

(2000) 01 AHC CK 0165

Allahabad High Court

Case No: Habeas Corpus Petition No. 38605 of 1999

Rajendra Thathera

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 12, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226
- National Security Act, 1980 - Section 12(1), 3, 3(2)
- Penal Code, 1860 (IPC) - Section 379, 411

Citation: (2000) CriLJ 1674

Hon'ble Judges: V.K. Chaturvedi, J; O.P. Garg, J

Bench: Division Bench

Advocate: S.T. Siddiqui, for the Appellant; A.G.A, for the Respondent

Final Decision: Dismissed

Judgement

O.P. Garg, J.

The only point which has been canvassed before this Court on behalf of the petitioner - Rajendra Thathera is that from the allegation contained in the F.I.R. and the grounds of detention accompanied with the order dated 30th June 1999, Annexure 9 to the writ petition, passed u/s 3(2) of the National Security Act (hereinafter referred to as "the Act"), by the District Magistrate Ballia, a case of disturbance of "public order" or disruption of maintenance of essential service and supply is not made out and at best, if the allegation as such are accepted to be true, it would be a case of breach of "law and order" for which the petitioner can adequately be dealt with and punished under the ordinary penal law.

2. The above submission has come to be made in the following circumstances :

3. In the night of 17th/18th May, 1999, electricity wire measuring 3710 meters in length, the assessed value of which comes to Rs. 48,230/- was removed and stolen

by some unknown culprits stretched in between 13 electric poles from Government Tube well No. 212 to Tube well No. 222 within the boundary of villages Samardapa to Dudhela within the jurisdiction of Police Station Haldi Ballia. A report of the theft was lodged on 24-5-1999 at 2.30 p.m. by Satya Nand Singh, in charge 33/11 K.V. Grah, Sonwani, Ballia. During the course of investigation, the petitioner was apprehended on 1-6-1999 and from his possession 18 Kilograms pieces of electric wire and solid block of 40 Kilograms (melted from electricity wire) with some pieces were recovered. The petitioner was booked in case crime No.90 of 1999 u/s 379/411 I.P.C. as the articles which were recovered from his possession pertained to the theft aforesaid. The petitioner applied for bail.

4. After receiving the report of the sponsoring authority and taking into consideration the material produced before the District Magistrate, Ballia, impugned order of detention dated 30th June 1999 (Annexure 9 to the petition) which was served on the petitioner on the same day along with the grounds of detention, Annexure 8 to the petition, was passed under the Act. The said order of detention was approved by the State Government on 10-7-1999 (Annexure 11 to the petition). The petitioner made a representation against the order of detention on 8-7-1999 (copy of which is Annexure 13 to the petition) .The Central Government rejected the representation of the petitioner on 6-8-1999, Annexure 14 to the petition. With the receipt of the opinion of the Advisory Board, the State Government rejected the representation of the petitioner on 23-8-1999, Annexure 15 to the petition, and confirmed the detention of the petitioner for a period of one year u/s 12(1) of the Act.

5. The grounds of detention indicate that the preventive measure to detain the petitioner was taken as his alleged criminal act had resulted in bringing to a halt as many as 13 tube wells in the area and supply of electricity to nearby 15 villages was disputed. The entire area was in the grip of darkness and the supply of water through tube wells became impossible.

6. Counter and rejoinder affidavits have been exchanged. Heard Sri S.T. Siddiqui, learned counsel for the petitioner and the learned A.G.A. on behalf of the respondents. The learned counsel for the petitioner tried in vain to take us through the various allegations made in the F.I.R. as well as the recovery memo which was prepared at the time of effecting recoveries from the possession of the petitioner when he was apprehended on 1-6-1999. Merits of the allegations against the petitioner cannot be gone into and sifted in a petition of Habeas Corpus. Subjective satisfaction of the detaining authority cannot be interfered with by this court if there is enough material to form the opinion that the preventive detention of the detenu is necessary to prevent the repetition of the crime. In [A.K. Roy and Others Vs. Union of India \(UOI\) and Others](#), the question of satisfaction of detaining authority received the attention of the Apex Court. It observed that the detention, it must be remembered, is based not on facts proved either by applying the test of

preponderance of probabilities or of reasonable doubt. The detention is based on the subjective satisfaction of the detaining authority that it is necessary to detain a particular person in order to prevent him from acting in a manner prejudicial to certain stated objects. The basic imperative of proof beyond reasonable doubt does not apply to the "subjective satisfaction" component of imprisonment for reasons of internal security, was the observation earlier made by Apex Court in [Ved Prakash Handooja Vs. Delhi Administration](#), . Undoubtedly, the firmness of the above legal position cannot be disputed.

7. Before grasping the real controversy whether the grounds of detention make out a case of disturbance of maintenance of "public order" or it was merely a case of breach of "law and order", it would be proper to deal with the passing submission made by the learned counsel for the petitioner that solitary/single incident of criminal activity does not give rise to "public disorder" or is not sufficient to brand the act as prejudicial to the maintenance of supplies and services. Normally, it is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of "public order" and even one single instance may be sufficient to satisfy him in that regard depending upon the nature of the incident. In certain circumstances, even a single incident may disturb tranquillity and even tempo of life of the community. This aspect of the matter came to be considered in the case of [Alijan Mian Vs. District Magistrate, Dhanbad and Others](#), . The observations made in the said case have been reiterated in all the subsequent decisions. In [Ayya alias Ayub Vs. State of U.P. and Another](#), , it was Observed that a single instance of activity tending to harm "public order" might, in the facts and circumstances of its commission, reasonably supply justification for the satisfaction as to legitimate apprehension of a future repetition of similar activity to the detriment of the "public order". In *Bimla Rani v. Union of India* 1989 Cri LJ 756 following Ayya's case (supra), it was observed that the question is whether the incident had prejudicially affected the "public order". In other words, whether it affected the even tempo of life of the community. The question posed in *Bimla Rani's* case (supra) was answered more appropriately and with clarity in the case of [Attorney General for India and Others Vs. Amratlal Prajivandas and Others](#), , wherein the Apex Court ruled that it is beyond dispute the the order of detention can be passed on the basis of single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Now the law as it stands firmly embedded is that multiplicity of the criminal acts is not necessary to pass an order of preventive detention. If the solitary incident by itself gives rise to disturbance of "public order" or is prejudicial to the maintenance of supplies and services, within the meaning of Section 3(2) of the NSA the detaining suthority having been satisfied of its further repetition, may legitimately pass an order of preventive detention with a view to preserve even tempo of the life of the community.

8. The order of detention u/s 3(2) of the Act may be passed with a view to preventing the detenu from, in any manner, prejudicial :

(i) to the security of the State

(ii) to the maintenance of public order, and

(iii) to the maintenance of supplies and services essential to the community.

The scope of expression "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" came to be considered and interpreted by the Apex Court in the oft quoted case of A.K. Roy (supra).

9. The expression "supplies" and "services" in Section 3 of the Act are to be construed pragmatically in the context of each case with due stress on the phrase "essential to the life of the community". These expressions 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 service essential to the community or he may be detained for disrupting supplies as well. Of course, sometimes the effect of such an act may telescope into each other. It is, thus, clear that under the provision of Section 3(2) of the Act, an order of detention can be passed with a view to prevent an act which may be prejudicial to the maintenance of supplies and services essential to the community.

10. Supply of electricity for propelling the tube wells for irrigation purposes, machineries and implements which may be used for agricultural purposes in the rural areas is essential to the well-being of the farmers/agriculturists. The villagers and the residents of the area also derive benefits from the supply of electricity for variety of domestic purposes. It is, therefore, an indubitable fact that the supply of electricity is essential to the community and if it is disrupted by the deliberate act of the criminals, they can be detained by invoking the provisions of Section 3(2) of the Act so that they may not repeat the commission of the crime, thereby putting at large to serious inconveniences. In the instant case, electric wire, measuring 3710 metres in length, was removed from the span of 12 poles running in between 13 poles. The impact of the removal of the wire was that as many as 13 tube wells came to a halt. The supply of water from these tube wells was totally disrupted. Supply of electricity to as many as 15 villages was disturbed. Seemingly, it may be a case of ordinary theft but in impact and its reach, it has disturbed the "public order" and in any case, the maintenance of essential supply of electricity was brought to a grinding halt. In the case of [Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal](#), , the detenu was stated to have committed theft of electric copper wire. It was held that the theft of the electric wire totally disrupted the electric supply for several hours in the areas concerned. The order of detention, it was held, fell within the purview of Section 3 of the Act Cutting and removal of copper return feeder wire of railway traction was found to be a sophisticated and complex operation which required technical skill and expertise. In [Madhab Roy alias Madha Roy Vs. State of](#)

[West Bengal](#), the Apex Court held that removal of copper return feeder could not be done by a novice or lay man. The detenu had acquired such skill and experience. The detaining authority, on one such single activity, it was observed, could validity pass an order of detention. The Apex Court held that even a single activity may be prejudicial to the maintenance of supplies and services essential to the community. In the case of [Mohd. Alam Vs. State of West Bengal](#), copper wires and cable used for tele-communications or power transmission were held to be essential to the life of the community. Their theft was interpreted to be an act prejudicial to the maintenance of supply and service to the life of the community. Similarly in [Arun Kumar Roy Vs. The State of West Bengal](#), cutting away of 40 meters of copper wire from overhead traction was held to be an activity prejudicial to the maintenance of supply and service essential to the community.

11. In view of the facts and circumstances as well as the well settled law on the point, we are of the view that the order of detention of the petitioner falls within the ambit of Section 3(2) of the Act as it was disruption of the maintenance of supply and service essential to the community. To conclude, we find that the order of detention dated 30-6-1999, Annexure 1 to the writ petition does suffer from any illegality or irregularity, calling for interference of this Court under Article 226 of the Constitution of India.

12. The writ petition is accordingly dismissed.