khoyrasole P.S. No. 10 dated January 23, 1973, discloses that the petitioner "indulged in selling Government paddy from the D.P. Agent godown at a higher than the scheduled". It also refers therein to the second ground mentioned in the grounds of detention. It is, therefore, not surprising that the petitioner would have made a long representation to the Government against his arrest and seizure of paddy and all other allegations which were certainly known to him in the course of the court prosecution. We are, therefore, not prepared to put the cart before the horse in order to determine the validity of the impugned order in the light of the representation made by the petitioner in this case.

4. We have carefully perused the grounds of detention and are constrained to hold that these are vague and uncertain grounds which did not enable the detenu to make an effective representation against the order. With reference to the first ground it is not at all clear whether the three persons mentioned in the ground who purchased four quintals of paddy were authorised purchasers or not. The first ground describes the transaction as a "clandestine deal"; but it is not at all clear how the transaction can be so described without any particulars to justify the observation. Similarly how the finding of 12 quintals and 15 kilograms of paddy can be described as a "surreptitious business" without disclosing any definite particulars to even prima facie justify such an observation. We re, therefore, clearly of opinion that in this case the petitioner did not have a reasonable opportunity to make an effective representation against the impugned order of detention. There is, therefore, clear violation of Article 22(5) of the Constitution of India as no adequate opportunity has been afforded to the petitioner to make a proper representation. In a case of preventive detention it is exceedingly important in the interest of liberty of the citizen that the minimum requirements of law which are laid down are strictly complied with and the detaining authority applies its mind in a proper manner at the time of passing the order.

5. It is also submitted by the learned Counsel for the State of West Bengal that the Division Bench of the Calcutta High Court had rejected the petitioner's application for a writ of habeas corpus under Section 491, Criminal Procedure Code. It is, however, well known that such an order of the High Court does not operate as res judicata in an application before this Court under Article 32 of the Constitution.

6. In the result the petition is allowed. The rule is made absolute. The petitioner shall be released from detention forthwith.

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