
(2006) 08 GAU CK 0072
In the Gauhati High Court

Maisnam Biren Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Citation : (2006) 08 GAU CK 0072

Hon'ble Judges : Amitava Roy, J and M.B.K.Singh, J

Bench : Division Bench

Advocate : Th.Ibohal Singh, I.Bikamjit Singh, Advocates appearing for Parties

Judgement

Roy, J.—The constitutional validity of the continued detention of the petitioner under the National Security Act, 1980 (hereinafter referred to as the "Act"), is under challenge.

2. We have heard Mr. I Bikamjit, Singh, learned counsel for the petitioner, Mr. N Ibotombi Singh, learned Central Govt. Standing Counsel for respondent No. 4, Union of India and Mr. Th. Ibohal, Additional Govt. Advocate for respondent No. 1, 2 & 3.

3. The essential facts are available in the pleadings of the parties. The petitioner has averred that he was on 06.11.2005 arrested by a team of Imphal West Police Commandos led by the Officer in Charge, CDO/Imphal West, while conducting a search of 5/6 suspected houses at Haobam Marak Irom Leikai area on the purported charge of being a Chairman of the banned outfit PREPAK. A case being FIR No. 201(11) 05 SJM P.S. under section 121/121A I.P.C. and 20 U.A. (P) A Act was registered against him and he was lodged in Manipur Central Jail, Sajiwa. According to him, he was falsely implicated in the case, though there was no shred of incriminating evidence against him.

4. He was thereafter by the order dated 15.11.2005 issued by the District Magistrate, Imphal West, under section 3 (3) of the Act detained thereunder on the ground of acting in a manner prejudicial to the security of the State and maintenance of public order. The grounds of detention were served on him on

21.11.2005. The petitioner on 06.12.2005 submitted his representation to the Chief Secretary, Govt. of Manipur through the Additional Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur, with copies to be forwarded to the concerned authorities including that of the Central Govt. for consideration of his case and revocation of the order of detention. The petitioner has complained of undue delay in disposal of his representation and has alleged that the concerned authorities have remained mute spectators. Though a period of two months has elapsed after the submission thereof. The impugned detention has been assailed inter alia on the ground of mechanical exercise of power, falsity of charges, absence of evidence justifying the same, denial of this right of making an effective representation as well as undue delay in disposal thereof.

5. In its written response, the Union of India in substance has pleaded that the ? appropriate Government? within the meaning of section 8 of the Act, in the facts of the case, signified State Government of Manipur and not the Central Government. While admitting the receipt of the report forwarded by the Govt. of Manipur to it, as required under section 3 (5) of the Act, it has been asserted that the representation dated 06.12.2005, made by the petitioner was received by the Central Government on 28.12.2005 and the concerned section in the Ministry of Home Affairs on 02.01.2006. As along with the representation, the parawise comments thereon were not received from the State Government, it by wireless message dated 02.01.2006, requested the State Government to forward the same. The parawise comments were received by the Central Govt. in the Ministry of Home Affairs and in the concerned section in the Ministry of Home Affairs on 04.01.2006, whereafter, the representation was immediately processed for consideration and was put up before the Under Secretary, Ministry of Home Affairs on the very same date. The Under Secretary on a careful consideration thereof, put up the representation before the Joint Secretary of Home Affairs on 05.01.2006 and the latter placed the same before the Secretary (BM), Ministry of Home Affairs on 12.01.2006. The Secretary (BM), Ministry of Home Affairs considered the case and forwarded the representation before the Union Home Secretary on 13.01.2006. The said authorities i.e. Union Home Secretary, who had been delegated the powers by the Union Home Minister to decide such matters rejected the representation on 13.01.2006. The decision was thereafter communicated to the detenu through the Home Secretary, Manipur, Imphal and the Superintendent, Central Jail, Sajiwa, Manipur vide crash wireless message No.II/15023/156/2005NSA dated 17.01.2006. It has therefore, been contended that there was no delay on the part of the Central Govt. in attending to and disposing of the petitioner's representation.

6. In their counter, the State of Manipur and Additional Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur, have asserted that as the petitioner as a member of the banned organization named PREPAK, was found indulging in activities of waging war against the lawfully established Govt. of India and Manipur, he was detained under the Act as a preventive measure. According to them, the detenu submitted three copies of representation dated

06.12.2005 addressed to (1) Chief Secretary, Manipur (2) Special Secretary (Home), Manipur and (3) Secretary to the Government of India, Ministry of Home Affairs, which were received from the Additional Superintendent, Manipur Central Jail, Sajiwa, on 08.12.2005. While, the representation addressed to the Chief Secretary and Special Secretary (Home), Govt. of Manipur, were considered and rejected by the State Govt., the decision was communicated to him on 09.12.2005, the copy of the representation addressed to the Secretary, Govt. of India, Ministry of Home Affairs, was forwarded to the Central Govt. also on the same day. Thereafter, the same was also considered by the said ministry and decision of rejection was communicated to the detenu on 21.01.2006. They further averred that a copy of the order of detention dated 15.11.2005 along with the connected papers had been duly forwarded to the Central Govt. on 28.11.2005, for consideration of the concerned ministry well within the prescribed time limit.

7. The District Magistrate, Imphal West, the detaining authority in his affidavit, supported the order of detention on the same ground. While denying the allegation that the grounds of detention furnished to the detenu were baseless, it was asserted that the order impugned, had been passed on a due consideration of all relevant facts and after arriving at the necessary satisfaction of the impelling necessity thereof. He confirmed the date of the petitioner's arrest to be 06.11.2005 and the registration of the police case as mentioned in the writ petition.

8. Though, an additional affidavit had been filed by the petitioner seeking to clarify that the representation dated 06.12.2005, meant for the Central Govt. had in fact been addressed to the Secretary to the Govt. of India, Ministry of Home Affairs, Delhi, the same has not been taken note off, in view of a noticeable shift of stand in this regard. In the writ petition, the petitioner had pleaded that he submitted his representation on 06.12.2005 addressed to the Chief Secretary, Manipur through the Superintendent of Jail, Manipur Central Jail, Sajiwa, Imphal, with copies amongst others to the Central Government. This Court was further disinclined to grant time to the Central Govt., as prayed for to file its affidavit to rebut the correctness of the new contentions, as the order of detention was dated 15.11.2005 and that in the meantime, almost eight months out of the prescribed statutory period of detention of 12 months had expired.

9. Though several grounds have been taken in the petition, for obvious reasons, we shall confine the narration to the points urged in course of the hearing.

The learned counsel for the petitioner, has urged that inordinate and unexplained delay on the part of the Central Govt. in disposing of the representation, is opposed of the mandate contained in Article 22 (5) of the Constitution of India, rendering the continued preventive detention to be invalid. Mr. Bikramjit Singh, to reinforce his contention has placed reliance on the decision of the Apex Court in *SMT. KHATOON BEGUM Vs. UNION OF INDIA*, AIR 1981 SC 1077, *RAMA DHONDU BORADE Vs V.K.SARAF, COMMISSIONER OF POLICE & ORS.*, (1989) 3

SCC 173 and of this Court in AHANTHEM MEME @ NIRMALA DEVI Vs. DISTRICT MAGISTRATE, IMPHAL EAST & ORS., 2004 (1) GLT 633, and SHRI HUIREM ROMEN MEITEI @ TAIBANGNGANBA, W.P(CRIL) 23 of 2005, W.P(CRIL) 53 of 2005 SHRI LAISHRAM LINCOLN SINGH @ NICOLAI Vs. STATE OF MANIPUR & ORS.

10. Mr. Ibotombi Singh, per contra has argued that the detenu's representation not having been addressed to any authority of the Central Govt., he cannot be heard to complaint about delay in disposal thereof. The Central Govt. in the facts of the instant case was not obliged in law to consider his representation. Referring to the communication intimating the detenu of his right to represent, the learned counsel argued that it was apparent therefrom that he was entitled in law to independently represent before the Secretary to the Govt. of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi against his detention and he having omitted to do so, the plea of delay is of no avail to him. There being no representation before the Central Govt. in the eye of law, the contention of delay in assailing his detention is per se untenable, he urged. Without prejudice to the above, Mr. Ibotombi, further argued that the Central Govt. could not be accused of having delayed the disposal of the representation as the same had been forwarded to the concerned Ministry sans the parawise comments of the detaining authority thereon. The Central Govt. having disposed of the representation without wasting any time after receipt of the parawise comments, the assertion of delay is unsustainable on facts. Mr. Ibotombi, pressed into service the decision of the Apex Court in UNION OF INDIA & ANR. Vs. SNEHA KHEMKA & ANR.,(2004) 1 Supreme Today, 536, AIR 2005 SC 428, Union of India and Ors. Vs. CHAYA GHOSHAL & ANR. and of this Court in W.P.(CRIL) 59 OF 2005, SHRI WAIKHOM MUHINDRO SINGH VS. STATE OF MANIPUR & ORS.

11. Mr. Ibohal, learned State counsel, while endorsing the arguments advanced on behalf of the Central Govt. submitted that the order of detention was rightly passed and that the State Government had scrupulously observed the requirements prescribed by the Act, so much so, that the petitioner's detention cannot be assailed to be illegal for any lapse on its part. With reference to the records, the learned State counsel affirmed that the order of detention was approved and confirmed on 25.11.2005 and 28.11.2005 respectively. The Official records pertaining to the petitioner's detention was submitted for the perusal of the Court.

12. The rival submissions have received the due attention of this Court. By the communication dated 21.11.2005, issued by the District Magistrate, Imphal West, indicating the grounds of detention to the petitioner, he was further informed of his right to make representation to the Govt. of Manipur as well as the Central Govt. against the order of detention. It was clarified that the representation was to be sent through the Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur, to the Chief Secretary, Manipur for

consideration thereof, by the State Government and to the Secretary to the Govt. of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi 110 001, to be attended to by the Central Government. The detenu was also informed that the representations to the State Govt. and the Central Govt. were to be made within three weeks from the date of his detention. He was further informed of his right to make a representation to the detaining authority within 12 days from the date of his detention or till the order was approved by the State Government, whichever was earlier.

13. Annexure 3 to the writ petition, is the letter dated 02.12.2005 addressed to the Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur by Shri Laishangbam Jadumani Singh, Advocate, submitting representations on behalf of the detenu challenging his detention with a request to the addressee to forward the same to the Chief Secretary, Govt. of Manipur, Special Secretary (Home), Govt. of Manipur and the Secretary to the Govt. of India, Ministry of Home Affairs, Department of Internal Security, North Block, New Delhi, after obtaining his signature at the earliest. The copy of the representation appended to the said letter, which forms a part of the writ petition, demonstrates that the same was addressed to the Chief Secretary, Govt. of Manipur. The endorsement on the last page of the representation indicates that four copies of the said representation had in fact been submitted by the learned counsel of the detenu. By a communication dated 09.12.2005 the Special Secretary (Home), Govt. of Manipur, intimated the petitioner about the rejection of his representation by the State Government.

The official records disclose that the grounds of detention were served on the detenu on 22.11.2005 and the order of detention was approved on 25.11.2005. The representation dated 06.12.2005 addressed to the Chief Secretary, Govt. of Manipur accompanied by four copies were forwarded to the Special Secretary (Home), Govt. of Manipur by the Additional Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur on 07.12.2005. The letter, however, mentioned that the other representations were addressed to the Secretary to the Govt. of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi and Chief Secretary, Govt. of Manipur. On 09.12.2005, the Special Secretary (Home), Govt. of Manipur, forwarded the petitioner's representation to the Secretary, Govt. of India, Ministry of Home Affairs, New Delhi. In the letter of the same date carrying representation, it was mentioned that the parawise comments thereon would follow.

14. Thereafter, by letter dated 21.12.2005 of the Special Secretary (Home), Govt. of Manipur, the parawise comments submitted by the detaining authority on 18.12.2005 on the petitioners representation were dispatched to the Secretary to the Govt. of India, Ministry of Home Affairs (Department of Internal Security) North Block, New Delhi. The order of detention was confirmed on 28.12.2005. By a wireless message dated 02.01.2006, the concerned Ministry of the Central Govt. requested the Home Secretary, Govt. of Manipur to furnish the

parawise comments on the petitioner's representation as the same had till then not been received by it. It was eventually that by the wireless message dated 17.01.2006 that the Ministry of Home Affairs, New Delhi informed the Home Secretary, Govt. of Manipur, Imphal about the rejection of the petitioner's representation by the Central Government. The decision was communicated to the petitioner by the State Govt. on 21.01.2006. The Under Secretary to the Govt. of India, Ministry of Home Affairs also by a letter dated 16/17.01.2006 communicated the said decision to the petitioner.

15. It would thus be obvious from the above revelation that the parawise comments on the petitioner's representation had not at the first instance been forwarded to the Central Govt. on 09.12.2005 and that it was after a lapse of 12 days that the same were transmitted on 21.12.2005. From the pleaded stand of the Central Govt. as well as the wireless message dated 02.01.2006, it is manifest that the parawise comments did not reach the Central Govt. at least till 02.01.2006. There is no explanation whatsoever in the counter filed by the State respondents explaining the reason for not furnishing the parawise comments along with the representation. The delay in doing so, has also remained unexplained. Unmistakably, the consideration of the petitioner's representation by the Central Government in absence of such parawise comments was not feasible and in view of the omission of the State respondents in doing so, considerably delay had occurred.

16. The plea raised on behalf of the Central Govt. that the representation not having been addressed to the concerned Ministry thereof, it had no obligation in law to entertain and dispose the same is far from convincing. It has not been urged before us and rightly that the Central Govt. under the constitutional and statutory scheme of things was not required to consider the representation of a detenu under the Act, challenging his detention. From the correspondences available on records, more particularly, the letter dated 02.12.2005 of the learned counsel for the petitioner and the letter dated 09.12.2005 of the Special Secretary (Home), Govt. of Manipur forwarding the representation to the Secretary, Govt. of India, Ministry of Home Affairs (Department of Internal Security) North Block New Delhi, it is abundantly clear that the same had been submitted to the concerned authority of the Central Govt. for consideration thereof, in accordance with law. Even, assuming that the representation so forwarded to the Central Govt. had not been addressed to its concerned authority, the same having been submitted before it or the request made on behalf of the detenu with the clear intention of being considered on merits, the contention to the contrary, is per se untenable. Further, the concerned authority of the Central Govt. dealt with the representation on merits being clearly under the impression that it was required to do so in law. The plea now raised is, therefore unsound and illogical.

17. In UNION OF INDIA & ANR. Vs. SNEHA KHEMKA & ANR. (Supra), the Apex Court was seized with the question as to whether a representation made to one

authority against an order of preventive detention but neither forwarded or addressed to the other concerned authorities was required to be considered by all of them. In the contextual facts, the Apex Court answered the issue in the negative. While affirming that the power of the State Govt. or the Central Govt. was in addition to the power of the detaining authority to revoke an order of detention, the detenu's right to make different representations before different authorities at different times in terms of the statutory, as well as the constitutional framework was acknowledged. The facts of the reiterated decision are distinguishable.

18. In *Shri Waikhom Mohindro Singh (Supra)*, as well the representation was not addressed to the concerned authority of the Central Government. This Court drawing support from the decision of the Apex Court in *CHAYA GHOSHAL & ANR. (Supra)*, recorded that though the detenu in that case had been informed in clear and unequivocal terms about the authority of the Central Govt. to whom the representation was to be addressed, he did not do so. This Court, however, did not record a finding that thereby the representation forwarded to the Central Govt. was non est in law or it had no obligation under the Constitution or the Act to consider the same on merits. This decision, therefore, is not an authority on the proposition that a representation by a detenu under the Act, challenging his detention, though, not addressed to a particular authority empowered to revoke the same, but forwarded to it, with the intention of the same being considered and disposed of on merits, it would be under no obligation in terms of Article 22 (5) or the Act, to record its decision thereon. Noticeably it was held in that case that the disposal of the representation was not delayed.

19. In *CHAYA GHOSHAL & ANR (Supra)*, it was held in essence that if a detenu addresses a representation against his detention to a authority, which is not directly/immediately concerned with the issue with the sole aim of deliberately creating a situation for delay and thereby intending to deflect the course of justice, the Court has to balance the facts situation ensure that the mere factum of some delay alone is not made use of to obtain relief.

20. In the facts of the present case, we are unable to discern any such conscious act or intention on the part of the detenu. As noticed hereinabove, the copies of the representation had been submitted to the Additional Superintendent of Jail, Manipur Central Jail, Sajiwa, Govt. of Manipur, by the learned counsel for the petitioner with a clear request to forward the same amongst others to the Secretary, Govt. of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi. The same in due course was also forwarded by the State Government to the said authority on 09.12.2005. All concerned proceeded on the understanding that the above authority of the Central Govt. was required to consider and dispose of the petitioner's representation on merit. Apart from the fact that the request in the forwarding letter of the learned counsel for the petitioner, while submitting the representations, was explicit and clear requiring that a copy thereof, be forwarded to the aforementioned authority

of the Central Govt., from the materials available, it is not possible to deduce that the petitioner in any manner had devised a strategy thereby to create a smoke screen to mislead the authorities concerned and take advantage of the resultant delay caused thereby. Having regard to the avowed purpose of the guarantee enshrined in Article 22(5) of the Constitution of India, it is not possible to trivialize such a valuable right of the detenu on inconsequential consideration as above. To entertain the plea as raised would tantamount to undermining the fundamental objectives constituting the procedural bulwark guarding the preventive detenu's fundamental right to life enshrined in Article 21 of the Constitution of India.

The constitutional philosophy, which informs such process cannot be permitted to be subverted by sustaining such a contention. We, therefore, unhesitatingly rejected the same.

The essentiality of expeditious disposal of a detenu's representation in the background of the Constitutional paradigm and the statutory provisions governing preventive detention, is by now well settled. The Apex Court in *SMTI. KHATUN BEGUM* (Supra), while dwelling on the right of a detenu to have his representation considered at the earliest opportunity and the corresponding obligation of the detaining authority held that Article 22 (5) enjoins a duty on the authority making the order of detention to afford the detenu the earliest opportunity of making her representation against the order. It elaborated further in the following terms:

‘The right and obligation to make and to consider the representation at the earliest opportunity is a Constitutional imperative which cannot be curtailed or abridged. If the Parliament or the State legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the interdepartmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representations made by detenus. It will be no answer to a demand for liberty to say that administrative red tape makes delay inevitable.’

Reiterating the above view in *RAMA DHONDU BORADE* (Supra), the Apex Court ruled that though there is no prescribed period that under the Constitution or the concerned detention law within which the representation should be dealt with, the use of the words ‘as soon as may be’ occurring in Article 22 (5) of the Constitution of India require that the representation should be expeditiously considered and disposed of with due promptitude and diligence with a sense of urgency and without avoidable delay. In the facts of that case, the Apex Court disapproved the delay of 28 days between the receipt and disposal of the representation and construed the same to be inordinate and unreasonable and resultantly interfered with the impugned order of detention.

21. The impact of delay on account of the failure of the State respondents to furnish the parawise comments on the detenu's representation was, unreservedly discountenanced by a Division Bench of this Court in SHRI HUIREM ROMEN MEITEI @ TAIBANGNGANBA(Supra).The Central Govt. in that case, as a matter of coincidence had taken a stand, demonstratively identical to the one as in the present proceeding. The representation therein, was received by the Central Govt. in the Ministry of Home Affairs on 21.03.2005. As it was not accompanied by the parawise comments, the State Government by various wireless messages was requested to forward the same. The parawise comments were received on 01.04.2005 and finally the representation was rejected on 08.04.2005. In all it took about 18 days for the representation to be disposed of by the Central Government. This Court noticing the absence of any reason or explanation from the State Govt. for its omission to forward the parawise comments along with the representation and also the delay in furnishing the same inspite of repeated requests by the Central Government, deduced supine indifference, slackness and callous attitude on the part of the detaining authority in dealing with the detenu's representation. It was held that the delay in the disposal of the representation by the Central Govt. arose out of the unexplained delay in submission of the parawise comments by the State Govt. rendering the continued detention of the petitioner therein, illegal and constitutionally impermissible.

22. The State respondents in the instant case, as well, have failed to provide any explanation for their failure to forward the parawise comments along with the representation to the Central Govt. on 09.12.2005. No reason has been cited for the delay of 12 days in eventually, transmitting the same on 21.12.2005. This patently, has contributed to the delay in disposing of the representation as is evident from the wireless message dated 02.01.2006 from the Central Govt. requesting the Secretary, Home Govt. of Manipur to forward the parawise comments for the consideration of the representation. Out of a period of 35 days taken for the disposal of the petitioner representation, 26 days are attributable to the dispatch and receipt of the parawise comments.

23. Further, more, the Central Govt. as well, was lacking in the required alacrity and concern inasmuch as, it allowed the representation to drift from 04.01.06 from one desk to the other to be finally disposed of by the Union Home Secretary eventually, on 13.01.2006. If the Union Home Secretary was the only authority to decide such representations, the procedure for processing the same as adopted was clearly neither informed nor in accord with the imperative prescription embodied in Article 22 (5) of the Constitution of India obligating the authorities concerned to acquaint the preventive detenu of the grounds of his detention and afford him the earliest opportunity of making a representation against the detention order. The underlying ordainment of the Constitutional edict being to guarantee the consideration of any representation that might be made by the detenu with utmost celerity, vigilance and care, procedural or bureaucratic red tapism cannot by any means be an acceptable defence to any

delay occasioned thereby. Noticeably in the present case, the Ministry of Home Affairs lingered over the representation from 05.01.2006 to 12.01.2006 before being placed with the Union Home Secretary on 13.01.2006. In the teeth of the judicially evolved principles discountenancing avoidable delay in the matter of disposal of such representations, we are of the considered view that in absence of any explanation in the Central Government's counter to the above effect, the inescapable conclusion is that it, as well had not processed the matter with the necessary promptness and watchfulness.

24. In the wake of the above, we are constrained to hold that the disposal of the petitioner's representation is vitiated by unexplained delay for the reasons detailed hereinabove. The continued detention of the petitioner, is therefore, impermissible under the Constitution. In the result, we are direct that the petitioner, if he is not required to be detained in any other case, be released forthwith. The petition thus allowed. No costs.