

(2005) 01 GAU CK 0045
In the Gauhati High Court

Kangjam Ongbi Ibethoi Devi

APPELLANT

Vs

Union of India and 3 Ors.

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Citation : (2005) 01 GAU CK 0045

Hon'ble Judges : M.B.K.Singh, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : Santa Khaidem, K.Kumar, Jalal Uddin, Advocates appearing for Parties

Judgement

Binoy Kumar, J.—By this petition under Article 226 of the Constitution, the petitioner is challenging the detention of her son, Shri Kangjam Manjor Meitei @ Thoi/Thoicha @ Irei, vide order dated 17/5/2004 passed by the District Magistrate, Bishnupur and continued detention of the detenu consequent upon approval and confirmation by the Government. The said detenu has been purportedly detained under N.S.A. with a view to prevent him from acting in any manner prejudicial to the security of the State and maintenance of public order. The detention order issued by the District Magistrate, Bishnupur was approved and confirmed by the Government on 25/5/2004 and 25/6/2004 respectively.

2. We have heard Mr. Santa Khaidem, learned counsel appearing on behalf of the petitioner, Mr. Jalal, learned Addl. Government Advocate appearing on behalf of the State respondents as well as Mr. K. Kumar, learned Addl. CGSC appearing on behalf of the Union of India.

3. The main ground of challenge against detention is that the representations submitted by the detenu were not disposed of promptly. According to the petitioner, the detenu submitted two representations on 5/6/2004 one for consideration of the Central Government and the another for consideration of the state Government through the Addl. S.P. Central Jail, Sajiwa and in respect of the representation made to the State Government, he was informed on 14/7/2004

about its rejection, but in respect of the representation made to the Central Government, he has not been informed if it has been disposed of or not. According to the State respondents, the State Govt. received the said two representations dated 5/6/2004 on 12/7/2004 as forwarded by the Jail authority on 9/7/2004 and the representation meant for the Central Govt. was forwarded to the Central Government after due process in the file on 19/7/2004 for consideration. No explanation is given as to why the representation made on 5/6/2004 was forwarded to the State Government by the Jail authority on 9/7/2004, i.e. after more than one month and how the said representations were received by the State Government only on 12/7/2004. The State Government apparently disposed of the representation made to it on 14/7/2004 i.e. within two days of receiving it. But, the problem is of unexplained delay of more than one month in placing the representation before the State Government for consideration. As per pleadings of the respondent No.1, the representation dated 5/6/2004 of the detenu was received by the Central Government only on 3/8/2004 without para wise comments of the State Government on the said representation and as such the State Government, vide Wireless messages dated 4/8/2004, 12/8/2004, 20/8/2004, 26/8/2004 and 2/9/2004, was requested to send the required parawise comments. However, according to the respondent No.1, the State Government forwarded the parawise comments on 9/9/2004 and after due process the concerned authority of the Central Government considered the said representations without delay and disposed of the same on 14/9/2004. Moreover, according to the respondent No.1, the detenu was informed of the decision of the Central Government by "Crash Wireless Message" dated 17/9/2004 through the Home Secy., Govt. of Manipur and the S.P. Central Jail, Manipur forwarded by a letter dated 20/9/2004. There is nothing to show that the officials of the State Government informed about the said decision of the Central Government to the detenu in connection with his representation.

4. Upon hearing the parties and on consideration of materials before the Court, we are of the opinion that the Central Government has dealt with the representation of the detenu with reasonable promptness by taking necessary steps for enabling disposal of it expeditiously as soon as it was received. However, we find that there was inordinate delay in forwarding the two representations dated 5/6/2004 only on 9/7/2004. The State respondents apparently think that no explanation is necessary in this regard. But, in our opinion, this unexplained and inordinate delay in dealing with the representations will have to be taken into account. There cannot be any doubt that the two representations were not forwarded with reasonable promptness required under the law. The Jail authority is a part of the State machinery and it is expected that the State Govt. will have to take appropriate steps so as to change the lackadaisical attitude on the part of the concerned Jail Official. It is also matter of great concern to find that the State Govt. failed to furnish the required parawise comments in respect of the representations to the Central Government with reasonable promptness despite repeated requests made in that regard

thereby making the provisions of Art. 22(5) ineffective. From the Additional affidavit in opposition on behalf of the State respondents, it is ascertained that the said para-wise comments were forwarded to the Central Government only on 26/8/2004.

5. The law enunciated by the Apex Court on the point is very clear. Hon'ble Supreme Court of India has repeatedly reiterated and restated about the need for prompt disposal of the representations. There is no specific time frame within which a representation is to be disposed of. What is really required is that there should not be any indifference or callousness in consideration and disposal of the representation and if no satisfactory explanation has been given or is found to be willful or wanton or supinely indifferent, it would be in the breach of the constitutional mandate of Art. 22(5). Liberty of a person guaranteed under Art. 21 of the Constitution is a cherished right and it can be deprived only in accordance with law. In our present case, the two representations made on 5/6/2004 were forwarded by the Jail authority on 9/7/2004 only, i.e. after more than one month of filing the representation. The representation dated 5/6/2004 meant for the Central Govt. was made available to the concerned authority of the Central Government only on 3/8/2004 i.e. after about two months of submitting it. Apart from that despite repeated requests from the side of the Central Government for sending para-wise comments, the concerned authority of the State Govt. furnished the required para-wise comments only on 9/9/2004. As per the additional affidavit in opposition of the State respondents, after receiving the first Wireless message from the Central Govt. on 5/8/2004, the District Magistrate, Bishnupur was requested on 6/8/2004 to furnish the para-wise comments on the said representation and the District Magistrate requested the S.P. Bishnupur on 11/8/2004 for the said para-wise comments. The District Magistrate, Bishnupur made the same request again to the SP/Bishnupur on 23/8/2004 and thereafter on receipt of the required comments, the same was submitted to the Secretary(Home), Govt. of Manipur on 23/8/2004. It is also said, the said para-wise comments were forwarded to the Central Government on 26/8/2004. The above said admitted fact clearly shows that there was inordinate delay in forwarding the para-wise comments by the State Government inasmuch as the delay made by the concerned S.P. and the District Magistrate is the delay made by the officials of the State Government. The fact remains that the two representations have not been dealt with reasonable promptness on the part of the officials of the State Government thereby there has been breach of the Constitutional mandate of Art. 22(5) of the Constitution.

6. For the reasons given above, the continued detention of the detenu is not sustainable in the eye of law. The impugned detention order and the subsequent approval and confirmation of the State Government are hereby quashed. The detenu, SHRI KANGJAM MENJOR MEITEI @ THOITHOICHA @ IREI, is to be released forthwith unless he is required to be detained in connection with any other case.

The writ petition is disposed of.

I agree.