

Supreme Court of India

Amulya Chandra Dey vs The State Of West Bengal on 10 July, 1972

Equivalent citations: AIR 1973 SC 1179, 1973 CriLJ 930, (1972) 2 SCC 902

Author: K Mathew

Bench: K Mathew

JUDGMENT K.K. Mathew, J.

1. The petitioner challenges the validity of a detention order and prays for the issue of a writ or order in the nature of habeas corpus and for releasing him from custody.

2. On November 25, 1971, the District Magistrate, 24 Paraganas, West Bengal, in the exercise of his power under the provisions of Sub-section (1), read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 Act 26 of 1971 passed an order for the detention of the petitioner. In pursuance of it, the petitioner was arrested on November 27, 1971 and he was served with the order of detention together with the ground of detention on the same day. On November 30, 1971 the District Magistrate reported to the State Government about the passing of the detention order together with grounds of detention and the particulars having bearing on the case. The report and the particulars were considered by the State Government and the order of detention was approved by it on December 6, 1971. On the same day, the State Government submitted a report to the Central Government in accordance with the provisions of Sub-section (4) of Section 3 of the Act. On December 24, 1971, the State Government placed the case of the petitioner before the Advisory Board under Section 10 of the Act. On or about December 3 1971, the State Government in its Home Department (Special Section) received a representation from the petitioner. The representation was considered by the State Government and the State Government, by its order dated 22-12-1971, rejected the same but forwarded the representation to the Advisory Board for its consideration. The Advisory Board, after consideration of the materials placed before it and the representation, submitted its report to the State Government on February 4, 1972. The Advisory Board was of the opinion that there was sufficient cause for detention of the petitioner. By its order, dated February 12, 1972, the State Government, in exercise of the powers conferred by Sub-section (1) of Section 12 of the Act confirmed the order of detention and communicated it to the petitioner by its Memo, dated February, 15, 1972.

3. The petitioner's counsel contended that the representation made by the petitioner, though received by the State Government on December 3, 1971, was disposed of only on December 22, 1971 and there was, therefore, undue delay in its disposal. To explain the delay, an affidavit was filed on behalf of the State Government on June 17, 1972, and in that it is averred that the delay in the disposal was due to the dislocation of work in the office due to demonstration of the State Government employees including those of the Home Department (Special Section) from September, 12 to end of November 1971. It is further stated in the affidavit that during this period there was no regular work or movement of files. Even assuming that the above averment is correct, it furnishes no reason for the delay in the disposal of the representation of the petitioner, as the dislocation of work was only from September 12 to end of November, 1971 whereas the representation was received by the Government on December 3, 1971. In *Jayanarayan Sukul v. State of West Bengal* Court said:

The fundamental right of the detenu to have his representation considered by the appropriate Government would be rendered meaningless if the Government does not deal with the matter expeditiously but at its own sweet-will and convenience.

4. In the circumstances of this case I think the State Government did not dispose of the representation as early as practicable. The detention of the petitioner is therefore illegal and I allow the writ petition. I have ordered the release of the petitioner from custody on July 5, 1972.