
(2006) 08 GAU CK 0082
In the Gauhati High Court

Khaidem Menan Meitei @ Yaiphaba

APPELLANT

Vs

District Magistrate Imphal West, Manipur and Ors.

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2006) 08 GAU CK 0082

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

Bench : Division Bench

Advocate : K.Kumar, Ibohal, Dolen Phurailatpam, Advocates appearing for Parties

Judgement

M.BK, J.—Heard Mr. Dolen Sharma, learned counsel appearing on behalf of the petitioner and Mr. Ibohal, learned Addl. G.A. appearing on behalf of the Govt. respondents as well as Mr. K. Kumar, learned counsel appearing on behalf of the respondent No.3.

2. On perusal of the materials before the Court and upon hearing the parties through their respective counsel, the following basic facts are ascertained. That, on 15.4.06, District Magistrate, Imphal West District, Manipur passed an order being No.Cril./NSA/No.7 of 2006 directing for detention of Shri Khaidem Menan Meitei @ Yaiphaba (hereinafter refers to as the petitioner) under section 3(2) of the National Security Act, 1980 until further orders purportedly with a view to prevent him from acting in any manner prejudicial to the security of the State and maintenance of public order. The above said detention order was approved by the State Government, vide order No.17(1)/996/06H, dated 25.4.06 issued by the Special Secretary(H), Govt. of Manipur. Thereafter, the State Govt. vide order No.17(1)996/06H dated 25.5.06 issued by the Joint Secretary(H) to the Govt. of Manipur confirmed the said detention of the petitioner under National Security Act,1980 and fixed 12 months from the date of detention as the period of his detention.

3. One of the grounds submitted by the petitioner's counsel challenging the

legality of the detention of the petitioner is that the Central Govt. has failed to consider the report of the State Govt. submitted u/s 3(5) of the National Security Act.

4. We have considered the submissions of the petitioner's counsel in the light of the decisions of a Full Bench of this Court in *Hitendra Nath Goswami Vs State of Assam & Ors*, 1984 Cril. Law Journal 1558 wherein the Full Bench, while dealing with exercise of discretionary power of the Central Government u/s 14(1) in the context of section 3(5) of the National Security Act held at Para 22 and 23 as follows:

22. It is for the Central Government to revoke or not the detention order in exercise of its discretionary power under S.14 (1) of the Act, on receipt of the report from the State Government; but to borrow the words of Lord Pearce in *Padfield's* case (19681 All ER 694), the Central Government cannot "throw it unread into the waste paper basket." The report is intended to be considered with reasonable expedition; any delay in the matter due to negligence, callous inaction, avoidable redtapism and unduly protracted procrastination would defeat the intention of the Parliament, See *Sabir Ahmed* (19803 SCC 295) (*supra*). As such, non consideration of the report by the Central Government with expedition would be a breach of the procedural safeguard provided by the Act, as an additional check against the improper exercise of power of detention by the detaining authority and thereby violate Art. 21. It is a case where the Central Government may be considered to have failed to understand the object and scope of S.14 (1) read with S.3 (5) of the Act and of its function and duties thereunder.

23. To construe otherwise will also attract the vice of arbitrariness and unfairness which are the sworn enemies of equality guaranteed under Art.14 of the Constitution, one procedure on representation made by the detenu to the Govt. and a different procedure on the report received from the State Government under S. 3(5) of the Act. I may recall here the statement of law enunciated by the Supreme Court in *Menaka Gandhi V. Union of India*, AIR 1978 SC 597, where it is laid down that the procedure must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise it would be no procedure at all and requirement of Art.21 would not be satisfied.?

5. We have also perused the decision of this Court in *Somi Angkang Vs Union of India* 1985 (2) GLR 1 Gopal Boro @ Gwojen Boro Vs. Union of India 2005(3) GLT 33 wherein the above said decision of the Full Bench of this Court reported in 1984 Cril. Law Journal 1558 has been followed. On the basis of the said decisions of this Court, it is well settled that discretionary power of the Central Govt. u/s 14(1) of the NSA in the context of section 3(5) of the same Act is coupled with duty to consider the report received from the State Government with reasonable expedition, notwithstanding that no representation/petition has been made by the detenu to the Central Government and in case of breach of such procedural safeguards, the detention order is liable to be set aside and the detenu is to be

set at his liberty.

6. In Para 4 of the counter affidavit of the respondent No.3, it is said that the report as envisaged u/s 3(5) of the N.S.A. about the detention of Shri Khaidem Menan Meitei was made by the Govt. of Manipur to the Central Government in the Ministry of Home Affairs vide their letter No.17 (1)996/06H dated 27.4.06. Further, according to the counter affidavit, the said report was received in the concerned Section in the Ministry of Home Affairs on 18.5.06 and the position was noted by the concerned O.S.D.(S) who has been authorized to take note u/s 3(5). Nothing is said if the said report was considered by the Central Govt. In fact, it is not even stated that the report was placed before the concerned authority, who was competent to deal with it on behalf of the Central Government. Since the report was not even placed before the concerned authority, there was no question of consideration of it for the purpose of revocation or otherwise of the detention of the petitioner under National Security Act, 1980.

7. In the light of the decisions of this Court in Hitendra Nath Goswami (supra), Somi Angkang Vs Union of India 1985 (2) GLR 1 Gopal Boro @ Gwojen Boro Vs. Union of India 2005(3) GLT 33 what was required on the part of the Central Government was to consider the report submitted to it u/s 3(5) of the N.S.A. with reasonable expedition. Further, on the basis of the said decision, failure to consider such a report will amount to violation of procedural safeguards of the concerned detenu and as such his detention will be liable to be set aside.

8. For the reasons given above, the detention of the petitioner under the impugned detention order is liable to be interfered with and its approval and confirmation is liable to be set aside. Accordingly, the impugned order of detention passed by the District Magistrate, Imphal West, Manipur, its approval and confirmation orders passed by the State Govt. are hereby set aside. The petitioner is to be released at his liberty immediately unless he is required to be detained in connection with any other case.

8. This writ petition is allowed. No order as to costs.