
(2000) 01 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8031 of 1999

Jasobanta Sahu alias Jasobanta Kumar Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-01-2000

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3, 3(2)

Citation : (2000) 89 CLT 355 : (2000) CriLJ 2517 : (2000) 18 OCR 148 : (2000) 1 OLR 166

Hon'ble Judges : P. Ray, J; L. Mohapatra, J

Bench : Division Bench

Advocate : Devashis Panda, D. Pr. Dhal and A. Parida, for the Appellant; S.K. Nayak, Addl. Government, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner calls in question the order of detention passed against him by opposite party No. 2 in exercise of powers conferred under Sub-section (2) of Section 3 of the National Security Act, 1980 ("the Act", for short)..

2. The case of the petitioner is that he had been arrested by the Sundargarh Town Police in connection with Sundargarh Town P. S. Case No. 35 of 1999 and had been forwarded to the Court of the learned S. D. J. M., Sundargarh. on 17. 3. 1999, whereafter he was remanded to jail custody. While he was in custody, the impugned order of detention dated 27. 3. 1999 was served on him. The grounds of detention as required u/s 8(1) of the Act were communicated to the petitioner by letter dated 31. 3. 1999 and the said grounds of detention are the subject matter of Annexure-2. The petitioner challenges the order of his detention on two grounds:

- (1) Delay in disposal of his representation; and
- (2) Legality of the detention order when there was no apprehension of his being

released on bail in connection with the case mentioned above.

3. Annexure-2, the grounds of detention, refers to several incidents in which cases were registered against the petitioner and the last one was in the month of March, 1999. It is alleged that on 7. 3. 1999 with the patronage of the petitioner some antisocials committed offence u/s 302, IPC read with Section 9 of the Explosives Act and the petitioner had been taken to custody in connection with the said case on 16. 3. 1999 and the order of detention was served on him when he was in custody. The grounds of detention further indicate that the reasons for passing the order of detention were not only involvement in criminal and antisocial activities but also apprehension that once the petitioner is enlarged on bail, he may indulge again in such activities. As it appears from the records, the petitioner had made a representation on 28. 4. 1999 and the rejection order was communicated on 17. 6. 1999. resulting in delay of more than one and half months.

4. Article 22(5) of the Constitution of India reads as follows:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

5. From the records available it is found that the order of detention was served on the petitioner on 27. 3. 1999 and the grounds of detention were served on 31. 3. 1999. Petitioner made the representation on 28. 4. 1999. Records further indicate that after receipt of the representation, the opposite party No. 2 sent the same to the State Government vide letter No. 927 dated 3. 5. 1999 and the parawise comments on the representation were also sent along with the said letter. Though the order-sheets maintained in the record do not show as to when the representation along with parawise comments were received by the State Government from opposite party No. 2, but it appears that for the first time the representation was dealt with on 1. 6. 1999. The note dated 1. 6. 1999 indicates that recommendation was made for rejection of the representation and the matter was placed before the Principal Secretary to Government of Orissa, Home Department, on 5. 6. 1999. It appears from the note sheet that the Principal Secretary recommended for rejection of the representation and the file was placed before the Minister of State, Home Department, who agreed with the recommendation on 10. 6. 1999. Thereafter the matter was placed before the Hon'ble Chief Minister who also agreed with the recommendation on 14. 6. 1999. The note sheet dated 17.6.1999 indicates that direction was issued to intimate about rejection of the representation. Nothing is indicated in the order-sheet as to how the representation along with the parawise comments of opposite party No. 2 were dealt with by the State Government in between 3. 5. 1999 and 1. 6. 1999.

6. The petitioner in the writ application has taken the following two grounds:

"4. FOR THAT, on the date of passing of the order of detention there was no likelihood of his release from custody in the near future to warrant passing of an order of detention since at the point of time of service of the detention order upon the petitioner the circumstances that the detenu would act prejudicially to the maintenance of public order was patently absent.

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10. FOR THAT, there has been unreasonable delay on the part of both the State Government as well as the Central Government in considering the representation dtd. 28. 4. 1999 made by the detenu thereby vitiating his detention. In the present case orders of rejection have been communicated to the detenu more than six weeks after he made his representations thereby infringing the detenu's Fundamental Rights enshrined in Article 22(5) of the Constitution of India to have his representation considered with the utmost expediency. The ordinate (inordinate) delay by both the Central Government and the State Government in considering the representation of the detenu has rendered his continuous detention illegal and liable to be set aside. "

In reply to the averments, the opposite party No. 2 has filed a counter wherein he has stated as follows:

"(c) The petitioner preferred a representation dt. 28. 4. 1999 and the State Government in Home (SS) Deptt. Memo No. 2764/ C, dt. 18. 6. 1999 intimated that the representation of the petitioner has been rejected and the same was communicated to the petitioner.

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(6) That it is a fact that the detaining authority was aware of the possible release of the petitioner on bail and his enlargement of bail would have affected the normal life in the locality due to the situation which were prevailed upon in the town. Over and above, he would have indulged in intimidation of general public and witnesses and might create bottlenecks in eliciting the truth during investigation by the police if he would have (been) released on bail. Thus the detaining authority preferred to book him under the N. S. Act....."

The State Government has also filed a counter and following is the reply to the aforesaid two grounds of challenge:

"5. That in reply to para-5 and 6, it is respectfully submitted that as regards the representation submitted by the petitioner against the order of his detention it is humbly submitted that after careful consideration the said representation dt. 28. 4. 1999 of the detenu has been rejected by the State Government and the detenu has been informed of this fact vide Home (SS) Department letter No. 3664/C, dt. 18. 6.1999. The said letter has been received by the detenu on 22. 6. 1999. Besides the Central Govt. after careful consideration of the

representation of the detenu has intimated him vide their letter No. 11-15030/16/99-IS (D-11) dt. 17.6.1999 that his request has not been acceded to by the Central Government....."

7. From the replies given in the counter affidavits filed by the District Magistrate as well as the State Government and the order- sheets it is clear that no explanation whatsoever is therefore not dealing with the representation from 3. 5. 1999 to 31. 5. 1999.

8. The learned counsel appearing for the petitioner has relied upon a decision reported in (1997) 13 OCR 286: Karan alias Pradeep Sagar v. State of Orissa. This Court quoting several decisions, has held that so far as the question whether there was delay in disposal of the representation is concerned, the same has to be considered on the background of Article 22(5) of the Constitution. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against the detention, as imperated in Article 22(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective, keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned and the infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law.

A similar view has also been taken by this Court in the decisions reported in 85 (1998) CLT 48 : Tilatama Parida v. State of Orissa and Md. Abdul Zahur Vs. State of Orissa and Others,

The apex Court in the decision reported in Smt. Gracy Vs. State of Kerala and another, has held that Article 22(5) casts an important duty on the detaining authority to communicate the grounds of detention to the detenu at the earliest and to afford him earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible.

9. Learned Additional Government Advocate has relied upon a decision reported in Abdul Salam alias Thiyyan Vs. Union of India and others, Relying upon the said decision, he submits that in that case there was delay of 35 days and the apex Court did not consider the delay to be fatal. From a reading of the said decision it is found that the detenu in the reported case made a representation on 27. 9. 1988 and the same was disposed of by the Central Government on 2.11.1988. Their Lordships have looked into the records and have referred to several dates in between the dates when representation was being considered by different authorities and ultimately concluded that the representation was considered most

expeditiously and there was no negligence or callous inaction or avoidable red-tapism. The learned counsel for the State also relies upon another decision reported in *Nagendra Nath Mondal Vs. The State of West Bengal*, In the said case, the representation was disposed of after 34 days of receipt. While considering the question whether the gap could be said to be inordinate delay, their Lordships looked into the records and held that the Government had spent some time in inquiries as to the situation in the locality, nature and the circumstances in which the detention order was found necessary, previous history of the person detained, etc. and the time consumed for the said purpose before deciding the representation, could not constitute delay.

Another decision of the Supreme Court reported in *State of Orissa and Another Vs. Shri Manilal Singhanian and Another*, has also been relied upon by the learned counsel for the State.

After going through all the three decisions cited by the learned counsel for the State, we find that in the counter affidavits filed in those cases as well as from the records their Lordships were satisfied that steps had been taken for early disposal of the representation, and the time consumed for the purpose of necessary inquiries or consideration by different authorities could not constitute the delay. We accept the submissions made by Mr. Nayak that it is open to the State Govt. to explain the delay with the help of original records, but unfortunately even the records indicate that no step in the matter of consideration of the petitioner's representation was taken between 3. 5. 1999 and 31. 5. 1999. Neither the counter affidavit nor the records offer any acceptable explanation for inaction during the aforesaid period. Therefore, relying on the decisions in the cases of *Karan (supra)*, *Tilatama (supra)* and *Smt. Gracy (supra)*, we are of the view that there has been considerable delay in disposal of the representation and no explanation having been offered by the State explaining the delay, the order of detention is liable to be quashed. In view of our finding that the detention order is liable to be quashed on the ground of delay in disposal of the representation, we do not feel it necessary to enter into the second ground.

10. In the result, the writ application is allowed and the order of detention, Annexure-1 is quashed. The detenu be set at liberty forthwith, if not required to be detained in connection with any other case.

P. Ray, J.

11. I agree.