

(1967) 01 DEL CK 0006

In the Delhi High Court

Case No : Criminal Writ Appeal No. 16 of 1966

Chander Parkash Aggarwala

APPELLANT

Vs

The District Magistrate of Delhi and Another

RESPONDENT

Date of Decision : 25-01-1967

Acts Referred:

Citation : (1967) 3 DLT 143

Hon'ble Judges : Jagjit Singh, J

Bench : Single Bench

Advocate : G.S. Vohra and K.L. Sharma, for the Appellant;

Judgement

Jagjit Singh, J.

(1) This is a petition under Article 226 of the Constitution for the issue of a writ in the nature of habeas corpus.

(2) On November 16, 1966, the District Magistrate, Delhi, in pursuance of the provisions of sub-clause (ii) of clause (a) of sub-section

(3) SUB-SECTION (2) of section 3 of the Act enables a District Magistrate, if satisfied as provided in sub-clauses (ii) and (iii) of subsection (1) of section 3 of the Act, to make an order of detention. Sub-clause (ii) and (iii) read as follows :-

"(II)the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community, or" The detention of Shri Aggarwal was however, ordered by the District Magistrate, Delhi "for preventing him from acting in any manner prejudicial to the maintenance of public order." In other words the order was not made for preventing Shri Aggarwal from acting in any manner prejudicial to the security of the State or the maintenance of supplies and services essential to the community.

(4) After the above-referred to, order of detention was made, a copy of it was sent along with a copy of a note from the Superintendent of Police (C.I.D.-S.B.), to the Lt. Governor, for obtaining approval, as required by sub-section (3) of

section 3 of the Act. On the same day, the Lt. Governor approved the order of detention.

(5) The petitioner was arrested on December 4, 1966. The grounds on which the order of detention was made were communicated to him on December 8, 1966. Alleging that his detention was wholly illegal, he filed a petition on December 22, 1966. On his application, dated 5-1-1967, he was allowed to file an amended petition.

(6) It was contended by Shri Gyan Singh Vohra, learned counsel for the petitioner, that the order of detention was unwarranted and illegal. It was urged by him that approval of the State Government, as required by sub-section (3) of section 3 of the Act, was not obtained within twelve days and that some of the grounds, which were communicated to the detenu were vague and not relevant.

(7) Regarding the first contention that approval of the State Government was not obtained within the required period of twelve days/it was pointed out that the grounds of detention were finalised on December 7, 1966 and, as such, the making of the order of detention could not have been reported to the State Government, on November 16, 1966, together with the grounds on which the order had been made. More specifically, it was contended that the expression "grounds on which the order has been made", occurring in-section 3(8) is word for word, the same as in section 7 and, Therefore, it was necessary for the District Magistrate to first, formulate the grounds for detention and then to send the same to the State Government u/s 3 (3) and to the detenu u/s 7. It was stated that sending a copy of the report of the Superintendent of police was not sufficient compliance with the requirement of subsection (3) of section 3 of the Act.

(8) It was not disputed by Shri Kanwar Lal Sharma, learned counsel for the State, that the grounds which were communicated to the petitioner were not finalised before December 7, 1966. It was, however, stated that the grounds ; contained nothing over and above the note of the Superintendent of police. (C.I.D.-S.B.) and were more or less a reproduction of its contents. Thus it was urged by Shri Kanwar Lal Sharma that the material on which the order of detention was based was made available to the State Government on November 16, 1966.

(9) In *Shamrao Vishnu Parulekar and another v. The District Magistrate, Thana and others*", their Lordships of the Supreme Court made the following observations:--

"The authority making the order u/s 3 (2) is accordingly required to report the fact of the order forthwith to the State along with" the grounds Therefore, and if the State does not approve of the order within twelve days, it is automatically to lapse. These provisions are intended to regulate the course of business between the State Government and the authorities subordinate to it exercising its power under statutory delegation; and their scope is altogether different from that of

section 7 which deals with the sight of the detenu as against the State Government and its subordinate authorities. Section 3 (3) requires the authorities to communicate the grounds of its order to the State Government, so that the latter might satisfy itself whether detention should be approved. Section 7 requires the statement of grounds to be sent to the detenu, so that he might make a representation against the order. The purpose of the two sections is so different that it cannot be presumed that the expression "the grounds on which the order has been made" is used in section 3 (3) in the same sense which it bears in section 7. * * * * * It is obvious that the communication that has to be served on the detenu u/s 7 of the Act is a formal document setting out the grounds for the order and the particulars in support thereof, subject, of course, to section 7(2) ; whereas the report to the State u/s 3 (3) Is a less formal document in the nature of a confidential interdepartmental communication which is to contain the particulars on which the order was made. It could not have been intended that the communications which are so dissimilar at their scope and intendment." The contention that the approval given by the State Government on November 16, 1966 was in c.ontravention of the provisions of section 3 (3) of the Act because the very grounds had not been sent with the copy of the order of detention as were later on communicated to the detenue, is without any force. The detailed report of the Superintendent of police (C.I.D.-S.B) which, according to the District Magistrate was the basis for the order made by him, had been duly sent to the Lt. Governor. It has, Therefore, to be held that requirements of sub-section (3) of section 3 of the Act were sufficiently complied with when the District Magistrate reported the material on the basis of which he had made the order of detention.

(10) It has next to be seen whether any of the grounds on which the order of detention was made, were vague or irrelevant. As many as 23 grounds were communicated to the detenu, some of which were fourteen typed pages.

(11) Though the power to issue an order directing detention of a person, u/s 3(1) (a) of the Act, undoubtedly, depends upon the subjective satisfaction of the appropriate authority, yet it is necessary that the grounds on which the order has been made should be of such a nature as to enable the detenu to make a fair representation to the authority concerned and the Advisory Board against the order of detention.

(12) Ground No. 1 consisted of three sub-grounds and was. intended to show the "criminal propensities" of the detenu. Sub ground (i) referred to a case (F. I. R. No. 278. of 1965 under sections 420 and 380 of the Indian Penal Code), in which the detenu was discharged. Sub ground (ii) mentioned conviction of the detenu, on 31-12-1959, in case F. I. R. No. 93 of 1957 under sections 506, 384 and 109 of the Indian Penal Code. Sub-ground (iii) related to a case (F. I. R. No. 191 of 1962 u/s 188, Indian Penal Code) which was withdrawn and the detenu was discharged.

(13) It was not clear how the alleged "criminal propensities" of the detenu were

established by referring to two cases in which he was discharged. The third case was a very old one and even if the detenu was convicted therein, almost seven years ago, that could have no connection with the maintenance of public order.

(14) Ground No. 2 referred to the detenu being a trade unionist, who had made trade unionism a source of income. It was further mentioned that he was Secretary of the Hind Mazdoor Panchayat and had been indulging in vicious and malicious propaganda against various classes of public servants and was inciting them to disaffection disloyalty and indiscipline against their superiors. Certain organisations, including Sarkari Karamchari Union, were stated to have been sponsored by him. No particulars were given of the vicious and malicious propaganda said to have been carried on by the detenu. Obviously the ground was a vague one.

(15) Ground No. 3 was divided into five sub-grounds. Ground No. 3 (i) related to organising a token strike, on 6-6-1962, by the employees of the Hindu Rao Hospital, and to a case against the detenu under sections 107 and 151 of the Code of Criminal Procedure. not only the allegation was an old one, but it was not clarified as what part was played by the detenu in organising the token strike when that ended in the discharge of the detenu on 12-6-1962, did not make the ground in any way more definite.

(16) Ground No. 3 (ii) was no less vague. The detenu was stated to have taken a prominent part, on 18-10-1962, in organising the defiance of law by the Backward Classes League of Punjab. It was however, not made clear as to what part was actually played by the detenu and what was the defiance of law by the Backward Classes League.

(17) Ground No. (iii) referred to a hunger strike by Jai Narain Balmiki at the instance of the detenu and the latter making a public speech on 12-2-1964, stating that if the lot of working classes was not ameliorated, the situation might get out of control and the Government might be overthrown. The first part of - the ground has to be regarded as vague as no details were given to show in which way the detenu had been instrumental in organising the hunger strike. The second part of the ground could be an expression of opinion. without in any acts prejudicial to the maintenance of public order.

(18) Ground No. 3 (iv) referred to the detenu organising a "Dharna" by Samey Singh, a dismissed employee of the willingdon Hospital. Similarly, sub-ground (v) mentioned the detenu to have made "abortive efforts" to organise general strikes in various hospitals, clinics and dispensaries. The part attributed to the detnue was not specified. both the sub-grounds were thus not free from vagueness.

(19) Ground No. 4 purported to give instances of the activities of the detenu which had the object of creating dissatisfaction amongst Govt. employees and members of the police force. Ground 4 (ii) was about exhorting police personnel to Launch a sustained struggle against the injustice of the authorities. Ground 4(v) was about formation of Sarkari Karamchari Union. These instances, instead

of relying upon any details merely used general expressions to describe what was considered to be the nature of the detenu's activities.

(20) Ground 5 (vi) was that at the instance of the detenu Shri Harbhajan Ahuja issued, on 22-8-1966, a circular wherein he exhorted class Vi employees of the police department to attend a meeting. At the meeting the detenu was stated to have made a speech in which he criticised the treatment of police constables by senior police officers and the negligence of the police hospital authorities in causing the death of a constable. Sub-Ground (vii) referred to another speech by the detenu alleging misappropriation of Amenities Fund by Officers and misuse of services of .constables. Ground 5(ix) related to issue of a statement protesting against suspension of a Head Constable and alleged harassment of Shri Devi Parshad by a Deputy Superintendent of Police. These grounds had no nexus to maintenance of public order.

(21) Some of the other grounds, which have to be regarded as somewhat vague or irrelevant ,were Nos. 14 to 18 and 20 to 21. Ground No. 14 mentioned that the detenu had stated in a speech that he was prepared to make all sacrifices for betterment of the lto of policemen. Ground No. 15 referred to preparing a charter of demands addressed to the Home minister. Ground No. 16 was about the detenu's organising a meeting of policemen at Teen Murti, on 5-9-1966, without saying as to what part was played by the detenu or what transpired at the meeting Ground No. 17 was about presenting an application to the Registrar of the Trade Unions for the registration of the Sarkari Karamchari Union. Ground No. 18 referred to a meeting, held on 12-9-1966, which was addressed by Sarvshri Mani Ram Bagri, Raj Singh Rana, Suman Bhattacharya and Brij Bhushan. Ground No. 20 Was about a speech of the detenu for organising a demonstration if the demands of. the workers were not met. Nothing was said as to what form the demonstration was to take. Ground No. 21 related to a speech of the detenu, in which he was said to have criticised the authorities. The nature of criticism was not revealed.

(22) There were some grounds which were neither vague nor irrelevant .For instance Ground 4(i) referred to the issue of a poster in April, 1965, under the caption, "Aee University Ke Tanashao" advocating use of force. Ground 4 (iv) related to a speech delivered by the detenu, on 9-8-1965, in which he was reported to have said that if justice was not done in case against one Pearey Lal, then the police station and the residence of the Deputy Commissioner would be smashed and the Chief Commissioner would not be allowed to rest in peace.

(23) It can, Therefore, be said that while some of the grounds were definite and relevant, the rest were vague or irrelevant .Ground 23, which in a way was intended to sum up the allegations contained in the other grounds, was in the .following terms-

"23.With a view to successfully carry on your frequent agitations, you have been directly or indirectly advocating the use of violence and have been persistently,

undermining the morale and discipline of the police force of Delhi by exhorting them to indulge in acts of indiscipline and by creating discontentment and disaffection in their minds against their superiors and the Government established by law. Your activities .are highly prejudicial to the maintenance of public order,-the security of Delhi State and the maintenance of services essential to the community." According to this ground, the activities of the petitioner were highly prejudicial not only to the maintenance of public order, but also the security of Delhi State and the maintenance of services essential to the community. While the detention order had only reference to maintenance of public order, the grounds purported to be wider in scope and to as well cover other matters on the basis of which also the District Magistrate was competent to make an order directing detention, but which were not considered by him to the case of the petitioner.

(24) It appears that at the time of finalising the grounds the fact was lost sight of that the order "made on-November 16,. 1966, sought to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order. His activities were, Therefore, at the time of making the order not regard as prejudicial to the services essential to the community. In spite of this ground No. 23 referred to the "security of Delhi State and the maintenance of services essential to the community."

(25) Preventive detention is a serious invasion of personal liberty and the safeguards which have been provided against the improper exercise of the power have to be rigidly enforced. In *Dwarka Das Bhatia v. The Slate of Jammu and Kashmir*. It was held as under-

""Where powers is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while anxious to Safeguard the personal liberty of the individual will not lightly interfere with such orders." Keeping in view the facts of this case the validity of the order directing

detention of the petitioner cannot be upheld in spite of the fact that some of the grounds for detention were neither vague or irrelevant. The vague or irrelevant grounds, if excluded, may have affected the subjective satisfaction of the appropriate authority.

(26) The petition is accordingly accepted. The order of detention, dated, November 16, 1966, being illegal is set aside, and the petitioner is directed to be released forthwith.