

Abdus Sukkur

Vs

State of West Bengal

Writ Petition No. 85 of 1972

(H. R. Khanna JJ)

30.05.1972

JUDGMENT

KHANNA, J. -

1. An order was made by the District Magistrate, Burdwan on February 10, 1971 under Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970) for the detention of Abdus Sukkur "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". In pursuance of that order, Abdus Sukkur was arrested on September 24, 1971. Abdus Sukkur thereupon filed the present petition through jail under Article 32 of the Constitution to challenge his detention.

2. Mr. Chibber argued the case amicus curiae on behalf of the petitioner, while the State of West Bengal was represented by Mr. Chatterjee. After hearing the learned counsel on May 24, 1972, I ordered that, for reasons to be given later, the petitioner be set at liberty. I now proceed to set out those reasons.

3. The order for the detention of the petitioner, as mentioned earlier, was made by the District Magistrate on February 10, 1971. The petitioner it is stated, was found to be absconding after the making of that order and he was arrested on September 24, 1971. He was then served with the order of detention along with the found of detention together with vernacular translation thereof. In the meanwhile, on February 10, 1971 the District Magistrate sent report to the State Government about the making of the detention order along with necessary particulars. The State Government approved the detention order on February 18, 1971. The case of the petitioner was placed on October 23, 1971 by the State Government before the Advisory Board. On October 28, 1971 the State Government received a representation from the petitioner against his detention. The said representation was considered by the State Government and was rejected on November 24, 1971. The representation was thereafter sent to the Advisory Board. The Advisory Board, after considering the material placed before it and after hearing the petitioner in person, sent its report to the State Government on November 26, 1971. Opinion was expressed by the Advisory Board that there was sufficient cause for the detention of the petitioner. The State Government confirmed the order for the detention of the petitioner on December 1, 1971.

4. It would appear from the above that though the representation made by the petitioner against his detention was received by the State Government on October 28, 1971, the said Government considered the representation and rejected it on November 24, 1971. There thus elapsed a period of 27 days between the receipt of the representation and its consideration and rejection by the State Government. As the above delay in considering and rejecting the representation had not been

explained in the affidavit which was initially filed in opposition to the petition on behalf of the State Government, this Court adjourned the matter on May 5, 1972 to enable the State Government to file an additional affidavit. When the case was taken up thereafter on May 24, 1972, Mr. Chatterjee, learned counsel for the State, stated that no additional affidavit was to be filed on behalf of the State. It would thus follow that the delay on the part of the State Government in considering the representation of the petitioner has remained unexplained. This unexplained delay, in my opinion, is sufficient to invalidate the detention of the petitioner.

5. According to clause (5) of Article 22 of the Constitution, when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. The fact that earliest opportunity has to be afforded to the detenu for making a representation against the detention order necessarily implies that, as and when the representation is made, it should be dealt with promptly. Undue delay on the part of the detaining authority in disposing of the said representation would run counter to the underlying object of clause (5) of Article 22. The requirement about the giving of the earliest opportunity to a detenu to make a representation against the detention order would plainly be reduced to a farce and empty formality if the authority concerned after giving such an opportunity pays no prompt attention to the representation which is submitted by the detenu as a result of that opportunity. It is, therefore, essential that there should be no undue or unexplained delay on the part of the detaining authority in disposing of the representation made by the detenu against the detention order. In case the authority concerned is guilty of such delay the detention would be liable to be assailed on the ground of infraction of Article 22(5) of the Constitution. That as it should be, because the matter relates to the liberty of a subject who has been ordered to be detained without recourse to a regular trial in a court of law. The authority concerned has, therefore, to proceed strictly in accordance with law and any deviation from compliance with legal requirement cannot be countenanced. It has accordingly been laid down in a string of authorities that undue or unexplained delay in the disposal of the representation of the detenu against the detention order would introduce a serious infirmity in the detention.

6. In the case of *Jayanarayan Sukul v. State of the West Bengal* ((1970) 3 SCR 225 : (1970) 1 SCC 219.) the Constitution Bench of this Court laid stress on 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 act 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 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 a detenu to have his representation considered as expeditiously as possible."

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

7. Reliance in the case of Jayanarayan Sukul v. State of West Bengal (supra) was placed upon an earlier decision of this Court in the case of Khairul Haque v. State of West Bengal (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 of 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. The different cases mentioned above were referred to by this Court in the case of Kanti Lal Bose v. State of West Bengal (W.P. No. 8 of 1972, decided on May 5, 1972 ((1972) 2 SCC 529.)) and it was held that unexplained delay of 28 days in considering the detenu's representation would invalidate his detention.

8. I, therefore, accept the petition and make the rule absolute.

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