

Rashid Sk.

Vs

State of West Bengal

Writ Petition No. 273 Of 1972

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

11.10.1972

JUDGMENT

DUA, J. -

1. Rashid Sk., petitioner has approached this Court through jail for a writ of habeas corpus under Article 32 of the Constitution.
2. Pursuant to the detention order, dated January 3, 1972, made by the District Magistrate, Burdwan under Section 3(1) and (2) of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called the Act), the petitioner was arrested on January 5, 1972, and detained with a view to "preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community". The grounds of detention were duly served on him at the time of his arrest. The report regarding the detention order had also been duly sent on January 3, 1972, to the State Government, which approved the order of detention on January 6, 1972. The same day the State Government reported that fact to the Central Government in compliance with Section 3(4) of the Act. The petitioner's case was placed before the Advisory Board on February 1, 1972, and the Board submitted its report on March 4, 1972. The representation made by the appellant was received by the Government on February 3, 1972, but the same was considered by it on March 1, 1972. The State Government confirmed the order of detention on March 15, 1972 : this confirmation was communicated to the petitioner on March 16, 1972.
3. According to the petitioner he had been arrested on December 11, 1971 and kept in police station, Hirapur for 12 days whereafter he was transferred to Koipunapur police station where he was kept for 13 days. On January 5, 1972, the detention order under the Act was served on him and he was thereafter detained in Burdwan District Jail. We do not attach any importance to the petitioner's averment that he had been arrested in December 1971, in connection with some other cases for the simple reason that he was admittedly detained under the impugned detention order with effect from January 5, 1972. His earlier arrest in connection with some other cases cannot render his detention under the order, dated January 3, 1972, illegal, if otherwise it does not suffer from any infirmity.
4. The first challenge to the petitioner's detention pressed by the learned counsel appearing as amicus curiae on his behalf relates to the delay on the part of the State Government in considering the petitioner's representation. The explanation for the delay between February 3, 1972 and March 1, 1972, offered by the State of West Bengal in its counter-affidavit reads :

"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 and abrupt

increase in volume of detention cases under the Maintenance of Internal Security Act, as there was spate of anti-social activities during that time within the State by the Naxalites and other political extremists. Due to aforesaid reason there was great pressure of work and movement of the files was very much delayed and the records in the office were not regularly available. It appears that there was about 27 days delay in considering the said representation of the petitioner. I further state that delay was unintentional and for reasons stated above it was beyond control of the State Government and I submit that the said delay may be condoned by this Hon'ble Court.

The question requiring consideration by this Court is the effect of this explanation for the delay on the part of the State Government in considering the petitioner's representation, on the validity of his detention. It is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of a detenu's representation by the State Government within any specified period of time. The constitutional requirement of expeditious consideration of the petitioner's representation by the State Government has, however, been spelt out by this Court from clause (5) of Article 22 of the Constitution. This clause reads :

"22(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."

The use of the words "as soon as may be" is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

5. In *Abdul Karim and Others v. State of West Bengal* ([1969] 1 SCC 433 : (1969) 3 SCR 479) this Court, while considering the permissible limits of legislation empowering preventive detention as laid down in Article 22 observed after referring to other clauses of Article 22 :

"Apart from these enabling and disabling provisions certain procedural rights have been expressly safeguarded by clause (5) of Article 22. A person detained under a law of preventive detention has a right to obtain information as to the grounds of detention and has also the right to make a representation protesting against an order of preventive detention. Article 22(5) does not expressly say to whom the representation is to be made. Article 22(5) does not expressly say to whom the representation is to be made and how the detaining authority is to deal with the representation. But it is necessarily implicit in the language of Section 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible. The constitution of an Advisory Board under Section 8 of the Act does not relieve the State Government from the legal

obligation to consider the representation of the detenu as soon as it is received by it. On behalf of the respondent it was said that there was no express language in Article 22(5) requiring the State Government to consider the representation of the detenu. But it is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, taken appropriate action. In our opinion, the constitutional right to make a representation guaranteed by Article 22(5) must be taken to include the necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality. It is, therefore, not possible to accept the argument of the respondent that the State Government is not under a legal obligation to consider the representation of the detenu or that the representation must be kept in cold storage in the archives of the Secretariat till the time or occasion for sending it to the Advisory Board is reached. If the viewpoint contended for by the respondent is correct, the constitutional right under Article 22(5) would be rendered illusory."

6. This view was approved in *Pankaj Kumar Chakrabarty and Other v. State of West Bengal*, ([1969] 3 SCC 400 : (1970) 1 SCR 543) in these words"

"For the reasons aforesaid we are in agreement with the decision in *Sk. Abdul Karim's case* (supra). Consequently the petitioners had a constitutional right and there was on the State Government a corresponding constitutional obligation to consider their representation irrespective of whether they were made before or after their cases were referred to the Advisory Board and that not having been done the order of detention against them cannot be sustained."

Now, whether or not the State Government has in a given case considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal.

7. In the present case the gap between February 3, 1972 and March 1, 1972, prima facie requires some explanation justifying the delay as the matter involves encroachment on the petitioner's right to personal liberty as guaranteed by the Constitution. This Court is expected to fully protest that right subject to restrictions placed thereon by the Constitution and the law in the larger interests of the security of the State and maintenance of public order and of supplies and services essential to the community which go to the root of the very sustenance of the State and the people. The explanation merely states in a general way that during that time there was a spate of anti-social activities in the State of West Bengal giving rise to sudden and abrupt increase in the volume of detention cases which led to greater pressure of work and this very much delayed the movement of the files. The records in the office were accordingly not regularly available. This explanation is much too vague and does not require any serious notice. No precise details are given and no figures about the abrupt increase of detention cases have been supplied. The State Government, in our view, should, in any event, have made arrangements for dealing with the cases of detention with due promptitude as required by the Constitution. No cogent and convincing material has been placed

before us to satisfactorily explain the inability of the State Government in considering the petitioner's representation within reasonable time. We are not satisfied that anything of great magnitude had suddenly happened in that State which was so unexpected and extraordinary in its nature that the State Government had been taken by surprise and was thus rendered so helpless as to be unable to comply with the requirements of the Constitution for expeditiously considering the petitioner's representation. The State Government, in our view, failed to realise the vital importance of the constitutional check placed on the subjective exercise of the extraordinary power of preventively detaining citizens without trial. This check, it may be pointed out, serves as a safeguard against misuse or improper exercise of this power and is inextricably linked with the legality of preventive detention. We are not unmindful of the interest of the society but those interests have been harmonised by the Constitution with the interest of the individual.

8. In the view that we have taken on this challenge it is necessary to consider any other point in this case. The petition is accordingly allowed and making the rule absolute we set aside the order of detention and direct that the petitioner be set at liberty forthwith.

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