

(2015) 02 MAN CK 0012
In the Manipur High Court
Case No : Writ Petition (Cril) No. 23 of 2014

Moirangthem

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

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

Citation : (2015) 02 MAN CK 0012

Hon'ble Judges : Kh. Nobin Singh, J.; N. Kotiswar Singh, J.

Bench : Division Bench

Advocate : Rajeetchandra, for the Appellant; Monomala, G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. S. Rajeetchandra, learned counsel for the petitioner and Ms. Monomala, learned GA for the respondents.

2. In this petition, the detainee petitioner has challenged her detention under the National Security Act (NSA), vide order dated 15.3.2014.

3. Though various grounds have been raised in challenging the detention of the petitioner under the NSA, this Court has considered only one ground, as in the opinion of the Court, success in the said ground would render the continued detention of the petitioner illegal. The said ground raised is about the non consideration by the State Government of the representation submitted by the detainee petitioner.

4. It is the case of the petitioner that the petitioner had submitted a representation against her detention to the District Magistrate, though no representation was submitted specifically addressed to the State Government. Though no representation was directly submitted to the State, copy of his representation was routed through the State Government by the District Magistrate and in view of the above, it had been contended by the petitioner that

the State Government was under the obligation to consider the representation relying on the decision of the Supreme Court in *Smt. Gracy Vs. State of Kerala* and another, .

5. The Hon'ble Supreme Court in the said case had considered the scope of fundamental right as guaranteed under Article 22(5) of the Constitution, as regards consideration of representation against detention. In the said case, the Hon'ble Supreme Court observed that the obligation of the Government to consider the representation is different from the obligation of the Advisory Board to consider the representation at the time of hearing the references before giving its opinion to the Government and consideration of the representation by the State Government has to be uninfluenced by the view of the Advisory Board. It has been also held that the detenu's right to have the representation considered by the Government under Article 22(5) is independent of the consideration of the detenu's case and his representation by the Advisory Board.

6. It was also held in para Nos. 8 and 9 as follow:

"8. It is undisputed that if there be only one representation by the detenu addressed to the detaining authority, the obligation arises under Article 22(5) of its consideration by the detaining authority independent of the opinion of the Advisory Board in addition to its consideration by the Advisory Board while giving its opinion. In other words, one representation of the detenu addressed only to the Central Government and not also to the Advisory Board does not dispense with the requirement of its consideration also by the Advisory Board. The question, therefore, is: Whether one of the requirement of consideration by Government is dispensed with when the detenu's representation instead of being addressed to the Government or also to the Government is addressed only to the Advisory Board and submitted to the Advisory Board instead of the Government? On principle, we find it difficult to uphold the teamed Solicitor General's contention which would reduce the duty of the detaining authority from one of substance to mere form. The nature of duty imposed on the detaining authority under Article 22(5) in the context of the extraordinary power of preventive detention is sufficient to indicate that strict compliance is necessary to justify interference with personal liberty. It is more so since the liberty involved is of a person in detention and not of a free agent. Article 22(5) casts an important duty on the detaining authority to communicate the grounds of detention to the detenu at the earliest to afford him the earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible. Article 22(5) speaks of the detenu's "representation against the order", and imposes the obligation on the detaining authority. Thus, any representation of the detenu against the order of his detention has to be considered and decided by the detaining authority, the requirement of its separate consideration by the Advisory Board being an additional requirement implied by reading together clauses (4) and (5)

of Article 22, even though express mention in Article 22(5) is only of the detaining authority. Moreover, the order of detention is by the detaining authority and so also the order of its revocation if the representation is accepted, the Advisory Board's role being merely advisory in nature without the power to make any order itself. It is not as if there are two separate and distinct provisions for representation to two different authorities viz. the detaining authority and the Advisory Board, both having independent power to act on its own.

9. It being settled that the aforesaid dual obligation of consideration of the detenu's representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority, there is no reason to hold that the detaining authority is relieved of this obligation merely because the representation is addressed to the Advisory Board instead of the detaining authority and submitted to the Advisory Board during pendency of the reference before it. It is difficult to spell out such an inference from the contents of Article 22(5) in support of the contention of the learned Solicitor General. The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement of the Constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention."

7. In the present case, even though the representation was submitted to the District Magistrate, the Detaining Authority, in terms of the above decision of the Supreme Court, it was incumbent upon the State Government to consider the representation submitted by the petitioner as the State was fully aware of the same. The petitioner has specifically pleaded in para 10 of the petition that the representation of the petitioner which was also placed before the State Government was not considered by the State Government which would render the detention of the petitioner illegal. The said averment in para 10 of the petition has not been specifically denied by the State respondents. Ms. Monomala, learned GA, who has produced the relevant record has not been able to show from the records that the representation of the petitioner was indeed considered by the State Government.

8. In view of the above, in the light of the decision rendered by the Hon'ble Supreme Court in *Gracy v. State of Kerala* (supra), we are of the view that non consideration by the State Government of the representation submitted by the detenu on 24.3.2014 would render the continued detention of the petitioner under the National Security Act illegal. Accordingly, we hold to the same effect.

9. In the result, the impugned detention order dated 15.3.2014 detaining the petitioner under the National Security Act, approval order dated 22.3.2014 and

the impugned confirmation order dated 25.4.2014 are hereby set aside.

10. The petitioner is directed to be set at liberty forthwith unless wanted in connection with any other case.

11. With the above observation and direction, the petition stands allowed.