

Dilip Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Oct-05-2001

Judge : R.N. Prasad and B.N.P. Singh, JJ.

Appeal No. : C.W.J.C. No. 371 of 2001

Appellant : Dilip Singh

Respondent : State of Bihar and ors.

Judgement :

R.N. Prasad and B.N.P. Singh, JJ.

1. The petitioner has filed the writ petition under Article 226 of the Constitution of India for quashing the order dated 10-5-2001 whereby a proceeding under the National Security Act, 1980 (hereinafter to be referred as the Act) was initiated and the petitioner was directed to be detained under Section 3(2) of the Act, Annexure-3, the order dated 19-5-2001 whereby the order of detention has been approved by the Government, Annexure-2 and also the order dated 24-7-2001, Annexure-1, the final order under Sections 12(1) and 13 of the Act whereby the petitioner has been directed to be detained till 9-5-2002.

2. The relevant facts of the case are that criminal proceedings were pending against the petitioner. The Superintendent of Police, Begusarai submitted a report to the District Magistrate, Respondent No. 4, for initiating a proceeding against him

under the Act. Respondent No. 4 initiated the proceeding and directed to detain the petitioner under the Act, Annexure-3. The order of detention, Annexure-3, was approved by the Government of Bihar vide order, Annexure-2. The petitioner filed representation on 10-5-2001. The said representation was rejected on 19-6-2001. The final order under Sections 12(1) and 13 of the Act was passed to detain the petitioner for one year i.e. till 9-5-2002, Annexure-1. The order of detention has been challenged on the ground that there was unexplained delay in disposing of the representation.

3. A counter-affidavit has been filed on behalf of Respondent No. 4. In the counter-affidavit the averment made in the writ petition has been denied. In para 17 of the counter-affidavit it has been stated that the petitioner was present before the Advisory Board and his representation and concerned papers were placed before the Advisory Board. The Advisory Board having gone through the representation filed by the petitioner and after hearing the petitioner was pleased to approve the order of detention passed against the petitioner. In para 18 it has been stated that the order of rejection of the representation was communicated vide letter dated 18-6-2001 to the petitioner by the Jail Superintendent, Begusarai and as such the mandatory provisions has been complied with.

4. Learned Counsel for the parties argued on the basis of stand taken in their pleadings.

5. There is no provision under the Act for filing representation, rather right to file representation has been provided under Article 22(5) of the Constitution of India. In case representation is filed by the detenu, the same is required to be disposed of at the earliest. If there is any delay in disposal, the same must be explained by the respondents. There may be delay in disposal due to unavoidable reason but delay in disposal of representation without any explanation would vitiate the order of detention. Filing of representation against the detention is a right guaranteed under the Constitution and such right cannot be violated arbitrarily. In the instant case, as has been indicated, in fact, in the counter-affidavit no explanation has been given for delay in disposal of the representation except that the representation was placed before the Advisory Board and the Advisory Board after

hearing the petitioner approved the detention. It is well-established rule of law that for disposal of the representation the respondent-authority is not required to wait for opinion of the Advisory Board. It is constitutional obligation on the Government and its authority to consider the representation filed by the detenu and dispose of the same without any delay. In the case of *Dr. Rahamatullah v. State of Bihar and Anr.* : 1981 CriLJ1698 , the State Government did not pass any order on the representation of the detenu rather it was waiting for the opinion of the Advisory Board and the representation was rejected after 24 days. The Apex Court in the circumstances held : 'the State Government waited till receipt of Advisory Board's opinion and there was unexplained period of twenty four days of non-consideration of the representation and, thus there was no independent consideration of the representation by the State Government, there was clear non-compliance of Article 22(5) of the Constitution of India and detention was consequently liable to be quashed'. Similarly in the case of, *Rajammal v. State of Tamil Nadu and Anr.* : 1999 CriLJ826 , the delay was of 5 days in disposal of the representation by the Minister as he was out of station. The Supreme Court quashed the detention order and held : 'it is a constitutional obligation of the Government to consider the representation forwarded by the detenu with out any delay. Though no period is prescribed by Article 22 of the Constitution of India for the decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 of the Constitution of India convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which could have occasioned in disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes.'

6. In the instant case it is evident that, in fact, no explanation has been furnished in the counter-affidavit rather it appears that representation was placed before the Advisory Board meaning thereby that the State Government has failed in discharging its constitutional obligation in disposing of the representation. Therefore, it can safely be said that the time taken in disposal of the representation is unexplained. In that circumstance the order of detention cannot be said to be legal.

7. Accordingly, the order of detention, Annexures-3,2 and 1 are hereby quashed.

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