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MADAN GOPE

v.

THE STATE OF WEST BENGAL

February 12, 1975

[V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

B

Maintenance of Internal Security Act, 1971, *s.* 3(1)—*Order of detention for maintenance of public order—If can be justified as for maintenance of essential supplies—'Smuggling' if can prejudice public order—'Public Order', scope of.*

The petitioner was detained by an order made under s. 3 of the Maintenance of Internal Security Act, 1971, to prevent him from acting in any manner prejudicial to the maintenance of public order, on two grounds. The activity which constituted the substratum of the first ground of detention was a case of inter-state smuggling of essential commodities. The other facts mentioned, in addition to smuggling in the ground, are (a) that the detenu and his associates had threatened the Home Guards who arrested them, and snatched away the seized commodities from the custody of the Home Guards, and, (b) that his activity came within the purview of ss. 143/185/332/506, I.P.C. and s. 7(i)(a)(ii) of Act X of 1955.

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Allowing the petition under Art. 32 challenging the order of detention,

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HELD: (1) Section 3(1)(a) of the Act confers power on the authority to detain a person if it is satisfied that such detention is necessary to prevent him from acting in a manner prejudicial to, (i) the defence of India, the relation of India with foreign powers, or the security of India, or (ii) the security of the State or the maintenance of Public Order, or (iii) the maintenance of supplies and services essential to the community. The power can be exercised only on one or more of the grounds enumerated, and if the exercise of the power is not, on the face of the order, correlated to any of these grounds or concerns activities which are not germane to any of those grounds, such exercise would be vitiated for lack of jurisdiction. Further the satisfaction spoken of in s. 3(1) which is the *sine qua non* for the exercise of power, is the subjective satisfaction of the authority which cannot be tested in court by objective standards. Ordinarily, therefore, the court cannot go behind the satisfaction expressed on the face of the order. Thus, where the order *ex facie* is made with a view to prevent an act prejudicial to the maintenance of public order, the detaining authority cannot be permitted to show that in fact the order was made to prevent an act prejudiced to the maintenance of supplies and services essential to the life of the community. [534B-G]

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(2) Ordinarily, smuggling is a calendestine activity and its concept is repugnant to what is public. But cases are conceivable where the act of smuggling may be accompanied by such violence or disorder that it throws out of gear the even tempo of the life of the community in the locality or disturbs public tranquillity. [535F-H]

In the present case, there is no mention that the detenu or his associates were armed with any deadly weapons, or that their acts had caused panic and terror among the people of the locality. The incident was confined to the detenu and his associates on one hand and the home guards who checked them on the other. It was not an activity which was prejudicial to the maintenance of public order. The first ground of detention had, therefore, no real nexus with the maintenance of public order. [536B-C]

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(3) The activity could at the most be said to be an activity affecting law and order. The order cannot be justified on the ground that the activity was prejudicial to the maintenance of supplies and services essential to the community, because, the Court cannot go behind the subjective satisfaction of the detaining authority as expressed in the detention order and permit it to justify its order on a ground different from the one mentioned on the face of the order. The fact that the activities of the detenu constituted the various offences mentioned in the order was only a conclusion drawn by the authority. [536A-B, C-E]

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(4) It could not be said that whenever any act is accompained by show of force or threat to any public servant entrusted with the maintenance of law and order, it must necessarily fall within the category of an act prejudicial to the maintenance of public order. In every case the broad test to be applied is whether the act was of such a magnitude and gravity that it had disturbed the even tempo of the life of the community in the area and that, essentially, is a question of fact depending on the circumstances of each case. [536F-G]

Indradeo Mahato v. *State of West Bengal*, AIR 1973 SCC 4; *Dr. Ram Manohar Lohia* v. *State of Bihar and Ors.* [1966] 1, SCR 709 and *Ram Ranjan Chatterjee* v. *The State of West Bengal*. Writ Petition No. 476/74 decided on 22-1-75 referred to.

(5) If one of the several grounds of detention is found to be irrelevant, the order of detention shall stand vitiated, because, it cannot reasonably by predicated to what extent the irrelevant ground had influenced the subjective satisfaction of the detaining authority. [536E-F]

ORIGINAL JURISDICTION : Writ Petition No. 559 of 1974.

Petition Under Article 32 of the Constitution

Gautam Goswami, for the petitioner.

G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—Madan Gope, petitioner challenges the validity of the order of his detention made by the District Magistrate, Purulia under s. 3 of the Maintenance of Internal Security Act, 1971. The order states that the detention has been made to prevent him from acting in any manner prejudicial to the maintenance of public order.

The impugned order is founded on two grounds which run as under :

"1. On 1-11-73 at about 09.00 hrs. you along with your associates attacked Home Guard No. 900 Aswini Mohanti and 3 others of Layadi Home Guard Camp who were on cordoning patrol near Kashipur village, P.S. Joypur close to Bihar border when they arrested you with rice, Dalda, Kerosene Oil, wheat, which were being carried by you and threatened them with death and snatched away the seized commodities from their custody.

In consequence of your said activity which comes within the purview of section 143/186/332/506, I.P.C. and 7(i)(a)(ii) of Act X of 1955, the maintenance of Public Order was disturbed.

The said activity thus attract sub-clause (ii) of Clause (i) of sub-section (1) of section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971).

2. On 6-11-73 at about 19.00 hours, you along with your associates attacked the investigating Police Officer and his Police Party with deadly weapons and attempted to resist your arrest while they went to Sidhi village under Joypur P.S.,

A District Purulia to investigate a case. You and one of your associates were arrested with deadly weapons.

These violent and dangerous activities on your part created terror and panic amongst the local people who were over-awed and thus you have disturbed Public Order.

B In consequence of your said activity which comes within the purview of sections 148/149, 307/506/186 I.P.C., the maintenance of public order was disturbed.

The said activities thus attract Sub-Clause (ii) of Clause (a) of Sub-section (1) of Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971)."

C The return has been filed by the District Magistrate who had passed the impugned order in which it is averred :

"I say that I made the detention order after being satisfied from the materials on records in support of the grounds of detention in question that with a view to preventing the
D said detenu from acting in any manner prejudicial to the maintenance of Public Order, it was necessary to detain him. . . . I further say that the grounds furnished to the said detenu are the grounds on which I based my satisfaction for making the order of detention taking those grounds separately and collectively. . . ."

E The main contention of Shri Goswami, learned Counsel appearing as *amicus curiae* for the petitioner, is that neither of the grounds of detention was relevant to Public Order. According to Counsel these incidents, at the most, affect 'law and order'. In support of his contention he has referred to *Bakhtawar Singh* v. *The State;*(1) *Man Singh* v. *State;*(2) *Arun Ghosh* v. *State of W. Bengal*(3) *Kanu Biswas* v. *The State of West Bengal*(4); *Kishori Mohan Bera* v. *The State of West*
F *Bengal*(5) and *Shyamlal Chakravarty* v *Commissioner of Police, Calcutta and another*(6).

In reply Mr. Chatterjee, learned Counsel for the State submits that in these criminal incidents, the petitioner had threatened and tried to obstruct public servants in the discharge of their duty. Whenever a criminal incident is accompanied by such threat or resistance, proceeds
G the argument, it raises a problem of Public Order as distinguished from a simple problem of law and order. Reference in this connection has been made to *Kanu Biswas* v. *State of West Bengal* (supra); *Babul Mitra* v. *State of West Bengal*(7) and *Indradeo Mahato* v. *State of West Bengal*(8).

(1) AIR 1951 Punjab 157. (2) AIR 1953 Pepsu 16.
H (3) [1970] 3, S.C.R. 288. (4) AIR 1972 S.C. 1656;
(5) AIR 1972 SC 1749. (6) AIR 1970 SC 269.
(7) AIR 1973 SC 197. (8) AIR 1973 SCC 4.

Times out of number, it has been emphasised by this Court that since the Act gives extraordinary powers to the Executive to detain a person without trial, meticulous compliance with the letter and requirements of law is essential for the validity of an order of detention made thereunder.

Section 3(1)(a) of the Act confers power on the authority to detain a person if it is satisfied that such detention is necessary to prevent him from acting in any manner prejudicial to :

(i) the defence of India, the relation of India with foreign powers of the security of India or

(ii) the security of the State or the maintenance of Public Order, or

(iii) the maintenance of supplies and services essential to the community.

Clause (b) of s. 3(1) applies to a foreigner and is not relevant for our purpose.

It will be seen that the power can be exercised only on one or more of the grounds enumerated above. If the exercise of the power is not on the face of the order correlated to any of these grounds or concerns activities, which are not germane to any of these grounds, such exercise would be vitiated for lack of jurisdiction. Further, the satisfaction spoken of in s. 3(1)—which is the *sine qua non* to the exercise of the power is the subjective satisfaction of the authority which cannot be tested in court by objective standards. Ordinarily, therefore, the court cannot go behind the satisfaction expressed on the face of the order. As pointed out by this Court in *Dr. Ram Manohar Lohia* v. *State of Bihar and Ors.*(1) "when an order on the face of it, is not in terms of the rule, a court cannot equally enter into an investigation whether the order of detention was in fact, that is to say irrespective of what is stated in it, in terms of the rule". Thus where the order *ex facie* is made with a view to prevent an act prejudicial to the maintenance of Public Order, the detaining authority cannot be permitted to show that in fact the order was made to prevent an act prejudicial to the maintenance of supplies and services essential to the life of the community.

The distinction between 'Public Order' and 'Law and Order' has frequently come up for consideration before this Court. Recently, in *Ram Ranjan Chatterjee* v. *The State of West Bengal,*(2) this Court explained the distinction between the two, thus :

> "It may be remembered that qualitatively, the acts which affect 'law and order' are not different from the acts which affect 'public order'. Indeed a state of peace or orderly tranquality which prevails as a result of the observance or enforcement of internal laws and regulations by the Government, is a

(1) [1966] 1 SCR 709.

(2) Writ Petition No. 476/74 decided on 22-1-75.

A feature common to the concepts of 'law and order' and 'public order'. Every kind of disorder or contravention of law affects that orderly tranquillity. The distinction between the areas of 'law and order' and 'public order' as pointed by this Court in *Arun Ghosh's* case (supra) "is one of degree and extent of the reach of the act in question on society". It is B the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals, directly involved, as distinguished from a winder spectrum of the public, it would raise a problem of law and order only. These concentric concepts of 'law and order' and 'public order' may have a common epi- C centre', but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguished it as an act affecting 'public order' from that concerning "law and order".

We may further, observe that the various grounds indicated in clauses (i), (ii) and (iii) of Section 3(1) (a) are not always mutually exclusive. D Nor can the prejudicial acts be categorised into water-tight compartments. As pointed out by this Court in *Indradeo Mahato's case* (supra) :

> "Similar acts in different situations may give rise to different problems : in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and widespread vibrations having serious enough im- E pact on the civilized peace-abiding society so as to affect public order, one has to weigh the degree and sweep of the harm the act in question is capable of in its context. Every case has therefore, to be considered on its own facts and circumstances."

F Considered in the light of the above principles, it is quite clear that the activity which constitutes the substratum of the first ground of detention, is manifestly a case of interstate smuggling or attempt to smuggle essential commodities such as rice, Dalda, Kerosene oil and wheat. Smuggling, ordinarily, is a calendestine activity. Broadly speaking, its concept is repugnant to what is 'public'. As rightly observed by Falshaw J. in *Bakhtawar Singh* v. *The State*(1) : *"Prima facie* G there is no connection between smuggling which is essentially a secret operation and the maintenance of public order in which the operative word is 'public' ". We will, however, hasten to add that this broad proposition as to the distinction between an act of 'smuggling' and an act affecting 'public order' is not an abstract or absolute proposition of law. Cases are conceivable where the act of smuggling may be accompanied by such violence and disorder that it throws out of gear the even tempo of the life of the community in the locality or disturbs public tranquillity. H The broad distinction between an act of smuggling and one prejudicial to 'Public Order' drawn by us is helpful only for the purpose of deter-

(1) AIR 1951 Simla 151.

mining whether in the circumstances of the present case, the smuggling activity attributed to the detenu, as incorporated in his first ground of detention, was germane to the maintenance of public order, for achieving which the preventive detention in question has been professedly made. In our opinion the answer to this question must be in the negative. The only fact which has been mentioned in addition to the smuggling of some essential commodities in that ground is that the detenu and his associates had threatened the Home-Guards and snatched away the seized commodities from their custody. Further fact mentioned is that this activity comes within the purview of Ss. 143/186/332/506 I.P.C. and 7(i)(a)(ii) of Act X of 1955. This latter fact to the effect that such and such offences were committed was only a conclusion drawn by the authority. There is absolutely no mention that any scare was caused in the locality. Nor is it alleged that the detenu or his associates were armed with any deadly weapons, or that their acts had caused panic and terror among the people of the locality. The incident was confined to the detenu and his associates on one hand and the Home-guards who checked them on the other. Clearly therefore, it was not an activity which was prejudicial to the maintenance of Public Order. At the most, it could be said to be an activity affecting law and order. Nor can the order be justified on the ground that this activity was manifestly prejudicial to the maintenance of supplies and services essential to the community. We have stated earlier that the court cannot go behind the subjective satisfaction of the detaining authority as expressed in the detention order and permit it to justify its order on a ground different from the one mentioned on the face of the order.

We are therefore of the opinion that the first ground of detention had no real nexus with the maintenance of Public Order. In view of this finding, it is not necessary for us to consider whether the criminal act incorporated in the second ground of detention falls within the category of an act affecting Public Order or one concerning law and order. If one out of several grounds of detention is found to be irrelevant, the order of detention shall stand vitiated. The reason is that in such cases, it cannot be reasonably predicated as to what extent the irrelevant ground had influenced the subjective satisfaction of the detaining authority.

We have gone through the cases cited by Mr. Chatterjee. It has not been laid down therein as a proposition of law that whenever any act is accompanied by show of force or threat to a public servant entrusted with the maintenance of law and order, it must necessarily fall within the category of an act prejudicial to the maintenance of Public Order. Even in these cases, the broad test applied was, whether the act was of such a magnitude and gravity that it had disturbed the even tenor of the life of the community in the area. Indeed, this is essentially a question of fact depending on the circumstances of each case.

In the result, we allow this petition, quash the impugned order of detention, make the rule absolute and direct that the petitioner be released forthwith.

V.P.S. *Petition allowed.*