
(1975) 12 OHC CK 0019
In the Orissa High Court

Bhramarbar Choudhury

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 07-12-1975

Acts Referred:

Constitution of India, 1950 — Article 22

Penal Code, 1860 (IPC) — Section 143, 379, 435, 447

Citation : (1976) 42 CLT 345 : (1976) CriLJ 934

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

R.N. Misra, J.—This is an application for a writ of habeas corpus, Th District Magistrate of Puri ((hereinafter referred to as the "detaining authority") - opposite party No. 1 - made an order for detention of ipetitioner under the Mainten-x of Internal Security Act (hereinafter f erred "to as the "Act") and petitioner ."was lodged in Puri Jail. He was served with the following grounds in support of his detention:

You, by your action in inciting and instigating the members of the Bhoi community of Bhingarpur, Bentapur, Dian-patna and the neighbouring villages of the Baliana P.S. of Bhubaneswar Sub-division to reap and remove the standing crops from the lands of (persons belonging to other communities, to loot their gathered produce and to set fire to the dwelling houses of the members of other communities as well as the members of their own community who did not fall in line with them, created a situation of terror and insecurity among the villagers of Bhingarpur, Bentapur Dianpatna and other neighbouring villages, which has completely thrown out of gear the even tempo of the normal life of the local community and the public order in these areas is seriously threatened and disturbed. Your prejudicial acts reached the climax when on 12-2-1975 you managed to set fire to your own house through your wife and other supporters with view to gaining sym- pathy of your followers by giving the incident a colour of an act a repression against you, so as to incite them to further prejudicial acts against public order in the area. Hence it was felt imminent to detain you by

invoking the provisions of Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971. The following instances will lend support for the above conclusion:

(a) That you on 8-1-1975 at about 5 p.m. instigated some members of the local Bhol community in Didhal village to loot away the crops from the lands of other communities and to threaten the recalcitrant members of the Bhoi community to set fire to their dwelling houses if they fail to associate themselves in such illegal activities. As a consequence of your instigation on 10-1-1975 two instances of organised looting by the members of the Bhoi community occurred in villages of Dianpatna and Bentapur in which Kultihi crop of Kanduri Sahu of Dianpatna and Narayan Sahu of Bentapur were looted. In this connection Baliana P.S. Case bearing No. 5 dated 11-1-1975 u/s 143/379, I. P.C. was registered in which you are an accused. Another case in this connection has been registered bearing No. 6 dated 11-1-1975 u/s 143/379, I. P.C. During investigation of these cases it came to light that the eye witnesses to these cases were reluctant to give their statements before the police lest they would be subjected to terrorisation and victimisation by you and your followers in the area.

(b) That on 17-1-1975 in the early morning you along with Gobinda Das and Sanatan Behera came to village Bramhan Sadangi and threatened the unwilling members of the Bhoi community with dire consequences like setting fire to their houses and physical assault, if instead of joining your illegal movements they sympathise with the members of the other communities who are victimised. Close on the heels of your instigation and intimidation, on the following day, i. e. on 18-1-1975 a case of arson and looting was enacted by your followers belonging to the Bhoi community on the house of Jaya Bhoi in village Bramhan Sadangi. Moreover, some members of Bhoi community committed an act of trespass and looting in the house of Choudhury Janardan Das of village Bentapur. In this connection a case bearing No. 15 dated 20-1-1975 under Sections 143/379/435, I.P.C. and another case bearing No. 17 dated 21-1-1975 under Sections 143/447/379, I. P.C. have been registered in Baliana P.S. In course of investigation of these two cases it was noticed that eye witnesses are afraid of making any statement before the Police, lest you and your camp followers subject them to physical injury and cause damage to their properties.

(c) That you illegally occupied a piece of Government land in mouza Dudurabasta of village Bhingarapur which had been transferred to the Gram Pan-chayat. On 12-2-1975 the Tahsildar, Bhu-baneswar, restored physical possession of the Government land to Panchayat authorities leaving a portion in which you had built one roomed thatched house. Consequent upon this, you managed to play the trick of removing all your belongings from the house and instructed your wife and two of your followers (namely Hari Bhoi and Satyananda Bhoi) to set fire to the house. The house was set on fire under your instigation with a view to give the colour of an act by the villagers against you and to mobilise the support of your followers in the area to take resort to loot and arson on the properties of

other villagers. This resulted in prevalence of a sense of horror and panic in villages Bhingarpur, Bentapur, Dianpatna and Ramachandrapur. The local villagers had no other alternative then to spend sleepless nights and tension till local police came to the spot on 13-2-1975 night.

The order of detention of petitioner was approved by the State Government by order dated 28-2-1975 (An-nexure 2). The case of petitioner is placed before the Advisory Board constituted under the Act and petitioner was afforded an opportunity of personal hearing. The Advisory Board was of the opinion that the detention was justified and the State Government upon a careful examination of the case and the opinion of the Advisory Board affirmed the detention.

2. This application was filed before the Court on 16-6-1975 with defects. After the defects were removed, the matter was placed for admission on 5-9-1975, when in view of the proclamation of emergency and suspension of the enforcement of Article 22 of the Constitution, the maintainability of the application was examined. Reliance was placed on three decisions of the Supreme Court on behalf of petitioner in support of the plea that the application was maintainable. (See Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Durgadas Shirali Vs. union of india (UOI) and Others., and Jaichand Lall Sethia Vs. State of West Bengal and Others, . It was also contended that the order of detention was not under the amended provisions of the Act. After both " " parties were heard on the question of maintainability, a rule nisi was issued and the detaining authority has filed the return supporting the order of detention.

3. Five points have been (pressed on behalf of petitioner in support of the application, namely-

(i) the satisfaction of the detaining . authority was based upon non-existent, irrelevant and erroneous grounds;

(ii) the detaining authority without application of mind has passed the order - of detention in a casual manner;

(iii) the grounds set-forth do not justify the conclusion that petitioner's activities were prejudicial to public order;

(iv) as some of the grounds are vague, the entire order of detention is vitiated; and

(v) in view of the allegations contained in ground No. 10 of the writ application that the representation had been rejected by the State Government without application of mind, the return to the Court should have not only been made by the detaining authority but also by a competent person on behalf of the State Government.

4. The ground of detention finished to petitioner has already been extracted in extenso. It is clear that in the first paragraph the detaining authority clearly indicated the basis for his satisfaction that petitioner's detention was necessary

under the Act. Three instances were given to lend support to the conclusion that detention was warranted. There is a clear distinction between a ground of detention and a fact or instance flowing out of particular conduct of a detenu. The facts stated under sub-paragraphs (a), (b) and (c) in the order of detention disclose instances which led to reaching of the satisfaction of the detaining authority. The conclusion reached by the detaining authority is contained in the main paragraph of the ground.

In a case of this type where the ground is separately indicated and instances to support the ground are also supplied, the well accepted rule that when one ground fails, the order of detention has to be struck down may not strictly apply.

The satisfaction of the detaining authority is not subject to judicial review. This is not a case where referring to the instances given in the ground of detention, one can come to the conclusion that the decision to detain petitioner is not a reasonable one. It is settled law that the detaining authority cannot be called upon to establish the facts alleged by (him). If the facts stated under sub-paragraphs (a), (b) and (c) are accepted, any prudent person would come to the conclusion that petitioner's activities are so prejudicial to public order that he should be detained.

5. The conduct of petitioner on different occasions and various settings has been looked into by the detaining authority for reaching his satisfaction. Whether Police made false reports is not a matter for the Court to consider. As we have already indicated, the Court is not the forum for examining the truth or falsity of the material upon which the order of detention is founded. The Advisory Board constituted under the Act is the forum before which detenu has the opportunity of canvassing such allegations. We are, therefore, not prepared to accept the second contention advanced on behalf of petitioner.

6. "Public Order" and "Law and Order" are two different concepts. In the case of *Ashok Das Vs. Additional District Magistrate and Others*, this Court pointed out:

"Public order" and "law and order" were appropriately differentiated by the Supreme Court in the case of *Arun Ghosh Vs. State of West Bengal*. It was pointed out that the true distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question upon society. Acts similar in nature, but committed in different contexts and circumstances might cause different reactions: in one case it might amount to a breach of "law and order" and in another, breach of "public order". Though "public order" has not been defined, the distinction between "law and order" and "public order" has been clearly drawn and ordinarily a problem of law and order cannot constitute itself to be a problem against public order....

It has been contended on behalf of petitioner that the allegations against petitioner at the best constitute criminal offences which can be adequately dealt with by the criminal law in force. We do not think there is any force in such submission. It is clear that petitioner indulged in activities which terrorized the

people! at large in a particular locality. The cases were not confined to private disputes between individual and individual. On the other hand, petitioner indulged in activities which very much disturbed the even tempo of life in the locality and the detaining authority was rightly of the view that unless petitioner was removed from living in the society and was detained in jail, the situation could not be appropriately dealt with,

7. The next ground of attack is] that the grounds are vague. As we have(already pointed out, in this case a distinction has to be maintained between the ground supplied and the instances upon which the ground rests. Even otherwise, the instances are quite detailed and do not leave any room to give rise to prejudice in the making of an adequate re-j presentation. Counsel for petitioner pointed out that mention of "other communities", "some members of the local Bhoi community" and "recalcitrant members of the Bhoi" community", in the absence of specific details have prejudiced petitioner in the making of an effective representation. We do not find any scope for such submission. In the setting in which the facts have been disclosed, "other communities" will mean communities other than Bhoi community. So far as "some members of the local Bhoi community" are concerned, some names have also been given. This contention raised on behalf of petitioner must, therefore, be rejected.

8. Petitioner made allegations against the detaining authority and the detaining authority has made a return to the rule. In ground No. 10 of the writ application, the disposal of the representation was impugned in a casual manner. It is true that the State Government has not filed a counter-affidavit, but in the absence of any positive material to support the allegation contained in ground No. 10, we do not find any justification to accept petitioner's contention that the disposal of the representation is vitiated as it has been made in a casual manner.

There is no merit in the writ application and it must accordingly be rejected.

K.B. Panda, J.

9. I agree.