
(1999) 01 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. (HC) 24 of 1998

Jaison Haokip

APPELLANT

Vs

District Magistrate Imphal and Others

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 226
National Security Act, 1980 — Section 8

Citation : (1999) 2 GLR 201

Hon'ble Judges : P.K. Sarkar, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : A. Nilomani Singh and A. Biond Singh, for the Appellant; Ibotai Singh and N. Ibotambi, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is an application under Article 226 of the Constitution of India praying for quashing the order of detention dated 10.5.1998 passed by the District Magistrate, Imphal West District and the order dated 15.5.1998 of the State Government of Manipur approving the said order of detention as well as the order dated 25.6.1998 confirming the order of detention.

2. By the order dated 10.5.1998 passed by the District Magistrate, Imphal West District, the Petitioner was detained under the National Security Act, 1980. In support of the said order of detention dated 10.5.1998 of the District Magistrate, grounds of detention were also furnished to the Petitioner by letter dated 12.5.1998 of the District Magistrate, Imphal West District. In the said letter dated 12.5.1998 it was, inter alia, stated that on 4.5.1998 about 3 PM acting on reliable information about the presence of members of extremists organization of Kukies known as Kuki National Front in the residence of the Petitioner at Paite Veng Imphal, a column of 57 Mtn Division along with police representatives raided the house of the Petitioner and some arms and ammunitions with incriminating documents were recovered from the custody of the Petitioner. In

the said letter dated 12.5.1998 various facts have been stated and the grounds indicated as to why it was necessary to detain the Petitioner for maintenance of public order and to prevent him from acting in a manner prejudicial to the security of" the State. In the said letter dated 12.5.1998 copies of various documents which formed the basis of grounds of detention were also enclosed. Besides other grounds, the main ground raised by the Petitioner in this writ petition is that the copies of some documents which were enclosed along with the said letter dated 12.5.1998 were not legible and as a result, the rights of Petitioner under Article 22(5) of the Constitution read with Section 8 of the National Security Act, 1980 to effective representation against the said order of detention was affected and the detention of the Petitioner under the impugned order is liable to be quashed.

3. Mr. A. Nilomani Singh, learned Counsel for the Petitioner submitted that a reading of the letter dated 12.5.1998 of the District Magistrate containing the grounds of detention would show that various incriminating documents alleged to have been recovered from the Petitioner on 4.5.1998 constituted the basis of ground of detention of the Petitioner and the said incriminating documents have been listed against items 19 to 28 of the re-seizure memo dated 5.5.1998. But the said documents mentioned against item Nos. 19 to 28 of the re-seizure memo could not be read by the Petitioner as the writings against the said items were illegible. For this reason, the Petitioner was not in a position to effect a representation against the order of detention to various authorities. In this context, he referred to the representation dated 27.5.1998 to the Secretary to the Govt. of India, Ministry of Home Affairs, and in particular, paragraph-11 thereof in which he has stated that he was not aware of the nature and contents of the alleged documents mentioned at serial Nos. 19 to 28 of the re-seizure memo dated 5.5.998 and as a result, he was unable to submit a meaningful representation to the Government and he has been deprived of his fundamental right to make a representation before the Government. Mr. Nilomani also referred to the copy of the representation dated 27.5.1998 of the Petitioner to the Chairman, Advisory Board constituted under the National Security Act, 1980, wherein he has Similarly stated that he was not aware of the nature and contents of the documents at serial Nos. 19 to 28 of the re-seizure memo dated 5.5.1998, and that he was unable to make a meaningful representation against the order of detention and his fundamental rights have been affected. Mr. Nilomani further pointed out that, from the order dated 4.6.1998, a copy of which has been annexed to the writ petition as Annexure A-7, it would be appear that the State Government has received the representation dated 27.5.1998 to the Chairman of the Advisory Board and, therefore, the State Government was aware of the grievance of the Petitioner that the nature and contents of the documents mentioned against serial Nos. 9 to 28 of the re-seizure list dated 5.5.1998 was not clear to the Petitioner due to the fact that the writings against the said serial Nos. 19 to 28 in the copies of the re-seizure memo dated 5.5.1998 furnished to the Petitioner were illegible. Yet the State Government did not

consider this aspect of the matter and rejected the representation of the Petitioner. Mr. Nilomani Singh cited the decision of the Supreme Court in the case of Bhupinder Singh v. Union of India and Ors. (1987) 2 SCC 234, wherein the Supreme Court after having found that the copies of the documents furnished to the detenu alongwith the grounds of detention were illegible, held that the detenu was entitled to be set free. Mr. Nilomani Singh submitted that the aforesaid decision of the Apex Court was also allowed by a Division Bench of this Court in the case of Besheswar v. State of Manipur and Ors. (1993) Supp (1) GLR (SIC) and it has been held by the Division Bench in the said case (SIC) where photostat copies of some of the documents furnished to the detenu were blurred and could not be read, the right of the detenu of an opportunity of making a representation guaranteed under Article 22 of the Constitution was affected.

4. Mr. T.H. Ibohal Singh, learned GA, Manipur, on the other hand, submitted that if the Petitioner felt that he was unable to make an effective representation against the order of detention due to the fact that some of the documents furnished along with the grounds of detention were illegible, he should have pointed out this fact to the concerned authority at the first instance instead of making a representation to the Central Government and the Advisory Board. The Petitioner has not taken any such action in this case and has instead submitted a representation to both the Central Govt. and the Advisory Board taking all possible pleas against the order of detention, Mr. N. Ibotomi, CGSC, adopted the aforesaid arguments of the learned GA, Manipur and submitted that if the Petitioner had at the first instance pointed out that illegible copies of documents have been furnished to him alongwith the ground of detention, the authorities would have provided legible copies of the documents to him. But in the present case, the Petitioner has made a representation taking all possible grounds and the said grounds have not been found to be good by the Central Government and the representation of the Petitioner has been rejected by the Central Government as would be evident from the communication dated 14.7.1998 of the Under Secretary to the Govt. of India, Ministry of Home Affairs to the Petitioner.

5. There cannot be dispute over the fact that re-seizure memo dated 5.5.1998 was supplied to the Petitioner alongwith the grounds of detention and that the said re-seizure memo dated 5.5.1998 was one of the documents which formed the basis of the grounds of detention. Further serial Nos. 19 to 28 of the said re-seizure memo referred to various incriminating documents said to have been recovered from the custody of the Petitioner at the time of raid of the residence of the Petitioner on 4.5.1998. The said documents in serial Nos. 18 to 28 of the re-seizure memo obviously constituted the link between the Petitioner and the extremist organization and, therefore, were relevant to the order of detention of the Petitioner. Yet on a bare perusal of the originals of the said seizure memo as furnished by the District Magistrate to the Petitioner, it would be found that the writings against serial Nos. 19 to 28 of the said seizure list are hardly legible. In our opinion, therefore, the Petitioner could not possibly have submitted an effective representation against the order of detention and his constitutional right under

Clause (5) of Article 22 of the Constitution as well as statutory right u/s 8 of the National Security Act, 1980 of an opportunity to make a representation against the order of detention was clearly violated. For this view of ours, we rely on the decision of the Supreme Court in the case of Bhupinder Singh v. Union of India and Ors. (supra) and the decision of the Division Bench of this Court in the case of N. Besheswar v. State of Manipur and Ors. (supra) cited by Mr. Nilomani Singh, learned Counsel for the Petitioner.

6. Nonetheless, if the Petitioner was really unable to submit his representation against the order of detention, he should have in our opinion brought this fact to the notice of the authorities concerned at the very first instance that some of the documents furnished alongwith the grounds of detention were illegible as a result of which he was unable to make an effective representation. In the instant case, the Petitioner instead of first bringing to the notice of the authorities that some of the documents furnished alongwith the grounds of detention were illegible made a full-fledged representation to the Government of India and the Chairman. Advisory Board and in the said representation, of course, added a few sentences to the effect that the Petitioner was unable to know nature and contents of the documents mentioned against serial Nos. 19 to 28 of the re-seizure memo dated 5.5.1998 furnished alongwith the grounds of detention. We hope that in future the detenus would bring to the notice of authorities at the first instance such defects and we also hope that in future as soon as such defect are pointed out to the concerned authorities, they will take prompt steps to remove such defects so that the detenus make an effective representation against the order of detention and the order of detention is not quashed by the court on grounds which have no relation to the merits of the detention order. Since the Petitioner has succeeded in the aforesaid main ground, it is not necessary the us to consider other grounds urged by Mr. A. Nilomani Singh, learned Counsel for the Petitioner.

7. With the aforesaid observations, the impugned orders of detention as well as approval and confirmation are quashed and the Petitioner would be set at liberty, if he is not otherwise required in connection with some other cases. It is stated by Mr. A. Nilomani Sing, learned Counsel for the Petitioner, that the Petitioner is on Parole till 31st January, 1999. The records of this case be transmitted to the Imphal Bench of this Court forthwith so that necessary orders can be (Sic) by the Registry of the Imphal Bench before 31st January, 1999.

8. In the result, the writ petition is allowed. However, we make no order as to costs.

An authenticated copy of this order be furnished to the learned Counsel for the parties by 16.1.1999.