

(2008) 09 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (Cr.) No. 36 of 2008

Md. Yahiya Khan @ Inao

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

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

Citation : (2009) 1 GLD 153

Hon'ble Judges : Maibam B.K. Singh, J; Ashok Potsangbam, J

Bench : Division Bench

Advocate : Pradeep Keisam, for the Appellant; R.S. Reisang, Addl. GA and C. Komol, for the Respondent

Final Decision : Allowed

Judgement

Maibam B.K. Singh, J.—Heard Mr. Pradeep Keisam, learned Counsel appearing on behalf of the Petitioner, Mr. R.S. Reisang, learned Addl. Govt. Advocate appearing on behalf of the Respondent Nos. 1, 2 and 3 and Mr. C. Komol, learned Counsel appearing on behalf of the Respondent No. 4.

2. There is no dispute in respect of the following facts:

The Petitioner namely, Md. Yahiya Khan, @ Inao was detained under National Security Act, 1980, vide order dated 28.2.2008 passed by the District Magistrate, Thoubal purportedly with a view to prevent him from acting in any manner prejudicial to the security of the State and Maintenance of Public Order. The Petitioner was furnished the grounds of detention vide letter No. CrI. NSA No. 5 of 2008 dated 28.2.2008. The said detention order was approved and confirmed vide order dated 10.3.2008 and 14.4.2008 respectively.

3. This writ petition has been filed challenging the legality of the above said detention order as well as its approval and confirmation orders. The only ground submitted by Mr. Pradeep Keisam, learned Counsel appearing on behalf of the Petitioner is that the representation of the Petitioner made to the Central

Government was not dealt with by the concerned authorities as expeditiously as possible and thereby the Petitioner's right under Article 22(5) of the Constitution of India has been violated. According to the learned Counsel appearing on behalf of the Petitioner, the representation dated 13.3.2008 was submitted to the Secretary, Ministry of Home Affairs, Govt. of India through the Superintendent of Manipur Central Jail, Sajiwa but the same was not disposed of till the date of filing of the present writ petition.

4. Upon hearing Mr. C. Komol, learned Counsel appearing on behalf of the Respondent No. 4 was well as on perusal of para No. 6 of the counter affidavit of the said Respondent, it is ascertained that the said representation of the Petitioner dated 13.3.2008 was received by the Central Government in the concerned section of Ministry of Home Affairs on 3.4.2008 through the State Government of Manipur vide letter No. 17(1)/1250/2008-H dated 17.3.2008. Further, it is ascertained that though while forwarding the said representation dated 13.3.2008, the State Government stated about following of para-wise comments of the detaining authority in respect of the said representation, no such para wise comment was received till the submission of the counter affidavit despite Ministry of Home Affairs wireless message dated 4.4.2008 followed by reminders dated 28.4.2008, 15.5.2008 and the Director (S) D.O. letter No. II/15023/48/07-NSA dated 27.5.2008.

5. In this connection, the Respondent No. 1 states in its counter affidavit that the representation addressed to the Central Government was forwarded on 17.3.2008 and that para-wise comment dated 9.6.2008 made by the District Magistrate Thoubal was forwarded on 16.6.2008. It is also stated that the result of the said representation of the Petitioner to the Central Government was communicated to the detenu/Petitioner vide message dated 3.7.2008 and letter dated 7.7.2008. The District Magistrate, Thoubal nowhere states in his counter affidavit as to why para-wise comments in respect of the said representation of the Petitioner addressed to the Central Government was purportedly submitted on 9.6.2008 only i.e. after about three months.

6. It is well-settled that the requirement of giving "earliest opportunity for making a representation to the detenu" as provided in Article 22(5) would be reduced to an empty formality if prompt attention is not paid to the representation submitted. It is also well-settled that the words "as soon as may be" occurring Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with the sense of urgency without an avoidable delay. Though, there is no period prescribed either under Constitution or under concerned detention law, within which the representation should be dealt with, the requirement is that there should not be supine indifference, slackness or callous attitude in considering the representation. The representation should be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the Court or else the unexplained delay or

unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention, and in that situation, continued detention would become bad.

7. In the present case, there is no dispute that the Petitioner/detenu submitted his representation addressed to the Central Government was submitted through the Superintendent, Manipur Central Jail, Sajiwa on 13.3.2008. The said representation was forwarded to the Central Government only on 17.3.2008. But the same was received by the Central Government in the concerned section of Ministry of Home Affairs on 3.4.2008 through the State Government letter No. 17(1)/1250/2008-H dated 17.3.2008. It is also ascertained that though while forwarding the said representation by the State Government it was stated clearly that the para-wise comments by the detaining authority in respect of the Respondent would follow, the said para-wise comments was readied after almost three months by the District Magistrate, Thoubal i.e. on 9.6.2008. It is also ascertained that the State Government forwarded the said para-wise comments only on 16.6.2008, resulting thereby delay in the disposal of the said representation by the Central Government.

8. In the absence of any explanation either from the District Magistrate, Thoubal as well as from the State Government as to why the required para-wise comments were readied only on 9.6.2008 and also as to why the said para-wise comments were forwarded to the Central Government only on 16.6.2008. We have no hesitation in holding that the concerned authorities of the State Respondents did not deal with the said representation with the sense of urgency and without an avoidable delay.

9. In the light of the above considerations, we are of the opinion that the Petitioner/detenu's right under Article 22(5) of the Constitution of India has been violated. In the result, the impugned detention order, impugned approval as well as impugned confirmation order are hereby set aside. The Petitioner/detenu, namely, Md. Yahiya Khan, @ Inao is to be released immediately, if he is not required to be detained in connection with in any other case.

10. With this, this writ petition stands disposed of.