
(1999) 11 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (Cri.) No. 8 of 1999

Smt. Toijam

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)
National Security Act, 1980 — Section 3(2), 3(3)

Citation : (2000) CriLJ 3586 : (2000) 2 GLT 328

Hon'ble Judges : P.C. Phukan, J; D.N. Chowdhury, J

Bench : Division Bench

Advocate : H.S. Paonam, for the Appellant; Kh. Nimaichand, Additional Government Advocate for Respondent Nos. 1 and 2 and N. Ibotombi Singh, C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—By this petition the petitioner has assailed the detention order dated 8-4-99 of her husband T. Lokeshore Singh who was arrested on 9-3-99 in connection with the Cri. N.S.A. No. 1 of 1999 under Sections 3(2) and 3(3) of the National Security Act, 1980 in the following circumstances :

The husband of the petitioner was arrested in connection with the aforesaid case on 9-3-99 and thereafter vide order dated 8-4-99 the detenu was detained u/s 3(3) of the National Security Act with a view to prevent him to do any act which is prejudicial to the security of the State and maintenance of public order. The ground of detention was served on the detenu on 12-4-1999 and his detention was confirmed on 11 -5-99 by the State Government. The detenu submitted his representation on 27-4-99 and according to the Petitioner, till filing of the petition, the detenu did not receive any communication about the disposal of the representation. Learned counsel Mr. H.S. Paonam submits that the detenu was communicated the rejection of the representation only on 1-6-99 in the Manipur Central Jail which the detenu received on 2-6-99. The learned Government

Advocate, however, cited the original order dated 17-5-99 showing that the representation of the detenu was disposed of on 17-5-1999.

2. Mr. H.S. Paonam, the learned counsel appearing on behalf of the petitioner/detenu has challenged the order of detention on numerous grounds. Learned counsel for the petitioner emphatically submits that detaining authority fell into serious error in exercising its discretion mechanically and passing the detention order without application of mind. The learned counsel for the petitioner further challenged the subjective satisfaction of the detaining authority in passing the detention order. Mr. H.S. Paonam, the learned counsel for the petitioner also questioned the order of detention on the ground that since the detenu is already under arrest in connection with criminal case there was no ground for detaining him under the National Security Act. Lastly the learned counsel for the petitioner challenged further order of detention for violation of the provision of Clause 5 of Article 22 of the Constitution of India in causing delay in disposal of the representation.

3. Mr. Kh. Nimaichand, Addl. Govt. Advocate and Mr. N. Ibotombi Singh, CGSC appearing for the respondents 1, 2 and 3 respectively seriously contested the case.

4. We have ourselves gone through the grounds of detention and on collation of the materials on record we are of the firm opinion that, there is rational subjective satisfaction arrived at bona fide on the basis of materials available before the authority pertaining to the acts as prejudicial to the security of the State and maintenance of public order. Though the detenu was arrested in connection with the criminal case, on evaluation of the facts situation the detaining authority thought it fit for the detention of the detenu which cannot be faulted for non-application of mind. The detaining authority was fully aware of the detention of the detenu in criminal cases and passed the order of detention on being fully aware of it. There is no force in the contention of the learned counsel for the petitioner questioning the subjective satisfaction of the detaining authority in detaining the detenu. The Court cannot enter into the area of propriety and the sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor the Court can, on a review of the grounds substitute its own opinion for that of the authority. Learned counsel for the petitioner also referring to the documents from the paper books submitted that the detenu was denied with his right to submit an effective representation so much so some of the documents those were served on the detenu were scrawled, indecipherable and unreadable which prevented the detenu from making an effective representation.

5. We are, however, not impressed with the aforesaid submission of the learned counsel for the petitioner. We have gone through the documents, even otherwise it was always open to the detenu to ask for legible copy of the order of detention from the authority. Learned counsel for the petitioner is however on the firmer ground when he assailed the order of continued detention on the ground of

inordinate delay in disposal of the representation by the authority. Admittedly, the representation was submitted to the Secretary to the Government of India, Ministry of Home Affairs and the Chief Sec-retary to the Govt. of Manipur through the Superintendent of Police, Manipur Central Jail on 27-4-99 and the Jail Superintendent received the said representation on the same day. A representation of the petitioner for releasing of her husband on parole was received while the case of the petitioner was sent to the Advisory Board for their consideration on 20-4-99. The representation of the detenu dated 27-4-99 was finally forwarded by the Inspector General of Prisons, Manipur vide his letter No. 9/14/92-IG(J) 181 on 5-5-99 to the Chief Secretary. Said representation was practically lying idle in the table from 14-5-99 in the name of processing and thereafter the file was moved to the Joint Secretary and Home Commissioner and finally reached the Chief Secretary on 17-5-99 on which date the representation was disposed of. Similarly the representation submitted by the detenu to the Central Government dated 27-4-99 reached to the Central Government on 21-5-99. According to the Central Government on receiving of the said representation it sought for vital information but the exact nature of the vital information could not be made known to us from the learned counsel for the Central Govt. which prevented it from attending the representation and at last they collected vital information from State Government of Manipur and on receiving the said vital information on 4-6-99, they processed the case and finally disposed of the representation on 9-6-99 within four days as 5th and 6th June 1999 were holidays. On their own the Central Govt. stated that on receiving the vital information on 4-6-99 the case of the detenu was put up before the Under Secretary, Ministry of Home Affairs on 8-6-99 who carefully considered the same with her comments put up the same before the Joint Secretary, Ministry of Home Affairs on 8-6-99. The Joint Secretary considered the case and put up the same before the Minister of State for Home Affairs who himself duly considered the case of the detenu and rejected the representation of the detenu on 9-6-99.

6. We have already indicated about the manner in which the representation of a detenu who was arrested and dealt with under the National Security Act. The words "as soon as may be" occurring in Article 22(5) of the Constitution reflects the anxiety on the part of the framers of the Constitution to enable a detenu to know about the grounds on which the order of detention has been made so as to enable him to make an effective representation against the detention.

7. The learned Govt. Advocates as well as the learned CGSC have indicated that they took all effective measures for dealing with the representation of the detenu as early as possible and as there should not be any time frame as the Constitution-maker did not make any time frame in the matter of disposal of a representation. Both the learned Government Advocates are fight in their submission that the Constitution-maker did not pin point any time frame for disposal of the representation. Constitution only provided a right of a detenu to submit his representation challenging his detention without trial which is required to be disposed of at the earliest point of time. Time schedule may differ from

case to case. It is not the exact time that is relevant what is relevant (is) the genuine concern and earnestness of the authority that is attached in expeditious disposal of the representation of the detenu. This issue is no longer res integra. The Constitution Bench Judgment of the Supreme Court in Jayanarayan Sukul Vs. State of West Bengal, held as follows (at page 747 of Cri LJ) :

...It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for other wise in the words of Shelat, J. who spoke for this Court in the case of Khairul Haque, W/P. No. 246 of 1969, D/- 10-9-1969 (reported in (1969) 2 SCWR 529) (supra), it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning....

8. There is no deviation from the above proposition of law. "The right of representation under Article 22(5) is a valuable Constitutional right and is not a mere formality" Sk. Abdul Karim and Others Vs. State of West Bengal, In Rashid Sk. Vs. State of West Bengal, the Supreme Court while dealing with the Constitutional requirement of expeditious consideration of the representation of a detenu by the Government as mentioned in Article 22(5) of the Constitution observed that (at page 658 of Cri LJ) :

The ultimate objective of the provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. The right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty -- the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

9. The law is well settled and there is no controversy in this regard. The only question for adjudication in this case is as to whether there was any delay in disposal of the representation. There is no hard and fast rule of time frame for

disposal of such representation. What the Court insisted is for "reasonable expedition". What is "reasonable expedition" is a matter dependent on the circumstances of each case. No hard and fast rule as to the measure of reasonable time can be pointed. However, it certainly does not cover the delay due to "negligence, callous inaction, avoidable red tapism and unduly protracted procrastination" Sabir Ahmed Vs. Union of India (UOI),

10. Mr. Kh. Nimaichand, the learned Govt. Advocate, submitted that the delay was duly explained and as such, the detention cannot be labelled as illegal on that ground. In support of his contention; the learned Advocate referred to decisions in Thounaojam Lukhoi Singh Vs. District Magistrate and Others, Mahboob v. Supdt. of District Jail, Meerut. In T. Lukhoi Singh (supra), there was a delay of 14 days and in Mahboob (supra), there was a delay of 4 days; and the learned Court held that it did not initiate the detention.

11. Mr. H.S. Paonam, learned Advocate appearing on behalf of the petitioner, on the other hand, referred to a three Judges' Bench decision of the Supreme Court in Rajammal Vs. State of Tamil Nadu and Another, and a decision of this Court in Lal Paite v. State of Manipur, reported in 1999 (3) GLT 236 and another case in Hegin Haokip v. State of Manipur (W.P.C.) No. 6 of 1999.

12. In Hegin Haokip (supra) this Court on reviewing the law in this regard observed as follows :

...There cannot be any dispute as to the proposition of expeditious disposal of a representation. The reason is too obvious. A person's personal liberty is in danger and where the liberty of a person is at peril, it is incumbent on the authority to take action on the matter. Any delay in disposal of the representation would not only be irresponsible and reckless, but the same is also unconstitutional. The Constitution guaranteed the right to life and liberty which can only be taken away by a procedure established by law. The Constitution casts an obligation on the authority to consider the representation submitted by a detenu without any delay. The delay is in the custody of the detaining authority. It is for the authority/authorities who is/are responsible for his custody to take prompt steps for forwarding the representation submitted by him and to take a decision on the representation "as soon as may be". The authority is not permitted to resort to any supine indifference or any form of slackness. Whether the delay was due to some unavoidable reason, it is for the authority to explain. The delay caused due to the callousness or indifference in considering the representation will affect the further detention of the detenu. The learned Government Advocate submitted that the delay, if there be any, cannot be said to be inordinate delay. What matters is the promptitude in disposal of the representation. It is not the measure and latitude of the time factor, emphasis is on the, manner and solemnity in discharging the constitutional obligation of the authority. "As soon as may be" is not to be computed in the gauge of time, space or duration alone. Anxiety, earnestness and awareness of individual liberty is the key question. Dispensation of representation concerning personal liberty of a

citizen should not be allowed, to rest on the opportuneness and convenience of the time table of the authority/authorities. The plea taken by the respondents including the plea of intervention of a Sunday and a holiday on account of Id-ul-Zuha, is not sufficient to justify the delay since there was no impediment for the file to reach the Officer with utmost promptitude in a case involving the fundamental right of a citizen. Time moves on with minutes and seconds. Each instant is precious. Those who guard the liberty of a citizen are to alive in each moment....

13. We have already mentioned about the matter in which the representation was dispensed with the authority. The explanation, on examination of all the aspects of the matter including the affidavits we do not find any valid reason for non-disposal of the representation earlier. The negligence on the part of the authorities is apparent on the i method it was dealt with. The representation dated 27-4-99 took 14 (fourteen) days" time in transit to reach the Government whereas the same Government Office was/is located with the same town itself. Similarly no explanation is furnished as to why it took 8 (eight) days to reach the Government from Office of the Inspector General of Prisons. The representation was relatable to liberty of a citizen and that representation was not dealt with by the authorities with the care which it was required to deal with.

14. For the foregoing reasons, we are of the view that further detention of the detenu T. Lokeshore Singh is not justified in law and detention order passed against the detenu is liable to be set aside. We, therefore, allow the Petition and set aside the order of detention passed by the District Magistrate, Bishnupur District, Manipur on 8-4-99.

15. We direct the respondents/authorities to release the detenu forthwith if he is riot otherwise required to be detained in connection with any other case.

16. The Writ Petition accordingly stands allowed.