DR. RAHAMATULLAH

v.

STATE OF BIHAR AND ANR.

September 28, 1981

[A.P. SEN AND BAHARUL ISLAM, JJ.]

Constitution of India 1950, Art. 22(5) and National Security Act 1980, S. 3(2)—Preventive Detention—Representation of detenu—Consideration by Government—Necessity of.

The petitioner was detained under section 3(2) of the National Security Act 1980. The order of detention was passed by the District Magistrate on April 30, 1981, and the grounds of detention were served on the petitioner on May 1, 1981. The State Government approved the order of detention on May 7, 1981, and referred the matter to the Advisory Board on May 19, 1981. The petitioner submitted his representation against the detention on May 31, 1981 and a copy of the same was sent to the Advisory Board. The Advisory Board by its report dated June 29, 1981 gave its opinion that there was sufficient ground for detention. On receipt of the report, the State Government confirmed the detention and directed detention of the petitioner for a period of one year.

In the writ petition to this Court it was contended on behalf of the petitioner that the State Government did not consider the representation submitted by the petitioner and thereby violated Article 22 (5) of the Constitution.

Allowing the writ petition,

HELD : 1. The law is well-settled that in case of preventive detention of a citizen, the obligation of the appropriate Government is two-fold: (i) to afford the detenu the opportunity to make a representation and to *consider the representation* which may result in the release of the detenu, and (ii) to constitute a Board and to communicate the representation of the detenu alongwith other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is a two-fold obligation of the appropriate government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate government and to have the representation once again considered by the Government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion. [840 B-D]

In the instant case, the State Government did not discharge the first of the two-fold obligation and waited till the receipt of the Advisory Board's opinion. There was an unexplained period of twenty-four days of non-consideration of the

representation. This shows there was no independent consideration of the representation by the State Government on the contrary they deferred its consideration till they received the report of the Advisory Board. This is clear non-compliance of Art. 22 (5). The order of detention is, therefore, liable to be quashed. [840E-F]

2. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22 (5) must be complied with. This sub-article provides that the detaining authority shall *as soon as may be* communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. [839 E-840 A]

Narendra Purushotam Umrao etc. v. *B. B. Gujral and Ors.*, [1979] 2 SCR 315 and *Pankaj Kumar Chakraborty and Ors.* v. *State of West Bengal*, [1970] 1 SCR 543, referred to.

ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 5124 of 1981

(Under Article 32 of the Constitution of India)

R. K. Garg, *V. J. Francis* and *Sunil Kumar Jain* for the Petitioner.

K.G. Bhagat and *D. Goburdhan* for the Respondents.

The Judgment of the Court was delivered by

BAHARUL ISLAM, J. This is a writ petition under Article 32 of the Constitution by the petitioner who has been detained under Section 3(2) of the National Security Act, 1980 (hereinafter "the Act"). The facts material for the purpose of disposal of this petition and not disputed before us may be stated thus :

The order of detention was passed by the District Magistrate, Dhanbad, Bihar, on April 30, 1981. The grounds of detention which were three in number were served on the petitioner on May 1, 1981 and the State Government approved the order of detention on May 7, 1981. In pursuance of Section 10 of the Act, the State Government referred the matter to the Advisory Board constituted under the Act on May 19. The petitioner submitted his represen-

A tation against this detention on May 31, 1981. A copy of the representation was sent to the Advisory Board. The Advisory Board by its report dated June 29, 1981 gave its opinion that there was sufficient ground for the detention of the petitioner and on receipt of the report, the State Government, in pursuance of the provisions of sub-section (1) of Section 12 of the Act confirmed the B detention of the petitioner and under Section 13 of the Act directed the detention of the petitioner for a period of one year.

2. The first contention of Mr. R.K. Garg, learned counsel appearing for the petitioner, is that the State Government did not consider the representation submitted by the petitioner and C thereby violated Article 22(5) of the Constitution. In the counter-affidavit, the respondents have stated, "since the Advisory Board was going to consider this case on June 29, 1981, the comments of the District Magistrate were kept handy for use during the sitting of the Board. The report of the Board was received by the Government after office hours on June 29, 1981. The next morning i.e. D on June 30, 1981, the report of the Advisory Board as well as the representation of the petitioner was examined by the office and the file was endorsed to the Chief Minister on July 1, 1981 by the Special Secretary of the Home (Special) Department suggesting that 'in view of the report of the Advisory Board, the detention of Shri Rahamatullah may be confirmed and be directed to be detained for E a period of twelve months' ".

3. Before we consider the first submission of learned counsel, a few more facts need be stated. In the writ petition, the petitioner alleged that he had submitted the representation on May 13, 1981 which fact was denied by the respondents in their counter-affidavit; F they asserted that the representation was submitted not on May 13, but May, 31. This has not been controverted before us by Mr. Garg. It has further been stated in the counter-affidavit—and not denied by the petitioner that the petitioner submitted the representation to the Superintendent of the District Jail, Dhanbad, where he was detained; the Suprintendent, District Jail, sent it by registered post G on the following day, namely, June 1, and the Home (Special) Department of the Government received it on June 5. It has been stated further in the counter-affidavit that "the representation contained certain points which needed a report" from the District Magistrate. A copy of the representation was sent on June 10, to H the District Magistrate, Dhanbad, through a Special messenger,

for comments, which were received on June 24. The respondents explained that since the Advisory Board was going to sit for consideration of the Petitioner's case on June 29, they sent the representation of the petitioner to the Advisory Board for consideration and placed the comments of the District Magistrate before Advisory Board. The Advisory Board's report was received on June 29 and the following day, the Home Department 'examined' the representation as well as the opinion of the Advisory Board on June 30, and endorsed the file on July 1 to the Chief Minister who approved the detention. But the respondents have not explained their inaction during (i) the period of five days from June 5 to June 10 taken by the Home Department to send the representation to the District Magistrate for his comments; (ii) the period of fourteen days from June 10 to June 24 taken by the District Magistrate to send his comments and (iii) the period of five days from June 24 to June 29 taken by the Home Department in placing the District Magistrate's comments before the Advisory Board and placing the matter before the Chief Minister. Thus the total period of inaction of the respondents is twenty-four days.

4. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub-Article (5) of Article 22 reads :

> "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."

This Sub-Article provides, *inter alia*, that the detaining authority shall *as soon as may be* communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority

A without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamounts to non-compliance of Sub-Article (5) of Article 22 of the Constitution.

B The law is well-settled that in case of preventive detention of a citizen, the obligation of the appropriate government is two-fold : (i) to afford the detenu the opportunity to make a representation and to *consider the representation* which may result in the release of the detenu, and (ii) to constitute a Board and to communicate C the representation of the detenu along with other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is a two-fold obligation of the appropriate government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate government and to have the representation once D again considered by the Government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion [see 1979(2) SCR 315(1)] and [1970 (1) SCR 543(2)]

5. In the instant case, the State Government did not dis- E charge the first of the two-fold obligation and waited till the receipt of the Advisory Board's opinion. There was, as pointed out above, an unexplained period of twenty-four days of non-consideration of the representation. This shows there was no independent consideration of the representation by the State Government; on the contrary they deferred its consideration till they received the report of the F Advisory Board. This is clear non-compliance of Article 22(5) as interpretted by this Court. The order of detention is, therefore, liable to be quashed on this ground alone.

6. Mr. Garg raised two other contentions before us, namely (i) that the first two of the three grounds of detention were stale G and the grounds showed no continuity of the alleged activities of the detenu; and (ii) that the documents relied on by the detaining authority in the grounds were not furnished to the detenu. In view

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(1) *Narendra Purushotam Umrao etc.* v. *B.B. Gujral and Ors.*
(2) *Pankaj Kumar Chakraborty and Ors.* v. *State of West Bengal*

of the fact that we are quashing the order of detention on the first ground, we need not examine these two contentions. A

7. The petition is allowed. The order of detention is quashed. The detenu shall be set at liberty forthwith.

B

N.V.K. *Petition allowed.*