

A

AJIT KUMAR KAVIRAJ

v.

THE DISTT. MAGISTRATE, BIRBHUM AND ANR.

September 6, 1974

[P. JAGANMOHAN REDDY AND P. K. GOSWAMI, JJ.]

B

*Preventive Detention—Duty of detaining authority to give unambiguous grounds to detenu—Procedural safeguards of liberty—Duty to observe.*

C

The petitioner was detained under s. 3 of the Maintenance of Internal Security Act, 1971. The grounds communicated to him were, (1) that on 28-1-1973 at about 4.30 p.m., he, as a direct purchasing agent of the Food Corporation of India sold out 4 quintals of paddy from the stock held in the account of the Food Corporation of India to three persons and by such *clandestine deal* hindered the procurement of paddy and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community; and (2) that on the same day at about 10.30 p.m. a stock of about 12 quintals of paddy was found in his godown and that he failed to justify the possession and that by such *surreptitious business* as a direct purchasing agent he impeded the progress of procurement of paddy and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community.

D

In a petition under Art. 32, challenging the detention,

HELD: (1) There was clear violation of Art. 22(5) as no adequate opportunity had been afforded to the petitioner to make a proper representation, because, the grounds are vague and uncertain and it is not reasonably possible for the detenu to make an effective representation against the order of detention. [22F-G]

E

With reference to the first ground it is not clear whether the three persons mentioned in the ground were authorised purchasers or not. The ground described the transaction as a clandestine deal, but it is not shown how the transaction can be so described without any particulars to justify such an observation. Similarly, no definite particulars are disclosed even to *prima facie* justify the observation that the finding of paddy in his possession was surreptitious business. [23C-E]

F

(2) The petitioner submitted a long representation to the Government. But it could not be said that on that account that he fully understood the import of the allegations mentioned in the grounds. The validity of the impugned order cannot be decided in the light of the representation made by the petitioner. He might have given the representation because an F.I.R. was filed against him for prosecuting him under s. 7 of the Essential Commodities Act, 1955, referring to the second ground of detention and he might have come to know the details in the course of the prosecution. In a case of preventive detention it is absolutely necessary to communicate the grounds of detention to the detenu in clear and unambiguous terms giving such particulars as will facilitate making of an effective representation that the order is unfounded. It is exceedingly important, in the interest of liberty of the citizen that the minimum requirements of law are strictly complied with and the detaining authority applies its mind in a proper manner at the time of passing the order. [22G-23C, F]

G

(3) The order of the High Court dismissing the petition of the petitioner under s. 491, Criminal Procedure Code, 1898, would not operate at *res judicata* in an application before this Court under Art. 32. [23G]

H

ORIGINAL JURISDICTION : Writ Petition No. 1880 of 1973.

Petition under Article 32 of the Constitution of India.

H. C. Mittar, for the petitioner.

*P. K. Chatterjee, G. S. Chatterjee and Sukumar Basu*, for the respondent.

The Judgment of the Court was delivered by

GOSWAMI, J.—By this application under Article 32 of the Constitution for a writ of *habeas corpus* the petitioner challenges the validity of the order of detention passed by the District Magistrate, Birbhum, on March 21, 1973, under section 3 of the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971). The order of detention is passed on the ground that the petitioner has been acting in a manner prejudicial to the maintenance of supplies and services essential to the community. The impugned order is specifically founded on two grounds communicated to the petitioner. These are as follows :—

- (1) "On 28-1-73 at about 4.30 P.M. you as a Direct Purchasing Agent of the Food Corporation of India sold out 4 quintals of paddy from the stock held in the account of the F.C.I. to Sk. Subhan, Sk. Rakib and Sk. Ambur of Sahapur, P. S. Khoyrasole and by such clandestine deal in paddy you hindered the procurement of paddy and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community".
- (2) "On 28-1-73 at about 10.30 P.M. a stock of 12 quint. 15 kg. of paddy was found in your godown but you failed to show any record or account book to justify the stock in your godown. By such surreptitious business as a Direct Purchasing Agent you impeded the progress of procurement of paddy by the F.C.I. and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community".

Mr. H. C. Mittal, learned counsel for the petitioner appearing as *amicus curiae*, has made several submissions but it is sufficient to confine our decision to one principal ground, namely, that the grounds are so vague and uncertain that it is not reasonably possible for the detenu to make an effective representation against the order of detention. Mr. Chatterjee, appearing on behalf of the State of West Bengal, seeks to support the order on the ground that the detenu fully understood the import of the allegations mentioned in the grounds of detention and submitted a long representation to the Government which was, however, rejected. It is well settled that in a case of preventive detention under the Act it is absolutely necessary to communicate the grounds of detention to the detenu in clear and unambiguous terms giving as much particulars as will facilitate making of an effective representation in order to satisfy the detaining authority that the order is unfounded or invalid.

Before we proceed further we may note that the petitioner was arrested by the police on January 28, 1973, and was produced before

A the Magistrate for prosecution under section 7(1)(a)(ii) of the Essential Commodities Act, 1955 Act No. X of 1955 for violation of condition of West Bengal Rice and Paddy Movement Order 1968. The first information report of that case being Khoyrasole P. S. No. 10 dated January 29, 1973, discloses that the petitioner "indulged in selling Govt. paddy from the D.P. Agent godown at a higher rate than the scheduled". It also refers therein to the second ground mentioned in the grounds of detention. It is, therefore, not surprising that the petitioner would have made a long representation to the Government against his arrest and seizure of paddy and all other allegations which were certainly known to him in the course of the Court prosecution. We are, therefore, not prepared to put the cart before the horse in order to determine the validity of the impugned order in the light of the representation made by the petitioner in this case.

We have carefully perused the grounds of detention and are constrained to hold that these are vague and uncertain grounds which did not enable the detenu to make an effective representation against the order. With reference to the first ground it is not at all clear whether the three persons mentioned in the ground who purchased 4 quintals of paddy were authorised purchasers or not. The first ground describes the transaction as a "clandestine deal"; but it is not at all clear how the transaction can be so described without any particulars to justify the observation. Similarly how the finding of 12 quintals and 15 kilograms of paddy can be described as a "surreptitious business" without disclosing any definite particulars to even *prima facie* justify such an observation. We are, therefore, clearly of opinion that in this case the petitioner did not have a reasonable opportunity to make an effective representation against the impugned order of detention. There is, therefore, clear violation of Article 22(5) of the Constitution of India as no adequate opportunity has been afforded to the petitioner to make a proper representation. In a case of preventive detention it is exceedingly important in the interest of liberty of the citizen that the minimum requirements of law which are laid down are strictly complied with and the detaining authority applies its mind in a proper manner at the time of passing the order.

It is also submitted by the learned counsel for the State of West Bengal that the Division Bench of the Calcutta High Court had rejected the petitioner's application for a writ of *habeas corpus* under section 491, Criminal Procedure Code. It is, however, well known that such an order of the High Court does not operate as *res judicata* in an application before this Court under Article 32 of the Constitution.

In the result the petition is allowed. The rule is made absolute. The petitioner shall be released from detention forthwith.

V.P.S.

*Petition allowed.*