
(2015) 12 MAN CK 0007
In the Manipur High Court
Case No : W.P. (Cril.) No. 12 of 2015

Oinam Mani Singh

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 14(1), 8

Citation : (2016) 1 GLT 86

Hon'ble Judges : N. Kotiswar Singh and Kh. Nobin Singh, JJ.

Bench : Division Bench

Advocate : Sanajaoba, Advocate, for the Appellant; Monomala, Govt. Advocate and S. Rupachandra, ASG, for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri Ph. Sanajaoba, learned counsel appearing for the petitioner and Ms. Monomala, learned Government Advocate appearing for the State respondents.

2. The petitioner is the father of the detenu, Shri Oinam Mani Singh and by the instant writ petition, he has questioned the validity and legality of the order of detention dated 26-06-2015 issued by the respondent No. 2, District Magistrate, Imphal West, Manipur.

3. As per the grounds of detention, the petitioner's son/detenu joined the banned organisation namely, Kangleipak Communist Party, Military Task Force (KCP - MTF) as a member in the month of March, 2015 through Shri Irengbam Brojen Singh. After joining the said banned organisation, the petitioner's son/detenu started working for the organisation along with other members and in due course he came to know the leader of the said organisation, Shri Salam Nabachandra Singh. Under the command of Shri Irengbam Brojen Singh, the petitioner's son/detenu extorted huge amount of money from the general public, proprietor of private firms, businessmen, Government employees, etc. Sometime

in the month of May, 2015, the petitioner's son extorted a sum of Rs. 50,000/- from the proprietor of furniture works located at Tera Bazar and on 23-05-2015, he extorted Rs. 2 lakhs from one Mr. Luis Tangkhul, Director of Agriculture Department, Government of Manipur and handed over the same to Shri Irengbam Brojen Singh. After extortions being committed, he threatened the victims not to report the matter to the security forces/police with the warning that in case the matter being reported to the police, they would be killed.

4. On 24-05-2015, at about 04:30 p.m., the petitioner's son/detenu was arrested by a police team of CDO, I/W led by S.I.S. Guikan Tangal from his house and was handed over to the O.C. Mayang Imphal P.S. with a written report and on the strength of the said report, a regular case under F.I.R. No. 23(5)2015 MIPS, U/S 17/18/20 UA(P)A. Act was registered and on 01-06-2015, he was remanded to judicial custody. Such act of extortion of money, being carried out by the petitioner's son/detenu with a view to achieve the objectives of his organisation, being prejudicial to the security of the State and maintenance of public order, the said impugned order of detention was issued by the respondent No. 2 while the detenu was in custody.

5. Although many grounds have been urged in the petition, Shri Ph. Sanajaoba, the learned counsel appearing for the petitioner, during the course of hearing, has restricted his arguments to two grounds only. According to him, there was total non-application of mind on the part of the respondent No. 2 at the time of communicating the grounds of detention to the petitioner's son/detenu for the reason that the documents forming the basis of the grounds of detention were not furnished to him denying an opportunity to submit an effective and purposeful representation. Secondly, there was inordinate delay in forwarding the representation dated 04-07-2015 of the petitioner's son/detenu. In support of his contention, the learned counsel appearing for the petitioner has relied upon the decisions rendered by the Supreme Court in the cases of Union of India (UOI) Vs. Paul Manickam and Another, and Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, .

6. Ms. Monomala, learned Govt. Advocate appearing for the State respondents, relying upon the affidavit filed by the respondent No. 2, the District Magistrate, Imphal West, submitted that on account of genuine error, the documents which formed the basis of the grounds of detention, could not be furnished to the detenu and immediately on coming to know about it, a fresh communication dated 04-07-2015 enclosing therewith the correct documents was served upon the petitioner's son/detenu and therefore, it was incorrect to say that there was total non-application of mind on the part of the respondent No. 2. It is further submitted by her that there was no delay in forwarding the said representation.

7. There is some substance in the contentions of the learned counsel appearing for the petitioner and moreover, it is not in dispute that pursuant to and after the order of detention dated 26-06-2015 having been issued, the grounds of detention were communicated to the petitioner's son/detenu vide letter dated

29-06-2015 of the respondent No. 2. But the documents which formed the basis of the grounds of detention and pertained to the case in which the petitioner's son/detenu was alleged to be involved, were not furnished to him. The petitioner's son/detenu submitted a representation dated 04-07-2015 to the respondent No. 2 requesting him to furnish the relevant documents and only on receipt of the said representation dated 04-07-2015 of the petitioner's son/detenu, the respondent No. 2 furnished him the said documents on the same day, i.e., 04-07-2015 at about 06:30 p.m. The next day i.e., 05-07-2015 being Sunday, the representation dated 04-07-2015 which is not even a substantive one, was forwarded by the respondent No. 2 to the State Government on 06-07-2015. Although the Government order approving the order of detention was issued by the State Government on 06-07-2015, it is evident from the Government file that the order of detention had already been approved on 03-07-2015 before the petitioner's son/detenu could make an effective representation after the receipt of the documents. The contention of the learned counsel appearing for the petitioner that it was only on account of the genuine error that the said documents could not be furnished, cannot be countenanced at all. Since the liberty of a citizen has been deprived, utmost care ought to have been taken by the respondent No. 2. Due to the failure on the part of the respondent No. 2 in furnishing the documents along with the grounds of detention, the petitioner's son/detenu could not get the opportunity to submit an effective representation before the approval of the order of detention. Even assuming that the said representation dated 04-07-2015 was the one contemplated under the provisions of Section 8 of the National Security Act, it is unfortunate for the petitioner's son/detenu that it was not considered on merit by the State Government nor was it considered by the respondent No. 2 except supplying the documents. Thus, the right to make an Constitution of India has been infringed rendering the impugned order of detention as illegal and bad. In Union of India (UOI) Vs. Paul Manickam and Another, relied upon by the learned counsel appearing for the petitioner, the Hon''ble Supreme Court held:

"16. In a case of preventive detention no offence is proved, nor is any charge formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See R. v. Halliday and Kubic Darusz v. Union of India.) But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the

curtailment of the individual liberty. (See *Ayya v. State of U.P.*) To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end in itself and the curtailment of liberty for reasons of the State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters."

We are of the view that the principles laid down by this Court in the above case with reference to some of the decisions of the Apex Court, have full application to the present case.

8. There is another ground as regards the delay in forwarding the representation dated 04-07-2015 which the learned counsel appearing for the petitioner has emphasised at the time of hearing. In fact this ground was not taken in the petition at all but on perusal of the Government file, it is evident that though the representation dated 04-07-2015 was received by the State Government from the respondent No. 2 on 06-07-2015, the same was forwarded by the State Government to the Union of India only on 21-07-2015 and there was no explanation for the delay of 15 days in forwarding the representation. In *Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others*, wherein there was delay of seven days in forwarding the representation, the Hon"ble Supreme Court held:

"34. Article 22(5) of the Constitution of India mandates in preventive detention matters. The detenu should be afforded the earliest possible opportunity to make a representation against the order. With regard to the importance of delay in preventive detention matters under the National Security Act, it has been held by this Court in *Union of India v. Laishram Lincola Singh* that: (SCC p. 492, para 6)

"6. ... There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable.""

(emphasis supplied)

35. On the specific ground of delay in forwarding the representation under the National Security Act, it has been observed by this Court in *Haji Mohammad Akhlaq v. District Magistrate, Meerut* that: (SCC p. 540, para 3)

"3. ... There can be no doubt whatever that there was unexplained delay on the part of the State Government in forwarding the representation to the Central Government with the result that the said representation was not considered by

the Central Government till 16-10-1987 i.e. for a period of more than two months. Section 14(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply a right in a detenu to make a representation to the Central Government against the order of detention. Thus, the failure of the State Government to comply with the request of the detenu for the onward transmission of the representation to the Central Government has deprived the detenu of his valuable right to have his detention revoked by that Government."

(emphasis supplied)

36. In the matter before us, a delay of 7 days has occurred in the forwarding of the representation. This may not be inordinate; however, at no stage has there been an explanation given for this delay. The State Government or the Central Government has not clarified the same and thus the delay remains unexplained.

37. In light of the fact that none of the documents relied on by the detaining authority in passing the detention order can be deemed to be pertinent, and the fact that the delay has remained unexplained, there is sufficient ground made out in order to quash the order of preventive detention made against the detenu."

9. Considering the facts of the present case and after having heard the learned counsels appearing for the parties, this court is of the view that the petitioner's son/detenu was not afforded an opportunity to make an effective and purposeful representation and therefore, the order of detention is liable to be quashed and set aside. Accordingly, we allow the writ petition, set aside the impugned order of detention dated 26-06-2015 issued by the respondent No. 2, the District Magistrate, Imphal West, Manipur and direct that the petitioner's son/detenu, namely Oinam Tikendrajit Singh @ Tiken be set at liberty forthwith unless his detention is required in any other case.