

State of Orissa and Another

Vs

Shri Manilal Singhanian and Another

Criminal Appeal No. 93 of 1975

(P.N. Bhagwati, P.K. Goswami, N.L. Untwalia JJ)

15.01.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal arises out of a writ petition filed by the first respondent challenging the order of detention dated October 15, 1974 made by the District Magistrate, Sambhalpur in exercise of the powers conferred on him under Section 3(2)(a)(iii) of the Maintenance of Internal Security Act, 1971. The High Court of Orissa allowed the writ petition and quashed the order of detention on two grounds : firstly, that the material before the District Magistrate was not such that any reasonable man could possibly arrive at a subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies essential to the community, and in any event, there was relevant material in existence to the knowledge of the District Magistrate which he failed to take into account in reaching his subjective satisfaction, and secondly, there was delay on the part of the State Government in considering the representation of the first respondent against the order of detention and this delay was not satisfactorily explained. The validity of both these grounds is challenged in the present appeal brought by the State and the District Magistrate with special leave obtained from this Court.

2. So far as the first ground is concerned, it is not necessary to examine it and determine whether it is right or wrong, because we have been informed by the learned Counsel for the State Government and the District Magistrate that they do not propose to detain the first respondent again on the selfsame material which was brought on record before the High Court even if they succeed in the appeal before us. We must however, confess that as we read the judgment of the High Court, we cannot escape the feeling that the High Court travelled a little beyond its jurisdiction in entering upon a close and detailed scrutiny of the material before the District Magistrate as if it was sitting in appeal against the findings of the District Magistrate. The only limited jurisdiction possessed by the High Court was to examine whether the subjective satisfaction reached by the District Magistrate was based on no material at all or was such as no reasonable person would arrive at on the basis of the material which was before the District Magistrate. This restricted jurisdiction, it does seem prima facie, the High Court overstepped in its anxiety and concern for personal liberty. But at the same time, while pointing out this infirmity into which the High Court prima facie seems to have lapsed, we cannot fail to take note of the fact that the inquiry, preliminary to the making of the order of detention, suffers from certain deficiencies, though they may not provide a legal ground for invalidating the order of detention. The District Magistrate relied almost entirely on the report of the Anti-Smuggling Magistrate for the purpose of arriving at his subjective satisfaction regarding the necessity of detention. The Anti-Smuggling Magistrate took samples of rice from the 'stores' of O.M.P., Second Battalion, Jharsuguda and it was on the basis of these samples of rice that a

conclusion was reached by him that the rice bought by Havildar Major from the first respondent's firm M/s. M. Manilal was fine or superfine rice and not coarse rice as stipulated in the release order. But these samples of rice were taken by the Anti-Smuggling Magistrate in the absence of the first respondent or any other representative of M/s. M. Manilal and an elementary precaution was thus ignored. It is also a little surprising that neither the Anti-Smuggling Magistrate, nor the District Magistrate should have carried out an immediate search of the godown of M/s. M. Manilal for the purpose of finding out what were the different varieties of rice in stock with them and whether the stocks of rice actually found in their possession tallied with the entries in the stock register. If M/s. M. Manilal did not deliver to Havildar Major 200 quintals of rice of coarse variety as provided in the release order, but instead supplied him 200 quintals of rice of fine or superfine variety as subsequently alleged by Havildar Major, the search of the godown of M/s. M. Manilal would have showed that they had actually in stock with them an excess of 200 quintals of rice of coarse variety over that appearing in the stock register. But, on the other hand, if the stock of rice of coarse variety actually found with M/s. M. Manilal on search of their godown tallied with the stock appearing in the stock register, it would have shown or at least gone a long way towards showing that 200 quintals of rice delivered by them to Havildar Major were of coarse variety. But for some inexplicable reason this elementary step was also not taken by the Anti-Smuggling Magistrate or the District Magistrate. Then again, neither the Anti-Smuggling Magistrate, nor the District Magistrate examined the Quality Inspector who was always stationed at the godown of M/s. M. Manilal and who took out a sample from the quantity of rice delivered by M/s. M. Manilal to Havildar Major and sent it for analysis to the Public Analyst. It may be noted that the analysis of this sample by the Public Analyst showed that it was a sample of rice of coarse variety and unless collusion was established between the Quality Inspector and M/s. M. Manilal or negligence in the discharge of his duties was attributed to the Quality Inspector, this would go to show that the rice delivered by M/s. M. Manilal to Havildar Major was of coarse variety. These are all circumstances which could have been inquired into or at any rate go investigated by the District Magistrate before reaching a subjective satisfaction resulting in deprivation of personal liberty of the first respondent. When we say this we do not wish to lay down that these deficiencies in the inquiry preceding the making of the order of detention have an invalidating consequence on the order of detention. Whether they have such consequence or not is a matter on which we do not wish to express any opinion. But there can be no doubt that they cause a certain amount of anxiety in the mind of the court that perhaps the detention of the first respondent might not really be justified and he might be wrongly incarcerated. It is true that this is not a matter which lies within the jurisdiction of the court for the court's jurisdiction is limited and its function is only to inquire whether the detention is in accordance with law. But a doubt does begin to gnaw at the mind of the court and, therefore, we are glad that the State Government and the District Magistrate have stated before us that they would not radiate the first respondent on the same material.

3. The second ground raises the question whether there was any unexplained delay on the part of the State Government in considering the representation made by the first respondent against the order of detention. Now, the law is well settled by several decisions of this Court, of which we may refer only to one, namely, *Sk. Rashid v. State of West Bengal* ((1973) 3 SCC 476 : 1973 SCC (Cri) 376), that the representation made by the detenu against the order of detention should be considered by the State Government as soon as possible, that is, with reasonable dispatch and if that is not done, it would have the effect of vitiating the order of detention. It was pointed out by this Court in *Sk. Rashid's case* that [SCC (Cri) pp 377-378, para 4]

it is undoubtedly true that neither the Constitution nor the Act expressly provides for the consideration of a detenu's representation by the State Government within any specified period of

time. The constitutional requirement of expeditious consideration of the petitioner's representation by the State Government has, however, been spelt out by this Court from clause (5) of Article 22 of the Constitution This right . . . to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - a right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

But, as pointed out by this Court in the same case, it is neither possible nor advisable to lay down any rigid period of time uniformly applicable in all cases within which the representation of a detenu must be considered by the State Government. The Court would have to consider judicially in each case on the available material whether the gap between the receipt of the representation and its consideration by the State Government is so unreasonable long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal. We must examine the facts of the present case in the light of this principle for the purpose of determining whether there was any undue delay in consideration of the representation of the first respondent by the State Government.

4. The first respondent made a representation against the order of detention on October 21, 1974 and it was received by the District Magistrate on the same day. The District Magistrate despatched the representation of the first respondent together with his parawise comments to the State Government on October 24, 1974 and it was received by the Home Secretary on October 25, 1974. The Home Secretary endorsed the representation to the Deputy Secretary and the Deputy Secretary in his turn endorsed it to the concerned section in his department for examination. Now, it appears that the secretariat was closed for the Pooja holidays from October 20, 1974 to October 27, 1974 (both days inclusive) and October 30, 1974 was also a holiday on account of Kumar Purnima. The assistant dealing with the matter could not, therefore, place the record in regard to the representation before the Head Assistant until October 31, 1974. The Head Assistant examined the representation and submitted his remarks on November 2, 1974 and on November 4, 1974 the Deputy Secretary dealt with the representation. The representation then went to the Secretary and he made his remarks on it on November 5, 1974. The representation was then processed by the Additional Chief Secretary on November 6, 1974 and finally on November 7, 1974 the file was endorsed to the Chief Minister who was incharge of the Home Department. The Chief Minister was absent from headquarters between November 7, 1974 and November 12, 1974 and immediately on return to headquarters, she disposed of the representation and rejected it on November 12, 1974. These facts, which are given in the counter affidavit filed by the Deputy Secretary to the Government of Orissa in the Home Department, clearly show that there was no undue delay on the part of the State Government in considering the representation of the first respondent. The representation could not straightaway be placed before the Chief Minister for his consideration. It had to be sent to the concerned department for examination and notings and naturally it took time for the representation to move from and notings and naturally it took time for the representation to move from a lower officer to a higher officer before it reached the Chief Minister. What is important to note is that there was no delay at any stage in this movement of the representation from one officer to another. Every officer dealt with the representation promptly and after examining it and making his notings, submitted it to the higher officer. The representation undoubtedly went to the Chief Minister on November 7, 1974 but since the Chief Minister was out of Cuttack, it had to wait till the Chief Minister returned and it is important to note that as soon as she returned, she immediately, without any delay at all, disposed of the representation. We do not, therefore, see any gap between the receipt of the representation and its consideration by the State Government which elapsed between the receipt of the representation and its disposal by the State Government has been satisfactorily explained in the affidavit of the Deputy Secretary filed on behalf of the State Government. We do not, therefore, agree with the

High Court that there was undue delay on the part of the State Government in considering the representation of the first respondent and in the circumstances the order of detention could not be held to be invalid on that ground.

5. In the result, in view of the statement made before us by the learned Counsel appearing on behalf of the State Government and the District Magistrate that they do not propose to detain the first respondent again on the same material, we dismiss the appeal, but with no order as to costs throughout.

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