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TULSHI RABIDAS

THE STATE OF WEST BENGAL

January 27, 1975

[V. R. KRISHNA IYER, P. K. GOSWAMI AND R. S. SARKARIA, JJ.]

B

Maintenance of Internal Security Act, Sec. 3—Subjective satisfaction, meaning of—Some evidence gathered during investigation which in some manner roped in the detenu, if sufficient.

C

In pursuance of the order of detention made by the District Magistrate, West Dinajpur, on March 19, 1973, the petitioner was taken into custody. The order of detention was intended to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies essential to the community. The first ground related to the arrest of the petitioner and his associates while they were smuggling 65 KGs. of paddy from West Dinajpur District to Malda District. On being challenged by the patrol party he could not produce any valid document in support of his carrying paddy at West Dinajpur-Malda districts border. The second ground related to the smuggling of paddy on 11/12.3-73 mid-night in 6 bullock carts by the petitioner and his associates from West Dinajpur District to Malda District. On being challenged by the Resistance Group Members, the petitioner and his associates threatened to kill them and therefore, being thus terrorised, they dared not apprehend the petitioner and his associates.

D

Dismissing the Writ Petition challenging the order of detention,

E

HELD: (i) The counter affidavit disclosed that a criminal case had been instituted against the petitioner and his associates for offences of illegal transport of paddy, for resistance to the police officers taking them into custody and for escape from lawful custody. It further stated that 'due to dangerous and desperate nature of the detenu and his associates' the witness declined to give evidence in open court for fear of their lives and that the final report was submitted in the said case. This means that the charge-sheet disclosed sufficient evidence to go before the Court and it was not a case of absence of reasonable grounds of suspicion. [403H-404B]

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(ii) So far as the second ground is concerned, the absence of material to show that a case has been charge-sheeted in court is not destructive of the detention order provided there is some material for subjective satisfaction of the authority concerned. Whether the investigation was conducted properly or not, whether the District Magistrate should have pinned his faith on the result of investigation and like questions are not for the court to consider. But the minimum which must be placed before the court is that there was some evidence gathered during investigation which, in some manner, roped in the petitioner. In the present case, there is some evidence for the District Magistrate to act. [404E-H]

G

(iii) Rhetorical assertions that the Presidential proclamation of emergency has outlived its reality and must be annulled, cannot be transformed into proof. The reasons given by this Court in *Bhuth Nath's* case A.I.R. 1974 S.C. 806, holds good here too. [405E-F]

Samsher Singh's case, A.I.R. 1974 S.C. 2192, referred to.

H

ORIGINAL JURISDICTION : Writ Petition No. 349 of 1974.

Petition under Art. 32 of the Constitution of India.

H. S. Marwah, for the petitioner.

Sukumar Ghosh and G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The case of the petitioner, a detenu in West Bengal, has been presented at persistent length by Sri Marwah, appearing as *amicus curiae*, but some of the many contentions pressed by him merit serious notice which alone we propose to deal with.

Now, the facts to the extent relevant. The order for detention was made by the District Magistrate, West Dinajpur, on March 19, 1973 pursuant to which he was taken into custody nine days later. The calendar of 'statutory' events discloses no infirmity but the content of the grounds given by the District Magistrate and the order of approval made by the State Government have been the focal points of attack. Straightway we proceed to set out the two criminal involvements of the petitioner which allegedly persuaded the authority to direct detention with a view, hereafter, to inhibit this activities prejudicial to supplies essential to the community. They are :

"(1) That on 6-3-73 at about 01.30 hours you along with your associate Mangal Soran of Gopalpur, P. S. Bangshihari, Dist. West Dinajpur were arrested with 65 kgs. of paddy in gunny bags within 1 K.M. of West Dinajpur-Malda Border at Kandarpur, P. S. Banshihari, Dist. West Dinajpur, by the patrol party of Bagduar A/S Camp, P. S. Bangshihari, Dist. Dinajpur while you and your said associates were smuggling the said quantity of paddy from West Dinajpur district to Malda district. Being challenged by the patrol party you could not produce any valid document in support of your carrying paddy at West Dinajpur-Malda districts border. This activity of yours created scarcity of paddy within the jurisdiction of Bangshihari P. S. Elaka of West Dinajpur district and the price index of paddy soared high and high beyond the purchasing capacity of the common people of that area. Thus you acted in a manner prejudicial to the maintenance of supplies essential to the community.

(2) That on 11/12-3-73 mid-night you along with your associates were found smuggling paddy in 6 bullock carts from Rakhalpukur, P.S. Banshihari, Dist. West Dinajpur to Malda district by some members of the local Resistance group, namely Kamal Chandra Roy of Deogaon, Narayan Chandra Sarkar of Mirshati, both of P.S. Banshihari, Dist. West Dinajpur and others. Being challenged by the said Resistance Group Members, you and your associates threatened to kill them and being thus terrorised the Resistance Group Members dared not apprehend you and your associates. These activities of yours are mainly responsible for the rise in price of paddy and rice within Banshihari P.S. jurisdiction of West Dinajpur district. By such illegal act of smuggling of paddy you and your associates created scarcity of paddy and rice in Banshihari P.S. jurisdiction, Dist. West Dinajpur and thereby acted in a manner prejudicial to the maintenance of supplies essential to the community.

A From the above facts it is clear that you and your associates are acting in a manner prejudicial to the maintenance of supplies and services essential to the community."

The past is the precursor and predictor of the future and this commonsense canon is usually—and in this case—applied by the authority to foretell the danger to the services and supplies essential to the community by repetitive criminal activity of the prospective detenu. B Once the officer entrusted with the power reads the omens with due care, the court cannot re-read for its own satisfaction. But if the authority puts forward grounds so grotesque that he goofs the law, as it were, the Court will invalidate the order for the well-worn reason that no rational being would have formed the satisfaction which is a *sine qua non* for the detention. C Supra-rational hunch or infra-rational instinct are not legal processes in this humdrum world and we have, as sentinels, the duty to scan the basis of the subjective satisfaction of the authority to check upon his minimal aspect of rational belief.

The grounds, as already set out, have to be considered to appraise the claim of rational belief as against the charge of a 'cyclostyled' satisfaction. The crime of March 6, 1973, committed past mid-night D by the petitioner and his associates, is tell-tale in certain aspects. It relates to removal of paddy in gunny bags. The smugglers were arrested by the patrol party of Bagduar anti-smuggling camp. The culprits could not produce any permit in support of their transport of the paddy. We have no doubt that smugglers disrupt supplies and services essential to the community and a smuggler of today who gets away with it is likely to be a smuggler of tomorrow, the habit of getting rich quick dying hard. E In this context, we have the counter-affidavit which runs thus :

"It appears from the report submitted by I.O. of the case that the petitioner was intimately connected with the incidents mentioned in the grounds of detention. I deny that the grounds of detention are false and detention of the petitioner is illegal. F It further appears from the report of the said I.O. that with reference to the first incident a Cr. Case being Banshihari P. case No. 6 dated 6.3.73 was instituted against the petitioner and his associates under Section 7(1) of the Essential Commodities Act and Section 224/225 of I.P.C. but as due to dangerous and desperate nature of the detenu and his associates the witnesses declined to give evidence against them in open court for fear of their lives and G final report was submitted in the said case."

The inevitable inference from this statement, understood in the background of the 'grounds,' is that a criminal case had been instituted against the petitioner and his associates for offences of illegal transport of paddy, for resistance to the police officers taking them into custody and for escape from lawful custody. Sections 224 and H 225 I.P.C. clearly indicate this development. What follows is significant. The Deputy Secretary in the Home Department (who has sworn to the counter-affidavit), by a perusal of the papers, states on

oath that 'due to dangerous and desperate nature of the detenu and his associates' the witnesses declined to give evidence in open court for fear of their lives and the final report was submitted in the said case.

The price that subjective satisfaction, as validating an order and excluding judicial scrutiny, has to pay in a court, is that if one of many grounds relied on by the authority goes, undeniably the whole order falls, even though if it were a case of objective satisfaction the court might have attempted to sustain the order on the surviving grounds. It is argued that for this reason, the detention order in the present case must fail.

We have to be very careful where economic offenders injure the soft underside of the community's distribution and consumption system in respect of essential commodities. Viewed with meticulous care, we see from the affidavit filed on behalf of the State that a criminal case had been actually instituted against the petitioner under s.7(1) of the Essential Commodities Act. This means that the charge-sheet disclosed sufficient evidence to go before a court and it was not a case of absence of reasonable grounds of suspicion. The possible argument that the affidavit had left vague the likelihood of a report under s. 169 Cr.P.C. based on no evidence is thus repelled. The order is not vulnerable on this score.

So far as the second episode is concerned, the attack made by counsel is that the counter-affidavit omits to mention anything about the criminal case that must have followed. True, there should have been a better affidavit, but the absence of material to show that a case has been charge-sheeted in court is not destructive of the detention order provided there is some material for the subjective satisfaction of the authority concerned. In the present case, on the police report regarding the second incident, which is a serious one, the authority might well have come to an inference of prejudicial activity. We must express our surprise at the silence in the counter-affidavit about the action taken in court having regard to the fact that the offence itself is one of transport by a 'caravan' of bullock carts. Even so, we are unable to void the order on this score, especially because the District Magistrate may well have acted on the police report. Whether the investigation was conducted properly or not, whether the District Magistrate should have pinned his faith on the result of the investigation and like questions, are not for the Court to consider. But the minimum which must be placed before the Court is that there was some evidence gathered during investigation which, in some manner, roped in the petitioner. We are prepared to hold that there is some evidence for the District Magistrate to act and there we pause.

We must frankly admit that the nature of the economic offence has had some impact on our mind in examining the order and the source material sedulously. The facts are peculiar and other facts might have led to an opposite inference. The caution that absent-minded orders of detention unwittingly suffer electrocution in court

- A should however not be forgotten, notwithstanding the survival of the order in this case.

The country which faces food scarcity has resorted to arming the government and its officers with special powers under the MISA. They are intended to be exercised whenever occasion arises, but exercised
B *with care.* In the present case we have had to make up for deficiencies in the counter-affidavit by a closer examination of materials, for reasons already set out.

- We should impress upon government and its lesser officials, armed with extraordinary powers, to use them for the salutary purpose of
C the protection of the community in its sensitive area of food and like essential articles. If there is failure in this area, the officers must be taken to task, for the victim is the country and the community. The release of a detenu because the order has been passed recklessly, is a matter which should be of concern to the State. If the detenu is a dangerous criminal who disrupts supplies and services essential to
D the life of the community, release of the man caused by absence of nexus for which the real though invisible responsibility falls on the officer, must be looked into at higher levels, so that the purposes of the MISA are not defeated by the neglect of legality or indifference in operation from within. Official vigilance is the price of social security and MISA is no talisman. In the present case, for the special reasons
E set out above, the order survives judicial scrutiny.

- Shri Marwah opened vigorously with the submission that the Presidential proclamation of emergency has outlived its reality and must be annulled by this Court. He marshalled what he variously called 'notorious' and 'historical' facts to establish that normalcy has pre-
F vailed in the land for some time and the impenetrable secrecy of 'subjective satisfaction' no longer remained a sustainable proposition after *Samsher Singh's Case*(¹). If the Emergency was extinguished judicially and retroactively, the Defence of India Act would have expired and the maximum period of detention itself would have ended, resulting in a release of the petitioner. For lovers of civil liberties a
G penumbra of Emergency is anathema but the preliminary question in a Court is whether the basic facts and necessary parties are on record at all. Rhetorical assertions cannot be transformed into proof and absent affected parties, the Court's jurisdiction cannot be activated. Further, adjournment for this purpose at this late stage being impermissible, we have to negative the plea. Moreover, the reasons given by this Court
H in *Bhut Nath's Case*(²) hold good here too. We reject the belated

(1) AIR 1974 SC 2192;

(2) A.I.R. 1974 S.C. 806.

plea, hopeful that in the event of a future ruling of this Court pronouncing the state of emergency long ago legally dead the petitioner will have the benefit of it at the hands of the State. Observing silence for the nonce on the merits of Shri Marwah's undocumented contention, we reach the conclusion that the petition is liable to be dismissed. We however record appreciation of the painstaking services of Mr. Marwah with a sense of involvement in the case, though appearing as *amicus curiae*.

The petition is dismissed and the rule discharged.

Petition dismissed.

V.M.K.