

Binod Bihari Mahato

Vs

State of Bihar and Others

Writ Petition No. 278 of 1974

(P. N. Bhagwati, R. SS. Sarkaria JJ)

01.10.1974

JUDGMENT

BHAGWATI J. -

1. The petitioner, who is an advocate practising in the courts in Dhanbad in the State of Bihar, has filed the present petition challenging the validity of an order of detention, dated March 18, 1974 made by the District Magistrate, Dhanbad under Section 3 of the Maintenance of Internal Security Act, 1971. The case of the petitioner is that he is a prominent public figure in the District of Dhanbad and he has been Pramukh of Baliapur Anchal since the last about ten years and Vice-Chairman of Zila Parishad, Dhanbad since about four years. He has been associated with numerous social, educational and political institutions in the District of Dhanbad and he is engaged in diverse activities calculated to bring about social and economic uplift of down-trodden people of Dhanbad District. The 16th Annual Convention of Bihar Rajya Panchayat Parishad was scheduled to be held at Gosaidih in Dhanbad District on March 16, 1974 and the petitioner was the Chairman of the Reception Committee. The ruling party was very much concerned about the growing popularity of the petitioner with the backward classes, and therefore, with a view to undermining his position, the ruling party chose this particular time when the 16th Annual Convention of the Bihar Rajya Panchayat Parishad was shortly due to be held and got a false case instituted against the petitioner at P. S. Tundi. The petitioner was arrested at Dhanbad on March 6, 1974 and after being produced before the Sub-Divisional Magistrate, he was taken to Bhagalpur Central Jail from Dhanbad. On March 11, 1974 the petitioner made an application to the Sub-Divisional Magistrate for being released on bail but no immediate order was passed on that application and the petitioner was, therefore, constrained to move the Session Judge for bail on March 14, 1974. The Sessions Judge granted bail to the petitioner and on the bail bonds being verified and accepted by the Sub-Divisional Magistrate, an order dated March 18, 1974 was passed for release of the petitioner. On the same day, that is March 18, 1974, the District Magistrate, Dhanbad, passed an order detaining the petitioner under Section 3 of the Act on the ground that it was necessary to do so with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. The order of detention was in Hindi, which is the official language of the State of Bihar but there was also an English version of the order of detention. There was no material difference between the Hindi and English versions of the order of detention. Pursuant to the order of detention, the petitioner was arrested on March 21, 1974, as soon as he was released on bail in compliance with the order of release passed by the Sub-Divisional Magistrate and at the time of his arrest the Hindi as well as English versions of the order of detention were served on him together with the grounds of detention which were also in Hindi and English versions. The Hindi version, as translated in English, set out the following grounds of detention :

1. He has been propagating communal hatred between Adivasis and outsiders (Biharis) and also between Adivasis and non-Adivasis for quite some time. He has been instigating the Adivasis to take up arms and laws in their own hands in several speeches and otherwise. As a result of these instigations and incitements, public order has been disturbed several times at several places. It would not be possible to give details of such instances, but as illustration, a few of them are given below.
2. On February 25, 1973, at Katras Ceramic Factory, Tilatanr, P. S. Katras, District Dhanbad, he instigated the employees of the said ceramic factory to remove the outsiders (Biharis) by force from the employment of the said factory and in consequence of the said abetment, 200 persons, armed with deadly weapons like lathi, grasa, etc., took out a procession and attacked the shop of one Ram Kripal Dubey and assaulted him and his father by means of lathi and grasa, and also damaged the factory and immediately thereafter the violent processionists attacked the residential quarters situated in the factory premises and assaulted the inmates and thereby committed acts prejudicial to the maintenance of public order;
3. On August 29, 1973, in the Railway Football Maidan, Gomoh, P. S. Topchanchi, District Dhanbad, in course of public speech, he asked the people to take law in their own hands by speaking 'Apna Faisla Ap Karo', 'Pahle Gherao Karo, Fir Mukka Lat Se maro, Fir Lathi Chalao, Uspar Vi Nahin Sunte Hai To Sar Kat Lo'. Similarly, on November 3, 1973, at the said place, he, in a public meeting organised by "Chotanagpur-Santhal Pargana Alag Raj Nirman Samiti" instigated to local Adivasis and Harijans to capture the lands purchased by the non-Adivasis by means of force and to harvest the standing paddy crops therefrom. Again on February 4, 1974, in Golf Ground, Dhanbad, P. S. and district Dhanbad, in a meeting of Adivasis organised by Jharkhand Party, he instigated the people to take the law in their own hands and to disturb the public peace by uttering "Agar Aaz Hame Koi Hat Dikhaega To Uska Hat Kat Lenge, Aur Angali Dhikaega To Angali Kat Lenge" and thereby committed acts prejudicial to the maintenance of public order;
4. On November 1, 1973, at village Marchakocha and Mahatotund, P. S. Topchanchi, District Dhanbad, in consequence of instigation given by him and his co-associate, namely, Gopal Chandra Munshi, Sriram Manjhi, Rashiklal Manjhi, Shibu Soren and others in village Marchakocha in the preceding night, Jhari Manjhi, Buddhu Manjhi, and others, belonging to 'Shivaji Samaj' forcibly took away the standing paddy crops from plot No. 383 in village Marchakocha and plot No. 340 in village Mahatotund, belonging to one Ram Anandi Singh, and grown by him, and thus committed acts prejudicial to the maintenance of public order;
5. On March 3, 1974, at village Singdih. P. S. Topchanchi, District Dhanbad, he instigated the local Adivasis and Harijans in a public meeting convened by "Jharkhand Alag Raj Nirman Samiti" to capture the lands of non-Adivasis by means of force and violence and so in consequence of the said instigation immediately thereafter the Adivasis and Harijans, numbering about 4,000, took out a procession being armed with deadly weapons, under his leadership and on way, in between Singdih and Amalkhori damaged a motor car bearing No. BRW 9981 and thus committed acts prejudicial to the maintenance of public order;
6. On March 4, 1974, at village Dumanda, P. S. Tundi, District Dhanbad, he organised a meeting of the Manjhis (Adivasis) and instigated them to loot the properties of 'Dikus' (non-Adivasis) namely, Joy Narayan Choudhury of village Durgadih, K. C. Chopra, Ismail Mia and others and in consequence of the said abetment on March 5, 1974, at about 1.30 p.m. 500 persons, armed with deadly weapons like bows and arrows bhalla, farsha, lathi, etc. formed an unlawful assembly with

the common object of looting the properties of 'Dikus' and forcibly removing them from there, and in prosecution of the said common object they surrounded the house of Joy Narayan Choudhury in village Durgadih, P. S. Tundi, District Dhanbad, and started pelting brick-bats and shooting arrows as a result of which Ganga Bishnu Prasad and Girdhari Rai sustained injuries and thereafter set fire to the house of said Joy Narayan Choudhury and thus committed acts prejudicial to the maintenance of public order.

Then the Hindi version proceeded to recite the satisfaction of the District Magistrate that in the circumstances he was satisfied that if the petitioner "is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order" and for prevention of such activities he considered the detention of the petitioner necessary. The English version also gave the same grounds of detention but the satisfaction of the District Magistrate recited in the English version was a little different. It stated that the District Magistrate was satisfied that if the petitioner "is allowed to remain at large he will indulge in activities prejudicial to the maintenance of public order or security of the State" and for prevention of such activities he considered the detention of the petitioner necessary. The words "or security of the State" were added in the recital of the satisfaction in the English version though they were absent in the Hindi version. The petitioner made an elaborate and exhaustive representation to the State Government against the order of detention in an attempt to answer the grounds on which the order of detention was based, but this representation was rejected by the State Government on April 24, 1974. In the meantime the case of the petitioner was placed by the State Government before the Advisory Board and the representation of the petitioner was also forwarded to the Advisory Board for its consideration. The Advisory Board gave an opportunity to the petitioner to be personally heard and after considering all the facts and circumstances of the case gave its opinion on May 2, 1974, that there was sufficient cause for the detention of the petitioner. The State Government thereafter confirmed the order of detention on May 11, 1974. This detention order was challenged by the petitioner by filing a petition under Article 226 of the Constitution in the High Court of Judicature at Patna. But a Division Bench of the High Court did not find any infirmity in the detention and by an order dated May 14, 1974 rejected the petition. The petitioner thereupon filed the present petition in this Court under Article 32 of the Constitution challenging the validity of his detention on various grounds.

2. The first ground on which validity of his detention was challenged on behalf of the petitioner was that the English version of the grounds of detention recited that the District Magistrate was satisfied that if the petitioner was allowed to remain at large he would indulge in activities prejudicial to the maintenance of public order or security of the State. This recital showed that the District Magistrate did not apply his mind with any seriousness either to the acts alleged in the grounds of detention against the petitioner or the question whether they fell within the purview of the expression "the maintenance of public order" or "the security of the State" or both and that was sufficient to vitiate the order of detention. Now, there can be no doubt, in view of the decisions of this Court in *Kishori Mohan Bera v. State of W. B.* (AIR 1972 SC 1749 : (1972) 3 SCC 845 : 1973 SCC (Cri) 30) and *Akshoy Konai v. State of W. B.* (1973) 1 SCC 297 : 1973 SCC (Cri) 317), that if the order of detention purports to be based on the satisfaction of the detaining authority that it is necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of public order or security of the State, it would clearly be an invalid order. The satisfaction of the detaining authority in such a case would be on the disjunctive and not conjunctive grounds and that would mean that the detaining authority was not certain whether it had reached its subjective satisfaction as to the necessity of exercising the power of detention on the ground of danger to public order or danger to the security of the State. If the detaining authority felt that it was necessary to detain the petitioner on the ground that his activities affected or were likely to affect

both public order and the security of the State, it would use the conjunctive 'and' and not the disjunctive 'or' in reciting its satisfaction. Where, however, the disjunctive 'or' is used instead of the conjunctive 'and', it would mean that the detaining authority was either not certain whether the alleged activities of the petitioner endangered public order or the security of the State, or it did not seriously apply its mind to the question whether such activities fell under one head or the other and merely reproduced mechanically the language of Section 3(1)(a)(ii). When such equivocal language is used and the detenu is not told whether his alleged activities set out in the grounds of detention fell under one head or the other or both, it would be difficult for him to make an adequate representation against the order of detention. If, therefore, it appears in the present case that the order of detention made by the District Magistrate was based on the satisfaction that it was necessary to detain the petitioner with a view to preventing him from carrying on activities prejudicial to the maintenance of public order or the security of the State, it would have to be struck down as invalid. But we do not find that there is any such infirmity in the order of detention. Whether we look at the Hindi version or the English version, the satisfaction which is recited in the order of detention and on which the order of detention is manifestly and avowedly based, is that it is necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. There is no reference to the security of the State in the recital of the satisfaction contained in the order of detention. The District Magistrate was satisfied that it was necessary to detain the petitioner only on the ground that his activities were prejudicial to the maintenance of public order and it was on the basis of this satisfaction that he made the order of detention. The Hindi version of the grounds of detention also reiterated the satisfaction of the District Magistrate based on the same ground, namely, that the petitioner, if allowed to remain at large, would indulge in activities prejudicial to the maintenance of public order. The recital of the satisfaction in the Hindi version of the grounds of detention did not make any reference to danger to the security of the State by reason of the activities of the petitioner. It is only in the English version of the grounds of detention that we find the words "security of the State" added in the recital of the satisfaction of the District Magistrate. That is obviously the result of inadvertence and no argument can be founded upon it. In the first place, Hindi being the official language of the State, it is the Hindi version of the grounds of detention which must be regarded as authentic and the validity of the detention must be judged with reference to the Hindi version of the grounds of detention and not the English version. Secondly, even if we confine ourselves to the English version of the grounds of detention, it is clear that at the end of each of the grounds it is stated in so many words that the acts of the petitioner were prejudicial to the maintenance of public order and there is no reference there to prejudice to the security of the State and it is only in the conclusion based on these acts that we find a recital of the satisfaction that if the petitioner is allowed to remain at large, he would indulge in activities prejudicial to the maintenance of public order or the security of the State. The words "or the security of the State" are obviously incongruous in the context. They do not fit in with the conclusion drawn at the end of each of the grounds which is confined only to the maintenance of public order and nothing more. There can be no doubt that these words have crept in the English version of the grounds of detention through some mistake. We cannot invalidate the order of detention on the basis of such an obvious error, ignoring the order of detention in both its Hindi and English versions, the Hindi version of the grounds of detention and the totality of the context so far as the English version is concerned.

3. The petitioner then contended that the first ground in so far as it alleged that the petitioner was propagating communal hatred between Adivasis and others (Biharis) and also between Adivasis and non-Adivasis was vague and unintelligible and the order of detention was on that account invalid. We do not see any force in this contention. Adivasis are the original inhabitants of the area while

outsiders are those Biharis who have come from outside and who are, therefore, regarded as outsiders by the original inhabitants. The petitioner was, according to this allegation contained in the first ground, stirring hatred between these two groups of people. He was also propagating hatred between two other groups of people, namely, Adivasis on the one hand and non-Adivasis on the other. This allegation can hardly be regarded as vague and unintelligible. In fact the District Magistrate gave not less than five instances containing detailed and elaborate particulars and they were sufficiently informative so as to provide more than adequate opportunity to the petitioner to make an effective representation. This ground must, therefore, be regarded as wholly unjustified and must be rejected.

4. The next ground urged on behalf of the petitioner was that the District Magistrate had taken into account many more instances than those set out in grounds (2) to (6) and that was apparent from the use of the expression "It would not be possible to give details of such instances" in ground (1). This ground is also, in our opinion, unsustainable. It is true that the District Magistrate stated in ground (1) that it would not be possible to give details of instances where by reason of instigation and abetment of the petitioner disturbances of public order had taken place, but that does not mean that the District Magistrate had various instances in mind which he took into account in arriving at his subjective satisfaction without disclosing them to the petitioner. What the District Magistrate meant to say using this expression was that instances of this nature were so many that one could not possibly have details of all of them, but there were a few before him by way of illustration and since he had relied on them for arriving at the requisite satisfaction, he proceeded to reproduce them in grounds (2) to (6). The only instances on which the District Magistrate relied for arriving at the requisite satisfaction were those set out in grounds (2) to (6) and no others. This ground also, therefore, cannot avail the petitioner.

5. It was then contended on behalf of the petitioner that the instance set out in ground (2) could not be regarded as one where communal hatred was propagated by the petitioner either between Adivasis and outsiders or between Adivasis and non-Adivasis and it did not, therefore, justify the inference set out in ground (1). But this contention is also futile, because it is clear from the instance as narrated in ground (2) that the petitioner instigated the employees of Katras Ceramic Factory to remove the outsiders (Biharis) by force from the employment of that factory, and in consequence of this instigation, violence was committed by 200 persons armed with deadly weapons like lathis, bhalas etc. and if this could not be regarded as propagation of communal hatred between Adivasis and outsiders (Biharis), we fail to see what other instance can be so branded. This incident also had direct nexus with maintenance of public order.

6. The petitioner also contended that the instance set out in ground (4) was an instance involving removal of paddy crops from two plots of land in villages Marchakocha and Mahatotund and that could have no relation to maintenance of public order. But it must be remembered that this instance does not stand in isolation. It is a part of a series of instances set out in grounds (2), (3), (5) and (6) if it is viewed in the context of these other instances, it is clear that it is not a localised instance affecting merely maintenance of law and order but a part of a series of acts affecting maintenance of public order.

7. The last ground urged on behalf of the petitioner was that paragraphs 5 and 7 of the affidavit filed by Miss Sunila Dayal, Deputy Secretary to Government of Bihar, Home Department, in reply to the petition showed that there were various other materials in regard to the petitioner which were taken into account by the District Magistrate in arriving at his subjective satisfaction and since no opportunity was given to the petitioner to make an effective representation in regard to such

materials, the order of detention was bad. This ground is also untenable. It is true that various statements in regard to the activities of the petitioner were made in paragraphs 5 and 7 of the counter-affidavit of Miss Sunila Dayal but these were obviously intended to repel the allegations of the petitioner that he was a dedicated social and public worker devoted to the uplift of the backward and down trodden classes. They were not set out as facts taken into account by the District Magistrate for the purpose of arriving at his subjective satisfaction in regard to the necessity of the detention of the petitioner. Miss Sunila Dayal did not state anywhere in her counter-affidavit that these facts weighed with the District Magistrate in reaching the requisite satisfaction. In fact, the District Magistrate himself had made an affidavit in reply to the petition filed by the petitioner in the High Court of Patna and in that affidavit, he did not refer to any of these facts as having been taken into account by him in passing the order of detention. This ground must also, therefore, fail.

8. These were the only grounds urged in support of the petition and since there is no substance in them, the petition fails and the rule is discharged. Special Leave Petition No. 611 of 1974 is also for the same reasons rejected.

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