

Dulal Chandra Majumdar

Vs

The State of West Bengal

Writ Petition No. 371 of 1974

(Y. V. Chndrachud, P. N. Bhagwati JJ)

05.11.1974

JUDGMENT

BHAGWATI, J. -

1. This petition is directed against an order of detention dated March 30, 1973 made by the District Magistrate, Nadia under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971. The order of detention recited the satisfaction of the District Magistrate that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order it was necessary to detain him and directed that the petitioner be accordingly detained. Pursuant to the order of detention, the petitioner was arrested on April 3, 1973 and at the time of his arrest the grounds of detention dated March 30, 1973 were served upon him together with their translation in Bengalee language. The grounds of detention started with a recital that the petitioner was being detained on the ground that he had been acting in a manner prejudicial to the maintenance of public order and set out one incident of dacoity committed by him on the basis of which the District Magistrate had reached his subjective satisfaction in regard to the necessity of detaining the petitioner. The usual ritual prescribed by the Act was thereafter followed and the order of detention was approved by the State Government, the representation of the petitioner was considered and rejected, the case of the petitioner was placed before the Advisory Board and on receipt of the opinion of the Advisory Board, the order of detention was confirmed by the State Government. The present petition was filed by the petitioner from jail challenging the validity of this detention.

2. There were several grounds urged before us on behalf of the petitioner in support of the petition, but it is not necessary to refer to all of them since there is one ground which is, in our opinion, sufficient to invalidate the order of detention. That ground rests on an averment made by the District Magistrate in paragraph 4 of the affidavit filed by him in reply to the petition. The District Magistrate stated as follows in paragraph 4 of his affidavit-in-reply :

I say that I passed the said order of detention after being bona fide satisfied from the materials on record as stated in the grounds of detention and so surrounding circumstances that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to detain him under provision of the Maintenance of Internal Security Act, 1971 ... I further state that having regard to the nature of the act and the manner in which it was committed by the detenu (as disclosed in the grounds furnished to the detenu) and effect thereof on the public order I was bona fide satisfied that the said act was sufficient for making the said detention order. I was also further satisfied that if the detenu petitioner is not detained under the said Act, he is likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community.

It will be seen from his statement made by the District Magistrate that from the material on record he was not only satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, but was also satisfied that if the petitioner was not detained, he would be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. The argument of the petitioner was that there was no nexus at all between the grounds of detention communicated to the petitioner and the subjective satisfaction of the District Magistrate that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community and the order of detention based inter alia on such subjective satisfaction was invalid. Now, there can be no doubt that if the order of detention was based on the subjective satisfaction that the petitioner would be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community, it would be bad because the incident of dacoity in a third class compartment of a running train set out in the grounds of detention would be wholly irrelevant to support such subjective satisfaction. It would be impossible for any rational human being to say that an incident of dacoity in a third class compartment of a running train where cash money was stolen is such an act that from it an inference can be raised that the person committing the dacoity would be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. The respondent realising the seriousness of this difficulty in its way, contended that the averment in paragraph 4 of the affidavit-in-reply that the District Magistrate was satisfied that if the petitioner was not detained, he would be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community, had crept in through mistake and it should not be taken into account by the Court in adjudging the validity of the order of detention. The argument of the respondent was that the only subjective satisfaction on which the order of detention was founded was that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order as recited in the order of detention and the grounds of detention and it was not correct to state that the District Magistrate was also subjectively satisfied that the petitioner would be likely to act in a manner prejudicial to the maintenance to supplies and services essential to the community and had on that account made the order of detention. We do not think we can accept this contention of the respondent. It must be remembered that the affidavit-in-reply has been made by the District Magistrate himself and we must presume that the District Magistrate must have made the statements contained in the affidavit-in-reply with the sense of responsibility which his high office necessarily carries. If the District Magistrate was also not subjectively satisfied in regard to the likelihood of the petitioner to act in a manner prejudicial to the maintenance of supplies and services essential to the community, he would not have made such an averment in paragraph 4 of his affidavit in reply. Ordinarily when an averment is made by a high officer like the District Magistrate in an affidavit which is made on oath, the Court is inclined to accept the averment as correct and the burden lies heavy on the party who alleges to the contrary. We cannot, therefore, lightly accept the submission of the respondent that the District Magistrate has made an incorrect statement in paragraph 4 of his affidavit-in-reply. The position might have been different if the District Magistrate himself had made a subsequent affidavit stating on oath that he had made a mistake in the earlier affidavit-in-reply and explained the circumstances under which he came to make such mistake. The Court would then have examined the explanation given by the District Magistrate and if satisfied as regards the genuineness of the mistake, the Court would have accepted the subsequent statement of the District Magistrate and ignored the earlier averment made in the affidavit-in-reply. But here there is no affidavit made by the District Magistrate confessing his mistake in making the earlier averment in paragraph 4 of the affidavit-in-reply. We must, therefore, accept the averment made by the District Magistrate in paragraph 4 of his affidavit-in-reply as correct and proceed on that the order of

detention was based not only on his subjective satisfaction that the petitioner would be likely to act in a manner prejudicial to the maintenance of public order but also on his further subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. And if that be so, the order of detention must be held to be invalid since the incident of dacoity in a third class compartment of a running train for committing theft of money which constituted the solitary ground of detention was wholly irrelevant and the subjective satisfaction of the District Magistrate that the petitioner would be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community could not be founded upon it and was hence colourable and no satisfaction at all.

3. We, therefore, allow the petition and make the rule absolute and direct that the petitioner be set at liberty forthwith.

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