Ranjit Dam vs State Of West Bengal on 3 May, 1972

Equivalent citations: AIR1972SC1753, (1972)2SCC516, AIR 1972 SUPREME COURT 1753, 1972 SCC(CRI) 801 1972 SCD 1004, 1972 SCD 1004

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Bench: H.R. Khanna, J.M. Shelat

JUDGMENT

J.M. Shelat, J.

1. This petition came up for hearing before us on April 24, 1972. After hearing the arguments, both on behalf of the petitioner and the State of West Bengal, we found that the petitioner's detention was not sustainable. We, therefore, directed release of the petitioner and said at that time that we would give our reasons for that order later on. We now proceed to give those reasons.

2. The petitioner was detained under an order dated June 23, 1971 passed by the District Magistrate, 24 Parganas under power reserved to him under Sub-section (1) read with Sub-section (3) of Section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970. The said order stated that it was passed with a view to preventing the petitioner from "acting in any manner prejudicial to the security of the State or maintenance of public order". Pursuant to the said order, the petitioner was arrested on June 28, 1971 and detained in the Dum Dum Central Jail. The grounds of detention furnished to the petitioner first recited that he was being detained to prevent him from acting in a manner prejudicial to the maintenance of public order, and then set out the particulars thereof which ran as follows:

> That on the night of 1-6-71 at about 01.30 hours, while committing theft of rice from Wagon No. SE 39751 at Bengaon Railway Station Yard, you and your associates charged bombs upon the on-duty R.P.F. party with a view to do away with their lives, when challenged by them. As a result of your bomb charge SR 3179 Himungshu Bhushan Dhar Sharma of the R.P.F. party sustained burn injury on his person. By explosion of bombs you and your associates created panic in the station area and in the adjoining locality you created disturbance of public order thereby.

3. The ground for detention thus did not mention that the acts which the petitioner was alleged there to have committed had affected or had any relation to the security of the State, though that expression, as aforesaid, was included in the impugned detention order.

4. Against the said order, the petitioner sent to the Government his representation which was received by it on July 9, 1971. The Government rejected the said representation and then referred the petitioner's case together with the said representation to the Advisory Board. On August 30, 1971, the Board made its report to the effect that in its view there was sufficient cause justifying the detention. The Government thereafter confirmed by its order of September 8, 1971 the impugned order and the petitioner's detention thereunder and communicated that order to the petitioner on October 11, 1971.

5. Mr. Markandeya, appearing amicus curiae for the petitioner, raised the following contentions in his challenge against the validity of the impugned order: (1) that the District Magistrate's recital in the impugned order that he was satisfied that the petitioner's detention was necessary so as to prevent him from acting in a manner "prejudicial to the security of the State or maintenance of public order" showed the casualness with which the order was passed inasmuch as the District Magistrate merely copied out the language of Section 3 without being certain whether his satisfaction was based on one or the other; (2) that this was particularly so as the ground of detention framed by him did not even mention the expression "security of the State", which fact further disclosed that the said ground had no relation to such security of the State: (3) that one of the reasons for detention given in the impugned order being thus absent, the impugned order was bad in law, and (4) that there was delay by the Government in considering the representation of the petitioner, which the Government even now had not explained and that such delay according to the decisions of this Court was fatal to the validity of the continued detention of the petitioner.

6. The petition was resisted by the Government who filed a counter-affidavit of the Assistant Secretary, Home (Special) Department. The Assistant Secretary was authorised, it appears, to file it as the District Magistrate who passed the impugned order was at the time not available as he had since then been appointed the Secretary of the State Electricity Board. The reason given in this counter-affidavit for the District Magistrate not making the affidavit himself does not appear to be satisfactory. But as nothing turns on that fact we need say no more about it for the present. The counter-affidavit affirms the fact of the Government having received the petitioner's said representation on July 9, 1971 as also the fact of the State Government having considered and rejected it. The counter-affidavit, however, does not set out the date when the Government rejected the said representation. Indeed, it leaves the date blank, and only states that after such rejection the Government forwarded that representation to the Advisory Board for its consideration. The counter-affidavit thus does not throw any light as to the date when the Government disposed of the said representation, nor the date when it sent it to the Board.

7. Counsel or the respondent-State, however, was good enough to produce the Government file in connection with the petitioner. That file showed that the Government had sent the said representation to the Board on July 27, 1971 for its consideration. This fact read along with the counter-affidavit would show that the Government must have considered and rejected the said representation on or before July 27, 1971. The date of such rejection being kept blank in the counter affidavit, it is not possible, however, to say when exactly the Government passed its order rejecting the representation. The counter-affidavit also did not explain why the Government took time between the 9th and the 27th of July, 1971 in disposing of the said representation. Thus, the delay,

Prima facie, of 19 days has remained unexplained by reason of the counter-affidavit keeping silence about the date of rejection.

8. The question is whether such delay can be considered in the circumstances of the case to be undue delay as contended by counsel.

9. In Khairul Haque v. State of West Bengal, Writ Petn. No. 246 of 1969 D/- 10-9-1969 (SC) this Court held that Article 22(5) of the Constitution envisaged a dual obligation of the Government and a corresponding dual right in favour of a detenu, namely, (1) to have his representation independently considered by the Government, and (2) to have that representation in the light of all the facts and circumstances of the case considered by an Advisory Board. The principle on which such a right was deduced was that the fact that Article 22(5) enjoined upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such a representation must, when made, be considered and disposed of as expeditiously as possible. For, otherwise the obligation to furnish the earliest opportunity to make a representation would lose both its purpose and meaning. Next, in Javanarayan Sukul v. State of West Bengal , J., in emphasising the need of expedition in considering a detenu's representation said that since in such cases the personal liberty of a citizen was at stake, delay in such consideration would be unconstitutional because the Constitution enshrined the fundamental right of a detenu to have his representation considered and it was imperative that when the liberty of a person was in peril immediate action should be taken by the relevant authorities. He, however, added that no definite time could be laid down within which such representations should be dealt with save and except that it was a Constitutional right of a detenu to have his representation considered as expeditiously as possible, it would, thus, depend upon the facts and circumstances of each case whether the appropriate Government had disposed of the representation expeditiously. Following these decisions, this Court held in Prof. Khaidem Tbocha Singh v. State of Manipur an unexplained delay of seventeen days was enough to render the detention illegal. Similarly, in Durga Show v. State of West Bengal', Writ Petn. Nos. 198-205 and 206 of 1969, D/- 2-9-1969 (SC) delay of sixteen days was held to have vitiated the detention. Recently, in Baidya Nath Chunnakar v. State of West Bengal, Writ Petn. No. 377 of 1971 D/- 14-3-1972 : of twenty nine days not accounted for by the State was considered enough to entitle a detenu to have his detention declared illegal. In Nagendra Nath Mondal v. State of West Bengal on the other hand, although 34 days intervened between the receipt by Government of the representation and its disposal by it, the delay was held not to be undue as it was satisfactorily explained. Thus the Court would look into the facts and circumstances of each case and decide whether the detaining authority, in exercise of its extraordinary power to detain a person without trial, has discharged its duty with sufficient alacrity and without any undue tardiness.

10. There is no doubt that In the present case there was delay in considering the petitioner's representation. The counter-affidavit filed by the State kept blank the data when it was dealt with and disposed of by the Government. The only thing that counsel could gather from the file relating to the detenu was that the Government received it on July 9, 1971 and submitted it to the Board on July 27, 1971. But counsel could not say either from the counter-affidavit or from the said file the precise date of its disposal by Government. The Government must have known from the decisions referred to earlier that it had to explain the delay and yet kept the date of the disposal blank in the

affidavit and did not also offer any explanation for the intervening period of 19 days. In the circumstances of the case we are constrained to hold that there was delay of 19 days which remained unexplained and which in view of the decisions referred to above rendered the petitioner's detention illegal.

11. The petition, on the grounds stated above, is allowed and the rule issued therein is made absolute.