

(2006) 01 GAU CK 0031
In the Gauhati High Court
Case No : WP (C) No. 35 of 2005 (PS)

Konsam Brojen Singh @ Basan

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 8(1)

Citation : (2006) 1 GLT 371

Hon'ble Judges : T.N.K. Singh, J;B.S. Reddy, J

Bench : Division Bench

Advocate : Dolen Phurailatpam, for the Appellant; A. Potsangbam and S. Sarma, SC, for the Respondent

Judgement

T.N.K. Singh, J.—Mr. A Potsangbam, learned Advocate General, Manipur in pursuance of the order of this Court dated 18.1.06 has assisted this Court in considering the important questions of law-

i) Whether right of the detenu under National Security Act guaranteed under Article 22(5) of the Constitution of India has conferred on him the right to file representation to the detaining authority in addition to his right to file representation u/s 8(1) of the National Security Act to the appropriate Government?

ii) If so, whether failure of the detaining authority and the appropriate government to inform the detenu of such right shall vitiate the detention order under National Security Act?

2. The learned Advocate General has answered in the negative by referring to the Division Bench decision of this Court in Thounaojam Lukhoi Singh Vs. District Magistrate and Others, and the decision of the Apex Court in Veeramani Vs. State of T.N., and Amin Mohammed Qureshi Vs. Commissioner of Police, Greater Bombay,

3. This Court in Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. (Supra) in a clear term held:

Unlike in COFEPOSA and NDPS Act, in the case of detention under National Security Act, a specific provisions has been made in Section 8(1) of the Act that a representation against the order of detention must be made to the appropriate Government. Therefore, the arguments that such representation can also be made to the detaining authority is not well founded.

4. The Division Bench of this Court in W.P. (CrI) No. 20/2001 decided on 6.08.02 and in Ahanthem Mema @ Nirmala Devi v. District Magistrate, Imphal and Ors. 2004 (1) GLT 633 and Thanglenmang Hangsing Vs. District Magistrate and Others, took the views contradictory to the decision of this Court in Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. (supra) and held that the detenu under the National Security Act has the right guaranteed under Article 22(5) of the Constitution to make representation against the detention order to the detaining authority and the failure on the part of the detaining authority to inform such right to the detenu shall vitiate the continued detention of the detenu. Considering the said contradictory views of the different Division Benches of this Court the questions - (i) whether the judgment passed by a Division Bench of the Court in Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. (supra) holding that the detenu under the NSA has no right to make a representation to the detaining authority is valid in view of the decision of the Apex Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, as well as the decision of the Division Bench of this Court passed in W.P. (CrI) No. 20/01 decided on 5.8.02 had been referred to the Full Bench in W.P. (CrI) No. 44/2002 (Gauhati)/W.P. (CrI) No. 9/2002 (Imphal). The Full Bench of this Court had answered the point by passing the judgment and order dated 13.4.2005:

It is, therefore, evident that the rights guaranteed to a detenu under Article 22(5) of the Constitution being the Fundamental Right available to such detenu, such right has to be read into any law dealing with preventive detention even if no such right has been conferred by any such law relating to preventive detention. In other words, even if the provisions of National Security Act do not confer any right on the detenu to make a representation to the detaining authority and has given a right to make representation, u/s 8(1), to the appropriate government the constitutional right of the detenu guaranteed under Article 22(5) of the Constitution cannot be taken away as it is the Fundamental right conferred on such detenu by the Constitution to make representation to the detaining authority.

In view of the above, we are constrained to hold that the decision of the Division bench of this Court in Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. (supra) is not a good law as the same is contradictory to the constitutional requirement under Article 22(5) of the Constitution and also the law laid down by the Apex Court.

5. The Full Bench of this Court while deciding the W.P. (Crl) No. 44/2002 (Gauhati) by passing judgment and order dated 13.4.2005 had not taken into consideration of the decision of the Apex Court in *Veeramani v. State of T.N.* (Supra) whereunder the Apex Court in a clear term in paragraph 17 of the judgment held that:

17. However, here may be scope to contend that even within 12 days, the detaining authority has the power to revoke and therefore in view of the safeguards provided under Article 22(5) the detenu if told, can make a representation within that period to the detaining authority in which case it would be under an obligation to consider the same. It may be noted that Article 22(5) casts an obligation on the detaining authority to communicate to the detenu the grounds and to afford to the detenu the earliest opportunity of making the representation. The article does not say to whom such representation is to be made but the right to make a representation against the detention order undoubtedly flows from the constitutional guarantee enshrined therein. The next question as to whom such representation should be made, depends on the provisions of the Act and naturally such a representation must be made to the authority who has power to approve, rescind or revoke the decision. To know who has such power, we have to necessarily look to the provisions of the Act. So far as the Tamil Nadu Act with which we are concerned, we have already noted that any detention order made by the empowered officer shall cease to be in operation if not approved within 12 days. Therefore, it is clear that the Act never contemplated that the detaining authority has specific power to revoke and cannot be inferred that a representation can be made to it within the meaning of Article 22(5). The provisions of the Act are clear and lay down that the detention order has to be approved within 12 days and where there is no such approval, it stands revoked. Therefore the representation to be made by the detenu, after the earliest opportunity was afforded to him,, can be only to the Government which has the power to approve or to revoke. That being the position the question of detenu being informed specifically in the grounds that he had also a right to make a representation to the detaining authority itself besides the State Government does not arise.

6. We are of the tantative view that the decision of the Division Bench of this Court in *Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors.* (supra) is in conformity with the ratio laid down by the Apex Court in *Veeramani v. State of T.N.* (Supra).

7. In a multi judge court judicial propriety demands that the decision by the coordinating Larger Bench is blinding on Smaller Bench. We are of the considered view that the present two important questions formulated above are required to be decided by a Larger Bench. Accordingly the matter shall be placed before the Hon"ble Chief Justice for referring the two important questions of law formulated - i) Whether right of the detenu under National Security Act guaranteed under Article 22(5) of the Constitution of India has conferred on him the right to file

representation to the detaining authority in addition to his right to file representation u/s 8(1) of the National Security Act to the appropriate Government and (ii) If so, whether failure of the detaining authority and the appropriate government to inform the detenu of such right shall vitiate the detention order under National Security Act? to a Bench of appropriate strength for decision.

8. Having regard to the substantial questions of law that arise for our consideration we consider it appropriate to direct notice to be issued to the learned Advocate General of Assam and the learned Advocate General of States of Nagaland, Meghalaya, Tripura and Mizoram to assist the court. We also request Mr. N. Dutta, learned Senior Advocate to assist the court as Amicus Curiae for which he readily consented. The Registry is accordingly directed to issue appropriate notice alongwith a copy of this reference order.