
(1988) 06 OHC CK 0009
In the Orissa High Court

Tukuna alias Satyajit Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-06-1988

Acts Referred:

National Security Act, 1980 — Section 3, 8
Penal Code, 1860 (IPC) — Section 302, 307, 323, 34, 385

Citation : (1989) CriLJ 364

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Judgement

G.B. Patnaik, J.—The continued detention of detenu Tukuna alias Satyajit Panda pursuant to an order of detention passed by the District Magistrate, Cuttack, in exercise of his powers under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as the "Act") and approved by the State Government under Sub-section (4) of the said section is being assailed in this writ petition. The detaining authority on being satisfied that the detention of the detenu is necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, has passed the impugned order of detention.

2. The grounds of detention which were communicated to the detenu, as required u/s 8 of the Act, have been annexed as Ann-2 to the writ petition. It would be appropriate to extract the grounds of detention:

2. On 28-12-1987 at 10 A.M. yourself and Sudhakar Bagedi went to the cattle feed shop of Biswanath Choudhury situated in front of Suraj Talkies on Chandinichowk-Cuttack Chandi Road and demanded subscription for the Club. As he did not pay, both of you threatened him. This fact was intimated to Desraj Agrawalla, the complainant, by his brother-in-law Biswanath Choudhury. On the same day at about 9.45 P.M. yourself, Dilip Behera and two others, all armed with knives went to "Uma Tailoring shop" situated near Suraj Talkies and the house of Desraj Agrawalla and demanded subscription with threats. When Desraj

Agrawalla objected to it, you dealt a blow on his face as a result blood oozed out from his nose. As he raised alarm you ran to the nearby sweetmeat shop of Baishnab Singh and bringing a "dekchi" containing hot water rushed forward to throw it on him. Out of fear he ran inside his house and all of you chased him and entered inside his house. Hearing his alarm his brother-in-law Biswanath Choudhury and sons Sankar, Sraban, Pradip and Satyanarayan came to his rescue and obstructed you all. Thereafter you and your associates came out to the road and started abusing him with threats. Hearing this, his neighbours and neighbouring shopkeepers also assembled there. But none did come forward to help him, as you and your associates hurling the knives were giving threats. As a result the neighbouring house owners and shopkeepers closed the doors of their houses and shops out of fear. The public did not venture to go by that road and all vehicular traffic stopped on the road and the road became isolated. After some time all of you went away towards Chandinichowk hurling the knives. A reign of terror prevailed i in the area for some time and the public were panic-stricken. Due to such action of yours and your associates, public peace and tranquillity was jeopardised This incident refers to Lalbag P.S. Case No. 549 dt. 28-12-1987 u/s 385/323/452/506/34 I/P.C.

The anti-social and violent activities; mentioned in the foregoing paragraph have adversely affected the even tempo of life of the community and disturbed public peace and order.

One set of copies and supporting records of this case is enclosed herewith.

You are, therefore, informed that if you like, you may file representation against the order of detention to State Government.

The grounds communicated, as extracted above, reveal that the detenu demanded some subscription from one Biswanath Choudhury during the morning hours of 28th of December, 1987, but as he did not pay, the detenu threatened him with dire consequences. Again, in the evening hours, the detenu with his associates armed with knives went to some other shop as well as the house of an inhabitant of the locality and demanded subscription from them with threats and when the demand was not fulfilled the detenu gave two slaps on the face of the person from whom the demand had been made. When alarm was raised the detenu went to the nearby sweet-meat shop and brought forth hot water to pour over the person from whom he had demanded the subscription. When the concerned person ran into his house out of fear the detenu and his associates even chased him and when others came and obstructed, the detenu and his associates came back to the public road and started hurling their knives and giving threats and on account of such activities of the detenu no member of the public could venture to go by that road and the vehicular traffic had stopped for some time to the road. It further reveals that a reign of terror prevailed in the area and the public were panic-stricken.

3. Mr. Beura, the learned Counsel for the petitioner, assails the order of detention

on the following grounds:

(i) The activities of the detenu complained of relate to disputes between private individuals and, therefore, appertain to "law and order" situation and had no relevance to "public order" situation. Consequently, the pre-condition for passing an order of detention u/s 3(2) of the Act has not been satisfied and the order of detention is, therefore, illegal.

(ii) The representation that was addressed to the Advisory Board was not sent to the Advisory Board for consideration and, therefore, it constitutes an infraction of the relevant provision of the Act and as such the continued detention of the detenu is illegal and void.

(iii) The incident narrated in the grounds of detention being a single one and there being no other materials from which a reasonable conclusion could be inferred that the detenu is likely to indulge in such activity in future, the order of detention is liable to be quashed.

(iv) In view of Sub-section (5) of Section 3 of the Act and in the absence of any communication from the Central Government that it did consider the report of the State Government sent to it u/s 3(5), it is only logical to conclude that the Central Government has not applied its mind and considered the report of the State Government, which constitutes an infraction of Section 3(5) of the Act and, therefore, the detention has been rendered illegal.

Mr. Patra, the learned Additional Government Advocate, appearing for the detaining authority, on the other hand, repels all the aforesaid submissions and contends that neither there has been any infraction of any statutory provision nor is there any substance in the contention of the petitioner that the activities appertained to a mere law and order problem and not a problem regarding public order. He further contends that the representation of the detenu was duly sent to the Advisory Board and has also been considered by the Advisory Board. Mr. Patra, the learned Additional Government Advocate, also urges that Section 3(5) of the Act does not cast an obligation on the Central Government to communicate the detenu the results of consideration of the report sent by the State Government to the Central Government and, at any rate, such a plea cannot be entertained for adjudication since the Central Government has not been made a party to this writ application. The rival submissions require careful examination of the relevant provisions of the statute as well as certain decided cases cited at the bar.

4. Before entering into a discussion on the points urged in seriatim, it may be noticed that in the recent past, demand of subscription by a single person or a group of individuals in a locality from the peace-loving inhabitants and shopkeepers assumed notoriety to a great degree. Rivalry between different groups of people based on their respective areas of operation for collection of such illegal demand either in the name of a Club or in the name of a Yuba-Sangha or under cloak of collection for any Deity in the area, has become a

problem for the authorities in charge of law and order and majority of the peace-loving inhabitants tolerate such activity without raising their voice out of fear and apprehension for their own safety and safety of their family members. Such activities, therefore, have to be curbed with heavy hand so that people in the locality can breathe free air and move freely.

5. Coming now to the first submission of Mr. Beura, the learned Counsel for the petitioner, Mr. Beura contends that the incident referred to in the grounds is an individual dispute between the detenu and the person from whom he had demanded certain subscription and the offence committed by the detenu can easily be adjudicated upon by taking recourse to the provisions of ordinary criminal law and it appertains to the realm of "law and order" and not "public order". In support of the aforesaid contention, the learned Counsel places reliance on the decision, of this Court in the case of Pabitra Kumar Sahoo Vs. State of Orissa and Others, and the decision of the Supreme Court in the case of Kuso Sah Vs. The State of Bihar and Others, as well as the decision of the Supreme Court in the case of Sushanta Goswami v. State of West Bengal AIR 1969 SC 1004. In Kuso Sah's case Kuso Sah Vs. The State of Bihar and Others, no doubt, the Supreme Court held that stray and unrecognised crimes of theft and assault were not matters of public order since they did not affect the even flow of public life and infractions of law were bound in some measure to lead to disorder but every; infraction of law did not necessarily result in public disorder. In Sushanta Goswami's case AIR 1969 SC 1004, the Supreme Court observed:

...the contravention of any law always affects order but before it can be said to affect public order it must affect the community or the public at large, A mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Act but a disturbance which will affect public order can alone justify detention under that head....

Relying upon these two decisions in the Bench decision of this Court in Pabitra Kumar Sahoo Vs. State of Orissa and Others, it was held that the act of removal of the T. V. set and the threats and assaults were confined to Minaketan and not to members of public at large and, therefore, the effect of the act was not that extensive as to affect considerable members of the society. It was, therefore, concluded that the act was an act infringing law and order and did not disturb the public tranquillity. The difference between "law and order" and "public order" has been pointed out by now in several decisions of the Supreme Court. As has been said by the Supreme Court in the case of Arun Ghosh Vs. State of West Bengal, , the test to be adopted is to find out whether the acts complained of are likely to cause a disturbance of the public order i.e. its impact on the normal life of the locality. If the acts complained of lead to the disturbance of the current of life of the community then it does amount to a disturbance of public order. The act by itself is not the determinative factor but its quality, potentiality, the manner in which it was done, the time at which it was done are all factors to be considered. In a recent decision of the Supreme Court in the case of State of U.P.

Vs. Kamal Kishore and Another, , the Supreme Court analysed a number of its earlier decisions and reiterated its views expressed in the case of Gulab Mehra v. State of U.P. wherein it was held that whether an act relates to law and order or to public order would depend upon the effect of the act on the life of the community or, in other words, the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it would be an act which would affect public order. It would be appropriate to extract a passage from the decision of the Supreme Court in the case of Ashok Kumar Vs. Delhi Administration and Others, :

The true distinction between the area of "public order" and "law and order" lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order....

In State of U.P. Vs. Kamal Kishore Saini, , referred to supra, the Supreme Court negated the findings of the High Court and came to the conclusion that the act complained of, namely while the complainant had been to Lucknow Jail along with his son Ram Kumar and son-in-law Nand Kishore to see an accused in the District Jail and when they could not meet the accused and were returning back and hardly had reached a little distance from the jail near the residence of the Jail Superintendent, the detenus along with one Anandi Shukla came on a scooter and fired at the complainant in consequence of which complainant, Ram Kumar and Nand Kishore ran helter and skelter and thereafter the detenus chased Ram Kumar and fired again in consequence of which Ram Kumar fell dead and for which a case had been registered under Sections 302/307, Penal Code, did affect the public order as it disturbed the public tranquillity and affected the even tempo of the life in the locality where the incident is alleged to have occurred. The Supreme Court further observed that the finding of the High Court that it did not disturb the public order was not legal and valid.

In another recent unreported decision of this Court in the case of Mohan Behera v. State of Orissa O.J.C. No. 1717 of 1987, decided on 20-7-1987 (Since reported in 1988 Cri LJ 38 (Orissa)) in somewhat similar, circumstances where the detenu had entered inside the hostel premises of a college in search of another student and when he did not find him there he then entered into the dining hall of the hostel and demanded food there at the point of a "Bhujali" to which the Manager of the Mess obliged and thereafter came out on the road with the "Bhujali" in his hand, it was held that it did affect the public order and,

therefore, the detaining authority was justified in issuing the order of detention in exercise of his powers u/s 3(2) of the Act,

It is not necessary for us to multiply authorities on the point and on the ratio of the aforesaid cases after examining the grounds stated in the grounds of detention, extracted earlier, we are of the opinion that the incidents narrated affected the public order as its reach and impact was to disturb public tranquillity and, as has been stated by the detaining authority, it did affect the even tempo of the life of the people in the locality where the incidents are alleged to have occurred. We would, therefore, reject the first submission of Mr. Beura, the learned Counsel for the petitioner.

6. So far as the second submission is concerned, we also find the same to be without any substance. In the counter affidavit filed on behalf of the State Government through its Joint Secretary, it has been stated that the representation of the petitioner dt. 21-1-1988 was forwarded to the Advisory Board on 25-1-1988 along with the comments of the District Magistrate thereon. The District Magistrate who is the detaining authority in his affidavit also has stated that the representation of the detenu dt. 21-1-1988 was placed before the Advisory Board for consideration and the Advisory Board after due consideration was of the opinion that there was sufficient ground for detention. The learned Counsel for the petitioner also concedes before us that the detenu himself was produced before the Advisory Board and has his say in the matter, In view of the aforesaid state of affairs, it is not possible for us to hold that the representation of the petitioner addressed to the Advisory Board had not been forwarded to the Advisory Board and has not been considered by the Advisory Board. We would accordingly reject the second submission of Mr. Beura for the petitioner.

7. So far as the third submission is concerned, Mr. Beura contends that the incident mentioned in the grounds of detention being a single incident and there being no assertion in the order of detention nor is there any material on record to come to a conclusion that the detenu is likely to indulge in such act in future, the order of detention is liable to be quashed. In support, of the aforesaid contention, the learned Counsel places reliance on a Bench decision of this Court in the case of Narayan Behera and Others Vs. District magistrate and Another, as well as the decision of the Supreme Court in the case of Ramveer Jatav Vs. State of U.P. and Others, . In the Supreme Court case upon which the learned Counsel for the petitioner relies, their Lordships have observed that it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person. In the Bench decision of this Court on which the learned Counsel for the petitioner places reliance, what was held was that in the facts, and circumstances of that case, it was not! possible for the Court to come to the conclusion that the detenus would repeat the misconduct or would do something else which would be prejudicial to the maintenance of public order. The order of detention under the Act is essentially a precautionary measure and is based on a reasonable prognosis of

the "future" behaviour of a person based on his past conduct judged in the light of surrounding circumstances. A single incident may even point to a repetitive tendency. In the case of *Debu Mahato Vs. The State of West Bengal*, , where the detenu was found removing three bales of empty jute bags after breaking open a railway wagon, the Supreme Court had observed that it was not their view that in no case could a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it was necessary, to detain him. In the case of *Narayan Debnath Vs. The State of West Bengal*, , the Supreme Court after referring to a single incident had observed that the act would reasonably give rise to a bona fide satisfaction in the mind of the detaining authority that such incidents were likely to be repeated in the same manner and a single incident of this magnitude could reasonably persuade the detaining authority to conclude that the detention of the detenu was necessary. In the case of *Dharua Kanu Vs. State of West Bengal*, , the Supreme Court also upheld an order of detention that was based on a single incident where the detenu was found removing fish plates from the running track. This being the legal position and on the incidents narrated in the grounds of detention, we are of the opinion that the nature of the act and the attendant circumstances are such that it may reasonably justify an inference that the person concerned, if not detained, is likely to indulge in commission of such acts in future. We would accordingly reject the submission of Mr. Beura on this score and hold that the order of detention does not suffer from the infirmity as alleged.

8. The only other submission which survives for our consideration is whether there has been an infraction of Sub-section (5) of Section 3 of the Act since there has been no communication from the Central Government that it did consider the report of the State Government sent to it u/s 3(5). At the outset, it must be said that the Central government has not been made a party to this application and, therefore, it is not permissible for us to entertain the said contention. Then again, there is no requirement of law that the Central Government must communicate the fact to the detenu that it has considered the report of the State Government. Further, in a Bench decision of the Gauhati High Court in the case of *Bikash Narayan Sarma Vs. State of Assam and Others*, , dealing with a similar question, it has been held:

...Though on receipt of the report it is open to the Central Government to revoke an order if it thinks fit to do, the question of "discretion coupled with duty" mention of ! which has been made in *Sabir Ahmed Vs. Union of India (UOI)*, will arise only when a petition/ representation has been made;...

We, however, need not consider this aspect any further since in our view we would not be in a position to come to a conclusion that the Central Government has not considered the report sent by the State Government in the absence of the Central Government as a party to this proceeding. We would accordingly reject the last submission of Mr. Beura, the learned Counsel for the petitioner.

9. All the contentions having failed, the writ application fails and is accordingly dismissed.

A.K. Padhi, J.

10. I agree.