
(1973) 12 SHI CK 0006
In the High Court Of Himachal Pradesh

Bhupinder Kumar

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 31-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 491
Maintenance of Internal Security Act, 1971 — Section 3(1), 3(2)

Citation : (1974) CriLJ 1195 : (1973) 2 ILR HP 1230

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Takur, J

Bench : Division Bench

Judgement

R.S. Pathak, C.J.—This is a petition under Article 226 of the Constitution read with Section 491 of the Code of Criminal Procedure. The petitioner prays for a writ in the nature of habeas corpus.

2. By our order dated December 28, 1973 we directed that the petitioner be set at liberty and that the reasons for the order would follow. Those reasons are now set out.

3. The petitioner is an Advocate practising at Nahan. A warrant was issued for his detention, u/s 3 (2) read with Section 3 (1) of the Maintenance of Internal Security Act. The petitioner was thereupon arrested and detained. He challenges the validity of his detention.

4. It is apparent from the material on the record that the petitioner has been detained on the ground that he is likely to act in a manner prejudicial to the security of the State and the maintenance of public order. It is contended on behalf of the petitioner that the grounds of detention suffer from several defects, any one of which is sufficient to invalidate the detention. In order to appreciate the contentions raised before us, it is necessary to summarise the grounds of detention briefly.

5. Paragraph 1 mentions that the petitioner is a close associate and lieutenant of

Miss Shyama Sharma, Chairman of the Patel Engineering Company Workers' Union, Khoori Majri, Tehsil Paunta Sahib, District Sirmur, and that he along with her and other associates, Ishwer Chander Gupta and Jagat, Singh Negi, had created terror and panic at the Khodri Majri Hydel Works with the result that the work there had come to a standstill, and there was no security to the lives of peaceful workers. It states further that because of the shortage of petroleum and its products the generation of electricity by those Hydel Works was absolutely essential for the future economy of the State and for the defence of the country. Paragraph 2 refers to elections held in the Workers Union in which Shrikant Tiwari was declared elect-ed as President of the Union. It is said that the candidature of Tiwari was actively supported by the petitioner and the elections were held under his guidance. There is an allegation that the Shrikant Tiwari Group refused to render accounts despite a requisition to that effect by the other workers, and that because of the instigation and incitement of the petitioner and his associates the Shrikant Tiwari Group took the law into their own hands and attacked their Union rivals. A large number of First Information Reports have been enumerated, but it is not stated who were the persons involved in those reports. It is said that the leftist unionists let loose a reign of terror under the petitioner's leadership and guidance giving rise to a serious threat to public order and the security of the State in Khodri Majri and its adjacent areas. Paragraph 3 refers to the factionalism among the labourers at Khodri Majri and recites that the petitioner was interested in exploiting the situation in order to fleece the workers of their Union funds, that the petitioner and his associates collected the Union funds from Khodri Majri and took the amount in a car to Dehra Dun. It was further alleged that agreements between the management and the workers were thwarted by the majority group of the labour led by the petitioner, and in consequence of which the law and order situation at Khodri Majri had deteriorated. Paragraph 4 refers to a meeting addressed by Miss Shyama Sharma at Dehra Dun. In her speech Miss Shyama Sharma is said to have attempted to create disaffection against the Government of India and to have incited leftist workers including aliens, to take up arms against the Government of India. Paragraph 5 again refers to the activities of Miss Shyama Sharma in attempting to cow down rival trade unionists at Chhibru with the help of hired goondas from Dehra Dun. There is also reference to coercion by Miss Shyama Sharma. directed against the management for securing the re-instatement of certain retrenched workers. All this has been done by Miss Shyama Sharma allegedly after consulting, and with the advice of, the petitioner. Paragraph 6 refers to secret meeting on November 7, 1973 attended by the petitioner. Miss Shyama Sharma, Jagat Singh Negi and Ishwar Chander Gupta, where it was decided that if the retrenched workers were not taken back an agitation would be started at Khodri Majri and at other places. Paragraph 7 refers to the visit of Miss Shyama Sharma to Khodri Majri pursuant to the decision taken in the aforesaid meeting. Paragraph 8 recites that a public meeting was held by Miss Shyama Sharma on November 11, 1973 at which were present certain members of the C. P. I. (M-L) Party and that fiery speeches were

delivered exhorting the workers to use violence. It was alleged that Miss Shyama Sharma held a public meeting at which she had secured the presence of certain C. P. I. (M-L) workers under the advice and guidance of the petitioner. Paragraph 9 refers to the violence which erupted at Khodri Majri on November 12, 1973 and the next day and the armed assault made by some of the workers on the Police. Paragraph 11 declares that Miss Shyama Sharma violated the law in entering the premises of the Patel Engineering Company which was prohibited place and that it was done under the petitioner's covert guidance.

6. Broadly speaking, the grounds of detention can be divided into:

(a) the guidance and direction said to have been given by the petitioner to the Shrikant Tiwari Group of workers in creating conditions of violence and insecurity;

(b) the guidance and directions given by the petitioner to the same group with a view to frustrating the agreements reached between the management and labour, and

(c) a meeting of November 7, 1973 said to have been attended by the petitioner at which it was decided to secure the re-instatement of fifty-three retrenched workers in the Patel Engineering Works, and

(d) a meeting addressed by Miss Shyama Sharma in Dehra Doon of November 4, 1973 with the consultation and advice of the petitioner.

There are other political activities of Miss Shyama Sharma which it is not necessary to go into.

7. It is contended by the petitioner That paragraph 4 of the grounds of detention do not relate to the security of the State or to the maintenance of public order in Himachal Pradesh. It is urged that the order of detention made by the District Magistrate. Sirtmir in respect of the petitioner could be passed in relation to a prejudicial activity within the State of Himachal Pradesh itself and could not be made on the basis of some-Thing done or apprehended outside the State of Himachal Pradesh. For that reason, it is said, the allegation made in paragraph 4 cannot constitute a ground for the detention of the petitioner. Paragraph 4 recites that in the speech delivered at a public meeting by Miss Shyama Sharma she incited feelings of disaffection towards the Government of India and appealed to Nepalese workers to take up arms against the Government of India. Certain remarks made by her have also been set out. and all of them are clearly directed against the Government of India. The petitioner says that none of the allegations contained in paragraph 4 can be said to relate to the State of Himachal Pradesh and therefore they could not constitute a ground for an order of detention by the District Magistrate, Sirmur. There is substance in the contention.

8. Section 3 (1) details the circumstances in which an order of detention may be made. Among others, an order of detention may be made if it is necessary with a view to preventing a person from acting prejudicially to "the security of the State or the maintenance of public order." The security of the State here must

necessarily refer to the security of a State as distinguished from the security of India. The security of India is dealt with in Sub-Clause (1) of Section 3 (1) (a) while the security of the State is dealt with in Sub-Clause (ii) of that provision. It may be noted that preventive detention in relation to the security of India is mentioned in Schedule VII, List 1, Entry 9 while preventive detention in relation to the security of a State is mentioned in Schedule VII, List 3, Entry 3. A District Magistrate is empowered to make an order of detention by Section 3 (2) of the Act. After the latest amendment of Section 3 (2) he is empowered to make an order if satisfied with respect to any of the Sub-Clauses of Section 3 (1) (a). It is beyond doubt that a District Magistrate can make an order of detention only if there is apprehension of some prejudicial activity in relation to the territory over which he exercises jurisdiction. It is plain that the District Magistrate, Sirmur can have no power to make an order of detention because of prejudicial activity apprehended in relation to the State of Kerala. The apprehension must relate to a situation which arises or is expected to arise within the territory which falls within his responsibility. Nothing set-out in paragraph 4 of the grounds of detention indicates that in consequence of the activities of Miss Shyama Sharma in Dehra Dun any prejudicial activity was expected in relation to the District of Sirmur or, for that matter, to the State of Himachal Pradesh. The incitement to disaffection by Miss Shyama Sharma was not directed against the Himachal Pradesh Government. If at all, it was directed against the Government of India. The conclusion is irresistible that paragraph 4 of the grounds of detention is not relevant at all to the security of the State of Himachal Pradesh, for which the petitioner has been detained. There is also nothing in that paragraph which can be relevant to the maintenance of public order within the State of Himachal Pradesh. Plainly, paragraph 4 is a ground which cannot be made the basis of an order of detention by the District Magistrate, Sirmur. It is settled law that if one of the essential grounds of detention is irrelevant, the order of detention is invalid. That is for the reason that the Court cannot sit in objective judgment over the sufficiency in fact of the grounds of detention. Whether an order of detention should be made on the facts of a case falls entirely within the subjective satisfaction of the authority making the order. If one of the essential grounds is irrelevant, it is not open to the Court to sit in judgment and hold that the remaining grounds could form the basis of the order of detention. See *Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others*, , *Pushkar Mukherjee and Others Vs. The State of West Bengal*, . The learned Advocate General relies on *Giani Bakshish Singh Vs. Government of India and Others*, but we do not see how that decision can be of any assistance to the respondents. Accordingly, the order of detention must be struck down for the aforesaid reason alone.

9. It is also contended by the petitioner that while the grounds of detention detail the activities of Miss Shyama Sharma and of Shrikant Tiwary and his group, there is nothing specifically said so far as the petitioner is concerned. It does appear that in regard to the petitioner it has been stated in most of the grounds

that he guided or directed Miss Shyama Sharma and the Shrikant Tiwari Group. No particulars, however, have been given to indicate how and when that guidance was given and what were the directions issued by the petitioner. The allegations are vague, and we are unable to hold that the petitioner is in a position to make an effective representation against his detention. That right being denied, to him, the detention must be considered invalid.

10. The learned Advocate General states that the petitioner is not entitled to relief because of a Proclamation of Emergency by the President of India. Although several opportunities were given to the learned Advocate General to produce a copy of the Proclamation before us he has failed to do so. It is not possible to give weight to his contention unless the precise terms of the Proclamation are before us. The petitioner has also challenged the order of detention on the ground of mala fides, but we do not consider it necessary to enter into that question.

11. Upon the aforesaid reasons we are of opinion that the petition must succeed and that the petitioner is entitled to an order that he be set at liberty forthwith.