B. Sundar Rao And Ors. vs State Of Orissa on 29 November, 1971

Equivalent citations: AIR1972SC739, (1972)3SCC11, 1972(4)UJ377(SC)

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Bench: D.G. Palekar, P. Jaganmohan Reddy

JUDGMENT

D.G. Palekar, J.

1. The Petitioner (1) B. Sundar Rao, (2) P. Appala Swamy, (3) Raghunath Patro, (4) Budhi Rsmalingam and (5) Kidari Dandasi have applied to this Court for a writ in the nature of habeas corpus alleging that they have been illegally detained. The petitioners along with some others were arrested in January, 1969 on a charge of conspiracy under Sections 120 r/w 399 IPC and 25(f) of Arms Act. The case came for hearing before the Assistant Sessions Judge, Koraput, Jaipur. On 17 4 1971 the petitioners were acquitted. They were, however, arrested by the local police at 5.30 P.M. on the same day under Section 151 Cr. PC and produced before the Magistrate on the next day i.e. 18 4-1971. Since proceedings under Section 107 Criminal Procedure Code were contemplated, they appear to have been remanded to Jail custody. On 20, April 1971 they were served with an Order dated 19-4-1971 passed by the District Magistrate, Koraput detaining them under Section of the Orissa Preventive Detention Act, 1970. Each one of the Petitioners was served with a separate order of detention. The order of detention so far as it is relevant is as follows :

> Since you with your associates have been systematically indulging in various acts of lawlessness criminal activities and other illegal acts in a manner prejudicial to public order as per the grounds enclosed. I Sri S.K. Basu, I.A.S District Magistrate, Koraput, after due consideration am satisfied that with a view to preventing you to act in a manner prejudicial to the maintenance of public order it is necessary so to do and I have, therefore, passed an order under Section 3(2) of the Preventive Detention Act, 1970, directing that you be detained.
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> Sin ultaneously, each one of the Petitioner was served the grounds on which the detention had been made. The grounds furnished to the Petitioner arc the same in every case and they are 22 in number. On a perusal of these grounds which are imprecisely and in artistically worded the District Magistrate appears to convey to the detenues that they were Naxalites who, in association with other Naxalites, both above ground and under ground, and in collaboration with those from beyond the limits of the State were indulging in the following activities.

1. murders of rich landlords, the police and their informants and witnesses.

2. dacoities and looting of the richer section of the people.

3. overpowering the police and snatching fire-arms from them.

4. spreading through their henchmen and supporters threats to witnesses and others that after their acquittal in the conspiracy case in which they were under-trial prisoners they would revenge themselves on them and

5. Carrying on a campaign of an arms struggle and inciting the poorer sections of the population.

Since the above activities were prejudicial to the maintenance of public order the District Magistrate was satisfied that it was necessary to detain them.

2. After the present petition was filed further grounds were permitted to be filled. Affidavit-in-reply supporting the Order of detention were filed on behalf of the State.

3. Section 3(2) of the Orissa Preventive Detention Act, 1970 provides:

> Any District Magistrate, or any Additional District Magistrate specially empowered in this behalf by the State Government, may if satisfied as provided in Sub-section (1), exercise the power conferred by the said sub-Section Sub-section (1) deals with the power of the State Government to make orders of detention and it is as follows :
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> (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do, make an order directing that such person be detained.

It will thus be seen that the State Govt. and the District Magistrate have been given the power to detain a person if satisfied with respect to him that with a view to, preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him. Sub-section (3) of Section 3 requires the District Magistrate to report the fact of detention to the State Government forthwith and the detention to the State Government forthwith and the detention order shall not remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.

Section 7(1) provides:

> When a person if detained in pursuance of a detention order, the authority making the order shall, as soon as may be, put not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall after him the earliest opportunity of making a representation against the order

to the, State Government.

4. Section 8 provinces for the Constitution of Advisory Boards. Section It requests that :

> In every case where a detention order has been made under this Act, the State Government shall, within thirty days from the date of detention under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report furnished by such officer under Sub-section (3) of Section 3.

5. Section 10 requires that the Advisory Board shall consider the materials before it and submit its report to the State Government within ten weeks from the date of detention. The Advisory Board shall also give its opinion as to whether or not there is sufficient cause for the detention of the person concerned, under Section 11 where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention, the State Government may confirm the detention order and continue the detention of the person concerned for such period not being beyond a period of twelve months from the date of detention an they think fit. However, where the Advisory Board has reported that there is be sufficient cause for detention of the person concerned, the State Government is required to revoke the detention order and cause the person to be released forthwith.

6. In the present case, as already stated, the District Magistrate passed the detention order under Section 3(2) of the Act on 19-4-1971. The detention order was served on 20-4-1971 and the Petitioners were taken into custody. The grounds of detention were also served on them on the same day. The detention was approved by the Government on 27-4-1971 The petitioners made a written representation to the State Government on 6-5-1971. It was received by the State Government on 17-5-1971. In the meantime, however, it appears reference as required under the Act, was made by the State Government to the Advisory Board on 11-6-1971. The representation received by the State Government was forwarded to the Advisory Board. The Advisory Board made its report on 21-6-1971 stating that in its opinion there was sufficient cause for detention. On 20-6-71 the State Government confirmed the detention order.

7. Learned Counsel for the Petitioners submitted that the order of detention is liable to be quashed on 3 grounds :

> (1) That the Orissa Preventive Detention Act, 1970 was void being in violation of the Petitioners right under Article 19(a), (b), (c) and (d) of the Constitution".
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> (2) That some of the grounds of detention served upon the petitioners were both vague and irrelevant and (3) That the petitioners' representation to the State Government has not been considered by the State Government.

8. Since we are satisfied that the petitioners must succeed on grounds Nos. 2 and 3 above, it is not necessary to consider ground No. 1.

9. Common grounds of detention have been served upon the petitioners and as already stated they are 22 in number. It is the contention on behalf of the petitioners that though some of the grounds may relate to the maintenance of public order some others have no relevance to the maintenance of public order and, therefore, the orders of detention are liable to be set aside. It is also contended that some of the grounds are so vague and indefinite that it is impossible for the petitioners to nuke an effective representation against those grounds and, therefore, oil that ground also the detention orders are liable to be set aside.

10. It is well established that the court has no power to review or consider the sufficiency of the evidence on which a detention order is made but the Court insists that the statutory requirements must be strictly complied with. The before, when the court closely scrutinizes the grounds in support of the detention order the scrutiny is not for the purpose of determining the sufficiency of the materials but to see whether the grounds supplied are sufficient to enable the detenu to make an effective representation and are not unconnected with the requirements on which alone the order of detention is made. For example, under Section 3 of the Orissa Preventive Detention Act, 1970 the power to detain can be exercised if the concerned power to detain can be exercised if the concerned authority is satisfied that with a view to preventing the person from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him. Therefore, the grounds of detention must have direct relevance to the maintenance of public order. If they have no such relevance they would be extraneous to the purpose of the Act in which case, the order of detention will have to be struck down the Position is similar in cases where some only of the many grounds have on relevance to the maintenance of public order. See Shibban Lal Saksana v. The State of UP 1954 SCR 418.

11. By the expression "maintenance of public order" what is intended is the prevention of grave public disorder. It is not the same as maintenance of law and order : See : Dr Ram Manohar Lohia v. State of Bihar and Ors. . Maintenance of law and order means the prevention of disorders of comparatively lesser gravity and of local significance.

12. Bearing these considerations in mind, we have to approach the question before us. Particular reference has been made to grounds 2, 3, 4, 8, 9 and 14 for their vagueness and irrelevancy. They will be, therefore, reproduced here :

> 2 On 12-6-69 Naxalites Gannath Patra, Dina Bandhu Samal, B. Sundar Rao, D.B. Patnaik and Others while being in Gunupur Sub Jail instigated the other U.T. Ps to disobey the Jail rules and to demand various inadmissible facilities from the authorities. They also organised secret meetings inside the Jail premises in order to start agitation against the Govt. by resorting to hunger strikes etc. (Signal No. 674/dt. 12-6-69 from Superintendent Sub Jail Gunupur.
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> 3. On 9-6-69 the Naxalites demanded separate cooking mess inside the Jail premises in Gunupur thereby caused annoyance and disturbances to other UTPs (Supdt. Order Book dt. 9-6-69 of Gunupur Sub Jail).

4. The Naxalites instigated the convicts and other UTPs in Gunupur Sub Jail on 12-6-69 to help DPM Patnaik, Gannath Patre and Dinabandhu Samal for their escape from Jail by scaling over the wall (Jail Superintendent note Book dt. 12-6-69).

6. On 1-12-70 they quarrelled with other convicts of the district jail on the issue of ration as a result there ensued a clash between them on one side and the other prisoners on the other when the latter chased and pelted brick bat and stones on them (Jail register Koraput Jail). This incident had adverse effect on public order.

9. He and his associates shouted slogans like Naxalite Zindabad. "Long Live Revolution". Mao Tse Tung Zindabab," before and after entering the court hall at the time of their production and thereby created sensation in the minds of public. They also shouted similar slogans while being taken from and to the Jail during their trial.

14. There is a talk in Ravagada and Chiandili area that the Naxalites in Gunupur conspiracy case, have sent intimation to their supporters and followers to remain prepared for carrying out the armed struggle as they are likely to be acquitted in this case. They have also sent information to chart out the names of targets for annihilation work.

(Ravagada P.S.S.D.E. No. 272 dt : 15-4-71 and Chandili O.P.S.D.E.No. 250 dated 15-4-1971.

13. Ground No. 2 mentions the names of certain Naxalites and it is stated that petitioner No. 1 is one of them. These Naxalites, it is alleged, instigated the other under-trial prisoners in Gunupur Sub Jail to disobey the Jail rules and demand various facilities from the authorities. It is also alleged that they organised several meetings inside the Jail premises with a view to start agitation against the Government by resorting to hunger strikes. It must be said that this ground is both vague and irrelevant. It is not clear which were the Jail rules the disobedience of which was instigated and what were the inadmissible demands. Grounds must be clear and definite, the object of furnishing grounds being to enable the detenue to make an effective representation. It is impossible, to say that on the ground as furnished to the detenues it was possible for the detenues to make an of active representation, secondly, the ground itself has no relevance to the maintenance of public order. Assuming petitioner No. 1 incites some under trial prisoners to disobey certain jail rules with a view to obtain better facilities for themselves and the under trial prisoners they could hardly prejudice the maintenance of public order as already defined. Nor could it be said that an agitation within the said premises by resorting to hunger strikes would lead to public disorder. Then again it must be noted that although this ground may apply to petitioner No 1, it does not apply to the other petitioners and Still it is made one of the grounds of detention in their cases. It must be therefore, held that this particular ground is both vague and irrelevant.

14. Ground No. 3 refers to the Naxalites demanding separate cooking mess inside the Jail premises in Gunupur causing annoyance and disturbances to other under-trial prisoners. Like ground No 2 already discussed this ground also does not have any relevance to the maintenance of public order. We will assume for the purposes of this ground that by Naxalites the District Magistrate intended to

refer to the petitioners. Even so, the ground being irrelevant for the purpose of the Act would necessarily invalidate the order of detention.

15. Ground No. 4 alleges that the Naxalites instigated the convicts and other under trial prisoners in Gunupur Sub, jail to help two other prisoners namely Gannath Patra and Dinabandhu Samal to escape from Jail by scaling over the wall. This ground again, in our view, is irrelevant to the satisfaction of the authority that the petitioners were likely to act prejudicially to the maintenance of public order.

16. Ground No 8 tells us that on 1-12-70 they (meaning, perhaps, the petitioners) quarrelled with other convicts of the District Jail on the issue of ration with the result there was a clash between them and the prisoners. The latter chased and pelted brick bats and stones at the petitioners. This is supposed to affect adversely public order. This ground again is irrelevant to the maintenance of public order.

17. Ground No. 9 says that the petitioner and his associates when entering or departing from the court hall created sensation in the minds of the public by shouting slogans like "Naxalite Zindabad, Long Live Revolution, Mao Tse Tung Zindabad." We do not see how more shouting slogans like this would prejudice the maintenance of public order. They might, at the most, disturb law and order but certainly would not create public disorder.

18. Ground No. 14 vaguely says that there is a talk in Rayapada and Chandili areas that the Naxalites (perhaps meaning the petitioners) in Gunupur conspiracy case had sent intimation to their supporters and followers to remain prepared for an armed struggle as soon as the petitioners are acquitted in the case under trial, It appears to us that the ground is vague because one does not know who was talking about this whether such persons who talked were responsible persons. The petitioners would not be in a position to make an effective representation against such vague allegations.

19. It will thus be seen that at least the above mentioned grounds out of the 22 which have been served upon the petitioners are either vague or irrelevant and since they have influenced the mind of the authority in passing the detention order, it would be difficult to uphold it.

20. It was further argued that though the petitioners had made a representation to the Government as required by Section 7 of the Act, the Government did not appear to have considered this representation. The petitioners have specifically alleged in their additional grounds that the representation submitted by the pensioners against the order was not considered by the State Government and this allegation, it is conceded, has not been controverter by the Government though an opportunity was given to file an affidavit in opposition. All that has been stated is that the representation had been received by the Government through the District Magistrate, Gunupur on 17-5-1971. The Government had approved the detention order on 27-4-1971 and made the statutory reference to the Advisory Board on 11-5-1971. Perhaps the representation received by the Government on 17-5-1971 might have been forwarded to the Advisory Board for its consideration. But that does not absolve the Government from applying its own mind to this representation and

taking a decision on it. It has been pointed out by this Court in Jayanarayan Sukul v. State of W.B. that four principles are to be borne in mind.

21. First, the appropriate authority is bound to give an opportunity to the detenue to make a representation and to consider the representation as early as possible. Secondly, the consideration of the representation of the detenue by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenue by the Advisory Board. Thirdly there should not be any delay in the matter of consideration and fourthly the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenue's representation to the Advisory Board. In the present case it was open to the Government to consider the representation as soon as it was received by the Government on 17-5 1971 in spite of the fact that six days earlier it had made the reference to the Advisory Board. Secondly having regard to the second principle referred to above the Government cannot absolve itself from considering the representation even at a after stage. We have seen that after the Advisory Board's opinion is received the State Government 19 bound under Section 11 to consider whether it should confirm the detention order and continue the detention of the person concerned. Since the Government had not considered the representation as soon as it was received nor even at the time of the confirmation and continuation of the detention, the Government had failed in one of its obligatory duties with regard to the detention of the prisoners and, therefore, for that reason also the detention becomes illegal.

22. For the aforesaid reasons, the detention of the petitioners must be declared to be illegal. No separate orders for the release of the petitioners are necessary to be passed now, since they have been already directed to be released after the closure of arguments in this case.