

Jayanarayan Sukul

Vs

State of West Bengal

Writ Petition No. 258 of 1969

(CJI M. Hidayatullah, J.M. Shelat, C.A. Vaidialingam, A.N. Grover, A.N. Ray JJ)

05.11.1969

JUDGMENT

RAY, J. -

1. The petitioner made an application under Article 32 of the Constitution requiring the respondent to show cause as to why the petitioner should not be released.
2. At the conclusion of the hearing of this petition on October 15, 1969 we directed the release of the petitioner and stated that the reasons would be given later on. We are stating out reasons for the order.
3. On June 5, 1969 the District Magistrate, 24-Parganas, West Bengal made an Order under Section 3 (2) of the Preventive Detention Act, 1950 (hereinafter called the Act) for the detention of the petitioner. On June 7, 1969 the petitioner was arrested and on the same day grounds of detention were served on the petitioner. On June 9, 1969 information was given to the State Government. On June 14, 1969 the Governor was pleased to approve the order of detention and on the same day the Governor sent the report to the Central Government under Section 3 (4) of the Act together with the grounds of detention. On June 23, 1969 the petitioner made a representation to the State Government. On July 1, 1969 the State Government placed the case of the petitioner before the Advisory Board under Section 9 of the Act together with the said representation. On August 13, 1969, the Advisory Board after consideration of the materials placed before it was of the opinion that there was sufficient cause for the detention of the petitioner. On August 19, 1969 the State Government is alleged to have rejected the petitioner's representation. By an order dated August 26, 1969 the Governor was pleased to confirm the order of detention of the petitioner.
4. The only contention on behalf of the petitioner was that though the petitioner made the representation on June 23, 1969 the Government did not consider the said representation with reasonable and proper exposition.
5. On behalf of the State of West Bengal it was contended first that the matter was referred to the Advisory Board along with the petitioner's representation and the State Government considered the report of the Advisory Board, and, secondly, the affidavit of Rathindra Nath Sen Gupta affirmed on September 19, 1969 will show that enquiries were made after the petitioner had made the representation and the Government therefore considered the representation.
6. The affidavit of Rathindra Nath Sen Gupta is of little value. The deponent stated first that he caused further enquiries to be made through the Superintendent, Railway Police after he had

received the representation of the petitioner from the State Government, secondly, that the Superintendent, Railway Police took a little time to submit a report, thirdly, the deponent after being satisfied about anti-social activities of the petitioner informed the State Government on August 12, 1969 to the effect that he did not recommend the release of the petitioner and, fourthly, that the State Government on August 19, 1969 rejected the petitioner's representation. There is no affidavit by the Superintendent of the Police, Sealdah who is alleged to have made further enquiries. One will look in vain into the affidavit of the deponent to find out as to when the deponent entrusted the said enquiry to the Superintendent, Railway Police and further as to what time and taken for enquiry and report. The Court is entitled to know the time and the steps taken along with the nature of the enquiry. The importance of the matter lies in the fact that it is a case of preventive detention and the personal liberty of a citizen is under consideration of the State Government. The State Government is, therefore, bound to give the utmost information to this Court.

7. The Preventive Detention Act confers powers on the Central Government or the State Government to make an order for detention of a person. The order of detention can be passed by the District Magistrate or the Additional District Magistrate or the Commissioner of Police or the Collector. When an order is made by any of these officers he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds and no such order shall remain in force for more than 12 days after the making of the order unless it is approved by the State Government. The State Government shall, as soon as may be, report the fact to the Central Government. Under Section 7 of the Act grounds of order of detention are to be disclosed to the persons affected by the order not later than 5 days from the date of detention and the Act further requires to afford the person affected by the order the earliest opportunity of making a representation against the order to the appropriate Government. In the present petition, we are concerned with the scope and intent of Section 7 of the Act in regard to the representation made by the petitioner.

8. Section 8 of the Act contemplates constitution of Advisory Boards. Section 9 requires the appropriate Government within 30 days from the date of detention to place the grounds and the representation, if any, before the Advisory Board. The Advisory Board under Section 10 is to consider the materials and if the Board considers it essential to hear the person concerned who desires to be heard, the Board will hear the person and make the report. Section 11 of the Act states that the Government may confirm the detention order if the Advisory Board gives an opinion to that effect. Under Section 13 of the Act the State Government may revoke an order passed by its officers and the Central Government may revoke an order made by the State Government.

9. Counsel on behalf of the State of West Bengal contended that the matter was referred to the Advisory Board along with the representation of the detenu, dated June 23, 1969 and the State Government on August 19, 1969 rejected the representation of the petitioner and thus discharged its duty. This contention has to be examined in the light of Article 22 of the Constitution and the provisions of the Act.

10. There have been five recent decisions of this Court on the provisions of this Act particularly in regard to the right of the detenu to have his representation considered by the appropriate Government and the obligation of the appropriate Government in that behalf. In *Sk. Abdul Karim and Others v. The State of West Bengal* (W.P. No. 327 of 1968, decided on 31-1-1969 : 1969 (1) SCC 433). This Court held that the appropriate Government could not be said to discharge the obligation merely by forwarding the representation of the detenu to the Advisory Board. Article 22 of the Constitution guarantees the right of a detenu to have a proper consideration of the

representation by the appropriate authority.

11. In the case of Pankaj Kumar Chakrabarty and Others v. The State of West Bengal (W.P. No. 377 of 1968, decided on 1-5-1969), this Court put in the forefront the distinction between the twin obligations of the appropriate authority under Sections 7 and 8 of the Act. The appropriate Government is to consider the representation of the detenu inasmuch as Sec. 7 of the Act speaks of affording the detenu the earliest opportunity of making a representation against the order of detention. The obligation of the appropriate authority to consider the representation of the detenu under Section 7 of the Act is entirely independent of any action of the Advisory Board or any consideration by the said Board of the representation of the detenu. In the case of Pankaj Kumar Chakrabarty (supra) this Court observed : "The peremptory language in Clause 5 of Article 22 of the Constitution and Section 7 of the Act would not have been necessary if the Board and not the Government had to consider the representation".

12. There is another reason why the appropriate Government is required to consider on its own the representation of the detenu. If the consideration of the representation of the detenu by the Board sufficed the constitutional guarantee, Section 7 of the Act would be robbed of its content. In Pankaj Kumar Chakrabarty's (supra) this Court emphasised the aspect that the representation was addressed to the Government and not directly to the Advisory Board and it was for the reason that the appropriate authority was to exercise its opinion and judgment in an independent and honest manner.

13. It, therefore, follows that the appropriate authority is to consider the representation of the detenu uninfluenced by any opinion or consideration of the Advisory Board. In the case of Khairul Haque v. State of West Bengal (W.P. No. 246 of 1969, decided on 10-9-69) this Court observed that "it is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation cannot depend upon the views of the Board on such representation". The logic behind this proposition is that the Government should immediately consider the representation of the detenu before sending the matter to the Advisory Board and further that such action will then have the real favour of independent judgment.

14. In the case of Shyamal Chakraborty v. The Commissioner of Police, Calcutta and Another (W.P. No. 102 of 1969, decided on 4-8-69, 1969 (2) SCC 426) one of the contentions was that the detenu's representation was not considered by the Government. There the facts were these : The detenu was arrested on November 13, 1968. On January 8, 1969 the Governor was pleased to confirm the order of detention after the Advisory Board had given opinion that there was sufficient cause for detention of the petitioner. The detenu thereafter on January 13 or 16, 1969, made a representation. On April 1, 1969 the Commissioner of Police informed the Home Department that he did not recommend the release of the petitioner. On March 28, 1969 notice was issued under article 32 of the Constitution to the Commissioner of Police and to the State Government to show cause why the petitioner should not be set at liberty. It is curious that even when Shyamal's case (supra) was heard in this Court on August 4, 1969 the representation of the petitioner could not be traced. This Court did not accept the contention of the petitioner that there was any breach of Section 7 of the Act on consideration of the facts that the detenu did not choose to make a representation till after the Advisory Board had dealt with the matter and further that the State Government was in the process of dealing with the representation and the detenu did not state that the grounds of detention were false. This Court concluded in the case of Shyamal Chakraborty (supra) by stating that the State Government would deal with the representation and pass a suitable order.

15. When the present Writ Petition came up for hearing on September 30, 1969 before the Bench consisting of Sikri, Mitter and Reddy, JJ., the matter was referred for decision by a larger Bench to consider as to what would be the question of period within which the Government could dispose of the representation of the detenu because it was felt that there was an apparent conflict between the cases of Shyamal Chakraborty and Khairul Haque (supra).

16. In view of the fact that there is a fundamental right of the detenu to have the representation considered by the appropriate Government such right will be rendered meaningless if the Government will not deal with the matter expeditiously but at its own will and convenience. In the case of Khairul Haque (supra) the petitioner made a representation on June 23, 1969. The Advisory Board made its report on August 11, 1969. On August 12, 1969 the Governor confirmed the order of detention. On August 29, 1969 the Governor rejected the petitioner's representation. The delay was not explained in that case. The disposal of the representation by the Government after the receipt of the Report of the Advisory Board was found by this Court to raise a doubt there whether the Government considered the representation in an independent manner. This independent consideration by the appropriate Government is implicit in Article 22 of the Constitution.

17. In the case of Durga Shaw and Others (W.P. No. 198, 205 and 206 of 1969, decided on 2-9-1969), three petitioners were set at liberty. There the representation of one detenu was received on May 29, 1969 and was rejected on August 11, 1969. In another case the representation of the detenu was received on June 18, 1969 and was rejected by the Government on August 16, 1969. In the third case the representation of the detenu was received on June 28, 1969 and was rejected on July 14, 1969. In the case of Durga Shaw and Others (supra) the opinion of this Court in the case of Sk. Abdul Karim (supra) was re-stated by emphasising the legal obligation of the appropriate Government to consider the representation of the detenu "as soon as it is received by it".

18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

19. No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in the words of Shelat, J. who spoke for this Court in the case of Khairul Haque (supra). "It is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for

consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.

21. In the present case, the State of West Bengal is guilty of infraction of the constitutional provisions not only by inordinate delay of the consideration of the representation but also by putting of the consideration till after the receipt of the opinion of the Advisory Board. As we have already observed there is no explanation for this inordinate delay. The Superintendent who made the enquiry did not affirm an affidavit. The State has given no information as to why this long delay occurred. The inescapable conclusion in the present case is that the appropriate authority failed to discharge its constitutional obligation by inactivity and lack of independent judgment.

22. The petition is, therefore, allowed. The petitioner is set at liberty.

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