

KHAIDEM IBOCHA SINGH ETC.

V.

STATE OF MANIPUR

October 8, 1971

[C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND
K. K. MATHEW, JJ.]

Preventive detention under Orissa Preventive Detention Act, 1970—Delay in considering representations to State Government—Effect on detention orders—Constitution of India, 1950, Art. 22(5)—If violated.

The petitioners were detained by orders of detention under the Orissa Preventive Detention Act, 1970, and the grounds of detention were furnished to them on the same day. They sent a representation to the State Government, and the State Government rejected it 17 days later. The petitioners challenged the validity of the order of detention under Art. 32 on the allegation that the delay constituted a violation of their right under Art. 22(5).

Allowing the petitions.

HELD : There has been an unexplained delay of 17 days in disposing of the representation of the detenus, and consequently, there has been a violation of the constitutional right guaranteed under Art. 22(5) to the petitioners. [1030 A-B]

The question whether there is delay in disposing of the representation made by a detenu and if so whether that delay has been properly explained by the State will have to be gathered from all the facts and circumstances of a particular case. In the present case, the respondent did not state what steps were taken from the date of receiving the representation to the date of rejecting it, excepting making a very bald statement that inquiries were sought from jail authorities through the sub-deputy collector, and that the jail authorities sent a letter two days before rejecting the representation. There is no averment in the counter affidavit that the inquiries were made orally, and in the absence of such an averment it is reasonable to presume that being an official matter there would be some correspondence. But neither the details of any enquiries made, nor the correspondence, were referred to or disclosed. [1029 E—H]

Durga Show etc. v. State of West Bengal, W.P. Nos. 198, 205/69 etc. dated 2-9-1969, *Khairul Haque v. State of West Bengal*, W.P. No. 246/69 dated 10-9-1969, *Prabhakar Shankar Dhuri v. Sh. S. G. Prashan & Ors.*, W.P. No. 514/70 dated 18-12-1970 and *Jayanarayan Sukul v. State of West Bengal*, [1970] 3 S.C.R. 225, followed.

ORIGINAL JURISDICTION : Writ Petitions Nos. 289 to 295 of 1971.

Petitions under Art. 32 of the Constitution of India for writs in the nature of *habeas corpus*.

S. C. Manchanda, O. P. Verma and Petitioners were also present, for the petitioners (in all the petitions).

R. N. Sachthey, for the respondent (in all the petitions).

A The Judgment of the Court was delivered by

Vaidialingam, J. The seven petitioners in these writ petitions under Art. 32 of the Constitution, challenge the validity of the orders of detention dated January 31, 1971 passed against each of them by the District Magistrate, Manipur (Central) under sub-s. (2) of s. 3 read with sub-s. (1) of the Orissa Preventive Detention Act, 1970 (hereinafter referred to as the Act) as extended to Manipur. They seek relief for issue of a writ of *Habeas Corpus* and for directions being issued to the respondent—the State of Manipur to release them from custody.

C The orders of detention state that they have been passed with a view to preventing the petitioners from acting in any manner prejudicial to the maintenance of public order. The petitioners, in consequence of these orders, were taken into custody and detained. Along with the petitioners another person, Prof. Nandlal Sharma, was also detained. The grounds of detention, as required by s. 7(1) of the Act were furnished to the detenus on the same day. The order of detention passed against Prof. Nandlal Sharma was later on revoked by the Lt. Governor and he was released.

E The petitioners, in Writ Petitions Nos. 289, 290, 291 and 295 of 1971 are either Masters of Arts (In Political Science) or Master of Arts, Education and are all Professors of Colleges of Moirang or Imphal. The petitioner in Writ Petition No. 294 of 1971 holds M.Sc., B. Ed., degrees and is an Assistant Head Master in a High School in Imphal. The educational qualifications of the petitioner in Writ petitions Nos. 292 and 293 are not clear from the records but they claim to be social workers.

F The District Magistrate made the necessary report to the Administrator under sub-section (3) of s. 3. On February 10, 1971, the Administrator under s. 3(3) approved the orders of detention passed by the District Magistrate on January 31, 1971 and the orders of approval were also communicated to the detenus.

G All the petitioners made a joint representation on March 1, 1971, which was received by the Government on March 3, 1971. In the representation, the petitioners had raised various grounds of attack against the order of detention. They had also very elaborately dealt with them and very strenuously refuted the various allegations contained in the grounds served on them, on the basis of which the orders of detention had been passed. The Administrator considered the representation received from the detenus and rejected the same on March 20, 1971. The petitioners were informed about the rejection of the representation by communication dated March 22, 1971. The cases of the petitioners were referred to the Advisory Board on February 16, 1971 as required under

s. 9 of the Act. The Advisory Board considered the matter and sent its report on April 18, 1971 expressing its opinion that the detention of the petitioners was justified. We may mention at this stage that the various dates given above are all taken from the counter-affidavit filed by the Secretary to the Government of Manipur, on behalf of the respondent. We are mentioning this aspect because there is a slight discrepancy in the dates given by the petitioners. That is why we have chosen to adopt the dates given on behalf of the State itself.

On behalf of the petitioners Mr. S. C. Manchanda, has raised various grounds of attack against the orders of detention passed by the State Government. The counsel very strenuously urged that the matters mentioned in the grounds furnished to the petitioners are absolutely false. According to him the petitioners are all educated persons and that they have been only writing articles pleading for improving the lot of the people of Manipur and for giving due recognition to the hopes and aspirations of the people of Manipur. The counsel has also urged that the grounds of detention are all vague and it was not possible for the detenus to make any effective representation against such vague allegations. The counsel further urged that in any event, there has been an inordinate delay of 17 days in the Administrator disposing of the representation made by the petitioners and as such there has been a violation of Art. 22(5) of the Constitution. Therefore, the detention orders will have to be struck down even on this short ground.

On the other hand, according to the affidavit filed on behalf of the State, all the petitioners are active members of the Pan Manipuri Youth League which is "an Over-ground Organisation of the Under-ground insurgents in Manipur." The petitioners have been publishing various matters in books and pamphlets with a view to create an atmosphere of distrust, hatred, disaffection and disloyalty in the minds of the people of Manipur. It is further urged that the petitioners, along with others were having secret meetings and using their influence as Professors and Teachers to incite the students to indulge in violent activities and take up arms against the Government. The respondent also urged that full particulars regarding the date, time and place, where the meetings were held or violent activities took place have all been very clearly given in the grounds of detention. As will be seen from the elaborate representation made by them, the petitioners can have no grievance that the grounds were vague. The representation deals with every one of the matters mentioned in the grounds. Even otherwise, if there was any vagueness in all or any of the grounds, it was open to the petitioners to have asked for further particulars, which they did not do. All these circumstances, according to the respondent, clearly show that the grievance that

A the grounds were vague is, absolutely unjustified. It is further pointed out by Mr. R. N. Sachthey, learned counsel for the State, that there has been no delay on the part of the Government in considering the representation made by the petitioners and that there has been no violation of Art. 22(5) of the Constitution. In order to enable the Administrator to properly dispose of the representation made by the detenus, certain information had to be collected from other officials and after the information was made available, the representation was rejected. Even if there has been any delay, it has been properly explained in the counter-affidavit filed on behalf of the State. Mr. Sachthey further contended that the respondent seeks to justify the orders of detention on the ground that they have been made with a view to prevent the petitioners and others from indulging in activities prejudicial to the maintenance of public order.

D We are of the opinion that the contention of Mr. Manchanda that there has been a delay in the State in passing orders on the representation made by the petitioners and that the said delay has not been properly explained by the State, has, in the circumstances of this case, to be accepted. In consequence, it follows that there has been a violation of the constitutional right guaranteed under Art. 22(5) to the petitioners. We are further of the view that the detention orders will have to be struck down on this short ground. In the above view, we do not think it necessary to refer in detail to the grounds of detention, which have no doubt been very severely attacked on behalf of the petitioners. However, we should say that *prima facie* we are satisfied that the grounds are neither vague nor devoid of particulars, nor can it be said that in this case there were no materials on the basis of which the detaining authority could not have passed the orders of detention under s. 3(2) read with s. 3(1) of the Act for the purpose mentioned therein on the basis of the grounds furnished to the petitioners. However, as we are striking down the order for the reason mentioned earlier, it is unnecessary to pursue this aspect further.

G In dealing with the question whether there has been any delay in disposing of the representation made by the petitioners, and if so, whether that delay has been properly explained by the State, it may be relevant to note only one of the grounds for detention. In ground No. 4, it has been alleged that the petitioners and other leaders of the Pan Manpuri Youth League held a secret meeting on December 13, 1970 between 7 P.M. and 9 P.M. wherein it was decided to boycott the Republic Day functions to be held on January 26, 1971 at Manipur and to disrupt the celebrations by violent means. There is a further allegation that the petitioners along with other leaders of the league held another secret meeting on December 16, 1970 between 6 P.M. and 10.30 P.M. wherein

the decision taken at the meeting of December 13, 1970 was confirmed and it was further decided to incite the students and the members of the public to boycott the Republic Day celebrations. It is further alleged that it was also decided at the said meeting to create an atmosphere of panic, confusion and public disorder by doing various acts referred to therein. As a consequence of these decisions taken at the two meetings, it is alleged, that the various violent acts, referred to in the said ground No. 4 were committed.

We have already referred to the fact that along with the petitioner, one Prof. Nandlal Sharma, was also detained under the Act. The allegations in ground No. 4 related not only to the petitioners but also to the participation of the said Prof. Nandlal Sharma in the secret meetings held on the night of December 13, 1970 as well as of December 16, 1970. It is pertinent to note that in the counter-affidavit filed on behalf of the State, it has been admitted that Prof. Nandlal Sharma was arrested on December 4, 1970 in case No. 427 (9) of 1970, Imphal Police Station under ss. 124A/153A of the Indian Penal Code and that he was released on bail by the Court on December 18, 1970. Therefore, it is clear even from the admission of the respondent that Prof. Nandlal Sharma was in jail custody from December 4, 1970 till December 18, 1970 and as such he could not have attended the secret meetings held on December 13, 1970 and December 16, 1970, referred to in ground No. 4.

There is no controversy that the joint representation made by the petitioners, was sent to the State Government on March 1, 1971. The said representation was received by the State Government on March 3, 1971, as admitted in the counter-affidavit. Even according to the State, the representation was rejected only on March 20, 1971, though communicated to the detenus on March 22, 1971. According to the petitioners the representation dated March 1, 1971 had reached the State on the same day, and that it was rejected only on March 22, 1971 and that there has been a delay of about 20 days. But, even according to the dates given by the State, which we are accepting, there has been a gap of at least 17 days in disposing of the representation. In the writ petitions, the petitioners apart from challenging the orders of detention on merits, have specifically pleaded that there has been a long delay of nearly 46 days in disposing of their representation. But specifically they have pleaded that there has been a delay of 17 days in the disposal by the State of their representation and hence there has been a violation of Art. 22(5) of the constitution. The petitioners have further pleaded that any time that may have been taken to collect information about Prof. Nandlal Sharma cannot operate to the prejudice of the petitioners. They have also pleaded that even assuming that any information had to be collected by the

A Government, the period of 17 days, as stated by the Government, was not at all necessary and any information could have been got easily from the Jailor, Manipur Central Jail, Imphal, within a few minutes, as the Jail was located within a very short distance from the Secretariat.

B From what is stated above, it is clear that the State was fully aware of the fact that the petitioners were also attacking the orders of detention as illegal on the ground of the above delay, which has resulted in violation of Art. 22(5) of the Constitution. Under those circumstances, there was a duty on the part of the State to give proper reasons explaining satisfactorily the circumstances why the order, on the representation made by the petitioners, could not be passed earlier. The State and its Legal Advisers must have been well aware of the decisions rendered by this Court, to which we will immediately refer, wherein it has been held that an unexplained delay in disposing of the representation made by a detenu makes the order of detention illegal as being violative of the constitutional right guaranteed to such a person under Art. 22(5) of the Constitution.

D In paragraph 13 of the counter-affidavit filed by the Secretary to the Government, it is admitted that the representation dated March 1, 1971 made by the petitioners was received by the Government on March 3, 1971 and rejected by the Administrator on March 20, 1971. The actual reasons given by the Secretary as to why it took 17 days for rejecting the representation can very well be set out as stated in the counter-affidavit, which is as follows:

E "It took 17 days for the representation to be considered and decided because enquiries were sought from the Jail authorities through S. D. C. Headquarters regarding certain facts brought out as regards Nandlal Sharma. The Jailor Manipur Central Jail by his letter dated 18th March, 1971 wrote to District Magistrate giving the requisite information. It was thereupon forwarded to the Chief Secretary who in his turn brought it to the notice of the Administrator. The Lt. Governor revoked the order of detention of Nandlal Sharma who was thereupon released. A true copy of the letter dated 18-3-1971 addressed by the Jailor to the District Magistrate, Manipur Central Jail is annexed to this affidavit and marked as a Annexure II. The detenus were informed accordingly on 22-3-1971."

H From the above it will be seen that the respondent seeks to offer an explanation for passing the order only on March 20, 1971 though the representation was received on March 3, 1971. The reason given is that enquiries were made from the Jail authorities through the Sub-Deputy Collector, Headquarters about certain

facts relating to Prof. Nandlal Sharma and in respect of the same a letter of the Jailor, Manipur Central Jail dated March 18, 1971 has been referred to and filed along with the counter-affidavit. The letter of the Jailor dated March 18, 1971 referred to in the counter-affidavit is as follows :

“Government of Manipur
Manipur Central Jail, Imphal
No. 145/J/71/Orissa/P.D. Act/275

Imphal the 18th March, 1971

To

The District Magistrate,
Manipur Central Jail, Imphal.

Subject : Query on the stay of Shri Nandlal
Sharma in Jail in December, 1970.

Sir,

I have the honour to state that :—

It is learnt that it was enquired by the S.D.C. Head Quarter whether Shri Nandlal Sharma was in jail on 13th and 16th of December, 1970 in reply the assistant dealing prisoners' section reported negative on the interpretation that the query was not meant if Sharma was in jail on 13th and 16th December, 1970 and that the query was meant if Sharma was admitted in this jail particularly on 13 or 16 December, 1970.

Having received this information I beg your pardonance to correct as follows that Shri Nandlal Sharma was in this jail for the period from 4-12-70 in connection with F.I.R. No. 427(9) 70 of I.P.S. u/s 124-A/153-A I.P.C. under the orders of the A.D.M. and released on 18-12-70 on bail.

Submitted for favour of necessary correction.

Yours faithfully,
Sd. Nadiya Chand Singh,
Jailor, Manipur Central Jail, Imphal.”

The language of this letter is very unhappy. We do not know whether the above letter was in English or whether it is a translation. Anyhow we have given the full extract of the letter as it is in the record. At this stage we may also mention that there is no affidavit filed by the Jailor as to when enquiries were made by the Sub-Deputy Collector and whether the enquiry was in writing or oral. There is also no affidavit by him as to how he learnt that enquiries were made by the Sub-Deputy Collector regarding Prof. Nandlal Sharma.

A From the extract quoted above from the counter-affidavit, it is clear that the respondent does not state what all steps were taken from March 3, 1971 till March 20, 1971, excepting making a very bald statement that enquiries were sought from jail authorities through Sub-Deputy Collector, Headquarters and that the jail authority sent a letter on March 18, 1971. There is no averment
B in the counter-affidavit that the enquiries, referred to therein, were made orally. In the absence of such averment, it is reasonable to presume that being an official matter, the Sub-Deputy Collector would have been desired by letter to collect information from the jail authorities and the Sub-Deputy Collector should have also addressed a communication to the Jailor asking for the necessary
C information. No details as to when or how the Sub-Deputy Collector was asked to make the enquiries nor any details as to how the latter made enquiries from the Jailor are given. There is no reference to any correspondence that may have passed between the Secretary and the Sub-Deputy Collector on the one hand and the Sub-Deputy Collector, the District Magistrate and the Jailor on the other. Even assuming there has been some correspondence,
D particulars are not given.

Then turning to the letter of the Jailor, which has been quoted above, it is rather significant that there is absolutely no reference to any communication having been received by him from the Sub-
E Deputy Collector, excepting a bald statement that "it is learnt that it was enquired by the S.D.C. Headquarters." Normally, in an official correspondence when a reply is sent to a communication, there will be a reference to that letter in the reply itself. Even the letter of the Jailor does not indicate whether the enquiry made by the Sub-Deputy Collector was oral or by a letter. Admittedly the
F Sub-Deputy Collector has not filed any supporting affidavit to the effect that he was asked by the Administrator or any other officer to make enquiries from the jail authorities and that he collected the necessary information from the latter. We are fully aware that the question whether there is a delay in disposing of the representation made by a detenu and if so, whether that delay has
G been properly explained by the State will have to be gathered from all the facts and circumstances of a particular case. In the absence of the various particulars, referred to earlier, explaining the circumstances under which the order came to be passed only on March 20, 1971, it must be held that there has been an unexplained delay of 17 days in this case in the Government disposing of the representation of the detenus. Mr. Sachthey, learned counsel for the
H State, tried his very best to convince us that delay, if any, of 17 days, has been properly explained, but this contention cannot be accepted.

Then the question is what is the effect of this unexplained delay of 17 days regarding the validity of the orders of detention passed against the petitioners. According to the petitioners the constitutional right given to them under Art. 22(5) that the detenus shall be afforded the earliest opportunity of making a representation against the order, has been violated by this inordinate delay and as such the orders of detention have to be set aside on this sole ground.

If, as a matter of fact, there has been an unexplained delay of 17 days, Mr. Sachthy, also could not controvert the legal position that Art. 22(5) is violated under such circumstances. In fact, he cannot argue to the contrary in view of the decision of this Court. In *Durga Show etc. v. The State of West Bengal*⁽¹⁾, this Court had to consider the effect, on the order of detention of a delay between the receipt of the representation from the detenu and its consideration and rejection by the Government. In particular, in one of the writ petitions therein, namely, Writ Petition No. 206 of 1969, the representation was received on June 28, 1969 and was considered and rejected on July 14, 1969, which means there was a delay of 16 days. In the other two petitions, the delay was very much more. This Court held that the unexplained delay of 16 days, which is the minimum, out of the three cases, is a long delay where a person is being detained without trial under special law relating to Preventive Detention. After referring to the previous decisions of this Court, it was emphasised that it was necessarily implicit in the language of Art. 22(5) the State Government, to whom the representation is made, should properly consider the representation as expeditiously as possible. It was also stressed that the constitution of an Advisory Board does not relieve the State Government from the legal obligation to consider the representation of the detenu as soon as it is received by it. On this basis, this Court ultimately held that the requirement of Art. 22(5) has not been satisfied as the State Government had failed to consider and dispose of the representations made by the detenus as expeditiously as possible and, in consequence, the detention of the petitioners therein was held to be illegal.

In *Khairul Haque v. The State of West Bengal*⁽²⁾, this Court had to consider the effect of a delay in the Government considering the representations with regard to the orders of detention. This Court again reiterated that under Art. 22(5) of the Constitution, there was a dual obligation on the appropriate Government and a dual right in favour of a detenu, namely, (1) to have his representation, irrespective of the length of detention, considered by the

(1) Writ Petition Nos. 198, 205, and 206 of 1969 decided on Sept. 2, 1969.

(2) Writ Petition No. 246 of 1969 decided on Sept. 10, 1969.

A appropriate Government; and (2) to have once again that representation in the light of the circumstances of the case considered by the Advisory Board before it gave its opinion. It was emphasised that the two obligations of the Government to refer the case of the detenu to the Advisory Board and to obtain its report on the one hand and to give an earliest opportunity to the detenu to make a representation and consider the representation on the other, are two distinct obligations, independent of each other. It was further observed as follows :

C “The fact that Art. 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning.”

D In *Prabhakar Shankar Dhuri v. Sh. S. G. Pradhan and others*⁽¹⁾ unexplained and unaccounted for delay in the consideration of the representation by the Government, results in holding that there has been a violation of Art. 22(5) which, in consequence, entitles the detenu to be set at liberty.

E In *Prabhakar Shankar Dhuri v. Sh. S. G. Pradhan and others*⁽¹⁾ it was again emphasised that when a representation has been made by a detenu, it was the duty of the Government to dispose of that representation without undue delay. The decision in *Durga Show etc. v. The State of West Bengal*⁽²⁾ was quoted with approval and it was held that when there is an unexplained delay in considering and disposing of a representation made by a person who is detained without trial under a special law relating to preventive detention, that by itself would be a sufficient ground for releasing a detenu. No doubt, it is also observed that if there is a delay, there must be a satisfactory explanation forthcoming from the Government explaining the delay.

G In its recent decision in *Jayanarayan Sukul v. State of West Bengal*⁽³⁾, after a review of the earlier decisions Ray, J., speaking for the Court, has observed as follows :

H “It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason

(1) Writ Petition No. 514 of 1970 decided on December 18, 1970.

(2) W. P. Nos. 198, 205 and 206 of 1969 decided on Sept. 2, 1969.

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

for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in words of Shelat, J., who spoke for this Court in the case of *Khairul Haque*⁽¹⁾ "it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an

(1) W. P. No. 246 of 1969 decided on 10-9-1969.

A opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu, the Government may still exercise the power to release the detenu.”

B Finally, it was held that the Government was guilty of infraction of the constitutional provisions by an inordinate delay in the consideration of the representation and that there was no explanation offered for the inordinate delay. Ultimately, the detenu was directed to be set at liberty.

C The various decisions, referred to above, no doubt deal with detention under the Preventive Detention Act, 1950, but the provisions of the Act, with which we are dealing, in all material respects, are substantially similar to the Preventive Detention Act, 1950. Hence the principles laid down by this Court in the above decisions apply on all fours to the matter on hand. We have already held that there is an unexplained delay of 17 days between the date when the representation was received by the Administrator, namely, March 3, 1971 and when the latter considered the representation and passed the order rejecting the same on March 20, 1971. If that is so, without anything more, that circumstance by itself is a sufficient ground for holding that the orders of detention of the petitioners are illegal and they are entitled to be released.

E We accordingly hold that the detention of the petitioners is illegal and make the rule issued in all these writ petitions absolute and direct the release of the petitioners forthwith unless they are required in connection with any other case.

V.P.S.

Petitions allowed.