

Supreme Court of India

Joydeb Dana vs State Of West Bengal on 6 January, 1969

Equivalent citations: 1969 (1) UJ 1 SC

Author: Ramaswami

Bench: Shah, Ramaswami, Grover

JUDGMENT Ramaswami, J.

1. In this case the petitioners have obtained a rule calling upon the respondent, viz., The State of West Bengal to show cause why a writ of habeas corpus should not be issued under Article 32 of the Constitution directing their release from detention under orders passed under Section 3(2) of the Preventive Detention Act, 1950 (Act IV of 1950), hereinafter called the 'Act'.

2. Cause has been shown by Mr. Debabrata Mukherjee and Other Counsel on behalf of the respondent to whom notice of the rule was ordered to be given.

3. The case of the petitioners may be considered in the following three groups ; (1) Petitioners Nos. 3, 13, 14, 15, 16 17 and 18; (2) Petitioner No. 1; and (3) Petitioners Nos. 2, 5, 6 and 8.

4. At the time of the hearing of this petition it was reported that petitioners Nos. 4, 7, 9, 10, 11 and 12 have already been released from jail. The cases of these petitioners are therefore dismissed as infructuous. At the conclusion of the hearing of this petition on December 3, 1968 we directed the release of petitioners mentioned in groups (1) and (2), viz., Nos. 3, 13, 14, 15, 16, 17, 18 and No. 1 and said that reasons would be furnished later. We shall now proceed to state these reasons.

5. As regards petitioner No. 16, Ajit Kumar Roy, the order of detention was made on May 9, 1968 by the District Magistrate, Hooghly and reads as follows ;

"No. 834/C DATED, CHINSURAH THE 9TH MAY, 1968.

Whereas I am satisfied with respect to the person known as Ajit Kumar Roy, s/o Sudhir Kumar Roy of 66, Jhappukur New Colony, P.S. Chinsurah 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, I therefore, in exercise of the powers conferred by Section 3(2) of the Preventive Detention Act, 1950, make this order directing that the said Shri Ajit Kumar Roy be detained.

Given under my hand and seal of office.

Sd -

District Magistrate, Hooghly."

On the same date the following grounds of detention were communicated to the detenu :

"1. You are being detained in pursuance of a detention order made Under sub-section 2 of Section 3 of the Preventive Detention Act, 1950 (Act IV of 1950) on the following grounds :--

2. That you have been acting in a manner prejudicial to the maintenance of public order by commission of offences of riotous conduct and assault as noted below :

(a) On 18.1.68 at 20. 30 hrs. at Keota Checkpost P. S. Chinsurah, you assaulted Police personnel and looted away seized rice from Police custody. This refers to Chinsurah P. S. Case No. 30 dt. 19. 1. 68, u/s 147/353/379 IPC. The case is pending investigation.

(b) On 6.3.68 at 16. 30 hrs. at Keota Private Colony P. S. Chinsurah, you assaulted Shri Rabindra Nath Dey, s/o Pramatha Nath Dey of Keota Private Colony, P. S. Chinsurah as he refused to purchase a stolen cycle. This refers to Chin-surah P. S. C. D. Entry No. 361 dt. 6-3-68. The allegation was enquired into and found to be true.

(c) On 7. 3. 68 at 19. 00 hrs. at Keota Colony No. 3 P.S. Chinsurah, you assaulted Shri Sukhamay Chakravorty, s/o Shri Bhopendra Nath Chakravorty of Keota Colony No. 3 P. S.

Chinsurah as he refused to purchase a stolen watch. This refers to Chinsurah . P. S. C. D. Entry no. 429 dt. 7- 3. 68 which was enquired into and found to be true.

(d) On 11-3-68 at 18.30 hrs. at Keota no. 2 Govt. Colony, P.S. Chinsurah you assaulted Shri Panchan Sanyal, s/o Jogendra Sanyal of Keota no. 2 Govt. Colony P. S. Chinsurah as he refused to purchase a stolen transistor Radio. This refers to Chinsurah P. S. G. D. Entry no. 691 dt. 11-3-63 which was enquired into and found to be true.

(e) On 16-3-68 at 08.30 hrs. on the G. T. Road near Dunlop Gate you assaulted Kalipada Majumder, s/o Late Aditya Kr. Majumder of Keota Colony, P.S. Chinsurah as he helped Police in taking action against antisocial elements. This refers to Chinsurah P.S G.D. Entry No. 1054 dt. 16-3-68 "which was found to be true on enquiry.

(f) On 19-3-68 at 02.00 hrs. at Keota No. 2 Govt. Colony P.S. Chinsurah you threatened Shri Kalipada Majumder s/o Late Aditya Kr. Majumder of Keota no. 2 Govt. Colony P.S. Chinsurah with assault and mischief. This refers to Chinsurah P.S.G.D. Entry No. 1256 dt. 19-3-68 which was found to be true on enquiry.

(g) On 27.3.68 at 12.00 hrs. on the G.T. Road near Dunlop Gate, P. S. Chinsurah you assaulted Anil Ch. Saha, s/o Rasik Ch. Saha of Keota no. 1, Govt. Colony P. S. Chinsurah and demanded Rs. 30/- from him. This refers to Chinsurah P. S. G. D. Entry no. 1843 dt. 27-3.68 which was found to be true on enquiry.

3. You are hereby informed that you make a representation to the State Govt. within 30 days of receipt of the "detention order and that such representation should be addressed to the Asstt. Secy, to the Govt. of West Bengal, Home Department, 'Special Section, Writers Buildings, Calcutta and

forwarded through the Superintendent of Jail in which you are detained.

4. You are also informed that under Section 10 of Preventive Detention Act, 1950 (Act IV of 1950) the Advisory Board "shall, if you desire to be so heard, hear you in person and that if you desire to be so heard by the Advisory Board, you should intimate such desire in your representation to the State Government.

Sd/- B. N. Chatterjee, District Magistrate, Hooghly."

6. On July 15, 1963 the Advisory Board made a report under Section 10 of the Act stating that there was sufficient cause for detention of Shri Ajit Kumar Roy. On July 24, 1968, the Governor of West Bengal confirmed the detention order under s. 11(1) of the Act.

Section 5 of the Act provides :

"3.(1) The Central Government or the State Government may-

(a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to :

(i) the defence of India, the relations of India with foreign powers or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) If satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act 1946 (XXXI of 1946), that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do make an order directing that such persons be detained, (2) Any of the following officers, namely,

(a) District Magistrates,

(b) Additional District Magistrates specially empowered in this behalf by the State Government,

(c) The Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad,

(d) Collector in the State of Hyderabad, may if satisfied as provided in Sub-clauses, (2) and (3) of Clause (a) of Sub-section (1) exercise powers conferred by the said sub-section.

(3) When any order is made under this Section by an officer mentioned in Sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order made after the commencement of the Preventive Detention (Second

Amendment) Act 1952, shall remain in force for more than twelve days after the making thereof unless in the mean-time it has been approved by State Government.

(4) When any order is made or approved by the State Government under this section the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have bearing on the necessity for the order."

Section 7 is to the following effect :

"7. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

7. It was argued by Mr. Garg on behalf of the petitioners that grounds (b), (c) and (d) served upon Sri Ajit Kumar Roy are not grounds which are relevant to "Maintenance of public order." It was said that these grounds relate to cases of assault to individuals and have no relevance or proximate connection with the maintenance of public order. It was therefore contended that the order of detention was illegal and the case is covered by the decision of this Court in Pushkar Mukherjee v. The State of West Bengal(1). In our opinion, the argument put forward by Mr. Garg on behalf of petitioner No., 16 is well-founded and must be accepted as correct. It was pointed out on behalf of the respondent that ground No. (a) relates to assault on Police personnel and looting of rice from police custody and must be held to be a matter prejudicial to public order. We shall assume in favour of the respondent that ground (a) is a matter prejudicial to public order. But even upon that assumption the order of detention must be held to be illegal. For it is now well-established that even if any of the grounds or reasons that led to the satisfaction is irrelevant, the order of detention would be invalid even if there were other relevant grounds, because it can never be certain to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them. In our opinion, the principle of the decision of this Court in Pushkar Mukherjee v. The State of West Bengal(1) applies to the present case and the order of detention of petitioner No. 16, Ajit Kumar Roy dated May 9, 1968 and the consequent order made by the Governor dated July 24, 1968 confirming the order of detention under s. 11(1) of the Act must be declared to be illegal and accordingly the petitioner, Ajit Kumar Roy is entitled to be released from custody forthwith.

In the case of petitioners 3, 13, 14 15 and 17 and 18 the orders of detention suffer from the same defect as that in the case of petitioner No. 16, Ajit Kumar Roy. For the reasons already given we hold that the orders of detention made under s. 3 (2) of the Act and the orders of confirmation by the State Government under s. 11. (1) of the Act in the case of all these petitioners are illegal and ultra vires and these petitioners are also entitled to be set at liberty forthwith.

8. We pass on to consider the case of petitioner No. 1, Joy deb Dana mentioned in Group (2). The order of detention in his case was made by the District Magistrate, Hooghly on April 5, 1968 and reads as follows:

"No. 619-C DATED, CHINSURAH, THE 5-4-1968.

Whereas I am satisfied with respect to the person known as Shri Joydeb Dana @ Badal Chandra Dana son of L. Jatindra Nath Dana of Naisarai, P. S. Arambagh Dist. Hooghly that with a view to preventing him from acting in any manner-prejudicial to the maintenance of supplies and services essential to the community, it is necessary so to do, I therefore in exercise of the powers conferred by Sec. 3 (2) of the Preventive Detention Act, 1950, make this order directing that the said Shri Joydeb Dana @ Badal Chandra Dana be detained.

Given under my hand and seal of office.

Sd/- B.N. Chatterjee.

District Magistrate, Hooghly."

The grounds of detention were served upon the detenu on same date and are to the following effect :

You are hereby detained in pursuance of detention order Under Sub-section (2) of Section 3 of the Preventive Detention Act, 1950 (Act IV of 1950 ) on the following grounds :

2. That you have been acting in a manner prejudicial to the maintenance of supplies and services essential to the community as noted below :

(a) A Public petition of the members of the Public of Arambagh P. S. dated 7-3-68 indicated that you were operating a husking machine with huller No. 2 instead of huller no. 8 as mentioned in your license, at Naisarai during day and night and husking stocks of smuggled paddy in an unauthorised manner. The petition was enquired into and found to be true.

(b) Secret report of the Hooghly D.E.B. dt. 24-3-68 indicated that you husked stocks of smuggled paddy in your Husking machine illegally situated at Naisarai, P.S. Arambagh, Dist. Hooghly on the same date between 08.00 to 20.00 hours and despatched those rice to the dishonest traders of Naisarai without any authority for the purpose of blackmarketing.

(c) On 28-3-68 between 08.00 hrs. to 12.00 hours in course of a D. E. B. raid, Police seized 2 hullers and some other machinery parts from your machine premises at Naisarai, which do not cover in your license and also 11 1/2 bags of un accounted stocks of paddy as you failed to produce any authority for the possession of those commodities.

3. You are hereby informed that you may make representation to the State Govt. as soon as possible, on receipt of the detention order and such representation should be addressed to the Asstt. Secy. to

the Govt. of West Bengal, Home Deptt., (Spl. Sec), writers' Building, Calcutta-1 and forwarded through the Supdt. of the Jail in which you are detained.

4. You are also informed that u/s. 10 of the Preventive Detention Act 1950 (Act IV of 1950 ) the Advisory Board shall hear you in person and if you desire to be so heard by the Advisory Board, you should intimate such desire in your representation to the State Government.

Sd/- B.N. Chatterjee District Magistrate, Hooghly."

9. On June 10, 1968, the Advisory Board reported that there was sufficient cause for detention of the detenu. On June 16, 1968 the Government of west Bengal confirmed the order of detention under s. 11(1) of the Act.

10. It appears to us that ground (b) is extremely vague. Ground (b) states: "Secret report of the Hooghly D.E.B. dt. 24-3-68 indicated that you have husked stocks of smuggled paddy in your Husking machine illegally situated at Naisarai, P.S. Arambagh, Dist. Hooghly on the same date between 08.00 to 20.00 hours and despatched those rice to the dishonest traders of Naisarai without any authority for the purpose of black-marketting." It is manifest that this ground is extremely vague and gives no particulars of the "dishonest traders" to whom the rice was alleged to have been despatched and the particulars are not sufficiently precise and concrete to enable the detenu to make an adequate representation against the order of detention and therefore infringes the Constitutional safeguard provided under art. 22(5). It was, however, argued by Mr. Debabrata Mukherjee on behalf of the respondent that even though ground (b) may be vague, the other grounds supplied to the detenu are not vague and full and adequate particulars have been furnished. But it is well-established that the Constitutional requirement that the grounds must not be vague must be satisfied with regard to each of the grounds communicated to the person detained subject to the claim of privilege under Clause (6) of Article 22 of the Constitution and therefore, even though one ground is vague and the other grounds are not vague, the detention is not in accordance with procedure established by law and is therefore illegal. In our opinion, the present case falls within the principle of the decision of this Court in Pushkar Mukherjee v. The State of West Bengal (1). We accordingly hold that the order of detention made against petitioner No. 1, Joydeb Dana by the District Magistrate of Hooghly on April 5, 1968 and the consequent order of the Governor of West Bengal dated June 16, 1968 confirming the order of detention were illegal and ultra vires.

11. As regards petitioners Nos. 2, 5, 6 and 8, Mr. Garg pressed the argument that there was nothing to show that the State Government had considered the representations of the petitioners and applied its mind before forwarding their cases to the Advisory Board. It was said that the duty of the State Government was not merely mechanical and unless it had properly considered the representations before sending them on to the Advisory Board, the orders of detention would be illegal. Mr. Dhebar on behalf of Mr. Mukherjee prayed for time to file additional affidavit. Accordingly, we have granted an adjournment. The case of the petitioner will be dealt with later on.