

(2012) 04 GAU CK 0060
In the Gauhati High Court
Case No : Writ Petition (Cri.) No. 85 of 2011

Smt. Ningombam (O) Leima Devi	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Arms Act, 1959 — Section 12, 25(1C), 8(c)
Constitution of India, 1950 — Article 21, 22, 22(3)(b), 22(5)

Citation : (2012) CriLJ 2146

Hon'ble Judges : T. Nandakumar Singh, J;Swapan Chandra Das, J

Bench : Division Bench

Advocate : Ph. Sajanaoba, for the Appellant; R.S. Reisang, G.A, for the Respondent

Final Decision : Allowed

Judgement

1. By this writ petition, the petitioner, who is the wife of the detenu, Shri Ningombam Lokeshore Singh alias Nagmba is assailing the detention order being No. Cri/NSA/No. 75 of 2011, Imphal dated 10-6-2011, the approval order of Government of Manipur dated 17-6-2011 and confirmation order of Government of Manipur dated 29-7-2011 for fixing the period of detention for 12 months from the date of detention only on the ground that the right of the detenu guaranteed under Article. 22 (5) of the Constitution of India had been infringed for failure of the appropriate. Government to consider the representation dated-20-7-2011 filed against the impugned detention order. Heard Mr. Sajanaoba, learned counsel for the petitioner and also Mr. R.S. Reisang, learned GA appearing for the respondents.

2. FACTUAL BACKGROUND

On the intervening night between 3-6-2011 and 4-6-2011 at about 2.30 a.m. while the detenu was at his residence along with the members of his family, some commando personnel suddenly entered at his residence and apprehended him; and taken to their camp at Minuthong, Imphal. After he was arrested by the

commando personnel, he was subjected to interrogation by the police personnel. In the afternoon of the same day he was taken to Singjamei P.S. and a police case being FIR No. 220(6) 2011 Singjamei P.S. u/s 17/20, UA(P) Act & 25(1-C), Arms Act was registered against the detenu. On the next date i.e. 4-6-2011 he was produced before the concerned Magistrate who remanded him to police custody till 10-6-2011. On 10-6-2011 when he was produced before the Court for judicial remand he was served with the copy of the impugned detention order dated 10-6-2011 passed by the District Magistrate, Imphal West District. On 13-6-2011 the detenu was served with a letter dated 13-6-2011 (grounds of order of detention) along with copies of the documents which formed the grounds of detention while the detenu was in Manipur Central Jail, Sajiwa. On 20-7-2011 the detenu submitted a representation for revocation of the detention order and also to allow him, to be represented by his lawyer or a friend of his choice before the Advisory Board at the time of consideration of his case.

3. In the writ petition it is specifically pleaded that the said representation dated 20-7-2011 was routed through the Additional Superintendent of Jail, Sajiwa who forwarded the representation to the State Government for placing before the Advisory Board. Since the said representation dated 20-7-2011 was placed before the State Government i.e. the appropriate Government for placing before the Advisory Board, the State Government i.e. appropriate Government before whom the said representation was placed has the obligation under the law to consider the representation independently before placing it before the Advisory Board. As the said representation dated 20-7-2011 was not considered by the State Government i.e. appropriate Government, the right of the detenu guaranteed under Article 22(5) of the Constitution of India had been violated and in the result the impugned detention order is vitiated. Such inaction and callousness on the part of the State Government has caused a great injustice to the detenu; as a result the fundamental right of the detenu guaranteed under Article 22(5) of the Constitution of India had been violated.

4. The respondents filed affidavit in opposition wherein the State Government has not denied the fact that the representation dated 20-7-2011 which was placed or routed through the State Government for placing it before the Chairman, Advisory Board was not considered independently by the State Government before placing it before the Advisory Board. But it is the case of the State respondents that since the representation dated 20-7-2011 was addressed to the Chairman, Advisory Board, the State Government or/appropriate Government has no obligation to consider it independently before placing the same before the Advisory Board. It is the admitted fact of the parties that the said representation dated 20-7-2011, even though it is addressed to the Chairman, Advisory Board was routed through the appropriate Government inasmuch as the Additional Superintendent of Jail, through whom the said representation is filed had placed the said representation before the appropriate Government i.e. the State Government for placing it before the Chairman, Advisory Board.

5. 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 to 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 detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralyzed 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 detenu....."

(Ref : Para 4 of the SCC in *Rattan Singh Vs. State of Punjab and Others*,).

The Apex Court (Constitution Bench), by relying on the earlier decision in *Rattan Singh Vs. State of Punjab and Others*, held that procedural safeguards provided for protection of persons sought to be preventively detained should be seriously enforced by the Court. (Ref: *Kamlesh Kumar Iswardas Patel v. Union of India*, (1995) 4 SCC 51).

5-A. 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 the 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 and another Vs. L. Hmingliana and others*,

6. 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 are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. Para Nos. 8 and 9 of the SCC in Union of India (UOI) Vs. Paul Manickam and Another, 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 :

Wherever 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 person 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.

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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...

7. 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 security of the materials in the presence of the detenu and even hearing him, if he so desired,

by an independent Board with adequate judicial knowledge. 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.

8. 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's* 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's* case (supra) read as follows :

20. Broadly stated, four principles are to be followed in regard to representation of detenus. 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 may still exercise the power to release the detenu."

9. 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.

10. Mr. Sajanaoba, learned counsel for the petitioner, in support of the grounds stated above for challenging the impugned detention order, by placing heavy reliance on the decisions of the Apex Court in (1) Smt. Gracy Vs. State of Kerala and another, (2) Moosa Husein Sanghat v. State of Gujarat, AIR 1994 SC 1479, (3) Inderjeet and Another Vs. Union of India (UOI) and Others, and (4) Thiyam Ningol Salam Ongbi Ramani Devi Vs. District Magistrate Imphal and Others, , contended that non-consideration of representation dated 20-7-2011 by the appropriate Government, i.e. by the State Government on the ground that the same was not addressed to the appropriate Government/State Government, even though representation was routed through the State Government, vitiates the detention order.

11. Mr. Reisang, learned G.A., to the contra, by referring to the decision of the Apex Court in R. Keshava Vs. M.B. Prakash and Others, and Amir Shad Khan and another Vs. L. Hmingliana and others, contended that since the representation dated 20-7-2011 was not addressed to the State Government, the State Government has neither obligation nor duties under the law to consider it independently, and accordingly, and accordingly, non-consideration of the representation dated 20-7-2011 by the State Government shall have no consequence.

12. In Smt. Gracy Vs. State of Kerala and another, , the representation addressed to the Central Advisory Board was routed through the Central Government and it had not been disputed that the Central Government had not at any time considered independently the detenu's representation addressed to the Advisory Board. In the additional affidavit, the stand of the Central Government was that since the detenu has not made any representation to the Central Government, assertion in para 2 of the grounds of the petition that no opportunity was afforded by the Central Government to the detenu are vehemently denied. The question of consideration of representation and providing of opportunity is raised only when the representation is made to the Central Government. In Smt. Gracy Vs. State of Kerala and another, , in the above given facts, the Apex Court held that so long as there is a representation made by the detenu against the order of detention, the dual obligation under Article 22(5) of the Constitution of India arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. Mode of address is only a matter of forms which cannot whittle down the requirements of the Constitutional mandate under Article 22(5) enacted as one of the safeguards provided to the detenu in the case of preventive detention, paras 7, 8, 9 and 10 of the SCC in Smt. Gracy's case (supra) read as follows :

7. The learned Solicitor General, however, contended that in the present case there being no representation addressed to the Central Government, the only representation made by the detenu being addressed to the Advisory Board

during pendency of the reference, there was no fact no representation of the detenu giving rise to the Central Government's obligation to consider the same. The question is : Whether this contention can be accepted in the face of the clear mandate in Article 22(5) of the Constitution?

8. It is undisputed that if there be only one representation by the detenu addressed to the detaining authority, the obligation arises under Article 22(5) of its consideration by the detaining authority independent of the opinion of the Advisory Board in addition to its consideration by the Advisory Board while giving its opinion. In other words, one representation of the detenu addressed only to the Central Government and not also to the Advisory Board does not dispense with the requirement of its consideration also by the Advisory Board. The question, therefore, is : Whether one of the requirements of consideration by Government is dispensed with when the detenu's representation instead of being addressed to the Government or also to the Government is addressed only to the Advisory Board and submitted to the Advisory Board instead of the Government? On principle, we find it difficult to uphold the learned Solicitor General's contention which would reduce the duty of the detaining authority from one of substance to mere form. The nature of duty imposed on the detaining authority under Article 22(5) in the context of the extraordinary power of preventive detention is sufficient to indicate that strict compliance is necessary to justify interference with personal liberty. It is more so since the liberty involved is of a person in detention and not of a free agent. Article 22(5) casts an important duty on the detaining authority to communicate the grounds of detention to the detenu at the earliest to afford him the earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible. Article 22(5) speaks of the detenu's "representation against the order", and imposes the obligation on the detaining authority. Thus, any representation of the detenu against the order of his detention has to be considered and decided by the detaining authority, the requirement of its separate consideration by the Advisory Board being an additional requirement implied by reading together clauses (4) and (5) of Article 22, even though mention in Article 22(5) is only of the detaining authority. Moreover, the order of detention is by the detaining authority and so also the order of its revocation if the representation is accepted, the Advisory Board's role being merely advisory in nature without the power to make any order itself. It is not as if there are two separate and distinct provisions for representation to two different authorities viz. the detaining authority and the Advisory Board, both having independent power to act on its own.

9. It being settled that the aforesaid dual obligation of consideration of the detenu's representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority, there is no reason to hold that the detaining authority is relieved of this obligation merely because the representation is addressed to the Advisory Board instead of the detaining

authority and submitted to the Advisory Board during pendency of the reference before it. It is difficult to spell out such an inference from the contents of Article 22(5) in support of the contention of the learned Solicitor General. The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention.

10. We are, therefore, unable to accept the only argument advanced by the learned Solicitor General to support the detention. On this conclusion, it is not disputed that there has been a breach by the Central Government of its duty under Article 22(5) of the Constitution of India to consider and decide the representation independently of the Advisory Board's opinion. The order of detention dated January 25, 1990 as well as the order dated April 24, 1990 of its confirmation passed by the Central Government, are therefore, quashed. This shall not, however, affect the detenu's prosecution for the alleged offence and it shall also not be construed as a direction to release him in case he is in custody as a result of refusal of bail. The writ petition is allowed, accordingly.

13. The ratio laid down in *Smt. Gracy Vs. State of Kerala* and another, was followed by the Apex Court in *Moosa Husein Sanghar's* case (supra) and held that merely because representation was addressed to the Advisory Board, the State Government cannot absolve the dual obligation under Article 22(5) of the Constitution of India to consider the representation independently and failure to consider the representation independently by the appropriate Government/State Government, will result to violation of the fundamental right of the detenu guaranteed under Article 22(5) of the Constitution of India. Paras 4, 5 and 6 of the AIR in *Moosa Husein Sanghar's* case (AIR 1994 SC 1479) (supra) read as follows :

4. Shri Krishna Rao, in our view is right in his submission that even though the representation was addressed to the Advisory Board but since it was forwarded to the Advisory Board through the State Government, it was incumbent upon the State Government to have considered the said representation and it could not return the same to the appellant without considering it on the ground that it was not addressed to it but was addressed to the Advisory Board. Reference, in this context, may be made to the decisions of this Court in *Kubic Darusz Vs. Union of India (UOI) and Others*, and *Smt. Gracy Vs. State of Kerala* and another, . In *K. Dariusz v. Union of India* (supra), the representation of the detenu was addressed to the Chairman. Advisory Board and it was argued on behalf of the Union of India that the said representation need not have been dealt with by the Central Government. Rejecting the said contention, it was held (AIR 1990 SC

605, para 16) :--

In the instant case though the representation was addressed to the Chairman. Central Advisory Board, the same was forwarded by the Jail authorities and it must be taken to have been a representation to the appropriate Government which was to consider it before placing it before the Advisory Board and the same having not been done Art. 22(5) has to be held to have been violated."

5. Similarly in Smt. Gracy Vs. State of Kerala and another, , the detenu had addressed his representation to the Advisory Board and it was not considered by the Central Government. It was urged on behalf of the Central Government that since the representation was addressed to the Advisory Board and it was not addressed to the Central Government, there was no obligation on the Central Government to consider the same independently. Dealing with the said contention this Court has observed:--

The contents of Art. 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Art. 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement enacted as one of the safeguards provided to the detenu in case of preventive detention." (p. 428) (of SCR): (at p. 565 of AIR).

6. It must, therefore, be held that merely because the representation was addressed to the Advisory Board and not to the State Government did not absolve the State Government from the constitutional obligation flowing from An. 22(5) to consider the said representation.

14. The ratio in Smt. Gracy Vs. State of Kerala and another, was also followed in Inderjeet and Another Vs. Union of India (UOI) and Others, and para 7 of the SCC read as follows :

7. At this juncture, it would be relevant to note that the ratio in Chief Engineer-cum-Secretary Vs. Jagdish Mitter and others, was analysed by this Court in R. Keshava Vs. M.B. Prakash and Others, .

It was inter alia observed as follows : (R. Keshava Vs. M.B. Prakash and Others,) :

12. A perusal of the aforesaid section and other relevant section and other relevant provisions of the Act makes it abundantly clear that no duty is cast upon the Advisory Board to furnish the whole of the record and the representation addressed to it only to the Government along with its report prepared u/s 8(c) of the Act. It may be appropriate for the Board to transmit the whole record along with the report, if deemed expedient but omission to send such record or report would not render the detention illegal or cast an obligation upon the appropriate Government to make inquiries for finding out as to whether the detenu has made

any representation, to any person or authority, against his detention or not. We are of the opinion that in *Smt. Gracy Vs. State of Kerala and another*, it was not held that any such duty was cast upon the Board but even if the observations are stretched to that extent, we feel that those observations were uncalled for in view of the scheme of the Act and the mandate of the Constitution.

13. In *Nand Lal Bajaj Vs. State of Punjab and Another*, this Court made the following observations (SCC p. 334, para 11):

11. The matter can be viewed from another angle. We were informed that the Advisory Board did not forward the record of its proceedings to the State Government. If that be so then the procedure adopted was not in consonance with the procedure established by law. The State Government while confirming the detention order u/s 12 of the Act has not only to peruse the report of the Advisory Board, but also to apply its mind to the material on record if the record itself was not before the State Government, it follows that the order passed by the State Government u/s 12 of the Act was without due application of mind. This is a serious infirmity in the case which makes the continued detention of the detenu illegal.

15. This Court in *Thiyam Ningoi Salam Ongbi Ramani Devi's case (supra)* (paras 10, 11, 12 and 13 of the GLT) held that:

10. Article 22(5) of the Constitution speaks that when a 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. Communication of the grounds as well as affording of opportunity of making a representation is an essential feature ingrained in Article 22(5) of the Constitution.

11. As alluded earlier that the first representation dated 3-6-99, was submitted before the grounds of detention were furnished to the detenu. The grounds of detention were communicated to the detenu on 7-6-99. The detenu submitted a lengthy representation detailing the facts situations on receipt of the grounds on fresh materials which required consideration. The detenu was in Jail. He submitted two representations to two different authorities. But both the representations were routed through the State Government. When the State Government received the representations, it was incumbent upon the State Government/Authorities to dispose of the said representations. Forwarding the representation to the Advisory Board did not (sic) relieve the State Government from discharging its Constitutional and legal obligation to consider the representations as soon as it received the same. In *Kubic Darusz Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court held that :

...though the representation was addressed to the Chairman, Central Advisory Board, the same was forwarded by the Jail authorities and it must be taken to have been a representation to the appropriate Government which was to

consider it before placing it before the Advisory Board and the same having not been done Article 22(5) has to be held to have been violated."

Similarly, in *Smt. Gracy Vs. State of Kerala* and another, the detenu addressed the representation to the Advisory Board and it was not considered by the Central Government. It was urged by the Central Government in the above case that it was addressed to the Advisory Board and not to the Central Government, there was no obligation on the Central Government to consider the same independently. Addressing the said contention, the Supreme Court made the following observation :

The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or not the Advisory Board or to both. The mode of addressees only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention."

The aforesaid two decisions are referred to and relied in *Moosa Husein Sanhar v. State of Gujarat*, reported in AIR 1994 SC 1479. The Supreme Court observed that the contents of Article 22(5) of the Constitution as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of his detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact as to whether the representation is addressed to the detaining authority or to the Advisory Board or to both. That the mode of address was only a matter of form which could not whittle down the requirement of the Constitutional mandate in Article 22(5) enacted to provide safeguard to the detenu in case of preventive detention.

12. From the records, it transpires that the State Government was satisfied by only sending the above two representations to the respective authorities to whom the representations were addressed without considering the said representations independently. The representations of the detenu, therefore, remained unattended by the State Government till today. The Constitutional imperatives demand for an expeditious disposal of the representation(s) having regard to the Constitutional safeguards guaranteed in Article 22(5) of the Constitution of India for protection of the personal liberty enjoined in Article 21 of the Constitution of India. Article 21 of the Constitution of India guaranteed right to life and personal liberty, which cast a duty on the State to safeguard that liberty. A representation of the detenu is not a mere document, but it is also relatable to the liberty of an individual, the preferred human rights enshrined in the Constitution of India. Article 22(5) thus created a Constitutional obligation on the authority to consider such a words "as soon as may be" indicated in clause 5 of Article 22 of the Constitution, speak of the great concern of the framers of the

Constitution for expeditious disposal of a representation. In different attitude or for that matter indolence in considering the representation goes counter to the obligation created by the Constitution. The legal and the Constitutional obligation was consistently reminded by the Supreme Court in a number of decisions.

13. All the circumstances set out above, unerringly point to the infraction of the Constitutional right of the detenu guaranteed under Article 22(5) in view of the fact that the representation of the detenu remained unattended. Under these circumstances, we, therefore, hold that the continued detention of the detenu. Shri Salam Jiten Singh, can no longer be justified, and accordingly, we order for release of the detenu forthwith, unless required in connection with any other case.

The writ petition is accordingly allowed.

16. The decision of the Apex Court in *R. Keshava Vs. M.B. Prakash and Others*, was that in case representation of the detenu was addressed to the Advisory Board alone without making any request to the Board to send the representation along with its report to the Government, Board was not obliged to furnish representation and whole record along with record to the Government. The Apex Court also held that in the absence of representation or knowledge of the representation having been made by the detenu the State Government was justified in confirming the order of detention on perusal of the records and documents excluding the representation made by the detenu to the Advisory Board. In *R. Keshava's* case (supra) the representation filed by the detenu was not in the knowledge of the appropriate Government and in the absence of knowledge of the representation, having been made by the detenu there is no infirmity in confirming the order of detention on perusal of the records and documents and also there is no infirmity on the part of the State Government in not considering the representation which is not at all in the knowledge of the State Government/appropriate Government. Paras 9 and 17 of the SCC read as follows :

9. In the instant case Respondent I in his affidavit has categorically stated :

"I respectfully submit that the Advisory Board has not forwarded the representation filed by the detenu to the State Government and consequently I did not consider the said representation filed by the detenu before the Advisory Board.

I respectfully submit that the Advisory Board has forwarded its report along with the covering letter dated 12-4-2000, to the State Government. However, Respondents I and 2 did not receive any representation given to the Advisory Board inasmuch as the Advisory Board has not sent the copy of the representation of the detenu, to the State Government. Therefore, the State Government could not consider the said representation. As the representations were addressed to the Advisory Board alone, there is no obligation on the part of the Superintendent of Central Prison to forward the copy of the representation to

the State Government or the Central Government. Consequently, the third respondent has not forwarded the representation to Respondents 1 and 2. I submit that the Advisory Board will be having the records which are sent by the State Government such as the order of detention, grounds of detention and the documents relied upon. Except these documents, the State Government will not furnish any other document to the Advisory Board. However, the documents which were produced by the detenu in the course of hearing before the Advisory Board, do not form part of the records sent by the State Government. In this case, the only extra document which was produced by the detenu was the representation. The copy of the representation was not sent by the Advisory Board to the State Government while sending its report to the State Government.

17. We are satisfied that the detenu in this case was apprised of his right to make representation to the appropriate Government/ authorities against his order of detention as mandated in Article 22(5) of the Constitution. Despite knowledge, the detenu did not avail of the opportunity. Instead of making a representation to the appropriate Government or the confirming authority, the detenu chose to address a representation to the Advisory Board alone even without a request to send its copy to the authorities concerned under the Act. In the absence of representation or the knowledge of the representation having been made by the detenu, the appropriate Government was justified in confirming the order of detention on perusal of record and documents excluding the representation made by the detenu to the Advisory Board. For this alleged failure of the appropriate Government, the order of detention of the appropriate Government is neither rendered unconstitutional nor illegal.

17. In *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 Apex Court observed :

18.....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, Apex Court observed --

59.....It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

18. As held in *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, a decision cannot be relied on without disclosing the factual situation. In the same judgment, the Apex Court also observed (SCC pp. 584-85, paras 9-12).

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a Statute and that too taken out of their context. These

observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as Statutes. To interpret words, phrases and provisions of a Statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret Statutes, they do not interpret judgments. They interpret words of Statutes, their words are not to be interpreted as Statutes. In *London Graving Dock Co. Ltd. v. Horton* (AC at p. 761) 1951 AC 737 Lord MacDermott observed (All ER p. 14-C-D).

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge,....."

10. In *Home Office v. Dorset Yacht Co. Ltd.* (1970) 2 All ER 294 (HL) All ER p. 297 g-h) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. "Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2). (1971) 2 All ER 1267 observed (All ER p. 127 d).

"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament",

And, in *Herrington v. British Railways Board* Lord Morris (1972) 1 All ER 749 (HL (E)) said : (All ER p. 761c).

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus :

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

(Emphasis supplied)

For the foregoing discussions, we are of firm view that the non-consideration of the representation dated 20-7-2011 by the State Government, even if the same was routed through the State Government and also had the clear knowledge of the representation, independently, will result to denial of the fundamental rights guaranteed under Article 22(5) of the Constitution of India to the detenu. In the result, the impugned detention order, approval order and confirmation orders are illegal. Accordingly, the impugned order dated 10-6-2011, approval order dated 17-6-2011 and confirmation orders are hereby set aside. The detenu, Shri Ningombam Lokeshore Singh alias Ngamba, s/o (L) N. Nungshi Singh of Thongju Part-II Pechu Lampak. P.S. Singjamei. District, Imphal East. Manipur be set at liberty forthwith, if he is not required in any other case.

The writ petition is allowed.