
(1998) 01 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule (HC) No. 131 of 1997

Joel Goriosa @ Joel Barman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 14, 3(2), 3(5)

Citation : (1999) 1 GLT 492

Hon'ble Judges : V.D. Gyani, J;D. Biswas, J

Bench : Division Bench

Advocate : B.D. Konwar, for the Appellant; A.C. Bora, Addl. A.G. and S.S. Dey, Government Advocate, for the Respondent

Judgement

V.D. Gyani, J.—By this petition under Article 226 of the Constitution the Petitioner who has been detained pursuant to an order dated 23.10.97 passed by District Magistrate, N.C. Hills, Haflong u/s 3(2) of the National Security Act seeks to challenge the detention order, Annexure-A and prays for issuance of a Writ of Habeas Corpus. The grounds of detention as contained in the impugned order, Annexure-A, are: (i) that the detenu Petitioner is a member of an extremist outfit engaged in extortion of money from people putting them under threat and at times causing bodily harm and injury; (ii) that the detenu Petitioner along with other members of the Dima Halam Dsogha established nexus with the banned NSCN(IM) in 1994 and received training in handling sophisticated arms and guerilla warfare tactics from NSCN(IM) training camp. On completion of training the banned organisation NSCN(IM) appointed the detenu Petitioner as President-cum-Chairman of DHD and also given him the rank of Second Lt. of NSCN(IM). Thus he became the part and parcel of NSCN(IM) extremist outfit. The detenu-Petitioner as a member of the banned organization of NSCN(IM) committed many heinous crimes at different places, he is wanted by police in connection with several crimes registered at police station, Haflong and other police stations as detailed in paragraph 4 of the Grounds of detention. Offices registered against

the detenu Petitioner are Under Sections 309/84, 307/302/326/427/379/147/120(B) etc. It would thus be seen that the detenu-Petitioner has been indulged himself in commission, of heinous crimes like murder, attempted murder and crediton.

2. Going through the grounds of detention and considering the days of registration of crimes as given in the impugned order, Annexure-A, we have no hesitation in holding that these grounds, on which the impugned order of detention, Annexure-A is based, are proximate in point of time, they are germane and relevant to the object sought to be achieved by passing the impugned order of detention.

3. Learned Counsel for the detenu-Petitioner however has challenged the impugned order of detention on the grounds of violation of the inbuilt procedural safeguards provided to the detenu under the Act. It was urged that the detenu had been apprised of his right to make representation and there was undue, unexplained delay in disposing of the representation submitted by the detenu. The document relied upon by the detaining authority for passing the order of detention as referred to in the order and the grounds of detention were not supplied to the detenu, thus seriously hampering and prejudicing the detenu in making an effective representation. There was no application of mind on the part of the detaining authority whose subjective satisfaction is vitiated because of his non-application of mind to the relevant vital facts.

4. Mr. Bora, learned Addl. Advocate General, Assam appearing for the Respondent State and Mr. H.B. Sarma, learned Standing Counsel for the Union of India, however, argued that all the material that has been referred to and relied upon by the detaining authority was in fact supplied to the detenu. Since the detaining authority himself has not availed of the FIR or the statements of witnesses, as might have been recorded by the police during the course of investigation in the list of cases contained in paragraph 4, it was not incumbent on the part of the detaining authority to have supplied all that material to the detenu. It was also urged that firstly there was no delay in disposal of the representation submitted by the detenu and secondly whatever time has been taken stands amply explained by the Respondent State.

5. Mr. Konwar, learned Counsel for the detenu Petitioner referring to the detention order, Annexure-A submitted that there is no reference whatsoever in the impugned order of detention that the detenu could make a representation to the State Govt., all that it states is making representation against the detention order, if any, but to him the . representation has to be made has not been indicated in the impugned order of detention. It was however submitted that the representation as submitted by the detenu was promptly forwarded to the concerned authorities and mere omission to mention the designation of the authority or in its place the Sate Govt. is a matter of pure academics. The detenu having made a representation and the same having been processed and rejected, the point as raised by the Petitioner is essentially academic in nature.

6. Learned Counsel for the Petitioner also urged that there is no reference either in the detention order or in the grounds of detention as supplied to the detenu that he could as well make a representation to the Central Govt. who undoubtedly u/s 14 of the Act has the power to revoke the detention order.

7. So far as the omission to mention that the detenu has a right to make representation is concerned, it is not as if there is absolutely no reference whatsoever to such a right vesting in the detenu. The impugned order thus contain a reference to the making of a representation, of course, it is not that specific as to indicate to the detenu the authority to whom the representation is to be made.

8. The detenu as averred by him did submit the representation addressed to the Chief Secretary on 12.11.97, it is an admitted position that this representation was received by the State Govt. on 19.11.97 from the Office of the Superintendent, District Jail, Jorhat who is also a party to this petition. This representation was rejected by the State Chief Minister on 20th November, 1997, just the next day after it was received and the rejection order was communicated to the detenu on 27.11.97. So far as the State Govt. is concerned, representation as submitted on 12th November, 1997 and disposed by 20th of the same month although there appears to be some snag in the matter of despatch, the representation by the Jail Superintendent who in all fairness should have explained as to why the delay, if any, had been caused in sending the representation to the State Govt. Once it was received by the State Govt. there was no delay as such in disposal of the representation. The delay appears to have been caused in transit as can be gathered from the statement made in paragraph 3 of the affidavit filed by the Respondent State. Now so far as the Central Govt. is concerned, the representation as submitted by the detenu on 12.11.97 is stated to have been received by the Central Govt. in the concerned desk of the Ministry of Home Affairs on 5.12.97 through the Govt. of Assam. The relevant portion of the statement made in paragraph 6 of the affidavit filed by the Union of India is reproduced below:

It is stated that a representation dated 12.11.97 in from the detenu was received by the Central Government in the concerned desk of the Ministry of Home Affairs on 5.12.97 through Government of Assam. This representation was immediately processed for consideration and it was found that certain vital information required for its further consideration was needed to be obtained from the State Government through a crash wireless message dated 5.12.97.

9. It is the pleaded case of the Union of India that since some vital important fact was required for consideration of the representation, a wireless message was sent to the State Govt. on the same day i.e. on 5.12.97. Now this vital information as sought by the Central Govt. related to:

(i) the actual date of taking the detenu into custody;

(ii) the date of furnishing the ground of detention;

(iii) the information given by the Advisory Board.

10. Admittedly, the representation as submitted by the detenu on 12.11.97 was finally rejected by the Central Govt. on 26.12.97 after 46 days of the submission of representation. The explanation offered by the Union of India for delay, in view of the foregoing discussion, cannot be accepted. In fact all that was needed for disposal of the representation even otherwise available to the Union of India by way of a report as is required to be submitted by the State Govt. in compliance of Sub-section (5) of Section 3 of the Act and this report was admittedly submitted by the State Govt. on 31.1.97 itself. There is an apparent undue, unexplained delay on the part of the Central Govt. in disposing of the representation submitted by the detenu whose continued detention, cannot be sustained in law and it is liable to be quashed and accordingly quashed. Since the petition has been disposed of on the sole ground as noted above, we are not inclined to go into the other grounds as raised.