

Kanti Lal Bose

Vs

State of West Bengal

Writ Petition No. 8 of 1972

(J. M. Shelat, H. R. Khanna JJ )

05.05.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail under Article 32 of the Constitution of India for issuing a writ of habeas corpus by Kanti Lal Bose, who has been ordered by the District Magistrate Howrah to be detained under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970, (President's Act No. 19 of 1970) (hereinafter referred to as the Act) "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order".
2. The petition was resisted by the respondent-State and the affidavit of Shri Dipak Kumar Rudra, District Magistrate, who passed the detention order, was filed in opposition to the petition. Mr. Vohra argued the case amicus curiae on behalf of the petitioner, while the State was represented by Mr. Ghosh. After hearing the learned counsel, we passed an order on May 3, 1972, for the release of the petitioner and stated that the reasons in support of our order would be indicated later. We now proceed to set out those reasons.
3. The order for the detention of the petitioner was made by the District Magistrate on February 19, 1971. The petitioner, it is stated, was found to be absconding and was arrested on July 15, 1971. The order of detention as well as the ground of detention together with vernacular translation thereof were served on the petitioner on the day of his arrest. In the meanwhile, on February 19, 1971, the District Magistrate sent report to the State Government along with necessary particulars about his having made the detention order. The State Government after considering the report and particulars approved the detention order on March 1, 1971. Report about the making of the detention order along with the requisite particulars was thereafter sent by the State Government to the Central Government. On August 11, 1971, the State Government received a representation from the petitioner. On August 21, 1971, the State Government placed the case of the petitioner before the Advisory Board. The representation of the petitioner was considered by the State Government and was rejected on September 8, 1971. The representation was thereafter forwarded to the Advisory Board. The Board, after considering the material placed before it, including the petitioner's representation, and after hearing the petitioner, submitted its report to the State Government on September 9, 1971. Opinion was expressed by the Advisory Board that there was sufficient cause for the detention of the petitioner. On October 11, 1971, the State Government confirmed the order for the detention of the petitioner. Information about the confirmation of the detention order was thereafter sent to the petitioner.
4. When the matter came up for hearing before us on April 26, 1972, Mr. Vohra sought permission

to take up additional grounds in support of the petition. He thereafter filed a written application setting forth the additional grounds. Looking to the facts of the case, we allowed Mr. Vohra to take the additional grounds.

5. It was argued on behalf of the petitioner that his representation was received by the State Government on August 11, 1971. The State Government considered the representation and rejected it on September 8, 1971. There thus elapsed a period of 28 days between the receipt of the petitioner's representation and the consideration and rejection of the same by the State Government. Learned counsel for the respondent, who had the Government file relating to the detention of the petitioner, could not furnish any explanation as to why the Government took a long period of 28 days to consider and reject the petitioner's representation. In the absence of any cogent ground the failure of the State Government to consider the representation of the petitioner and pass an order thereon for a period of 28 days would, in our opinion, invalidate the detention of the petitioner.

6. In the case of *Jayanarayan Sukul v. State of West Bengal* ((1970) 3 SCR 225 : (1970) 1 SCC 219.) the Constitution Bench of this Court emphasized the imperative necessity of the consideration of the representation made by a detenu by the Government as early as possible. It was observed :

"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 be an irresponsible on the part of the appropriate authority but also 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.

No define 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 a detenu to have his representation considered as expeditiously as possible."

7. The detenu in that case a representation to the State Government on June 23, 1969, and the same was rejected by the said Government on August 9, 1969. It was held that the Government was guilty of infraction of constitutional provision because of the inordinate delay in considering the representation. The petitioner was accordingly set at liberty.

8. Reliance in the case of *Jayanarayan v. State of W.B.* (supra) was placed upon the earlier decision of this Court in the case of *Khairul Haque v. State of W.B.* (W.P. No. 246 of 1969, decided on September 10, 1969.) In that case this Court held that Article 22(5) of the Constitution envisaged a dual obligation of the Government and a corresponding dual right in favour of a detenu, namely : (1) to have his representation independently considered by the Government, and (2) to have that representation, in the light of the facts and circumstances of the case, considered by an Advisory Board. It was observed that the said provision enjoined upon the detaining authority to afford to the detenu the earliest opportunity to make a representation. This fact, in the opinion of the Court, necessarily implied that such a representation must, when made, be considered and disposed of as expeditiously as possible, for otherwise "the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning". In *Prof. K.I. Singh v. State of Manipur* (AIR 1972 SC 438 : (1972) 2 SCC 576.), this Court held that an unexplained delay of 17 days was

enough to render the detention illegal. In *Baidya Nath Chunkar v. State West Bengal* (W.P. No. 377 of 1971, decided on March 14, 1972 : (1972) 2 SCC 473.), unexplained delay of 29 days in considering the representation was held to have vitiated the detention of the detenu. In the case of *Nagendra Nath Mondal v. State of West Bengal* ((1972) 1 SCC 498.) on the other hand, although 34 days had elapsed between the receipt of the representation and its disposal by the Government, the delay was held by this Court to have been satisfactorily explained. The cases mentioned above were referred to by this Court in *Ranjit Das v. State of West Bengal* (W.P. No. 14 of 1972, decided on May 3, 1972.), and it was held that unexplained delay of 19 days in considering the detenu's representation would invalidate the detention. In the present case, as stated earlier the delay of 28 days in considering an rejecting the representation of the petitioner has not been explained. The said delay would consequently vitiate the detention of the petitioner.

9. Mr. Ghosh has referred to a decision of this Court in the case of *Arun Kumar Roy alias Katu v. State of West Bengal* (W.P. No. 52 of 1972, decided on May 3, 1972.). The representation of the detenu in that case was received by the State Government on October 7, 1971, and after consideration was rejected by the said Government on November 17, 1971. The fact, that a period of one month and ten days elapsed between the receipt of the detenu's representation and its disposal by the State Government was enough, according to the submission made in that case, to invalidate the detention. This submission was rejected on the ground that the petitioner had make no grievance in the writ petition about the delay in the consideration of his representation. It was observed that if any such plea had been taken, the Court would have had to consider whether the Government had any explanation to offer for the delay. The above case, in our opinion cannot be of much assistance to the respondent-State. As stated earlier, the counsel arguing on behalf of the petitioner had been permitted to take additional grounds. One of those grounds specially dealt with the point that respondent had made an inordinate delay in considering the representation of the petitioner and, as such, had contravened Article 22(5) of the Constitution. The learned counsel for the respondent-State thereafter looked into the official file and could furnish no explanation for the failure of the State Government to consider the representation of the petitioner till September 8, 1971.

10. We, therefore, accept the petition and make the rule absolute.

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