

Abdul Latif

Vs

The District Magistrate, Malda and Others

Writ Petition No. 389 of 1974

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

18.02.1975

JUDGMENT

SARKARIA, J.

1. The petitioner challenges the validity of the order of his detention made on November 23, 1972 by the District Magistrate, Malda under Section 3 of the Maintenance of Internal Security Act, 1971.

2. The order states that the detention has been made with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The impugned order is founded on the following ground :

On July 2, 1972 at about 20.45 hrs. you and your 50/60 associates twisted the signal wire of Jamirghata Rly. Station up outer signal by pushing wooden stick and tying the same by iron wire. As a result goods train No. DC 132 up was detained beyond outer signal of Jamirghata Rly. Station. You and your associates then broke open the door of the wagon No. SEC 47865, and wagon No. NRC 12872. You and your associates looted raw coals from the above noted wagons and opened KC wagons NRKC 80027, ERKC 82923 and WRKC 50160. RPF Personnel stationed at Jamirghata Rly. Station hastened to the spot and chased you and your associates. Then you along with you associates attacked the RPF personnel with deadly weapons and pelted stone chips aiming at the RPF personnel. On self-defence SRK/A. S. Bhagwan Singh was compelled to fire 2 rounds from his rifle. Due to firing one of your associates named Jajal SK of Jatrgachi received bullet injury and died instantaneously and you sustained bullet injury and were admitted in Sadar Hospital, Malda with the help of some of your associates and was cured there. The other associates managed to flee from the place of occurrence leaving behind about 40 mds. of raw coal at the place of occurrence. You have, therefore, acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

3. The first contention of Mr. R. K. Jain, learned Counsel appearing as amicus curiae for the petitioner is that the detention order has been passed mechanically without due application of mind. It has also been pointed out that the counter-affidavit has not been filed by the authority which had made the detention order under Section 3(1).

4. We do not find any force in these contentions. The affidavit-in-opposition has been filed by Shri Sukumar Sen, the Deputy Secretary, Home (Special) Department, Government of West Bengal. The detention order was originally made by Shri R. K. Midha, the District Magistrate of Malda. In the counter it has been explained that Shri Midha was for the time being not available for affirming the

affidavit as he had been transferred to Shillong and had joined the Ministry of home Affairs, Government of India. In the circumstances, the explanation for not filing the counter-affidavit by Mr. Midha who had passed the impugned order is satisfactory. In the counter, it is sworn :

I have been informed by the I.O. of the case that in connection with the incident mentioned in the ground of detention a criminal case was filed in the Court of S. D. J. M., Malda, being G.R.P.S. Case No. 2 dated July 3, 1972 under Sections 147/161/379, I.P.C. Although the petitioner was not named in F.I.R. of the said case, his complicity transpired during investigation of the above case and he was arrested in connection with the said case on July 4, 1972. After some investigations the prosecution submitted final report and the petitioner was discharged from the said case, not because there was no evidence against him but because the detenu was a dangerous person and witnesses were all afraid to depose against him openly in Court. The detenu was freed from the custody on November 24, 1972 and was arrested and taken into custody on the same day pursuant to the said order of detention dated November 23, 1972.

5. There is no reason to doubt this averment which in turn is based on the information derived from the police officer who had investigated the case No. 2 dated July 3, 1972.

6. Although the detention order was based on a single incident but the nature and the circumstances in which that criminal incident was committed could not be said to be such that on its basis, the detaining authority could not possibly have formed an opinion as to the tendency of the detenu to act likewise in future also. The criminal incident in question was not the lone act of the petitioner. It was committed by an organized gang in a daring fashion in the teeth of opposition from Railway Protection Force. The number of miscreants who were concerned in breaking open the wagons and the robbery of coal was 50 or 60. There was an encounter between the miscreants and the R.P.F. which was compelled to fire two rounds resulting in the death of one and injuries to the petitioner. This act of the detenu was extremely prejudicial to the maintenance of supplies and services essential to the life of the community. We therefore repel the first contention of Mr. Jain.

7. The other contentions canvassed by Mr. Jain relate to the constitutional validity of the various provisions of the Act. It is submitted that the power conferred by Section 13 of the Act to detain a person for a period of 12 months or until the cessation of Emergency whichever is longer is violative of Article 19 of the Constitution. It is added that the continuance of Emergency is mala fide and since the period of 12 months counted from the date of detention has expired, the detenu is entitled to be released. Stress has also been laid on the fact that Article 19 is a basic feature of the Constitution which could not be amended by Parliament nor could it be superseded by a simple proclamation of Emergency made by the President. It is further maintained that the representation of the petitioner ought to have been considered by an impartial tribunal constituted by the State Department. Since the Act does not make any provision for consideration of the representation of the detenu by an impartial tribunal, it contravenes the mandate of Article 22(5) of the Constitution. In support of his contentions, Counsel has referred to certain observations of Fazl Ali, J. and Mahajan, J. (as he then was) in *A. K. Gopalan v. State of Madras* (1950 SCR 88 : AIR 1950 SC 27 : 51 Cri LJ 1383).

8. We do not think it necessary to go into these contentions as we understand that these issues have been referred to the Constitution Bench for decision in Writ petition No. 3 of 1975 (*Pravin Liladhar Dholakia v. C. T. A. Pillai*). If these contentions are eventually upheld by the Constitution Bench, it

will be open to the petitioner to move this Court again in appropriate manner to take advantage of the decision of the Constitution Bench.

9. For the reasons aforesaid, the petition fails and is dismissed.

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