

(1982) 06 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule (HC) No. 32 of 1982

Sena Rokhuma Thangvela

APPELLANT

Vs

District Magistrate, South and District, Manipur & Others

RESPONDENT

Date of Decision : 10-06-1982

Acts Referred:

National Security Act, 1980 — Section 10, 10

Citation : (1982) 1 GLR 606

Hon'ble Judges : B.L.Hansaria, J and S.M.Ali, J

Bench : Division Bench

Advocate : L.Nanda kumar Singh, N.K.Singh, R.K.Manisana Singh, Advocates appearing for Parties

Judgement

Hansaria, J.—The petitioner is a Mizo by birth and is a journalist by profession on being an editor of a daily paper "Zoram Thar" published in Lushai language from Churachandpur. He came to be detained on 29.3.82 in pursuance to an order of that date passed by District Magistrate, Manipur South District with a view to prevent him from acting in a manner prejudicial to the security of the State. The order of detention was passed under section 3(2) of the National Security Act, 1980, for short the Act. The grounds of detention were served on the petitioner on 30.3.82. The order of detention was approved by the State Government on 8.4.82. The detenu filed a representation against the order of detention which is dated 22.4.82. This was in Lushai language. Admittedly this was received by the Government on 1.5.82, As the Advisory Board seized with the case was sitting on 2.5.82, the representation was forwarded to the Board on that date without the same having been considered by the Government. The Board however considered the representation and recommended further detention. After receipt of the report of the Board the Government confirmed the order on 6.5.82. The representation which had been filed by the detenu was however taken up for consideration by the Government subsequently and the same was rejected on 24.5.82,

2. Relying on these facts Shri Nandakumar Singh for the petitioner has urged that the impugned order is not sustainable inasmuch as the Government had not considered the representation of the detenu before it had confirmed the order of detention on 6. 5. 82. From the facts as narrated above, this position is indubitable. The question is whether the same has violated the constitutional safeguard given to a detenu by Article 22 (5) of the Constitution.

3. In support of his submission Shri Nandakumar Singh has first referred to *Sekawat vs. State of West Bengal* AIR 1975 SC 64. In that case though the order of detention was made on 26.7.72, the petitioner in fact came to be detained on 24. 10.72. The matter was thereafter placed before the Advisory Board for its opinion and the Board submitted a report dated 23.11.72. Up to this time no representation against the order was received from the petitioner. It was only on 27.11.72 that the State Government received the representation. By that date the State Government had not confirmed the order of detention. Even so the State Government proceeded to confirm the order of detention without considering the order of detention. The order of confirmation was passed on 29.11.72 whereas the representation was considered and rejected on 2.12.72. On these facts it was held by the Supreme Court that the order confirming the detention having been passed without considering the representation of the petitioner was unlawful as being in violation of Article 22 (5) of the Constitution. The only material difference in the facts is that the representation in that case had been received after the report of the Advisory Board, whereas in the present case representation was received before the matter had been considered by the Advisory Board. Relying on this distinction, learned Advocate General submits that the ratio of the above case would not apply. To persuade us to hold so learned Advocate General has referred to that part of the decision where in a contention was advanced that if the representation is received after the matter had been referred to the Advisory Board for which a time limit is fixed, there will be no obligation on the part of the Government to forward it to the Advisory Board. No final opinion was expressed on this point as the same did not arise for consideration. In the present case the attack is not so much on the ground that the representation was not considered before sending the matter to the Advisory Board, as that this was not considered by the Government before confirming the order of detention. Learned Advocate General has submitted that as the representation was received beyond the period of three weeks mentioned in section 10 of the Act, it was not obligatory on the part of the Government to consider the representation before confirming the order. We are also referred to in this connection to para 4 of the grounds of detention wherein it has been mentioned that should the detenu desire to make a representation he should address it to the Chief Secretary so as to reach the Government before the expiry of three weeks from the date of detention so that while placing the grounds of detention the same may be placed before the Advisory Board which the Government is required to do within three weeks from the order of detention. This limit of three weeks as visualised by section 10 of the Act is for placing the

matter before the Advisory Board. This limitation has nothing to do with the representation which a detenu may wish to make. If a representation is made within the period of three weeks, it would be incumbent on the part of the Government to forward the same to the Advisory Board apart from considering the same on its own. If however a representation be made beyond the period of three weeks, it cannot be held on any principle that the Government may not consider the same before confirming the order.

4. Reference is also made in this connection by Shri Nandakumar Singh to *Vimal Chand vs. Pradhan*, AIR 1979 SC 750, which a Division Bench observed as below in para 4:

"There are thus two distinct safeguards provided to a detenu; one is that his case must be referred to an Advisory Board for its opinion if it is sought to detain him for a longer period than three months and the other is he should be afforded the earliest opportunity of making a representation against the order of detention and such representation should be considered by the detaining authority as early as possible before any order is made confirming the detention. Neither safeguard is dependent on the other and both have to be observed by the detaining authority."

The second safeguard viz, consideration of the representation by the detaining authority before any order confirming the detention is made is absent in the present case. We are unable to agree to the learned Advocate General that this would apply only when a representation is made within the statutory period mentioned in section 10 of the Act. The constitutional safeguard made available by Article 22 (5) of the Constitution is the consideration of the representation as soon as it is received by the Government and also before confirming the order of detention as stated in *Vimal Chand*. For this purpose it is not material as to whether the representation had been made within the period prescribed by section 10 of the Act or not. As in present case the representation was admittedly not considered before the Government had confirmed the order, we are satisfied that the detention was in violation of Article 22 (5) of the Constitution. This ground alone is sufficient to set aside the order. We may also state that there was delay as well in consideration of the representation inasmuch as after the same was received on 1.5.82 the same came to be rejected on 24.5.82. The cause for delay has been explained in para 12 of the counter affidavit and it appears that as the representation was in Lushai language, the Director of Publicity was asked only on 12.5.82 to arrange to translate the representation in English. We would think that this delay of 11 days is fatal to the order as there is no explanation as to why despite receipt of the representation on 1.5.82 and knowing that it was in Lushai language no steps were taken till 12.5.82 to get it translated. The mere fact that this was sent to the Advisory Board on 2.5.82 did not exonerate the Government's own responsibility to consider the representation. Having taken this view we are not addressing ourselves on the other points raised by Shri Nandakumar Singh.

5. In view of the above we allow the petition and set aside the order of detention, the petitioner is to be set at liberty forthwith If he is not wanted in connection with any other case.