Thakur Prasad Bania And Ors. vs The State Of Bihar on 13 August, 1955

Equivalent citations: AIR1955SC631, 1955(0)BLJR659, 1955CRILJ1408, AIR 1955 SUPREME COURT 631

JUDGMENT

Jagannadhadas, J.

1. These five are petitions by five individuals who are now under detention for the issue of a writ in the nature of 'habeas corpus' in respect of each of them. The orders of detention in question were issued by the District Magistrate of Saran on 17-10-1954, and the Government passed further orders under Section 3 of the Preventive Detention Act, 1950 (Act IV of 1950) on 27-10-1954, approving the detention orders passed by the District Magistrate.

These orders were confirmed later by the Government, on 5-1-1955, presumably after die consideration thereof by the Advisory Board and the detention in respect of each was directed to be continued until 17-10-1955. The grounds of detention in all these cases arise out of the same set of facts and are more or less similar, if not the same.

The validity of the detention in each of the cases is attacked on the same grounds and there has been only one single argument in respect of all these petitions. Hence they are dealt with by this common order.

2. One argument of a general nature relating to all these matters arises with reference to the facts set out in paras. 1 to 10 in each of these petitions, the substance of which is as follows. In respect of an alleged disobedience of a prohibitory order banning processions in the town of Siwan on 9-10-1954, i.e. the Dasara day, and for alleged rioting arising out of the said disobedience, there was launched on 10-10-1954, a criminal prosecution against these five petitioners and some others under Sections 143, 145, 147 and 352 of the Penal Code.

On 11-10-1954, a proceeding under Section 107 of the Criminal P. C. was also started against them in view of the alleged disturbances of the 9th October. While these two proceedings were in the initial stages the Government passed the preventive detention orders now under challenge with reference to the same facts as against the present five petitioners and thereafter withdrew the above two criminal proceedings only as against them, while proceeding with the same in respect of the others.

The contention raised is that a detention order pased under these circumstances is an interference with the normal course of justice and is 'ipso facto mala fide' and has got to be quashed on this very ground. Observations of this Court and of some of the High Courts in similar cases have been

brought to my notice which suggest that where the grounds on which a detention order is based are also the subject matter of a criminal prosecution, the order of detention may amount to abuse of the statutory powers.

But no case has laid down, so far, that such an order is necessarily 'mala fide'. Courts have treated such a circumstance as calling for scrutiny as to the 'bona fides' of the detention order but have held that the question of 'mala fides' has got to be decided as one of fact with reference to all the circumstances of an individual case. It is unnecessary, however, in these cases to base the decision on any such view.

In a proper case that question may have to be dealt with fully by this Court.

But here, as has been pointed out in the judgment of the High Court and in the counter-affidavit filed on behalf of the State, the grounds of detention are not wholly the same as the facts in respect of which the prosecution was launched and the proceeding under Section 107 of the Criminal P. C. was initiated.

There are at least four items in the grounds of detention which are not the subject-matter of the prosecution, for instance grounds Nos. 4, 5, 11 and 17. In these circumstances the contention that the detentions are in respect of the very same matters for which the prosecutions were launched and that the detention orders are in the nature of interference with the course of justice and therefore 'mala fide' is not sustainable.

3. The next argument that has been urged before me is that ground No. 17 which is as follows is on the face of it unsupportable.

> "Due to the above enumerated actions of his, communal situation in Siwan town and also its neighbourhood namely, Benusar, Amlori, Pachrukhi, Harihans, Ratharua, Hathuari, Andor and Maharajganj deteriorated so much so that the communal situation became very explosive and serious communal conflagration resulting in wide spread riots became imminent on the evening of 24-9-1954.
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> This could only be averted with the great difficulties by the authorities and after a deployment of considerable armed, unarmed, and mounted police force in the town and the Muffasil requisitioned from Chapra, Patna, Muzzafarpur and Arrah."

To appreciate this argument it is necessary to notice that grounds Nos. 1 to 16 refer to various instances dated 19-9-1954, 20-9-1954, 22-9-1954, 24-9-1954, 29-9-1954, 6-10-1954, 9-10-1954 and 10-10-1954. It is pointed out that the statement "Due to 'the above enumerated' actions of his, the communal situation in Siwan town ..... deteriorated ..... resulting in wide spread riots became imminent on the evening of 24-9-1954 which could only be averted with difficulty by deployment of considerable armed police".

is patently erroneous since the incidents on and after 25-9-1954 could not possibly have any bearing on the situation a day prior there to, viz. 24-9-1954. It is said, therefore, that ground No. 17 is a totally irrelevant and un sustainable ground and that this feature vitiates the entire order. Reliance is placed on -- 'Dr. Ram Krishan Bhardwaj v. State of Delhi', .

The language of ground No. 17 set out above certainly does give scope for this comment and argument, and it is extremely regrettable that in so important a matter as detention of a citizen without trial, such mistakes are allowed to occur suggesting absence of careful scrutiny by the authority concerned.

A perusal, however, of the various grounds arid a reading of para 17 in the light thereof would reasonably indicate that what is stated in para 17 as being the situation by the evening of 24-9-1954, is to be related to the actions enumerated in paras 1 to 6 and not to) those in paras 7 to 16 and that the phrasa "above enumerated" is not necessarily to be related to all the "above" but only to some out of them.

At best it may be said that loose language has been used. Quite apart from this, however, paragraph 17 'purports to do nothing more than to state a fact, viz.

> "that the communal situation became explosive and serious communal conflagration resulting in wide-spread riots became imminent by the evening of the 24th September, 1954."

This is a statement of fact on which, along with the facts in paras 1 to 16, the decision of the Government to detain the petitioners is based. Even assuming that there is some mistake in the enumeration of what events lead to the communal situation, the truth or otherwise of the assertion that there was in fact a communal situation of an explosive nature by the evening of 24-9-1954, is one that cannot be gone into in this Court.

I do not see, therefore, how the case in , can be made to apply to the facts of this case.

4. The next argument is that some of the grounds are vague, for instance ground No. 5 and that, therefore, the principle in , applies to these cases. I have considered carefully all the grounds. I do not find any such vagueness as would handicap the detenu in making proper representation to the Advisory Board.

Indeed the grounds furnished to the detenus in these cases are very elaborate and fairly exhaustive. The obligation of the Government to furnish grounds which are not vague cannot be taken to mean that they must furnish every meticulous detail. I am satisfied that the detenus in these cases could have no grievance against the detention orders on the ground of vagueness of any one of the grounds therein.

5. None of the arguments addressed to me challenging the validity of the orders of detention are sustainable. These applications were accordingly liable to be dismissed and have accordingly, been

dismissed by my orders pronounced in Court on 12-8-1955.