

(2006) 12 GAU CK 0070

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 31 of 2006

L. Manichandra @ Chinglen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Maintenance of Internal Security Act, 1971 — Section 3(1)
National Security Act, 1980 — Section 3, 3(1), 3(2)

Citation : (2008) GLT 361 Supp

Hon'ble Judges : B. Sudershan Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Advocate : D.K. Mishra, A. Dutta, S. Jahan and J. Rahman, for the Appellant; D. Das and Khro, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The Petitioner, who has been detained under the provision of the National Security Act, 1980, by the present writ petition is challenging the order passed by the detaining authority, namely the Special Secretary to the Government of Nagaland, dated 31.07.2006 detaining him under the provision of Section 3 of the National Security Act, 1980 (in short, "the Act"), purportedly with a view to prevent him from acting in any manner prejudicial to the security of State of Nagaland and maintenance of the public order.

2. The order of detention dated 31.07.2006 was served on the Petitioner while he was in custody in connection with some other criminal cases along with grounds of detention as well as the particulars in support of the grounds of detention. The Petitioner was also served with a letter dated 21.07.2006, addressed by the Additional Deputy Commissioner (Head Quarter) to the Principal Secretary (Home), forwarding the proposal of the Deputy Commissioner dated 14.07.2006 for detaining the Petitioner under the provision of the Act; letter dated 14.07.2006, addressed by the Deputy Commissioner, Dimapur to the Additional

Chief Secretary and the Commissioner, Nagaland, forwarding the proposal for detention; letter dated 11.07.2006, addressed by the Superintendent of Police, Dimapur to the Deputy Commissioner initiating the proposal for detention of the Petitioner; the arrest/court surrendered form dated 22.06.2006 containing the particulars regarding the writ Petitioner; the FIR dated 22.06.2006 lodged by the Officers In-charge, West Police Station; the FIR dated 22.06.2006 lodged by the Dimapur Police; the format for interrogation of the writ Petitioner and 5 numbers of seizure memos in respect of the writ Petitioner and another seizure memo in respect of one Priyananda Meitei. The Petitioner vide the communication dated 31.07.2006 was also informed of his right to make a representation to the detaining authority, Central Government and also the State through concerned jail authorities and accordingly the representation was submitted by him on 07.08.2006 to the Special Secretary, Government of Nagaland, Home Department, the detaining authority through the Superintendent, Central Jail, Dimapur, where he has been detained in custody. The said representation has been rejected by the detaining authority, namely the Special Secretary, on 18.08.2006. Meanwhile, the representation of the Petitioner was also placed before the Advisory Board on 04.09.2006, where he was heard personally and such order of detention was confirmed vide order dated 07.09.2006, on the basis of the report of the Advisory Board. The Petitioner therefore, has filed present writ petition seeking a writ of habeas corpus.

3. We have heard Mr. D.K. Mishra, the learned Sr. counsel for the Petitioner, Mrs. Khro, the learned State counsel appearing on behalf of the detaining authority as well as the Respondent No. 2 and 4 and Mr. D. Das, the learned Central Government counsel appearing on behalf of the Union of India, Respondent No. 1.

4. Mr. Mishra, the learned Sr. counsel challenging the order of detention passed by the detaining authority, namely the Special Secretary, has made a number of submissions, namely the non-application of mind on the part of the detaining authority to the materials placed before it; non placing of all relevant materials before the detaining authority to arrive at a subjective satisfaction before passing the order of detention; non-supply of the materials placed before the detaining authority to the Petitioner; taking into account the materials which were the basis for passing the earlier order of detention under the Act; unexplained delay of 11 days in disposal of the representation by the detaining authority as well as non-consideration of the representation by the Central Government on the plea that the same has not been addressed to any authority of the Central Government. Mr. Mishra, the learned Sr. counsel has also referred to a numbers of decisions of the Apex Court in support of his contention. But first we propose to deal with the submission of the learned Sr. counsel for the Petitioner, on the point of non placing the entire materials before the detaining authority to arrive at his subjective satisfaction for the purpose of passing an order of detention under the Act and non-supply of such materials to the detinue, even if, those were placed before the detaining authority, which according to the learned Sr. counsel for the Petitioner reflects non-application of mind by the detaining

authority as well as denial of the opportunity to make effective representation to the authority concerned, thereby violating the fundamental right guaranteed under Article 22(5) of the Constitution of India. The learned Sr. counsel referring to the grounds of detention as well as the particulars in support of such grounds, which have been supplied to the detainee has submitted that it is apparent from the said particulars furnished by the detaining authority in support of the grounds that there were some materials including huge number of CD's, electronic gadgets, books on military operations on Artillery, IEDs Commando operations, Intelligence, revolutionary books, maps etc., which were in possession of the detainee when he was arrested on 21.06.2006 from hotel Evelyn, Dimapur in West P.S. Case No. 55/2006. According to the learned Sr. counsel, it is evident from the proposal submitted by the Superintendent of Police for detention of the Petitioner under the Act that those materials were never placed before the detaining authority and the said authority in a most mechanical manner without going through those materials has passed the order of detention which amounts to total non-application of mind on the part of the detaining authority, while passing such order of detention. It has further been contended by the learned Sr. counsel that it is apparent from the particulars in support of the ground furnished to the detainee by the detaining authority that the said authority was influenced by those materials, in passing the order of detention and therefore, those were in any case have to be supplied to the Petitioner, non-supply of which amounts to violation of his right guaranteed under Article 22(5) of the Constitution.

5. The learned State counsel relying on the affidavit filed by the Under Secretary to the Government of Nagaland, Department of Home (Political Branch) as well as the record produced before this Court has submitted that all the materials which were placed before the detaining authority namely, the Special Secretary, who upon consideration of those formed his satisfaction for the purpose of passing an order of detention under the Act, were supplied to the Petitioner. According to the learned State counsel the copy of the two FIRs, joint interrogation report, seizure memos, the proposal initiated by the Superintendent of Police for detention under the Act, the Deputy Commissioner letter's dated 14.07.2006 to the Additional Chief Secretary cum Commissioner as well as the letter dated 21.07.2006 of the Additional Deputy Commissioner, Office of the Commissioner to the Principal Secretary (Home) were admittedly supplied to the Petitioner and those being the materials on the basis of which the detaining authority formed his satisfaction, it cannot be said that the relevant materials were not supplied to the detainee.

6. It is evident from the grounds of detention and also the particulars in support of such grounds of detention furnished by the Special Secretary to the Government of Nagaland to the detainee that the detaining authority was influenced by some materials including the CDs and other recovered from the possession of the detainee when he was arrested on 21.06.2006 from a hotel in Dimapur in connection with West P.S. Case No, 55/2006. The records produced

before this Court by the State Respondents reveal that none of those materials which were seized in connection with the said Police Station Case from the possession of the detainee were made available of the detaining authority for forming his subjective satisfaction, whether the order of detention under the provision of the Act is required to be made or not. Had those materials been placed before the detaining authority, the said authority upon consideration of such materials may or may not have passed the order of detention under the Act. It is evident from the particulars in support of the grounds furnished to the detainee that the detaining authority while forming his subjective satisfaction was influenced by those materials as mentioned by the Superintendent of Police in the proposal initiated by him vide communication dated 11.07.2006, as those were mentioned in his said proposal without enclosing the materials recovered and placing the same before the detaining authority.

7. The records produced by the State Government also reveals that in fact, the detaining authority namely, the Special Secretary to the Government of Nagaland, has not arrived at his independent satisfaction about the requirement of passing an order of detention under the Act, but such satisfaction was in fact formed first by the Principal Secretary (Home), who vide note dated 26.07.2006 recorded the satisfaction that there are "adequate cogent grounds for his detention under the provision of Section 3(1) and (2) of the NSA 1980". The Principal Secretary (Home) thereafter, placed the matter before the Chief Secretary for his approval and accordingly the Chief Secretary has simply approved the same on the same day, i.e. 26.07.2006, which was ultimately sent to the Special Secretary (Home) through the Principal Secretary on 28.07.2006. The Special Secretary (Home) thereafter, on 31.07.2006 directed to place the draft order of detention and accordingly draft order of detention, grounds of detention and the schedule were put up before the Special Secretary on 31.07.2006, which having been approved, the order of detention was directed to be issued and accordingly the same was issued. In the instant case there is no dispute that the Special Secretary, Government of Nagaland (Home) is the detaining authority as the order of detention was passed by him on 31.07.2006 under Sections 3(1) and (2) of the Act. It is also evident from the order dated 18.08.2006 (Annexure-2 to the affidavit in opposition filed by the State Respondents) as well as the statement made in the said affidavit that the Special Secretary to the Government of Nagaland is the detaining authority and he has passed the order of detention under the Act.

8. As discussed above, the record reveals that in fact the detaining authority has not formed any subjective satisfaction for issuance of the order of detention and such satisfaction was of the Principal Secretary to the Government of Nagaland as well as the Chief Secretary.

9. In any case, as discussed above, all the materials namely, the materials, which were seized from the possession of the Petitioner on 21.06.2006 at the time of his arrest in connection with the West P.S. Case were neither placed

before the Special Secretary/Principal Secretary (Home)/Chief Secretary nor were supplied to the Petitioner. Even if, the Special Secretary to the Government of Nagaland is not the detaining authority and the detaining authority is either the Principal Secretary (Home) or the Chief Secretary, then also the order of detention cannot stand the scrutiny of law as the relevant materials were not placed before the detaining authority and also not supplied to the Petitioner/detenué, which amounts to non-application of mind on the part of the detaining authority as well as the violation of the fundamental right guaranteed to the Petitioner under Article 22(5) of the Constitution, to make an effective representation against the order of detention.

10. The Apex Court in Krishna Murari Aggarwala Vs. Union of India (UOI) and Others, while dealing with the provision of Section 3(1) of the Maintenance of Internal Security Act, 1971, has observed that the order of detention required to be passed under the said provision of law can only be by one authority and one authority alone can pass such order of detention. The same analogy is also applicable in the present case. The Apex Court in Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others, has held when the copies of the relevant materials are not supplied to the detenué it results in violation of the fundamental right guaranteed to him under Article 22(5) of the Constitution, under which he has the right to make an effective representation against the order of detention.

11. This Court, in view of the aforesaid discussion has not gone into the other points raised by the learned Sr. counsel for the writ Petitioner challenging the order of detention, as the order of detention cannot stand in the eye of law because of the reasons stated above.

12. In view of the aforesaid discussion, we are of the considered opinion that the order of detention dated 31.07.2006 passed by the Special Secretary to the Government of Nagaland (Home), is bad in law as the same suffers from non-application of mind by the detaining authority as well as for non-affording effective opportunity to the detenué to make representation against the order of detention by not supplying the copies of all the materials which influenced the detaining authority in forming his subjective satisfaction. Hence the order of detention as well as the subsequent order of conformation of detention are set aside. The detenué is set at liberty if not wanted in any other case.

13. The writ-petition is accordingly allowed.

14. No cost.