
(2009) 02 GAU CK 0045
In the Gauhati High Court

Md. Nurjaman Shah

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)

Citation : (2009) 5 GLR 648 : (2010) 2 GLT 913

Hon'ble Judges : K. Meruno, J;A.C. Upadhyay, J

Bench : Division Bench

Judgement

K. Meruno, J.—Heard Mr. A. Bimol, learned Counsel for the petitioner, Mr. Th. Ibohal, learned senior G. A. appearing for the State respondents as well as Mr. C. Komal, learned senior CGSC appearing for the Union of India.

2. The brief facts of the case is, that the petitioner was arrested on 27.4.2008 by a team of Manipur Police from a hotel in Mysore along with some persons on mere suspicion of being member of PULE After his arrest, he was brought to Imphal and remanded to police custody and thereafter to judicial custody. By an order dated 28.5.2008 a detention order was passed detaining the petitioner under the NSA. On receipt of the detention order and the approval order of the State Government, the petitioner submitted a representation dated 24.6.2008. However, the said representation was not considered. In the representation, the petitioner at para 11 of the representation requested the Chief Secretary, Govt. of Manipur to send copies of the representation to the Central Government. In para 8 of the said representation, the petitioner had pointed out that some documents mentioned in para 9 of the grounds of detention, which forms the basis of the ground of detention, are not legible also some of the documents have not been furnished to him depriving him to make a comprehensive and meaningful representation to the concerned authorities.

3. Mr. A. Bimol, learned for the petitioner submits that counter on behalf of the respondents has been filed and in the counter of the respondent No. 2, it has been clearly stated that the representation addressed to the Chief Secretary,

Government of Manipur has not been forwarded for consideration by the Central Government. Mr. Bimol also submits that the two grounds, relied upon by the petitioner challenging his detention order, are that legible copies of the documents on the basis of which the detention has been ordered, has not been provided to the petitioner for which he could not make a comprehensive and meaningful representation to the concerned authorities thereby depriving him of the fundamental rights and also violation of the constitutional mandate as envisaged under Article 22 of the Constitution of India. The second leg of the grounds is that the representation of the petitioner has not been forwarded to the Central Government for consideration which has violated the rights of the petitioner to file representation. Such action of the State respondents in not forwarding the representation of the petitioner to the Central Government has vitiated the detention.

4. Counter on behalf of the respondents have also been filed.

5. The learned Counsel for the petitioner submits that against the Central Government has no grievance. It is only the action of the State Government which has infringed fundamental rights of the petitioner and his detention has now become illegal. Mr. Bimol, learned Counsel for the petitioner has relied upon the decision in the case of Smt. Dharmista Bhagat Vs. State of Karnataka and Another, and the decision in the case of Manjeet Singh Grewal v. UOI and Ors. . The two cited cases are with regard to providing copies of legible documents to the detainee. He also relied upon another decision of the Apex Court in Amir Shad Khan and Anr. v. L. Hmingliana and Ors. 1991 SC 1983. Mr. Bimol, learned Counsel for the petitioner also submits before us copies of the documents, in original, which were handed over to the detainee/petitioner for our perusal.

6. We have perused the said documents in original placed before us and we are of the considered opinion that the documents supplied to the petitioner/detainee as stated in the order dated 29.5.2008, i.e., the grounds of detention, certain documents, as mentioned in the said grounds of detention at para 9, sub-para IV, VI, V, VII and VIII, are the documents which are not legible. The same have also been shown to Mr. Ibohal, learned senior G.A., who in his usual frankness, admits that certain copies of the documents are not legible and therefore left it for the court to decide the matter.

7. With regard to the question of not forwarding the copies of the representation to the Central Government by the State Government, the decision of the Supreme Court reported in AIR 1991 SC is also a case where the State Govt. did not forward the representation of the petitioner to the Central Government and in this view the Apex Court in the case of Amir Shad Khan and another Vs. L. Hmingliana and others, held at para 14, operative portion of which, is as follows:

D....

We are, therefore, of the opinion that the Detaining Authority as well as the State Government were not justified in taking a hyper-technical stand that they

were under no obligation to take out copies of the representations and forward them to the Central Government. We think that this approach on the part of the Detaining Authority and the State Government has robbed the appellants of their constitutional right under Article 22(5) read with Section 11 of the Act to have their representation considered by the Central Government. The request of the detenus was not unreasonable. On the contrary the action of the Detaining Authority and the State Government was unreasonable and resulted in a denial of the appellants' constitutional right. The impugned detention orders are, therefore liable to be quashed.

8. In another reported case of this Court in the case of Chubkumla v. Union of India 2004 (1) GLT 43, it was held that the representation of the detenu was forwarded to the State Government, but the same was not transmitted to the Central Government. In such circumstances, this Court held that the detention as illegal and same was quashed.

9. We have also perused the said two decisions of the Apex Court pertaining to supply of illegible documents to the detenu. On perusal of the said two decision of the Apex Court, we are of the considered opinion that since the documents supplied with the grounds of detention are not at all legible and therefore we are of the considered opinion that the detention order of the detenu has been vitiated on two grounds-one for non supply of legible documents with the grounds of detention and two-for non-forwarding of the representation of the detenu to the Central Government.

10. In the result, considering what has been discussed above the impugned detention order, the approval order and the confirmation order, are hereby quashed and set aside. The detenu, namely, Md. Nurjaman Shah @ Denny @ Japan, is to be set at liberty forthwith, if he is not otherwise required to be detained in connection with other case.

This writ petition stands disposed of.