
(1987) 12 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule (HC) No. 319 of 1987

Leishangthem Ongbiibemhal Devi	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

National Security Act, 1980 — Section 10, 10, 3(5), 3(5)

Citation : (1988) 1 GLJ 232

Hon'ble Judges : J.M.Srivastava, J and R.K.Manisana Singh, J

Bench : Division Bench

Advocate : R.P.Kakati, Kh.Chonjohn Singh, K.Irabort Singh, Advocates appearing for Parties

Judgement

Manisana, J.—By this application under Article 226 of the Constitution of India, the petitioner Leishangthem Ongbi Ibemhal Devi has challenged the detention of her son Leishangthem Jiban @ Jivan Singh under the National Security Act, 1980, for short the Act".

2. The detenu was ordered to be detained by the District Magistrate Imphal on 19.1.87 at the time while the detenu was already in Jail in connection with other criminal cases. On 31.1.87 the Government of Manipur approved the detention order. The detenu submitted a representation, dated 31.1.87, which was received by the Superintendent of Manipur Central Jail and the Superintendent in his turn sent the representation to the State Government on 2.2.87. The State Government received the representation on 2.2.87 and rejected it on 7.2.87 after consideration. The detenu was informed of the rejection of his representation on 10.2.87. The grounds of detention and other relevant Documents except the representation were placed before the Advisory Board on 5.2.87. Although the representation was not placed before the Advisory Board on 5.2.87, the State Government forwarded the representation on 10.2.87 to the Advisory Board for its consideration The Advisory Board held its sittings on 27.2.87 and 28 2,87. The Board, after hearing the detenu in person and

considering all the relevant documents including the representation, submitted its report on 28.2.87. Acting on the report of the Board, the State Government confirmed the detention order on 9.3.87 and fixed the period of detention for 12 months from the date of detention.

3. The grounds of detention are as follows :

?I(a) That just after O. Mohan Singh of Singjamei Okram Leikai who was an extremist was released from the Jail on 16.2.86, You started to carry out contract works jointly with S/Shri S. Premkumar Singh and O. .Mohan Singh. In due course through them you came in contact with the K C.P.Members viz. Y.Manao @ Mahi of Khurai Sajor Leikai, A. Ibomcha Singh @ Kale of Khurai Thoidingjam Laikai, O. Kenady Singh of Khurai Thoudam Leikai and R. K. Ronel Singh of Singhjamei Sapam Leikai. Ail of you decided to revive the outlawed organisation namely the K. C. P. under the leadership of Shri Y. Manao @ Man @ Inaomacha Singh. In order to raise the party fund of the K.C.P. you all made plans to loot cash and gold from rich persons of Singhjamei area and Khurai area. I(b). In pursuance of that plan you took part in committing the following decoities.

(i) Looting of one gold necklace and a pair of earrings from the daughterinlaw of Shri Th. Ibobi Singh of Haobam Marak Keisam Leikai and one gold ring with some amount in cash from Shri Th. Ibobi Singh on 13.4.86 as suggested by Shri O. Mohan Singh.

(ii) Looting of gold ornaments and the wrist watch worthing about Rs. 14.100/ and cash of Rs. 1,300/in cash from the house of Shri Y. Lalbapu Singh of Khurai Thoidingjam Leikai on 15.4.86 at about 630 P.M. as suggested by Sttri A. Ibomcha Singh @ Kale

I(c). That you were arrested on 22.11.86 and remanded to the judicial custody on 1.12.86. You were identified in the T.I parade held on 18.12.86 by Shri Y.Lalbapu Singh.

I(d). That you were released on bail by the court on 12.1.87. You were rearrested as a suspect on 12.1.87 in connection with a dacoity case vide FIR No. 339 (9) 86 Lamphel P.S. in which on 1.9.86 at about 10.15 a.m. eight youths looted gold ornaments and other valuable articles of the total value of about Rs. 65, 444/ from the house of Shri N. Narahari Singh of Khurai Thoudam Leikai at gun point and you were remanded to the judicial custody on 13.1.87.

I(e). It is very likely that you be would released on bail by the court at anytime. In view of your prejudicial activities in the proximate past it can reasonably be anticipated that you would continue to act in the manner prejudicial to the security of the state and maintenance of the public order in case you be released on bail. Thus the application of the normal criminal laws against you is not effective at all for preventing you from the prejudicial activities. An alternative preventing measure by detaining you under the N.S.A. is therefore immediately

called for."

4. The contention of the learned counsel for the petitioner is that merely on the ground that the accused in detention as an undertrial prisoner was likely to get bail, an order of detention under the Act should not be passed.

5. The learned counsel has drawn our attention to the ground 1 (e) and has submitted that the ground I(e) clearly shows that the detenu would be released on bail by the Court at any time, and that the order of the detention was made as the detaining authority was apprehensive that, in case the detenu was released on bail, he would again carry on his alleged activities. Therefore, the detention order was passed merely on the ground that if the petitioner is released on bail, he would again carry on his alleged activities. In such a situation, the bail application had to be opposed and it would not be a ground for detention

6. In support of his contention, he has referred us to a decision of the Supreme Court in *Ramesh Yadav v. District Magistrate*, AIR] 986 SC. 315, in which it has been held :

"Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

7. It is important to note that Supreme Court in *Suraj Pal Sahu vs. State of Maharastra*, AIR 1986 SC. 2177 has explained the decision in *Ramesh Yadav* by observing that principle enunciated by the decision in *Ramesh Yadav* will have to be judged and applied in the facts and circumstances of each case.

8. We are of the view that *Ramesh Yadav*'s case will not be applicable to the present case as the facts are not same. A reading of the judgment shows that all grounds were not available to be used in the order of detention for the reasons given therein and that in addition to the grounds of the detention, reference was made to the fact that if the detenu was released on bail, the detenu will indulge in the activities prejudicial to the maintenance of public order. In that context, the Supreme Court has held that merely in the grounds that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the act should not ordinarily be passed

19. In our judgment in ground I(e), the detaining Authority has only shown his awareness of The criminal cases. Otherwise, the detention been dealt with all reasonable promptness and decision is to be decided not by the application of any rigid or inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of the facts and circumstances of each case ; if on such examination it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu, on the other hand, if the Court is

satisfied that the delay was occasioned not by any lack of diligence or promptness of attention on the part of the party concerned, but due to unavoidable circumstances or reasons entirely beyond his control, such delay will not be treated as furnishing a ground for the grant of relief to the detenu against his continued detention""

(emphasis added)

15. It would be useful at this stage to refer to the decision of the Supreme Court in State of Rajasthan vs. Shamsheer Singh AIR 1985 SC. 1082. In that case the detenu was ordered to be detained by the Government of Rajasthan on 14.8.84, and the detenu was taken into custody on 15.8.84. On 22.8.84, the State Government placed before the Advisory Board the grounds on which the order of detention had been made. By then no representation had been made and, therefore, there was no occasion for causing any representation to be placed before the Board. The detenu made a representation on 28.8.84 which was received by the Superintendent of the Jail where the detenu had been lodged and the same was received by the State Government on 30.8.84. The representation was placed before the Advisory Board on 6.9.84. On receipt of the reference, the Board directed its sitting to be convened on 10.9.84. There was no dispute that there was delay in placing the representation before the Board under section 10 of the Act.

16. The Supreme Court has, relying on the above decisions, held :

".....however mandatory provision may be, where it is impossible of compliance that would be a sufficient excuse for noncompliance, particularly when it is a question of time factor. Keeping the attendant circumstances of this case in view, we find it difficult to hold that the time taken by the State Government can amount to withholding the representation which has resulted in noncompliance of S. 10 of the Act so as to vitiate the detention."

17. We may also refer to another decision of the Supreme Court in the State of U. P. vs. Mahant Singh, AIR 1986 SC. 207, In that case also the Supreme Court has, relying on the decision in Shamsheer Singh's case (Supra), held :

"In the matter before us, August 28, 1981 was the last date of three weeks from the date of detention but the representation had been placed before the Board on August 29, 1981. There has been an assertion on behalf of the State Government that the representation was forwarded to the Board on August 28, 1981, and seems to have been received there on the following day. In the face of these facts, the ratio in Shamsheer Singh's case is applicable and the High Court should not have quashed the order of detention."

18. What have emerged from the above decisions of the Supreme Court with regard to section 10 of the Act are as follows. The representation must be forwarded to the Advisory Board before the Board made its report. Whether the representation submitted by a detenu has been dealt with all reasonable

promptness and diligence is to be decided not by the application of any inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of facts and circumstances of each case. Under the doctrine of impossibility of performance (*lex non cogit ad impossibilia*), however mandatory the provision may be, where it is impossible of compliance that would be a sufficient excuse for noncompliance, particularly when it is a question of the time factor.

19. Turning to the present case, as already stated, the (representation was considered by the State Government before it was placed before the Board Placing of representation by the State Government without its consideration would give rise to a question whether the detention order was vitiated. The representation was sent to the Board on 10. 2. 87 before due date which fell " on 12. 2. 87 The Board considered the representation and other (material and made its report on 28. 2. 87. In the circumstances of the case, we are of the view that the ratio of the above decisions of the Supreme Court will be applied in the present case, and that there was sufficient compliance with the provisions of section 10 of the Act.

20 It is next contended on behalf of the petitioner that the report by the State Government under section 3 (5) of the Act was not received by the Central Government within the prescribed] 7 days and as such, there was infraction of section 3 (5) of the Act.

21. Under subsection (5) of section 3 of the Act, when any order is made or approved by the State Government under section 3, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such" other particulars as, in the opinion of the Government, have a bearing on the necessity for the order.

22. In the present case, (the 7th day fell on 7.2.87. The State Government reported the fact of detention on 2.2.87 by wireless message. The State Government forwarded the grounds of detentions and other relevant documents, as required by section 3 (5), on 6. 2. 87 by registered post. The Central Government received the same on 9.2.87. The petitioner's counsel has submitted that under section 3 (5) the same should reach the Central Government on or before 7.2.87, but not on 9.2.87. Therefore, there was noncompliance with the provisions of section 3 (5) of the Act.

23. The learned counsel for the petitioner has relied on a decision of the Bombay High Court in *Vinayak Ramchandra vs. Commissioner of Police*, 1985, Cri. L. J. 1257 (DB), in which the Bombay High Court has held that under section 3 (5) of the Act, unless the report sent by the State Government reaches the Central Government within the prescribed period of 7 days it cannot be said that there was compliance with the provisions of section 3 (5) of the Act. Mr. R. P. Kakati, the learned Additional Central Government Standing Counsel, has relied on the decision of the Patna High Court, as reported in *Jogendra vs. State of Bihar*, 1985

Cri. L. J. 889 (DB). In that case the Patna High Court has held that the contention that the report ought to have reached the Central Government within 7 days mentioned in section 3 (5) cannot be accepted because the obligation imposed on the State Government under section 3 (5) of the Act is that the State Government shall send the report and it is not that the report should reach within the period of 7 days.

24. Section 3 (5) of the Act has not provided as to how to report the facts to the Central Government. In Craies on Statute Law, 17th Edition at page 111, it is stated:

"If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of .the work which the statute had in contemplation, the courts are at liberty to infer that the statute by implication empowers that detail to be carried out."

In such a case the report can be sent by registered post, wireless message, telegram, telex, or through a messenger. Therefore, in the light of the passage quoted above we hold that sending the report by registered post is one of the methods of reporting.

25. The question then is, Whether the report sent by registered post should reach the Central Government within 7 days from the date when the detention order is made or approved by the State Government ? At this stage it would be useful to refer to section 3 (4) of the Act. Section 3 (4) of the Act reads as follows I

"(4) When any order is made under this, section by an officer mentioned in subsection (3)s he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making therefore unless. in the meantime it has been approved by the State Government Provided that where under section 8 the ground of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this subsection shall apply subject to the modification that, for the words "twelve days" the words "fifteen days" shall be substituted." (emphasis added)

Under section 3 (4) of the Act, the officer, who is authorised to make detention order, shall report the fact of making the detention order within the times prescribed therein and if the report is not received by the State Government within the prescribed time limit, the detention order shall cease to exist after the prescribed time. In both section 3 (4) and section 3 (5) the expression "report the fact" is used. In section 3 (4), it is indicated that the report must reach the State Government within the prescribed time limit. But, in section 3 (5), such time limit that the report must reach the Central Government has not been indicated. Therefore, in the context of section 3 (5), the word "report" means "to

make a formal report". In such a situation under section 3 (5) of the Act, the State Government has to make the report to the Central Government within the said period of 7 days, but section 3 (5) does not show that the report should reach the Central Government within any prescribed time unlike section 3(4) of the Act. For the reasons stated, in our judgment, if the report is dispatched within the said period of 7 days, there is compliance with the requirements of the section 3 (5) of the Act. In this view of the matter, we /respectfully unable to agree with the decision of the Bombay HighCourt and agree with the decision of Patna High Court. In the present case the report was dispatched within the prescribed period of 7 days and, therefore, there was compliance with the provisions of section 3 (5) of the Act.

26. The last contention of the learned counsel for the petitioner is that the Central Government has not considered all the documents and materials sent by the State Government to the Central Government. On perusal of the affidavit filed by the Central Government, it shows that all the documents and materials were considered. In this view of the matter the contention of the learned counsel is not tenable

27. For the forgoing reasons [the petition is dismissed.