SUPREME COURT OF INDIA

Ashutosh Lahiry

v.

The State of Delhi and Another

(Kania C.J., Mahajan, Mukherjea and Das JJ.)

May 19, 1950

Judgment

Das J.

1. This application under Article 32 of the Constitution of India for a writ of *habeas corpus* made by Ashutosh Lahiry at present detained in District Jail, Delhi, under an order of detention passed on April 01, 1950 by the District Magistrate of Delhi under the Preventive Detention Act, 1950 raises two questions, namely: (1) that the Preventive Detention Act, 1950 takes away or abridges the fundamental rights of the Indian citizens conferred by Part III of the Constitution and is accordingly void under Article 13(2) of the Constitution; and (2) that the Order of detention has been made *mala fide* and is an abuse of power and as such void, illegal and inoperative.

2. The first question mentioned above is now concluded by the decision of this Court which, by a majority, upheld the validity of the impugned Act except as to certain provisions which were held to be severable. The provisions which were held to be bad have no bearing on the present case.

3. In order to determine the second question it will be necessary to state a few facts. The petitioner is a member of the Hindu Mahasabha. He is a representative of the Bengal Hindu Mahasabha on the Working Committee as well as on the All India Committee of that organization. In the recent past there were serious communal disturbances in East Bengal in course of which there were, as alleged, extensive killings of Hindu minorities and abduction of Hindu women. This resulted in a large scale migration of Hindus from East Bengal into West Bengal which, it is stated, is still in progress. There can be no question that Hindu feelings were and are running high and communal incidents and repercussions took place in West Bengal also.

4. A large number of refugees poured into West Bengal and particularly in Calcutta. The petitioner actively took part in the relief work undertaken by the Hindu Mahasabha and actively co-operated with the Bengal Chief Minister (Dr. B. C. Roy) in the work. On March 05, 1950 the Prime Minister of India visited Calcutta to study the situation on the spot. There was a move to hold a *hartal* on that day. The petitioner issued a Press statement deprecating such move as ill-advised and called upon the citizens not to join in the *hartal*. The petitioner claims that as a result of his appeal the *hartal* fell through. The petitioner is said to have interviewed the Prime Minister in connection with relief work. It appears that there was a public meeting in Delhi on or about March 19, 1950. It is alleged that intemperate speeches were delivered at this meeting touching the communal situation in East Bengal and that such speeches led to a communal riot in Delhi on March 19, 1950. On March 23, 1950 the petitioner came to Delhi for, he says, attending the Board meeting of a company of which he is a director.

5. On March 27, 1950 the petitioner held a Press conference at Delhi where, it is alleged, he gave a highly exaggerated and communal version of the happenings in Bengal and East Bengal. No report of the Press conference, however, was published by the authorities. On March 28, 1950 the petitioner returned to Calcutta where he ordinarily resides. A meeting of the Working Committee and a meeting of the All India Committee of the Hindu Mahasabha were called by its President for April 01 and 02, 1950, the notices having been issued on March 15, 1950. The object of these

meetings was to discuss the situation in Bengal with special reference to the large influx of refugees. These were not public meetings. The meetings were, however, banned and the President, the General Secretary, the Organising Secretary and others were externed from Delhi on April 01, 1950. On the same day at 8-45 p.m. a detention order dated March 31, 1950 was served on the petitioner.

6. On April 03 the following grounds of detention were served on the petitioner under Section 7 of the Act:

> *"You came to Delhi on March 27, 1950 and held a press conference in which you gave a highly exaggerated and communal version of happenings in Bengal and East Bengal. It is understood that since after the press conference your activities have continued to be of a nature inciting communal passions. It has also come to notice that your activities during your stay in West Bengal had also been of a communal nature. Your activities in the present atmosphere in Delhi where a communal riot took place on March 19, 1950 as a result of the intemperate statements made in a public meeting, are likely to create hatred between different communities which may lead to disturbance of public peace and order."*

7. The petitioner alleges that his object in coming to Delhi was not to create any communal bitterness. He came here in March 1950 to attend a Board meeting. It is true that he held a Press conference but no report was published in any newspaper and, therefore, there can be no question of his comments having created any mischief even if they were highly communal, which is denied. On April 01, 1950 he came to attend the two meetings but the meetings were banned and no mischief can possibly be said to have been done. All the important leaders of the Mahasabha had been externed from Delhi and the meetings were banned by the Government in order to prevent persons opposing the Congress Governments from criticising the policy of the party in power. The Prime Minister of Pakistan had come or was due to come to Delhi at or about that time and all these steps were taken to prevent the ventilation of the genuine feelings of the people. In particular, the petitioner was co-operating with Bengal Government in the relief and rehabilitation work and there could be no justification for taking the petitioner into custody.

8. The District Magistrate of Delhi has filed an affidavit in opposition to this application. He states that before he made the Order he satisfied himself from reports and information from persons experienced in investigating matters of this kind and whose duty is to make such investigations and report the same to him confidentially that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of public order.

9. It is now well settled that the satisfaction of the authority making the order as to the matters specified in the Act is the only condition for the exercise of his powers and that the Court cannot substitute its own satisfaction for that of the authority. It is, however, open to the detenu to establish, if he can, that the order was made *mala fide* and in abuse of powers.

10. The facts and circumstances set forth in the petition and in the affidavit in reply and summarised above are calculated to give rise to a certain amount of suspicion in the mind of the Court. The recourse of the drastic order for detention rather than to a preventive order under Section 144, Criminal P. C., lends some colour to the petitioner's contention. Suspicion, however, is not proof and I am not convinced that the act of the District Magistrate was actuated by any improper or indirect motive. The communal situation in Delhi was tense. In fact there was a communal riot on March 19, 1950. The petitioner held a Press conference where he is alleged to have given a highly exaggerated and communal version of the happenings in Bengal. The District Magistrate, in these circumstances, felt satisfied, he says, that it was necessary to take action against

the petitioner. I am not prepared to say that in view of the prevailing situation his satisfaction was patently simulated. The petitioner's active participation in relief work to which reference has been made is not necessarily inconsistent with and does not exclude or rule out the possibility of his inflaming the communal passions of the Hindu refugees. In the premises, I am unable to accede to this petition, which must, therefore, stand dismissed.

Mukherjea J. (for Mahajan J. and himself)

11. This is an application for a writ of Ashutosh Lahiry who complains of illegal detention in the Delhi Jail in pursuance of an order of the District Magistrate of Delhi made under Section 3 (2) of the Preventive Detention Act.

12. Mr. Chatterjee, appearing for the petitioner, has raised a two-fold ground in support of the petition. His contention, in the first place, is that the Preventive Detention Act of 1950 is *ultra vires* the Constitution and any detention made under its provisions is illegal and inoperative in law. He has argued, in the second place, that the facts of the case would establish that the order of detention is a *mala fide* order, amounting to abuse of authority vested in the District Magistrate under the Preventive Detention Act.

13. So far as the first point is concerned, this court has held by a majority in the case of *A. K. Gopalan v. State of Madras*[1] that the Preventive Detention Act is not *ultra vires* the Constitution with the exception of Section 14 which, being severable from the rest of the Act, does not affect the validity of the latter in any way. Having regard to the pronouncement already made by this court, it is not possible to accept the first contention which has been raised by the learned counsel.

14. As regards the second ground, it is perfectly true that the order of detention may be declared invalid if it could be proved to have been made by the authority concerned in *mala fide* exercise of their power. The burden of proving the absence of good faith is upon the petitioner and in cases of this description, it is certainly a heavy burden to discharge.

15. From the facts set out in the affidavit of the petitioner which have not been controverted by the respondents, it appears that the petitioner is a member of the Working Committee as well as of the All India Committee of the Hindu Mahasabha. He ordinarily resides in Calcutta, West Bengal, and came to Delhi on March 23, 1950 to attend a meeting of the Board of Directors of the Bharat Publications Limited. On March 27, 1950 he held a Press Conference at Delhi and went back to Calcutta on the 28th. He came to Delhi again on April 01 following, with a view to attend the meetings of the two committees of the Hindu Mahasabha spoken of above, which were scheduled to be held on April 01 and 02, 1950. Before the meeting could be held, the President, General Secretary and Organizing Secretary of the Hindu Mahasabha were externed from Delhi on April 01, 1950, and on the same day an order was served upon the petitioner directing his detention under the Preventive Detention Act.

16. In the grounds of detention, which were served upon the petitioner under Section 7, Preventive Detention Act, it is stated as follows:

> *"You came to Delhi on March 27, 1950 and held a press conference in which you gave a highly exaggerated and communal version of happenings in Bengal and East Bengal. It is understood that since after the press conference your activities have continued to be of a nature inciting communal passions.....Your activities in the present atmosphere in Delhi where a communal riot took place on March 19, 1950 as a result of the intemperate statements made in a public meeting, are likely to create hatred between different communities which may lead to disturbance of public peace and order."*

17. In the absence of any evidence to the contrary, I must assume that the facts stated in the grounds are all true and that the petitioner did give an exaggerated version of the happenings in East Bengal at the Press Conference held on March 27, 1950, although no report of this Conference was allowed to be published under the Orders of the District Magistrate. I may also take it that there was a communal disturbance at Delhi of some magnitude on March 19, 1950 and that in these circumstances the presence of the petitioner in this city was not considered desirable; but even then a doubt legitimately arises in one's mind as to the necessity or propriety of making use of the provisions of the Preventive Detention Act against the petitioner. As said above, he is not an inhabitant of this place and does not normally carry on his activities in Delhi. He resides habitually in West Bengal and came to Delhi only to attend certain meetings.

18. If as the District Magistrate thought his presence at that time in Delhi might lead to disturbance of communal peace, there were certainly ample powers under the ordinary law which he could exercise for the purpose of preventing the mischief. There are provisions in the Criminal Procedure Code which could be invoked for such purposes. As a matter of fact, the meeting could not be held on April 01 as proposed, as the persons who were expected to take leading part in the same were externed from Delhi. It is somewhat difficult to see why a different treatment was meted out to the petitioner and he was consigned to detention in jail for an indefinite period of time. There could be no better proof of *mala fides* on the part of the executive authorities than a use of the extraordinary provisions contained in the Act for purposes for which ordinary law is quite sufficient. Though I am unable to hold definitely that there is want of good faith on the part of the authorities, the case is certainly not free from suspicion. I can only hope that the authorities will take care to see that no instances occur which might savour of injustice or oppression through misuse of those extraordinary powers which the Parliament has vested in the executive in the interests of the State itself. With these observations, I concur in the order made in this case that the application should be dismissed.

Case Number(s)
Not stated in the source

Judgment(s) referred

Judgment	Citation	Para	Remarks
1. A. K. Gopalan v. State of Madras	1950 INSC 13; 1950 (1) SCR 88	13	

Statute(s) referred

Statute	Section/Article	Para
Constitution of India	Articles 13(2), 32	1
Preventive Detention Act, 1950	Sections 3(2), 7, 14	1, 6, 10, 11, 12, 13, 15, 16, 17
Code of Criminal Procedure, 1898	Section 144	10

Advocate(s)
Not stated in the source text.
(P) – Provisional