JAICHAND LALL SETHIA

v.

STATE OF WEST BENGAL & ORS.

July 27, 1966

[K. N. WANCHOO, M. HIDAYATULLAH, S. M. SIKRI, V. RAMASWAMI AND J. M. SHELAT, JJ.]

Defence of India Rules, 1962, *r.* 30—*Detention under—Plea of* mala fide *whether can be raised—Detenue whether entitled to inspect file containing order of detention—No* mala fides *alleged against Chief Minister who passed order—His affidavit not necessary.*

The appellant was detained under r. 30 of the Defence of India Rules, 1962. He challenged the order of detention by a petition under Art. 226 of the Constitution which was dismissed. In appeal before this Court by special leave it was urged on behalf of the appellant that: (i) the order of detention was *mala fide;* (ii) the High Court in not calling for the file of the case and permitting the appellant to inspect the material on the basis of which the order of detention was made, committed an error of law; (iii) the High Court should have asked for an affidavit from the Chief Minister of the State who passed the order of detention.

HELD: (i) Although in view of the decisions of this Court the appellant was entitled to raise the plea of *mala fides* despite the Proclamation of Emergency and the President's Order which followed, the facts of the present case did not justify the plea. [468 H]

Makhan Singh Tarsikka v. *State of Punjab*, [1964] 4 S.C.R. 932 and *Durgadas Shirali* v. *Union of India*, [1966] 2 S.C.R. 573 referred to.

(ii) The satisfaction of the Government which justifies the order of detention under r. 30 is a subjective satisfaction. A court can not normally enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made, in the mind of a reasonable person. If therefore an authenticated order of detention is on its face regular and in conformity with the language of r. 30, it is not ordinarily open to a court to enter into an investigation about the sufficiency of the material on which the order of detention is based. [469 C-D]

King Emperor v. *Shibnath Banerjee*, 72 I.A. 241, *Liversidge* v. *Sir John Anderson* [1942] A.C. 206 and *Greene* v. *Secretary of State for Home Affairs* [1942] A.C. 284, referred to.

Even though the order as drawn up recites that the State Government was satisfied the accuracy of that recital can be challenged in court to a limited extent. The accuracy can be challenged in two ways, either by proving that the State Government never applied its mind to the matter or that the authorities of the State Government acted *mala fide*. In a normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by the court as establishing that the necessary condition was fulfilled. However, if the order of detention itself suffers from any lacuna it is open to a court to call for an affidavit from the Chief Minister or other Minister concerned or to call for the relevant file from the State Government in order to satisfy itself as to the accuracy of the recital made in the order of detention. [470 F-H]

A *Biren Dutta etc.* v. *Chief Commissioner of Tripura,* [1964] 8 S.C.R. 295 and *Jagannath Misra* v. *State of Orissa.* [1966] 3 S.C.R. 134, referred to.

In the circumstances of the present case summoning of the file by the High Court was not necessary, and the High Court rightly rejected the appellant's prayer for inspection of the file. [471 E-F]

B (iii) As there was no allegation of *mala fides* or lack of *bona fides* with regard to the Chief Minister, it was not necessary for the High Court to call for his affidavit. The affidavit of the Deputy Secretary to the State Government was in the circumstances of the case, sufficient. [471G-472A]

1966.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 110 of 1966.

C Appeal by special leave from the judgment and order dated February 8, 1966 of the Calcutta High Court in Criminal Misc. Case No. 266 of 1965.

N. C. Chatterjee, S. K. Dutta and *D. N. Mukherjee,* for the appellant.

D *C. K. Daphtary, Attorney-General, B. Sen, P. K. Chatterjee* and *P. K. Bose,* for the respondents.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, against the judgment of the Calcutta High Court dated February 8, 1966 in Criminal Misc. Case No. 266 of 1965 refusing to grant a writ in the nature of *habeas corpus* ordering the release E of the appellant, Jaichand Lal Sethia from detention under an order passed by the Government of West Bengal under r. 30 of the Defence of India Rules.

After the conclusion of arguments in this case on May 3, 1966 we expressed the view that this appeal should be dismissed and the reasons will be stated later. We now proceed to express those reasons.

F

The case of the appellant is that he was carrying on business of purchasing and selling goods like cloves, cinnamon, dye-stuff etc. in the city of Calcutta. In the month of January, 1963 the appellant had some trouble with the police of Burrabazar, P.S. in Calcutta, particularly with the Sub-Inspector Kalyan Dutt, Officer-in-charge of that Police Station. The appellant also said G that he incurred the displeasure of the officers of the Customs Department who had illegally seized the goods of the appellant and also prevented him from participating at the auction-sales of Customs Department. The appellant had made a complaint to the higher authorities of the Customs Department in this respect. On September 27, 1965 the order of detention of the appellant was H made by the Government of West Bengal under r. 30 of the Defence of India Rules and in pursuance of that order the appellant was detained in the Presidency jail at Calcutta. The order of

detention being No. 7422 H.S. of the Government of West Bengal Home Department Special Section reads as follows:

> "Whereas the Governor is satisfied that with a view to preventing Sri Jaichand Lal Sethia, son of Sri Dipchand Sethia of 9 Decres Lane, Calcutta from acting in any manner prejudicial to the maintenance of Public Order, it is necessary to make an order directing that he be detained.
>
> Now, therefore, the Governor in exercise of the power conferred by Rule 30 of the Defence of India Rules, 1962, is pleased hereby to direct that the said person be detained and be kept in custody in the Presidency Jail during the period of such detention."

The appellant obtained a rule from the Calcutta High Court asking the respondents to show cause why a writ in the nature of *habeas corpus* should not be granted directing the release of the appellant from detention. The case of the appellant was that the order of detention was made *mala fide* because the appellant had incurred the personal hostility of some officers in the police and Customs Departments. It was contended that the order of detention was procured *mala fide* upon false reports made vindictively under the Defence of India Rules by the officers in the police and Customs Departments. It was said that the order was made by the Chief Minister, West Bengal not because he was satisfied about the necessity of detaining him in the interest of public order but for ulterior considerations. In response to the notice an affidavit was filed on behalf of the State of West Bengal denying the allegations of the appellant. Affidavits were also filed by Kalyan Dutt and Debranjan Dutta controverting the allegations of the appellant so far as they were concerned. After hearing the parties, the Calcutta High Court held that the order of detention was lawfully made by the Chief Minister of West Bengal and the allegation of *mala fide* had not been established by the appellant. The High Court accordingly dismissed the application of the appellant for grant of a writ of *habeas corpus*.

On behalf of the appellant it was submitted by Mr. N. C. Chatterji that the order of detention was made on the basis of reports submitted by the police and Customs authorities whose enmity had been incurred by the appellant. It was pointed out that on August 16, 1964 the appellant had sent a representation to the Chief Minister of West Bengal and other higher authorities saying that the police had been creating fictitious records for putting the appellant under detention under the Defence of India Rules. In July, 1965 three defamation cases were started against the appellant at the instance of the Customs Officers. In August and September, 1965 the appellant had sent representations against the police and Customs officers to the Chief Minister, West Bengal and other higher authorities. The contention of the appellant is

A that the order of detention was made on September 27, 1965 by the Chief Minister, West Bengal not because of any material suggesting that the appellant was acting, in any manner, prejudicial to the maintenance of public order but because of the false reports made by the police and Customs officers. The next contention of the appellant is that there is no affidavit filed on behalf of
B the Chief Minister, West Bengal showing that he applied his mind to the case of the appellant and that he had the requisite satisfaction as required by the statutory rule. It was also submitted that the High Court did not permit the appellant to inspect the material on the basis of which the order of detention was made and the High Court committed an error of law in not permitting the appellant to go beyond the authenticated order of detention and
C to find out whether the satisfaction of the Chief Minister, West Bengal was based upon sufficient material.

Before proceeding to deal with these points raised on behalf of the appellant it is necessary to state that in *Makhan Singh Tarsikka* v. *The State of Punjab*[1] and in *Durgadas Shirali* v. *The Union of India and Anr.*[2] this Court had occasion to consider
D the legal effect of the proclamation of Emergency issued by the President on October 26, 1962 and two orders of the President—one dated November 3, 1962 and the other dated November 11, 1962 issued in exercise of the powers conferred by cl. (1) of Art. 359 of the Constitution. It was held by this Court that the scope of Art. 359(1) and the Presidential Order issued under it is wide enough to include all claims made by citizens in any Court
E of competent jurisdiction when it is shown that the said claims cannot be effectively adjudicated upon without examining the question as to whether the citizen is, in substance, seeking to enforce fundamental rights under Arts. 14, 19, 21 and 22. It was pointed out that during the pendency of the Presidential Order the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes
F Arts. 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the Ordinance or any rule or order made thereunder on any other ground. If the appellant seeks to challenge the validity of the Ordinance, rule or order made thereunder on any ground other than the contravention of Arts. 14, 21 and 22, the Presidential Order cannot come into operation. It is not also open to the appellant to challenge the
G Order on the ground of contravention of Art. 19, because as soon as a Proclamation of Emergency is issued by the President under Art. 358 the provisions of Art. 19 are automatically suspended. But the appellant can challenge the validity of the order on a ground other than those covered by Art. 358, or the Presidential
H Order issued under Art. 359(1). Such a challenge is outside the

(1) [1964] 4 S.C.R. 932.
(2) [1966] 2 S.C.R. 573.

purview of the Presidential Order. For instance, a citizen will not be deprived of the right to move an appropriate Court for a writ of *habeas corpus* on the ground that his detention has been ordered *mala fide*. Similarly, it will be open to the citizen to challenge the order of detention on the ground that any of the grounds given in the order of detention is irrelevant and there is no real and proximate connection between the ground given and the object which the legislature has in view. It may be stated in this context that a *mala fide* exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended. In other words, the power conferred by the statute has been utilised for some indirect purpose not connected with the object of the statute or the mischief it seeks to remedy.

It is contended, in the first place, on behalf of the appellant that the order of detention is bad because the Chief Minister had taken into account the reports from the police and Customs officers falsely made against the appellant. It is argued by Mr. N. C. Chatterji that the order of detention is bad because the statutory power has been exercised *mala fide* that is to say, it has been utilised for some indirect purpose not connected with the object of the statute or the mischief which it seeks to remedy. The allegation of the appellant has been denied by Mr. Sen Gupta, Deputy Secretary to the West Bengal Government, Home Department in his affidavit made on behalf of the Government of West Bengal It is stated by Mr. Sen Gupta that in making the order of detention dated September 27, 1965 the Chief Minister, West Bengal did not take into consideration the criminal proceedings pending against the appellant before the Police and Customs authorities. Mr. Sen Gupta further said that all papers available to State Government as to the activities of the appellant Jaichand Lal Sethia were placed before the Chief Minister who was personally satisfied that the appellant was engaged in illegal activities prejudicial to the maintenance of public order and as such an order of detention of the appellant was necessary. It was also stated by Mr. Sen Gupta in his affidavit that the appellant was engaged not only as a dealer in spices but was engaged in procuring and selling goods illegally and clandestinely.

The allegation of the appellant has also been denied by Kalyan Dutt in his affidavit. Mr. Kalyan Dutt states that he never created fictitious records against the appellant and never prepared or forwarded any history-sheet or any note to any authority recommending the detention of the appellant under the Defence of India Rules. There is also an affidavit by Mr. Debaranjan Dutta denying the allegations made by the appellant. On perusal of the various affidavits filed in the case the High Court reached the conclusion that the allegation of *mala fide* made by the appellant

had not been substantiated and the order of detention made by the Government of West Bengal could not be held to be legally invalid on this account. We see no reason to take a view different from that of the High Court on this point. We are accordingly of the opinion that Mr. N. C. Chatterji on behalf of the appellant is unable to make good his submission on this aspect of the case.

It was next contended on behalf of the appellant that the High Court should have called upon the State Government to produce the file concerning detention of the appellant in order to determine for itself whether the Chief Minister had sufficient material before him for satisfying himself as to the necessity for the detention of the appellant. We are unable to accept this argument as correct. The satisfaction of the Government which justifies the order of detention under r. 30 is a subjective satisfaction. A court cannot normally enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If therefore an authenticated order of detention is on its face regular and in conformity with the language of r. 30 it is not ordinarily open to a court to enter into an investigation about the sufficiency of the material on which the order of detention is based. The legal position has been explained by the Judicial Committee in *King Emperor* v. *Shibnath Banerjee*(1) as follows:

> "It is quite a different thing to question the accuracy of a recital contained in a duly authenticated order, particularly where the recital purports to state as a fact the carrying out of what I regard as a condition necessary to the valid making of that order. In the normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by a court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a *prima faciea* case that the recital is not accurate".

Reference may be made, in this connection, to *Liversidge* v. *Sir John Anderson*(2) *and Greene* v. *Secretary of State for Home Affairs* (3). The question in those cases was whether the Home Secretary had reasonable cause to believe that certain persons were of hostile associations and that by reason thereof it was necessary to exercise control over them. It was held that the matter was one for the executive discretion of the Secretary of State, and that the Court was not entitled to investigate the grounds on which the Secretary of State came to believe the persons concerned to be of

(1) 72 I.A. 241 at p. 261. (2) [1942] A.C. 206.
(3) [1942] A.C. 284.

hostile associations, or to believe that by reason of such associations it was necessary to exercise control over them. In *Liversidge's*(1) case Viscount Maugham observed as follows:

> "In my opinion, the well-known presumption *omnia esse rite acta* applies to this order, and, accordingly, assuming the order to be proved or admitted, it must be taken *prima facie*, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State was complied with."

In *Greene's*(2) case Viscount Maughan again quoted with approval the following passage from the judgment of Goddard L.J. in the Court of Appeal:

> "I am of opinion that where on the return an order or warrant which is valid on its face is produced it is for the prisoner to prove the facts necessary to controvert it, and in the present case this has not been done. I do not say that in no case is it necessary for the Secretary of State to file an affidavit. It must depend on the ground on which the return is controverted, but where all that the prisoner says in effect is 'I do not know why I am interned. I deny that I have done anything wrong', that does not require an answer because it in no way shows that the Secretary of State had not reasonable cause to believe, or did not believe, otherwise."

It is manifest that an order of detention under r. 30 of the Defence of India Rules can only be passed if the State Government is satisfied that the detention of a particular person is necessary on any ground referred to in that Rule. Even though the order as drawn up recites that the State Government was satisfied, the accuracy of that recital can be challenged in court to a limited extent. The accuracy can be challenged in two ways either by proving that the State Government never applied its mind to the matter or that the authorities of the State Government acted *mala fide*. In a normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by the court as establishing that the necessary condition was fulfilled. In other words, in a normal case the existence of such a recital in a duly authenticated order that the State Government was satisfied will, in the absence of any evidence to the contrary, be accepted by the court as establishing that the State Government was so satisfied. If the order of detention itself suffers from any lacuna it is open to a court to call for an affidavit from the Chief Minister or other Minister concerned or to call for the relevant file from the State Government in order to

(1) [1942] A.C. 206. (2) [1942] A.C. 284.

A satisfy itself as to the accuracy of the recital made in the order of detention.

For instance, in *Biren Dutta etc.* v. *Chief Commissioner of Tripura*,[1] this Court made an order directing the Chief Secretary to the Tripura Administration to transmit to this Court the original files in respect of the detenus and also directed the Minister concerned or the Secretary or the Administrator to file an affidavit in this Court stating all the material facts indicating whether the decision arrived at was duly communicated to the detenus concerned. But the order for production of the file and for affidavit from the Minister or the Secretary concerned was made in that case because the appellant alleged that the order of review had not been reduced to writing under r. 30A(8) and the relevant conditions prescribed by the rule had not been complied with and that it had not been communicated to him. Reference was made by Mr. N. C. Chatterji to another case—*Jagannath Misra* v. *The State of Orissa*[2]—in which this Court ordered the Home Minister to file an affidavit. In that case the order of detention was defective because the authenticated copy of the order mentioned six grounds with the disjunctive "or" mentioned in the affidavit of the Chief Secretary. Some of these grounds were followed by "etc.". In view of the ambiguity of the order this Court made a direction asking the State Government to produce the original order which was in the form of a document and also called for an affidavit from the Home Minister who was in-charge of matters of detention. In the present case, the material facts are different from those in the *Jagannath Misra*[2] case, in the *Biren Dutta*[1] case. It follows therefore that the High Court was justified in not making an order for discovery or production of the original departmental file containing the activities of the appellant by the Government of West Bengal.

Lastly it was contended for the appellant that the High Court should have asked the Chief Minister to file an affidavit and rejected the affidavit filed by the Deputy Secretary Mr. Sen Gupta as insufficient to controvert the allegations of the appellant. We do not think there is any substance in this point. There is no allegation made by the appellant that the Chief Minister himself was acting *mala fide*. The allegation of the appellant was that Mr. Kalyan Dutt and the Customs Officers had acted *mala fide* against the appellant. The allegation of the appellant on this point has been denied by Mr. Kalyan Dutt in his affidavit. As there is no allegation of *mala fides* or lack of *bona fides* with regard to the Chief Minister of West Bengal who is the authority for deciding as to the necessity for detention of the appellant it

(1) [1964] 8 S.C.R. 295. (2) [1966] 3 S.C.R. 134.

was not necessary for the High Court to call for an affidavit from the Chief Minister and the affidavit filed by Mr. Sen Gupta on behalf of the Government of West Bengal was rightly considered by the High Court as sufficient in the circumstances of the case. A

For these reasons we hold that there is no merit in this appeal and that it should be dismissed. B

Appeal dismissed.