

Sri Bimal Chandra Dutta

Vs

State of West Bengal

Writ Petition No. 143 of 1972

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

16.08.1972

JUDGMENT

KHANNA, J. -

1. Bimal Chandra Dutta petitioner was ordered by the District Magistrate Burdwan as per order dated October 11, 1971 to be detained under Section 3 of the Maintenance of Internal Security Act "with a view to preventing him from acting in any manner prejudicial to the maintenance or public order".

2. In pursuance of that order, the petitioner was arrested on December 4, 1971 and was served with the order of detention as well as the ground of detention together with vernacular translation thereof. The petitioner thereafter approached this Court through jail under Article 32, of the Constitution for issuing a writ of habeas corpus. When the petition came up for hearing before us on July 28, 1972, we directed that for reasons to be given later, the petitioner should be set at liberty. We now set out those reasons.

3. The order of detention of the petitioner was approved by the State Government on October 21, 1971. On December 15, 1971 the State Government in its Home Department, Special Section, received a representation from the petitioner. The said representative was rejected by the Government on February 4, 1972. In the meanwhile on December 31, 1971, the case of the petitioner was placed before the Advisory Board. The representation of the petitioner after being rejected, too was sent to the Advisory Board. The Advisory Board, after considering the material placed before it and after hearing the petitioner in person, submitted its report to the State Government on February 9, 1972. Opinion was expressed by the Board that there was sufficient cause for the detention of the petitioner. On February 23, 1972 the State Government confirmed the order for the detention of the petitioner.

4. The petition was opposed by the State Government and the affidavit of Shri Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal was filed in opposition to the petition.

5. Mr. Varshneya who argued the case amicus curiae on behalf of the petitioner, contended before us that there was inordinate delay on the part of the State Government in disposing of the representation of the petitioner and this fact would invalidate his detention. This contention, in our opinion, is well-founded. As mentioned earlier, the representation of the petitioner against his detention was received by the State Government on December 15, 1971 and was rejected on February 4, 1972. There thus elapsed a period of about 51 days between the receipt of

representation and its disposal by the State Government. The Government has tried to explain the delay on the ground that a go-slow movement had been launched by the State Government employees sometime back and that movement resulted in dislocation of office work and there was also increase of office work. There is, however, nothing on record 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 representation would not, in our opinion, justify the delay in the disposal of the petitioner's representation. In the case of Binode Hem Bram v. State of West Bengal (WP No. 189 of 1972, decided on July 29, 1972) 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 January 10, 1972 and had been rejected on February 19, 1972. There was a delay of 40 days in the disposal of the detenu's representation in that case. It was held by the Court that the go-slow movement at a time prior to the receipt of representation would not justify the delay in the disposal of representation.

6. 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 ground on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. The fact that the 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. While dealing with the above provisions, it was observed by this Court in the case of Abdus Sukkur v. State of West Bengal (W.P. No. 85 of 1972, decided on May 30, 1972) ((1972) 2 SCC 547) :

"Undue delay on the part of the detaining authority in disposing of the detenu's representation would run counter to the underlying object of clause (5) of Article 22. The requirements 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 related 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."

The petition for the issue of a writ habeas corpus in that case was accepted because there has been an unexplained delay of 27 days in disposing of the detenu's representation.

7. We are of the view that the delay in the present case in the disposal of the petitioner's representation has not been satisfactorily explained. The detention of the petitioner cannot consequently be held to be in accordance with law. We, therefore, accept the petition and make the

rule absolute.

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