

Supreme Court of India

Gopal Bar vs State Of West Bengal on 20 January, 1975

Equivalent citations: AIR 1975 SC 751, 1975 CriLJ 612, (1975) 3 SCC 557, 1975 (7) UJ 179 SC

Author: R Sarkaria

Bench: R Sarkaria, V K Iyer

JUDGMENT R.S. Sarkaria, J.

1. The petitioner challenges the validity of the order of his detention made under Section 3 of the Maintenance of Internal Security Act, 1971, by the District Magistrate, Howrah. The order states that the detention has been made with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The order is founded on two incidents, the facts of which were incorporated in the grounds of detention and are as under

1. On 19-2-1973 at 20.07 hrs. at Beleaguer Railway Station you along with your associates being armed with deadly weapons like bombs, daggers etc. stopped train No. 72 Dn. in between KM Post No. 10/20 to 10/31 and committed theft in respect of 13 pegs by breaking open the wagons. On being challenged by the R P.F. Party you and your associates attacked them by pelting stones and hurling bombs in order to take away the stolen properties by scaring them away. The R.P.F. Party warned against the firing when you and you associates could make goods escape with 3 pegs., leaving behind 10 Nos. pegs. which were recovered by them. As a result of this incident train services in Howrah-Burdwan Chord Line was seriously disrupted.

2. On 1-3 73 at 08.30 hrs. at Howrah Goods Yard you along with your associates being armed with deadly weapons like bombs, daggers etc. committed theft of batteries from an empty rake which was stabled near location Box No. 34 in between Chandmari Bridge and Flyover Bridge. The RPF party tried to resist when you and your associates attacked them by pelting stones and hurling bombs in order to take away the stolen batteries by scoring them away. When the R.P F. Party warned against firing you and your associates fled away with the stolen batteries leaving behind two batteries which were recovered by the R.P.F. men. As a result of this train services in Howrah-Burdwan Main and Chord Lines were seriously disrupted.

2. In respect of the incident of 19 2 1973, G.R.P.S. Case No. 63 under Section 147/336/307/461/379, Penal Code and Sections 3 & 5 of the Explosive Substances Act was registered with the police under the aforesaid sections of Penal Code and of the Explosive Substances Act in respect of the second incident, dated 1-3-1973. The petitioner was not named in the F.I.Rs. His complicity was revealed during investigation of the above cases He was arrested by the police on 22-3-1973 in connection with those cases He was forwarded to a judicial Magistrate who however freed him from custody on 16-6-1973 Pursuant to the order of detention, he was taken in to custody soon after his release. The final report by the police to the judicial Magistrate in those cases was made on 18-8-1973 with a prayer that the detenu be discharged from the said cases as the witnesses, being afraid of the detenu, who was a dangerous character, were not willing to dispose against him in court. In consequence, the Magistrate discharged the petitioner in those cases on 18-8-1973

3. The first contention of Mr. Aneja, learned Counsel appearing as amicus curiae for the petitioner is that the second ground of detention was not germane to the object of supplies and services essential to the community. The contention must be repelled. The second ground speaks of theft of batteries from an empty rake which was stabled between Chandmari Bridge and Flyover Bridge at Howrah Goods Railway Yard. When the R.P.F. Party intervened, the miscreants attacked them by hurling bombs and succeeded in removing forcibly the stolen property to some distance. According to the counter this had resulted in disruption of the train services Batteries are essential equipment. The mere fact that at the time of theft the rake lay stabled, and was not in motion, does not mean that the theft of this essential equipment would not prejudicially affect the smooth and systematic running of the trains.

4. Next it is contended by Mr. Anima that these were simple cases of theft and that the explanation gives in the counter affidavit for not proceeding with the prosecution of the petitioner for substantive offences, is too unreasonable to be believed by a reasonable man Stress has been laid on the fact that the only material witnesses in these cases would be the members of the Railway Protection Force who could not be expected to be afraid of the petitioner or his associates. In support of this contention reliance has been placed on the decision of this Court in *Sri Lal Shaw v. State of West Bengal* (1)

5. It appears to us that the ratio of *Sri Lal Shaw's* case (*supra*) is not applicable to the facts of the present case. Here, the detention order was founded on two incidents relating to the commission of theft of railway equipments. The miscreants were armed with deadly weapons including bombs which they actually hurled at the Railway Protection Force On the second occasion on 1-3-1973, they had actually succeed in cowing down the Railway Protection Force. Further point to be noted is that the petitioner was not named in the F.I.Rs, nor was he identified at the time of these incidents by the Railway Protection Force. Consequently, in order to bring home those offences, the prosecution had to examine some private persons to connect the petitioner with the commission of these offences. In the circumstances of the case, therefore, it would not be extravagant or frivolous to say that the prosecution witnesses particularly those who were not members of the R. P. Fs being afraid were not willing to depose against the petitioner in open court. In the counter, the District Magistrate who had passed the impugned order of detention has categorically averred. Both the acts stated in the grounds of detention were committed by the detenu along with his associates in quick succession and in course of about 10 days. The nature of acts, the manner in which the same were committed, the effect and result of said activities upon the community and the disruption in smooth running of train services between Howrah-Burdwan Main and Chord line were taken by me into consideration before making the order of detention I carefully scrutinised the materials on record in support of the grounds of detention collected by officers experienced in investigating cases of the kind stated in the grounds of detention collected by officers experienced in investigating cases of the kind stated in the grounds of detention and was satisfied about the authenticity of the same. The daring acts committed by the detenu showed a course of conduct and tendency which satisfied me that it was necessary to make the order of detention of the said detenu petitioner.

6. There is no good ground to reject these averments. We therefore negative the second contention also. The petition fails and is dismissed. Rule discharged.