

State Vs. Chandra Bali Singh

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Court : Allahabad

Decided On : Jul-24-1959

Reported in : AIR1960All124; 1960CriLJ203

Judge : B.R. James and ;S.N. Sahai, JJ.

Acts : [Prisons Act, 1894](#) - Sections 45, 45(1), 46(1), 50 and 52; [Constitution of India](#) - Articles 14, 20 and 20(2)

Appeal No. : Govt. Appeal Nos. 1599, 1600 and 1604 of 1957

Appellant : State

Respondent : Chandra Bali Singh

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : S.C. Khare, Adv.

Disposition : Appeals dismissed

Judgement :

S.N. Sahai, J.

1. These six appeals are against the order passed by the learned Civil and Sessions Judge of Deoria, acquitting the respondents in each case of an offence punishable under Section 52 of the Prisons Act (Act IX of 1894). Chandrabali

Singh is the respondent in Govt. Appeal No. 1599 of 1957 while Brijraj Singh, Raj Kishore, Sardar Ambrik Singh, Krishna Lal and Ugrasen Singh are the respondents in Govt. Appeals Nos. 1600, 1601, 1602, 1603 and 1604 respectively.

2. The facts of the case lie within a very narrow compass. The respondents who are members of the Socialist party, were admitted in the district Jail, Deoria, under Section 188 I. P. C. on the 29th September, 1956 at 9.15 a.m. after being sent from the court of Sri G. P. Misra, Magistrate first class, Deoria, as undertrials. The charge against them was that when in jail as undertrials they refused to take food stating that they were on hunger strike from outside.

According to the testimony of Sri Badri Prasad Misra, Jailor, District Jail, Deoria, who was on duty on the aforesaid date, on their admission into the jail he offered food to them but they refused to take it as they were on hunger strike. Sri Badri Prasad warned them that it was an offence not to take meals inside the jail and read out paragraph 742 of the Jail Manual to them.

3. The first instance of refusal to take food was on the 29th September, 1956 at midday. The Superintendent of jail also came in the meantime. Both of them went to barrack No. 3 where the accused were lodged. But in spite of their persuasion the accused did not take either the evening meal of 29th or the first two meals of the 30th September, 1956. They, however, took their meals in the night of that day. In view of the persisting refusal of the accused to take their meals on the 29th the Jailor made a note on the history ticket of every accused to the effect 'Refusing to take food' and underneath it the Superintendent of jail wrote: 'Warned that this is a major jail offence under jail rules and he is liable to prosecution.'

On the morning of the 30th a complaint was sent by the Superintendent, District Jail, Deoria to the District Magistrate of that district which ran as follows:

'I have the honour to report that undertrial prisoners, Sri Krishna Rai, Chandrabali Singh, Raj Kishore, Ugrasen Singh, Sardar Ambrik Singh and Brijraj Singh admitted into jail on the 29th September, 1956 under Section 188 I. P. C. from the Court of Sri G. P. Misra, Magistrate first class, have refused to take food stating that they are on hunger strike from outside. They have been warned that hunger

strike inside the jail is a major jail offence and they are liable to be prosecuted, vide paragraph 742 of the Jail Manual. Action may kindly be taken to prosecute them under Section 52, Prisons Act, accordingly in anticipation of Inspector General's sanction.'

The requisite sanction was received from the Inspector General of Prisons on the 31st October, 1956, which may also be quoted in full :

'Whereas I am satisfied from the report No. 1241/ UT, dated 30th September, 1956, of the Superintendent, District Jail, Deoria, that undertrial prisoners Krishna Rai, Chandrabali Singli, Raj Kishore, Ugra-sen Singh, Sardar Ambrik Singh and Brijraj Singh, confined in the district Jail, Deoria continued to remain on hunger strike when admitted into the jail on 29th September, 1956, in spite of being warned that such action constitutes a major jail offence, vide paragraph 742 of the Jail Manual.

Now, therefore, I. C. P. Tandon P.M.S.I., Inspector General of Prisons, U.P., hereby sanction the prosecution of the said undertrial prisoners Krishna Rai, Chandrabali Singh, Raj Kishore, Ugrasen Singh, Sardar Ambrik Singh and Brijraj Singli under Section 52 of the Prisons Act.'

It may be stated here that prosecution was launched before the receipt of the sanction of the Inspector General of Police U.P. The procedure adopted at the trial was one of summons cases. No formal charge was framed against any one of the accused. When examined in court they denied the fact that they went on hunger strike or that they refused to take food.

4. The prosecution, in support of its case, examined Sri Badri Prasad Misra, Jailor, District Jail, Deoria, Sri Satgur Behari, Deputy Jailor, and Sri Vijay Nath Misra, Assistant Jailor of the same jail. The trial court accepted their testimony and held that the prosecution had established its case against each of the accused and convicted find sentenced them to nine months' R. I. under Section 52 of the Prisons Act. On appeal the learned Civil and Sessions Judge upheld the finding of fact recorded by the Trial court that the accused had when admitted to the jail as undertrials resorted to hunger strike inside the jail and had deliberately refused to

take food fully knowing the consequences of their act.

He, however, allowed the appeals of all the accused and acquitted them of the offence with which they were charged on the ground that Section 52 of the Prisons Act violated the fundamental rights guaranteed by Article 14 of the Constitution and as such was void under Article 13. The State Government, feeling aggrieved with the order passed by the lower appellate court, has filed these appeals against the acquittal of the respondents.

5. According to the prosecution the respondents by going on hunger strike were guilty of an offence under the Prisons Act, Section 45 of the Prisons Act enumerates such offences. Clause (1) of that section is the relevant clause for the purposes of this case. It runs as follows : 45(1)

'Such wilful disobedience to any regulation of the prison as shall have been declared by rules made under Section 59 to be a prison-offence.'

The U. P. Jail Manual contains rules framed under Section 59 of the Prisons Act and according to paragraph 806 of the aforesaid manual 'refusing to take food' has been made an offence in sub-para (17). It is evident that if as has been found (and the finding appears to be quite justified on the evidence produced), the accused refused to take food when offered by the jail authorities they committed an offence punishable under the Prisons Act.

6. It was, however, urged before us by the learned counsel for the respondents that even if it be held that they were guilty of the offence of refusing to take food they had already been punished by the warning given by the Superintendent of jail and they could not be punished again for the same offence in view of the second proviso to Section 52 of the Prisons Act which provides that no person shall be punished twice for the same offence, as does also Article 20(2) of the Constitution. In our opinion there appears to be force in this contention. The punishments which can be awarded by the Superintendent are enumerated in Section 46 of the Prisons Act and one of the punishments provided by Clause (1) is a 'formal warning'. 'Formal warning' has been explained in the Act itself as meaning :

'a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner's history ticket.'

It is manifest from the testimony of Badri Prasad Misra, P.W. 1, that the Superintendent warned each accused personally and an entry to the same effect was also made in the punishment book as well as in the history ticket of each person. All the formalities of a 'formal warning' were thus complied with..

7. In our opinion the accused were punished by the Superintendent of the Jail by giving them a warning and could not on that account be punished a second time on the basis of the complaint (Ex. P 5) which was lodged against them after the warning had been administered.

8. It has been strenuously urged before us on behalf of the State that hunger strike is a continuing offence and the respondents having refused to take their meals on the 30th also in the morning and in the afternoon could be prosecuted for and convicted of that offence. It is true that hunger strike is a continuing offence but it is clear from a perusal of the report made by the Superintendent, District Jail, Deoria to the District Magistrate of the same district that the complaint against the respondents was only in respect of their refusal to take food on the 29th of September, 1956.

There is no mention in the complaint of any refusal to take food on the 30th September. It is also clear from the evidence of Sri Satgur Behari, Deputy Jailor, that Ex. P 5 was written between 9 and 10.30 a.m. on the 30th and immediately despatched the same day after the signature. It is thus obvious that the report Ex. P 5 could only relate to the refusal of the accused to take food on the 29th September, 1956 and could not be in respect of any offence they might have committed on the next day.

Under these circumstances we are of opinion that the respondent could not be punished again at the trial which took place in the court of Sri A. N. Sinha, Magistrate first class, Deoria. The conviction and the sentence passed upon them by the learned Magistrate could not, therefore, be maintained.

9. In the above view of the case it is not necessary for us to go into the question whether Section 52 of the Prisons Act was hit by Article 14 of the Constitution. The question, however, is of some importance and presumably these appeals have been filed to obtain an authoritative decision on the point. We, therefore, heard counsel's submissions in respect of the question and have no hesitation in saying that the view taken by the learned Sessions Judge was wholly erroneous. Section 52 of the Prisons Act runs as follows :

'If any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class or Presidency Magistrate, having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner

10. According to the learned Sessions Judge, the section does not contain any guiding principle on the basis of which the Superintendent can decide in which case he should award the punishment himself and which case he should forward to a Magistrate. The power given to him by the section is, such an unbridged and arbitrary power that in the exercise of it, it is open to him to make a distinction between one man and another similarly situated. The section, therefore, became discriminatory and was hit by the provisions of Article 14 of the Constitution,

11. The learned Judge's conclusion suffers from two infirmities. Firstly, even a cursory perusal of Section 52 of the Prisons Act would show that the power given to the Superintendent to forward the case of an individual prisoner to the District Magistrate is neither unrestricted nor unbridged. It is clear that the case has to be forwarded to a Magistrate only when the prisoner is guilty of frequently committing such offences or if the Superintendent is otherwise of opinion that he cannot adequately punish the offender. It is obvious that the rule for guiding the exercise of discretion is provided by the legislature in the section itself. It cannot, therefore, be said that the discretion is unrestricted.

12. Secondly the learned Sessions Judge has really mistaken 'discretion' for 'discrimination' though the two are not necessarily the same. He has referred in support of his view to the case of the State of West Bengal v. Anwar Ali, AIR 1952 SC 75. That was, however, a case where the impugned legislation was found to be discriminatory without reason on the very face of it and was struck down on that account.

The discretion vested in the State Government by the Ordinance in question in that case was found to be wholly arbitrary. A case more in point is the case of Messrs. Panna Lal Binraj v. Union of India, (S) AIR 1957 SC 397, in which the validity of Section 5(7A) of the Income-tax Act was challenged on the ground that it conferred arbitrary powers on the Commissioner of Income-tax and the Central Board of Revenue in connection with transfer of cases. It was held that a discretion was vested in the authorities but the constitutionality of the provision was upheld on the ground that 'the power was discretionary but not necessarily discriminatory'.

One of the considerations which led the learned Judges to the conclusion was that the discretion was vested in high officials in respect of whom there was a presumption that they would discharge their duties honestly and in accordance with rules of law. The discretion conferred by Section 52 of the Prisons Act is also vested not in any subordinate official of the jail but in the Superintendent himself and the considerations which are to guide him in the exercise of his discretion have been indicated in the section..

The discretionary power cannot, in the circumstances, be held to be either arbitrary or discriminatory. The section does not, therefore, in any way, infringe the principles of equality before the law vouchsafed by Article 14 of the Constitution.

13. The acquittal of the respondents must, therefore, be upheld, though on grounds different from those on which the learned Sessions Judge has based it.

14. The appeals must consequently fail and are dismissed. The bail bonds of the respondents shall stand discharged.