

(2005) 03 GAU CK 0085

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 54 of 2004

Sayed Sabir Ahmed

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

National Security Act, 1980 — Section 10, 14(1), 3(2), 3(5)

Citation : (2005) 2 GLT 428

Hon'ble Judges : D. Biswas, Acting C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : P.C. Dey, A. Das and A. Ozah, for the Appellant; K.N. Choudhury and B.J. Talukdar and K.K. Gogoi, CGSC, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, Actg. C.J.

1. Heard Mr. P.C. Dey, learned Counsel for the Petitioner. Also heard Mr. K.N. Choudhury, learned Addl. Advocate General, Assam assisted by Mr. B.J. Talukdar, learned Government Advocate and Mr. K.K. Gogoi, learned Central Government Standing Counsel.

2. This Habeas Corpus petition under Article 226 is directed against the order dated 14.8.2004 passed by the District Magistrate, Nagaon under Sub-section (2) of Section 3 of the National Security Act, 1980, (hereinafter referred to as the "Act") detaining the Petitioner Shri Sayed Sabir Ahmed in custody for a period of three months from the date when the order of detention was served upon him. The order of detention has been passed on the ground that the Petitioner is involved in various criminal activities including explosion of bomb rendering the society unsafe. The order of detention further shows that the detenu was in custody in connection with other criminal cases and the detaining authority was aware of this fact.

3. The aforesaid order of detention has been challenged on various grounds of

which only the following grounds have been relied upon by Mr. P.C. Dey, learned Counsel for the Petitioner:

(i) That the grounds of detention as is required u/s 10 of the Act have not been referred to the Advisory Board within the statutory period of three weeks;

(ii) The grounds of detention were forwarded to the Central Government by the State Government on 24.8.2004 as provided under Sub-section (5) of Section 3 of the Act and the Central Government though empowered u/s 14(1), did not apply its mind either to revoke or modify the order of detention as provided therein; and

(iii) The representation submitted by the detenu on 28.8.2004 was forwarded by the District Magistrate to the State Government, Central Government and the Advisory Board after a delay of 13 days i.e. on 9.9.2004 and the Respondent State has not explained the delay that occurred in transmitting the representation in their affidavit-in-opposition.

4. Extensive arguments have been advanced by Shri Dey, learned Counsel for the detenu in order to show that the detention of the detenu cannot be sustained in law in view of the violation of the mandatory provisions of Section 3(5) read with Section 14(1) as well as Section 10 of the Act. Mr. KN Choudhury, learned Addl. Advocate General, Assam argued at length to counter the contentions advanced by Shri Dey.

5. We have taken note of the rival contentions. In so far as the violation of Section 10 is concerned, we may record that the order of detention was passed by the District Magistrate on 14.8.2004 and the State Government was immediately informed of the order of detention. The State Government approved the order of detention by an order passed on 19.8.2004 and forwarded the grounds of detention to the Central Government on 24.8.2004. As is required u/s 10 of the Act, the grounds of detention ought to have been placed before the Advisory Board within a period of three weeks from 14.8.2004 i.e. on or before 3rd September 2004. Admittedly, in the instant case, the State Government placed the grounds of detention before the Advisory Board on 9.9.2004. Ex-facie there is a violation of the mandatory provisions of Section 10. In consequence, the order of detention stands vitiated. In this connection Mr. Dey relied upon a Division Bench's decision of this Court in *Paban Saloi @ Babul Choudhury, Petitioner -versus- Union of India and Ors.* Respondents reported in 2000 (2) GLT 135. In the same vein, as has been indicated by us hereinbefore, the Division Bench of this Court interfered with the order of detention for non-compliance of the provisions of Section 10 only exactly on a similar situation. We, therefore, uphold the contention that there has been flagrant violation of the provisions of Section 10. This means the order of detention cannot be sustained in law.

6. The next contention urged is with regard to the failure of the Central Government to apply its mind to the grounds forwarded by the State Government as required u/s 3(5) of the Act read with Section 14(1). It has been

urged by Shri Dey that the powers vested with the Central Government u/s 14(1) is not an empty formality. According to Shri Dey, it casts an obligation on the Central Government to apply its mind and pass appropriate orders either revoking or modifying the order of detention. There is no doubt that the provisions in Sub-section (5) of Section 3 will have to be read conjointly with the provisions in Section 14(1) and such reading would lead to the irresistible conclusion that the Central Government is under legal obligation to apply its mind and pass appropriate orders after receipt of the grounds of detention. This position of law has been well settled in a number of judgments of this Court of which mention may be made of a Full Bench judgment rendered in Hitendra Nath Goswami Vs. State of Assam and Others, The ratio of the judgment available in Paras 22 and 33 of the aforesaid judgment are quoted below:

22. ...As such, non-consideration of the report by the Central Government with expedition would be a breach of the procedural safeguard provided by the Act, as an additional check against the improper exercise of power of detention by the detaining authority and thereby violate Article 21. It is a case where the Central Government may be considered to have failed to understand the object and scope of Section 14(1) read with Section 3(5) of the Act and of its function and duties thereunder.

33. I have discussed at length the question under reference, and for reasons given above, my answer is that the discretionary power of the Central Government u/s 14(1) of the Act in the context of Section 3(5) of the Act is coupled with duty to consider the report received from the State Government with reasonable expedition notwithstanding that no representation/petition has been made by the detenu to the Central Government; what is reasonable expedition depends on the circumstances of the particular case; and in case of breach of such procedural safeguard, the detention order is liable to be set aside and the detenu set at liberty.

7. The ratio available in the aforesaid judgment is also available in Lalbhai Talsibhai Patel Vs. Additional Special Land Acquisition Officer, A Division Bench of this Court was of the opinion that not only the Central Government is duty bound to consider the grounds (report) forwarded to it by the State Government, but it must do so with reasonable expedition in discharge of its duties and obligation enjoined u/s 14(1) of the Act. According to the Division Bench, the object of sending the report is either to revoke or modify or not to revoke or modify the order. On the factual matrix of the case at hand and taking note of the aforesaid decisions, we are of the opinion that the detention of the Petitioner in the instant case is vitiated for non-performance of the Central Government in accordance with the provisions of Section 14(1) of the Act.

8. The other point urged is with regard to 13 days delay by the District Magistrate in forwarding the representation submitted by the detenu. There is no dispute with regard to the delay on which the grievances have been raised in the writ petition. No explanation is available in the affidavit-in-opposition filed by the

State Government in any manner whatsoever to justify this delay. Mr. Choudhury, learned Addl. Advocate General, Assam during the course of argument, however, cited certain dates from the official records in order to show that the delay on the part of the District Magistrate was under administrative compulsion. In view of the findings recorded above that there is violation of the provisions of Section 10 and Section 3(5) read with Section 14(1) of the Act, we think it would just be a futile exercise in the fact situation of the case to endeavour to justify the 13 days delay in transmission of the representation. We leave the matter as it.

9. In the result, we allow the writ petition. The order of detention dated 14.8.2004 passed by the District Magistrate, Nagaon and the order of confirmation dated 29.09.2004 passed by the Deputy Secretary to the Government of Assam, Political (A) Department are hereby set aside. The Petitioner be set at liberty forthwith if not wanted in connection with any other case.

No costs.