

(2003) 12 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 15 of 2003

Gautam Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)

National Security Act, 1980 — Section 3(2), 3(3), 3(5)

Citation : (2004) 1 GLT 49

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : B.D. Konwar and J.M. Konwar, for the Appellant; C. Choudhury and A. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—A challenge has been laid in the instant petition to the order of detention dated 26.3.2003 passed under Sub-sections (2) and (3) of Section 3 of the National Security Act, 1980, (for short "the Act") and the consequent continuous detention of the Petitioner.

2. We have heard Mr. B.D. Konwar, learned Counsel for the Petitioner, Mr. C. Choudhury, learned Central Government Standing Counsel and Ms. A. Hazarika, learned Counsel for the State Respondents.

3. The bare facts necessary for dealing with the controversy are that the Petitioner who was already in jail in connection with other case(s) was served with an order of detention dated 26.3.2003 passed under the Act on the ground that it was necessary to prevent him from acting in the manner prejudicial to the security of the state and maintenance of public order. According to the Petitioner, though the grounds of detention accompanying the order were vague and devoid of material particulars and further the relevant documents in support thereof had not been furnished to him, he submitted a representation against his detention dated 29.3.2003 before the appropriate authority. Though it has been contended,

inter alia, in the petition that the order of detention is not sustainable as it had been passed mechanically and without any application of mind and that his continued detention is not permissible in law as the order of detention had not been approved by the State Government within the time prescribed, the principal grievance discernable from the petition is with regard to delay in despatch and disposal of his representation by both the State Government as well as the Central Government. The order of confirmation of detention is, however, questioned on the ground that the Advisory Board had failed to forward the relevant records and documents to the Government of Assam.

4. The stand of the Central Government in its affidavit is that a report as envisaged u/s 3(5) of the Act about the detention of the Petitioner was forwarded to it by the State Government on 4.4.2003 which was received in the Ministry of Home Affairs of the Central Government on 9.4.2003 and the concerned authority thereof examined the report on 24.4.2003 and was of the view that the order of detention need not be interfered with. It has been further pleaded that the representation dated 29.3.2003 of the detainee along with parawise comments were received by the Central Government on 28.4.2003 and was considered and rejected by the Union Home Secretary entrusted with such duty on 1.5.2003. The decision was thereafter communicated by a crash wireless message dated 5.5.2003 followed by a letter dated 6.5.2003.

The Respondent authorities representing the State Government while supporting the order of detention on the ground as enumerated therein as well as the supporting documents have contended that the representation of the detainee was forwarded by the detaining authority to the Central Government as well as the State Government on 4.4.2003 without any undue delay. The detention of the Petitioner was duly approved on 4.4.2003 within the time prescribed by the Act. All necessary records along with representation were placed before the Advisory Board. After the order of detention, the detaining authority reported the said fact to the State Government in due time and the order of detention was thereafter approved on 4.4.2003. The relevant records were placed before the Advisory Board on 10.4.2003, that is, within three weeks from the date of passing of the order of detention. With regard to the disposal of the representation by the State Government it has been contended that on a consideration of all relevant materials on record including the parawise comments, the representation was rejected by the State Government on 28.4.2003 and on the same very day the decision was communicated to the Petitioner.

5. In course of the arguments, this Court after noticing that there was no explanation whatsoever from the side of the State Respondents with regard to the delay between 4.4.2003 and 28.4.2003 granted liberty to them to file additional affidavit. In the affidavit thereafter filed by the detaining authority it was stated that the representation was received in the office of the detaining authority on 29.3.2003 whereupon the same was put up before it on 31.3.2003,

the day before, ie, 30.3.2003 being a Sunday. The Respondent No. 3 forwarded the representation to the Superintendent of Police, Goalpara on 31.3.2003 asking for parawise comments which were received on 4.4.2003. The concerned file was thereafter placed before the detaining authority on 5.4.2003 who after signing the forwarding letter addressed to the Central Government and the State Government remitted the same to the concerned confidential branch for despatch. According to the answering Respondent it was only on being required by the Additional Senior Government Advocate, Assam, to explain the delay in transmission of the representation, that it transpired that on 4.4.2003 Shri H Ahmed (CA) in-charge of the detention cases on receiving the parawise comments requested Shri Jibon Das, Assistant of the confidential branch, to prepare the file for being put up before the detaining authority. Shri Ahmed in the evening of 4.4.2003 while leaving for his home met with an accident and was on leave from 5.4.2003 and joined on 17.4.2003. After joining, he assumed that Shri Jibon Das had despatched the representation along with the forwarding letter. The file in fact had been put up by Shri Jibon Das before the detaining authority on 5.4.2003 and the latter signed the same for immediate despatch thereof. The file, however, remained lying in the confidential branch from 5.4.2003 to 18.4.2003 and on a preliminary enquiry made, Shri Jibon Das explained that 6.4.2003 was a Sunday and he had been on leave on 7.4.2003 and 8.4.2003 and thereafter on joining his duties on 9.4.2003 he faced heavy pressure of work because of absence of two other assistants, they being on leave. Further, he was ignorant about the steps to be taken in the detention cases and in the confused state of mind, the representation could not be sent to the concerned branch immediately. The Assistant further explained that he discovered the file on 19.4.2003 while searching a floppy and it was thereafter he forwarded the letter with the representation to the Nazarat Branch on 19.4.2003. The detaining authority while referring to the above facts has pleaded that the delay had occurred due to Shri Ahmed going on leave following an accident and pre-occupation of Shri Jibon Das in the office. According to the answering Respondent, however, the inaction on the part of Shri Das has been construed to be a gross negligence and dereliction of duty for which a disciplinary proceeding has been initiated against him.

6. Though a number of grounds have been taken in the petition assailing the order of detention, Mr. Konwar, learned Counsel for the Petitioner, confined his arguments to the aspect of delay in forwarding of the representation to the Central Government as well as the State Government and forcefully argued that there being no acceptable explanation therefor, the detention of the Petitioner is liable to be adjudged illegal and unconstitutional and consequently he is entitled in law to be set at liberty forth with. He contended that the delay of 15 days in despatching the representation of the Petitioner exhibits callous disregard to the mandate of the Constitution and the Act for providing earliest opportunity to a detainee in such cases and in the facts and circumstances of the case, the official Respondents having failed to comply with the same, the detention of the

Petitioner is Constitutionally impermissible. He submitted that the explanation provided by the state Respondents is not an explanation in the eye of law having regard to the solemn duty cast on the detaining authority by the Constitution and the Act to act with promptness and expedition in disposal of a representation of a detainee. Mr. Konwar referred to a host of decisions of the Apex Court underlining time and again the imperative necessity of prompt disposal of representations in preventive detention cases.

7. Mr. Choudhury, learned CGSC, submitted that the representation of the Petitioner was received by the Central Government on 28.4.2003 and was taken up for consideration with all promptitude and was rejected by the appropriate authority on 1.5.2003. Thereafter the decision was communicated by a wireless message on 5.5.2003 which was followed by a letter to the said effect on 6.5.2003. According to Mr. Choudhury, therefore, there was no undue delay in disposal of the representation by the Central Government after receipt thereof on 28.4.2003.

8. Ms. Hazarika, learned Counsel for the State Respondents while supporting the order of detention argued that the same was passed on sufficient and cogent grounds and was duly approved and ultimately confirmed by the State Government in accordance with the Act. According to her, the representation of the Petitioner submitted on 29.3.2003 was forwarded in time to the District Magistrate by the Superintendent of Jail, Goalpara. The detaining authority took immediate steps for obtaining parawise comments thereon and after receiving the same issued necessary directions for despatch thereof along with the forwarding letter dated 4.4.2003. It was thereafter due to some lapse on the part of the office staff that there occurred a delay till 19.4.2003. The State Government, however, on receipt of the representation on 21.4.2003, on a due consideration thereof rejected the same on 28.4.2003. The learned State counsel further argued that all relevant records were placed before the Advisory Board in time and the Board having recommended continuance of the detention, the order of detention was confirmed by the State Government thereafter. According to Ms. Hazarika considering the grounds on which the order of detention has been made, the delay in remitting the representation cannot be considered to be fatal so as to vitiate the same in law. The learned State counsel produced the relevant Government records pertaining to the detention of the Petitioner.

9. It is no longer *res integra* that a representation submitted by a detainee under the Act has to be attended to at the earliest and the authorities concerned to ensure expeditious disposal thereof have to act with all seriousness and promptitude. Any let up in the process of consideration of the representation is to be viewed as contravention of the procedural safeguards prescribed by the constitution and the Act. As preventive detention is one without any prior trial, the detainee has to be furnished with the grounds of detention with all supporting materials in order to enable him to represent against the same as early as possible. It is, therefore, imperative that in case such a representation is

submitted, the authorities should ensure that the same is considered at the earliest, least the opportunity so provided to the detainee is rendered illusory. It has been ruled in a catena of decisions of the Apex Court as well as of this Court that in case there is unexplainable delay in dealing with a representation of a detainee under the Act, the same would render the detention invalid.

10. A number of decisions have been relied upon by the learned Counsel for the Petitioner, the central theme whereof is that the detaining authority should act promptly in such matters and for that purpose, the Government must gear up its own machinery to ensure that the representation is considered and disposed of without unnecessary delay. In view of the consistent judicial pronouncements which underscores the above proposition, we do not consider it necessary to burden this judgment by referring to the said authorities individually. Sufficient it would be to refer to a decision of this Court in *Jubenor Hussain Vs. Union of India (UOI) and Others*, where this Court after referring to some of the decisions of the Apex Court on the above aspect of the matter quashed the order of detention on the ground that there was an unexplained delay of 12 days in despatching the representation submitted by the detainee by the Jail Superintendent to the Home Department of the state. This Court while coming to the conclusion that the detention was not permissible in view of the above lapse on the part of the concerned authorities, recalled its observations in *Md. Monisur Islam Vs. Union of India (UOI) and Others*, to the effect that the provision of law authorizing preventive detention will have to be rigorously enforced and any breach thereof would be at the pain of invalidation of the related orders and decisions. It was further held in *Md Monisur Islam (supra)* that the right to have the earliest opportunity of making a representation against the order of preventive detention has really its roots in the constitutional guarantee enshrined in Article 22(5) of the constitution and that while interpreting the expression "earliest" what matters is to ascertain with what live concern and promptness the representation had been processed and attended to at different levels and stage to stage.

11. Reverting to the facts of the present case, we find that the representation was submitted on 29.3.2003 before the Superintendent of jail and the detaining authority after obtaining the parawise comments on the said representation ordered the same to be forwarded to the Central Government as well as State Government for consideration thereof on 4.4.2003/5.4.2003. It was thereafter, as is represented before this Court, because of lapse on the part of the concerned Assistant in the office, that the same remained unattended till 19.4.2003 and consequently the representation and the parawise comments having been forwarded on that date came to be rejected by the Central Government on 1.5.2003 and by the State Government on 28.4.2003. It is this delay from 4.4.2003/5.4.2003 which the Petitioner contends has to be construed as violation of his constitutional as well as his right under the Act to have his representation disposed of at the earliest. Having regard to the state of law as noticed hereinabove on the issue as well as the reason for the delay set out in the additional affidavit of the detaining authority, we are inclined to agree with

Mr. Konwar in this regard. The contents of the additional affidavit referred to above, in our view exhibits a callous indifference and inaction on the part of all those associated with the process at that stage. Admittedly, the representation and the parawise comments were lying in the confidential branch of the office of the detaining authority from 4.4.2003/5.4.2003 till 19.4.2003. The explanation is that the Assistant Shri H Ahmed who was entrusted with the matter relating to preventive detention cases had asked his colleague Shri Jibon Das to prepare the file for putting up before the detaining authority on 4.4.2003. In the evening of 4.4.2003, he met with an accident and went on leave. He joined his services on 17.4.2003 and remained under the impression that in the mean time Shri Jibon Das must have despatched the representation along with accompanying documents. The version of Shri Jibon Das, on the other hand, is that after the detaining authority had signed the relevant file on 5.4.2003, he thought of despatching the same on 6.4.2003, however, 6.4.2003 was a Sunday and he was on leave on 7.4.2003 and 8.4.2003. After he joined his duties, because of heavy pressure of work, he could not attend to the representation and because of his ignorance about the steps to be taken in such cases, he could not forward the representation to the Nazarat Branch for dispatch. According to him, he discovered the file only on 19.4.2003 while searching for a floppy and it was thereafter that the related file was sent to the Nazarat Branch on 19.4.2003. The explanation, considering the fact that it relates to the functioning of the office of a District Magistrate cannot in any view of the matter be said to be satisfactory.

12. It is true that the extent of delay in dealing with the representation of a detainee may not always be decisive to hold that there has been a lapse on the part of the Respondent authorities. Rather the concern with which they had attended the representation is of utmost importance. The explanation put forward makes it evidently clear that after the forwarding letter was signed by the detaining authority on 5.4.2003, the same along with the representation remained at the disposal of the Assistant of the concerned branch. Though it is suggested that Shri Jibon Das being unaware of the procedure of dealing with such matters and due to heavy pressure of work could not take necessary steps for timely despatch of the representation, there is nothing to indicate as to what further steps did he take in that regard. It is not the stand of the detaining authority that after 5.4.2003 it had at any point of time enquired about the progress in the matter. It appears that the detection of the representation on 17.4.2003 was per chance and had it not come to the notice of Shri Jibon Das while searching a floppy, the representation would have gathered dust even thereafter. Having regard to the valuable safeguard which the constitution and the Act provides to the detainee in the matter of consideration of his representation, we are of the view that the explanation is neither convincing nor satisfactory. No compelling, weighty and sufficient reasons have been put forward to hold that the official Respondents have discharged their solemn obligation under the Constitution and Act. We are of the view that each and every explanation if accepted, the constitutional assurance of affording the

detenue the earliest opportunity of making a representation would be reduced to a dead letter. The underlying purpose of such an opportunity is to mandate disposal of the representation with utmost expedition. The sufficiency and acceptability of any ground explaining any delay has, therefore, to be judged in the context of the duty so cast by the Constitution and the Act. Preventive detention being one without trial the procedural safeguards prescribed by the constitution and the Act have to be strictly guarded and the rights of the detenue flowing from there have to be zealously protected. A collective responsibility rests on all who are associated with the process and any attempt to shift the blame by one on the other cannot be countenanced moreso if it has the potential of defeating the detenues right under the Constitution and the Act. The Act permits preventive detention in exceptional circumstances and on considerations contemplated therein and correspondingly, therefore, the authorities concerned have been saddled with the onerous responsibility to make sure that the exercise of such powers is strictly in conformity with the provisions thereof. It is understandable that an action under the Act is to be taken in public interest and it is, therefore, even more important for the authorities to be alive to their legal obligations so as to take the proceeding to its logical end by strictly adhering the provisions of the Act. The facts and circumstances of the case display vivid indifference both to the safeguards provided by the Act as well as the duty cast on the authorities. On an overall consideration of the materials on record in its entirety and the state of law as noticed herein above we are unable to persuade ourselves to hold that the continuous detention of the Petitioner is constitutionally valid. Consequently, the order of detention, the approval and confirmation thereof cannot be sustained and are hereby quashed. The Petitioner thus would be set at liberty forthwith if he is not wanted in connection with any other case.

13. We part on the note that this Court strongly disapproves the manner in which the representation of the Petitioner has been dealt with and we expect that the authorities concerned would guard against recurrence of such lapses in future.

The Writ petition is thus allowed.