

Ram Bilas Gupta Vs. Rex

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Court : Allahabad

Decided On : Apr-01-1949

Reported in : AIR1949All748

Appellant : Ram Bilas Gupta

Respondent : Rex

Judgement :

ORDER

Bind Basni Prasad, J.

1. This is a habeas corpus application under Section 491, Criminal P.C., by one Ram Bilas Gupta of Basti. It appears that on 15th December 1948, he was arrested but was released at 7 P.M., on day following. At that time there was no warrant for his arrest and no order passed under the U.P. Maintenance of Public Order (Temporary) Act, 1947. On 31st December 1948, the District Magistrate passed an order under Section 3 (2) of the Act and the applicant was arrested and detained for a period of fifteen days. On 8th January 1949, the Provincial Government passed an order of detention under Clause (a) of (Sub-section (1) of Rule 8 of the Act and directed the detention of the applicant for a period of six months. The same day the grounds of detention under Section 5 of the Act were drawn up and communicated to the applicant a few days later. These grounds are as follows:

You took a leading part in instigating the sweepers at Basti to stage an illegal strike on 13th December 1948 ., which however lasted only for a couple of days. You have again been visiting secretly the sweepers' quarters and canvassing them for illegal strikes to dislocate and interfere with the services essential to the life of the community. The strike which you have been trying to (instigate, is, if it materialises, bound to lead to clashes between different sections of the community and disturbances of public tranquillity and public order. Your detention is, therefore, considered necessary in order to prevent that eventuality.

2. The detenu sent his application from the jail and prayed for his attendance in Court. He was present yesterday when the case was heard and argued it personally. He is present today also. The main ground taken is that the grounds of detention as communicated to him under Section 5 of Act are vague and indefinite. In the Full Bench case of *Rex v. Durgadas* A.I.R. (86) 1949 ALL. 148, it was held that the grounds and particulars must not be vague, indefinite or incomplete and must convey sufficient information to the detenu to enable Him to make a representation that the detaining authority was wrong in its belief that his detention was necessary in the interest of public safety etc. If in the opinion of the Court the grounds supplied are vague, indefinite and insufficient, the Court must hold that further detention is illegal or improper. The provisions of Section 5 are mandatory and the detaining authority must, therefore, strictly comply with them. While laying, down these general principles, the Court in dealing with individual cases of *Durgadas*, *Bajendra Sharma*, *Jugun Lal* and *Gyanendra* observed while discussing the grounds supplied under Section 5:

If the place and time had been given, the detenu could have satisfied the detaining authority that on the particular date or at the particular time he was at another place i.e., something in the nature of an alibi.

Now in the present case the detenu categorically denies before the Court that he canvassed the sweepers to go on strike. He admits that he is a Communist but contends that he works mostly in office and did not go about canvassing the sweepers to go on illegal strike.

3. It is now well settled that in dealing with habeas corpus applications this Court cannot go into the questions of facts to ascertain whether the allegations of the detenu are correct or whether there existed in fact sufficient and valid grounds for the detaining authority to pass the order of detention. Once the detaining authority was satisfied of the necessity of passing the detention order, this Court cannot go behind it. But the Act gives valuable right to the detenu to be apprised of grounds and particulars of their detention, so that they make effective re-presentation to the detaining authority itself to satisfy it of their innocence and to obtain release from it. I am of opinion that in the present case the grounds supplied to the detenu suffered from vagueness and indefiniteness. Neither the place or places which the detenu is alleged to have visited, nor the dates of the visit, nor the manner in which the applicant is said to have canvassed the sweepers, have been indicated in the grounds supplied under Section 5 of the Act. One could carry on the canvassing either by making speeches or by distributing leaflets or in some other manner. I had recently the case of another detenu from Basti, namely, that of Misbahuzzaman, which I decided on 30th March 1949. In the grounds supplied to him by the Provincial Government the place where Misbahuzzaman had addressed the sweepers to go on strike and the date thereof were specified. There is no such specification in the present case.

4. Another contention advanced by the applicant is that the strike, which he is alleged to have instigated, was not illegal and so he could not be detained for doing what was not illegal. I can do no better than to quote what I said on this subject in Misbahuzzaman's case. A person cannot be detained simply for instigating a strike, because a strike may be legal or illegal. If he incites an illegal strike, he can be detained. But he can be detained also for the instigation of a legal strike if in the opinion of the detaining authority it is likely to lead to disturbance of peace. In other words, it would not be legal to detain a person simply on the ground that he was instigating a strike in accordance with the law. But it is not wrong in law to detain a person if he has indulged in the instigation of a strike which, though legal, is in the opinion of the detaining authority likely to lead to disturbance of peace. In the present case, it has not been shown to me how this strike was illegal.

5. The third ground taken is that the Act expired on 28th February 1949, and so further detention was illegal. Under resolution passed by both the Houses of the Legislature in accordance with Sub-section (4) of Section 1 of the Act, the life of the Act has been extended and it is in force even now.

6. As I have held that the grounds supplied in the present case suffered from vagueness and indefiniteness, the further detention of the applicant is illegal. I, therefore, allow his application and direct that he be released forthwith unless required by law for any other purpose.

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