

Utpal Mazumdar on Behalf of Debashis Das Gupta Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Dec. 20, 1973

Citation: 78 CWN 380

Hon'ble Judges: P.K. Chanda, J; P.C. Borooah, J

Bench: Division Bench

Advocate: Sankardas Banerji and Ashoke Kumar Ganguli, for the Appellant; Prasun Chandra Ghose for the State., for the Respondent

Judgement

P.C. Borooah, J.

The subject matter of challenge in this Rule is the detention of one Debashis Dasgupta who was taken into custody on

26th of May, 1973 pursuant to an order No. 633-DD (M) dated the 26th May, 1973 passed by the Commissioner of Police, Calcutta in exercise

of his powers conferred by sub-section (1) (a) (ii) read with sub-section (2) of section 3 of the Maintenance of Internal Security Act, 1971. The

object of detention as set out in the order was to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. The

impugned order rests on two grounds which reads as follows: --

(i) On 22.12.72 at about 22.15 hrs. you and your associates, 15/20 in number, including Tapan Dey Sarkar of 38D, Pratapaditya Road,

Biswanath Chankravarty of 38C, Pratapaditya Road, conjointly launched a violent attack on the residents and shopkeepers around Pratapaditya

Road near its crossing with Sahanagar Road by hurling bottles at random in order to overawe them. In course of the disturbances, due to hurling of

bottles, one Sudhir Das of 19/B, Pratapaditya Road and one Ram Chandra Marik of 19A, Pratapaditya Road sustained injuries on their person

from broken pieces of bottle. You all also exploded bombs while escaping from the place of disturbance after ransacking the shops of Sitaram

Show, Ram Chandra Mallik, Padma Sain, Bharat Rajak and Sudhir Das all of Pratapaditya Road. By doing such acts of violence you and your

associates created great public disorder paralysing the current of public life of the locality.

(ii) On 23.12.72 at about 22.30 hrs. you along with Anil Kumar Sadhukhan alias Khodan of 44A and 37/3/A, Tollygunge Road, Badan Banerjee

of Rajani Bhattacharjee Lane, Surapati Mukherjee of Pratapaditya Road and others all being armed with sodawater bottles bombs and pipeguns

armed a violent assembly in front of 7, Haji Mahasin Road and attacked Sri Lakshmi Kanta Bose, M.L.A. by hurling soda-water bottles and

bombs on Haji Mahasin Road. The incident brought about serious repercussion in the locality affecting the even tempo of life of the people of the

locality who were terrorised to pursue their normal avocations for a considerable period of time.

Against the order of detention the detenu made a representation which he handed over the Superintendent of the Presidency Jail, Calcutta on the

20th June, 1973. The representation was received by the State Government on 25th June, 1973 and was rejected after consideration on the 28th

June, 1973. The State Government referred the detenu's case to the Advisory Board on the 21st June, 1973. After the Detenu's representation

was rejected by the State Government it was sent to the Advisory Board which considered the representation and submitted its report on the 26th

July, 1973 that there was sufficient cause for detention and the order of detention was duly confirmed on the 6th August, 1973.

2. On the facts set out above, Mr. S. Banerji, appearing on behalf of the petitioner, has argued that the order of detention is illegal inasmuch as the

mandatory requirements of section 10 of the Maintenance of Internal Security Act which requires the State Government to refer the detenu's case

to the Advisory Board along with the representation of the detenu, if received, within a period of thirty days has not been complied with. Mr.

Banerji submits that the detenu submitted his representation of the Jail authorities on the 20th of June, 1973, before the expiry of thirty days and the

State Government's failure to send the representation to the Advisory Board while referring the detenu's case has deprived the detenu of his

statutory and constitutional right and as such, the order of detention has become invalid. In support of his argument Mr. Banerji has drawn our

attention to a decision of this Court viz. Gopal Chandra Mazumdar Vs. The Commissioner of Police and Others, .

3. Mr. Prasun Chandra Ghosh, learned Advocate appearing on behalf of the State has drawn our attention to an affidavit affirmed by the

Superintendent of the Presidency Jail at Alipore and has submitted that due to reasons stated in paragraph 5(i) to (iv) of the said affidavit the

representation of the detenu could not be forwarded to the State Government immediately and the delay has been sufficiently explained in the said

affidavit.

4. In the case cited by Mr. Banerji this Court held that u/s 10 of the Maintenance of Internal Security Act there was a mandatory obligation upon

the State Government to forward the detenu's representation when referring the case of the detenu to the Advisory Board provided the

representation was received within the appropriate time giving the State Government reasonable opportunity to place it before the Advisory Board

in accordance with the terms of section 10 of the said Act.

5. Section 10 of the aforesaid Act is very clear in its terms and it requires the State Government to place before the Advisory Board within a

period of thirty days from the date of detention the grounds on which the order of detention has been made along with the representation, if any,

made by the detenu. Therefore, the question to be considered is whether in the present case the detenu made his representation giving the State

Government sufficient time to place it before the Advisory Board when the detenu's case was referred to it.

6. The last date for referring the detenu's case to the Advisory Board expired on the 25th June, 1973. The detenu being in custody had no direct

access to the Assistant Secretary (Home), Special Department to whom the representation had to be addressed but he handed it over to the Jail

authorities on the 20th June, 1973, for being forwarded through the Superintendent of the Jail. In doing so he explicitly followed the instructions

which were set out in the order in which the grounds of detention were communicated to him.

7. As far as the representation was concerned the only duty of the Superintendent of the Jail was to forward it to the addressee as expeditiously as

possible. There was no duty cast on the Superintendent nor was it any part of his business to scrutinise the representation. In the instant case the

representation was forwarded to the Home Department on the 25th June, 1973, that is on the 6th day after receipt of the same. This delay is

sought to be explained by the Superintendent in the affidavit filed by him. In paragraph 5(i) to (vi) of the said affidavit it has been stated that the

representation made by the detenues are dealt with by an Welfare Officer of the Jail and at the relevant time there was no Welfare Officer and his

duty was being performed by the Deputy Jailor who was discharging the function of the Welfare Officer in addition to his own duties and it is

further stated that in view of the pressure of work and a large number of representations pending before him, the Deputy Jailor could not attend to

the representation of the detenu and send the same to him on the 23rd June, 1973. It has also been stated that the Superintendent received the

representation at about 12.45 p.m. on the 23rd June 1973 which was a Saturday and as such a half day. In the circumstances the representation

was sent to the Home Department, Writers' Building Calcutta on Monday, the 25th June, 1973 at about 10.30 a.m. by Special messenger.

8. The explanation for the delay given by the Superintendent of the Jail is not acceptable to us. There was no justification for holding up the

representation till the 6th day. The constitutional and statutory rights given to a detenu and the corresponding obligations on the part of the State

cannot be kept in abeyance because of a Sunday or a Public holiday. In the present case the detenu was lodged in the Presidency Jail, Calcutta

and Writers Buildings" where the office of the Home Department was located was within walking distance. The representation could have easily

reached Writers Buildings" on the day it was submitted by the detenu.

9. If the Superintendent of the Presidency Jail had acted promptly in forwarding the detenus representation to the State Government, the said

representation could have been sent to the Advisory Board within a period of thirty days when the detenu's case was referred to it. The mandatory

requirements of section 10 of the Maintenance of Internal Security Act has thus not been complied with, and the detention as such is liable to be

assailed. This is as it should be because the matter relates to the liberty of a citizen who has been ordered to be detained without recourse to a

regular trial in a court of law. The authority concerned has therefore to proceed strictly in accordance with law and any deviation from compliance

with the requirements of law cannot be countenanced. The order of detention has therefore to be struck down as illegal.

10. The Rule is made absolute. Let the detenu be set at liberty forthwith. Let the order releasing the detenu be sent by special messenger at the

cost of the petitioner.

Chanda, J.

I agree.