
(2010) 02 GAU CK 0082
In the Gauhati High Court
Case No : Writ Petition (Cri) No. 96 of 2009

Shri Laishram Shyamjai Singh	Vs	APPELLANT
The District Magistrate and Others		RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(4), 22(5)
National Security Act, 1980 — Section 10, 11, 3(2), 3(3), 3(4)
Penal Code, 1860 (IPC) — Section 120B, 307, 364, 364A, 457
Unlawful Activities (Prevention) Amendment Act, 2004 — Section 16, 20

Citation : (2010) 2 GLD 265 : (2010) 2 GLT 423

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

Bench : Division Bench

Advocate : Kh. Mani Singh, for the Appellant; R.S. Reisang, Additional Government Advocate and C. Kamal, CGSC, for the Respondent

Final Decision : Allowed

Judgement

1. The core question called for decision in the present writ petition is : Is it obligatory or whether the obligation cast on the State Government (appropriate Government) u/s 10 of the National Security Act, 1980 (for short "NSA") to refer the representation filed by the detenu within three weeks from the date of detention of the detenu to the detaining authority, even if rejected, to the Advisory Board constituted u/s 9 of the NSA or not?
2. Heard Mr. Kh. Mani Singh, learned Counsel appearing for the petitioner detenu as well as Mr. R.S. Reisang, learned Government Advocate appearing for the respondent Nos. 1 and 2 and Mr. C. Kamal, learned CGSC appearing for the respondent No. 3.
3. Before answering the question called for decision, it would be convenient to look into Section 10 of the NSA and for easy reference Section 10 of the NSA is quoted hereunder:

10. Reference to Advisory Boards.- Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer mentioned in Sub-section (3) of Section 3, also the report by such officer under Sub-section (4) of that section.

4. FACTUAL BACKGROUND:

The petitioner-detenu was arrested on 15.7.2009 at about 12-20 pm by a team of police personnel of Imphal West District in connection with a criminal case being FIR No. 188(6) 2009 under Sections 364/364A/307/457/120B of IPC and 25(1-B) of the Arms Act read with Section 16/20 UA(P)A Act, and remanded to police custody by the concerned Magistrate till 25.7.2009. While he was in police custody, he was served with a copy of the impugned detention order being No. Cnl/NSA/No. 65 of 2009, dated 25.7.2009 passed by the District Magistrate, Imphal West, Manipur directing the petitioner-detenu to be detained u/s 3(2) of the NSA until further orders. The District Magistrate, Imphal West Manipur under his letter being No. Cril/NSA/No. 65 of 2009 dated 28.7.2009 furnished the grounds of order of detention to the petitioner-detenu. Later on, the Government of Manipur issued order being No. 17.(1)/1530/2009-H dated 5.8.2009 approving the detention order of the petitioner-detenu dated 25.7.2009 passed by the District Magistrate Imphal West, Manipur.

5. It is the fundamental right of the petitioner-detenu under Article 22(5) of the Constitution of India to file representation against the detention order to the authority. This Court, (Special Bench) consisting of five Judges, in *Konsam Brojen Singh v. State of Manipur and Ors.* 2006 (1) GLT 375 (FB), held that the detenu has the right to make representation to the detaining authority in addition to his right of making representation to the appropriate authority. The ratio laid down in *Konsam Brojen Singh* (supra), is that the detenu has the right under Article 22(5) of the Constitution of India to file representation against the detention order to the concerned District Magistrate, who passed/issued the detention order. Para- 57 of the judgment in *Konsam Brojen Singh* case (supra) reads as follows:

57. For all the aforesaid reasons, we hold:

(1) That a detenu 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 to 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 detenu whether they are

provided for or not in the preventive detention laws.

(2) The right to make representation to the detaining authority by a detenu 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 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 detenu of his right to make such a representation to the detaining authority;

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

6. The petitioner-detenu filed a representation dated 5.8.2009 addressed to the detaining authority (i.e., the District Magistrate, Imphal West, Manipur) against the detention order. The District Magistrate after due application of his judicious mind rejected the representation dated 5.8.2009 filed by the petitioner-detenu vide his order dated 7.8.2009.

7. The appropriate Government, i.e., the State Government placed before the Advisory Board, constituted u/s 9 of the NSA, the grounds of order of detention and the report submitted by the District Magistrate under Sub-section (4) of Section 3 of the NSA and the Advisory Board in its meeting held on 24.8.2009 and 25.8.2009 had considered the case of the petitioner-detenu and unanimously opined that there was/were sufficient cause for detention/continue detention of the petitioner-detenu under the NSA. Admittedly, the said representation dated 5.8.2009 filed by the petitioner-detenu addressed to the District Magistrate, Imphal West, Manipur, who rejected the same on 7.8.2009, was not placed before the Advisory Board.

8. The respondent No. 1 and the respondent No. 2 filed two separate affidavit-in-oppositions, wherein it is the case of the respondent Nos. 1 and 2 that the representation dated 5.8.2009 filed by the petitioner-detenu addressed to the District Magistrate, Imphal West, Manipur is not required to be placed before the Advisory Board for the reasons that; (1) the representation dated 5.8.2009 addressed to the District Magistrate, Imphal West, Manipur had already been considered and rejected by the District Magistrate on 7.8.2009; (2) at the time of placing the grounds of order of detention, the report of the District Magistrate, Imphal West and other materials before the Advisory Board, there was no representation pending for consideration; and (3) the "representation" mentioned in Section 10 of the NSA is the representation filed by the petitioner-detenu addressed to the appropriate Government i.e., the State Government.

9. On plain reading of Section 10 of the NSA, it is crystal clear that

"representation" mentioned in Section 10 of the NSA is not clarified by the words such as representation to the appropriate Government or representation to the detaining authority or the pending representation, it is simply mentioned in Section 10 of the NSA that the representation, if any.

10. It is a cardinal rule of construction that no word should be construed, redundant or surplusage in interpreting the provision of a statute or rule (Ref. *Dinesh Chandra Sangma v. State of Assam and Ors.* AIR 1978 SC 717 . The Apex Court in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , held that it is the basic principle of construction of statute that statute enacted must ordinarily be construed according to its plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally reconcilable with the rest of the statute. It is well settled that while construing or/ interpreting statute, true meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law. Accordingly, we require to see the scheme of law relating with the detention of a citizen of India who has a fundamental right for protection against arrest and detention in certain cases.

11. Article 21 of the Constitution of India provides in clear and explicit terms that no one should be deprived of his life or personal liberty except in accordance with procedure established by law. In order that the personal freedom may not be curtailed beyond necessity and the executive administration may not make it an empty guarantee, detailed provisions were made in Article 22 providing an effective procedure in the matter of making of representation and scrutiny of the materials in the presence of the detenu and even hearing him, if he so desired, by an independent Board with adequate judicial bias. 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 or to direct the release of the detenu even though the detention may have been valid till the breach occurred.

12. The Apex Court (Constitution Bench) had considered and discussed the right of a citizen guaranteed under Article 22(5) of the Constitution of India and the scheme of law u/s 10 of the NSA in *Jayanarayan Sukul Vs. State of West Bengal*, The Apex Court in *Jayanarayan Sukul* case (supra), held that four principles are to be followed in regard to the representation of the detenus of which the 4th principle is that the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. The appropriate Government will not send the matter to the Advisory Board if the appropriate Government releases the detenu accepting the representation. If the representation is not accepted, the appropriate Government shall send the case of the detenu along with his representation to the Advisory Board. Para 20 of the AIR in *Jayanarayan Sukul*

case (supra), reads as follows:

20. Broadly stated, four principles are to be followed in regard to representation of detenu. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any against the release of the detenu the Government may still exercise the power to release the detenu.

13. The Apex Court in Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur, held that under Article 22(5) of the Constitution of India there is dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, to have his representation considered by the appropriate Government and to have once again that representation considered by the Advisory Board before it gives its opinion.

14. The Advisory Board constituted u/s 9 of the NSA has the power to consider the matter placed before them independently and uninfluenced by the any decision of the appropriate Government regarding the detention of the detenu. In other words, the appropriate Government and the Advisory Board constituted u/s 9 of the NSA have to exercise their respective powers independently for coming to their independent decision regarding the detention of the detenu. Further while considering the representation of the detention of the detenu by the Advisory Board constituted u/s 9 of the NSA, they are not subject to any decision made by the appropriate Government or detaining authority regarding the same representation filed by the detenu.

15. The Apex Court (Constitution Bench) in A.K. Roy and Others Vs. Union of India (UOI) and Others, , emphasised on compliance with the procedural requirements and held that the duty and functions of the Advisory Board is to determine whether there was sufficient cause for detention of the person concerned on the date on which the orders of detention was passed and whether

or not there is sufficient cause for the detention of that person on the date of its report. The Apex Court in *State of Himachal Pradesh v. Mahant Singh* : (1985) 4 SCC 624, was of the definite view that the requirement of Section 10 of the NSA are mandatory and non-compliance with or infraction thereof would certainly be fatal. The Apex Court in *State of Rajasthan and Another Vs. Shamsheer Singh*, , held that "Section 10 stipulates that the grounds on which the order has been made and also the representation of the detenu, if any, have to be placed before the Board when the reference is made. The legislative scheme contained in this section envisages the situation that there may be a case where no representation at all is made or within the time contemplated u/s 10 the representation has not been forthcoming. We agree with the submission of Mr. Jethmalani that the obligation cast u/s 10 of the Act, is paramount and the strictness with which such a mandate has to be complied with is absolute. While making of the reference u/s 10 with the grounds of detention is a must, furnishing of the representation is conditional upon it having been made and receipt thereof by the appropriate Government. Though under the general scheme of the Act, definite and different periods have been prescribed for compliance with the step to step treatment of the matter, there is no obligation cast on the detenu to make a representation within any definite time. We are, therefore, prepared to accept the submission of the learned Advocate General that while considering the compliance with Section 10 of the Act, emphasis has to be laid on making of the reference and forwarding of the grounds of detention, and the placing of the representation has to be judged on different basis. We may not be understood to be of the view that it is open to the appropriate Government to withhold the placement of the representation unduly or indefinitely. When the reference is received and the grounds of detention are available, the Board proceeds to fix a date of hearing for consideration of the justification of detention. The procedure of the Advisory Board contained in Section 11 of the Act, indicates that the Board is to consider the materials placed before it and is entitled to call for such information as it may deem necessary from the appropriate Government or from any other person concerned and after hearing the detenu, if he wants to be heard in person, has to report to the appropriate Government within seven weeks from the date of detention in the manner indicated in the remaining sub-sections of that section. While dealing with this aspect of the matter it is to be borne in mind that Section 10 requires the reference to be placed before the Board within three weeks and Section 11 requires the report to be submitted to the appropriate Government within seven weeks. The legislative scheme in fixing the limit of three weeks in Section 10 and the further limit of seven weeks in Section 11 allows at least four weeks" time to the Board to deal with the matter."

16. The obligation cast u/s 10 of the NSA is a paramount and the strictness with which such a mandate has to be complied with is absolute. It is the mandate provided u/s 10 of the NSA that the appropriate Government requires the reference to be placed before the Advisory Board, the grounds, of order of detention and the representation, if any, and the report of the detaining authority

under Sub-section (3) of Section 3 of the NSA within the time limit, i.e. three weeks. As discussed above, the detenu has the dual right in his favour to have his representation considered by the appropriate Government and to have once again that representation considered by the Advisory Board before it gives its opinion inasmuch as the appropriate Government and the Advisory Board constituted u/s 9 of the NSA are two different individual bodies/authorities. This Court is of the view that the detenu has such dual right in his favour. In *K. Ngalawon (Smti) v. Union of India and Ors.* 2000 (2) GLT 158, the Division Bench of this High Court in para-6 of the judgment held as follows:

*** In this connection certain decision as referred to by the learned Counsel for the petitioner may be cited- *Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal*, wherein it has been observed that Clauses 4 and 5 Article 22 clearly provide that there is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, (1) to have his representation irrespective of the length of detention considered by the appropriate Government and (2) to have once again that representation in the light of the circumstances considered by the Board before it gives its opinion. This observation made in paragraph 10 of the judgment clearly indicates that where a representation is preferred by the detenu, it vests dual right of consideration of the representation one by the Government and the other by the Advisory Board. It also comes out from the observation made by the Hon"ble Supreme Court that the representation is to be considered by the Board before it gives its opinion. In the present case, we find that the Board met to consider the case of the detenu on 11.1.2000. The representation was received on December 21, 1999. It was obviously to be considered by the Board before it gave its opinion. In *Jayanarayan Sukul Vs. State of West Bengal*, it has been clearly held in paragraph 20 of the judgment that first, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the same as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of detenu by the Advisory Board. In *Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur*, it has been held that under Article 22(5) of the Constitution there is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, to have his representation considered by the appropriate Government and to have once again that representation considered by the Advisory Board before it gives its opinion. These two have been held to be two distinct obligations of the State Government and this right to have the representation considered by the Advisory Board is governed by Article 22(5) of the Constitution. * * *

(Emphasis supplied)

17. This Court is of the view in *Pabansaloi @ Babul Choudhury v. Union of India and Ors.* 2000 (2) GLT 135, that u/s 10 of the NSA the appropriate Government

is required to place the matter before the Advisory Board within three weeks of the order of detention and in the meantime, if any representation has been received, the same may also be sent to the Advisory Board. The appropriate Government is not allowed to sleep over the matter or to place the matter before the Advisory Board after the expiry of three weeks on the plea that they were awaiting the receipt of representation. In the instant case, the representation dated 5.8.2009 addressed to the detaining authority was filed by the detenu within the time limit mentioned in Section 10 of the NSA but it was not placed before the Advisory Board simply for the reasons mentioned above by the respondent Nos. 1 and 2.

18. In the foregoing paras we have clearly held that the Advisory Board constituted u/s 9 of the NSA has the right and authority to take its own decision in the matter of detention of the detenu irrespective of any order either by the appropriate Government or by the detaining authority rejecting any representation filed by the detenu. Therefore, we have no alternative except to come to the finding that non-placing of the representation dated 5.8.2009 filed by the petitioner-detenu before the Advisory Board within the time limit mentioned in Section 10 of the NSA is nothing but breach of the mandate provided u/s 10 of the NSA and, in the result, continue detention of the petitioner-detenu would be illegal.

19. For the foregoing reasons, the impugned detention order dated 25.7.2009, the approval order dated 5.8.2009 and the confirmation order of the Government of Manipur dated 2.9.2009 are hereby set aside. The petitioner-detenu, Shri Laishram Shyamjai Singh, shall be released forthwith, if he is not required to be detained in connection with other case(s).

20. With above observations and directions, the writ petition is allowed. There shall be no order as to costs.