

Debendra Nath Goswami

Vs

The State of West Bengal

Writ Petition No. 258 of 1972

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

(H. R. Khanna, K. K. Mathew JJ)

31.10.1972

JUDGMENT

DUA, J. -

1. Debendra Nath Goswami forwarded through Dum Dum Central Jail an application for a writ in the nature of habeas corpus. That petition purported to be made under Article 226 of the Constitution and under Section 491, Code of Criminal Procedure. Latter he forwarded another application under Article 32 of the Constitution from Burdwan Jail where he was apparently transferred in the meantime seeking the same relief.

2. The petitioner was arrested on December 29, 1971, pursuant to an order of detention made on May 3, 1971. The grounds of detention were served on him at the time of his arrest. The fact of making the detention order was reported to the State Government on May 3, 1971, the day it was made. The State Government approved that order on May 11, 1971, and also reported that fact to the Central Government the same day. His representation was received by the State Government on January 22, 1972, and was considered by it on February 15, 1972. His case was placed before the Advisory Board on January 25, 1972, and the Advisory Board made its report on February 17, 1972. The detention was confirmed by the State Government on February 25, 1972, and communicated to the petitioner on March 1, 1972.

3. The delay by the State Government in considering the petitioner's representation is, in our opinion, prima facie unreasonable and it requires satisfactory explanation. The explanation for this delay is contained in Para 9 of the counter-affidavit sworn by Shri Sukumar Sen, Deputy Secretary, Home (Special) Department, Government of West Bengal on August 21, 1972. It reads as under :

"9. In this connection I further state that in considering the said representation of the said petitioner there was a delay of about 25 days. I further state that the said representation could not be considered earlier by the State Government inter alia on the ground that due to sudden and abrupt increase in numbers of detention cases relating to detentions under the said Act and the Maintenance of Internal Security Act, there were great pressure of works in this department of Home Special and in consequence whereof consideration of urgent cases was a little delayed."

4. The question of the effect of undue delay on the part of the State Government in considering a detenu's representation has come up before this Court on numerous occasions.

5. It has consistently been laid down that no hard and fast line can be drawn and that in each case it has to be seen if on the facts and circumstances the State Government can be said to have considered the representation with reasonable dispatch and promptitude realising the importance our Constitution attaches to an individual's right to personal liberty. The position has been reviewed in a recent decision of the this Court in *Durga Pada Ghosh v. State of West Bengal*. Article 22(5) of the Constitution imposes an obligation on the authority making an order of preventive detention to communicate to the person concerned as soon as may be the grounds on which such order is made and also to afford him the earliest opportunity of making a representation against that order. This obligation can be meaningful only if such representation is also considered with the sense of urgency with which the authority is required to communicate the grounds and afford the earliest opportunity to the detenu. It must necessarily follow that if the representation is not considered with the same sense of urgency of the very purpose of providing the communication and the opportunity by sub-article (5) would be frustrated and defeated. The explanation for the delay has to satisfy the conscience of the court that the State Government concerned considered the representation with the sense of urgency expected of it by the Constitution. In the present case we are far from satisfied with the explanation of the State Government. It is too vague and reflects an attitude of casual indifference on the part of the State Government. It discloses no compelling reasons for the delay. The result is that the petitioner's detention must be held to have become illegal by reason of the unreasonable delay on the part of the State Government in considering his representation. The petitioner's detention must, therefore, be struck down as illegal and the petitioner directed to be set at liberty. We order accordingly.

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