Nagendra Nath Mondal vs The State Of West Bengal on 13 January, 1972

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Author: J.M. Shelat

Bench: J.M. Shelat, Hans Raj Khanna

PETITIONER:
NAGENDRA NATH MONDAL

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT13/01/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
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R	1972 SC1623	(7)
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R	1972 SC1749	(7)
R	1972 SC1753	(9)
RF	1972 SC2132	(4)
R	1972 SC2143	(6)
RF	1972 SC2420	(4,5)
E	1972 SC2623	(9)
E	1972 SC2686	(3)
F	1973 SC 197	(9,10)
R	1973 SC 295	(7)
R	1980 SC 849	(7,8)
R	1981 SC2166	(21)
RF	1987 SC 998	(6)
RF	1987 SC2332	(16A)

R 1989 SC 764 (13)
R 1990 SC1086 (18)

ACT:
West Bengal Prevention of Violent Activities Act, 1970-Section 3(2)(b)-Acts prejudicial to the maintenance of public order-Tests for determining.
Practice and procedure-Habeas Corpus-Grounds not urged in the petition, if can be urged.

HEADNOTE:
The petitioner was detained under the West Bengal Prevention of Violent Activities Act, 1970. The grounds for detention stated that he, along with others, on two, occasions, entered the premises of educational institutions, set fire to books, registers, furniture etc., placed bombs in the building and threatened the staff with death and thereby committed "mischief" disturbing "public order" within the meaning of S. 3(2)(b) of the Act. The petitioner's representation was received by the State Government on May 27, 1971. On June 7, 1971 the petitioner's case was placed before the Advisory Board. The State Government considered the representation and rejected it by its order dated July 1, 1971. On July 9, 1971 the Board reported that there was in its opinion sufficient cause for the petitioner's detention.
The petitioner sent his habeas corpus petition from jail in which he denied the allegations made against him. At the hearing of the petition, the counsel for the petitioner raised two additional grounds (i) that the grounds furnished to the detenu did not constitute breach of public order., and therefore, the detention was illegal; and (ii) that the delay in considering the petitioner's representation. Nas inordinate, and therefore, was in violation of Article 22(5) of Constitution.
Dismissing the petition,
HELD : (i) According to the Report of the Advisory Board, there was sufficient material justifying the order and in the absence of any definite material, it is not possible lo accept the vague allegations by the petitioner. [780 E]
(ii)Ordinarily grounds which (lo not find any place in the petition would not be permitted to be raised before this Court. But since this was a habea scorpus petition and furthermore, made by the petitioner from jail such grounds could be allowed to be raised. [78 F]
(iii)The true distinction between the area of law and order and public order is one of degree of extent of the breach of the act in question upon society. Any contravention of law always affects order, but before it could be said to affect 'public order' it must affect the community at large. Acts

similar in nature, but committed in different contexts and circumstances might affect the problem of law and order and in another, the breach of public order. The analogy of crimes against individuals and crimes against the public, though useful to a limited extent, would not always be apt. [79 H-80B]

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Lohia v. State [1966] 1 S.C.R. 709, Pushkar Mukherjee v. West Bengal [1969] 2 S.C.R. 635; Arun Ghosh v. West Bengal [1970] 3 S.C.R. 288 and S. K. Saha v. Commissioner of Police, Calcutta [1970] 3 S.C.R. 360 referred to.

(iv) The distinction drawn by Clause (b) of S. 3(2)is between causing fire to building of an educational institution simpliciter and committing mischief of the same nature but such that it disturbs or is likely to disturb the even tempo of the community in that particular locality. The object of the acts complained of as vandalism, to disturb the working of the institution by burning its records and to create a scare so that neither the teaching staff, nor the pupils would dare attend it for prose caution of studies. In these circumstances the alleged acts did not merely constitute mischief under S. 425 of the Penal Code, but constituted such mischief which disturbed or was likely to disturb public order and, therefore, fell within the definition in Section 3(2)(b) [81 G-H]

(v) In the circumstances of the present case, it cannot be held that the delay was so inordinate as to affect the validity of the detention. No doubt, the delay in deciding the representation was 34 days, but most of it was due to the fact that the representation and the record remained with the Board. In a given case, Government may not be able to reach a proper conclusion within a short time especially, where another authority has passed the questioned order. 183 F] Jayanarayan Sukul v. West Bengal [1970] 3 S.C.R. and Khairul Haque v. West Bengal, writ petition decided on September 10, 1969, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 308 of 1971. Under Article 32 of the Constitution of India for a writ in the nature of habeas corpus.

S. K. Dhingra for the petitioner.

P. K. Chatterjee, G. S. Chatterjee, for the respondent. The Judgment of the Court was delivered by Shelat, J. On May 7, 1971, the District Magistrate, Jalpai- guri, in exercise of power conferred upon him by S. 3 (3) of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970) passed an order under sub-sec. 1 of that section directing the detention of the petitioner. The order recited that the District Magistrate was satisfied that it had become necessary to detain the

petitioner "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". On that very day, the District Magistrate reported to the State Government the fact of his having passed the said order. In pursuance of that order, the petitioner was arrested on May 9, 1971 and was detained in jail. The petitioner was furnished, as required by the Act, with the grounds for his detention at the time when his arrest was effected. On May 17, 1971, the State Government approved the said order. On the same day the State Government reported the fact of the passing of the said order and its approval to the Central Government. The petitioner made his representation which he was entitled to make by virtue of S. 8 (i). That was received by the State Government on May 27, 1971. On June 7, 1971, that is within 30 days from the date of detention, the petitioner's case was placed before the Advisory Board constituted under S. 9 of the Act. The State Government considered that representation, but rejected it by its order dated July 1, 1971. On July 9, 1971, the Board reported that there was, in its opinion, sufficient cause for the petitioner's detention, Thereupon, the State Government, by its order dated July 29, 1971, confirmed the detention order under s. 12.

The grounds for detention served on the petitioner stated that the order was passed in view of his acting "in a manner prejudicial to the maintenance of public order as evidenced by the particulars given below". These particulars were :

> "1. On 1-12-70 after midnight you along with other entered into the Headmaster's room of Moynaguri Higher Secondary School, Police Station Moynaguri, after breaking open the doors and set fire to books, registers, a typewriter, furniture etc. causing heavy loss to the school. After completing the operation you placed a bomb in the school premises endangering the life of the teaching staff and the students.
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> 2. On 5-4-1971 at about 10.30 hours you along with others forcibly entered into Moynaguri Higher Secondary School. Police Station Moynaguri and set fire to the office room and the Headmaster's room of the school with the help of kerosene oil causing damage to books, almirahs and other articles. While committing the arson in the above school you also threatened the teaching staff and the duftry of the school with death if they would dare to give you any resistance or divulge your name to any authority holding you responsible for the arson."

The grounds also, informed the petitioner that he could make a representation to the State Government, that his case would be put up before the Board and that the Board would grant him a personal hearing, if he so desired. The case of the detenu, as stated in the petition, was that he was at first arrested on suspicion on April 23, 1971 in connection with G. R. Case No. 812 of 1971, but was released on bail as there was no evidence against him. There was another case also being G.R. 2639 of 1970 in connection with the incident referred to in ground No. 1 set out above. The detenu however, was not arrested in that connection. The two G.R. Cases were started long before he was arrested on May 9, 1971 under the detention order dated May 7, 1971. He denied that he was connected or associated with the incidents mentioned in the said grounds, and said that the allegations made against him therein were false, baseless, motivated and vague, and that there was absolutely no material upon the basis of which the order of detention could be made. He also alleged

that some rival parties, who were in league with the police had falsely involved him in the incidents referred to in the grounds and got the District Magistrate to issue the said detention order. These allegations were denied in the counter-affidavit filed on behalf of 'the State Government, the assertion therein being that there was reliable material before the District Magistrate relating to the illegal and antisocial activities prejudicial to the maintenance of public order. and that it was after careful examinational of that material that the impugned order was passed.

The allegations made by the petitioner were, in our view, vague and indefinite and not backed by any material or particulars, and therefore cannot be accepted. Besides, the detenu's case was placed before the Advisory Board together with his representation and other relevant materials, and according to the report of the Board, there was sufficient material justifying the In the absence of any definite material before us, it is not possible to accept the extremely vague allegations made by the petitioner. But Mr. Dinghra, who appeared amicus curicae for the peti- tioner, raised two additional grounds. Neither of them was, however, raised in the petition but since this was a habeas corpus petition, and furthermore, made by the petitioner from jail, lie was allowed to take them though ordinarily he would not have been permitted to do so as they did not find any place in the petition.

The two additional rounds were (1) that the rounds fur- nished to the detenu did not constitute breach of public order, and therefore, the detention did not fall under sub-ss. (1) and (3) of s. 3; and (2) that although the representation made by the detenu was received by the Government on May 27, 1971,it was not considered and disposed of till July 1, 1971, that the delay in doing so was inordinate and was in violation of Art. 22(5) of the Constitution, rendering the impugned order invalid. In regard to the first contention, counsel urged that assuming that the allegations made in the grounds for detention were true, setting fire to an educational institution and destroying thereby its, records might constitute an offence under the Penal Code, but did not constitute disturbance or breach of public order, which alone could warrant a detention order under the Act. In support of this proposition, counsel referred to some of the decisions of this Court.

The detention order, no doubt, mentioned that it was issued with a view to prevent the detenu acting prejudicially to the maintenance of public order. The contention raised by counsel, however, involves the question whether the acts alleged against the detenu constituted breach of public order or were such as would be prejudicial to its maintenance. As to what is meant by the expression, 'public order', Hidayatullah, J., (as he then was) in Lohia v. State(1), said that any contravention of law always affected order, but before, it could be said to affect 'public ,order', it must affect the community or the public at large. He considered three concepts, viz., "law and order", " public order" and "the security of the state" generally used in preventive detention measures and suggested that to appreciate the scope and extent of each of them, one should imagine three concentric circles, the largest of them representing "law and order", the next representing "public order" and the smallest representing "the security of the state". An act might affect "law and order", but not "public order", just as an act might affect public order but not "the security of the state". Therefore, if the detention order were to use the expression "maintenance of law and order", that would be widening the scope of the detaining authority, if the statute concerned confined that power in relation to acts prejudicial to "the maintenance of public order". A similar distinction was also drawn in Pushkar

Mukherjee v. West Bengal(2), where Ramaswami, J., observed that the expression "public order" in s. 3 (I) of the Preventive Detention Act, 1950 did not take in every kind of infraction of law. An assault by one on another in a house or even in a public street might create disorder but not public disorder, for the latter was one which affected the community or the public at large. Therefore, a line of demarcation must be drawn between serious and aggravated forms of disorder which affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder was, thus, not necessarily sufficient for action under the Preventive Detention Act but a disturbance which would affect public order fell within the scope of the Act. But in Arun Ghosh v. West Bengal(3), it was pointed out that the true distinction between the areas of "law and order"

and (1) [1966] 1 S.C.R. 709. (2) [1969] 2 S.C.R. 635. (3) [1970] 3 S.C.R. 288.

"public order" was one of degree and extent of the reach of the act in question upon society. Acts similar in nature, but committed in different contexts and circumstances might cause different reactions; in one case it might affect the problem of the breach of law and order, and in another the breach of public order. The analogy resorted to by Ramaswami, J., of crimes against individuals and crimes against the public, though useful to a limited extent, would not always be apt. An assault by one individual upon another would affect law and order only and cause its breach. A similar assault by a member of one community upon a leading individual of another community, though similar in quality, would differ in potentiality in the sense that it might cause reverberations which might affect the even tempo of the life of the community. As the Court pointed out, "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different". At the same time, the power of detention having been permitted to the State under the Constitution as an exceptional power, its exercise had to be scrutinized with extreme care and could not be used as a convenient substitute for the normal processes of the criminal law of the country. (cf. S. K. Saha v. Commissioner of Police, Calcutta(1).] These are all cases under the Preventive Detention Act, IV of 1950, which by s. 3 of it confers power of detention Oil specified grounds which include acts prejudicial to the maintenance of public order. The present Act likewise confers such power with a view to prevent a person from acting in any manner prejudicial to the security of the State or the maintenance of public order under its s. 3 (I). Though the Act does not define the expression "public order", it does define the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". That expression under the definition inter alia means "committing mischief within the meaning of s. 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution, or on any public building where the commission of such mischief disturbs or is likely to disturb public order. . . ." The definition itself thus draws a distinction between mischief by fire or explosive substance upon property of

one of the specified categories and such mischief upon any such properties which disturbs or is likely to disturb public order. The former, however reprehensible, would be taken care of by the Penal Code, and it is only in respect of the latter that the drastic power of detention without trial conferred by the first subsection can be validly exercised. But to the extent that the (1) [1970] 3 S.C.R. 360.

expression "public order" is not defined here also, decisions under Act IV of 1950 delineating the sphere of "public order" from those of "maintenance of law and order"

and "the security of the State" would still be of utility. The acts alleged against the petitioner in the grounds for detention are acts which fall under S. 3 (2) (b), in that, they constitute mischief by fire and by explosive substance on property of an educational institution. But the question is whether these acts disturbed or were likely to disturb public order; in the words of Hidayatullah, C.J., in Arun Ghosh v. West Bengal(), disturb the even tempo of the life of the community of that specified locality. The distinction drawn by cl. (b) of s. 3 (2) then is between causing fire, for instance, to a building of an educational institution simpliciter, and committing mischief of the same nature but such that it disturbs or is likely to disturb the even tempo of the community in that particular locality. The grounds set out two acts alleged against the petitioner. The first, of December 1, 1970, was that the petitioner and some others trespassed after midnight into the Headmaster's room in the Moynaguri Higher Secondary School and set fire to books, registers, furniture etc., and then placed a bomb in the school building thereby endangering the life of the teaching staff and the students attending the school. The second, of April 5, 1970, was that the petitioner along with some others again trespassed into the same school and set fire to parts of it and then threatened the members of its staff with death if they offered resistance or disclosed his name to any authority.

The target of arson, (assuming the allegations to be true which we have to assume) was an educational instituting and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies. The parents dare not henceforth send their wards for fear that the school might be set on fire while they are in it. The bomb was manifestly placed in the premises for creating that scare. It could not have been intended for any other purpose after the records and furniture had been set on fire. In these circumstances, the alleged acts did not merely constitute mischief under s. .425 of the Penal Code, but constituted such mischief which disturbed or was likely to disturb public order. The acts in question, no doubt, would be acts similar to those committed by a person who resorts to arson, but in the circumstances were acts different in potentiality, and therefore, fell within the definition in s. 3 (2) (b) The, first argument urged on behalf of the petitioner must, consequently, fail.

(1) [1970] 3 S.C.R. 288.

The second argument related to the time taken by the State Government in deciding the representation sent by the petitioner from jail. As aforesaid, it was received by Government on May 27, 1971, but was considered and rejected on July 1, 1971, that is to say, after a lapse of 34 days. Like S. 7(i) or the Preventive Detention Act, IV of 1950, the present Act also provides by S. 8(i) that the detaining authority shall provide to the detenu not later than five days from the date of detention the grounds on which the detention order his been made and shall afford him the earliest opportunity of making a representation against the, order to the State Government. In Jayanarayan Sukul v. West Bengal() where also a point as to undue delay in the light of Art. 22(5) of the Constitution and s. 7 of the Preventive Detention Act, IV of 1950 was raised, Ray, J., speaking for the Court, laid down four principles. These were

1. that the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation as early as possible;

2. that such a consideration of the representation is entirely independent of any action by the Advisory Board including consideration by it of the detenu's representation;

3. that there should not be any delay in the matter of consideration. though no hard and fast rule can be laid down as regards the time which can be taken in considering such a representation;

4. that the appropriate government has to exercise its opinion and judgment on the representation independent of that of the Advisory Board.

(cf. Khairul Haque v. West Bengal (2), which was applied in this case and where the distinctive features of the functions of the Government and the Board and their objects were discussed.) No doubt Ray, J., it P. 232 of the report, said that the Government had to come to its decision on the representation before it sent the detenu's case to the Board. But, in that observation, he was not emphasising so much the point of time when the Government has to send the detenu's case including his, representation to the Board. tit of the necessity of the Government considering and deciding the representation independently of and before the Board's decision, a point made in Khairul Haque's case(2). The delay in Jayanarayan's case(1) was of the month and twenty day, and was (1) [1970] 3 S.C.R. 225.

(2) Writ Petition No. 246 of 1969, decd. on September 10, 1969.

in the circumstances of that case held to be inordinate vitiating. the detention.

The time gap between the receipt by Government of the peti- tioner's representation and the date of its decision was of 34 days. The question is whether that gap can be treated as inordinate delay going to the root of the validity of the detention or its continuation thereafter. The counter- affidavit filed on behalf of the Government, no doubt, did not contain any explanation, But that was because it answered only the allegations in the petition filed by the petitioner from 'all, which had in it only

general allegations such as the vagueness of the grounds of detention mala fides etc., and did not raise specifically any point on this aspect at all. The point to delay was for the first time taken in the course of arguments when the petition first came up for hearing before another of this Court. At that time, Counsel for the State produced the records of the case and nothings from the records were actually read out before the Court in the hearing of the petitioner's counsel. That fact is not disputed before us and so also the fact that those records showed that on June 7, 1971 Government had sent the files in connection with the petitioner's case and his representation to the Advisory Board. As soon as the representation was returned to it, Government considered it and rejected it but that was before the Board made its report and sent it to Government. But counsel urged that this fact may explain the lapse of time from the date that the records were sent and the date when they were returned, but not the delay between May 27, 1 971 and June, 7, 1971 during which Government could have arrived at its decision. That argument has not much force, because in a given case Government may not be able to reach a proper conclusion within a short time, especially, in a case where another authority in this case the District Magistrate, has passed the questioned order. It might have to make inquiries is to the situation in the locality, the nature of and the circumstances in which detention was found necessary. the previous history of the person detained etc. Therefore, it is difficult to agree with counsel that Government should have reached its conclusion during the said period. No doubt, the, delay in deciding the representation was of 34 days, but part of it was due to the fact that the representation and the record remained with the Board. In these circumstances, it is difficult to say that there is a just and proper analogy between this case and that of Khairul Haque (1) or Javanarayan (2) or that upon such analogy we should reach the same conclusion which was reached in those cases. As held in Jayanarayan's case(2) there can be no hard and fast rules with regard to the time which Government can or should take,. (1) W.P. No. 246 of 1969 decd. on Sept. 10, 1969. (2) [1970] 3 S.C.R. 225.

that each case must be decided on its own facts. In the circumstances of the present case we are unable to hold that the delay 'was so inordinate as to affect the validity of the petitioner's detention.

The petition fails and Is dismissed.

S.N. Petition dismissed.