

**(1953) 03 PAT CK 0001**

**Patna High Court**

**Case No:** Criminal Miscellaneous No"s. 58 and 61 of 1953

Rajendra Nath Pandey and  
Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** March 26, 1953

**Acts Referred:**

- Preventive Detention Act, 1950 - Section 13(2), 3, 7

**Citation:** AIR 1953 Patna 351 : (1953) 1 BLJR 371

**Hon'ble Judges:** Sinha, J; Das, J

**Bench:** Division Bench

**Advocate:** Sultan Ahmad, B.C. Ghosh and S.K. Mazumdar, for the Appellant; A.G.,  
Standing Counsel and S.C. Chakravarty, for the Respondent

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### **Judgement**

Sinha, J.

These two applications, one by Rajendra Nath Pandey and the other by Baidya Nath Pandey, who are brothers, are under Article 223 of the Constitution of India for their release from detention.

2. Rajendra Nath Pandey is detained under an order of detention passed on 5-1-1953. Previous to this order of detention, he had been detained under another order, but that order of detention had been revoked some time in December, 1952. Some of the grounds mentioned in the order of detention dated 5-1-1953, are common to the grounds of detention in the previous order, but several grounds are fresh ones. The orders of detention of 5-1-1953, passed against Rajendra Nath Pandey and Baidya Nath Pandey are in similar terms, and the grounds of detention in both the cases are common. The orders of detention show that, with, a view to preventing Rajendra Nath Pandey and his brother Baidya Nath Pandey from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary to detain these two brothers under the Preventive

Detention Act, 1950 (Act 4 of 1950). The orders of detention in these two cases are separate, and separate grounds of detention, though common, had been served upon these two brothers. It appears from the grounds given by the State Government that these two brothers are joint in business and property, which is in the name of their father, and that their residential house is in village Sindri, which is a joint property and is in occupation of Baidya Nath Pandey, A portion of this house is used as a grocery shop run by Baidya Nath Pandey in which Rajendra Nath Pandey has also his share. It is said that Ramchandra Pandey, son of Baidya Nath Pandey, looks after the shop. It is stated in the grounds that Rajendra Nath lives at village Rudra, which is two miles away from village Sindri where Baidya Nath lives, and both these villages are in the Sadar Sub-division of the district of Manbhum. Sadar Sub-division of Manbhum was a monopoly area for the purchase of rice and paddy in which no person could sell paddy, rice, wheat or maize beyond the maximum limit mentioned in Section 4, Foodgrains Control Order, 1950 to any person except to an agent of the State Government.

According to the information available to Government, the grounds mention, on several dates, including 10-6-1952, 125 maunds of rice were sold from the shop at Sindri to several persons, and there were purchases also of rice in large quantities on several dates, including 7th Pous, 1358, 12th Magh, 1358 and Baisakh, 1359. All those dates will fall in the year 1951 and 1952. The grounds also state that, in contravention of the Bihar Food-grains Control Order 100 to 200 bags of rice had been stored and similar quantities despatched on a day on a number of occasions. The names of a number of persons have been given to whom rice had been sold to places outside the Sadar Subdivision of Manbhum, as appeared from the registers maintained by the shop at Sindri, belonging to these two brothers. It is stated that a truck stands registered in the name of Rajendra Nath Pandey, and that an income from the truck to the extent, of Rs. 150/- on one day was found mentioned in the register of the shop. It further mentions that the Jaipur Police were paid same illegal gratifications and further that on two occasions Rajendra Nath was prosecuted for smuggling rice outside the sub-division, but he was acquitted on technical grounds. Lastly, it is stated that these two brothers do not possess any licence for sale, purchase or storage of foodgrains, but in spite of it they indulged in illegal activities forbidden by the Foodgrains Control Order.

3. The case of Rajendra Nath Pandey was argued by Mr. B. C. Ghosh, and Sir Sultan Ahmad argued on behalf of Baidya Nath Pandey. I now consider the common grounds taken by them. It is contended that these two brothers are agriculturists, and, therefore, no licence is needed for them under the Foodgrains Control Order. Section 3, Food-grains Control Order, 1950, runs as follows:

"No person shall --

(a) engage in a wholesale transaction in food-grains, or

(b) keep, sell or store in any place or premises occupied by him or under his control or permit any other person to keep or store in any such place or premises, 10 maunds or more of any foodgrains or all foodgrains taken together;

(c) engage in milling paddy or wheat; except under and in accordance with a license in Form A, A(1) or A(2), as the case may be, issued in that behalf by the licensing authority;

Provided that nothing in this clause shall apply to the sale or storage of any foodgrains by a producer who is not a dealer."

"Wholesale transaction" is defined in Section 2(s) of the Order, and it means the purchase, sale or storage for sale in one day of 10 maunds or more of any foodgrain by any person and includes purchase, sale or storage by any person on behalf of another and by an employer for the purpose of supplying foodgrain on payment or otherwise to any of his employees. "Dealer", according to the definition u/s 2(c) means a person who buys, sells, stores or distributes any foodgrain or engages in milling and includes any person doing so on behalf of another as a commission agent or "arhatia" and also includes a producer who purchases, sells, stores or stores for sale any foodgrains other than the foodgrain which is produced by himself with or without the aid of members of his family or paid labourers. Section 4, Foodgrains Control Order, 1950, which refers to monopoly procurement, runs as follows:

"No person shall in any market or area specified in a notification issued by the Controller or an officer duly authorised by him in this behalf buy or sell--

(a) any quantity of paddy exceeding 11/2 maunds, or

(b) any quantity of (i) rice or (ii) wheat or (iii) maize exceeding one maund in one day except to the agent of the State Government duly appointed for this purpose by the Controller or an officer empowered by him."

Reading these sections together, it is clear that in a monopoly area nobody can sell any quantity of paddy exceeding 11/2 maunds or a quantity of rice, wheat or maize exceeding one maund in one day. The grounds specifically mention that the Sadar Sub-division of Manbhum, where these petitioners reside, is a monopoly area, and, therefore, they could not have sold any quantity of paddy or rice or wheat beyond the permissible limits mentioned in Section 4. These are all questions of fact which it is not permissible for the High Court to go into. From the grounds served upon these petitioners, it is amply clear that the State Government were in possession of facts on which they felt satisfied that it was absolutely necessary to prevent these two brothers from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, and this Court cannot go into facts to find out whether the facts were sufficient for the satisfaction of the State Government or not.

4. It was then contended that from the account books of the shop of Baidya Nath Pandey in possession of the Government, it was apparent that they did not sell paddy or rice at a rate higher than that mentioned in the gazette. That may be so, but the selling rate mentioned in the gazette is not the rate at which the Government buy in a monopoly area; it is much less than the prevailing market rate, and, therefore, there was no justification for carrying on these activities of selling paddy and rice beyond the permissible limit in a monopoly area.

5. Another question of fact raised was that the petitioners were purchasing and selling paddy and rice as an agent, or sub-agent of the purchasing agents of the Government. The petitioners have not brought to the notice of the Court any authority to show that they were purchasing or selling foodgrains on behalf of the purchasing agents of the State Government, and this Court cannot go into that question.

6. So far as Rajendra Nath Pandey is concerned, Mr. Ghosh has raised several points which are peculiar to his client. It was contended that under the amended Section 13(2), Preventive Detention Act, 1950 (Act 4 of 1950) in case of a revocation of the previous order, the satisfaction of the detaining authority must be based on fresh facts which have arisen after the revocation of the previous order. In other words, if the grounds recite the previous grounds as also grounds based on fresh facts, the order of detention must show, on the very face of it, that the satisfaction of the detaining authority was based upon those fresh facts, that is to say, a mere statement in the order of detention that the detaining authority is satisfied on the grounds given, which comprise grounds based on old and fresh facts, is not enough. It is difficult to appreciate this contention of Mr. Ghosh. After the previous order has been revoked, or it has expired, a fresh order of detention can only be passed, if fresh facts have arisen since the date of revocation or expiry, as the case may be, of the previous order of detention (Section 13(2) of the Act). Therefore, it is enough if fresh facts have arisen after the previous order of detention was revoked, and the State Government or the Central Government are satisfied about the necessity of detaining a particular person upon a consideration of the facts in existence before the revocation and which came into existence after the revocation. It is now well established that if the grounds on which it is stated

"that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the Question of satisfaction except on the ground of mala fides cannot be challenged in a Court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State-Government, is ruled out by the wording of the section. It is not for the Court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally

observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law."

[The State of Bombay Vs. Atma Ram Sridhar Vaidya, .](#)

The question, therefore, is whether the grounds given should be dissected and it should be found out whether it were the previous facts alone or the fresh facts which have arisen after the revocation or on a consideration of both that the satisfaction of the detaining authority was founded. When the detaining authority is in possession of some facts, both past and present, it is on the aggregate effect of all the facts taken together that the detaining authority has got to make up its mind, and it cannot be said with any reasonableness that the past activities of a man cannot be taken into account, on which the satisfaction of the State Government should be based as to whether or not a particular person should be prevented from acting in a particular manner within the meaning of the Preventive Detention Act. The proposition is now beyond question that it is open to the detaining authority to take into consideration and apply its mind afresh to the past activities as also to the activities which came to light after the revocation of the previous order of detention. Upon that fresh grounds based on fresh facts have been incorporated in the same. In my opinion, it is not at all necessary, under the provisions of Section 13 (2) of the Act, for the detaining authority to say expressly that its satisfaction about the necessity of passing a fresh order of detention was based on fresh facts.

7. It was further contended that the statement made in the grounds served upon Rajendra Nath Pandey, as mentioned in paras. 13 and 14, to the effect that Rajendra Nath Pandey was prosecuted on two occasions and was acquitted on technical grounds, was not correct. We have been given copies of the judgments in the two cases. Both the cases were started on an incident which took place on 26-8-1949. Rajendra Nath Pandey was then carrying 199 bags of rice on three trucks, and two prosecutions were launched against him. In one case it was held that, as the trucks were seized within the border of Manbhum and had not then crossed the border, the accused in that case, including Rajendra Nath, were not guilty. In the other case Rajendra Nath was acquitted on the ground that, being the son of a big producer, he was exempted from holding a license for storing foodgrains. The expression "another occasion" in para. 14 of the grounds may not be happy, but there is no doubt that two prosecutions were launched against him and in both of them he was acquitted. Whether the grounds of acquittal in those two cases were technical is a matter of opinion.

8. It was lastly contended that, so far as Rajendra Nath Pandey was concerned, there is no definite allegation made against him, and further that the grounds are vague. It is true that no specific allegations have been made against him, but it appears that the grounds mentioned do suggest that the State Government were satisfied that, on the facts in their possession, there were sufficient reasons for believing that Rajendra Nath Pandey was helping and assisting his brother Baidya Nath Pandey in

his business in which he himself had a share. The truck is registered in his name, and the income from a truck is noted in the account books of Baidya Nath Pandey, and the State Government think that the truck mentioned in the books of account must have reference to the truck of the petitioner Rajendra Nath Pandey as no other truck is shown to belong to the joint family to which Rajendra Nath belongs. It would have been better if the State Government had expressly mentioned the fact that this petitioner Rajendra Nath Pandey was assisting and aiding his brother Baidya Nath Pandey in carrying on his illegal activities as a dealer in food-grains; but the mere omission to say so does not carry the petitioner any further because he is a sharer in the business carried on by his brother Baidya Nath Pandey and his truck is employed in the said business. As I have said, the grounds do not specifically mention about the activities of this petitioner and to this extent it may possibly be said that the grounds, in so far as Rajendra Nath is concerned, are a little vague. But, it is now beyond question that

"mere vagueness of grounds standing by itself and without leading to an inference of mala fides or lack of good faith is not a justiciable issue in Court of law for the necessity of making the order, inasmuch as the ground or grounds on which the order of detention was made is a matter for the subjective satisfaction of the Government or of the detaining authority; -- [Ujagar Singh Vs. The State of The Punjab](#), and -- [The State of Bombay Vs. Atma Ram Sridhar Vaidya](#),."

On the grounds given, it cannot be said that there is any "mala fide" or lack of good faith on the part of the State Government. As an example of vagueness, another instance in the grounds was referred to by Mr. Ghosh. In para. 13 of the grounds, two dates have been mentioned--

9th Magh--Caught by Jaipur Police--

Feeding

Rs. 5/-

5th Magh--Bail ....

Rs. 30/-

It is said that no year has been mentioned, and, therefore, the grounds have been purposely kept vague. This reference in the grounds has been made from the account books and, therefore, it cannot be said that there was any "mala fides" in the State Government in not mentioning the year --it may be a case of mere slip and omission. If there had been no reference made in the account books about these entries, there was some justification for the contention. It was said that if the year had been mentioned it could have been shown that the apprehension of the State Government to the effect that the truck referred to in that paragraph as having fetched an income of Rs. 150/- was incorrect as it could not be the truck of the petitioner which was registered only in July, 1951." As I have already said, these entries are referable to the account books and the omission to mention the year cannot be referable to a lack of "bona fide" on the part of the State Government. Paragraphs 19-20 read with a tabular statement marked "B" of the application, by

the petitioner give in detail the name of the transporting agent, validity of permit truck No. places between and quantity. This shows that the petitioner has in his possession a copy of the account books, and, therefore, in my opinion, the mere omission, to mention the year in para 13 of the grounds cannot at all be said to be "mala fide". The petitioner has not discharged the burden of showing on facts that this omission of the year in that paragraph was with some ulterior motive and was a "mala fide" one.

9. In the result, all the contentions fail, and the applications are dismissed and the rules discharged.

10. I have omitted the consideration of the petitions filed by these two petitioners separately with a prayer to call for certain documents. After having heard the parties at length, I am of the opinion that no useful purpose would have been served by sending for those documents, and those petitions must, therefore, be rejected.

Das, J.

11. I agree.