(1983) 02 GAU CK 0007

Gauhati High Court

Case No: Civil Rule (HC) No. 4 of 1983

(sic)At Mudoi		APPELLANT
	Vs	
District Magistrate (sic)Wgong and Others		RESPONDENT

Date of Decision: Feb. 2, 1983

Citation: (1983) 1 GLR 225

Hon'ble Judges: T.N. Singh, J; B.L. Hansaria, J

Bench: Division Bench

Advocate: S.N. Medhi and A.C. Bora, for the Appellant; P. Prasad, for the Respondent

Final Decision: Allowed

Judgement

B.L. Hansaria, J.
The Petitioner was detained by an order passed on 29th October 1982 with a view to prevent him from acting in any manner prejudicia1 to the maintenance of public order and maintenance of supplies and services essential to the community. This satisfaction was founded on six grounds. The legality of the order has been challenged in this writ petition. The submission made are mainly four, these being:

(1) There is no proper affidavit by the detaining authority and as such the order is liable to be set aside on this ground alone,

(2) Ground No. is not related to public order.

(3) Ground No. 6 is vague.

(4) The order speaks of non-application of mind, in as much as it is not spelt out in the order which supplies and services in particular were effected or likely to be prejudicially affected.

2. The first submission is sought to be brought home by Sri S.N. Medhi, the learned Counsel for the Petitioner, by referring to a recent decision of the Supreme Court in Biru Mahato Vs. District Magistrate Dhanbad, That was a case wherein the District

Magistrate who had filed return claimed as if he was the detaining authority. This was found not established on facts. As the deponent had not based affidavit on records of the case it was held that the affidavit be ignored. Mr. Medhi submits that in the present case well Shri S.K. Tewair who for filed the affidavit on behalf Respondent No. 1 having not stated that he was the successor to the incumbent who had passed the detention order, should be held that shri Tewari has as if claimed himself to tfo detaining authority, which in fact is not so. The further of the argument is that on the ratio of the aforesaid decision should ignore the affidavit, We have found it difficult to accept submission because the affidavit of Shri Tewari cannot really read to mean that he was the person who had passed the of detention. This apart, he has clearly stated in his affidavit that he had gone through the entire records of the case (which raised him of the full facts) making him competent to swear the affidavit. The case at hand is therefore distinguishable and (sic) do not think if we will be justified in setting aside the impugned order on this ground alone. As there is no allegation of personal bias or mala fide, this is not a case where the impugned (sic) can be struck , down for want of proper affidavit. In his connection reference may be made specifically of Shaik Hanif and Others Vs. State of W.B., and Asgar District Magistrate Burdwan and Ors. AIR 1974 SC (sic)

3. The second submission of Shri Medhi has also no force, (sic) the extent of the reach of the ground No. 2 is far beyond the narrow field of law and order and it does appertain to the realm of public order on the facts and circumstances of the case This would be apparent from reading of the ground

You, Dilip Rajkhown, Ratul Mahanta, Lachit Bardol of and Girin Das were seen on 25th January, 1982 instigating the people in Nowgoag, Phulaguri and Roha to prevent people from coming out of their houses on the 26th January 1982. Consequently, people Were-afraid of coming out of their houses. The movement of people and vehicles was disrupted in Nowgong, Roha and Phulaguri, shops and business establishments were closed. Several incidents of assault, kidnapping, wrongful restraint end sabotage were reported in and around Nowgong. The incidents are listed at Annexure I.

4. We are also not impressed by the submission of Shri Medhi that ground No. 6 is vague; or that no seizure list having been given, the right of the Petitioner to make effective representation was denied, Let us read this ground:

You along with chandan Singh, Chandramohan Bora and Kip Bora had stored two powerful detenators in one of the rooms of Nowgong College. These detenators were recovered by the police on 30th September 1982 at about 3 P.M. from the above room in/the presence of the four personal. The detenators had been collected for planting time bombs on 30th September, 1982 at night in Nowgong Town.

There being nothing in this ground if any seizure list was prepared, we cannot hold that nun-furnishing of the same has introduced any infirmity in the order. Even if

such a list would have been prepared, we have our doubt if non-furnishing of the same would have, caused serious dent to the order. As to the vagueness, it is submitted by the learned Government Advocate that the four "I persons" mentioned in the ground are none else than the Petitioner and his three associates named in the first sentence of the ground. This submission is made because of the definite article in the expression "the four persons". The submission does have force, and we cannot read vagueness in this ground to the extent of setting aside the order on this score.

5. As to the submission, the contention of the learned Government Advocate is that the naming of particular supply and service which might have been prejudcially affected was not necessary because the activity of the Petitioner was of such a nature which affected many such supplies and services.

6. In A.K. Roy and Others Vs. Union of India (UOI) and Others, it has been held that no person can be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community unless, by a law, order or notification made or published fairly in advance, the supplies and services, the maintenance of which is regarded as essential to the community and in respect of which the order of detention is proposed to be passed, are made known appropriately to the public. This was felt necessary to unable any person to know with reasonable certitude as to which services are considered by the detaining authority as essential to the community in as much as the (sic)ssion "supplies and services essential to the community" was regarded as a vague concept. following this decision a notification was issued on 8th February, 1982 bearing No. 1/11025/1/81-IS. US. (D.11) which has listed as many as 16 services.

7. The question is, if while passing the order of detention any particular supply and service is not named, would it evidence non-application of full mind by the detaining authority? We have given our considered, thought to this aspect of the matter. After the decision in A.K. Roy it is indisputable that there cannot be any order of detention qua maintenance of supplies and services essential to the community unless the supply and service in question be a notified supply and service. As already noted, in notified category there are 16 services. Now, if the detaining authority does not specify in the order as to which particular supply and / or service he had in mind while passing the order it would be difficult to know whether he had applied (full mind with reference to any specific supply and service the notified categories cover a very wide field, the detaining authority, in the case of challenge to the order on the ground non-application of mind, could fall upon any one or the of the services and contend the activity of the detenu had (sic)cially affected that service, even it that particular service (sic)night not have had in mind while passing the order of (sic). It may be stated that however prejudicial the acti(sic) of a person might be, all the notified categories of services, cannot be affected. In such a situation, omnibus mention of supplies and services would give a long handle to the authority to justify

its order on the score of application of mind even though while passing the order the particular supply and service effected or likely to be affected might not have been borne in mind, According to us, the position is analogous to an order of detention which is passed merely by saying that the person is indulging in prejudicial activity without specifying which particular activity the authority had in mind. Such an order would not apparently be upheld as non-application would be writ large on its face. We are of the view that as while passing the order of detention the authority his to specify the particular prejudicial activity whose prevention he has in mind, so also he must specify the particular supply and service which according to him is being prejudicially affected by the activities of the detenu, The notified categories. of supplies and services thus really get as if. implanted in the Act and an order of detention on this score must have reference to one or more specified supplies and service forming part of notified categories. Any other view would also pose a possibility of abuse of power as a result of a absence of full application of mind. As in the present case particular category of supply and service was not named, the same speaks of application of full minds according to us.

8. We would therefore accept the last submission and set aside the order of detention. The result is that the petition is allowed and the detenu is ordered to be released forthwith if not needed otherwise.