

DISTRICT MAGISTRATE, NOWGONG & ANR.

v.

SARAT MUDOJ

September 14, 1983

[RANGANATH MISRA AND AMARENDRA NATH SEN, JJ.]

National Security Act, 1980—Section 3(2) read with s. 3(3)—Detention order not containing particulars of which of the specified supplies and services—affected—Valid.

The respondent challenged the order of his detention under the National Security Act on the ground that since the detaining authority did not specify in the order of detention as to which particular supplies and services he had in mind while making it, the order of detention was vitiated. The High Court set aside the order of detention. In appeal it was submitted that it would be impossible for the detaining authority to specify any of the 16 items of services and supplies included in the notification in regard to the future conduct of the detenu.

Allowing the appeal,

HELD: Under the Act the detenu is entitled to make a representation against the order of detention. It is manifest from the statutory scheme that his right to represent is after the grounds are served on the detenu. The right of the detenu to make a representation should be without fetters and as wide as possible. Since the citizen is detained without trial and on the basis of satisfaction of a notified authority the right to represent assumes importance. The detenu would be in a position to effectively represent only when specific particulars are provided to him and the grounds are intended to provide that material to him. A full disclosure made in the grounds of detention in no way prejudices the right guaranteed to the detenu to make an effective representation challenging his detention. Therefore, non-specification of the required particulars in the order of detention would not vitiate the order as long as the particulars are provided in the grounds in support of the order of detention which in quick succession of the detention order are served on the detenu.

[960 B-E]

It is open to the detaining authority to take note of the past conduct of a detenu. If past conduct confined to any or all of the 16 items in the notification could be satisfied, the detaining authority could also on the basis of reasonable apprehension of repetition of such conduct in future make an order of detention for its prevention. [960 H; 961 A]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 468 of 1983.

Appeal by Special leave from the Judgment and Order dated the 2nd February, 1983 of the Gauhati High Court in Civil Rule (HC) No. 4/83.

B *M.M. Abdul Khader* and *S.K. Nandy* for the Appellants.

V.M. Tarkunde and *Mrs. Manik Karanjawala* with him for the Respondent.

C The Judgment of the Court was delivered by

D RANGANATH MISRA, J. The detaining authority under section 3 (2) read with s. 3 (3) of the National Security Act, 1980 ('Act' for short) being the District Magistrate of Nowgong and the State of Assam assails the decision of the High Court at Gauhati quashing the order of detention.

On October 20, 1982, the District Magistrate made the following order :

E "Whereas I am satisfied from the dossier submitted by Superintendent of Police, Nowgong that it is necessary to prevent Shri Sarat Mudoi s/o Shri Renu Mudoi, village Senchows, P.S. Nowgong from acting in any manner prejudicial to maintenance of public order and maintenance of supplies and services essential to the community, I. S. Kablian, I.A.S., District Magistrate, Nowgong, hereby in exercise of powers conferred under section 3 (2) read with section 3 (3) of National Security Act, 1980, direct that Shri Sarat Mudoi be detained with immediate effect until further orders".

G In the grounds of detention which were supplied to the detenu within the time provided by law, six grounds were specified. Before the High Court several contentions were raised including the one to the effect that if the detaining authority does not specify in the order of detention as to which particular supply and/or service he had in mind while making it, the order of detention is vitiated. After hearing counsel for the parties, the High Court came to the conclusion :

H

"We are of the view that as while passing the order of detention the authority has 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 services forming part of notified categories. Any other view would also pose a possibility of abuse of power as a result of absence of full application of mind."

and set aside the order of detention.

At the stage of notice on the special leave petition this Court on March 10, 1983, made the following order :

"Issue notice to the respondent returnable within a week confined to the question as to whether according to the ratio laid down by this Court in *A. K. Roy v. Union of India* (AIR 1982 SC 710), it is necessary to specify in the order of detention itself the particular supplies and services essential to the community which are affected by the activities of the detenu or will it suffice if it is mentioned in the grounds for detention".

On behalf of the State this Court was told that even if the appeal was allowed, the respondent would not be detained for the unexpired portion of the period.

The short question that survives for consideration, therefore, is whether without the particulars of supplies and services specified in the order of detention, it is bad. In *A.K. Roy's case* and the connected matters this Court took the view that no person could be detained under s. 3 (2) of the Act 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 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 properly to the public. Accordingly,

A by a notification on February 8, 1982, 16 specified supplies and
services were notified as essential to the community and this
notification was duly published in the Gazette of India, Extra-
ordinary issue of the same day. Under the Act the detenu is
entitled to make a representation against the order of detention. It
is manifest from the statutory scheme that his right to represent is
after the grounds are served on the detenu. It is the pronounced
B view of this Court that such right should be without fetters and as
wide as possible. Since the citizen is detained without trial and on
the basis of satisfaction of a notified authority the right to represent
assumes importance. The detenu would be in a position to effectively
C represent only when specific particulars are provided to him and the
grounds are intended to provide that material to him. Mr. Tarkunde
who appeared *amicus curiae* fairly agreed that it is not necessary that
the specification should be in the order of detention and it would be
adequate to enable the detenu to make an effective representation if
the particulars are provided in the grounds of detention. We are
D inclined to take the view that a full disclosure made in the grounds
in no way prejudices the right guaranteed to the detenu to make an
effective representation challenging his detention. Therefore, non-
specification of the required particulars in the order of detention
would not vitiate the order as long as the particulars are provided
E in the grounds in support of the order of detention which in quick
succession of the detention order are served on the detenu. Counsel
for the appellants argued that while it would be possible for the
particulars to be provided with reference to past conduct it would be
difficult to specify any of the 16 items of services and supplies
F included in the notification in regard to future conduct of the detenu
and, therefore, to require the detaining authority to so specify would
be asking for the performance of something impossible.

In view of the limited question on which notice was issued, this
aspect strictly does not fall for consideration. We also do not find
any merit in this stand.

G It was pointed out by this Court in *Debu Mahto v. State of
West Bengal*⁽¹⁾, that the basis for an order of preventive detention is
the reasonable prognosis of the future behaviour of the person based
upon his past conduct. It is open to the detaining authority to take
H note of the past conduct of a detenu and apprehending repetition of

(2) A.I.R. 1974 S.C. 816.

such conduct in future an order of detention can be made with a view to preventing such action. If past conduct confined to any or all of the 16 of the items in the notification could be satisfied, the detaining authority could also on the basis of reasonable apprehension of repetition of such conduct in future make an order of detention for its prevention. We do not propose to say anything more in view of the short question to which the notice was confined. We are thankful to Mr. Tarkude for assisting us at the hearing as *amicus curiae*.

This disposes of the appeal.

H.S.K.

Appeal allowed.