

Atiar Rahman

Vs

State of West Bengal

Writ Petition No. 178 of 1972

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

09.08.1972

JUDGMENT

KHANNA, J. –

1. The District Magistrate of 24 Parganas made an order on August 24, 1971, that Atiar Rahman petitioner be detained under Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". The detention order was approved by the Government of West Bengal on September 3, 1971. In pursuance of the detention order, the petitioner, who was earlier found to be absconding, was arrested on September 20, 1971. The petitioner thereafter filed the present petition through jail for issuing a writ of habeas corpus.
2. The petition was opposed by the State of West Bengal and the affidavit of Shri D. Mukhopadhyaya, District Magistrate of 24-Parganas was filed in opposition to the petition.
3. We have heard Mr. Ram Panjvani, who has argued the case amicus curiae of behalf of the petitioner, and Mr. P. K. Chakravarty on behalf of the respondent State, and are of the opinion that the detention of the petitioner is not in accordance with law as there has been inordinate delay on the part of the State Government in disposing of the petitioner's representation against his detention.
4. The petitioner sent representation against the detention from the jail and said representation was received by the state Government on October 25, 1971. The State Government considered the representation and rejected it on November 18, 1971. There thus elapsed a period of 24 days between the receipt of representation and its disposal by the state Government. The said Government has tried to explain the delay in the disposal of representation by ascribing it partly to the go-slow movement of the State Government employees and partly to the sudden increase in volume; of work on account of increased number of detention in cases. In support of this pleas the State Government has filed the affidavit of Shri D. Mukhopadhyaya. The affidavit, however, reveals that Shri Mukhopadhyaya had no personal knowledge of the go-slow movement or the sudden increase in volume of work in respect of detention cases. According to the affidavit of Shri Mukhopadhyaya, he got this information from the Deputy Secretary, Home (Special) Department of State Government of West Bengal. It is however, not clear as to why affidavit of the Deputy Secretary, Home (Special) Department of the State Government of West Bengal or someone else who had personal knowledge of the facts which led to the delay in disposal of representation has not been filed to explain the delay. The present is not a case wherein Shri Mukhopadhyaya gave affidavit regarding the delay on the basis of information derived from records kept in the office. On the contrary, the affidavit shows that the averment about the delay in the disposal of representation were

based upon what Shri Mukhopadhyaya had heard from someone else. The affidavit is also silent on the point of time as to when there was go-slow movement and whether the same synchronized with the time during which representation was pending with the State Government. We, therefore, are of the opinion that no satisfactory material has been brought on the record to justify the delay in the disposal of the petitioner's representation.

5. It is well established that inordinate delay in the disposal of the detenu's representation introduces an infirmity in his detention. 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 necessary postulates that as and when the representation is made, it should be dealt with promptly and without delay. Dealing with the above provision, this Court observed in the case of *Abdus Sukkur v. State of West Bengal* ((1972) 2 SCC 547 : 1972 SCC (Cri) 885) :

"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 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. This is 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 detenu against the detention order would introduce a serious infirmity in the detention."

Railance in this context was placed in the case on the earlier decision of this Court in *Jayanarayan Sukul v. State of West Bengal* ((1970) 1 SCC 219 : 1970 SCC (Cri) 92) wherein the Constitution Bench had laid stress on the imperative necessity of the consideration of the representation made by a detenu by the Government as early as possible. Reference was also made to a number of other cases wherein this Court had held that unexplained delay in considering the detenu's representation would invalidate his detention. Unexplained delay of 27 days in the disposal of the detenu's representation was held in *Abdus Sukkur's* case (*supra*), to be fatal and the detenu was ordered to be set at liberty.

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

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