

Bablu Das

Vs

The State of West Bengal

Writ Petition No. 1640 of 1973

(P. K. Goswami, V. R. Krishna Iyer, R. S. Sarkaria JJ )

15.01.1975

JUDGMENT

KRISHNA IYER J. -

1. The petitioner was detained pursuant to an order dated December 1, 1972. The sole ground on which the District Magistrate, 24-Parganas (the detaining authority) relied has been set out in the 'ground' communicated which runs as follows :

That on October 11, 1972 at about 01-55 hrs., you along with your associates being armed with bombs and other weapons victimised wagon No. NR-17393 Ex. BVO to KPD attached to running goods train in EC-249 DN near the Booster Sub-station of Dum Dum Jn. R/s when the train slowed down for traffic restriction and committed theft in respect of tea chests. Train guard RPF party challenged you and your associates when you hurled bombs towards the RPF party. RPF RK Sitaram Rai fired one round in self-defence when you and your associates fled away leaving behind three chests of tea at the P.C.

This case, when it had come up earlier for hearing created some doubt in the mind of the Court as to whether this single incident alone would have persuaded the authority into the satisfaction about future prejudicial activity of disrupting supplies and services essential to the life of the community. Counsel for the State fairly agreed that he would produce the file relevant to his point. Today, when arguments were commenced, Counsel brought to our notice the history sheet which was placed before the District Magistrate on the strength of which the subjective satisfaction was entertained.

2. We have seen from the said biodata that, apart from the single incident of crime which was communicated as a ground to the detenu, there is also a series of other injurious circumstances of the immediate past about the criminal antecedents of the detenu which were not communicated. Indeed, this chain of facts explain why in the counter affidavit it has been stated that :

The petitioner is a notorious wagon-breaker and railway criminal and indulging in committing thefts from goods train.

For one thing, 'notorious' wagon-breaker implies a course of conduct and not a single instance. For another, the factors which make up the notoriety and which are recited in the history sheet presented to the District Magistrate certainly must have induced him into the subjective satisfaction resulting in the detention. They were not communicated. The consequence is that the order is in violation of the constitutional provision in Article 22(5) and is bad. For this reason, the rule is made absolute and the petitioner is directed to be released forthwith.

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