
(2010) 08 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 2 of 2010

Firoz Khan

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Preventive Detention Act, 1950 — Section 5

Citation : (2010) 6 GLR 576

Hon'ble Judges : Madan B. Lokur, C.J.;Asok Potsangbam, J

Bench : Division Bench

Advocate : S. Rajeetchandra, L.N. Ngamba and Khogen Kanglei, for the Appellant; Th. Ibohal, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, C.J.—Heard Mr. S. Rajeetchandra, learned Counsel for the Petitioner and Mr. C. Komal, learned State Counsel.

2. The Petitioner is aggrieved by an order of detention dated 18.11.2009 passed by the District Magistrate, Imphal West. Manipur.

3. The allegation against the Petitioner is that he is a member of an armed gang called the Peoples United Liberation Front ("PULF") and he is actively involved in extorting money on his behalf and on behalf of his organisation. This has given rise to terror and panic in the general public and more particularly in government employees. Therefore, for the maintenance of public order it was found necessary to preventively detain the Petitioner under the provisions of the National Security Act, 1980.

4. The only ground urged by learned Counsel for the Petitioner is that his client was not supplied the grounds of detention in a language that he understands, i.e., Manipuri.

5. At this stage it may be mentioned that the Petitioner is illiterate and cannot

even read or write Manipuri. In this context, before we proceed further, we may mention that learned Counsel for the Petitioner relied upon an additional affidavit filed by his client on 5.6.2010 wherein it is mentioned that the detainee speaks and understands the Manipuri vernacular. It is not mentioned in the affidavit that the Petitioner can read Manipuri. On the contrary, it is asserted that the detainee is illiterate.

6. Learned Counsel for the Petitioner cited three judgments before us. We may mention here that in all the three cited judgments, the detainee was, literate unlike the case of the Petitioner who is illiterate.

7. The first decision cited by learned Counsel for the Petitioner is *Harikisan Vs. The State of Maharashtra and Others*,

8. Reliance has been placed on paragraphs 4 and 8 of the decision.

9. On a reading of these two paragraphs it is clear that the grounds of detention served on the detainee were in English and it was contended on behalf of the State of Maharashtra that since English is the official language of the State, there was no reason to supply to the detainee the grounds of detention in Hindi. This was upheld by the High Court but reversed by the Supreme Court. It was held by the Supreme Court that if the detained person is conversant with the English language he will naturally be in a position to understand the gravamen of the charge. But in the case of a person who is not so conversant with the English language then, in order to satisfy the requirements of Article 22(5) of the Constitution, the detainee must be communicated the grounds in a language which he can understand and in a script which he can read. The detainee in that case was a literate person who could understand Hindi but was not served with the order of detention in that language despite a request made in this regard. Under the circumstances, there was no communication of the grounds of detention to the detainee.

10. In our opinion the decision is not at all applicable to the facts of the present case. In that case, as mentioned above, the detainee was literate and could read Hindi unlike in the present case where the detainee is illiterate and cannot even read Manipuri.

11. The second decision relied upon by learned Counsel for the Petitioner is *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, In this case the Petitioner was a Ladakhi who could barely read and write Eadakhi language. He was served with the grounds of detention in Tibetan language and it was contended by learned Counsel for the detainee, as mentioned in paragraph 4(1) of the decision that the detainee knew only Ladakhi.

12. In response, it was contended on behalf of the State that the detainee's wife knew English and Tibetan and to that extent there was no constitutional infirmity in not supplying to the detainee the grounds of detention in Ladakhi language. This contention was negated by the Supreme Court in paragraph 12 of the

decision. It was held that the grounds of detention have to be communicated in a language which is understood by the detainee. In that case, the grounds of detention were supplied to the detainee in Tibetan language which he did not know and even though he had little knowledge of Ladakhi the grounds of detention ought to have been supplied to him in that language on a demand having been made.

13. Again this decision is of no help to learned Counsel for the Petitioner because in that case also the detainee could read and write Ladakhi, even though barely, unlike in the present case where the Petitioner is not capable of reading or writing Manipuri language.

14. The third and final decision cited by learned Counsel for the Petitioner is *Hadibandhu Das Vs. District Magistrate and Another*,

15. In that case also the grounds of detention was served upon the detainee in English and he had asked for a translation of the grounds of detention and the documents in Oriya, the language he could read. The documents were supplied to him in Oriya but beyond the period of 5 days as prescribed by Section 5 of the Preventive Detention Act, 1950. On this ground the Supreme Court was of the view that the preventive detention of the detainee could not be sustained.

16. The Supreme Court also considered the meaning of "communication" of the grounds of detention. The Supreme Court noted that the detainee in that case was conversant with Oriya language and could read Oriya and that is why he required the grounds of detention to be supplied in that language. The detainee did not know English and, therefore, to satisfy the requirements of Article 22(5) of the Constitution, the grounds of detention ought to have been communicated to him in a language that he understood, i.e., Oriya. Although this was done, it was beyond the period prescribed under the Preventive Detention Act, 1950.

17. Again this decision is of no avail to learned Counsel for the Petitioner because the detainee was conversant with the Oriya and could read that language unlike the present case where the detainee is admittedly illiterate.

18. The sum and substance of the above discussion is that if a detainee is literate or even semi-literate, then the grounds of detention ought to be supplied to him in a language that he can read. However, if he is illiterate and cannot read, then of course the grounds of detention must be explained to him in a language that he is conversant with so that he is communicated the facts and allegations made against him, thereby enabling him to make an effective representation against the order of preventive detention.

19. Learned Counsel for the Petitioner did not cite any decision to suggest that the grounds of detention could be communicated to a person who is illiterate, other than by the authority serving him the grounds of detention and explaining to him the grounds in a language that he understands. In this case there is no dispute, or at least none has been raised by learned Counsel for the Petitioner,

that the grounds of detention were explained to the detainee in a language that he understood, namely, Manipuri. Since the grounds of detention were communicated in a language which the detainee understood, we are unable to accept the contention raised by learned Counsel for the Petitioner.

20. Under the circumstances, there is no merit in the writ petition. It is dismissed.