Sk. Salim

Vs

The State of West Bengal

Writ Petition No. 506 of 1974

(M. H. Beg, Y. V. Chandrachud JJ)

27.01.1975

JUDGMENT

CHANDRACHUD, J. -

1. The petitioner, Sk. Salim, challenges by this petition under Article 32 of the Constitution an order of detention passed by the District Magistrate, 24-Parganas, under the Maintenance of Internal Security Act, 1971. The order was passed on June 13, 1972 avowedly with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The particulars furnished to the petitioner refer to two incidents of theft dated January 31 and February 23, 1972. The former relates to a theft of underground copper cables and the latter to a theft of A.C.S.R. Conductors. The particulars further mention that on February 24, 1972 the petitioner and two of his named associates were found in possession of 30 kgs. of stolen A.C.S.R. Conductors.

2. Section 3(1) of the Act empowers the Central Government and the State Governments to pass orders of detention for the reasons therein mentioned. Section 3(2) confers power on District Magistrates, specially empowered Additional District Magistrates and Commissioners of Police to pass orders of detention for reasons specified therein. If an order of detention is passed by any of these officers, he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government :

That is the clear mandate of Section 3(3).

3. The District Magistrate, in the instant case, made the detention order on June 13, 1972 and on the 15th he reported the fact of making the order to the State Government. The question for consideration, which has been argued with some fervour by the learned Counsel appearing amicus curiae for the petitioner, is whether the District Magistrate can be said to have reported the making of the order "forthwith" as required by Section 3(3).

4. Laws of preventive detention by which subjects are deprived of their personal liberty without the safeguards available in a judicial trial ought to be construed with the greatest strictness. Courts must therefore be vigilant to ensure that the detenu is not deprived of the modicum of rights and safeguards which the preventive law itself affords to him. The Maintenance of Internal Security Act contains what is evidently thought to be a scheme of checks and counter-checks by which the

propriety or necessity of a detention order may at various stages be examined by various authorities. If an order of detention is made by a District Magistrate or a specially empowered Additional District Magistrate or a Commissioner of Police, he is required by Section 3(3) to report "forthwith" to the State Government about the making of the order. The order cannot remain in force for more than 12 days or in the circumstances mentioned in the proviso to Section 3(3), for more than 22 days unless in the meantime it has been approved by the State Government. If the order is made or approved by the State Government it must under Section 3(4) report the fact to the Central Government within 7 days. By Section 10, save as otherwise expressly provided in the Act, the appropriate Government shall within 30 days from the date of detention under the order, place before the Advisory Board constituted under Section 9 the grounds on which the order has been made, the representation if any made by the detenu and in case where the order has been made by any of the officers specified under Section 3(2), the report made by the officer under Section 3(3). Section 11(1) requires the Advisory Board to submit its report to the appropriate Government within 10 weeks from the date of detention. This time-schedule, evolved in order obviously to provide an expeditious opportunity at different levels for testing the justification of the detention order has to be observed scrupulously and its rigour cannot be relaxed on any facile assumption that what is good if done within 7, 12 or 30 days could as well be good if done, say, within 10, 15 or 35 days.

5. The requirement that the District Magistrate or the other officers making the order of detention shall forthwith report the fact of making the order to the State Government can therefore admit of no relaxation, especially because it has a distinct and important purpose to serve. The 12 days' period which Act in normal circumstances allows to the State Government for approving the detention order is evidently thought to be reasonably necessary for enabling the Government to consider the pros and cons of the order. Delay on the part of the District Magistrate or the other officers in reporting to the State Government the fact of making the detention order would inevitably curtail the period available to the State Government for approving the detention order. The period of 12 or 22 days, as the case may be, which is referred to in Section 3(3) runs from the date on which the order of detention is made and not from the date on which the fact of making the order is reported to the State Government. Such a delay may conceivably lead to a hurried and cursory consideration of the propriety or justification of the order and thereby impair a valuable safeguard available to the detenu. A liberal construction of the requirement that the officer making the order of detention shall forwith report the fact to the State Government is therefore out of place.

6. Contending for the acceptance of the literal meaning of the word 'forthwith', Counsel for the petitioner argues that administrative exigencies cannot ever be allowed to explain away the delay between the making of the detention order and the report of it to the State Government. It is an established rule of construction that unless the language of the statute is ambiguous, the words used by the Legislature ought to be given their plain, literal meaning. But it is equally important that by no rule of construction may the words of a statute be so interpreted as to bring about absurd situations in practice. The stranglehold of stark literalness has therefore to be avoided in order to give a rational meaning and content to the language used in the statute. Thus, though the word 'forthwith' cannot be construed so as to permit indolence or laxity on the part of the officer charged with the duty of reporting the detention to the State Government, reasonable allowance has to be made for unavoidable delays, always remembering that the detaining authority must explain any long delay by pointing out circumstances due to which the report to the State Government could not be made with the greatest promptitude.

7. The dictionary meaning of 'forthwith' is : "Immediately, at once, without delay or interval". A typical instance of the use of the word cited in the dictionary is : "When a defendant is ordered to

plead forthwith he must plead within twenty-four hours" (See Shorter Oxford English Dictionary, Third Edition, Vol. I, p. 740). This shows that the mandate that the report should be made forthwith does not require for its compliance a follow-up action at the split-second when the order of detention is made. There ought to be no laxity and laxity cannot be condoned in face of the command that the report shall be made forthwith. The legislative mandate, however, cannot be measured mathematically in terms of seconds, minutes and hours in order to find whether the report was made forthwith. Administrative exigencies may on occasions render a post-haste compliance impossible and therefore a reasonable allowance has to be made for unavoidable delays. This approach does not offend against the rule formulated in Kishori Mohan Bera v. State of W. B. ((1972) 3 SCC 845 : 1973 SCC (Cri) 30), and followed in Bhut Nath Mete v. State of W. B. ((1974) 1 SCC 645 : 1974 SCC (Cri) 300), that a law depriving a subject of personal liberty must be construed strictly. The rule of strict construction is no justification for holding that the act to be performed 'forthwith' must be performed the very instant afterwards without any intervening interval of time or that it should be performed simultaneously with the other act. Citing Sameen v. Abeyewickrema (1953 AC 597), Maxwell says that where something is to be done forthwith, a court will not require instantaneous compliance with the statutory requirements ("The Interpretation of Statutes" 12th Ed., pp. 101-102).

8. In Keshav Nilkanth Joglekar v. Commissioner of Police, Greater Bombay (1956 SCR 653 : AIR 1957 SC 28 : 1957 Cri LJ 10), a Constitution Bench of this Court had to deal with a similar contention founded on Section 3(3) of the Preventive Detention Act, IV of 1950, which was in terms identical with Section 3(3) of the Act under consideration. The order of detention was passed in that case on January 13, 1956 but the report to the State Government was made on January 21. Accepting the explanation offered by the detaining authority in his affidavit as to why he could not make the report earlier, the Court held that the question to consider under Section 3(3) was whether the report was sent at the earliest point of time possible and when there is an interval of time.

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