

Golam Alias Golam Mallick

Vs

The State of West Bengal

Writ Petition No. 270 of 1974

(P. Gagmohan Reddy, P. N. Bhagwati, P. K. Goswami, R. S. Sarkaria JJ)

12.09.1974

JUDGMENT

SARKARIA, J. –

1. The petitioner challenges the validity of the order, dated December 14, 1972, of his detention made by the District Magistrate 24 Paragons under Section 3 of the Maintenance of Internal Security Act (hereinafter called the Act).

2. The only ground of detention served on the detenu runs thus :

You are being detained . . . on the ground that you have been acting in a manner prejudicial to the maintenance of supplies and services essential to the community as evidenced by the particulars given below :

That on September 10, 1972 in between 06.30 hrs. and 07.30 hrs. you and your associates broke open Wagon Nos. PC 12799 NR 35424 and ERC 97048 loaded with foodgrain (wheat) and committed theft in respect of the same from Canning Railway Yard. You were named in the F.I.R. and subsequently arrested.

3. In the counter-affidavit filed by the District Magistrate, it is averred that he was "satisfied from the materials on record as stated in the grounds of detention", and the "acts committed by the detenu (as disclosed in the grounds furnished to the detenu)" about the necessity of making the detention order. It is nowhere said in the counter that anything more than the bald information given (vide Annexure A, to the counter) was communicated to the detenu. Therefore, neither the contents of the F.I.R. nor the vital particulars of the incident of theft on which the subjective satisfaction of the District Magistrate was based, were communicated to the detenu. The material served on the detenu is conspicuous by the non-mention of many facts of the incident, such as, the quantity of wheat stolen, the implements or weapons, if any, with the thieves, the show of force, if any, accompanying the theft, the magnitude and duration of the dislocation caused to the supplies and service etc.

4. The material communicated to the detenu disclosed a case of theft simpliciter for which he would have been normally dealt with and punished under the Penal Code of law. Indeed, as mentioned in Annexure A (quoted above), the petitioner was initially arrested for such prosecution. There is however nothing in the counter-affidavit to show that after his arrest, he was actually charge-sheeted before a magistrate for trial and was discharged or released thereafter in pursuance of an order passed under the Code of Criminal Procedure.

5. Shri Raghunath Singh, Advocate, appearing as amicus curiae for the petitioner contends that under the law the detaining authority was bound to communicate to the detenu, all material facts integral to the grounds of detention which weighed with the detaining authority in ordering the detention, and his failure to do so, has left the ground communicated deficient and vague, and in consequence, deprived the detenu of his right of making an effective representation. For this reason, it is urged, the detention is illegal.

6. Shri S. C. Majumdar, learned Counsel for the State, however, contends that this court cannot test and review the subjective satisfaction of the detaining authority by objective standards : nor can the court go into the question whether the solitary ground of detention was sufficient to make the impugned order, the matter being one exclusively within the province of the authority. It is further maintained that the law requires only the "grounds" of detention, as distinguished from the 'particulars of the evidence', to be communicated to the detenu, and that this requirement has been amply complied with in the instant case.

7. We think that the contention of the learned amicus curiae for the petitioner must prevail. No doubt, clause (5) of Article 22 of the Constitution and Section 8 of the Act do not, in terms, speak of 'particulars' or 'facts', but only of 'grounds' to be communicated to the detenu. But this requirement is to be read in conjunction with and subservient to the primary mandate : "and shall afford him the earliest opportunity of making a representation against the order", in the aforesaid clause (5). Thus construed, it is clear that in the context, 'grounds' does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 3 of the Act; not is its connotation restricted to a bare statement of conclusions of fact. It means something more. That 'something' is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. All the basic facts and material particulars, therefore, which have influenced the detaining authority in making the order of detention, will be covered by "ground" within the contemplation of Article 22(5) and Section 8, and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against public interest. The question whether this requirement is complied with or not is justiciable. Indeed it is the duty of this Court as sentinel of the fundamental freedoms guaranteed by the Constitution, to see that the liberty of none is taken away except in accordance with procedure prescribed by law.

8. In the case before us, we have perused the history-sheet (bio-data) of the petitioner which was submitted by the Superintendent of Police while moving the District Magistrate for the detention of the petitioner. In this history-sheet it is inter alia stated that the petitioner started mixing with his associates and committing crime in the Canning R/S railway campus and specialized in wagon-breaking and pilfering of foodgrains. It is further mentioned in this history-sheet that while committing the theft of wheat from the wagons on September 10, 1972 the petitioner and his associates were carrying breaking implements, and when the railway staff warned the miscreants, the latter threatened the former with dire consequences.

9. This additional material which is given in the history-sheet and the contents of the F.I.R., which evidently weighed with the detaining authority in making the order of detention, were not communicated to the detenu. Thus, the solitary ground communicated to the detenu was so truncated and shorn of material particulars on which the District Magistrate had based the order of detention, that the detenu was disabled to make an effective representation. The order of detention is therefore vitiated and illegal.

10. In the result, the petition is allowed, the order of detention is quashed and the rule is made

absolute. The petitioner shall be set at liberty forthwith.

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