

SHYAMAL CHAKRABORTY

v.

COMMISSIONER OF POLICE, CALCUTTA & ANR.

August 4, 1969

[S. M. SIKRI, G. K. MITTER AND K. S. HEGDE, JJ.]

Preventive Detention Act, 1950, ss. 3 and 7—'Public order' in s. 3—Acts which are offences under Indian Penal Code whether come under purview of 'public order'—Representation to Government by detenu after case dealt with: by Advisory Board—Duty of Government to consider representation under s. 7.

The petitioner was arrested and detained by an order of the Commissioner of Police, Calcutta under s. 3(2) of the Preventive Detention Act, 1950. According to the grounds of detention supplied to him his activities were prejudicial to the maintenance of 'public order'. The petitioners' case was placed before the Advisory Board and on obtaining its opinion the Governor confirmed the order of detention. It was after this that the petitioner made representations to the State Government. Then he filed the present petition under Art. 32 of the Constitution based on the following grounds: (i) that there was a breach of s. 7 of the Act inasmuch as his representations were not considered by the Government; (ii) that the grounds furnished to him mentioned offences under the Indian Penal Code and these could not be used for the purpose of detention except in emergencies; (iii) that the grounds did not have any relation to 'public order'.

HELD: (i) It is obligatory on the Government to deal with the representations made by the detenu, but in the present case the detenu made his representations only after the Advisory Board had dealt with the matter. The State Government was in the process of dealing with his representation. In the circumstances it could not be said that there had been a breach of s. 7 of the Act. [765 E-G]

(ii) The contravention of any law always affects order but before it can be said to affect public order it must affect the community or the public at large. [766 A]

Pushkar Mukherjee & Ors. v. The State of West Bengal, [1969] 2 S.C.R. 635, applied.

The grounds of detention supplied to the detenu in the present case showed that on one occasion he took part in rioting along with associates armed with lathis, iron rods and acid bulbs. On another occasion he took part in assaulting a constable on duty. On a third occasion he and his associates were armed with deadly weapons which were actually used in indiscriminately endangering human lives in the locality. [766 C-D]

From these activities the object of the detenu seems to have been to terrorise the locality and bring the whole machinery of law and order to a halt. The conclusion of the detaining authority that the detenu was likely to act in a manner prejudicial to the maintenance of public order in the future and it was necessary to prevent him from doing so, was justified. [766 E-F]

- A The fact that public sector was affected by an act which was also an offence under the Indian Penal Code was irrelevant. [766 F]

ORIGINAL JURISDICTION : Writ Petition No. 102 of 1969.

Petition under Art. 32 of the Constitution of India for a writ in the nature of *habeas corpus*.

- B *Vinoo Bhagat*, for the petitioner.

S. P. Mitra, G. S. Chatterjee for *Sukumar Basu*, for the respondents.

The Judgment of the Court was delivered by

- C **Sikri, J.** This is a petition under Article 32 of the Constitution by Shyamal Chakraborty who has been detained under the Preventive Detention Act, 1950 (hereinafter referred to as the Act). Three grounds have been urged by the learned counsel why we should issue a writ of *habeas corpus* directing his release : (1) that the detenu's representation was not considered by the Government, (2) that the grounds furnished to the detenu mentioned offences under the Indian Penal Code and cannot be used for the purpose of detaining the detenu except in emergencies and (3) that the grounds do not have any relation to the maintenance of public order. Following are the facts as they emerge from the affidavits on record.

- E The detenu was detained by an order No. 3846-D.D. (S) dated 13th November, 1968 passed by the Commissioner of Police, Calcutta in exercise of powers conferred on him by section 3(2) of the Act. The detenu was arrested on November 13, 1968 and was served with the grounds of detention both in English and in vernacular on the same day. On 15th November, 1968, the Commissioner of Police reported the fact of such detention of the petitioner together with the grounds and other particulars having bearing on the necessity of the order to the State Government. On 19th November, 1968, the Governor was pleased to approve the said order of detention under section 3(3) of the Act and on the same day the Governor submitted the report to the Central Government under section 3(4) of the Act together with grounds and other particulars having bearing on the necessity of the order. On 7th December, 1968, his case was placed before the Advisory Board under section 9 of the Act. On 6th January, 1969, the Advisory Board after consideration of the materials placed before it was of the opinion that there was sufficient cause for detention of the petitioner. The petitioner had not submitted any representation to the State Government till then. By an order dated 8th January, 1969 the Governor was pleased to confirm the order of detention. It appears that on the 13th January, 1969 and 16th January, 1969 the detenu made

representations. After the receipt of these representations the same were sent by the Home Department to the Commissioner of Police for his report. On 1st April, 1969 the Commissioner of Police informed the Home Department that he did not recommend the release of the petitioner. But the representations of the petitioner were not received back from the Commissioner of Police with his letter of the 1st April, 1969. Later on the Commissioner of Police sent back the representation dated 13th January, 1969 to the Home Department. This Court on 28th March, 1969 issued a notice under Article 32 of the Constitution to the Commissioner of Police and to the State Government to show cause why *rule nisi* should not be issued made returnable three weeks hence. On receipt of this notice the State Government refrained from passing any order on the representation dated 13th January, 1969. The representation dated 16th January, 1969 is untraceable, but effort is being made to trace it. According to the Commissioner of Police it was on the same lines as the representation dated 13th January, 1969.

It is necessary to reproduce the grounds of detention served on the detenu and they are in the following terms :—

“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 :

You have been acting in a manner prejudicial to the maintenance of public order by the commission of offences of rioting, assault etc. as detailed below :

(1) That on 28-6-68 at about 6 p.m. you along with your associates being armed with lathis, iron rods, acid bulbs etc. committed a riot in Kumartuli Park in course of which you severely assaulted Shri Amal Krishna Roy of 20A, Abhoy Mitra Street and iron rods, acid bulbs etc. were indiscriminately used endangering human lives.

(2) That on 23-7-68 at about 6.10 p.m. you along with your associates being armed with lathis, iron rod, hockey sticks etc. attacked constables Sankar Lal Bose and Jagdish Singh both of Shyampukur P.S. on Kaliprosad Chakraborty Street near the Gaudiya Math who went there to discharge their lawful duties, as a result of which constable Sankar Lal Bose sustained bleeding injuries on his person.

(3) That in the night of 3-10-68 between 11.50 p.m. and 1.30 a.m. you along with your associates being

A armed with deadly weapons took part in a riot at Rabindra Sarani from Bug Bazar Street crossing to Kumartuli Street crossing in course of which bombs, brickbats and soda water bottles were indiscriminately hurled endangering human lives.

B You are hereby informed that you may make a representation to the State Government against the detention order and that such representation should be addressed to the Assistant Secretary to the Government of West Bengal, Home Department, Special Section, Writers' Buildings, Calcutta and forwarded through the Superintendent of the Jail in which you are detained as early as possible.

C You are also informed that under section 10 of the Preventive Detention Act, 1950 (Act IV of 1950) the Advisory Board, shall, if you desire to be 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".

D Coming now to the first point raised by the learned counsel it seems to us that there has been no breach of the provisions of the Act. This Court has held that it is obligatory on the Government to deal with the representations made by the detenu, but the facts recited above show that the detenu did not choose to make a representation before the Advisory Board dealt with the matter, and further the State Government was in the process of dealing with the representation when this Court issued the notice. Moreover, in the representation dated 13th January, 1969, the detenu barely stated that the grounds were false and that the detenu was a poor man and the family conditions were miserable and he was living peacefully in the town and had never committed any act which was manifestly prejudicial to the maintenance of public order or communal harmony. He prayed that "under the circumstances, I am to request you to kindly produce me before the Advisory Board and release me." At that stage it was impossible to produce him before the Advisory Board. The Advisory Board had already dealt with the matter. Under these circumstances we are unable to say that there has been a breach of section 7. We trust that the State Government will now immediately deal with the representation or representations and pass a suitable order.

G It will be convenient to deal with the points 2 and 3 mentioned above together. It is true, as urged by the learned counsel for the petitioner, that this Court has consistently held that the grounds must have relevance to the maintenance of public order, and that they should not relate merely to the maintenance of

order. It is true, as laid down by this Court, that the contravention of any law always affects order but before it can be said to affect public order it must affect the community or the public at large. As Ramaswami, J., put it in *Pushkar Mukherjee & Ors. v. The State of West Bengal*⁽¹⁾, "in this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest."

The question which arises is this : do the grounds reproduced above relate merely to maintenance of order or do they relate to the maintenance of public order ? It will be noticed that the detenu in each of these cases acted along with associates who were armed with lathis, iron rods, acid bulbs etc. It is clearly said in ground No. 1 that he committed a riot and indiscriminately used acid bulbs, iron rods, lathis etc. endangering human lives. This ground cannot be said to have reference merely to maintenance of order because it affects the locality and everybody who lives in the locality. Similarly, in the second ground, he alongwith his associates prevented the police constables from discharging their lawful duties and thus affected everybody living in the locality.

In ground No. 3, again the whole locality was in danger as the detenu and his associates were armed with deadly weapons and these were in fact used for indiscriminately endangering human lives in the locality. The object of the detenu seems to have been to terrorise the locality and bring the whole machinery of law and order to a halt. We are unable to say that the Commissioner of Police could not in view of these grounds come to the conclusion that the detenu was likely to act in a manner prejudicial to the maintenance of public order in the future and it was necessary to prevent him from doing so. The fact that public order is affected by an act which was also an offence under the Indian Penal Code seems to us to be irrelevant.

In the result the petition fails and is dismissed.

G.C.

Petition dismissed.

(1) [1969] 2 S.C.R. 635.