

PETITIONER:  
S. K. KEDAR

Vs.

RESPONDENT:  
STATE OF WEST BENGAL

DATE OF JUDGMENT 02/05/1972

BENCH:  
MATHEW, KUTTYIL KURIEN  
BENCH:  
MATHEW, KUTTYIL KURIEN  
REDDY, P. JAGANMOHAN  
MITTER, G.K.

CITATION:  
1972 AIR 1647                      1973 SCR (1) 488  
1971 SCC (3) 816  
CITATOR INFO :

|    |             |      |
|----|-------------|------|
| R  | 1972 SC1653 | (14) |
| R  | 1972 SC1656 | (9)  |
| R  | 1973 SC 295 | (7)  |
| F  | 1973 SC1062 | (4)  |
| R  | 1987 SC 998 | (6)  |
| RF | 1987 SC2332 | (18) |
| RF | 1989 SC 764 | (14) |
| R  | 1990 SC1086 | (18) |

ACT:  
West Bengal (Prevention of Violent Activities) Act (19 of 1970), S. 11 'Public order', scope of Advisory Board's obligation to hear detenu in person-Scope of

HEADNOTE:

In exercise of the powers conferred under s. 3(1) and (3) of the, West Bengal (Prevention of Violent Activities) Act, 1970 the District Magistrate passed an order detaining the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. The grounds of detention were that he along with his associate attacked the Railway Police Force with bombs and created disturbance of public order. After his arrest the case was referred to the Advisory Board and the Board, after considering the entire material before it, reported to the State Government that there was sufficient cause for the detention of the petitioner. On the same day he sent a representation that he may be heard in person which the Board received two days later. The Board however heard him, found no reason to revise its opinion, and sent a supplementary report to that effect.

The petitioner challenged the detention in this Court. Dismissing the petition,

HELD: (1) The question whether a person has only committed a breach of law and order or has acted in a manner likely to Cause disturbance of the public order is one of degree and the extent of the reach. of the act upon society. The act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts effect differently law and order on

the one hand and public order on the other. It is always a question of degree of the harm and its effect on the community. In the final analysis it depends on the facts of each, case whether the acts perpetrated are such a nature of potentiality.

[441D-G]

Pushkar Mukherjee and others v. The State of West Bengal, (1969) 2 S.C.R. 635, Sudhir Kumar Saha v. Commissioner of Police, Calcutta and another A.I.R. 1970 S.C. 8.14 and Nagendra Nath Mondal v. The State of West Bengal, [1972] S.C.R. 498 and Arun Ghosh v. State W. Bengal, A.I.R. 1970 S.C. 1228, referred to.

In the present case, the acts attributed to the petitioner are such as would bring them within the ambit of s. 3(2) (b) and (d) of the Act. Attacking the Railway Police, Force party with bombs at the railway station was bound to cause scare among all the members of the public who would be resorting to the station yard and interfere with their activities in getting the goods loaded or unloaded. The acts had the potentiality of affecting the even tempo of the life of the community in the locality by their reverberations. Therefore, the grounds communicated to the petitioner disclosed that he indulged in an activity which was prejudicial to the maintenance of public order [491 G-H, 492A-B]

489

(2) Section II of the Act provides that the Advisory Board may give personal hearing if it considers it essential or if the person concerned desires to be heard. In this case, the Board did not consider it essential to hear the petitioner in person before submitting its report. But when petitioner sent a representation that he may be heard in person the Board heard him before submitting the supplementary report. Therefore, the petitioner cannot contend that he was not personally heard before the Board submitted its opinion. [492E-G]

#### JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 35 of 1972.

Under article 32 of the Constitution of India for a writ in the nature of habeas corpus.

S. K. Gambhir, for the petitioner.

P. K. Chakravarti and G. S. Chatterjee, for the respondent.

The Judgment of the Court was delivered by Mathew, J. This is an application filed under Article 32 of the Constitution for the issue of a writ in the nature of habeas corpus and to release the petitioner who is alleged to be in illegal custody.

In the exercise of the power conferred under sub-section (1) read with sub-section (3) of section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970), hereinafter referred to as the 'Act', the District Magistrate, 24 Parganas, passed an order on July 10, 1971, detaining the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. Thereafter the petitioner was arrested on July 13, 1971, and was served with the order of detention as also with the grounds of detention together with a vernacular translation thereof on the same day. On July 14, 1971, the District Magistrate reported to the State Government about the passing of the detention order. The report was considered by the State Government on July 21, 1971, and the

Government approved the order of detention passed by the District Magistrate. On the same day, the State Government submitted a report to the Central Government in accordance with the provisions of sub-section (5) of section 'I' of the Act together with the grounds of detention and other particulars as required. On August 11, 1971, the State Government placed the case of the petitioner before the Advisory Board under section 10 of the Act. The State Government received a representation from the petitioner on September 8, 1971. The representation was considered by the Government and it was rejected by an order dated September 10, 1971. The representation was, however, forwarded to the Advisory Board for consideration of the same by the Board. The Advisory Board, after consideration of the materials placed before it, submitted its report to the State Government on September 6, 1971, incorporating its opinion that there was sufficient cause for the detention of the petitioner. The

490

petitioner prayed, to, the Advisory Board, by means of a representation dated September 6, 1971, that he might be given an opportunity of being heard in person. This representation was received by the Advisory Board on September 8, 1971, and the Board heard the petitioner on September 18, 1971. Therefore, the Board sent a supplementary report to the State Government on the same day, stating that the Board did not find any reason to revise its previous opinion. The State Government confirmed the order of detention on October 7, 1971, and the order of confirmation was communicated to the detenu on the same day. The grounds of detention communicated to the petitioner stated

"(1) That on 5-7-1971 at about 0530 hrs. you along with your associates, while removing Brake Blocks, Vertical Levers and other railway materials from wagon Nos. NRP 1820 and PW 3471 at Chitpur Rly. Yard,, charged bombs and ballasts upon the on-duty R.P.F. party, when challenged by them. Your attack grew so violent that RK 6448 Ram Bachan Rai of the R.P.F. Party had to fire, one round in self-defence,, when you all fled away. You created disturbance of public order thereby.,

(2) That on 5-7-1971 night again at 20.30 hrs., you along with your associates, while, removing iron rods from BF Wagon No. ER99155 at Chitpur Rly. Yard, charged bombs and ballasts upon the on-duty R.P.F. party at Chitpur post, when challenged by them. Your attack grew so violent that RK 6756 Madan Mohan Prasad of the R.P.F. party had to fire two rounds upon you in self-defence culminating (in) death of one of your associates on the spot, when you all fled away, you created disturbance of public order thereby."

Section 3(2) of the Act defines the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" for the purpose of sub-section (1) of that section. Clauses (b) and (d) of sub section 3(2) read as follows:-

"(b) Committing mischief, within the meaning of section 425 of the Indian Penal Code, (45 of 1860) by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building, where the commission of such mischief disturbs, or is likely to disturb; public order;"

491

"(d) committing or instigating any person to commit any

offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence, under the Arms Act, 1959 (54 of 1959) or the Explosive Substances Act, 1908 (6 of 1908) where the commission of such offence disturbs, or is likely to disturb, public order;"

The question is, whether the offences alleged to have been committed by the petitioner in the grounds communicated to him would amount to commission of offences which would disturb public order or which are likely to disturb public order.

The relevant criteria to distinguish in the abstract between acts prejudicial to maintenance of law and order and those which are prejudicial to maintenance of public order are laid down in a number of rulings of this Court (see Pushkar Mukherjee and others v. The State of West Bengal(1), Sudhir Kumar Saha v. Commissioner of Police, Calcutta and another(2) and Nagendra Nath Mondal v. The State of West Bengal(3). The question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of the law and order (see, Arun Ghosh v. State of Bengal(4).

In the final analysis, one must always return to the facts of the case to see whether the acts perpetrated are of such a nature or of such potentiality as to travel beyond the, immediate victims and affect the general or local public. A case by case adjudication gives the judicial process the impact of actuality and thereby saves it from the hazards of generalisation.

We think that the acts attributed to the petitioner are such as would bring him within the ambit of clauses (b) and (d) of section 3(2) of the Act. Attacking the R.P.F. party with bombs at the Chitpur railway station yard was bound to cause scare among all the members of the public who would be resorting to the station yard and interfere with their activities in getting the goods loaded and

(1) [1969] 2 S.C.R. 635 (2) A.I.R. 1970 S.C. 614

(3) [1972] 1 S.C.C. 498. (4) A.I.R. 1970 S.C. 1228

14-LI286SupCI/72

492

unloaded. The acts attributed to the petitioner had the potentiality of affecting the even tempo of the life of the community in the locality by their reverberations. We therefore, overrule the contention of counsel for the petitioner that the grounds communicated to the petitioner did not disclose that he indulged in any activity which was prejudicial to the maintenance of public order.

It was contended that the petitioner was not given an opportunity of being personally heard by the Advisory Board before it sent the report incorporating its opinion that there was sufficient cause for the detention of the petitioner. We do not think that there is any substance in this contention either. Section 11 of the Act, so far as

it is relevant, provides :

" 1. Procedure for Advisory Boards (1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if in any particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government within ten weeks from the date of detention."

In this case, the Board did not consider it essential to hear the petitioner in person before submitting its report. So, unless the petitioner requested for a personal hearing, there was no obligation on the part of the Board to give a personal hearing to him. The Board considered all the relevant materials relating to the case of the petitioner and it came to a conclusion that there was sufficient cause for the detention of the petitioner in its report dated September 6, 1971. On the same day the petitioner sent a representation to the Board that he may be heard in person. That representation reached the Board only on September 8, 1971. Thereafter the Board heard the petitioner in person on September 18, 1971, but found no reason to revise its previous opinion. So it submitted a supplementary report to the Government on September 18, 1971, to that effect. We, therefore, dismiss the petition.

V.P.S.

Petition dismissed.

493