
(2008) 05 GAU CK 0018
In the Gauhati High Court
Case No : WP(CrL) 2 of 2004

Putul Moran @ Pilika Moran

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

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

Citation : (2008) 5 GLR 313

Hon'ble Judges : Aftab H.Saikia, J and Anima Hazarika, J

Bench : Division Bench

Advocate : P.S.Deka, D.Choudhury, P.J.Saikia, Advocates appearing for Parties

Judgement

Aftab H. Saikia, J.

1. Heard Mr. P. J. Saikia, learned counsel for the petitioner. Also heard Mr. D. Choudhury learned Central Government Counsel ("the CGC") representing the Union of India as well as Mr. P. Sen Deka, learned State Counsel representing all the official respondents.

2. The detention order dated 18.6.2007 issued by the District Magistrate, Tinsukia detaining the petitioner under section 3(2) and 3(3) of the National Security Act, 1980 ("the Act") has been assailed only on the sole ground that when the detaining authority served the impugned detention order along with the grounds of detention upon the petitioner, he was not informed that he has the right to make representation before the detaining authority also and in support of this submission reliance has been placed on a full court decision of this court rendered in K.B. Konsam Brojen Singh v. State of Manipur and Others, 2006 (1) GLT 375 (FB) wherein it was held in paragraph 57 of the judgment as under :

"57. For all the aforesaid reasons, we hold. (1) That a detainee has two rights under article 22(5) of the Constitution,

(i) to be informed, as soon as may be, the grounds on which the order of detention is passed, i.e., the grounds which led the subjective satisfaction of the detaining authority, and

(ii) to be afforded the earliest opportunity of making a representation against the order of detention. The twin rights are available to a detainee whether they are provided for or not in the preventive detention laws.

(2) The right to make representation to the detaining authority by a detainee in addition to his right to file representation to the Central Government or appropriate Government is also guaranteed under article 22(5) of the Constitution which forms a part of package of guaranteed fundamental right. No distinction as such could be made in this regard in respect of the detention orders made either under COFEPOSA, PIT NDPS or National Security Act, 1980, as the case may be.

(3) The detaining authority is under the constitutional obligation to inform the detainee of his right to make such a representation to the detaining authority.

(4) The failure to inform the detainee of such right to make a representation to the detaining authority vitiates the detention order made even under the provisions of the National Security Act, 1980."

3. Referring to clauses (3) and (4) of the above paragraph 57, it is strenuously argued that since the detaining authority being under the constitutional obligation, did not inform the detainee of his right to make representation to the detaining authority, such action vitiates the detention order ex facie.

4. In the instant case, while allowing the petitioner/detainee to make a representation, the detaining authority in the grounds of detention so furnished to him, intimidated him as under :

".....However, you may submit your representation against the detention order addressed to the Government and Advisory Board through concerned Jail Superintendent & District Magistrate, Tinsukia.

5. Since the detaining authority failed to inform the detainee of his right to make representation to the detaining authority, having regard to the above cited judicial pronouncement, we have no hesitation to quash the impugned detention order which vitiates the impugned detention order of the petitioner under the Act resulting in his deprivation of fundamental rights in the manner of procedural safeguard guaranteed under article 22(5) of the Constitution of India. We do accordingly.

6. The petitioner be set at liberty forthwith, if he is not required in any other case.

7. In the result, this Habeas Corpus Petition succeeds "and stands allowed.