

In The Matter of Durga Show and Others  
Writ Petitions Nos. 198, 205 and 206 of 1969

02.09.1969

JUDGMENT

BHARGAVA, J. –

1. These three petitions under Article 32 of the Constitution are by three persons detained under the Preventive Detention Act, on the ground that their detention was necessary in order to maintain supplies and service essential to the community.

2. In the case of the detenu Durga Show in Writ Petition No. 198 of 1969, the facts given in the counter-affidavit filed on behalf of the State Government show that his representation was received by the Government on 29-5-1969 but it was considered and rejected by the Government on 11-8-1969.

3. In the case of the detenu Nand Kishore Ojha in Writ Petition No. 205 of 1969, the representation was received on 18-6-1969 and was considered and rejected by the Government on 16-8-1969. In both these cases the rejection order was made after the receipt of the report of the Advisory Board and after the Government had confirmed the orders of detention in pursuance of the report.

4. In the third case of Balgobonda Gore in Writ Petition No. 206 of 1969, the representation was received on 28-6-1969 and was considered and rejected on 14-7-1969, on which date it was also sent to the Advisory Board.

5. The common feature in all the three cases is that there is considerable delay between the receipt of the representation and its consideration and rejection by the Government. In none of the cases any attempt has been made in the counter affidavit to explain the delay. A delay of 16 days which is the minimum out of the three cases is a long delay where a person is being detained without trial under a special law relating to preventive detention. This Court in its judgment, dated 31-1-1969 in Writ Petition No. 327 of 1968 *Sk. Abdul Karim and Others. v. State of West Bengal* (1969 (1) SCC 433 : AIR 1969 SC 1028 : (1969) II SCJ 381), explained the duty of the State Government arising out of the provisions of Article 22(5) of the Constitution to consider the representation received from a detenu in the following words :

"But it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible. The constitution of an Advisory Board under Section 8 of the Act does not relieve the State Government from the legal obligation to consider the presentation of the detenu as soon as it received by it."

6. This earlier decision was affirmed by another Bench of this Court in its judgment, dated 1-5-1969 in Writ Petition No. 277 of 1968 *Pankaj Kumar Chakrabarty and Others. v. The State of West Bengal*. (1969 (3) SCC 400)

7. Clearly, the facts mentioned above show that the requirement laid down by the Constitution has

not been satisfied in the case of any of these three petitioners before us. They were entitled to receive a consideration of their representations by the State Government as expeditiously as possible which the Government failed to do, and consequently their continuance in detention thereafter is illegal. As a result, the three petitions are allowed. All the three Petitioners shall be set at liberty forthwith.

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