

(1998) 03 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule (H.C.) No"s. 28, 29 and 31/97

Mrs. Rose Shimray

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 22, 22(3), 22(4), 22(5)
National Security Act, 1980 — Section 14, 14(2), 3, 3(1), 3(2)

Citation : (1999) CriLJ 1692 : (1999) 1 GLT 341

Hon'ble Judges : W.A. Shishak, J;H.K. Sema, J

Bench : Division Bench

Advocate : A. Nilamani Singh, for the Appellant; A. Jagatchandra,A.G.A. and C. Komol Singh, Sr. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—These batches of Habeas Corpus Petitions raises the same question of law and as such, they are being disposed of by this common judgment analogously.

2. Facts leading to the filing of the present habeas corpus petitions may be recited briefly. Detenuess were arrested on 28-9-96 at Shillong by the Meghalaya Police and remanded to judicial custody. Thereafter, pursuant to a direction passed by the Gauhati High Court, they were handed over to Nagaland Police on 3-10-96. They were detained by an order dated 1-10-96 by the Govt. of Nagaland in exercise of power under subsections (1) and (2) of Section 3 of the National Security Act, 1980 (in short the Act). Detenuess challenged the aforesaid order by filing the habeas corpus petitions registered as C. R. Nos. 11/ 97, 12/97 and 13/97 at principal seat of the Gauhati High Court. The Division Bench disposed of the aforesaid writ petitions on 27-2-97 quashing the detention order and directed the detenuess to be set at liberty forthwith unless they are otherwise wanted in connection with some other cases. Consequently, the detention order has been revoked by the Government of Nagaland by its order dated 15-3-97.

The detenues were, however, not released and they were handed over to Manipur Police on 10-5-97. Detenues were again detained under the N.S.A. by an order dated 22-7-97 in respect of the detenues in C. R. No. 28/97, C. R. No. 29/97 and the detenu in C. R. No. 31/97 was detained by an order dated 7-8-97, passed by the District Magistrate, Ukhrul, in exercise of the power under Sub-section (3) of Section 3 read with Section 3(2) of the Act. This subsequent detention order has been assailed in these batches of habeas corpus petitions. The aforesaid petitions have been espoused by the relatives of the detenues.

3. We have heard Shri A. Nilamani Singh, learned Sr. Counsel for the petitioners, Shri A. Jagatchandra Singh, learned Addl. Govt. Advocate for the respondents Nos. 1 and 2 and Shri C. Komol Singh, learned Sr. C. G. S. C. for the respondent No. 3.

4. The detention orders have been assailed on the following grounds.

(a) The detention orders have been passed in contravention of proviso to Sub-section (2) of Section 14 of the Act inasmuch as no fresh facts have been arisen warranting the subsequent detention orders and therefore, the detention orders vitiated.

(b) The detaining authority considered the grounds of earlier detention orders which had been quashed by this Court, in subsequent detention orders.

(c) The grounds of detention served upon the detenues were stale grounds inasmuch as the offences alleged to have been committed by the detenues prior to the grounds of first detention orders which had been quashed by this Court.

(e) Delay in disposing of the representations of the detenues by the Central Government after receiving the report from the Advisory Board.

5. We shall now examine the contention of the learned Sr. counsel for the petitioners ground wise.

GROUND No. 1 : The detention orders have been passed in contravention of proviso to Sub-section (2) of Section 14 of the Act inasmuch as no fresh facts have been arisen warranting the subsequent detention orders and therefore, the detention orders vitiated. It is contended by Shri Nilamani Singh that the subsequent detention orders had been passed by the District Magistrate, in contravention of proviso to Sub-section (2) of Section 14 inasmuch as no fresh facts have been arisen in between the revocation of the earlier detention orders and the subsequent detention orders and therefore, the subsequent detention orders are vitiated.

Proviso to Sub-section (2) of Section 14 reads as under:-

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a

period of twelve months from the date of detention under the earlier detention order.

6. There is no denying the fact that no fresh facts have been arisen in between the revocation of earlier detention orders and the subsequent detention orders because the detenues had been all along in judicial custody and there is no allegation against them that while they were in custody, they have committed an offence which is prejudicial to the security of the State or to the maintenance of public order. It is, however, contended by Shri Jagatchandra Singh, learned Addl. Govt. Advocate that proviso to Sub-section (2) of Section 14 would not be a bar for the State of Manipur to pass the detention orders. According to him, the proviso to Sub-section (2) of Section 14 would not be applicable in the detention order passed by a different State. According to him, the detention orders dated 27-2-97 and 7-8-97 were not the subsequent detention orders but they were the first detention orders passed by the State of Manipur. Referring to Section 3 of the Act, the learned counsel submitted that the section itself contemplated the two authorities, Central Government or the State Government and according to him, different State can pass different detention order independently of each other. We are of the view that this submission cannot be accepted because to do so would amount to the detention of the detenues indefinitely not authorised by law. Under the Act itself, maximum period of detention has been prescribed and that is 12 months from the date of detention. This position has been made amply clear by the proviso to Sub-section (2) of Section 14 as quoted above. Article 22 of the Constitution forbids the detention of a person for a longer period, not authorised by law. Therefore, it cannot be the intention of the Legislature to detain a person under the preventive detention indefinitely so as to vitiate Article 22(4) of the Constitution. Be that as it may, Shri Jagatchandra Singh fairly concedes that no fresh facts have been disposed in the grounds of subsequent detention,

7. Further, provision, to Sub-section (2) of Section 14 has to be considered in the light of law laid down by the Apex Court in a catena of decisions. Subsequent detention order passed on non-existence of the fresh facts has been held to be bad by the Supreme Court. In this connection, Shri Nilamani Singh has referred to the following decisions of the Supreme Court.

8. In Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, it was pointed out by the Supreme Court as under:- at page 1148 (of Cri LJ)

Even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order.

9. In Abdul Razak Abdul Wahab Sheikh Vs. S.N. Sinha, Commissioner of Police, Ahmedabad and Another, it was pointed out by the Apex Court that:

There was nothing to show from the grounds of detention nor any fresh facts have been disclosed after the earlier detention order passed against the detenu

was set aside by the Advisory Board.

In the instant case, as already-said that the earlier detention order passed by the Nagaland Government on 1 -10-96 has been quashed by the Division Bench of this Court on 27-2-97. Thereafter, subsequent detention orders has been passed by the Manipur Government on 22-7-97 and 7-8-97 respectively. We have been taken to the grounds of detention on the basis of which the detaining authority formed an opinion to detain the detenues. No fresh facts have been disclosed in the grounds of detention warranting the subsequent detention of the detenues. In fact, going through the grounds of detention of the offences alleged to have been committed by the detenues are relating to 1989,1993 and 1996. This would show that no fresh facts have been arisen in between the revocation of the earlier detention order that is 15-3-97 and the subsequent detention order. Therefore, the petitioners succeeded on this point.

10. GROUND No. 2 : Detaining authority considered the grounds of earlier detention orders which had been quashed by this Court in subsequent detention orders. In the grounds of detention served upon the detenues, it has been stated that the Government of Nagaland earlier detained the detenues by its orders dated 1-10-96 and the same were quashed by the High Court and consequently, the detention has been revoked by the Government of Nagaland by its orders dated 15-3-97. This would show that the detaining authority considered the grounds of earlier detention orders quashed by this Court in subsequent detention orders. The law on this point has been set at rest by a catena of decision of the Apex Court.

11. In *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, it was pointed out by the Apex Court as under (Para 15 of Cri LJ):-

Where the detaining authority while passing second order of detention had referred to the earlier detention order and the judgment of the High Court quashing it, presumably for the purpose of showing that the detenu in spite of earlier detention order was continuing his bootlegging activities and the detaining authority said clearly in affidavit in reply that he took into consideration the previous grounds of detention also for his conclusion that the detenu was engaged in bootlegging activities since long thus, in other words, the detaining authority had taken into consideration the earlier grounds of detention which grounds had been nullified by the High Court, the subsequent detention order was vitiated on the ground that the detaining authority had taken into consideration the grounds of earlier detention order along with other materials.

12. In *Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another*, it was pointed out by the Apex Court as under at Page 2100 (of Cri LJ):-

An order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order the order of

detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered.

In *Ramesh Vs. State of Gujarat and Others*, the Apex Court reiterated the same view.

13. In the instant case, the petitioner have taken specific grievance in paragraph 7(6) of the writ petition as under :

For that the Respondents have acted mala fide unfairly, arbitrarily and capriciously, in their bid to keep the detainee perpetually in detention on irrelevant, unsubstantial and concocted materials which would bear no scrutiny, knowing well that the Hon'ble High Court has already quashed the previous detention orders of the Nagaland Government which were based on the same or similar grounds as those in the present case; accordingly, the present orders of detention are rendered invalid and liable to be set aside.

14. Respondent No. 1 whose order has been assailed in these batches of writ petitions has filed counter but the specific grievances taken in paragraphs 7(1) to 7(6) has not been controverted. The denial of the respondent is of general nature. This would clearly show that the respondent has considered the grounds which were of the same or similar grounds on the basis of which the Nagaland Government passed the detention order, quashed by this Court.

15. GROUND No. 3 : The grounds of detention served upon the Setenues were stale grounds inasmuch as the offences alleged to have been committed by the detainees are prior to the grounds of first detention orders which had been quashed by this Court. At the risk of repetition, we reiterate that going through the grounds of detention, it relates to the offences alleged to have been committed by the detainees in 1989, 1993, 1995 and 1996 which were prior to the earlier detention orders passed by the Govt. of Nagaland on 1-10-96 and quashed by this Court on 27-2-97. On other words, the offences alleged! to have been committed by the detainees are all stale not having proximate relationship with the detention orders.

16. In *Mustakmiya Jabbariya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, the incident had occurred on 24-4-93 and the detention order was passed on 19-8-94. In that situation the Apex Court pointed out in paragraph 10 of its judgment as under :-

This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not approximate in point time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention.

17. GROUND No. 4: Delay in disposing of the representations of the detainees by the Central Government after receiving the report from the Advisory Board.- On

this point, the submission of Shri Nilamani Singh are on two folds. Firstly, there is an inordinate delay in disposing of the representations filed by the detenues and consequently, disposing of the representations after the receipt of the Advisory Board's report vitiate the detention orders.

18. In the present case, the detenues filed representations on 7-8-97 and the Central Government received the said representation on 19-8-97 and it was disposed of on 12-9-97 after lapsed of about 23 days from the date of receipt of the representations. Respondent No. 3 filed his counter and explained the delay in disposing of the representations in paragraph .6 of its counter. In paragraphs 6 of its counter, respondent admits that the detenues filed the representation dated 7-8-97 and the same was received by the respondent on 19-8-97 and after considering it carefully the same was rejected on 11-9-97. It is further stated in paragraph 6 that after receipt of the representation the same was immediately processed but it was found that certain vital information required for its further consideration was needed to be obtained from the State Government and the District Magistrate, Ukhul and the same was sought through a Crash Message dated, 21-8-97.

19. The averment made in paragraph 6 of its counter is no explanation at all. Firstly, u/s 3(5) of the Act along with the detention order together with the grounds of detention and other particulars had been sent to the Central Government. In this view, the materials on the basis of which the detaining authority formed an opinion to detain the detenues was already with the Central Government and it was duty bound on the part of the Central Government to have considered the representations filed by the detenues as expeditiously as possible on the basis of the materials before it. We are unable to accept the averment made in paragraph 6 of the counter explaining the delay. We, therefore, hold that. there was unexplained delay in disposing of the representations filed by the detenues.

20. This apart, the crash message dated 21-8-97 mentioned in paragraph 6, apart, from other materials, sought for the submission of Advisory Board's report from the State Government before considering the representations of the detenues. It is, therefore, clear that the representations of the detenues were considered and rejected after the receipt of the Advisory Board's report, which has been held to be constitutionally invalid by the Apex Court in a catena of decisions.

21. In Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, it was pointed out by the Apex Court in paragraph 7 of its judgment as under at Page 1981 (of AIR):

Apart from the admitted inordinate delay, there is a fundamental defect which renders the continued detention of the appellant constitutionally invalid. As observed by one of us (Sen, J.) in Narendra Purshotam Umrao Vs. B.B. Gujral and Others, there was a duty cast on the Government to consider the

representation made by the detenu-without waiting for the opinion of the Advisory Board. The constitution of an Advisory Board u/s 8 of the Act does not relieve the State Government from the legal obligation to consider the representation of the detenu as soon as it is received by it. It goes without saying that the constitutional right to make a representation guaranteed by Article 22(4) must be taken to include by necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality. The representation made by the appellant addressed to the Chief Minister could not lie unattended to in the portals of the Secretariat while the Chief Minister was attending to other political affairs. Nor could the Government keep the representation in the archives of the Secretariat till the Advisory Board submitted its report. In Narendra Purshotam Umrao case it was observed; (SCC p. 641, SCC (cril) p. 561, para 11). thus the two obligations of the Government to refer the case of the detenu to the Advisory Board and to obtain its report on the one hand and to give an earliest opportunity to him to make a representation and consider the representation on the other, are two distinct obligations independent of each other.

It was further pointed out by the Apex Court as under:

It is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation, cannot depend upon the view of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. There was, therefore, no reason for the Government to wait for considering the petitioner's representation until it had received the report of the Advisory Board. As laid down in *Sk. Abdul Karim and Others Vs. State of West Bengal*, the obligation of the appropriate Government under Article 22(3) is to consider the representation made by the detenu as expeditiously as possible. The consideration by the Government of such representation has to be, as aforesaid, independent of any opinion which may be expressed by the Advisory Board.

In *Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others*, it was pointed out by the Apex Court in paragraph 10 of its judgment as under at page 2180 (of Cri LJ) :-

It is seen that though the representation was received by the State Govt. on February 20,1993, the State Govt. decided to keep it pending awaiting the opinion of the Board and on receipt of the report on March 23, 1993, considered the case and the representation was rejected on the even date, namely, March 23, 1993. In view of this consistent settled law the action of the State Govt. in keeping the representation without being considered and disposed of expeditiously, awaiting the decision of the Board till March, 23, 1993 and consideration of the Board till March, 23,1993 and consideration of the representation thereafter and rejection are illegal.

23. In the light of the law laid down by the Apex Court, we hold that the rejection of the detenus' representation after the receipt of the Advisory Board's report are illegal and vitiates the detention order.

24. For the reasons aforesaid, we hold that the detention order dated 22-7-97 and 7-8-97 are unconstitutional and they are hereby quashed and set aside. The detenus namely; (1) Shri Angelus Shimray, S/o George Shimray of Paoyi Village, Ukhrul, (2) Shri Vareingam Horam, S/o Shri Thikatai Horam of Tusom Village, Ukhrul and (3) Shri Wungshi Shimray S/o Shri Vangam Shimray of Shokvao village, Ukhrul are directed to be set at liberty forthwith, if they are not wanted in connection with any other cases. Petitions are allowed. Parties are asked to bear their own costs.