

Binode Hembram

Vs

State of West Bengal

Writ Petition No. 189 Of 1972

( H. R. Khanna, J. M. Shelat, I. D. Dua JJ)

28.07.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail under Article 32 of the Constitution of India for the issue of a writ of habeas corpus by Binode Hembram, who has been ordered to be detained under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act by the District Magistrate, Midnapore "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order".

2. The petitioner in pursuance of the detention order was arrested on December 29, 1971, and was served with the order of detention as well as the ground of detention together with the vernacular translation thereof. Report about the making of the detention order was sent by the District Magistrate to the State Government along with necessary particulars on December 30, 1971, and the detention order was approved by the Government on January 4, 1972. On January 10, 1972, the State Government received representation from the petitioner. The said representation was rejected by the State Government on February 19, 1972. In the meanwhile, on January 20, 1972, the State Government placed the case of the petitioner before the Advisory Board. The petitioner's representation after being rejected, was also sent to the Advisory Board. The Advisory Board, after considering the material placed before it, sent its report on February 22, 1972. Opinion was expressed by the Board that there was sufficient cause for the petitioner's detention. The order of detention was confirmed by the State Government on March 8, 1972.

3. The petition has been resisted by the State Government and the affidavit of Shri Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

4. We have heard Mr. Harbans Singh, who has argued the case amicus curiae on behalf of the petitioner, and Mr. Chatterjee on behalf of the State, and are of the opinion that there has been inordinate delay on the part of the State Government in disposing of the representation of the petitioner and this fact is sufficient to invalidate his detention. The representation of the petitioner, as mentioned earlier, was received by that Government on January 10, 1972, and was rejected by that Government on February 19, 1972. There thus elapsed a period of about 40 days between the receipt of the representation and its disposal by the Government. The State Government has tried to explain the delay on the ground that there was a go-slow movement launched by the State Government employees sometime back and that movement resulted in dislocation of office work and also increase in the volume of work. There is, however, nothing to show that there was any go-

slow movement during the days when the representation of the petitioner was received. Any such movement at a time prior to the receipt of the representation would not, in our opinion, justify the delay in the disposal of the representation. In the case of *Amulya Chandra Dey v. State of West Bengal* (W.P. No. 118 of 1972, decided on July 10, 1972) ((1972) 2 SCC 902 : 1972 SCC (Cri) 906) an attempt was made by the State Government to justify the delay on a similar ground. The representation in that case had been received on December 3, 1971, and had been disposed of on December 22, 1971. Affidavit was filed on behalf of the State Government that there were demonstrations by the State Government employees during the period from September 12, till the end of November, 1971. It was observed by this Court that "even assuming that the above statement is correct, it furnishes no reason for the delay in the disposal of the representation of the petitioner, as the dislocation of work was only from September 12 to end of November, 1971, whereas the representation was received by the Government on December 3, 1971". The detention of the detenu was held to be illegal and he was ordered to be set at liberty. Reliance in this context was placed upon the decision in the case of *Jayanarayan Sukul v. State of West Bengal* ((1970) 3 SCR 225 : (1971) 1 SCC 219). wherein this Court observed :

"The fundamental right of the detenu to have his representation considered by the appropriate Government would be rendered meaningless if the Government does not deal with the matter expeditiously but at its own sweet-will and convenience."

5. In the light of the view we have taken in the matter regarding the delay in the disposal of the representation, it is not necessary to go into the other submissions of Mr. Harbans Singh.

6. We, therefore, accept the petition and direct that the petitioner be set at liberty.

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