

(2001) 01 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 8737 of 2000

Sk. Samsa ' Sk. Samsuddin	Vs	APPELLANT
State of Orissa and others		RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226, 227
National Security Act, 1980 — Section 12, 13, 8

Citation : (2001) 91 CLT 721 : (2001) CriLJ 1952 : (2001) 20 OCR 468 : (2001) 1 OLR 274

Hon'ble Judges : Pradipta Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : M/s D.P. Dhal, A.K. Acharya, M.K. Dash, A.K. Swain, D.K. Patnaik and S.K. Tripathy, for the Appellant; Mr. Debasis Das, A.G.A. and Mr. P.R. Barik, Addl. S.C. (Central), for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—This is an application under Articles 226 and 227 of the Constitution of India by a detenu under the provisions of the National Security Act, 1980 (hereinafter referred to as "the Act"). The order of detention dated 24-1-2000 is assailed primarily on two grounds, namely, that there was inordinate delay in disposing of the representation of the petitioner by the State Government and that the detenu was not informed to file a representation before the Central Government which has the power to revoke the order of detention passed by the State Government.

2. Two counter-affidavits have been filed on behalf of the opposite parties, one sworn to by the Under Secretary, (Home) Special Section Department and the other by the District Magistrate-cum-Collector, Balasore who had passed the order of detention. After perusing the affidavits, for effective adjudication of the case, we called upon Mr. Das, learned Additional Government Advocate, to produce the concerned Government file for perusal, which was produced before

US.

3. So far as the question whether there was delay in disposal of the representation is concerned, law is well settled that the detenu, under Article 22(5) of the Constitution of India, has a right that his representation should be considered by the appropriate authority as expeditiously as possible and there should not be unexplained delay in the matter of disposal of the representation. The representation is to be considered on its right perspective keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the Constitutional rights guaranteed under Article 22(5) invalidates the detention order. Personal liberty, protected under Article 21, is sacrosanct and it is obligatory on the part of the detaining authority to expeditiously deal with the representation to protect and safeguard the rights guaranteed under the Constitution. This Court relying upon several decisions, in the case of Choudhury Debasis Dash Vs. State of Orissa and Others, has categorically held that the Constitutional protection given to the detenu which mandates grant of liberty to the detenu to represent against detention, as imparted under Article 22(5) of the Constitution, casts an onerous duty on the authority to whom the representation is addressed, to deal with the same with utmost promptitude. Apart from the right guaranteed under Article 22(5) of the Constitution, section 8 of the Act also vests a right upon the detenu to file his representation.

4. Examining the present case at hand in the ratio laid down above, we find from the records produced by the Government as well as the affidavits that the detenu filed a representation on 3-2-2000 which was forwarded, by the District Magistrate, Balasore along with his parawise comments on 5-2-2000. The said representation was received in the Home (SS) Department on 7-2-2000. The representation and the parawise comments were examined and put up by the dealing Assistant on 8-2-2000 before the concerned Secretary. After routing through different levels, the matter was placed before the Chief Minister on 13-2-2000. It further appears that the Chief Minister simply put his signature on 18-2-2000. It is argued that the Chief Minister has accepted the suggestions made by the Secretary to reject the representation. The decision was communicated to the detenu on 19-2-2000 and was served on him on 24-2-2000.

5. From the records we find that there is no reason, not to place the file before the Chief Minister between 13-2-2000 to 18-2-2000. In the affidavit also no explanation has been given by the concerned authority explaining the reason for not placing the representation before the Chief Minister between 13-2-2000 to 18-2-2000. Further, it appears that the Chief Minister except putting his initial, has neither accepted the suggestion made by the Secretary to reject the representation nor made any endorsement to that effect. Therefore, we hold that the representation was dealt with in a routine manner and the mandates of Article 22(5) read with section 8 of the Act was not kept in mind while disposing of the representation inasmuch as, the delay from 13-2-2000 to 18-2-2000

remains unexplained. The action itself infringes the Constitutional right of the detenu guaranteed under Article 22(5) of the Constitution and the order of detention is liable to be quashed on that ground alone.

6. The second ground raised by the detenu that he is to be informed that he can make a representation to the Central Government, was directly an issue before this Court which has already been answered in the case of Prasad Bhola " Durga Prasad Bhola v. State of Orissa and others 1996 XI O. C. R. 631. However, as we are going to dispose of the matter on a short point, we do not want to dwell into the said controversy in the present case.

7. In the present case, admittedly, the detenu was arrested on 24-1-2000. Section 13 of the Act stipulates that maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 12, shall be twelve months from the date of detention. In that view of the clear position of law, the petitioner, in usual course, is to be released after expiry of twelve months from the date of his detention which is almost over. Further, the delay of five days i. e. from 13-2-2000 to 13-2-2000 remains unexplained which has made the order of detention invalid,

8. The writ application is allowed. The order of detention dated 24-1-2000 is quashed. The detenu be set at liberty forthwith unless he is required to be in custody for any other purpose. A copy of the judgment be sent to the Government in course of the day.

Pradipta Ray, J.

9. I agree.

10. Writ application allowed.