

Gauhati High Court

Dilip Kumar Rajkhowa vs District Magistrate, Nowgong And ... on 19 February, 1981

Equivalent citations: AIR 1981 Gau 81

Bench: D Pathak, K Lahiri

ORDER

1. This is a habeas corpus petition where the detenu has been detained under Section 3(2) of the National Security Act, 1980, with a view to "preventing him from acting in a manner prejudicial to the security of the State, the maintenance of public order". The petitioner was furnished with a copy of the grounds. The first three grounds read as under:

"Grounds of detention of Shri Dilip Raj-khowa, S/o Bishnu Rajkhowa, Village Teliagaon, P. S. Nowgong, Dist. Nowgong (Assam).

1. You as an active member of Jaliyata-badi Dal, Nowgong branch attended a number of meetings of the J, B. D. and emphasised the need to form branch committees of the District at different places of the District and actively mobilising the people to be united under the banner of the J.B.D. to launch agitation on the foreigners issue, Soon after beginning of the current agitation for which an order for your detention under P. D. Act was issued by the District Magistrate, Nowgong on 18-4-80 for your prejudicial activities, but you remained absconding to avoid detention.

2. On 9-9-80 you along with others submitted a memorandum to the Deputy Commissioner, Nowgong protesting against distribution of land to landless people and appealed to stop distribution of land.

3. Immediately after the failure of Delhi talk, you with firm determination actively mobilised the Jatiyatabadi Dal/Yuba Chatra Parishad to continue the agitation till all the foreigners are deported from the soil of Assam."

(Emphasis added)

2. Mr. R. C. Choudhury, the learned counsel for the petitioner submits that the grounds are vague, irrelevant and nonexistent; the grounds Nos. 1, 2, 3 are vague and irrelevant, ground No. 1 is factually incorrect as well. The learned counsel further submits that the subjective satisfaction of the detaining authority was vitiated for non-consideration of material facts and consideration of non-existent facts; none of the grounds touches the fringes of the first of the three concentric circles or "the smallest circle" namely, "the security of the State" for which as well, the petitioner is being detained. The State refutes the contentions.

3. The petitioner made representation wherein he took up the plea that he had never absconded 'to avoid detention' as alleged in ground No. 1. He has stated in his representation as well as in his writ application that he attended his office regularly during the period in question. He stated categorically that his office Attendance Register would show that he was regularly attending his office. He averred in para 8 of his petition as under:--

"That your petitioner begs to state that the ground No. 1 is factually not correct. The same is vague and irrelevant and is devoid of basic facts and material particulars The petitioner begs to state further that he is an employee of the Assam Electricity Board, Nowgong and at the relevant time was working in the office regularly till his arrest on 2-1-81. The Office Attendance Register will show that the petitioner was regularly attending his office."

We have perused the return made by the State and do not find that the allegations of the petitioners were refuted. There is no statement that the petitioner did not attend his office till his arrest on 2-1-81 nor is there any assertion that the Office Attendance Register of the petitioner does not reflect his attendance during the period. The State produced before us the materials on which the District Magistrate had formed his subjective satisfaction, namely, the police report styled as 'dossier'. On perusal thereof we find that the dossier clearly shows that the first detention order had been revoked by the Government before making of the present detention order. Further we are astounded to note that the accusations referred in A in Ground No. 1, namely, that the petitioner being an active member of Jatiyabadi Dal, Nowgong branch had attended a number of meetings of the J. B. D., emphasised the need to form branch committees of the District at different places of the District and had actively mobilised the people to be united under the banner of the J. B. D. to launch agitation on the foreigners issue, are conspicuously absent. It follows therefore that the understructure of ground No. 1 was installed on incorrect or inaccurate statement. We recall Tyson Edward's quip "Accuracy is the twin brother of honesty; inaccuracy is a near kin to falsehood." Even though the above statement is not true for all occasions, we feel that the statement has some relevancy while considering the grounds of detention under the Preventive Detention Laws. Introduction of nonexistent material particular in a ground impressed in the detention order is a serious remiss in "preventive detention" says trial, that takes away the precious right called "freedom".

The alleged activities have nexus with the object of detention. It is difficult to predicate that the activities had no strong influencing effect to bear up and contribute to the creation of "the subjective satisfaction" of the detaining authority. The final authority to form the requisite opinion rests with the Government or the officer authorised; this Court is not an appellate authority to consider "the sufficiency of the grounds". However, detention without a trial merely on the subjective satisfaction is a serious matter. "It must require the closest scrutiny of the material on which the decision is formed, leaving no room for errors or at least avoidable errors"; as ruled in *Rameshwar Lal Patwari v. State of Bihar*, AIR 1968 SC 1303. Their Lordships heavily relied on *Keshav Talpade v. Emperor*, (1943) 5 FCR 88 : AIR 1943 PC 72 and observed (at p. 1306):--

"..... The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

(Emphasis added) The principle is the law of the land as the Supreme Court has confirmed the rule. In *Mintu Bhakla v. State of West Bengal*, AIR 1972 SC 2132, the petitioner had in his representation as well as in the writ petition, contended that on the date of the incident Upon which the detaining reached its subjective satisfaction as to the necessity to detain him, he was actually in police custody and the only answer to such specific defence of the petitioner was a bare denial of the facts and the allegations asserted by the petitioner. The allegations of the petitioner made twice were not answered by cogent, proper or adequate material to disprove them. On the basis thereof their Lordships have held that the allegations remained unanswered and must consequently be accepted in the absence of any cogent reply thereto, one of the grounds of detention was found factually baseless and the whole order of detention was declared invalid. The above principles of law have been reiterated by their Lordships in a catena of cases.

4. While considering the second sentence of Ground No. 1 marked B, we find that the allegations are not wholly correct. The allegation in B is that the petitioner "remained absconding to avoid detention". It is a serious allegation as an abscondence to avoid detention order is a strong circumstance. The petitioner questioned the correctness of the statement not in a negative and bald manner but in a positive and assertive words that at all relevant period, he worked in the A. S. E. B. Office regularly till his arrest on 2-1-81 and the office attendance register would show that he had regularly attended his office during the period. These were asserted twice, once in his representation and then in para 8 of the writ petition (quoted above). The return submitted by the successor to the detaining authority contains a vague reply to the assertions. The respondent admitted that the petitioner was an employee of the Assam State Electricity Board, Nowgong, but nowhere stated that the petitioner did not attend his office during the period, nor is there any assertion in the return that the attendance register does not show regular attendance of the petitioner during his alleged abscondence. The return is neither cogent nor proper or adequate to disprove the specific allegations made twice by the petitioner. "Such a vague answer is neither a proper nor an adequate reply in disproof of the specific allegation made twice by the petitioner. That allegation, therefore, remains unanswered and must consequently be accepted in the absence of any cogent reply therein" vide *Mintu Bhakla* (supra). We reach the same conclusion, Accordingly we are constrained to hold that Ground No. 1 is illusory or non-existent.

Further, Ground No. 1 clearly indicates that the petitioner remained absconding to avoid the order of detention which is a very grave and serious allegation. We are taken aback to note from "the Dossier" produced by the State that the petitioner was not "absconding on the date", as his earlier detention order had been revoked by the Government. The fact that the petitioner was absconding to avoid service of his detention order was undoubtedly a vital and material fact likely to influence the mind of the authority whereas factually he was not an absconder on the said date. The petitioner contested the correctness of the statement and claimed that he was never an absconder. The said vital and material fact was not considered by the detaining authority. If such material and vital facts likely to influence the mind of the authority were not placed before or considered by the detaining authority, it must be held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority and rendered the detention invalid and illegal, as held by the Supreme Court in *Ashadevi v. K. Shivraj*, AIR 1979 SC, 447, *Shaikh Nizamuddin v. State of West Bengal*, AIR 1974 SC 2353; *Suresh Mahato v. District Magistrate*,

Burdwan, AIR 1975 SC 728.

5. In the result, we have no hesitation in arriving at the conclusion that the under-structure of Ground No. I was based on non-existent and illusory material, installed, on incorrect and inaccurate statements and the authorities left out the most material and vital fact that the petitioner was not "absconding". Under the circumstances, when the ground is illusory the order of detention must be declared illegal and this has vitiated the order of detention as well. Grounds 2 and 3 speak about the protest of the petitioner and others to the Deputy Commissioner not to distribute land to landless people with an appeal to stop distribution of land and mobilisation to continue agitation till all the foreigners are deported from the soil of Assam. We are constrained to hold that the grounds cannot have any nexus with the object of detention, namely, the security of the State and/or public order. Accordingly, we conclude that the detention was based on irrelevant grounds.

6. The purpose of detention is for "the security of the State" and "public order". We have scrutinised all the grounds. We have taken into consideration the picturesque notion of three concentric circles, the dimension of gravity and extensity of the acts, the potentiality of the acts, the nature of operations and the physical impact on the community, to arrive at the conclusion that none of the grounds attract the expression "the security of the State" contemplated under "the Act". There is no allegation that the acts were intended to overthrow Government or waging war or rebellion against the Government, or disclose facts to bring the case within the purview of the expression "security of the State", although some of the grounds do attract "public order". However, when the detention is for "the security of the State" as well and there being no material to hold that the detention could be ordered for the said purpose, we conclude that the order of detention is bad.

For the foregoing, reasons, we allow the petition, make the Rule absolute and direct that the petitioner be released forthwith unless he is wanted in connection with any other case.