

(2014) 11 MAN CK 0003

In the Manipur High Court

Case No : Writ Petition (Cril.) No. 31 of 2014

Takhellabam Ongbi Mala Devi

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

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

Citation : (2014) 11 MAN CK 0003

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ph. Sanajaoba, Advocate for the Appellant; Y. Ashang, GA and S. Rupachandra, ASG, Advocate for the Respondent

Judgement

Laxmi Kanta Mohapatra, C.J.—The petitioner is the detenue and she has filed this writ application challenging the legality of the order passed by the District Magistrate, Imphal West on 5.6.2014 in Annexure-N/1 directing her detention under Sub Section 3 of Section 3 of the National Security Act, 1980.

2. In the grounds of detention, it is alleged that the petitioned joined a banned organization namely, Peoples Liberation Army (PLA for short) in January, 2001 and had taken military training in the month of May, 2002 in a training centre in Chandel district. While continuing as a Member of the said banned organisation, she was involved in extortion of money from general public, Govt. employees and businessman etc. and it is also alleged that she had hurled a hand granate to the house of Shri Ch. Ranbir Singh on 17.2.2011. She was arrested in connection with a case of Singjamei P.S. and was remanded to jail custody on 3.3.2011. During that period, she was also detained under National Security Act, 1980 by order dt. 3.3.2011. She was released on 25.2.2012 and started working for KCP Noyon faction and went to Bangladesh in July, 2012 and stayed with her husband. She got computer training in Bangladesh and came back to Manipur in the first part of 2013 and again started criminal activities like extortion of money,

transportation of explosives, planting IEDs to terrorise public. It is also alleged that she carried out these activities along with some of her companions in the name of URF. It is further alleged that she along with her companion had planted IED explosive on 9.4.2014 at the gate of one Moirangthem Shyamkishor Singh who neglected to pay demand money and that she was also involved in planting IEDs which exploded on 13.4.2014. She was arrested on 26.4.2014 by a police team of CDO/IW from a place near Gambhir Shopping Complex, Imphal and a Samsung Mobile handset along with two Sim cards were seized from her possession. A case was registered in the City Police Station vide FIR No. 56(4)14 for commission of offence u/s. 17/20 UA(P) A. Act and she was remanded to police custody till 3.5.2014. While in custody she was arrested in connection with two other cases-once on 3.5.2014 and again on 7.5.2014. After she was remanded to judicial custody, the impugned order of detention was passed. The said order of detention was confirmed by the State Govt. after obtaining the opinion of Advisory Board.

3. Shri Sanajaoba, learned counsel appearing for the petitioner assails the impugned order of detention mainly on the ground of non disposal of representation submitted by the petitioner by the State Govt. as well as delay in disposal of the representation by the Central Government. It was contended by the learned counsel for the petitioner that the petitioner submitted representation on 16.6.2014 which was never disposed of by the State Govt. and the said representation was forwarded to the Central Government only on 30.6.2014, almost 14 days after the representation was submitted to the State. Since no explanation has been given in the counter affidavit as to why State Government took 14 days in transmitting the representation to the Central Government, the order of detention should be quashed. It was also contended by the learned counsel that the State Govt. was aware of the representation submitted by the petitioner but did not take care to consider and dispose of the same. On this ground also, according to the learned counsel for the petitioner, the order of detention is liable to be set aside.

4. Mr. Ashang, learned G.A. appearing for the State submitted that the representation of the petitioner was received after her case was placed before the Advisory Board and therefore considering the opinion of the Advisory Board, the order of detention was confirmed and there was no necessity to consider the representation of the petitioner any further.

5. From the counter affidavit filed on behalf of the respondent No. 1, it appears that the petitioner was arrested on 26.4.2014 and was served with the grounds of detention on 7.6.2014. The petitioner submitted a representation on 16.6.2014 addressed to the District Magistrate, Imphal West and the said representation was sent to the Government on 19.6.2014. Another representation was given by the petitioner on 25.6.2014 addressed to the Chairman, Advisory Board which was received from the SP, Manipur Central Jail on 27.6.2014. However, the said representation dt. 25.6.2014 could not be

considered by the Advisory Board as the Advisory Board considered the case of the petitioner on 24.6.2014. There is no statement in the counter affidavit filed by the respondent No. 1 that the representation of the petitioner dt. 16.6.2014 which was received by the State Government on 19.6.2014 was ever considered.

6. It appears from the counter affidavit filed on behalf of the Central Government that the representation of the petitioner dt. 16.6.2014 was forwarded by the Govt. of Manipur on 30.6.2014. The delay in sending the representation to the Central Government has not been explained in the counter affidavit filed on behalf of the respondent No. 1, i.e. State of Manipur represented by the Chief Secretary. In this connection, a reference may be made to a decision of the Gauhati High Court in the case of Smt. Ningombam (O) Leima Devi Vs. State of Manipur, . The Division Bench of the Gauhati High Court took into consideration several decisions of the Supreme Court on this issue and allowed the writ petition. It was also held that non consideration of the representation by the State Govt. even if the same is routed through State Govt. independently will result in denial of fundamental right guaranteed under Art. 22(5) of the Constitution of India to the detainee. The ratio laid down in Smt. Gracy Vs. State of Kerala and another, was followed by the Apex Court in Moosa Husein Sanghar Vs. State of Gujarat and others, and it was held that merely because representation was addressed to the Advisory Board, the State Government cannot absolve the dual obligation under Art. 22(5) of the Constitution of India to consider the representation independently and failure to consider the representation independently by the appropriate Government will result to violation of the fundamental rights of the detainee guaranteed under the Constitution.

7. In the present case, the petitioner had submitted two representations. The first representation was dt. 16.6.2014 addressed to the District Magistrate and the said representation was forwarded to the State Govt. and was received by the State Govt. on 19.6.2014. There is no whisper in the counter affidavit of the respondent No. 1 as to whether the said representation dt. 16.6.14 received by the State Govt. on 19.6.2014 was considered or not. Apart from the above, the second representation of the petitioner addressed to the Advisory Board dt. 25.6.14 was within the knowledge of the State Government, but no decision was taken on the said representation by the State Government. On this ground alone, the order of detention is liable to be quashed.

8. Apart from the above, as indicated in the counter affidavit of the Central Government, the representation of the petitioner was forwarded to the Central Govt. only on 30.6.2014. The delay of 14 days in sending the representation to the Central Govt. has not been explained by the State Govt. in its counter affidavit.

8.1. In the case of Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, unexplained delay of 7 days was also taken note of by the Supreme Court while setting aside the order of detention.

9. For the reasons stated above, we are unable to sustain the order of detention at Annexure-N/1 and accordingly allow the writ petition, quashing the order of detention dt. 5.6.2014 passed by the District Magistrate, Imphal West and further direct the petitioner namely, Takhellambam (O) Khamnam (N) Mala Devi @ Ton, be set at liberty forthwith unless her detention is required in any other case.