

Panna Jadev

Vs

The State of West Bengla

Writ Petition No. 488 of 1974

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

27.01.1975

JUDGMENT

SARKARIA, J. -

1. The petitioner challenges the validity of the order of his detention made by the District Magistrate of 24 Parganas on December 10, 1973. The order states that the detention has been made with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

2. The detention order is founded on two incidents, the facts of which were communicated to the detenu in the grounds of detention as follows :

1. That on July 19, 1973 at about 02.00 hrs. you along with your associates Mati Lal Shaw and others of Tittagarh cut down and stole away copper wires worth about Rs. 1035.00 from six electric posts from Tittagarh Jute Mill Mazdur Line, P. S. Tittagarh, District 24-Parganas, causing serious disruptions to the maintenance of supplies and services of power and light in the area which is essential to the community.

You, thus acted in a manner prejudicial to the maintenance of supplied and services essential to the community.

2. That on July 28, 1973 at about 23.00 hrs. you along with your associates Matilal Shaw and others of Tittagarh broke open transformer of the deep tube well at Palitpara, P. S. Ranaghat, District Nadia and stole away copper cables worth about Rs. 3500.00 from inside it, causing disruptions to the maintenance of supplies and services of power, required for supplying water from the deep tube wells for irrigation of cultivable lands which is essential to the community.

You, thus acted manner prejudicial to the maintenance of supplies and services essential to the community.

3. In response to the rule nisi, the District Magistrate who had passed the impugned order has inter alia stated :

With reference to the two criminal cases filed in connection with the incidents mentioned in the grounds of detention I say that materials on record clearly showed the participation of the said detenu in the acts stated in the grounds of detention

though his name did not appear in the F.I.R. Ground No. 1 relates to Tittagarh P.S. Case No. 14 dated July 22, 1973 under Section 379 of the Indian Penal Code and ground No. 2 relates to Ranaghat P.C. Case No. 2 dated August 1, 1973 under Section 379 of the Indian Penal Code. As the petitioner was absconding he could not be arrested. The petitioner detenu was not named in F.I.R. but his complicity transpired during investigation into the said above cases. Ultimately F.R.I. was filed in the said cases on October 17, 1973 as the witnesses were afraid to depose against him. Thereafter the case of the petitioner was placed before me and I passed the order of detention on December 10, 1973, but as the petitioner was absconding he could not be arrested. He was ultimately detained pursuant to my order of February 2, 1974.

4. Mr. O. P. Rana, learned Counsel appearing as amicus curiae for the petitioner has raised two contentions. Firstly, that no period of detention has been fixed by Government in their order of confirmation of the detention. Failure to do so, says the Counsel, offends Section 12(1) of the Act and in consequence invalidates the detention. Secondly, that the detaining authority had passed the order in a view casual manner without application of mind. On the basis of these two simple incidents of theft, proceeds the argument, the District Magistrate could not possibly be satisfied that the petitioner was likely to indulge in similar activities in future. It is stressed that no explanation has been given for the delay of two months in making the detention order after the presentation of the final report by the police to the Judicial Magistrate for the discharge of the petitioner. It is further argued that the assertion in the counter that the witnesses were afraid to depose in court against the petitioner, was entirely unbelievable.

5. The first question stands concluded by the decision of this Court in Fagu Shaw v. State of W. B ((1974) 4 SCC 152 : 1974 SCC (Cri) 316.). Therein, Mathew, J. speaking for the Court observed : [SCC p. 165 SCC (CRI) p. 329, para 28]

Although it was argued that Section 13 of the Act is violative of Article 14 of the Constitution for the reason that it has conferred unlimited discretion on the detaining authority to fix the period of detention, we do not think that there is any substance in that contention. The authority which passes the initial order of detention is not expected to fix the period of detention [see Krishnan's case (S. Krishnan v. State of Madras, 1951 SCR 621 : AIR 1951 SC 301 : 52 Cri LJ 1103.) (supra)], nay, it may be illegal if it were to do so. Nor is the Government bound when confirming the order of detention, under Section 12(1) of the Act to fix the period of detention (see Suna Ullah v. State of J & K ((1973) 3 SCC 60 : 1973 SCC (Cri) 138.)).

6. What has been quoted above is a complete answer to this contention of Mr. Rana.

7. This takes us to the second contention. In the counter it is averred by the detaining authority :

I further say that the grounds furnished to the said detenu are the only grounds on which I based my satisfaction for making the order of detention taken those grounds separately and collectively though other materials were also placed before me Both the acts stated in the grounds of detention were committed by the detenu along

with his associates in succession within 10 days I carefully scrutinised the materials on records in support of the grounds of detention collected by officer experienced in investigating cases of the kind stated in the grounds of detention and was satisfied about the authenticity of the same. The daring acts committed by the detenu showed a course of conduct and tendency which satisfied me that it was necessary to make the order of detention of the said detenu-petitioner.

8. Now the history sheet after scrutinising which the District Magistrate passed the impugned order, discloses two other criminal incidents similar to those mentioned in the grounds of detention. The first of them took place on June 17, 1973 and the second on August 2, 1973. The facts pertaining to these two incidents were admittedly not communicated to the detenu. It is difficult to believe the ipse dixit of the detaining authority that the only grounds on which he based his subjective satisfaction were those which were communicated to the detenu. From these two incidents within a span of ten days, it was not reasonably possible to spell out a course of conduct and tendency on the part of the detenu to inhibit which the preventive action has been ostensibly taken. The last incident, the facts of which were not communicated to the detenu, was the most proximate in point of time. It is therefore impossible to believe that this incident, at least, was not a part of the primary material on which the order of detention was grounded. The failure to communicate the basic facts pertaining to the incidents of June 17, 1973 and August 2, 1973 amounts to a contravention of the mandatory provisions of Article 22(5) of the Constitution and Section 8 of the Act. As a consequence, the detenu did not have due opportunity to make an affective representation against his detention.

9. In view of the above finding, it is not necessary to go into the other contentions raised by Mr. Rana.

10. For the above reasons, we hold that the detention order is illegal, and in the result, allow this petition, make the rule absolute and direct that the detenu be released forthwith.

</html