
(1982) 01 GAU CK 0007
In the Gauhati High Court

Dinabandhu Choudhury and

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 20-01-1982

Acts Referred:

Constitution of India, 1950 — Article 21, 22
National Security Act, 1980 — Section 3

Citation : (1982) CriLJ 1809

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Judgement

K. Lahiri, J.—The petitioner has been detained u/s 3(2) of the National Security Act, 1980 (for short "the Act") with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community and against his detention the petitioner has preferred this Habeas Corpus application. The order of detention is dated 16-12-81 and the detenu was arrested on the following day at about 3 a.m. On 21-12-81 the petitioner was served with the grounds of detention which reads as under:

You are the General Secretary of All Assam Karmachari Parishad (AAKP) and Convenor of Co-ordination Committee AAKP, and in that capacity you have been a party to the decisions of this organisation and to the implementation thereof.

1. On 13-6-81 you attended a meeting of the AAKP at B. Baruah College, Gauhati, which was also attended by S/Shri Tirtha Barkatoki, Krishna Baruah, Kamakhya Charan Choudhury and others, in which a decision was taken for full participation of the employees of Govt. and Semi Govt. Offices in the "Assam Bandh" on 15-6-81, for the observance of which a call was given by All Assam Students' Union (AASU), and All Assam Gana Sangram Parishad (AAGSP). Pursuant to this decision most of the State/Central Govt. and Semi Central Government employees throughout the Brahmaputra Valley districts in Assam abstained from offices and duties which seriously affected supplies and services essential to the community.

2. On 15-11-81 you attended a Steering Committee meeting of AAKP in the office of AAKP at Silpukhuri Gauhati which was attended by S/Shri Kamakhya Charan Choudhury, Tirtha Borkotoky, Haladhar Pathak and others. In this meeting a decision was taken to extend full support to the 36 hours "Assam Bandh" for observance of which on 19th and 20th November, 1981 a call was given by AASU & AAGSP. Pursuant to this decision most of the employees of Government and Semi Government Offices remained absent from offices and duties which dislocated supplies and services essential to the community.

3. On 20-11-81 you attended a meeting of the AAKP held at the Karmachari Parishad's office at Silpukhuri, which was also attended by S/Shri Kamal Nayak, Bhairab Das, Kamakhya Charan Choudhury, Khanindra Ch. Das and others. In this meeting a decision was taken to extend support to the "Road Block" programme sponsored by AASU/AAGSP with a view to stopping the movement of Road Transport in Assam from 5 A.M. to 5 P.M. on 30-11-81. The Road Block caused serious dislocation of services and supplies essential to the community.

Above activities of yours are clearly prejudicial to the maintenance of supplies and services essential to the community.

2. The petitioner made representation to the State Government, his case was considered by the Advisory Board constituted under the Act which upheld the order of detention. Before us the learned Counsel for the petitioner has put forward several contentions but we propose to dispose of the petition on those grounds which appear to us to be pertinent.

3. Personal liberty is more cherished than all other freedoms taken together. Detention without trial is a serious matter and the order of detention must be justified by the Detaining Authority. Whenever human liberty is in peril and justice is threatened the citizen should receive the fullest protection from the Court within the four corners of Article 22 of the Constitution benignantly stretched, and all the safeguards of the Act liberally interpreted, of course, within the legitimate limit. Worth of human liberty is a cherished value which must be carefully watched over by the Court. At the same time we must bear in mind that survival of the State and protection of the society are no less important. It is a settled law that the "prejudicial activities" contemplated under the Act need not necessarily be activities prohibited or made punishable by a substantive provision of law. We are also conscious that the expressions "supplies and services" should not be read conjunctively; they should be understood disjunctively, A person may be detained for preventing him to act in a manner prejudicial to the services essential to the community or he may be detained for disrupting supplies as well. Of course, sometimes the effect of such act may telescope into each other.

4. The first question which has come up for our consideration is whether the grounds or any one of the grounds are vague or non-existent or misconceived and therefore the petitioner was deprived of his procedural safeguards under Articles 21 and 22 read with the procedure laid down under "the Act." It will be

seen that three activities of the petitioner were considered as prejudicial activities. The third activity is also a specific instance or a ground of detention. It is alleged in Ground No. 3 that the detenu attended a meeting on 20-11-81 wherein decision was taken to extend support to the "Road Block" programme. We have perused the dossier and we have no hesitation in observing that we are not at all satisfied with the manner, method and upkeep of the dossier. There is no signature or initial of any officer authenticating the correctness of the statements contained. This is the dossier which was produced before us as the original one. It gives a clear impression that it was typed in one sitting although it contains matters even prior to 13-6-81, the contents were recorded in a manner to create a clear impression that the incidents were recorded in one sitting and not recorded from time to time as the incidents happened. Further, the forwarding letter of the dossier shows that it is a fresh "dossier". However, leaving the matter at that let us proceed to consider about the third ground. In "the dossier" we do not find any reference about the meeting held on 20-11-81 nor is there any statement about any meeting on that date wherein any decision had been taken. As such we are constrained to hold that the ground was non-existent and on this ground alone the petitioner is entitled to be released.

5. Mr. Mazumder the learned Advocate General contends that the date furnished to the petitioner was wrongly typed as 20-11-81 and it should be 26-11-81. It is true that there is a reference in the dossier about such a meeting on 26-11-81. However, if we accept the contention of the learned Advocate General we must hold that the petitioner was deprived of his constitutional safeguards provided under Article 22 as well as under the provisions of "the Act" as the detenu was deprived of making an effective representation in respect of the alleged activity of the 26th. Under these circumstances, we must hold that the petitioner was deprived of his protective umbrella, namely, his right of representation under Article 22 read with the provisions of "the Act" and on this score the continuous detention of the petitioner must be held to be illegal.

6. Now, if we turn to the preamble or the opening part of the grounds of detention we find that the petitioner was detained by the authority on being satisfied that he was (a) a party to the decisions of organisations and also (b) a party to the implementation of the decisions. The detention was on the subjective satisfaction of the Detaining Authority and admittedly these were the two basic or fundamental factors in making the order of detention. Now, let us turn to the grounds to find out if at all the petitioner was responsible for the implementation of the decisions. We record that we have considered the statements contained in the dossier to find out whether the detenu was ever a party to the implementation of the decisions taken on the three dates mentioned in the grounds. We found absolutely no material to bear up the imputations. On scrutiny of all the grounds we do not find any activity of the petitioner to show that he was either an active party or even a passive party to the implementation of the decisions. There is no allegation that the detenu ever made any overt or covert act or played any part to implement any of the decisions taken in the

meetings. Curiously enough we do not find any material whatsoever to show that the detenu was absent on the Bundh days, to lend support to the decision said to have been taken in the meetings. We are constrained to hold that the subjective satisfaction of the Detaining Authority that the petitioner was a party to the implementation of the decision had no base or factual data. There is no material having any rational probative value to form the subjective satisfaction that the detenu was a party to the implementation of the decisions taken in the meeting. Therefore, our conclusion is that there was no material before the Detaining Authority to hold that he was a party to the implementation of the decisions and the continuous detention of the petitioner is invalid.

7. We are fully conscious of the limitation of judicial review in Habeas Corpus applications. This Court cannot consider the propriety or sufficiency of the grounds on which the subjective satisfaction of the detaining authority is based, provided they have a rational probative value and are not extraneous to the purpose of detention. This Court on a review of the grounds cannot substitute its opinion for that of the detaining authority by applying objective test to determine the necessity of detention for a specified purpose nor can the Court embark upon the question whether the detaining authority has rightly or wrongly reached the subjective satisfaction on the question of fact. There is a line of decisions of the Supreme Court to the above effect. However, we quote only the recent decisions of the Supreme Court reported in *State of Gujarat Vs. Adam Kasam Bhaya*, , *State of Gujarat Vs. Mohd. Ismail Jumma and Others*, At the same tune the Supreme Court had ruled that a valid detention order must contain basic facts and materials which must be in existence at the time of recording the order of detention. If a conclusion is reached but the basic facts and materials in support thereof are absent, the order of detention cannot be upheld. It has also been ruled that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and it would not avail the detaining authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity, because it can never be predicated to what extent a ground or reason operated on the mind of the detaining authority or whether the detention order would have been made at all if the bad ground or reasons were excluded and the good grounds or reasons alone were before the detaining authority. Vide *Dwarika Prasad Sahu Vs. The State of Bihar and Others*, *Biram Chand Vs. State of Uttar Pradesh and Others*, , *Pushkar Mukherjee and Others Vs. The State of West Bengal*, , *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , *Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others*, , *Shibban Lal Saxena v. State of U.P.*

8. We are fully conscious that if the reason or the non-existent material is of trivial nature we should not declare the order of detention as invalid. However, the implementation of the decisions in the meetings were activities which cannot be said to be trivial or insignificant. Therefore, we conclude that the subjective satisfaction reached by the detaining authority that the detenu was a party to the

implementation of the decisions was non-existent, A fortiori we are constrained to hold that the order of detention suffers from non-application of the mind to the material facts by the detaining authority.

9. Now if we look at the grounds as well as the reasons for detention we find that the petitioner was detained as he was a party to the decisions taken in the meetings held on the three dates mentioned in the grounds. Pausing for a moment to consider as to who were the callers of the bundhs or Road Block, we find that neither the detenu nor his associates had any say to the calls for the Bundhs etc. The call had been given by "All Assam Students" Union" (AASU) and "All Assam Gana Sangram Parishad" (AAGSP). They called for Bundhs or Road Blocks. As such the detenu had no direct or indirect nexus to call for Bundhs etc. An indirect connection of the detenu with the Bundhs and Road Blocks was drawn as he was a party to the decisions taken. If we try to analyse the nature of the decisions we note that the first decision was taken "for full participation of the employees...for the observance of the Bundh". The second decision was not for full participation but "to extend full support". Therefore, the second decision was to give full support but there was no decision to participate in the Bundhs. If we turn to the third ground we find that the decision was taken to "extend indirect support" (vide the dossier). The intensity of the third decision was further minimised as there was no decision to extend "full support". So we find that the intensity of the decisions gradually softened. If we leave that aside and try to examine the nature and character of petitioner's participation we find that he cannot be said to be an active party to the decisions. It is true that he was present but we do not find any material to show that there was any active part played by the detenu in the form of incitement or exhortation to the members present in the meetings for taking the decisions. At best it can be said that in those meetings the detenu was a passive attendant. Bearing in mind that the detention was without any trial, and based merely on the subjective satisfaction, can it be said that for being merely a passenger or torpid, sedentary or dormant person present in the meetings a Person could be detained under the National Security Act. We requested the learned Advocate General to assist us with a single decision of any Court in India where a detenu was detained merely on such a ground and the order of detention was upheld by the Court. The learned Advocate General has failed to show any such decision. The basic fact and materials found in the grounds do not make out any case for detention of a person under "the Act". Their Lordships in the Supreme Court have laid down in *Khudiram Das Vs. The State of West Bengal and Others*, that if the grounds have no rational probative value and are extraneous for the purpose of detention the order of detention cannot be sustained. If the authority concludes so unreasonably that no reasonable authority can ever have come to the conclusion, the High Court has power to interfere in such a case not as an Appellate Authority but as a Judicial Authority which is concerned and concerned only to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided into it. We quote the relevant

observations of Bhagawati J. in *Khudiram v. State of West Bengal* (supra) (Paras 9 & 10):

But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subject to the judicial scrutiny...

Then again the satisfaction must be grounded "on materials which are of rationally probative value". *Machinder v. King* AIR 1950 FC 129. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad.... The power of the Court to interfere in such a case is not as an Appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned and concerned only to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it.

We observe this far and no further that the activities, namely, mere presence of the petitioner in the meetings, in our opinion, has no rational probative value for the purpose of detention under "the Act". We express that mere presence of the petitioner where others had taken the decisions and the petitioner was merely a passenger and did nothing at all, so it could not be a ground of detention under "the Act". However, we do not express any final opinion as we have already held the order of detention to be invalid for the reasons alluded. Further, we are constrained to observe that we are very unhappy to peruse the dossier. The document was the base or foundation for detaining the petitioner. It is ill-kept, ill-maintained and does not appear to have been recorded at or about the time when the activities happened. It is absolutely fresh. On the basis of such a dossier, it is difficult to hold that the detaining authority could make the impugned order Of detention. We speak this far and no further. Let the forwarding letter and the dossier be sealed and signed by the Bench Clerk for identification.

10. In the result, we hold that the ground No. 3 was non-existent and assuming that the date was misprinted, we are constrained to hold that the detenu was deprived of his constitutional as well as statutory safeguards. There is absolutely no material to hold that the petitioner was a party to the implementation of the decisions. Primarily on these grounds we hold that the continuous detention of the petitioner is invalid. We also express that we find it difficult to accept that mere presence of the detenu in the meetings without any overt act could be a relevant factor for detention, on the facts and circumstances of this case. For the

foregoing reasons we hold that the order of detention is invalid and the detenu is entitled to liberty. Accordingly we set aside the order of detention and direct that the detenu be released forthwith unless he is wanted in connection with any other case.

11. Now we proceed to dispose of the two other Civil Rules namely, C. R. (HC) 2/82 and C. R. (HC) 3/82 which are similar in nature and character. We quote herein below the grounds 2 and 3 of Shri Kamal Nayak.

You are the General Secretary of the Central and Semi Central Employees Parishad (CSEP) and also the convenor of the Co-ordination Committee of All Assam Karmachari Parishad (AAKP). In that capacity you have been a party to the decisions of these organisations and to implementation thereof

1. You, as the Convener...dated 12-6-81....

2. On 14-11-81, you attended a meeting of the Co-ordination Committee of AAKP held at the AAKP office, Silpukhuri, Gauhati which was attended by S/Shri Bhairab Prasad Das, Dina Bandhu Choudhury, Khanindra Chandra Das and others. In this meeting a decision was taken to support the "Assam Bundh" for observance of which on 19th and 20th November, 1981, a call was given by AASU and AAGSP. Pursuant to this decision a large number of employees of Central and State Govt. remained absent from their duties throughout the Brahmaputra Valley districts of Assam which disrupted supplies and services essential to the community.

3. On 26-11-81, you along with S/Shri Bhairab Prasad Das, Kamakhya Charan Choudhury, Khanindra Chandra Das and others attended a meeting of the Coordination Committee of the AAKP held at AAKP Office at Silpukhuri, Gauhati in which a decision was taken to extend support to the "Road Block" call sponsored by the AASU and AAGSP which aimed at stopping the movement of all vehicular traffic in Assam from 5 a.m. to 5 p.m. on 30-11-81. Pursuant to this decision, the "Road Block" programme was undertaken which caused serious dislocation of supplies and services essential to the community.

(Emphasis supplied)

The grounds of detention of Shri Bhairab Prasad Das are similar except in place of Bairab Prasad Das, the name of Shri Kamal Nayak was mentioned in the grounds. By a notification dated 14th August, 1981, in the State of Assam strikes were prohibited in every services falling within the categories referred in items 1 (i) to (v) of the Notification. It was issued on 14-8-81. There was another notification dated 14th of November '81 declaring all services in connection with production, supply and distribution of electricity as essential services under the Essential Services & Maintenance Act, 1981. Therefore, on 12-6-81 none of the services in the State of Assam was essential services. However, since 14th of August '81 most of the services were declared to be essential, services.

12. In these cases, the petitioners have challenged Grounds 2 and 3 and

advanced the same arguments as made in Civil Rule (HC), 1 of 1982 (Dinabandhu Choudhury v. State of Assam). Ground No. 1, definitely brings out a case that the detainees were parties to the decision which extended full support to the proposed bundh on 15-6-81. We also find their active part in making the decision. We also find that they laboured hard to implement the decision in calling upon the employees and workers to respond to the bundh call and to make it a success. It is indubitable that this is a good ground for detention but these are their activities on 12-6-81 and 16-8-81. The petitioner was detained merely on this ground, but the Detaining Authority also took into consideration the other two grounds. While considering the two grounds we find that the second ground was to extend full support and the third one was to extend support. In the dossier it is stated as "to extend indirect support".

13. We do not find that the detainees took any part to implement the decisions referred in Grounds Nos. 2 and 3. As such there is no material in the said grounds to hold that they were parties to the implementation of the decisions. Even there is no material that the detainees absented themselves on the date of Bundhs or took any part to support "the Road Block" call. As such we cannot find any material in grounds 2 and 3 that the detainees took any part to implement the decisions. Further, we find that on 14-11-81 and 26-11-81 the detainees were mere passengers or silent observers in the meetings, The detainees were undoubtedly in the meetings where the resolutions were taken but no overt act prior to the taking of the decisions or subsequent thereto or at the time of the decisions is there in the grounds. As such it is very difficult to hold that merely on the score that they were present in the meeting without any further act, the activities could fall within the ambit of the law. We have perused the dossiers of the detainees. We are also very unhappy to record that these were also very fresh and could not have been the dossiers kept in the regular course of business. Nobody has signed to take, upon himself the responsibility of the contents nor is there any Initial. The dossier suffers from the same infirmities as we find in the case of Shri Dina Bandhu.

14. Under the circumstances we are constrained to hold that the grounds 2 and 3 do not depict any picture that the detainees were parties to the implementation of the decisions. On this ground alone the petitioner must succeed. The Detaining Authority did not apply its mind to the facts of grounds 2 and 3 to note that there was no material to hold that the detainees were parties to the implementation of the decisions taken on 15-11-81 and 26-11-81 as claimed in the preamble.

15. Further the connection of the detainees as parties to the decisions was drawn merely on the score that they were present in the meetings is such that no reasonable person could have arrived at the conclusion that they furthered the cause or bundhs or road blocks. We also find that they were not callers of the bundhs or road block programmes. Mere presence in the meeting where decisions were taken by others to extend full support and/or to extend indirect

support, in our opinion, cannot be said to be an activity falling within the purview of "the Act". In our opinion, these are very remote activities wherefrom the conclusion cannot be reached that the detainees were parties to any activities prejudicial to the maintenance supplies and services.

16. Out of the two activities, the second activity namely "implementing the decision" is conspicuously absent in Grounds 2 & 3. In so far as the activity of being a party to the decision, we are of the view, that the decisions were never taken at the instance or exhortation of the detainees. Further the dossiers, the foundation on which the orders of detention were passed, to say the least, do not inspire any confidence in our mind, for the reasons set forth. They shall be sealed and signed by the Bench Clerk for identification. In view of the discussions made above and for the reasons set out in C. R. No. (HC) 1 of 1982, we hold that the order of detention cannot be upheld and further detention of the petitioners are invalid. Accordingly we hold that the impugned orders of detention are invalid. We allow the petition and direct that the petitioner shall be set at liberty forthwith unless wanted in connection with any other case.