

PETITIONER:
SATYA DEO PRASAD GUPTA

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT 27/11/1974

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
UNTWALIA, N.L.

CITATION:
1975 AIR 367 1975 SCR (2) 854
1975 SCC (1) 736
CITATOR INFO :
R 1978 SC1155 (2)

ACT:

Preventive detention-Duty of Officers of Government not to mislead Court -Unexplained delay in considering detenu's representation-Effect of Constitution of India 1950, Art. 22(4)-Confirmation of detention with a view to continue beyond 3 months-When should be made.

HEADNOTE:

The District Magistrate issued an order of detention on June 11, 1974, under s. 3(2)(iii) of the Maintenance of Internal Security Act, 1971 directing the detention of the petitioner and reported the fact to the State Government. The petitioner was arrested on July 11, 1974. The State Government approved the order of the detention and referred the case to the Advisory Board on August 9, 1974. On August 16, the representation of the petitioner was received by the State Government and the State Government sent it immediately to the Advisory Board. The Advisory Board reported on August 20 to the State Government that in its opinion there was sufficient cause to detain the petitioner. On November 15, the State Government rejected the representation of the petitioner and confirmed the order of detention, though, in the affidavit in reply filed on behalf of the respondent and sworn to by a Deputy Collector on October 14, it was stated that the State Government had already considered and rejected the petitioner's representation. Allowing the petition challenging the petitioner's detention.

HELD : (1) No words can be too strong to condemn the irresponsible attitude of such a high placed Officer as the Deputy Collector in making a false and misleading statement on oath with a view to wresting a favourable decision from the Court. [858C-D]

(2) Where there is inordinate delay on the part of the State Government in considering the representation of a detenu and no satisfactory explanation is offered by the State, Government for such delay, the constitutional obligation is violated and the detention is rendered

invalid. The constitutional requirement of affording an opportunity to a detenu to make a representation against the order of detention is intended to provide a safeguard against improper or unjustified exercise of the power of detention and it is for this reason that this Court has always insisted that the representation of the detenu should be considered promptly and without undue delay, so that, if it is found by the detaining authority, on considering the representation, that the grounds on which the order of detention has been made are incorrect or non-existent or irrelevant, the detaining authority itself may cancel the order of detention at the earliest opportunity. [858E-859A] In the present case, there was an inordinate delay of 3 months on the part of the State Government in considering the representation of the petitioner and the State Government had not offered any explanation for the delay. [858E-F]

Jayanarayan Sukul v. State of West Bengal [1970] 3 S.C.R. 225, followed.

(3) Under Art. 22(4) of the Constitution, the confirmation of the detention with a view to continue it beyond a period of 3 months, on receipt of the opinion of the Advisory Board, must be within 3 months from the date of detention. But, in the present case, the order of confirmation was made beyond 3 months from the date of detention and therefore, the order of detention must "be held to be invalid. [859E-H]

D. S. Roy v. The State of West Bengal A.I.R. 1972 S.C. 1924, followed.

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JUDGMENT:

ORIGINAL APPELLATE JURISDICTION : Writ Petition No. 448 of 1974.

Petition under Article 32 of the Constitution.

D. P. Singh. Rajesh Prasad Singh and R. K. Jain for the Petitioner;

U. P. Singh for the Respondents.

The Judgment of the Court was delivered by

BHAGWATI, J. This is yet another instance where this Court is reluctantly compelled to set free from detention a person believed to be an economic offender. We had occasion to point out in an earlier Judgment(1) that economic offenders are a menace to the society and it is necessary in the interest of the economic well being of the community to mercilessly stamp out such pernicious, antisocial and highly reprehensible activities as boarding, black-marketing and profiteering which are causing havoc to the economy of the country and inflicting untold hardships on the common man and the Court would, therefore, naturally be loath to interfere with an order of detention which is calculated to put an economic offender out of action by way of social defence. But here in the present case the attempt to curb this social menace has been frustrated and set at naught by want of due care, promptness and attention on the part of the State Government and the Court is left with no choice but to strike down the detention of the petitioner. If only the State Government had properly applied its mind to the correct legal position as laid down by various decisions of this Court and shown greater concern and anxiety while exercising the power of preventive detention, the infirmity vitiating the detention of the petitioner could have been easily avoided. We hope and trust that the State Government will be more careful in the future so that persons who

disrupt the social and economic life of the community are effectively prevented from carrying on their nefarious activities.

The petitioner is the karta of a Joint Hindu family and as such karta he runs a shop for selling medicines and drugs under the name of Popular Pharmacy in Ranchi. On 22nd April, 1974, at about 8 p.m. one Vijoy Shankar accompanied by R. N. P. Dube, Executive Magistrate, went to the shop of the petitioner and asked for certain medicines according to a prescription made out by a House Surgeon of the Medical College, Ranchi. The petitioner, who was present at the shop, asked Vijoy Shankar and R. N. P. Dube to come at 8.30 p.m. and stated that he would then be able to supply the medicines to them. Vijoy Shankar and Dube accordingly visited the shop again at 8.30 p.m. when the petitioner supplied most of the medicines mentioned in the prescription. Amongst the medicines so supplied were two ampoules of pathedine and one bottle of ether. The petitioner charged for these two ampoules of pathedine Rs. 3/- as against the price of 90 paise per empoule shown in the current price list and for the bottle of ether, which contained 450 grms., he charged Rs. 20/as against the price of Rs. 6.85 shown in the current price list. This

(1) Dwarika Prasad Sahu V. State of Bihar, W. P. 346 of 1974, decided on 12-11-1974.

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was in contravention of paragraph 15 (2) of the Drug (Price Control) Order, 1970. The petitioner also refused to issue cash memo in respect of the two ampoules of pathedine and one bottle of ether supplied by him, though he was bound to do so under paragraph 22 of the Drug (Price Control) Order, 1970. When asked by Vijoy Shankar and R. N. P. Dube to give his name, the petitioner falsely and deliberately gave his name as Sailendra Kumar Gupta though his real name was Satya Deo Prasad Gupta.

It appears that on the following day, that is, 23rd April, 1974, a group of persons claiming to be representatives of a body known as Nao Nirman Samiti came to the petitioner's shop, forcibly took him out and after placing a garland of shoes around his neck and affixing a placard displaying the slogan : Main black marketeer hun. Chharupia ka ether bees rupia men bechta hun-Ropular Medical, Bariat-u," paraded him through the streets in a rickshaw with a rope tied around his waist. "The New Republic", a local newspaper, published in its issue dated 27th April, 1974, a photograph of the petitioner as he was being paraded in this procession. This incident exemplified the wrath and anger of the people against the petitioner as they felt that he was black marketing and profiteering in such essential commodities as medicines and drugs.

The District Magistrate, Ranchi thereafter issued an order of detention under section 3 (2) (iii) of the Maintenance of Internal Security Act, 1971 directing that Sailendra Kumar Gupta that being the name given by the petitioner to Vijoy Shankar and R. N. P. Dube at the time when they made purchases from him-should be detained as it was necessary so to do with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. This order of detention had, however, to be cancelled since the real name of the petitioner was Satya Deo Prasad Gupta and not Sailendra Kumar Gupta as mentioned in the order of detention. The District Magistrate then issued another order dated 11th June, 1974 of detention under section 3(2)(iii) of the Act on the ground that it was necessary to detain the petitioner

with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. Pursuant to the order of detention the petitioner was arrested on 11th July, 1974 and at the time of his arrest, grounds of detention were served on him. These grounds related to the incident of 22nd April, 1974 when the petitioner had sold two ampoules of pathedine and one bottle of ether at prices exceeding those shown in the current list of prices in contravention of paragraph (15)2 of the Drug (Price Control) Order, 1970 and refused to issue cash memo in respect of these sales though required to do so under paragraph 22 of that order and it was on the basis of these grounds of detention that the District Magistrate had arrived at the requisite subjective satisfaction leading to the making of the order of detention. The District Magistrate, immediately after making the order of detention, reported the fact to the State Government and the order of detention was unproved by the State Government within the period prescribed by section 3, sub-section (3). The State Government thereafter placed

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the case of the petitioner before the Advisory Board on 9th August, 1974 as required by section 10. It appears that the representation of the petitioner against the order of detention was not received until, this date and it could not, therefore, be forwarded to the Advisory Board at the time when the papers relating to the case of the petitioner were forwarded to it. Subsequently, however, on 16th August, 1974 the representation of the petitioner was received and the State Government immediately sent it to the Advisory Board for its consideration. The Advisory Board, after considering the grounds of detention, the other material placed before it and the representation of the petitioner made a report dated 20th August, 1974 stating that in its opinion there was sufficient cause to detain the petitioner. The State Government should have immediately thereafter proceeded to consider the representation of the petitioner and decided whether or not to confirm the order of detention under section 12, sub-section (1) but no such action was taken by the State Government for some time. The petitioner, therefore, filed the present petition challenging the validity of the detention.

The only ground urged by Mr. D. P. Singh, learned counsel appearing on behalf of the petitioner, against the validity of the detention was that the State Government had failed to consider the representation of the petitioner and to make the order of confirmation within a reasonable time and the detention of the petitioner had, therefore, become invalid. Indeed Mr. D. P. Singh could not advance any other ground, since it was apparent that, if the allegations contained in the grounds of detention were true, the petitioner was a blackmarketeer and profiteer and it would not be open to this Court in the exercise of its limited jurisdiction in cases of this kind to enquire into the truth or falsity of the grounds of detention. When the petition originally came up for hearing before a Bench of this Court consisting of Chandrachud, J, and one of us (Bhagwati, J.) on 11th November, 1974, the attention of the Court was drawn to a statement made by the Deputy Collector, Ranchi in paragraph 15 of his affidavit in reply that "the State Government fully, rightly and sympathetically considered the petition of the petitioner". The reference here obviously was to the representation of the petitioner, because paragraph 26 of the petition to which this was a reply alleged that the State Government had not "so far" considered the repre-

sentation of the petitioner "resulting in a clear violation of the provisions of the Act". This statement was made in the affidavit in reply which was sworn by the Deputy Collector, Ranchi on 14th October, 1974. Now, ordinarily the Court would have acted on this statement made by the Deputy Collector, Ranchi on oath, but no date was given in the affidavit. in reply as to when the representation of the petitioner was. considered and rejected by the State Government and the Court, therefore. adjourned the hearing of the petition and directed Mr. U. P. Singh, learned Advocate appearing on behalf of the Government of Bihar to produce the original record of the case so that the Court could satisfy itself that everything was done. according to law.

L346 Sup./75

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The petition thereafter came up for hearing before us on 18th November, 1974. Mr, U. P. Singh on behalf of the Government of Bihar placed before us the record of the case and on perusing the record. we found that the order rejecting the representation of the petitioner and confirming the order of detention was made by the Government as late as 15th November, 1974 after the petition was adjourned to enable Mr. U. P. Singh to produce the original record before us- This was a startling revelation as it showed undoubtedly that the statement made by the Deputy Collector, Ranchi in paragraph 15 of his affidavit in reply that the State Government had "fully, rightly and sympathetically considered" the representation of the petitioner prior to the date of the affidavit in reply, that is before 14th October, 1974, was patently false and misleading. It is a matter of regret that a highly placed officer like the Deputy Collector should have made such a false and misleading statement on oath with a view to wresting a favourable decision from the Court. This only shows how cavalierly and irresponsibly the executive authorities in the present case seem inclined to view questions concerning personal liberty and betrays complete lack of candour and frankness with the Court. No words can be too strong to condemn such irresponsible attitude.

We have already referred to the original record of the case and that clearly shows that though the representation of the petitioner was received by the State Government on 16th August, 1974 and the Advisory Board, after considering the case of the petitioner and taking into account his representation, gave its opinion on 20th August, 1974, the State Government slept over the matter for a period of about three months and considered the representation of the petitioner only on 15th November, 1974 after the hearing of the petition had been adjourned on 11th November, 1974. There was obviously inordinate delay on the part of the State Government in considering the representation of the Petitioner. There is no explanation for this inordinate delay offered by the State Government. We asked Mr. U. P. Singh whether he was in a position on behalf of the State Government to offer an explanation for this apparently unreasonable delay. but he confessed his inability to do so. We fail to see why the State Government should not have been able to consider the representation of the petitioner for about three months. This only shows callous disregard of the constitutional provision which requires that the representation of a detenu must be considered without avoidable delay. The constitutional requirement of affording an opportunity to a detenu to make a representation against the order of detention is intended to

provide a safeguard against improper or unjustified exercise of the power of detention and it is for this reason that the decisions of this Court have always insisted that the representation of the detenu should be considered promptly and without undue delay. so that if it is found by the detaining authority, on considering the representation. that the grounds on which the order of detention has been made are incorrect or non-existent or irrelevant, the detaining authority itself may cancel the order of detention and the detenu may be freed from unjustified detention at

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the earliest opportunity. Here, there was absolutely no justification--at least none could be pointed out--why the State Government could not consider the representation of the petitioner for about three months. It is now well settled by the decision of a Bench of five Judges of this Court in *Jayanarayan Sukul v. State of West Bengal*(2) that where there is inordinate delay on the part of the State Government in considering the representation of a detenu and no satisfactory explanation is offered by the State Government for such delay, the constitutional obligation is violated and the detention is rendered invalid. Ray, J., as he then was, speaking on behalf of the Court pointed, out in that case :

"In the present case, the State of West Bengal is guilty of infraction of the constitutional provision not only by inordinate delay of the consideration of the representation but also by putting off the consideration till after the receipt of the opinion of the Advisory Board. As we have already observed there is no explanation for this inordinate delay. The Superintendent who made the enquiry did not affirm an affidavit. The State has given no information as to why this long delay occurred- The inescapable conclusion in the present case is that the appropriate authority failed to discharge its constitutional obligation by inactivity and lack of independent judgment."

Therefore. on this ground alone, the detention of the petitioner must be held to be invalid.

There is also another ground which must result in invalidation of the detention of the petitioner. The law is now well settled as a result of a decision of this Court in *D. S. Roy v. The State of West Bengal*(2) that on a proper interpretation of Art. 22, clause (4) of the Constitution, the confirmation of the detention with a view to continue it beyond a period of three months, on receipt of the opinion of the Advisory Board, must be within three months from the date of detention. The confirmation of the detention must, therefore, follow within three months from the date of detention. Here, in the present case, the petitioner was detained pursuant to the order of detention on 11th July, 1974 and the order confirming the detention should, therefore, have been passed at the latest on 11th October, 1974. But the State Government, though it received the opinion of the Advisory Board as far back as 20th August, 1974, did not bestir itself for well nigh three months and it was only on 15th November, 1974 that it suddenly woke up to make the order of confirmation. The order of confirmation was clearly made beyond three months from the date of detention and there is, therefore, no escape from the conclusion that the order of detention must be held to be invalid. We may point out that the decision of this

Court in D. S. Roy v. The State of West Bengal(2) was given as far back as

(1) [1970] 3 S.C.R. 225.

(2) A. 1. R. 1972 S. C. 1924.

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7th December, 1971 and Yet the State Government in the present case acted in contravention of the constitutional mandate enunciated and explained in that decision. Taking a charitable view of the matter we may presume that the State Government was not aware of this decision. But-that can hardly be an excuse for violation of the law. We think it would be desirable if some machinery is set up by the Government of India or the State Government by which the decisions of this Court in cases of preventive detention are brought to the notice of the executive authorities as soon as they are handed down so that the executive authorities know what is the law laid down by this Court and they can conform to it.

We are thus' left with no choice but to hold the detention of the petitioner invalid. We, accordingly, allow the petition and make the rule absolute and direct that the petitioner should be set at liberty forthwith.

V.P.S.

Petition allowed.

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