

(1999) 06 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (Criminal) (HC) No. 30 of 1999

Maheswar Brahma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Arms Act, 1959 — Section 25(1A), 27(3)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 120B, 121, 153(A), 153(B), 302

Citation : (1999) 2 GLT 464

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : K. Agarwal, D.K. Chomal and B.K. Sarma, for the Appellant; B.C. Das, Addl. Sr. G.A. and K.K. Mahanta, Sr. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—Heard Mr. K. Agarwal, learned Counsel for the Petitioner and Mr. B.C. Das, learned Addl. Sr. Govt. Advocate, Assam and Mr. K.K. Mahanta, learned Sr. Standing Counsel for Union of India, appearing for the Respondents.

2. This petition is preferred against the order of detention of the detenu, Shri Swamdown Brahma @ Gendra Brahma @ Samina Brahma, dated 12.3.99, passed u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the Act) by the District Magistrate, Bongaigaon. A copy of the order of detention has been annexed as Annexure-1 and the grounds of detention are contained in Annexure-3 to the writ petition.

3. The order of detention has been challenged on a number of grounds. Firstly, that the documents furnished in support of the grounds of detention are in the languages, namely, English and Assamese, which the detenu does not understand. The other ground of challenge is that the Central Government did not decide the representation preferred by the detenu. The learned Sr. Standing Counsel for Union of India, however, on the basis of the instructions received

informed that the Central Government has also decided and rejected the representation of the detenu, though it was not incumbent upon it to consider the same. It is also the case of the detenu that some of the documents having material bearing on the merits of the case and as mentioned in the grounds of detention have not been supplied to him. Yet another submission which has been made is that there is nothing to indicate that the detnue is an active member of the banned National Democratic Front of Bodoland(NDFB) and was involved in the activities prejudicial to the maintenance of public order and the security of the State.

4. The learned Counsel appearing for the State has also advanced his argument in opposition to the grounds raised by the Petitioner as indicated in the preceding paragraph. We, however, feel that it would not be necessary to go into the merits of those grounds since, in our view, the case can be disposed of on one of the grounds which has been taken by the Petitioner that the District Magistrate passed the order without application of mind.

5. In support of the contention that the order of detention has been passed without application of mind, learned Counsel for the Petitioner has taken us through the order of detention as well as the grounds of detention supplied to the detenu. A perusal of the documents indicated above shows that the detaining authority felt satisfied on the report of the Superintendent of Police, Bongaigaon, that the detenu was an active member of the banned National Democratic Front of Bodoland(NDFB) since 1995 and was involved in several prejudicial activities and ostensibly fighting for the liberation of the Bodo nation from the dominion of India through armed struggles. It is also indicated that the said organisation, namely, NDFB, has been declared as an unlawful organisation by the Government of India by Notification dated November 23,1998. It is also indicated that the detenu had undergone arms training for one month at some unknown place somewhere in Indo-Bhutan border, whereafter the detenu was placed in Bijni sector, Bongaigaon district.

6. So far the incidents are concerned, it is to be found in ground No. 6 that the detenu along with other activists participated in an incident on 7.2.96 in which some muslim persons had been killed and many of them had been injured in connection whereof Bijni PS Case No. 19/96 u/s 341/302/326/153(A)/153(B) IPC R/W Section 25(1)(A) Arms Act had been registered. It is then mentioned in ground No. 7 that the detenu was also involved in extortion drive from Non-Bodos of some villages under Bijni PS. It is mentioned in ground No. 9 that the detenu was arrested on 19.2.99 by Para Military Forces in connection with Bijni PS case No. 13/99 u/s 120(B)/121 IPC R/W Section 25(1)(A) Arms Act. While the detenu was in jail, the order of detention was passed on 12.3.99. We then find the last but one paragraph of the grounds of detention, which reads as follows:

All the activities mentioned indicate that the person acted in a manner prejudicial to the security of the State and maintenance of public order. If the person is allowed to remain at large he would again go underground and act to further the

objectives of outlawed ULFA and indulge in activities prejudicial to the maintenance of the security of the State. It is be clearly mentioned that the detenu may submit representation addressed to the State Govt./Central Govt. and Advisory Board.

In the order of detention also, the recitation is to the same effect, which reads as follows:

Therefore, I am satisfied that the person Sri Swmdwn Brahma acted in a manner prejudicial to the maintenance of public order and against the security of the State and, if allowed to remain at large, there is every likelihood that the person would again go underground and act furtherance of the objective of the outlawed ULFA and indulge in activities prejudicial to the maintenance of the security of the State.

7. From the reading of the order and the grounds of detention as quoted above it is found that the satisfaction of the detaining authority based on the alleged activities of the detenu was that if the detenu was allowed to remain at large, there was every likelihood that he would again go underground and act in furtherance of the objective of the outlawed ULFA and indulge in activities prejudicial to the maintenance of the security of the State. A close reading of the order of detention as well as the grounds of detention makes it clear that all throughout the complaint has been about his being a member of the banned NDFB, which has become an outlawed organisation in 1998. The said two documents only detail such activities which further the objective of the said organisation, namely, NDFB. That being so, the apprehension as expressed in the paragraphs quoted above about the likelihood of the detenu being engaged in activities in furtherance of the objective of the outlawed ULFA, does not fit in. It may be observed that in the body of the detention order or the grounds of detention nothing has been stated about the organisation "ULFA". All has been stated about the alleged activities of NDFB, which is fighting for the liberation of Bodo nation from the Union of India through armed struggles and other activities connected thereto. But the purpose of detention is to restrain the detenu or prevent him from indulging in the activities of outlawed ULFA, in connection whereof nothing has been stated in the order of detention or the grounds of detention. Unless there is an apprehension that on being enlarged the detenu would indulge in some illegal activities which are indicated in the grounds of detention, there would be no occasion of preventive detention. The order, as it stands, does not indicate that the detenu would be likely to be engaged in the activities relating to NDFB.

8. The other fact which has been brought to the notice of the Court in connection with the argument that there is non-application of mind is that under ground No. 6 an incident has been indicated in connection whereof Bijni PS Case No. 19/96 is said to have been registered. It is submitted that in the supporting material, the FIR relating to Bijni PS case No. 16/96 has been furnished and not that of Bijni PS case No. 19/96. It is also indicated that all the sections under which the

case is said to have been registered are not the same. In the supporting document furnished, namely, the FIR relating to Bijni PS Case No. 16/96, the case was registered u/s 341/302/326 IPC R/W Section 25(1)(A)/27(3) Arms Act; whereas ground No. 6 mentions Sections 153(A)/153(B) IPC apart from other sections, which are not mentioned in the document furnished in support of ground No. 6. It is also indicated that Section 27(3) Arms Act is mentioned in the document relating to Case No. 16/96, whereas no such section is mentioned in paragraph 6 of the grounds of detention relating to case No. 19/96.

9. On the material as indicated above, we find force in the submission of the learned Counsel for the Petitioner that there has been lack of application of mind while passing the order of detention. Needless to emphasize that non-application of mind by the detaining authority vitiates the order of detention. The provisions of law relating to preventive detention are to be strictly construed. The detenu has to be definite and certain as to what he is to say against the order of detention-as in the present case, as to whether his alleged association with NDFB or apprehended activities to further the objective of ULFA.

10. In this view of the matter, the order of detention is not sustainable. Accordingly, the order of detention, dated 12.3.99, contained in Annexure-1 to the writ petition is quashed and it is provided that the detenu shall be set at liberty forthwith unless wanted in connection with any other case.

11. The petition is allowed.