
(1948) 12 CAL CK 0008
In the Calcutta High Court

Bibhuti Bhusan Nandy

APPELLANT

Vs

Superintendent Presidency, Jail and Another

RESPONDENT

Date of Decision : 22-12-1948

Acts Referred:

Government of India Act, 1935 — Section 205

Citation : AIR 1949 Cal 566 : (1949) CriLJ 968

Hon'ble Judges : R.P. Mookerjee, J; Das Gupta, J

Bench : Division Bench

Judgement

Das Gupta, J.—On 7th December 1948 on the application of Bibhuti Bhu3an Nandi stating that he was arrested on 16th November 1948, by an A. S. I. of Taltala p. a. Calcutta, and was told that the arrest was u/s 30(I), West Bengal Security Act, that he was being detained after his arrest in the Presidency Jail, Calcutta and that this detention was illegal, wrongful and improper, we issued a rule on the Chief Secretary to the Government of West Bengal and the1 Superintendent, Presidency Jail why an order under S, 491, Criminal P. C., should not be made and the petitioner set at liberty. The Bale was made returnable on 13th December 1943.

2. On 13th December, the Deputy Legal Remembrancer appeared before us, contended that the detention was in accordance with law; and in support of this contention, produced before us the original order signed by an Assistant Secretary to the Government of West Bengal, purporting to be an order under S, 16, West Bengal Security Act. This order is dated 3rd December 1948; it appears to have reached the Superintendent, Presidency Jail, on 7th December 1918, and served on the prisoner Bibhuti Bhusan Nandi. It is deplorable that an order of this serious nature should take four days to traverse the distanoe from the Assistant Secretary"s office to the Presidency Jail - a matter of less than five miles? and no less deplorable that the Superintendent of the Jail should have taken another four days in serving this order on the prisoner. This delay cannot however affect the validity of the detention, if made, in accordance with the

provisions of Section 16 of the Act. Mr. Gupta on behalf of the petitioner contends that the order purporting to be made u/s 16 of the Act. is not really in accordance with the provision of the Act. The relevant portion of Section 16 runs thus:

The Provincial Government if satisfied with respect to any particular person that with a view to pre-venting him doing any subversive Act. it is necessary so to do, may make an order directing that he be detained....

The order produced before us runs thus:

... Whereas having considered the materials against the said person, the Governor is satisfied that, with a view to preventing the said person from doing any subversive act, it is necessary to make the following orders for the purpose of continuing his detention....

Mr. Gupta contends that this is a mere copy of the language of the section, and the absence of the mention of any one or more particular subversive act to prevent the doing of whit by the petitioner, the detention was considered necessary, shows that there could not have been any satisfaction of the Governor. -The argument which looks plausible at first Bight appears to be this: If the Governor had applied his mind to decide whether the detention was necessary to prevent any subversive act, he must have thought of particular subversive acts, before he could come to a decision. He could come to a decision that the detention was necessary to prevent the doing of subversive Act. A, or subversive Act. B, or subversive Act. O, or two or more of them. But if he did come to such a decision he must have mentioned the particular subversive act in the order. The fact that no particular act is mentioned shows that the Governor did either not apply his mind to the matter at all, or that even if he did, he did not come to a decision, In other words, it is not true that the Governor was satisfied that the detention was necessary for the purpose of Section 16.

3. The argument is plausible; but in my judgment fallacious. If the Governor is ratified that the detention is necessary to prevent the doing of subversive Act. A and subversive act B, and subversive act O, it does not necessarily follow that he will mention this detail in the order. He may think it sufficient to say that the detention is necessary to prevent the doing of any of the several subversive aorta as defined in the Security Act. This is all the more likely if the Governor wishes to make it clear that the detention is directed to prevent all the subversive acts. The farcify of omission to mention in the order anyone or more subversive act is no reason to think that the Governor did not apply his mind to the matter, or that he did not come to any decision. So long as circumstances do not make out a case of mala fide action the statement in the order that the Governor is satisfied must be taken for the purpose of these proceedings to prove that he is in f Act. satisfied. The circumstance of omiasion to mention any or more subversive acts is not sufficient to establish mala fide.

4. We hold therefore that the detention u/s 16, Security Act is legal, and as at

present, the detention under this section is continuing, we cannot grant him any relief u/s 491, Criminal P. C.

5. As regards the detention u/s 30 of the Act. we are of opinion, for reason we have mentioned in detail in Ram Banjan Bhatta. chary's case and on the authorities of AIR 1946 123 (Privy Council) that unless the grounds for the police officer's suspicion are considered to be reasonable the detention must be held to be illegal. In the present case, the Crown has not disclosed the grounds on which the arrest and detention u/s 30 of the Act. were made. We be ld therefore -that the detention of the petitioner u/s 30, Security Act, that is, for the period up to 7th December 1948, was illegal. This illegality does not however affect the validity of the detention u/s 16 of the Act : (Vide Basanta Ghosh's case (AIR 1944 p. c, 86). Mr. Gupta contended also that the Security Act is ultra vires the Provincial Legislature. The grounds given by him for this contention are the same as were raised by him before the Pull Bench in Jnan Prosanna's case 6 B c. W. N. 27 : (A.I.B. 1949 cal. 1) but were rejected. In view of the Pall Bench decision in that case we are be und to hold that this-contention must fail.

6. We hold that the present detention of the-present petitioner is in accordance with law. the rule is accordingly discharged.

7. We grant the certificate u/s 205 Government of India Act.

R.P. Mookerjee, J.

8. I agree.