

(2008) 09 GAU CK 0114

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 22 of 2008

Dharmeswar Haloi @ Baity

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3

Citation : (2009) 1 GLT 657

Hon'ble Judges : Anima Hazarika, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : S. Sinha, J. Payeng, J. Kalita and M.K. Boro, for the Appellant; P.S. Deka and N. Baruah, for the Respondent

Final Decision : Allowed

Judgement

Aftab H. Saikia, J.—Heard Mr. J. Payeng learned Counsel appearing for the Petitioner (hereinafter referred to as "the detenu"). Also heard Mr. P.S. Deka learned Counsel representing the State of Assam/official Respondent Nos. 2 to 6 and Mr. N. Baruah learned Central Government Counsel ("CGC" for short) on behalf of the Union of India/Respondent No. 1.

2. The legality and correctness of the order dated 7.2.2008 issued by the District Magistrate, Nalbari in exercise of power u/s 3 of National Security Act, 1980 (for short "the Act") detaining the detenu Sri Dharmeswar Haloi @ Baity under the Act for his activities being detrimental to the maintenance of public order and security of the country, have been assailed in this Habeas Corpus petition filed by the detenu himself.

3. The detenu has basically challenged the order on two grounds:

(1) The detaining authority by the impugned detention order failed to inform the detenu as regards his right to file representation before the detaining authority and the same is evident from the impugned detention order itself as well as

grounds of detention furnished to the detenu.

(2) There was an inordinate unexplained delay in disposing the representation dated 5.3.2008 of the detenu by the appropriate authorities namely, Government and Central Government inasmuch as the State Government rejected his representation on 31.3.2008 causing an unexplained delay of 26 days when Central Government rejected the representation dated 5.3.2008 on 7.4.2008 after one month.

4. It is a settled law that when a detenu is detained, he has a fundamental right under Article 22(5) of the Constitution to make representation before the detaining authority in addition to his right to file representation before the Central Government or the appropriate Government. See (i) *Konsam Brojen Singh Vs. State of Manipur and Others*, (ii) *Miss Dinali Langthasa v. Union of India and Ors.* in Case W.P. (Crl) No. 9/2008 disposed of on 2.6.2008 (iii) *Sri Dilip Moran v. Union of India* in case W.P. (Crl) No. 20 of 2008 disposed of on 27.8.2008.

5. In the instant case, information as regards the detenu's right to file representation before the detaining authority, has not been given to the detenu and the same is apparent in the impugned order itself.

For the sake of convenience, the portion relevant as discussed above reflected in "Copy forwarded to" mentioned in the impugned detention order may be quoted as under:

1....

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7. Sri Dharmeswar Haloi @ Bhaity S/o Sri Bharat Haloi (Das) of village Bishnupur Khat, P.S. Nalbari in Nalbari District for information with a copy of the grounds of detention (both English & Assamese version) He has a right to make a representation to the State Government against the order of detention. He also has a right to claim personal appearance before the Advisory Board. He may make a representation to the Advisory Board, State Govt. & Central Govt. If he feels aggrieved by the above order through the Superintendent of District Jail, Nalbari or District Magistrate, Nalbari.

In the grounds of detention the relevant portion in last paragraph may be extracted as under

The Subject may if he so desires submit representation against his detention to

the Advisory Board, State Government & Central Government through the Superintendent of District Jail or District Magistrate, Nalbari.

6. Besides in their affidavit the State Government through Respondent Nos. 2 and 3 in paragraph 9 and 12 emphatically admitted that the representation dated 5.3.08 so received by the State Government on 6.3.08 was rejected on 31.3.08 and delay in disposing such representation after 26 days was explained to the effect that the Government was awaiting for the parawise comments from the detaining authority which the Government received on 27.3.08. Such explanation pertaining to non-receipt of parawise comments has been rejected as not tenable under the law and the said ground of delay for seeking and in getting parawise comments from the concerned authority at a belated stage has already been negated by a catena of judicial pronouncements; amongst those to cite one is the case of Subrata Paul Vs. Union of India (UOI) and Others, wherein this Court had the occasion to deal with such similarly situated issue of explaining the delay in disposal of the representation on the ground of non-receipt of para-wise comments and in paragraphs 24 and 25 it was held as under:

24. From the affidavit submitted by the Under Secretary, Ministry of Home Affairs, Govt. of India, we find that the representation could not be considered for non-receipt of parawise comments from the detaining authority Strangely, the Central Government had to remind the detaining authority for submitting its comments on 26.10.2006, we have given our anxious consideration whether this could have been a proper explanation for withholding the representation. In our considered opinion both the State Government and the Central Government were at fault. We have already held earlier that the report from the State Government to the Central Government should be a complete one. It is true that in the present case, the detenu had submitted a representation, albeit only in the name of the detaining authority and the same was forwarded to the Central Government. However, the same could not be considered with prompt dispatch by the Central Government due to incomplete dossiers, that is, without comments from the State. This procedural lacuna resulted in loss of 35 days in considering the representation by the Central Government. Accordingly, there was 66 days cumulative delay in disposal of the representation by the State and the Central Government. Having regard to the nature of detention and rigor of the law, we hold that there was disproportionate delay at both the ends.

25. Mrs. B. Goyal learned State Counsel appearing for the State submitted that in the case of Sitthi Zuraina Begum Vs. Union of India (UOI) and Others, the Hon'ble Supreme Court has held that if the delay is explained, the preventive detention need not be interfered with. In the said case only 20 days' time was taken for considering the representation. Even this delay took place to translate the representation from Tamil to English. However, in the case before us, the representation was submitted in English and despite that both the State Government as well as the Central Government took long periods in considering the representation, above all both these authorities have failed to account for the

time taken in disposing the representation.

7. It would be pertinent herein to quote those contentions made on behalf of the State Government narrated at para 9, 10, 11 and 12 in their affidavit and the same may be noticed as under:

9. That the humble deponent begs to state that the detenu submitted a representation addressed to the Chairman, Advisory Board, NSA with a copy to the Govt. which was forwarded by the Superintendent District Jail, Nalbari on 5.3.2008 and was received by the State Government on 6.3.2008.

10. That the humble deponent begs to State that the detaining authority letter dated 25.3.08 forwarded its parawise comments to the State Government which was received by the State Government on 27.3.2008.

11. That the humble deponent begs to state that after receipt of the parawise comments on the representation dated 27.3.2008, the State Government vide its letter dated 27.3.2008 forwarded the representation alongwith the parawise comments to the Central Government as well as the State Advisory Board. The State Government also asked the detaining authority vide letter dated 10.3.08 to furnish its para-wise comments on the representation submitted by the detenu.

12. That the humble deponent begs to state that vide letter No. PLA. 64/08/64 dated 31.3.2008 the representation of the detenu was rejected by the State Government and the said fact was communicated immediately on the same day to the Central Government, State Advisory Board and to the Superintendent, District Jail, Nalbari to effect service of the order to the detenu. The detenu acknowledged receipt of the rejection order on 09.04.2008.

8. The representation filed by the detenu was also rejected by the Central Government on 7.4.2008 and the same is reflected from the paragraph-13 of the State Government's affidavit which may be quoted as under:

13. That the humble deponent states that the Central Government rejected the representation of the detenu on 7.4.2008.

9. In the affidavit filed by the Central Government also single ground has been taken in case of such delay i.e. non receipt of parawise comments and receipt of the same at a belated stage. As discussed above the ground of non-receipt of parawise comments has already been discarded by Apex Court as well as this Court.

10. In view of what has been stated discussed and observed above, we are of the considered opinion that the impugned detention order needs to be interfered with. Consequently, the impugned detention order dated 7.2.2008 stands quashed and set aside.

11. The detenu Sri Dharmeswar Haloi @ Baity be set at liberty forthwith, if he is not connected with in any other case.

12. In the result this Habeas Corpus succeeds and stands allowed. However there shall be no order as to costs.
13. Send down the records forthwith.