
(1985) 03 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule (HC) No. 28/84

Sourakpam Ongbi Ibemaishak Devi

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 21-03-1985

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)

National Security Act, 1980 — Section 10, 11, 3(2), 3(3), 3(4)

Citation : (1985) 2 GLR 346

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

Bench : Division Bench

Advocate : Th. Priyananda Singh, for the Appellant; R.P. Kakati for the Respondent Nos. 1 to 4 and K. Irabot Singh, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—It is yet another saw of violation of Article 22(5) of Constitution. But, it has a novelty. A brief narration of facts, to which we shall soon turn, will disclose what we mean using the term novelty.

2. The detenu was already in confinement on 20.5.84 when an order was passed against him on 1.6.1984 u/s 3(2) of the National Security Act, for short the "Act". This order was served on him in jail on 2.6.1984 and the grounds on 4.6.1984. Thereafter the order passed by the District Magistrate was approved by the State Government on 12.6.1984. There was a sitting of the Advisory Board on 17.6.1984 and the detenu was produced before the Board. This was done despite the fact that in "grounds" he was told that he could file "representation" and he was asked to intimate his desire to the Government along with his "representation" if he wanted to be heard in person so that necessary arrangement could be made accordingly. The Board submitted its report to the Government on 17.6.1984 after hearing the detenu. Thereupon the State Government passed an order on 20.6.1984 confirming the detention for a

period of 12 months. That is not the end of the saga. The Petitioner was then moved out of the state and taken to Varanasi and there he has since been languishing in confinement.

3. The grievance, and indeed the single, solitary, solid grievance of the detenu forcibly presented before us by his counsel, Mr. Priyananda Singh, is that the detenu was deprived of his constitutional right to make his "representation". Because in view of the provision of the Section 10 of the Act "representation" could be submitted by him within a period of three weeks from his detention under the Act for consideration of the Advisory Board, In the instant case the period of the weeks expired on 23.6.1984 inasmuch as the order was served on him on 2.6.1984 and the detenu would have the right to file his representation before that, even on 22.6.1984, However, he was produced on 17.6.1984 before the Board. There is nothing to show that the detenu himself desire that he should be produced on that date. There is also nothing before us to show that the detenu decided not to file any representation. There is no doubt therefore that his constitutional right was infringed by his production before the Advisory Board without the "representation". We would like to stress the paramount constitutional imperative of detenu's right to make "representation" which right cannot be said to have been exercised effectively by allowing him a formal "hearing" by the Board. Indeed the mandate of Article 22(5), which speaks of the right of "representation", is concretized in the statutory provision embodied in section 10 of the Act, We extract the statutory provision:

Save as otherwise expressly provided in this Act, in every case where a detention order has been made under 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,

(Emphasis added)

4. We have not an iota of doubt that the State Government has an obligation in terms of Section 10 to place before the Advisory Board as contemplated Under Clause (4) of Article 22 not only the "grounds" on which the order had been made but also the "representation" of the detenu if any to Board to give its "opinion" in terms of Clause (4) on the sufficiency of the "cause" for detention under the Act. We note the compulsion Section 10 requiring the State to "produce" the detenu before the Advisory Board "within three weeks" from the date of his detention by producing the detenu "within three weeks" before the Advisory Board the State Government cannot be said to have discharged its statutory obligation u/s 10 or carried out the constitutional mandate guaranteed in clause (4) and (5) Article 22 if within that period "representation" from the detenu had not been received except in cases when the detenu refused positively to make any

"representation". Although in "grounds" served on him no date was mentioned by which the representation must be submitted, we must accept the position that the detenu had the right u/s 10 to submit representation u expiry of the period of three weeks. By depriving him of the opportunity to file his representation within that period and producing him before the Advisory Board, to obtain his "opinion," of the Board, in our opinion, would be grossly violative of the provisions not only of Section 10 but also of Article 22(5)

5. For the view we have taken we find ample support from the decision of the Appellate Court in *Janendra Nath Roy v. SI West Bengal* (1971) 4 SCC 50. The Court held that representation of the detenu required consideration of the State Govt. as well as the Advisory Board, That the obligation as respects consideration at both levels, of the representation, was a constitutional imperative emanating from Article 22(5) was also held in *Sk. Abdul Karim and Others Vs. State of West Bengal*, and *Jayanarayan Sukul Vs. State of West Bengal*, was noted by their Lordships. The same view was also taken in *Nagendra Nath Mondal Vs. The State of West Bengal*, Because Section 8 of the Act speaks of opportunity of making representation to the appropriate government, it does not and It cannot restrict, in our opinion, the ambit and scope of clauses (4) and (5) of Article 22 of which the latter clause does not explicitly contemplate a restricted right that the right is to have his "representation" considered merely by the State Govt. It speaks generally of an opportunity to be given to the detenu to make representation "against the order" of detention and the currency of the order has to be considered by the Govt. as well as the Advisory Board. The representation may be addressed separately to both or even only to the State Govt. whose duty will have then to send the same to the Advisory Board for its consideration in compliance with requirement of Section 10. Indeed, because the Advisory Board, after it submits its "report" and gives its "opinion" because functus officio under Clause (4) of Article 22 as held in *Shyamal Chakraborty Vs. The Commissioner of Police, Calcutta and Another*, the right to have his representation considered by the Board even if submitted after three weeks but not unreasonably delayed (before the Board could submit its "report" as per Section 11), cannot be curtailed either legislatively or by executive Act in an arbitrary manner. According to us, therefore, section 10 does not contemplate that the Advisory Board must "report" within three weeks whether or not the detenu had submitted his "representation". Unless the detenu had indicated that he would not submit any representation and he desired only to be heard by the Board, State Govt. would have no authority in law to "produce" the detenu before the Advisory Board within three weeks and thereby defeat the constitutional mandate or clauses (4) and (5) of Article 22. Two things, according to us, are very clear, Section 10 in terms does not debar detenu's making, and Board considering the "representation", after three weeks. It should not, therefore, be so read as to achieve an extra or contra constitutional purpose.

6. Indeed what bears particular emphasis is the Interpretation of Section 10 by the Apex Court in *Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh* and

Another, that it does not cast any duty on the State Govt. to the representation of the detenu considered within three weeks by the Advisory Board. Because the expression used in the Section is "place before" it would only imply a duty forward or submit the same to the Board which was an independent body not subordinate to the Government and had the power to regulate its procedure in a with Section 11 of the Act. Be it noted that although the State Govt. is required to "place before", the Board within three weeks, the "grounds" at the "representation" as per Section 10, the Board, on the other band, is allowed further time until the expiry of 7 weeks from the date of detention within which it has to Submit its report because it may be necessary for the Board to call further information or material to dispose of the case. There must therefore, be, In our opinion, material placed before the Court in such a case to show that the Advisory Board had questioned the detenu as to whether he had submitted any representation or he Intended to submit a representation so that they could wait until the statutory time- limit prescribed in section 11 expired. Because, as alluded, it is also Board's constitutional obligation to consider detenu's representation before giving its "opinion" and submitting its "report" In the instant case even that is lacking.

7. In the instant ease, its alluded, the detenu was "produced" before the Advisory Board before expiry of three weeks without his having "reasonable" or sufficient opportunity to file a "representation" for consideration of the Advisory Board. This action tantamounted to infringement of detenu's statutory as Well as constitutional Tight which t his continued detention illegal.

8. Learned counsel also took the plea, relying on Hitendra Nath Goswami 1984 Cri.L.J. that for violation of Section 3(5) of the Act by Union of India the detenu must be set free. We have perused the returns filed by the Union as well as the Secretary (Home), Manipur. The factual position in this respect is not clear. There exists some doubt about relevant dates as respect dispatch, receipt and consideration of report u/s 3(5) by the Union of India, In any view of the matter, we do not propose t consider the grievance of infringement of section 3(5) for the reason that the application succeeds on another point.

9. In the result, the application is allowed. The rule is made absolute. The detenu shall be released forthwith.