
(2009) 11 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (Crl) No's. 56 and 57 of 2009

Sanasam Irabanta Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(4)
National Security Act, 1980 — Section 3(3), 3(4), 3(5), 5

Citation : (2010) 4 GLR 343 : (2009) 5 GLT 595

Hon'ble Judges : T. Nandakumar Singh, J;K. Meruno, J

Bench : Division Bench

Advocate : Ph. Sanajaoba, for the Appellant; R.S. Reisang and Amarjit Naorem, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—These two writ petitions, i.e., WP(Crl.) No. 56 of 2009 and WP(Crl.) No. 57 of 2009, challenging the detention orders on the same question of facts and law, are taken up for joint hearing and disposal by a common judgment and order.

2. Heard Mr. Ph. Sanajaoba, Learned Counsel appearing for the petitioners. Also heard Mr. R.S. Reisang, learned Government Advocate appearing for the respondent Nos. 1 and 2 as well as Mr. Amarjit Naorem, learned C.G.S.C. appearing for the respondent No. 3.

3. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objective of the society, specified in the Constitution. The object of law of preventive detention is not punitive but only preventive. Preventive detention is an anticipatory measure and does not relate to an offence. It is resorted when the executive is convinced that such detention is necessary in order to prevent the persons detained from acting in a manner prejudicial to certain objects which are specified by the law. The framers of the Constitution, being aware that preventive detention involves a serious

encroachment on the right to personal liberty, took care to incorporate, in Clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "zealously watched and enforced by the court". The Apex Court in *Rattan Singh Vs. State of Punjab and Others*, observed that -

...May be that the detenue is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the loss of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus...." (Ref.: Para-4 of the SCC in *Rattan Singh's* case (supra)).

The Apex Court (Constitution Bench), by relying on the earlier decision in *Rattan Singh's* case (supra) held that procedural safeguards provided for protection of persons sought to be preventively detained should be seriously enforced by the court. [Ref.: *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*,

4. No doubt, the doctrine of preventive power of the Administrative/ Executive authority, constitutionally validate preventive process for the maintenance of public order, security of the State, national security, defence of India and relations of India with the foreign power. The Apex Court in *Amir Shad Khan and another Vs. L. Hmingliana and others*, held that -

The law of preventive detention is harsh to the person detained and, therefore, there can be no doubt that it must be strictly construed. Article 22(3)(b) denies to a person who is arrested or detained under any law providing for preventive detention the protection of Clauses (1) and (2) of the said article. Clause (4) thereof enjoins that the preventive detention law must conform to the limitations set out thereunder. Clause (5) of Article 22 reads as under:

22. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order." (Ref.: Para 3 of the SCC in *Amir Shad Khan's* case (supra)).

5. The Apex Court in *Union of India (UOI) Vs. Paul Manickam and Another*, held that the history of liberty has largely been the history of observance of procedural safeguards. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. 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 ore strictly construed, and a meticulous compliance with the procedural safeguard, however, technical, is mandatory. Para Nos. 8 and 9 of the SCC in *Paul Manickam's* case (supra) read as follows:

8. It has been said that the history of liberty has largely been the history of observance of procedural safeguards. The procedural sinews strengthening the substance of the right to move the court against executive invasion of personal liberty and the due dispatch of judicial business touching violations of this great right is stressed in the words of Lord Denning as follows:

"Whenever one of the King's Judges takes his seat, there is one application which by long tradition has priority over all other, Counsel has but to say: My Lord, I have an application which concerns the liberty of the subject and forthwith the Judge will put all other matters aside and hear it. It may be an application for a writ of habeas corpus, or an application for bail but whatever form it takes, it is heard first" (Freedom under the Law, Hamlyn Lectures, 1949)

9. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of the State's security, public order, disruption of national economic discipline, etc., being envisaged as a necessary evil to be administered under strict constitutional restrictions. In *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, this judicial commitment was highlighted in the following words: (SCC p. 538, para 5).

The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

*** *** *** This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention....

6. In the present two writ petitions, the detenus had been detained under the National Security Act, 1980 vide the orders of the District Magistrate, Imphal West on the same day, i.e., on 15.5.2009 in exercise of the powers conferred under Sub-section (3) of Section 3 of the National Security Act, 1980 read with Home Department's Order No. 17(1)/49/ 80-H(Pt-1) dated 16.2.2009. Admittedly, the said detention orders dated 15.5.2009 passed by the District Magistrate, Imphal West had been approved by the State Government in exercise of the powers conferred u/s 3(4) of the NSA vide two orders having the same date, i.e., 22.5.2009. The detenus, by filing the present writ petitions, have been assailing the detention orders on the main ground that the procedure prescribed u/s 3(5) of the National Security Act, 1980. which are to be guarded zealously and enforced by the court in detaining them under the NSA had not been followed inasmuch as the State Government, in compliance with the mandatory requirements of sending the report of the fact of approval of detention orders by the State Government together with the grounds on which the orders have been made and such oilier particulars as, in the opinion of the State Government, have a bearing on the necessity for the orders, had not sent the report of approvals of the detention order vide Government order dated 22.5.2009 to the Central

Government within seven days from the date of approval of the detention order.

7. This Court, in order to see if the procedures provided in Section 3(5) of the NSA had been complied with by the State Government in detaining the detenus, had directed the learned Government Advocate to produce the relevant file including the dispatch register maintained by the concerned Department of the Government of Manipur for sending the report mentioned in Section 3(5) of the NSA to the Central Government. Accordingly, the learned Government Advocate makes the relevant file including the dispatch register available before this Court for perusal. On perusal of the dispatch register, it is clear that the State Government sent the report for approving the detention orders vide approval orders dated 22.5.2009 along with the grounds on which the said order had been made to the Central Government only on 30.5.2009, i.e., on the 8th day from the date of passing the approval orders, i.e., 22.5.2009.

8. This Court (Division Bench) in CR (HC) No. 41 of 1996 between Sanasam Ongbi and Anr. v. State of Manipur and Ors. had quashed the order of detention on the conclusion that there has been infraction of Sub-section (5) of Section 3 of the NSA inasmuch as the report of the State Government did not reach the Central Government within seven days of the date of approval of the detention order of the detenu. Thus, this Court (Division Bench) had interpreted Sub-section (5) of Section 3 of the NSA in Sanasam Ongbi's case (*supra*) in such a manner that the report of the State Government provided in Sub-section (5) of Section 3 should reach the Central Government within seven days of the date of approval of the detention order. For easy reference, Sub-section (5) of Section 3 of the NSA is reproduced hereunder:

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

9. There are many divergent views of different High Courts regarding the expression "report the fact to the Central Government within seven days" as mentioned in Sub-section (5) of Section 3 of the NSA. The Full Bench of the Bombay High Court held that the requirement of Section 3(5) of NSA is that the State Government should send the report within seven days from the passing of the order of approval thereof and it is not necessary that such report should reach the Central Government within that stipulated period. This conflicting interpretation/expression of the High Courts in interpreting Section 3(5) of the NSA was brought to the notice of the Apex Court in the State of Manipur and Others Vs. Sanasam Ongbi and Another, and the Apex Court had given the authoritative pronouncement regarding the expression "report of fact to the Central Government within seven days" mentioned in Section 3(5) of the NSA by accepting the view of the Full Bench of the Bombay High Court as well as the Division Bench of the Allahabad High Court and the Gujarat High Court that the

State Government should send the report within seven days from the passing of the order of approval thereof and it is not necessary that such report should reach the Central Government within that stipulated period and further held that the Division Bench of the Gauhati High Court committed error in coming to the conclusion that there has been an infraction of Section 3(5) of the NSA as the report and the other documents did not reach the Central Government within the period of seven days as provided in Sub-section (5) of Section 3 of the NSA. Para Nos. 2 and 3 of the SCC in Sanasam Ongbi's case (supra) are quoted hereunder.

2. On a plain reading of the section, it appears to us that the statutory obligation on the State Government is to report the fact to the Central Government together with the grounds on which the order has been made within seven days of the date of approval when the order is made by any other authority than the State Government and within seven days of the date of the order when the order is made by the State Government itself. The language of Section 5 is not susceptible of the construction that the report itself should reach the Central Government within seven days prescribed under the said Sub-section, which would be an impossible burden in certain circumstances. This question came up for consideration before the Bombay High Court in the case of Vinayak Ramchandra Sakhalkar and Vs. D. Ramchandran, Commissioner of Police and Others etc., The court interpreted the expression "report the fact" in Section 3(5) of the Act to mean that the report sent by the State Government u/s 3(5) of the Act must be received by the Central Government within the prescribed period of seven days. The question also came up for consideration before the Allahabad High Court in the case of Guru Charan Singh v. Supdt., Central Jail 1986 All. LJ 1172 (All.) and the Allahabad High Court relied upon the aforesaid decision of the Bombay High Court and came to the conclusion that the expression "report the fact to the Central Government within seven days" means to communicate the fact within seven days and, therefore, it is quite obvious that unless the fact of detention is communicated to the Central Government within seven days, it cannot be said that the mandate of Section 3(5) is complied with. A similar provision in the prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, came up for consideration before the Gujarat High Court in the case of Jivrajbhai Vrajlal Patel v. State of Gujarat (1988) 1 Guj. LR 17. Section 3(4) of the said Act enjoins upon the State Government to report the factum of detention to the Central Government within seven days. The High Court construed the said provision and held that the law enjoins that the report should actually reach the Central government and the fact that the State Government has forwarded the report within seven days is not sufficient. The Gauhati High Court in the impugned judgment relied upon the decision of the Bombay High Court and the decision of the Allahabad High Court and came to the conclusion that the provisions of Section 3(5) cannot be said to have been complied with in their true spirit as the report in question did not reach the Central Government within the period of seven days as indicated in Sub-section (5) of Section 3 of the Act. The interpretation to the provisions of Section 3(5) of

the Act given by the Bombay High Court referred to earlier has not been accepted by the Full Bench of the said High Court in the case of *Nizam Babamiya Bhatti v. A.S. Samra, Commr. of Police* (1994) 1 Mah. LJ 6 (Bom.) (FB). The aforesaid Full Bench had considered the Gujarat High Court's decision and the decision of the Division Bench of the Allahabad High Court and come to the conclusion that the views expressed by the Gujarat and Allahabad High Courts and the Division Bench of Bombay High Court cannot be accepted. The Full Bench held that the requirement of Section 3(5) is that the State Government should send the report within seven days from the passing of the order or approval thereof and it is not necessary that such report should reach the Central Government within that stipulated period. This question has been considered by a Full Bench of the Patna High Court in the case of *Yogendra Singh Vs. State of Bihar and Others*, and the court held that:

Where the State Government had approved the detention order by order dated 5.11.1983, and the report had been sent to the Central Government on 12.11.1983, the order of detention could not be challenged on the ground that it was the legal obligation on the part of the detaining authority to make a report to the Central Government within seven days. It cannot be said that the report ought to have reached the Central Government within seven days because the obligation imposed upon the State Government u/s 3(5) is that the State Government should send a report and it is not that the report should reach within a period of seven days.

To the same effect is the decision of the Orissa High Court in the case of *Ullas Sahu and etc. Vs. District Magistrate and Others*, whereunder the Orissa High Court differed from the views taken by the Bombay and Allahabad High Courts and came to the conclusion that the obligation on the State u/s 3(5) of the Act is not that the report should reach the Central Government within the period of seven days as provided therein.

3. Having examined the divergent views of different High Courts as noticed above as well as on a construction of Sub-section (5) of Section 3 of the Act we have no hesitation to hold that the expression "report the fact to the Central Government" cannot be equated with the fact that the "report should reach the Central Government" within the period of seven days as provided in Sub-section (5) of Section 3. We are in respectful agreement with the views expressed by the Full Bench of the Bombay High Court as well as the Division Bench of the Patna and Orissa High Courts and we hold that the law laid down by the Allahabad High Court and the Gujarat High Court is not correct. The Learned Counsel appearing for the detainee placed reliance on a decision of this Court in the case of *Sher Mohammad alias Seru Vs. The State of West Bengal*, In the aforesaid decision, Section 3(4) of the Maintenance of Internal Security Act, came up for consideration and this Court held that a communication made to the Central Government prior to the approval of the detention order by the State Government cannot, be held to be a compliance with Section 3(4) of MISA. The

question which falls for consideration in the case in hand was not before the court in the aforesaid case nor find it been answered and as such the aforesaid decision is of no assistance. In the aforesaid premises we hold that the Division Bench of the Gauhati High Court committed error in coming to the conclusion that there has been an infraction of Section 3(5) of the Act as the report and the other documents did not reach the Central Government within the period of seven days as provided in Sub-section (5) of Section 3 of the Act. The construction put forth by the High Court on the expression "within seven days report the fact to the Central Government" is erroneous. The impugned decision accordingly does not by down the correct law. The appeal is allowed and the writ petition filed by the detainee in the High Court stands dismissed.

10. For the foregoing discussions, we are of the considered view that the procedural safeguards provided in Section 3(5) of the NSA had been violated in the instant case, inasmuch as, the report of fact of approval of the detention orders vide approval orders dated 22.5.2009 had not been sent to the Central Government within seven days from the date of passing of the approval orders inasmuch as the report of the fact of approval of the detention orders vide approval order dated 22.5.2009 was sent only on 30.5.2009. As such, the detention orders dated 15.5.2009 passed by the District Magistrate, Imphal West and the approval orders of the Government of Manipur dated 22.5.2009 as well as the subsequent confirmation orders of the Government of Manipur are liable to be quashed.

11. Accordingly, the detention orders dated 15.5.2009 passed by the District Magistrate, Imphal West and the approval orders of the Government of Manipur dated 22.5.2009 as well as the subsequent confirmation orders of the Government of Manipur are quashed. The two detenus, namely, (1) Shri Sansam Ibohanbi @ Ibo, S/o S. Irabanta Singh (detenue in WP (Cril) No. 56 of 2009) and (2) Naorem Nicolas Singh @ Nanao, S/o N. Samananda Singh (detenue in WP (Cril) No. 57 of 2009), should be set at liberty forthwith, if they are not required to be arrested or detained in any other cases.

Send a copy of this judgment and order to the Chief Secretary, Manipur, Commissioner/Secretary (Home), Government of Manipur and the DGP, Manipur for information and necessary action regarding the procedure prescribed in Section 3(5) of the National Security Act, 1980.

12. With the aforesaid directions, these two writ petitions, i.e., WP (Cril) No. 56 of 2009 and WP (Cril) No. 57 of 2009 are allowed.