

Kala Chand Saran

Vs

State of West Bengal

Writ Petition No. 194 of 1972

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

02.08.1972

JUDGMENT

DUA, J. -

1. Kala Chand Saran has sent through Dum Dum Central Jail an application complaining against his detention under Section 3, sub-section (1) read with sub-section (2) of the Maintenance of Internal Security Act, 25 of 1971 (hereinafter called the Act) and praying for his release. Though no provision of law is mentioned in the application it is obviously intended to be under Article 32 of the Constitution. The detention order, according to the return was passed by the District Magistrate, Midnapore on December 24, 1971 and the detenu was arrested pursuant to that order on December 29, 1971. The grounds of detention were served on the detenu at the time of his arrest. On December 30, 1971 the necessary report was made to the State Government and the order of detention was approved by that Government on January 4, 1972. The petitioner's representation was received by the State Government on January 10, 1972 and was considered by it on February 19, 1972. His case was placed before the Advisory Board on January 20, 1972, and the Advisory Board gave its decision on February 22, 1972. The State Government confirmed the order on March 8, 1972 and on the same day it was communicated to the detenu-petitioner.

2. The only point raised before us by Mrs. Udayaratnam, the learned advocate appearing as amicus curiae in support of the petition is that the State Government did not consider the detenu-petitioner's representation as expeditiously as possible and took nearly one month and one days to do so.

3. Prima facie the period between January 10, 1972 and February 19, 1972 seems to us to be unduly long and this inordinate delay requires satisfactory explanation by the State Government. Para 7 of the counter-affidavit sworn by the Deputy Secretary, Home (Special) Department, Government of West Bengal on July 8, 1972, contains the explanation for the delay. It is averred therein :

"..... that the said representation of the detenu-petitioner could not be considered earlier by the State Government as due to various movements launched by the employees sometime back there had been considerable increase in pending matters. Further due to the sudden increase in volume of work due to increased number of detention cases under maintenance of Internal Security Act during that period there was great pressure of work causing delay in dealing with the files. In this case there was a delay of about 40 days in considering the representation of the petitioner. I further state that the said delay was unintentional and was caused due to reasons beyond the control of the State Government.

4. This explanation is extremely vague both as to the time when the so-called various movements by

the employees are alleged to have been launched and their nature and duration. Reference to sudden increase in the volume of work due to increased number of detention cases under the act is equally vague and it gives no clear idea to this Court as to how far the State Government could be held to be reasonably justified in delaying the consideration of the detenu-petitioner's representation for so long. As has often been pointed out by this Court deprivation of the personal liberty of an individual in our democratic Republic is considered to be a serious matter and our Constitution has been very jealous in prescribing effective safeguards against the infringement of the fundamental right of personal liberty guaranteed by it. It is noteworthy that protection of life and personal liberty guaranteed by our Constitution extends to all persons and is not limited or confined to the citizens of India : Articles 21 and 22. Article 22(5) of the Constitution contains some of those safeguards against preventive detention which have to be complied with by the detaining authority. As there is no trial in cases of preventive detention the representation and its consideration are designed by the Constitution to afford the earliest opportunity to the detenu to have his version in defence considered. No doubt, maintenance of internal security and matters connected therewith are entitled to the greatest priority because on them depends not only the fate of orderly society and of the freedoms assured to all persons enjoying the privilege of being present in this Republic, but disturbance of internal security may also at times endanger the security of the nation as a whole. Nevertheless, we cannot on this ground alone countenance the position that the State Government is free to adopt a leisurely attitude in considering the detenu's representation which, according to Article 22(5) must be considered as soon as possible or as expeditiously as practicable and without avoidable delay.

5. The undue delay in considering the detenu's representation having not been satisfactorily explained to this Court, we have no option but to allow this petition. We have already directed on July 28, 1972 that the petitioner be set at liberty. In the present order we have given reasons in support of the order of July 28, 1972.

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