
(2004) 06 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 10 of 2004

Rina T. Sangma

APPELLANT

Vs

State of Meghalaya and Another

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Meghalaya Preventive Detention Act, 1995 — Section 3, 3(1)

Citation : (2005) 1 GLR 563 : (2004) 3 GLT 485

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : A.S. Siddique, R. Kar and S. Bhattacharjee, for the Appellant; B. Dutta, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—Heard Mr. S. Siddique, learned counsel for the petitioner and Mrs. B. Dutta, learned Govt. Advocate, Meghalaya for the respondents.

2. The son of the petitioner Shri Rina T. Sangma was detained on 05.09.2003 by detention order dated 05.09.2003 in exercise of powers detention; he has made representation to the State Government, which was rejected by order dated 13.10.2003. Aggrieved by the said order, the present habeas corpus petition is filed.

3. The only submission made by the learned counsel for the petitioner before us is that the Additional District Magistrate of South Garo Hills District, who has been holding the charge of District Magistrate, does not have the authority under the law to pass an order of detention under the Act of 1995, he not being the District Magistrate.

4. On the other hand, the submission of the learned State Counsel is that by virtue of the notification issued on 23.04.1974 read with explanation dated 02.02.1983, there is delegation of powers of the District Magistrate in favour of Additional District Magistrate and, therefore, issuance of the order of detention is

in conformity with the provisions of the Act of 1995.

5. To appreciate respective submissions made by the counsel appearing for the parties, it would be appropriate to refer and quote Section 3 of the Act of 1995, which reads :

"3(1). The State Government or a District Magistrate may, if he is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or to the maintenance of public order or of supplies and services essential to the community, it is necessary so to do, make an order directing that such person be detained.

(2) The powers under Sub-section (1) may also be exercised by such officer of the State Government not below the rank of Secretary (hereinafter referred to as empowered officer) as may be specially empowered by it in this behalf."

6. It is apparent from Sub-section (1) of Section 3 that the State Government or the District Magistrate may issue order of detention against any person with a view to prevent him from acting in any manner prejudicial to the security of the State or to the maintenance of public order or of supplies and services essential to the community. Therefore, the power which can be exercised under Sub-section (1) of Section 3 of the Act of 1995 is vested in the State Government or a District Magistrate. Sub-section (2) of Section 3 is in regard to State Government's power to delegate authority of District Magistrate in favour of an officer of the rank of Secretary or above. Sub-section (2) of Section 3 specifies that the delegation of the power shall not be to an officer below the rank of Secretary. Entire reading of Section 3 sub-sections (1) and (2) makes it clear that under the section the State Government, District Magistrate or an officer of the State Government not below the rank of Secretary, empowered by the Act, can issue an order of detention u/s 3 of the Act of 1995.

7. In the matter of Ajaib Singh v. Gurbachan Singh and Ors., AIR 1965 SC 1619, the appellant was detained under Rule 3(I)(b) of the Defence of India Rules by an order passed by one Shri Lall Singh. When he order of detention was passed, Sri Lal Singh was the Additional District Magistrate of Amritsar and had been, inter alia, invested u/s 10(2) of the Code of Criminal Procedure, 1898 with all the powers of the District Magistrate under the Code or any other law for the time being in force, and in exercise of such power the order of detention was issued by him as District Magistrate. Two questions arose before the Apex Court - whether Shri Lall Singh was the District Magistrate of Amritsar on June 30, 1964, the date on which the order of detention was issued and secondly, if, was not District Magistrate on that date, could he as Additional District Magistrate exercise the power of detention. While construing Section 10(1) of the Code of Criminal Procedure, the Apex Court has held at para 9 :

"9.....Now Section 10(1) of the Code provides for the appointment of a District Magistrate and lays down that "in every district outside the presidency-towns, the State Government shall appoint a Magistrate first class to be an

Additional District Magistrate and such Additional District Magistrate shall have all or any of the power of a District Magistrate under the Code or under any other law for the time being in force as the State Government may direct. But even if an Additional District Magistrate has been appointed with all the powers under the Code and also under any other law for the time being in force, he is still not the District Magistrate unless the Government appoints him as such u/s 10(1) of the Code. Further Section 11 of the Code envisages the contingency of the office of the District Magistrate becoming vacant. It provides that where his contingency arises, any officer succeeding temporarily to the chief executive administration of the district shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by the Code on the District Magistrate. But even if an officer is exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate he is still not the District Magistrate until he is appointed as such u/s 10(1) of the Code."

8. The view taken in Ajaib Singh {supra} has been reiterated by the Apex Court in Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., wherein three Judges Bench of the Apex Court in para 7 has said that the scheme of Section 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even though the latter may be empowered under Sub-section (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in Sub-section (1) of Section 10.

9. Section 20 of the Code of Criminal Procedure, 1973, which is applicable to the present case provides that the State Government may appoint as many as persons as it thinks fit to be Executive Magistrate in every district and every metropolitan areas and one of them to be District Magistrate. Sub-section (2) of Section 20 authorises the State Government to appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of the District Magistrate under the Code of Criminal Procedure or under any such law for the time being in force, as may be directed by the State Government. Therefore, if the State Government directs, the Additional District Magistrate can exercise the powers of District Magistrate under the Code of Criminal Procedure or under any other law.

10. Sub-section (3) of Section 20 of the Code contemplates a situation when the office of the District Magistrate is vacant and some other officer succeeds him temporarily to the executive administration of the district. Such officers, pending orders of the State Government, can exercise the powers and perform all the duties respectively conferred by the Code of Criminal procedure on the District Magistrate. Under Sub-section (2) the Additional District Magistrate, on the direction of the State Government, can exercise the powers of the District Magistrate under the Code as well as under any other law. Whereas, under

subsection (3) Officer succeeding temporarily to the post of District Magistrate without there being any order of the State Government shall exercise powers of the District Magistrate vested in him under the Code of Criminal Procedure and not under any other law. From a bare reading of Sub-sections (1) (2) and (3) of Section 20 and the decision in the aforementioned two judgments of the Apex Court it is apparent that although, if the orders are issued by the State Government, the Additional District Magistrate is an authority, who is competent to exercise all the powers of District Magistrate under the Code of Criminal Procedure or any other law, but it cannot be taken to be an appointment of an District Magistrate under Sub-section (1) of Section 20 of the Code as appointment of an Additional District Magistrate to be a District Magistrate. There is a distinction between the exercise of powers of the District Magistrate and appointment as a District Magistrate. Unless and until the person is appointed as District Magistrate, he cannot be said to be a District Magistrate although he can exercise the powers of the District Magistrate.

11. In reference to the orders issued by the State Government, Mrs. B. Dutta, learned Government Advocate has argued that the Additional District Magistrate could be treated to be a District Magistrate, to exercise the powers u/s 3 of the Act of 1995 by virtue of the order of the State Government dated 23.04.1974 read with the explanation dated 2.2.1983. The State Government's order reads :

GOVERNMENT OF MEGHALAYA LAW DEPARTMENT ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Shillong the 23rd April, 1974

No. L.J. 156/71/Pt/22- For the purpose of Chapter VIII, X and XI of the Code of Criminal Procedure, 1973 (2 of 1974) and in exercise of the powers conferred by Sub-sections (1), (2) and (4) of Section 20 of the said Code, the Governor of Meghalaya is pleased to appoint the Sub-divisional officers (Civil) and the Assistants to the Deputy Commissioner to be Executive Magistrates within the local limit of their jurisdiction in the tribal areas within the State of Meghalaya.

The Governor, for the said purpose and in exercise of the powers aforesaid, is pleased further to appoint all the Deputy Commissioners, Additional Deputy Commissioners and Sub-Divisional Officer to be the District Magistrates, the Additional District Magistrates with all the powers of the District Magistrate and the Sub-Divisional Magistrates respectively within the local limit of their jurisdiction in the said tribal areas.

This will take effect from the 1st day of April, 1974.

SN. Phukan Deputy Secretary to the Govt of Meghalaya, Law Department, Shillong."

12. Under the first part of the order, for the purpose of Chapters VIII, X and XI of the Code of Criminal Procedure, 1973 the State Government has appointed all

the Deputy Commissioners, Additional Deputy Commissioners, Sub-divisional Officers (Civil) and other Assistants, if any, to be the Executive Magistrates within the local limits of their jurisdiction in the tribal area. This is an order passed by the State Government in exercise of powers u/s 20(1) of the Code of Criminal Procedure, 1973. But this part of the order does not speak of the appointment of Additional Deputy Commissioner, who has been appointed as Executive Magistrate, to the post of Deputy Commissioner. Thus, the first part of the order speaks only appointment of an Executive Magistrate for the purpose of Chapters VIII, X and XI of the Code. The second part of the order issued by the Governor lays down that the Deputy Commissioners, Additional Deputy Commissioners, Sub-Divisional Officers shall be the District Magistrates, Additional District Magistrates and Sub-divisional Magistrates respectively within the local limits of their jurisdiction in the tribal areas for the purpose of Chapter VIII, X and XI of the Code. This order nowhere says that Additional Deputy Commissioner is being appointed as District Magistrate nor it says about authorisation of powers of District Magistrate for the purpose of the Act of 1995. The explanation dated 02.02.1983 reiterates the same position as has been mentioned herein above. Thus, there is nothing on record to show that the Additional District Magistrate has been appointed on the post of District Magistrate under Sub-section (1) of Section 20 of the Code of Criminal Procedure.

13. In the facts of the case, Section 3 of the Act of 1995 gives authority to the State Government and the District Magistrate to pass an order of detention. It does not authorise the Additional District Magistrate to exercise the powers u/s 3 of the Act of 1995. The order of detention having not been issued by the Deputy Commissioner, who does have the authority or competence under Act of 1995 to pass the order of detention, the order of detention dated 05.09.2003 is without authority to law and is quashed.

14. The writ petition is allowed. The detenu shall be set at liberty, if he is not required in any other matter. However, there shall be no order as to costs.