(1972) 08 SC CK 0005

Supreme Court of India

Case No: Writ Petition No. 215 of 1972

Madan Mohan Mondal		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: Aug. 2, 1972

Acts Referred:

- Constitution of India, 1950 - Article 22(5)

Citation: AIR 1972 SC 2400 : (1972) 2 SCC 534 : (1972) SCC(Cri) 872 : (1973) 1 SCR 761 : (1973) 5 UJ 335

Hon'ble Judges: I. D. Dua, J; H. R. Khanna, J

Bench: Division Bench

Advocate: G.S. Rama Rao, for the Appellant; G. Mukhoty and G.S. Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

I.D. Dua, J.

The petitioner was arrested on November 8, 1971 pursuant to the order of detention of the same date passed under Sub-section (1)(a)(iii) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 26 of 1971 (hereinafter called the Act). The grounds of detention were also served on him and the matter reported to the State Government on that very day. On November 16, 1971 the State Government accorded its approval and made the necessary report to the Central Government. The case was placed before the Advisory Board on December 3, 1971. On December 6, 1971 the petitioner''s representation was received by the State Government but it was considered on January 8, 1972 nearly 33 days after its receipt. The Advisory Board gave its decision on January 13, 1972 and the order of detention was affirmed by the State Government on January 22, 1972. The detenu was communicated of this order on January 25, 1972.

2. The only ground raised on behalf of the detenu before us is that the State Government considered his representation after undue delay and that his detention must be considered to have become illegal on this ground.

3. The explanation given by the State for this delay is contained in para 8 of the counter-affidavit and it reads :

...the said representation of the detenue-petitioner could not be considered by the State earlier, inter alia, on the following grounds :

(a) that the go slow movement launched by the State Government employees sometime back caused some dislocation in office work consequential increase in the pending work and delay in disposal.

(b) that due to increase of the volume of work relating to detentions under the said Act there was considerable pressure of work and in consequence whereof disposal of urgent matters were also delayed.

(c) that due to aforesaid grounds, movement of files was delayed and the records were not readily available and in this case there was a delay of about 33 days in considering the representation of the petitioner.

I further state that the said delay was unintentional and was caused for such reasons beyond the control of the State Government. I submit that the said delay may be condoned.

4. No doubt there was war with Pakistan from December 3, 1971 to December 17, 1971 when India unilaterally declared ceasefire and in the State of West Bengal naturally things could not be quite normal during the war days and perhaps also during some time thereafter. These are the facts of which this Court can certainly take judicial notice. But for reasons best known to the respondent no reliance has been placed on this circumstance while explaining the delay and our decision must not be considered to imply any expression of opinion on the effect of the 1971 Indo-Pak war. The question whether or not the Indo-Pak war or its after effects on the normal functioning of the relevant Government departments reasonably contributed towards delay in the consideration of the detenu''s representation must be left open to be decided when appropriately raised in a case.

5. We should like to repeat what seems to us to be well settled that too leisurely a manner of dealing with the statutory provisions relating to safeguards against arbitrary or illegal orders of preventive detention requiring urgent attention, as is the case before us, is wholly inconsistent with the fundamental importance attached by our Constitution to the question of personal freedom of the individual. If preventive detention without trial is to be justified then the Government must comply with due promptitude with all the essential requirements of our Constitution as also of the Act relating to such detention. The

representation made by the detenu to the State has, therefore, to be considered as early as possible, or in other words as expeditiously as practicable without avoidable delay. This has been repeatedly stated by this Court to be implicit in Article 22(5) of the Constitution. Article 22, it may be recalled, prescribes the minimum procedure that must be included in any law permitting preventive detention and when the provisions of Article 22 or of a law relating to a preventive detention providing for safeguards against arbitrary or illegal orders of detention are not complied with then even if the detention may be valid ab initio it ceases to be valid as soon as violation of the provisions of Article 22 or of the mandatory provisions of the law permitting preventive detention occurs. No doubt no rigid limit of time can be fixed within which the Government must consider the representation and the question always requires determination on the facts and circumstances of each case. Any prima facie unreasonable delay must be satisfactorily explained by the detaining authority if the order of detention is required to be upheld by this Court. The explanation for the delay in the present case is so extremely vague that we find it almost impossible to hold that due to the reasons contained in the explanation embodied in the counter-affidavit there was any real, genuine obstacle in the way of the Government in considering the representation within reasonable time and before the expiry of what seems to be an inordinate delay of 33 days.

6. In the counter-affidavit it is averred that the petitioner appears also to have applied to the Calcutta High Court for a writ of habeas corpus (Crl. Misc. No. 958 of 1972) which is still pending there. The petitioner has in his application in this Court stated that he had "not appealed to the Hon"ble High Court at Calcutta". The learned Counsel for both sides in this Court were unable to give any further details or information in this connection. The State has not produced before us a copy of the writ application nor could the counsel for the State tell us about the date on which the writ petition in the Calcutta High Court was filed by the detenu. In these circumstances we do not think it would advance the cause of justice to decline to dispose of the present petition under Article 32 of the Constitution or to postpone the hearing and await the decision of the Calcutta High Court.

7. We are not unmindful of the fact that in the counter-affidavit it is stated that the detenue-petitioner is a notorious thief of copper wires and cables and after stating the objectionable activities of the detenu and after referring to the incidents mentioned in the grounds of detention it is asserted that the detenue-petitioner"s activities seriously disrupted telegraphic communication system of the railways and caused dislocation of railway service. But this cannot absolve the authorities concerned of their Constitutional obligation to give appropriate effect to the legal safeguards provided by the Constitution and the Act. Indeed it is precisely in such a situation that the real strength and vigour of the true democratic system of government like ours which guarantees individual liberty is properly tested. Legal safeguards against possible arbitrary exercise of power or abuse or misuse of the provisions of the preventive detention laws demand compliance in all situations covered thereby including situations like the one suggested in the counter-affidavit. To ignore them would be to ignore the mandate of the Constitution.

8. This writ petition is accordingly allowed and the detenue-petitioner directed to be set at liberty forthwith.