
(2013) 03 GAU CK 0074
In the Gauhati High Court
Case No : WP (Criminal) No. 17 (K) of 2012

Akheto Sumi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Arms Act, 1959 — Section 25(1)(A)
Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 14, 3, 5, 8

Citation : (2013) CriLJ 3075 : (2013) 3 GLT 544

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : I. Longjem, for the Appellant; T.B. Jamir, CGC, for the Respondent

Final Decision : Disposed Off

Judgement

Prasanta Kumar Saikia, J.—Heard Mr. I. Longjem, learned counsel for the petitioner. Also heard Mr. K. Wotsa, learned GA and Mr. T.B. Jamir, learned CGC. In this proceeding, the detention order dated 20.11.2012, passed by the learned District Magistrate, Zunheboto detaining the petitioner under Sub- Section 3 the National Security Act, 1980 (hereinafter referred to as "The Act of 1980") as well as the order of approval passed by the State Govt. on 29.11.2012 have been called into question.

2. The brief facts necessary for disposal of the present proceeding are that one Shri Akheto Sumi, hereinafter referred to as the detenu/petitioner, is a resident of Purana Bazar, Dimapur. He sustains his livelihood by doing a petty business. On 16.11.2012, the detenu went to Zunheboto for attending some personal work and spends the night of 16th November at the residence of one of his acquaintances at Amiphoto Colony, Zunheboto Town.

3. At around 6 AM on 17.11.2012, some Assam Rifles personnel entered into the house, where he was staying at that time and searched such a house. In that connection, it has been alleged that during the search, some fire arms and

ammunitions were recovered from the house, aforesaid. It was contended that those arms and ammunitions were of the detenu who was said to be a member of the GPRN/NSCN group. With the aforesaid allegations, he was apprehended and was handed over to the police.

4. Thereafter, a police case, being Zunheboto PS Case No. 44/12 under Sections 7/ 8 of NSR Act, 1962 read with Section 25(1)(A) of the Arms Act has been registered against the detenu. On 21.11.2012, the detenu was brought to the Central Jail at Dimapur and has been detained there ever since. When his brother came to know about such detention, former came to the police station and learnt that his brother was detained under the Act of 1980.

5. He also came to know that the learned District Magistrate, Zunheboto by his order dated 20.11.2012 detained the detenu under the Act of 1980. It was stated that the said order was subsequently approved by the State Govt. vide its letter dated 29.11.2012. On the strength of the such an order, the detenu has been detained for a period of one year w.e.f. 20.11.2012.

6. Now, it has been contended that the aforesaid detention order was passed in gross violation of the various provisions incorporated in the Act of 1980. Referring to grounds of detention, it has been stated that as per Section 14 of the said Act, the detenu has a right to make a representation to (a) detaining authority, (b) the State Govt. and (c) the Central Govt.

7. But inspite of above statutory requirement, the detenu was not informed that he has a right to make representation to the District Magistrate, he being the detaining authority as well as to the Central Govt. In that connection, it has been pointed out that the Deputy Commissioner, being the detaining authority, has a right to revoke the Govt. detention order anytime before the approval of same by the State Govt.

8. Similarly the State Govt. has the authority to revoke the detention order passed by the District Magistrate. On the other hand, the Central Govt. too can revoke the detention order passed by the District Magistrate or State Govt. Since the detenu was not informed of that he has a right to make representation to the District Magistrate as well as to the Central Govt., the detention order in question, being illegal, is liable to be quashed.

9. It has also been argued that as per Section 8 of the 1980 Act, in normal circumstances, the grounds of detention needs to be communicated to the detenu within a period of five days but in exceptional circumstances, the grounds of detention may be communicated within ten days from the date of detention order.

10. But then reasons are to be recorded as to why the grounds of detention could not be communicated within a period of five days from the date of service of detention order on the detenu. However, this time limits too was violated by the detaining authority in the proceeding under consideration. According to the

petitioner, such a position is found evident from the records of the respondents themselves.

11. In support of the contention that there was violation of Section 8 of the Act, my attention has been drawn to paragraph 10 of the writ petition as well as paragraph 6 of the Govt. affidavit. Since there was serious violation of the aforesaid provisions of law, the learned counsel for the petitioner urges this Court to set aside and quash the detention order as well as approval order and to release the petitioner from the detention forthwith.

12. Learned counsel for the petitioner in order to show that the detaining authority is duty bound to inform the detenu that he has a right to make a representation to the Central Govt. as well as to the State Govt. has relied on the decision of this High Court in the case of Thanglenmang Hangsing Vs. District Magistrate and Others, paragraphs 10 and 11. For a ready reference the same is reproduced below:

10. Next point urged was with regard to the right of the petitioner to make representation to the Central Government. The petitioner admittedly did not file any representation to the Central Government for revocation of the detention order. It appears that the petitioner was not informed of his right to make the representation to the Central Government u/s 14 of the National Security Act read with Article 22(5) of the Constitution. The State respondents in their affidavit did not offer any explanation for this omission/lapse on the part of the detaining authority. The grounds of detention (Annexure-A/2) show that the petitioner was informed of his right to make the representation to the Government of Manipur represented by the Chief Secretary through the Superintendent of Manipur Central Jail, Sajiwa within three weeks. There is nothing else in this communication relating to the detenu's right of representation to the Central Government. The order of detention is also completely silent on this. In this connection, we may refer to a Division bench decision of this Court in Hemanta Nath Vs. State of Assam and Others, . Relying upon the decisions in Nutan J. Patel (Ms) Vs. S.V. Prasad and Another, and Kamalesh Kumar (supra), this Court held as follows:

5. It is an admitted position that the detenu has not been apprised of his right to make a representation to the Central Government so much so as per detention order and grounds of detention as supplied to the detenu. There is no mention of his right to make a representation to the State Government, although subsequently, just within four days of passing the detention order, he was informed through a letter that he could make such representation to the State Government. But there again there is no information so far as the Central Government is concerned. This denial of opportunity to make a representation to the Central Government vitiates the continued detention of the detenu.

11. On the fact situation of this case, the ratio available in the above judgment would. apply meaning thereby that the order of detention cannot be sustained

for omission on the part of the detaining authority in informing the detenu of his right to make a representation before the Central Government within the purview of Section 14 of the National Security Act, 1980.

13. He has also cited the decision of this High Court in *Hokuto Sema Vs. Union of India & Ors.* reported in 1997 (2) GLT 518, paragraphs 24, 25 & 26. For a ready reference the same is reproduced below:

24 The Central Government is competent to revoke the order of detention, there is no dispute about it. It is evident from the order, and the grounds of detention, Annexure-3, that the detenu was not informed of his right to make a representation to the Central Government. Being purely a matter of record, and a question of law, this point though not pleaded was allowed to be taken. Strict rules of pleadings are not applicable to a petition for Habeas Corpus. The respondents could not improve the grounds of detention forming an integral part of the order, Annexure-3. The last part reads as follows:

You have a right to make a representation to the State Government against the above said order. You have also a right to claim a personal hearing before the Advisory Board.

25. There is no mention that the detenu could make a representation to the Central Government and no amount of affidaviting could salvage the situation. The fact remains that the detenu was not informed of his right to make representation to the Central Government, thus denying him a valuable right of making a representation to the Central Government.

26. This denial of opportunity to the detenu has vitiated his continued detention.

14. With regard to the duty of the detaining authority to inform the detenu that he has right to make a representation to the Deputy Commissioner as well in compliance with the provisions contained in Section 14 of the said Act, my attention has been drawn to the decision in *Thanglenmang Hangsing (supra)*, at paragraphs 7 and 8.

7. The materials on record including the grounds of detention (Annexure-A/2) do not reflect that the detenu was informed of his right to make a representation to the detaining authority. In *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court held that the provisions of Article 22(5) has the same force and sanctity as in other provisions relating to Fundamental Rights. According to Hon"ble Supreme Court, Article 22(5) imposes a dual obligation on the authority making the order of preventive detention to communicate to the person detained the ground on which the order of detention has been made and afford the person detained an earliest opportunity of making a representation against the order of detention. The Supreme Court further held that the authority that has made the order of detention can also revoke it and this right of the detaining authority is inherent in the power to make the order of detention. The decision in *Kamlesh Kumar (supra)* was also relied upon by the

Hon"ble Supreme Court in the State of Maharashtra and Others Vs. Santosh Shankar Acharya, while dealing with a prevention order passed under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. A Division Bench of this Court in WP(Crl) No. 16 of 2003 also followed the aforesaid decision in Kamlesh Kumar (supra) while dealing with a case under the National Security Act. This Court in para 10 of the judgment held as follows:

10. A bare perusal of the above provisions of law manifestly goes to show that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention to the appropriate Govt. by the detaining authority who has passed, the order of detention at the time of communicating the grounds on which such detention has been made and the detaining authority has the power to entertain the representation so received by him till approval of the order of detention by the State Govt. The language of the legislature is very clear and unambiguous to the effect that by exercising power u/s 21 of the Clauses Act, the said detaining officer can amend, vary and rescind the order as has been provided u/s 14 of the Act so referred above. That being so, taking into consideration the above statutory provisions and applying the provisions of law enunciated by the Apex Court in Kamlesh Kumar's case (supra) and Santosh Shankar Acharya's case (supra), we are of the firm opinion that the ratio of those two decisions of the Supreme Court is fully applicable in this case. Here, the detaining authority failed to consider and dispose of the detenu's representation dated 31.3.03 so made to him. The respondent No. 1 went wrong in not discharging the imperative duty cast on him by the statute and as such the order of detention in the case at hand, appears to be illegal and invalid.

8. It is therefore, clear that the provisions in Article 22(5) cast an obligation on the detaining authority to inform the detenu detained under any preventive detention law of his right of making representation to the detaining authority before approval of the order of detention by the State Government. This is the established principle of law. In the case at hand the detaining authority apparently did not inform the detenu of his right to make a representation before him (detaining authority). There is, therefore, a serious lapse on the part of the detaining authority. This lapse alone vitiates the order of detention.

15. As far as the requirement of detaining authority to communicate the grounds of detention within the period, specified u/s 8 of the Act is concerned, my attention has been drawn to the decision of Hon"ble Supreme Court rendered in "the case" of State of Rajasthan and another Vs. Talib Khan and others etc, .

16. Both the learned counsel for the State respondents as well as the CGC submitted that the respondents had conducted themselves in accordance with law in detaining the petitioner/detenu under the Act of 1908.

17. I have considered the above arguments advanced by the learned counsel for the parties having regard to the pleaded case of the parties in their respective

pleadings keeping an eye on the laws which hold the field. In that connection, I have also perused the detention order dated 20.11.2012 which was attached as Annexure C to the writ petition. For ready reference, the same is reproduced below:

Dated Zbto., 20.11.12

To The Detenue SS Capt. Akheto Sumi

THE GROUNDS OF DETENTION

WHEREAS, the undersigned has made detention order against you under the provision of NSA 1980.

Now, therefore, in pursuance of Section 5 of the said Act, the undersigned hereby inform you that the said detention order has been made against you on the following grounds:--

1. Security of the State of Nagaland
- 2 maintenance of Public order
3. Violation of cease fire ground rules

You are also informed that you have a right to make a representation to the detaining authority i.e. the State Government through the concern Jail Authority. You also have a right to claim a personal hearing before the Advisory Board constituted by the State Government under the aforesaid Act.

Sd/- (K.S. Anden Konyak) NCS District Magistrate Zunheboto, Nagaland

18. A bare perusal of the grounds of detention as stated in the Annexure C, it would appear clear that the detenu was never informed about his right to make a representation to the authorities which were specified in the Section 14 of the Act since the grounds of detention dated 20.11.2012 only speaks about detenu's right to make a representation to the State Govt. only. The States could not produce anything to show that the above proposition was not right.

19. In view of what have emerged from our foregoing discussion, I am constrained to hold that in the case under consideration, the detaining authority by not informing the petitioner that he has a right to make a representation to the detaining authority i.e. the Deputy Commissioner as well as the Central Govt. in order to require them to revoke the detention order profoundly violated the statutory requirement of law, aforesaid.

20. This unfortunate violation, in my considered opinion, in the face of established position of law which have been highlighted through the judgment, referred to above, rendered the detention order unsustainable in law.

21. Since the detention order is liable to be set aside on the aforesaid grounds, I am not inclined to consider the other alleged violation in detaining the detenu/

petitioner under the Act of 1908.

22. In view of the above, the detention order is hereby set aside and quashed. The detaining authority is hereby ordered to release the detenu from custody forthwith, if he is not required to any other cases. With the above observations and direction, this proceeding is disposed of.