

Prem Dutta Paliwal vs Superintendent Central Prison Agra And ... on 29 October, 1953

Equivalent citations: AIR1954ALL315

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution for the issue of a writ in the nature of 'habeas corpus'.

2. The petitioner was detained on the 7th May, 1953, under Section 3(1)(a)(ii) of the Preventive Detention Act, 1950. On the 29th May he was furnished by the District Magistrate with the grounds of his detention. Subsequently the case of the petitioner was referred to the Advisory Board, constituted under Section 8 of the Preventive Detention Act, which came to the conclusion that there was a sufficient cause for the petitioner's detention. Thereafter the Governor by an order dated the 6th August, 1953, passed under Sub-section (1) of Section 11 of the Act directed that the petitioner continue to be detained for a maximum period of twelve months from the date of his detention.

3. The petitioner contends that his detention is illegal as the grounds upon which he was detained were vague and indefinite and did not disclose sufficient particulars to enable him to make an effective representation to the authorities.

4. The learned Deputy Government Advocate submits that even if the petitioner's detention was originally illegal it ceased to be so when the Advisory Board gave it as its opinion that there was sufficient cause for his detention. The validity of that detention, learned counsel argues, cannot today be challenged in this Court.

5. Article 22(4)(a) of the Constitution, so far as it is material, reads as follows:

"22(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

This Article lays down a restriction on any law providing for preventive detention. Unless that law makes provision for the report by an Advisory Board constituted in the manner prescribed the consequence is that the law itself, in so far as it purports to authorise detention beyond three months, would be invalid. Such a provision is to be found in Section 8 of the Preventive Detention Act, 1960, but neither that Section nor Clause (4) (a) of Article 22 constitutes the Advisory Board a court of law or imposes on it the duty of determining whether a person's detention is legal. All that Section 8 of the Act does is to constitute a body which, as its name implies, is a purely advisory body whose duty it is to advise the Government whether in its opinion there is sufficient cause for the continued detention of a particular person or persons. Its opinion cannot therefore, in my view, operate to oust the jurisdiction of this Court to determine whether the grounds upon which the petitioner was detained satisfied the requirements of the law.

6. Of the twelve grounds of detention served upon the petitioner learned counsel has drawn our attention to grounds 6, 12 and part of ground 7 which read as follows:

"6. That you have been planning designs with some two or three others for getting the houses of the mill-owners (M/s Ramdayal Chrutarmal) looted and for bringing them to humiliation and disrepute."

"7. That you have also been threatening the labour class which has not joined hands with you to leave the mills and join with you."

"12. That you have sponsored, led and organised two illegal strikes in which offences involving breaches of peace and disturbances of public order occurred."

The first question is whether these grounds are expressed in terms which are sufficiently clear and precise to enable the petitioner to make an adequate representation to the appropriate authorities. In none of the grounds has any date or time been mentioned. In the case of ground 12, in which it is alleged that the petitioner organised two illegal strikes, not only is there no mention of the date but no particulars are given as to the place or places where the alleged strikes are said to have occurred nor of the persons against whom they are alleged to have been directed. In my opinion these grounds, and in particular ground 12, are in terms which are too vague to enable the petitioner to make an adequate representation.

The Deputy Government Advocate has strongly urged before us that if the twelve grounds are read as a whole then the petitioner ought to have had no difficulty in understanding what it was which was made the subject matter of complaint in grounds 6, 7 and 12. A similar argument was addressed to the Supreme Court in -- 'Ram Krishan Bhardwaj v. State of Delhi', AIR 1953 SC 318 (A), but was rejected in these words:

"Surely, it is up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to be his own resource for interpreting the grounds."

6a. The second question is whether one or more vague grounds among others, which are clear and definite, would infringe the constitutional safe-guard provided in Article 22(5) of the Constitution. This question is no longer open to argument. It has been answered in the affirmative by the Supreme Court in 'Ram Krishan Bhardwaj's case, (A)', to which I have just referred. The learned Chief Justice, delivering the judgment of the Court, said:

"Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under Article 22(5), as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention 'sufficient to enable him to make a representation which on being considered may give relief to him', we are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under Clause (6) of Article 22".

7. In my opinion the petitioner's detention cannot be held to be in accordance with the procedure established by law, and he is entitled to be released. I would direct that he be set at liberty forthwith.

Sapru, J.

8. I agree with the order proposed to be passed by my brother Mootham.

9. The facts which have given rise to this petition have been narrated by him and I think it is unnecessary for me to repeat them. A point which was made by the Deputy Government Advocate, Sri Sri Rama, was that this petition was only presented to this Court on the 21st October, 1953, enough the actual order of detention had been passed on the 27th May, 1953. It is contended by Sri Sri Rama that the petition having been made after the Advisory Board constituted under the Preventive Detention Act had forwarded its opinion to the State Government, the detention of the Petitioner is justified. The argument, in short, is that the detention of the Petitioner is 'now' at all events legal & that this Court cannot or should not therefore, grant him the relief asked for by him.

10. Article 21 of the Constitution guarantees life and personal liberty 'according to procedure established by law'. Article 22 seeks to provide protection against arrest and detention in certain cases. In effect, what Article 22(4) does is to lay down that it shall not be open to the legislature to pass any law authorising preventive detention of a person for a longer 'period than three months unless an Advisory Board constituted of persons who are or have been or are qualified to be High Court Judges has reported before the expiration of the said period that there is, in its opinion, sufficient cause for such detention. There is a further proviso that nothing in that Sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7).

The Advisory Board has been constituted as a safeguard against a possible misuse of the power of preventive detention. The Advisory Board is not a judicial body; it does not follow strict judicial

procedure; it is in fact in the nature of a body charged with the responsibility of advising the executive government in regard to cases of preventive detention where it is intended that such detention shall last for more than three months. I cannot, therefore, accept the contention that we have any concern with the proceedings of the Advisory Board. The fact that the Constitution has provided an Advisory Board for advising on cases of preventive detention does not mean that the right of this Court to grant a writ of 'habeas corpus' in cases where the initial arrest in the opinion of this Court was illegal or improper has been taken away.

11. I agree with the view which has been expressed by Wanchoo, C. J. in the case of -- 'Durg Singh v. The State', AIR 1953 Raj 177 (B), that the fact that an applicant's case has been considered by the Advisory Board can make no difference to the order that we can pass in the circumstances of this case.

12. The question which has to be considered is whether all the grounds supplied to the Petitioner are of a nature sufficient to enable him to make a proper representation. The view which has been taken by their Lordships of the Supreme Court in -- 'AIR 1953 SC 318 (A)', is that preventive detention being a serious invasion of personal liberty, the duty of the Courts is to make sure that such meagre safeguards as the Constitution provides against its improper exercise are strictly enforced. The learned Chief Justice points out that the Petitioner has a right under Article 22(5) to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which on being considered may give relief to him. The learned Chief Justice goes on to observe that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detainee, subject of course to a claim of privilege under Clause (6) of Article 22.

13. Sri S. N. Duvedi who appears for the Petitioner has invited our attention to the grounds furnished to the Petitioner and has contended that three of them are of a most unsatisfactory nature, namely grounds Nos. 6, 7 and 12. In ground No. 6 it is stated that the Petitioner had been planning designs with some two or three others for getting the house of the mill-owners Messrs. Ramdayal Chhitarmal looted and for bringing them to humiliation and disrepute. It will be seen that neither the time nor the place nor the names of the persons with whom he was planning have been disclosed.

14. In ground No. 7 it is alleged against the Petitioner that he had been threatening the labour class which had not joined hands with him to leave the mills and join with him; a specific instance has also been mentioned in the second part of this ground, No particulars of the labour class or of the mills have been given in this ground, I may say that I should not have disposed to look upon either of the grounds Nos. 6 and 7 as fatal had it not been for ground No. 12. I shall, therefore, come to ground No. 12.

15. In that ground it is said that the Petitioner had sponsored, led and organised two illegal strikes in which breaches involving peace and public disturbance occurred. Neither the time nor the place of these strikes has been mentioned in this ground. Whether these strikes were organised in Agra or somewhere else is not at all clear from it. It cannot be said from reading it what the period when

these strikes were organised was. Though these strikes are described as illegal, the matter in connection with which they were organised is not indicated. I am, therefore, driven to the conclusion that the grounds are unsatisfactory.

As Patanjali Sastri, C. J. points out, the fact that the petitioner would suffer no hardship or prejudice by reason of sufficient particulars not having been already furnished to him is immaterial.

"The question, however, is not", as he puts it, "whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representation but whether his constitutional safeguard has been infringed."

This is a case in which possibly good grounds for detention have been mixed up with vague, indefinite and bad grounds. Having regard to the fact that the view which the Supreme Court has taken, is that the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of Article 21 unless the constitutional requirement with respect to each of the ground communicated to the person detained subject to a claim of a privilege under Clause (6) of Article 22 is satisfied, there is no alternative before us but to direct release of the Petitioner.

16. The petitioner must, therefore, succeed and I agree with the order of my brother Mootham that the Petitioner be released forthwith.

By The Court

17. The petition is allowed with costs. The petitioner is entitled to be released and we direct that he be set at liberty forthwith.