
(1999) 05 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (Criminal) No's. 9 and 11 of 1999

Prabin Daimary and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1999) 2 GLT 104

Hon'ble Judges : Brijesh Kumar, C.J.; D.N. Chowdhury, J

Bench : Division Bench

Advocate : M.U. Mahmud and P.K. Talukdar, for the Appellant; B.C. Das, Addl. Sr. G.A. and K.K. Mahanta, Sr. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—We have heard Mr. M.U. Mahmud, learned Counsel for the Petitioners and Mr. B.C. Das, learned State counsel. Since the relevant facts for the purpose of disposal of the above noted two writ petitions are same, we propose to dispose of the said two petitions by this common order.

2. The Writ Petition (Crl) No. 9/99 Sri Beauty Goyary @ Mithinga Katali @ Binod Goyary has been detained under an order passed by the District Magistrate, Dhemaji u/s 3(2) of the National Security Act. On behalf of the said detenu this writ petition has been preferred by Sri Prabin Daimary.

3. The Writ Petition (Crl) No. 11/99 Sri Mihineswar Basumatary @ Maya Swm Deori, has been detained under an order passed by the District Magistrate, Dhemaji u/s 3(2) of the National Security Act. On behalf of the said detenu this writ petition has been preferred by Smti Mahima Basumatary, wife of the detenu.

4. Both the detenus were first detained by orders of detention dated 12.10.98 passed by the District Magistrate, Dhemaji. The grounds of detention in respect of both the detenus were the same. It appears, as indicated by the learned State counsel, that before the matter came to be considered by the State Government

for approval of the detention, the period provided for the same was over as a result of which the detention orders passed against the detenus on 12.10.98 lapsed. Hence, fresh orders against the two detenus were passed on 26.11.98. The grounds of detention in respect of both are the same.

5. Learned Counsel appearing for the Petitioners in both the cases, submits that there has been great delay in considering the representations of the detenus against the order of detention. Hence, their continued detention is unlawful. In that connection we may refer to paragraph 7 of the affidavit filed in opposition by Sri Mahat Chandra Brahma, District Magistrate, Dhemaji. In para 7 it is stated that the detenu had made representation on 4.12.98 which was addressed to the District Magistrate, State Government, Central Government and the Chairman, Advisory Board through the Superintendent District Jail, Tezpur. The representations were forwarded to the authorities on 5.12.98. The State Government, however, received the representations on 16.12.98. The State Government after considering the representations rejected the same on 24.12.98. In respect where of, a formal notification was issued on 31.12.98. It is further stated that the State Government forwarded the representations submitted by the detenus to the Government of India, Ministry of Home Affairs, New Delhi, by Speed Post on 31.12.98.

6. On perusal of the averments made in paragraph 7 as indicated in the proceeding paragraph, we notice that the representations preferred by the detenus on 4.12.98 could reach the State Government only on 16.12.98. That is to say, it took a period of 12 days to reach the State Government. It is indicated by the Respondents themselves that it was forwarded by the Jail authorities on 5.12.98. We hardly find any justifications for taking such a long time in reaching the representations of the detenus to the State Government. Thereafter, the State Govt. also took 8 days to take a decision on the representations. The details as to in what manner the representations were dealt with by the State Government have not been indicated in the counter affidavit, nor the fact as to how it took 12 days for the authorities to reach the representations to the State Government.

7. After the State Government had rejected the representations on 24.12.98 a notification in respect thereof was issued on 31.12.98. Admittedly, the representations addressed to the Central Government were sent on 31.12.98, by the State Govt., by Speed Post along with the notification dated 31.12.98. It is thus clear that the representations which were meant for the Central Government, made on 4.12.98, were forwarded to the Central Government only on 31.12.98, that is to say, after about 27 days of making of the representations. We hardly find any justification in retaining the representations addressed to the Central Government for such a long time before forwarding the same. May be, that the State Government had thought it proper to forward the representations to the Central Government after the representations were disposed of by itself. If that was the view, we hardly find any justification for the same. The Central

Government need not wait for the orders of the State Government passed on the representations preferred by the detenus nor the State Government is justified in retaining the representations with itself and forward them to the Central Government only after it has taken a decision in the matter. The delay thus caused, in forwarding the representations after 27 days, to the Central Government is not at all explained. Nor we find any explanation for reaching the representations to the State Govt. after 11/12 days of having been forwarded by the authorities. We find force in the submissions made on behalf of the Petitioner that due to unexplained delay on the part of the Respondents, the continued detention of the detenus would be illegal.

8. So far writ petition No. 11/99 is concerned, we find that a counter affidavit has been filed by the Central Government as well, the Respondent No. 2. Though we find that it would not be very necessary to deal with the same in view of the finding recorded in the preceding paragraph, but since it has been filed we would like to deal with the said counter affidavit as well. It is filed by Bina Prasad, Under Secretary, Ministry of Home Affairs, Govt. of India. In para 6 it is stated that representation of the detenu was received by the Central Government through the State Government, but the date of receipt has not been indicated. It is further averred that after receipt of the representation the Central Government through crash Wireless Message dated 6.1.99, sought some vital information from the State Government and the required information was received with a covering letter of the State Government dated 30.1.99. The matter was thus put up before the Union Minister of Home Affairs on 5.2.99 and ultimately the Home Minister after considering the matter rejected the representation on 8.2.99. It is not indicated as to what kind of vital information was sought by the Central Government from the State Government. In any case, the information which was sought through a W.T. Message on 6.1.99 was sent by the State Government only on 30.1.99 which was received by the Central Govt. on 3.2.99, that is to say, it took near about a month to make available the vital information sought through Crash W.T. Message. There is nothing to indicate that in case there was delay on the part of the State Government in sending the required information, any reminder or letter was issued by the Central Government or not. The inordinate delay in furnishing the information by the State Government as required by Central Government remains unexplained.

9. In view of the discussions in the proceeding paragraphs, in our view there is unexplained delay on the part of the State Government in deciding the representations of the detenus as well as in forwarding the representations to the Central Government and lastly in Writ Petition (Crl) No. 11/99 (Smti Mahima Basumatary v. State of Assam and Ors.) the Central Govt. kept the matter pending for a long period without proper explanation.

10. In the result, both the above noted writ petitions namely, Writ Petition (Crl) No. 9/99 and No. 11/99 are allowed and continued detention of both the detenus is held to be illegal. They shall be released forthwith, unless wanted in

connection with any other case.