
(1976) 02 CAL CK 0014
In the Calcutta High Court

Jitendra Mohan Saha

APPELLANT

Vs

The District magistrate and Others

RESPONDENT

Date of Decision : 18-02-1976

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 8(1)

Citation : (1976) CriLJ 1592

Hon'ble Judges : Anil Kumar Sen, J;A.P. Bhattacharya, J

Bench : Division Bench

Judgement

Anil Kumar Sen, J.—The detenu Sricharan Saha was put to preventive detention by the District Magistrate, West Dinajpur in exercise of his powers u/s 3 (1) (2) of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the said Act) under an order dated July 6, 1975. He was so detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. Detention rests on a ground which, in our opinion, is quite germane to the object of detention but it will not be necessary for us to refer to the said ground as the impugned detention fails on the failure of the detaining authority to comply with the mandatory provisions of Section 8 of the Act which invalidates the detention. It is the validity of such detention which is the subject-matter of challenge in this Rule obtained by the detenu/petitioner on a writ petition.

2. The Rule is being contested by the respondents and Mr. Basu, the learned Counsel for the State has produced before us the original records from the Home file. On the records so produced, there is no dispute as to certain facts. Although the order of detention was passed on July 6, 1975, the grounds for the detention was not drawn up contemporaneously. The order was executed and the detenu was taken into custody on July 7, 1975. The grounds for detention were drawn up and signed by the detaining authority on July 10, 1975, that is, well within 5 days from the date of the order and date of detention. Unfortunately, however, the admitted position is that such grounds were not communicated to the detenu

prior to July 16, 1975, on which date for the first time, the grounds were served on the detenu in jail. Therefore, on these facts it is well established that the grounds were not served on the detenu within 5 days from the date of detention as enjoined by Section 8 (1) of the said Act.

3. Section 8, Sub-section (1) provides as follows:

When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

4. On the provisions of Section 8 (1) as above it is obligatory on the part of the detaining authority to communicate the grounds on which the detention rests within 5 days from the date of detention except in exceptional cases where due to exceptional circumstances the time schedule cannot be maintained and such circumstances are brought on record by recording of reasons for non-fulfilment of the time schedule. Except for the exceptional cases, therefore, communication of the grounds to the detenu within 5 days is a mandatory obligation which has got to be fulfilled and the infringement thereof would invalidate the detention. Provision for such communication of grounds is one of the statutory safeguards available to persons who have been deprived of their liberty without trial and as such strict compliance thereof would always be enforced. Maintenance of time schedule so prescribed is, therefore, obligatory and admits of no relaxation except to the extent and subject to such conditions as prescribed by Section 10 itself (See *Sk. Salim Vs. The State of West Bengal*, .)

5. In the present case, however, on record there is nothing to make out any exceptional circumstance for the delayed service of the ground beyond 5 days from the date of detention. We have looked into the records produced by Mr. Basu very carefully with his assistance. Only thing on which reliance could be placed by Mr. Basu is one paragraph incorporated in the report made by the detaining authority to the State Government on July 10, 1975, u/s 3 (3) of the said Act. In intimating the making of the order and in enclosing a copy of the grounds in this report dated July 10, 1975, it had been stated that:

The date of detention will be communicated as soon as the order is executed.

The grounds for detention could not be served upon the detainee concerned within the specified time due to some unavoidable reasons.

6. Mr. Basu relies on the last part of the aforesaid report as making out of exceptional circumstances which would justify service of the ground beyond 5 days but within 15 days from the date of detention as contemplated by Section 8 (1) of the Act. We are, however, unable to accept this contention. This report is

materially discrepant and misconceived. On July 10, 1975, the order of detention had already been executed. Therefore, it was not correct on the part of the detaining authority to make a report and leave an impression with the State Government that the order had yet not been executed and that when executed the date of detention would be communicated to the State Government, That apart the recital relied on by Mr, Basu does not make out any circumstance far less any exceptional circumstance contemplated by Section 8 (1) of the said Act which alone could justify a communication of the ground beyond 5 days but within 15 days from the date of detention. In our opinion, when the statute provided relaxation of the 5 days" time-limit in exceptional circumstances, it contemplated objective existence of such exceptional circumstances. The statute further provided a safeguard that not only such circumstances must be in existence on facts but must contemporaneously be brought on record by recording of reasons, i.e., by recording of facts constituting the ground for the delay in communicating the grounds to the detenu beyond 5 days from the date of detention. Mere quoting of the language of the section and mere stating that such communication could not be made due to unavoidable reasons, without specifying what such reasons are, is not due compliance with the mandatory provisions of this section. Facts constituting the reason not being recorded, it is not possible to judge whether the same would objectively stand the test prescribed. The recital relied on by Mr. Basu, therefore, does not, in our opinion, make out any exceptional circumstance which alone could justify the delay in communication of the ground.

7. On the conclusions as above, we must hold that in this case the detaining authority having infringed the mandatory provisions of Section 8 (1) of the said Act by not communicating the grounds within 5 days from the date of detention, the continued detention had been rendered invalid so that the detenu is entitled to release.

8. This application, therefore, succeeds and the Rule is made absolute. Let the detenu be set at liberty forthwith.

9. Let a Writ in the nature of Habeas Corpus do issue accordingly.

A.P. Bhattacharya, J.

10. I agree.