

Samir Das and anr. Vs. the District Magistrate and ors.

Samir Das and anr. Vs. the District Magistrate and ors.

SooperKanoon Citation : sooperkanoon.com/129535

Court : Guwahati

Decided On : Jun-25-1974

Judge : D.M. Sen and B.N. Sarma, JJ.

Appellant : Samir Das and anr.

Respondent : The District Magistrate and ors.

Judgement :

Sen, J.

1. Criminal Misc. Case No. 51 (H.C.) of 1974 arises out of an application under Article 226 of the Constitution of India, directed against an order dated 3-5-1974 passed by the District Magistrate, Kamrup. Gauhati, detaining the petitioner under Section 3(2)(a) of the Maintenance of Internal Security Act, 1971 (hereinafter called 'the Act').

The impugned order reads as under:

Whereas I am satisfied with respect to the person known as Shri Prof. Samir Das S/o. Suresh Das of Pandu College, P. S. Jhalukbari, District Kamrup, that with a view of preventing him from acting in a manner prejudicial to the maintenance of services essential to the community, it is necessary to make the following orders:

Now. therefore, in exercise of the powers conferred on me under Section 3 (2)(a) of the Maintenance of Internal Security Act, 1971, I Shri B. r. Singh, I. A. S., District Magistrate, Kamrup, Gauhati do hereby direct that the said Shri Prof. Samir Das be detained with immediate effect and until further orders at Gauhati Jail.

2. The grounds of detention furnished to the petitioner are contained in Annexure B, which reads as under:

That you, being a leader of C.P.M. addressed meetings of Railway employees on 16-3-1974 and 21-3-1974 at Rava Park, Maligaoi and incited the Railway employees to resort to indefinite strike demanding fulfilment of their demands and- in pursuance of such incitement the Railway employees whose unions or associations are constituent members of the National Co-ordination Committee for Railway men's struggle have decided to launch an indefinite strike with effect from 8-5-1974 in N. F, Rly. Zone and as a result the movement of essential commodities in Kamrup district is going to be completely immobilised.

You are, thus, acting in a manner prejudicial to the maintenance of supplies essential to the community in this district and your being at large has jeopardized the maintenance of such supplies.

3. The petitioner contends that the grounds of detention as per Annexure B do not support the recital or preamble as stated in Annexure A, The order of detention was passed with a view to preventing the petitioner from acting in a manner prejudicial to the maintenance of services essential to the community, while the ground furnished to him was that he was acting in a manner prejudicial to the supplies to the community. In Section 3 (1) (a) (iii) of the Act, the words 'services' and 'supplies' have not been used in a conjunctive sense; they have been used disjunctively, that is to say. these two terms are not synonymous although in certain cases they may be overlapping. In the instant case, according to the petitioner, the order at Annexure A is relat-able only to the maintenance of services, whereas in the grounds the averment is with regard to the maintenance of supplies. This will show that the grounds, which are the materials on basis of which the conclusion of the detaining authority regarding the necessity for the

preventive detention has been arrived at. are not referable to the order.

4. The petitioner has also challenged the detention order on the ground that the materials or reasons which led to the conclusion of the detaining authority as regards the need for the petitioner's detention are no longer existent on the date of the return, which alone is the relevant date for consideration in a habeas corpus application. As has been held in *Ram Narayan Singh v. State of Delhi*. : 1953 CriLJ113 . 'In habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. In the instant case, the date of the return was 19th June, 1974 and we are to examine with reference to this date whether the grounds mentioned in Annexure B in support of the detention order were existent on the said date.

5. In our opinion, the question whether the grounds ' of detention show that the detention is ab initio illegal must be kept distinct from the question whether they have on the date of the return become non-existent, irrelevant or extraneous. Thus, even if the detention order is not void ab initio, it might become illegal when the grounds have ceased to be germane or have otherwise spent their force. We also have to take note of the fact that preventive detention is something distinct from punitive custody. As has been observed in *A, K. Gopalan v. State of Madras* : 1950 CriLJ1383 .

The word 'preventive' is used in contradistinction to the word 'punitive'. To quote the words of Lord Finlay in *Rex v. Halliday*, 1917 AC 260 at p. 269 : (86 LJKB 1119), 'it is not a punitive but a precautionary measure'. The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated; and the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence.

The basic justification for preventive detention under our jurisprudence is, therefore, a reasonable apprehension in the mind of the detaining authority that the detenu might act in one of the prejudicial manners specified in Section 3 (1) (a) of the Act and the need for taking some precautionary measure to prevent him

from doing so. If, therefore, the grounds taken by the detaining authority in support of the preventive detention and on which its order must necessarily rest have ceased to exist on the date of the return, the court would have nothing before it to determine whether such grounds, which have lapsed or spent their force meanwhile, can have any nexus with the object purported to be served by the order of detention. No doubt, the sufficiency of any of the grounds as opposed to their rational connection with any of the objects specified in Section 3 (1) (a) of the Act cannot be subjected to a judicial probe. But, where the grounds have disappeared, the position would certainly be the same as if the grounds were non-existent, irrelevant extraneous, illusory or vague.

6. We must be careful that there is no assumption of authority by the judiciary beyond what is expressly provided under the law, even for protection of civil liberties, but, at the same time, as has been held in AIR 1950 SC 27 = 51 Cri LJ 1383 (supra), although there may be no objective standard which the court can utilise for determining whether requirements of law have been complied with, as regards the sufficiency of any grounds, on basis of which the detaining authority has arrived at its satisfaction, the grounds must nevertheless be such as would prima facie justify the curtailment of liberty of a citizen, in order to achieve or avoid one of the objects specified in Section 3 (1) (a) of the Act. When it comes to preventive detention, the very purpose is to prevent the individual not merely from acting in a particular way. but from achieving a particular object. Preventive detention is effected with a view to preventing the person concerned from acting prejudicially with regard to certain objects, which the legislature provided for such detention as in view. If the grounds indicate beyond any dispute that such objects could no longer be in view, because of changed circumstances or the non-existence of the objects, the preventive detention itself would be against the provisions of the Act.

7. In the instant case, the grounds furnished are that the petitioner being a leader of the C. P. I. (M) addressed meetings of Railway employees on 16-3-1974 and 21-3-1974 at Maligaon; that he incited the Railway employees to resort to an indefinite strike; that in pursuance of such incitement the Railway employees decided to launch an indefinite strike: and as a result of such strike movement of

essential commodities in Kamrup District was going to be completely immobilised. The grounds as stated above clearly indicate that the object to be avoided was disruption of essential commodities in Kamrup District, resulting from the indefinite strike that was to be launched by the Railwaymen. It is not disputed that the Railway strike has now been unilaterally called off and that whatever disruption such strike might have caused was a1 ready over. In any case, the Railway strike having been called off, it could no longer further generate any disruption of movement of essential commodities. It was the possibility of this resultant disruption that was the ground for the detention. This around no longer exists on the date of return in this habeas corpus application and, as such, we must hold that the said ground which has been furnished to the petitioner under Article 22(5) of the Constitution of India has become nonexistent and therefore irrelevant. In any case, after the strike had been called off, no object relatable to Section 3 /I) (a) of the Act could be served by the continued detention of the petitioner and, as such, any further preventive detention would, on the grounds furnished to the petitioner, be mala fide, as not being relatable rationally to any of the objects which are to be avoided or achieved under the Act. In *P. Mukherjee v. State of West Bengal* : 1970 CriLJ852 their Lordships have held:

The detenu may urge that along with other facts which show mala fides, the grounds served on him cannot rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3 (1) (a) cannot be questioned before the courts.

In the instant case, the ground that as a result of the strike the movement of essential commodities in Kamrup District is going to be completely immobilised, can no longer rationally support the conclusion drawn against the petitioner by the detaining authority that it is necessary, as a precautionary measure, to confine him in detention. As we have stated earlier, in a habeas corpus application whether the grounds can rationally support the conclusion or not, are to be subjected to a judicial probe with reference to the; date of the return. We may refer in this connection to *Pranab Chatterjee v. State of Bihar*, : (1970)3SCC926 where their

Lordships of the Supreme Court have again reiterated their view that in habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention of the person at the date of the return and not with reference to the institution of proceedings, in this case the date of the order of detention. If on the date of the return, a vital ground is shown to be non-existent, so that it could not have and ought not to have formed a part of the material for consideration, the court must attach some importance to that fact in order to determine whether the detention order has since become illegal.

8. For the reasons stated above, we are of the opinion that the order of detention must be struck down as being contrary to law and a direction be issued to release the petitioner forthwith from detention.

9. Since we are setting aside the order of detention for the reason that the ground furnished under Article 22(5) of the Constitution has become non-existent on the date of the return, it is not necessary for us to examine the other contentions of the petitioner.

10. The above direction to release the petitioner from detention was passed on 21st June, 1974, but today in this judgment, we are stating our reasons therefor.

11. In Criminal Misc. Case No. 52 (H.C.) of 1974. the facts and points of law involved are the same as in Criminal Misc. Case No. 51 (H.C.) of 1974. In this case also, we pass the same order as in Criminal Misc. Case No. 51 (H, C.) of 1974.

B. N. Sabma, J.

I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com