

SUPREME COURT OF INDIA

Sudhir Dey

Vs.

State of W.B.

Writ Petn. No. 260 of 1972

(A. N. Ray and I. D. Dua, JJ.)

08.09.1972

JUDGEMENT

DUA, J.:-

1. In this case, we made a short Order on September 1, 1972 allowing the Writ Petition and quashing the detention order in respect of the petitioner Sudhir Dey and also directing that he be set at liberty forthwith. We now proceed to give reasons for allowing the Writ Petition.

2. From the Writ Petition and the counter filed on behalf of the Respondent State, it is clear that the District Magistrate of Burdwan passed the order for the petitioner's detention on 8-12-1971 "with a view to preventing him from acting in a manner prejudicial to the maintenance of public order". This order was made in exercise of the powers conferred on the district Magistrate by sub-sec. (1) read with sub-section (2) of S. 3 of the Maintenance of Internal Security Act No. 26 of 1971 (hereinafter called the Act). The grounds of detention on the basis of which the impugned order was passed are as under:

"1. On 15-9-71 at about 1 P.M. you with your associates viz: Durgapada Ghosh and others at the point of dagger and exploding bombs snatched away Rs. 1900/- from Sri Krishna Bahadur and Shyamapada Chakraborty of Raj Collegiate School on the road in front of the branch office of the State Bank of India, situated at Burdwan University. By such act in broad day light you created panic and terror and the peaceful citizens of the area felt insecure to come out on the road and their even tempo of life was adversely affected.

2. On 8-11-71 at about 08.45 hrs. you with your associates Durgapada Ghosh and others at the point of dagger snatched away Rs. 2100/- on the road in front of Municipal office from Tapan Kundu of Borhat. This created a panic in the locality and the peaceful citizens were terrorised and felt hesitant to come on the road. This adversely affected the even tempo of life of the people of the locality."

3. These two grounds were considered by the District Magistrate to be separately and collectively sufficient to satisfy him that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. The petitioner made a representation to the Government against the order of his detention. This representation was received by the Government on or about January 4, 1972 in its Home Department (Special Section). The said representation was considered and rejected by the State Government on February 17, 1972. The reason for this delay is stated in para 12 of the counter affidavit which reads as:

"12. In this connection I further state that the said representation of the detenu petitioner could not be considered by the State Government earlier, due to sudden increase in volume of detention cases under Maintenance of Internal Security Act. Due to aforesaid reason there was great pressure of work and movement of the files were very much delayed and the records of the office were not regularly available. It appears that there was about 43 days delay in considering the said representation of the petitioner by the State Government. I further state that the delay was unintentional and was for reasons beyond control of the State Government and I submit that in these circumstances delay may be condoned by this Honourable Court."

4. This delay in considering the petitioner's representation is prima facie unreasonable and in the absence of satisfactory explanation it must be held to be violative of the mandate contained in Article 22 (6) of the Constitution, thereby rendering the petitioner's further or continued detention illegal. Article 22 which guarantees protection against arrest and detention in certain cases after laying down the general rule in clauses (1) and (2) excludes from their operation inter alia, persons "arrested or detained under any law providing for preventive detention." Clause (4) of this Article provides for examination by the Advisory Board, set up for the purpose, of cases of detention for a period longer than three months. Clause (5) lays down:

"5. 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."

5. This Court has more than once considered the scope and effect of this clause. Recently, in *Javanaravan Sukul v. State of West Bengal*, (1970) 3 SCR 225 at p. 231 = (AIR 1970 SC 675) on a review of its earlier decisions, this Court 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. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in words of Shelat, J. who spoke for this Court in the case of *Khairul Haque* (W. P. No. 246 of 1969 decided on 10-9-1969). It obvious that the obligation to furnish the earliest opportunity to make representation loses both its purpose and meaning".

6. In *K. I. Singh v. State of Manipur*, (AIR 1972 SC 438 at p. 440) the unexplained delay of 17 days was held to invalidate the detention. It was said there:

"We are of the opinion that the contention of Mr. Manchanda that there has been a delay in the State in passing orders on the representation made by the petitioners and that the said delay has not been properly explained by the State, has; in the circumstances of this case, to be accepted. In consequence, it follows that there has been a violation of the constitutional right guaranteed under Art. 22 (5) to the petitioners. We are further of the view that the detention orders will have to be struck down on this short ground. In the above view, we do not think it necessary to refer in detail to the grounds of detention, which have no doubt been very severely attacked on behalf of the petitioners. However, we should say that prima facie we are satisfied that the grounds are neither vague nor devoid of particulars, nor can it be said that in this case there were no materials on the basis of which the detaining authority could not have passed the orders of detention under S. 3 (2) read with S. 3 (1) of the Act for the purpose mentioned therein on the basis of the grounds furnished

to the petitioners. However, as we are striking down the order for the reason mentioned earlier, it is unnecessary to pursue this aspect further."

7. The importance of speedy consideration of the representation made by persons detained under laws relating to preventive detention has thus been repeatedly emphasized by this Court. Unreasonable delay by the Government in considering the representation made by a detenu when there is no satisfactory explanation for such delay has always rendered the further or continued detention of the detenu void. The question of the satisfactory nature of the explanation and therefore also of the unreasonableness of the delay must necessarily depend on the facts and circumstances of each case.

8. In *Binodo-hen-Bran v. State of West Bengal* (W. P. 189/72 decided on 17-7-1972 (SC)) there was a delay of about 40 days between the receipt of the representation and its disposal by the Government. The delay was sought to be explained on the ground that there was a go-slow movement launched by the State Government employees some time back and that movement had resulted in dislocation of office work and also in increase of volume of the work. There was nothing to show that there was any go-slow movement during the days when the representation of the petitioner was received and any such movement prior to the receipt of the representation was held not to justify the delay in the disposal of the representation. The order of detention in that case was quashed on this ground.

9. In *Nagendra Nath v. State of West Bengal*, (AIR 1972 SC 665) a gap of 34 days on the facts and circumstances of that case was not considered to amount to undue delay so as to go to the root of the validity of the detention in question or its continuation.

10. In the present case admittedly there is a delay of 43 days and the only reason in justification of this delay is stated to be that "due to sudden increase in the volume of detention cases", under the Act there was "great pressure of work" which delayed movement of files, with the result that "the records of the office were not regularly available". This, in our view, is wholly unsatisfactory explanation for justifying the long delay of 43 days. No details are given about the sudden increase in the detention cases and nothing has been said as to why the State was unable to make proper arrangements for dealing with them in accordance with the provisions of the Constitution. The fact that the Act had been brought on the statute book in July, 1971 is proof positive of the situation in West Bengal at least since January, 1971-if not since much earlier-being far from normal and if that be so, then there is no reason why the State Government should not have made adequate arrangements for dealing with any situation arising out of the sudden rise in detention cases in January, 1972 when the petitioner's representation was received by the Home Department (Special Section). The State must have foreseen the possibility of such a situation. The creation of Special Section of the Home Department also suggests that the State Government was fully conscious of the critical situation in that State and was not taken by surprise and it had anticipated the possibility of increase in detention cases. The State should have, therefore, made adequate arrangements to be in a

position to cope with the increase of detention cases as has been suggested in the counter-affidavit.

11. The reason given by the State Government, wholly unsatisfactory as it is, reflects an attitude of casual indifference on its part towards the question of personal liberty of the citizen and towards the mandate contained in Art. 22 of the Constitution. The case in hand is, however, directly covered by the ratio of the case of the petitioner's associate Durgapada Ghosh which was decided on 7-8-1972, (Durgapada Ghosh v. State of West Bengal, W. P. 174 of 1972 decided on 7-8-1972 = (now reported in AIR 1972 SC 2420)) in which precisely similar gap between the receipt of the representation and its consideration by the State Government was held to be unduly long and the explanation for the delay unsatisfactory. There, in the counter-affidavit, the go-slow movement of the office of the State Government leading to irregular movement of files was stated to have prevailed in September-October, 1971. This was considered to be no justification for the long delay in considering the detenu's representation made early in January, 1972. In the case in hand the State has chosen in its counter-affidavit to omit to state the period of irregular movement of files and has made a general and vague assertion thereby rendering the explanation more unsatisfactory. Durgapada Ghosh's case (AIR 1972 SC 2420) (supra) however, fully covers the present case.

12. The grounds disclosed in this case no doubt seem to us to show that they are relevant and that the petitioner's detention could not be successfully challenged on any infirmity in those grounds, but we need not express any opinion on that point as we are constrained to quash the impugned order on the ground of undue delay on the part of the State Government in considering his representation.

13. No further directions need be given as we have already quashed the impugned order and directed that the petitioner be set at liberty.

Petition allowed.