
(1984) 01 GAU CK 0018
In the Gauhati High Court

Thokchom Gosai Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Citation : (1985) CriLJ 553

Hon'ble Judges : T.C. Das, J;N. Ibotombi Singh, J

Bench : Division Bench

Judgement

N. Ibotombi Singh, J.—By our short order passed on 23-1-84 we quashed the order of detention as void and ordered the release of the detenu forthwith stating that reasons would follow. We now set out reasons herein below :

2. This is an application under Article 226 of the Constitution challenging the order of detention dated 6th December, 1983 passed by the District Magistrate. (Imphal) Manipur u/s 3(3) read with Section 3(2) of the National Security Act, 1980. The District Magistrate (Imphal) Manipur passed the impugned order as he was satisfied that it was necessary to detain Mr. Thokchom Thoibam Singh alias Thoi alias Brojen Singh with a view to preventing him from acting in any manner prejudicial to the security of the State and maintenance of public order. The detenu was already under confinement in the Manipur Central Jail, Imphal, being arrested in connection with FIR No. 345(6)/83 IPS Under Sections 121, 121 A, IPC ; Section 25(I)(a) of Arms Act and 13 UA(P) Act. He was served on 8-12-83 with the detention order along with the grounds of detention. The detenu made a representation to the Government of Manipur on 11-12-83. Meanwhile, the present petition for a writ of Habeas Corpus was filed on 21-12-83 on behalf of the detenu by his father Thokchom Gosai Singh challenging the validity of the order of detention. Rule nisi was issued on 22-12-83. It appears that his representation was also rejected by the Government on 22-12-83. While the writ petition was pending there was a sitting of the Advisory Board constituted u/s 9 of the Act and the Advisory Board on reference to it of the case of the petitioner

made its report on 10-1-84 that in its opinion there was good and sufficient cause for his detention. The State Government approved the detention order and acting on the report of the Advisory Board passed order for detention for a period of 12 months from the date of detention.

3. The respondents herein, the State of Manipur, the District Magistrate, Imphal, Government of Manipur and the Superintendent, Central Jail, Imphal filed return showing justification of the detention order. The affidavit-in-opposition was sworn on behalf of the respondents by Shri S. Saral Singh, District Magistrate (Imphal). Manipur who passed the impugned order of detention. The grounds of detention are reproduced below :

I.(a) That you are an active member of the outlawed organisation known as Peoples Liberation Army (PLA for short) after you joined the said organisation in 1981 through 1. Indramani Singh and contacted H. Yaima Singh alias Chaoba Singh of Bishenpur. Hard-core members of the organisation.

(b) That you along with your associates namely H. Yaima Singh alias Chaoba Singh, L. Ibomcha Singh and H. Nillo Singh made a PLA star fixed with a bomb and planted just near the platform for Flag hoisting at Bishenpur Bazar in the night of 25-1-83.

(c) That you were having unauthorised possession of a revolver with 9 rounds of 38 ammn. and 12 rounds of 9 mm and two hand grenades which were received by you from the said H. Yaima Singh alias Chaoba in the month of June. 1983.

(d) That on 16-6-83 you were arrested by the Police from your house and the said "38 revolver with two live hand grenades, six live rounds of 18 ammn.. 4 live rounds of 9 mm were also recovered from your possession.

Extract copies of your own statement and that of L. Balla alias Dolendra Singh, H. Nillo Singh and H. Yaima Singh alias Chaoba Singh of Bishenpur along with copies of FIR No. 6(l)/83 B.P.S. and .145(6)/83 IPS which form the basis of the grounds for your detention are enclosed.

4. The learned Counsel for the detenu has assailed the detention order on a number of grounds ; but we propose to deal with one contention only which, in our opinion, would go to the root of the matter and which, when accepted, in our opinion, would result in the invalidation of the order. The point raised is that the seizure list of the incriminatory articles said to be recovered from the possession of the detenu at the time of arrest on 16-6-83. has not been furnished to the detenu along with the grounds of detention. The recovery of these articles referred to in ground No. I(d) extracted above, the counsel submits, was taken into account by the detaining authority as a basic fact in reaching the requisite subjective satisfaction and non-furnishing of the copy of the same clearly caused prejudice to the detenu in exercise of his right of making an effective representation under Article 22(5) of the Constitution. In support of the contention the learned Counsel for the detenu referred to decision of the

Supreme Court in Mohd. Zakir Vs. Delhi Administration and Others, and Thakor Mulchandani Vs. Assistant Secretary to the Government of Maharashtra and Others, . The learned Government Advocate in reply contends that the seizure list was not relied on by the detaining authority in reaching the subjective satisfaction and as such non-supply of it has not caused any prejudice to the detenu.

5. We find no force in the contention of the learned Government Advocate. It is a constitutional mandate which requires that the detaining authority is to give the documents relied on in order of detention *pari passu* the grounds of detention in order to enable the detenu to make an effective representation as observed by the Supreme Court in Mohd. Zakir (*supra*). Clause (d) of the ground No. 1, extracted above would show that the seizure of the incriminatory articles from the possession of the detenu on 16-6-83 was very much taken into consideration by the detaining authority in arriving at his subjective satisfaction. In Khudiram Das Vs. The State of West Bengal and Others, the Supreme Court dealt with the constitutional requirement of Article 22(5), which insists that all basic facts and particulars which influenced the detaining authority leading to the making of the order of detention must be communicated to the detenu. It was pointed out that it is not only the right of (he Court but also its duty to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it. it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials apart from those admitted by it. which could have reasonably influenced the decision of the detaining authority.

6. In Yumnam Mangibabu Singh Vs. State of Manipur and Others, one of the grounds of detention recited that the detenu had procured four sets of bill forms and 3 or 4 blank letter-heads from one Iboyaima Singh, a partner of M/s Win Supply Agency by exercising coercion influence or extortion. In pare 1(e) of the ground it was stated that the detenu issued four supply orders on four different dates for the sum of Rs. 3.96,560/ - in the name of M/s. Win Supply Agency for supply of various materials for electrical installations ; but the supply orders were actually given to one Sanjoy Sharma, a member of PLA and his other associates : and the detenu had handed over the bill orders and letter-heads extorted by him from M/s. Win Supply Agency ; and the said Sanjoy Sharma and his associates presented those bill forms for payment. The Supreme Coure held that on the point of alleged influence, coercion or extortion said to have been exerted on Iboyaima Singh. Iboyaima Singh must have said something in his statement and the detenu was, therefore, entitled to get a copy of statement of Iboyaima Singh so that the detenu could make his representation in that behalf. In other words, the statement of Iboyaima Singh was clearly a material which

influenced the mind of the detaining authority in reaching the requisite subjective satisfaction, and non-furnishing of the copy of that statement clearly prejudiced the detenu in exercise of his right of making an effective representation. Repelling the contention of the counsel for the State that statement of Iboyaima constituted the source of information, the Court further held that the manner in which the bill forms and the blank letler-heads were allegedly procured by the detenu by exercise of influence, coercion or extortion, which allegedly facilitated the diversion of Government funds to the unlawful body, assumed considerable importance regarding which the detenu ought to have been given an opportunity to have his say. Since the constitutional safeguard was clearly breached, the impugned detention order could not be sustained.

7. The two decisions of the Supreme Court referred to above clearly establish the proposition of law that the Court is entitled to examine what are the basic facts and materials which actually weighed with the detaining authority in reaching the requisite subjective satisfaction ; and if the grounds of the order of detention reflected the existence of a document which has been taken into account by the detaining authority in reaching the requisite satisfaction, such a document falls within the concept of the basic fact and it must be furnished to the detenu so as to enable him to make an effective representation under Article 22(5) of the Constitution.

8. In our opinion, seizure of the incriminating articles from the possession of the detenu was taken into consideration by the detaining authority in reaching the requisite subjective satisfaction and non-supply of the copy of the seizure memo introduced a serious infirmity in the order. In *Thakor Mulchandani Vs. Assistant Secretary to the Government of Maharashtra and Others*, the contention that the copy of the document which was in the nature of a slip was not necessary as in the statement of the detenu details of the same were there, was not accepted, inasmuch as the statement was not admitted and in absence of the detailed account, which was incorporated in document, statement itself was not quite intelligible. On these facts the slip containing accounts was held to be a material document, because of which it was held that it must have been supplied to the detenu and non-supply of the same invalidated the detention order. The same principle is applied to the case on hand as the factum of the seizure of the incriminating articles from the possession of the detenu was taken into consideration, the seizure memo was relied upon by the detaining authority in reaching the subjective satisfaction and it must have been supplied to the detenu *pari passu* the grounds of detention. Since the same was not supplied, the order of detention is void.

9. In the result, we allow the petition and the order of detention is held void and the detenu is directed to be released forthwith.

T.C. Das, J.

10. I agree.