

Mani Roy Vs. State of Bihar

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Court : Patna

Decided On : Mar-09-2006

Judge : R.N. Prasad and Ramesh Kr. Dutta, JJ.

Acts : Bihar Control of Crimes Act, 1981 - Sections 12(2), 17, 19, 21(1) and 22;
[Constitution of India](#) - Articles 21 and 22(5)

Appeal No. : Cri. WJC No. 862 of 2005

Appellant : Mani Roy

Respondent : State of Bihar

Advocate for Def. : K.K. Sinha, SC 9

Advocate for Pet/Ap. : Ajay Kumar Ambastha, Subhash Kumar Mishra and Vijay Kumar Sahay, Advs.

Disposition : Application allowed

Prior history : 1. A proceeding under the provisions of the Bihar Control of Crimes Act, 1981, hereinafter referred to as 'Act 1981', was initiated against the petitioner. The order of detention was passed under Section 12(2) of the Act vide order dated 2-4-2005 by the District Magistrate, Begusarai, respondent No. 3 Annexure-1. The said order was approved by the State Government vide order dated 13-4-2005, Annexure-2. The petitioner filed representation on 5-5-2005 against the detention. Annexure-3. The repr

Judgement :

1. A proceeding under the provisions of the Bihar Control of Crimes Act, 1981, hereinafter referred to as 'Act 1981', was initiated against the petitioner. The order of detention was passed under Section 12(2) of the Act vide order dated 2-4-2005 by the District Magistrate, Begusarai, respondent No. 3 Annexure-1. The said order was approved by the State Government vide order dated 13-4-2005, Annexure-2. The petitioner filed representation on 5-5-2005 against the detention. Annexure-3. The representation of the petitioner was rejected vide letter dated 23-5-2005 (Annexure-4). The final order was passed detaining the petitioner till 1st of April, 2006 under Section 21(1) and 22 of the Bihar Control of Crimes Act (Annexure-5). The petitioner has challenged the order of detention, (Annexure-1 and 5) on the ground of unexplained delay in disposal of his representation.

2. A counter-affidavit has been filed on behalf of respondent Nos. 1 and 2, In para 8 of the counter-affidavit statement has been made that the representation against detention order was filed on 2-5-2005 through Superintendent of District Jail, Begusarain and the same was received In Department on 4-5-2005, immediately vide letter dated 4-5-2005 the District Magistrate was asked to furnish his comment on the petitioner's representation, The District Magistrate, Begusarai vide letter No. 816, dated 10-5-2005 sent his comment which was received in the Department on 12-5-2005. The meeting of Advisory Board was fixed on 13-5-2005 wherein the representation of the petitioner was placed as well as petitioner was also heard in person. The opinion of the Advisory Board was received in the Department on 16-5-2005. Thereafter, the representation of the petitioner along with other documents was thoroughly examined by the State Government at different level i.e. Assistant on 17-5-2005, Section Officer on 18-5-2005. Deputy Secretary on 18-5-2005, Joint Secretary on 18-5-2005. Home Commissioner and Secretary on 19-5-2005, the Chief Secretary on 19-5-2005 and finally approved by His Excellency the Governor of Bihar on 20-5-2005 rejecting the representation of the petitioner vide Memo No. 4886, dated 23-5-2005. The similar statement has been made in the supplementary counter-affidavit filed on behalf of respondent Nos. 1 and 2. Except that the representation dated 5-5-2005 was filed against the order of detention but said aspect appears to be incorrect in view of the fact that

on 4-5-2005 action was taken on the representation. However, a counter-affidavit has been filed on behalf of respondent No. 3 wherein, in para 6, it has been stated that the petitioner has filed his representation on 2-5-2005 before the Superintendent of District Jail, Begusarai and on receipt of the Department's letter dated 4-5-2005 asking for comment, the office of the answering respondent vide letter No. 778, dated 5-5-2005 called for a report from Superintendent of Police, Begusarai. The Superintendent of Police, Begusarai submitted his report on 7-5-2005. The next date, i.e. 8-5-2005 was Sunday holiday. Thereafter comment was sent to the Home (Police) Department on 10-5-05. No reply to the counter-affidavit has been filed.

3. However, on consideration this much is obvious that the representation was filed on 2-5-2005. The right of disposal of the representation of the petitioner lies with the Government and not with the Advisory Board. The Fundamental right of the citizen is enshrined under Article 21 of the [Constitution of India](#), i.e., 'Protection of life and personal liberty' and it says that no person shall be deprived of his life or personal liberty except according to procedure established by law. So far the Act of 1981 is concerned, there is no specific time for disposal of the representation. The filing of the representation comes under the purview of Article 22(5) of the [Constitution of India](#). The same has been reiterated in Section 17 of the Act that the Government shall afford him opportunity to the detenu to file representation, Section 19 of the said Act says that if any representation is filed the same also be placed before the Advisory Board. However, Act does not say that the power of rejection is with the Advisory Board. The law is well settled that the Advisory Board has to give opinion on the basis of materials available on record as to whether the detention is justified or not under the law but its opinion is binding on the State Government. In the instant case the respondents have filed to explain the delay satisfactorily, moreover, it is obvious that the power of rejection of the representation is with the Government. This aspect has not been denied by the counsel for the respondents. In the counter-affidavit it has been stated that the representation has been filed by the petitioner but no final order was passed and representation was placed before the Advisory Board meeting of which was to be held on 13-5-2005. Further more opinion of the Advisory Board was received on 16-5-2005. Thereafter representation was considered by the Assistant, Sectional

Officer which is not required under the law as power of taking final order on the representation is with the Government. In such a situation it can safely be said that the delay in disposal is not satisfactorily explained and as such the order of detention cannot be held to be legal.

4. Accordingly, orders contained in Annexures-1 and 5 are quashed and this writ application is allowed. The respondents are directed to release the petitioner forthwith, if not required in other case.

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