Gopal Bauri

Vs

The District Magistrate, Burdwan and Others

Writ Petition No. 406 of 1974

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

17.01.1975

JUDGMENT

GOSWAMI, J. -

1. This application for a writ of habeas corpus under Article 32 of the Constitution arises out of an order of detention made on June 25, 1973, by the District Magistrate Burdwan under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. The order was made in order to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The grounds on which the said order is based are as follows :

> (1) On March 20, 1973 night at about 01.00 hrs. you with your other associates committed theft of ball bearings and wheels of the bucket carriages of the rope-way lines near Harishpur village and the supply of sand to the collieries was suspended. By such act you adversely affected the raising of supply of coal from the collieries which is essential for human consumption and for the maintenance of supplies and services essential to the community.
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> (2) On March 21, 1973 at about 03.00 hrs. you with your associates committed theft of ball bearings and wheels of the bucket carriages from the rope-way lines at Palashbon village causing suspension of supply of sand to the collieries. Some stolen ball bearings were recovered from the possession of one of your associates on March 23, 1973. The resultant effect was that coal which is essential commodities cannot be processed out of the mines for human and other consumption and for the maintenance of supplies and services essential to the community.

The petitioner was arrested by the police in connection with the aforesaid two incidents on March 26, 1973 and was released by the court on bail on the same day. The police, however, in due course submitted the final report on November 25, 1973 and the accused was discharged on July 22, 1974.

2. As seen earlier the impugned order of detention was made on June 25, 1973 and the petitioner was detained in pursuance of that order on July 13, 1973. It is submitted by Mr. Quamruddin, learned Counsel, appearing as amicus curiae that based on the grounds as given, there is an inordinate delay in making the detention order. Secondly he submits that the grounds are vague inasmuch as there is no mention of the number of ball bearings nor of the number of associates in the grounds. We are not impressed by these submissions in this case.

3. We, however, find from paragraph 5 of the counter-affidavit submitted by the Deputy Secretary, Ministry of Commerce, Government of India, who was the District Magistrate of Burdwan at the relevant time the following statement :

I further say that having regard to the nature of the acts committed by the detenu (as disclosed in the grounds furnished to the detenu), I was bona fide satisfied that the said acts were sufficient for making the detention order. Both the acts stated in the grounds of detention were committed by the detenu along with his associates in quick succession in course of three successive days . . . .

The grounds which have been furnished to the detenu describe the occurrence of two successive days, namely, March 20 and 21, 1973. Even giving some allowance to the affidavit of the District Magistrate it may be that the "three" successive incidents may include reference to the recovery of some stolen ball bearings from the possession of "one of your associates on March 23, 1973" mentioned in the second ground. Even so, it was absolutely necessary to communicate to the detenu the name of the particular associate from whose possession the recovery of the stolen articles, the subject-matter of the thefts disclosed in the two grounds, was made. Since it is clear from the District Magistrate's affidavit that the recovery of the stolen articles from one of the detenu's associates weighed with him in making the impugned order, the petitioner should have been apprised of that material fact in a specific manner the least of which was to furnish the name of the associate. It may be that omission to give names of indeterminate associates who run away after committing illegal acts at dead of night may not be of consequence but here the name of the associate from whom the stolen ball bearings were recovered was a definite fact known to the authority in order to connect the detenu with the particular thefts. Since the sin of the recovery from "one of your associates" visits the detenu against whom a prejudicial inference has been made by the detaining authority resulting in his subjective satisfaction in making the impugned order, omission to disclose the name of the associates in the grounds amounts to denial of an effective opportunity to the petitioner to represent against the order. For this infirmity in the grounds the petitioner is denied the constitutional protection under Article 22(5) of the Constitution.

4. It is submitted on behalf of the respondents that even a disclosure of the name of the associate would have evoked the same plea of denial by the detenu and, therefore, would be inconsequential. We are unable to accept such a submission. In case of preventive detention the duty to furnish the relevant material particulars in the grounds which reasonably influence the subjective satisfaction in making the order of detention is not to be judged by what the answer the detenu will make but whether the detenu will be able to make an effective representation against the order. The possibility or probability of detenu's ultimate denial of the allegations is not relevant in that context.

5. In this case either the District Magistrate did not know the name of the associates for which alone it was not possible for him to disclose it to the detenu or knowing the same he has refrained from furnishing it to the detenu. In the first case his subjective satisfaction was influenced by an unreal and non-existent material circumstance, the District Magistrate not having considered whether the associate could be in fact an associate of the detenu. In the second case a reasonable opportunity has not been given to the detenu to know a very relevant and material particular in the grounds to afford making an effective representation against the order. In either case the order will be reckoned as invalid under the law.

6. In the result the impugned order is invalid and the same is quashed. The rule nisi is made absolute and the petitioner shall be released from detention forthwith.

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