

(2006) 05 GAU CK 0065
In the Gauhati High Court

Thongam Hemanta Meitei @ Premjit

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0065

Hon'ble Judges : M.B.K.Singh, J and R.B.Misra, J

Bench : Division Bench

Advocate : Dolen Phurailatpam, Jalal Uddin, N.Ibotombi Singh, Advocates
appearing for Parties

Judgement

R.B.Misra, J.—In the present writ petition, the detention order dated 13th September, 2005 (AnnexureN/1) passed by District Magistrate, Imphal West in exercise of powers conferred to him under section 3(3) of the National Security Act, 1980, (for short the "Act 1980") read with Central Govt. Home Departments order dated 6.9.2005, has been challenged whereby the petitioner for his activities prejudicial to the security of the State and maintaining public order under section 3(2) of the Act of 1980 has been detained.

2. The sole question for consideration before this court is that whether report of detention of petitioner sent by the State Government to the Central Government in reference to section 3(5) of the Act of 1980 could be revoked or modified or affirmed in reference to section 14(1) of the "Act 1980" expeditiously or in a routine manner at any time?

3. The brief facts necessary for the adjudication of the present writ petition are that the petitioner was arrested on 4.9.2005 along with one Thounaojam Jiten Meitei @ Ibungo of Awang Leikinthabi and an FIR No.42 (9)05 Sekmai PS was lodged on 5.9.2005 at Sekmai PS under section 20/23 of UA (P) Amendment Ordinance Act of 2004 against the petitioner and the above alleged accused. The petitioner was produced before the concerned Chief Judicial Magistrate on 6.9.2005 and was kept in judicial custody upto 12.9.2005, and, the order of

detention dated 30.9.2005 impugned in the present writ petition was passed. The grounds of detention was served to the petitioner on 16.9.05 as indicated as Annexure N/2 to the writ petition.

4. A representation for and on behalf of the petitioner was submitted on 24.9.2005 before the District Magistrate. However, the same day, the detention order was approved by the State Government, the respondent No.1 conveying same to the petitioner on 24.9.05. The State Government transmitted the report on 26.9.05 to the Central Government, whereas, the petitioner had also submitted his representation to the State Government on 27.9.05 through Manipur Central Jail, Sajiwa, Manipur. The petitioner, however, was informed by Special Secretary (Home) of the State Government that his representation was disposed of on 01.10.05 (at Annexure N/7 to the writ petition). It appears the report of the State Government conveyed to the Central Government was received on 5.10.05 and as revealed by the counteraffidavit and paragraph 4 of the additional affidavit of the Union of India, the respondent No.3 that the concerned section of the Ministry of Home Affairs, Central Government of India had received the report on 13.10.05 as 8, 10, 11, 12th October, 2005 were holidays being Saturday, Sunday, Maha Ashtami and Dussehra. . It has been indicated in the counteraffidavit that no time limit is set out for the Central Government for consideration of the report forwarded by the State Government under section 3(5) of the "Act 1980". According to the learned counsel for Central Government, the time limit of one week is only specified for the State Government to send the report to the Central Government. However, during the course of arguments, it has been brought to the notice of this court that the Central Government has considered the report and approved the detention of the petitioner on 16.11.2005.

5. It has been argued on behalf of the petitioner that a Constitution Bench of this court way back in 1984 CRI.L.J. 1558 (Hitendra Nath Goswami, Petitioner v. State of Assam and others, respondents) while dealing with the scope of section 14(1) and section 3(5) of the "Act 1980" has observed that the report of the State Government has to be considered by the Central Government with reasonable expedition. In support of his contention, para. 13 has been referred by the learned counsel for the petitioner which is quoted as below :

?13. In Haradhan Saha v. State of West Bengal, AIR 1974 SC 2154: (1974 Cri.L.J 1479), a Constitution Bench of 5 Judges expressed the view that S.14, Maintenance of Internal Security Act of 1980, 1971, which is in pari material with S.14, National Security Act of 1980, 1980, provides that without prejudice to the provisions of S.21 , General Clauses Act of 1980, 1897, detention order may at any time be revoked by the appropriate Government. The same view was also expressed by the Supreme Court in Ram Bali v. State of West Bengal, AIR 1975 SC 623 : (1975 Cri. LJ 592), where it was held that it is left with the Central Government in exercise of his discretion, either to exercise the power read with the provisions of S.21 General Clauses Act of 1980, or without aid of S.21,

General Clauses Act of 1980. See also *Smt. Kavita v. State of Maharashtra*, AIR 1981 SC 1641: (1981 Cri.LJ 1262). In *Haradhan Saha's case* (1974 Cri.LJ 1479), the Supreme Court observed: "S.14 of the Act of 1980 clothes the authority with the power of revoking or modifying the detention order at any time. Such a power which is for the benefit of the detenu carries with it the duty to exercise that power whenever and as soon as charge or new factors call for exercise of that power."

6. According to the learned counsel for the petitioner, in (1985) 2 GLR 1, *Somi Angkang v. Union of India & ors.*, the Central Government is duty bound to consider the report of the State Government under section 3(5) read with section 14(1) of the "Act 1980" with reasonable expedition and failure on the part of the Central Government shall violate the procedural safeguards to the detenu and as such order of detention shall be liable to be set aside. In support of his stand, the learned counsel for the petitioner has invited the attention of this court to the relevant paragraphs of *Somi Angkang* (supra) which are quoted as below :

"We are of the firm opinion that not only the Central Government is duty bound to consider the report, but it must do so with reasonable expedition and it must perform the duties and obligations enjoined under section 14(1) of the Act of 1980. The object of sending the report is either to revoke or modify, or not to revoke or modify the order. This supervisory power conferred by the statute on the Central Government is a discretionary power.

The nature and character of the power of the Central Government is absolutely discretionary. There is no dispute at the Bar that the Central Government may revoke an order, modify it, or refuse to modify or recall it. However, can the Central Government take a negative view, i.e. not to consider the report at all? In the instant case, the common case of the parties is that the report needs consideration by the Central Government with reasonable expedition. There is no dispute at the Bar that the underlined object of the Parliament in conferring the supervisory power on the Central Government is intended to make an effect additional check and safeguard against improper exercise of power by the detaining authority or by the State Government.

It is clear that the report received under section 3 of the Act or any communication received from the detenu must be considered with reasonable expedition. In our opinion, the term "consideration" in the present context means perusal with a purpose followed by a decision. In so far as the decision is concerned, the Central Government may take any one of the four possible courses i.e, either to revoke, or modify or not to revoke or modify the order. No reason may be required to be given in taking a decision. It may not be a speaking order; but the Central Government must consider the report, and consideration cannot be done in a vacuum. The duty is imposed by the Parliament on the Central Government pertains to the field of life and liberty of citizens. It is a serious business. As such, it must consider the report effectively to fulfill the object for which the section has been enacted by the Parliament. The

object, as already stated, is to consider whether there was improper exercise of the power of the detention by the detaining authority or the State Government. The connotation of the word 'consider' is 'to look at attentively or carefully: to think or deliberate on; to take into account; to attend to; to regard as'. Admittedly, casual or mechanical exercise of power is not exercise of the power of the Central Government under section 3(5) read with Section 14(1) of the Act.

7. In 2005 (3) GLT 33 (Gopal Boro @ Gwojen Boro v. Union of India & ors), a Division Bench of this court, relying upon the decision of Hitendra Nath Goswami (supra) and after considering the decision of Somi Angkang (Supra) has held that power of revocation of detention order vested in the Central Government is to be exercised with reasonable expedition.

8. On the other hand, learned counsel for the State as well as the Union of India has submitted that section 3 of the "Act 1980" only prescribes the time period for sending a report by the State Government to the Central Government, whereas, section 14(1) does not specify in clear words any time limit for consideration of the report by the Central Government, therefore, for obvious reasons available on record, after receiving the report on 5.10.05 by the Central Government after placing of the same to the officer concerned on 13.10.05, the report after consideration was affirmed on 16.11.05 and such decision should be treated to have been made in reasonable time as the same has been considered bonafidely and carefully as such detention order of petitioner and its affirmation by the Central Government is not to be interfered with by this court in exercise of its judicial review under Article 226 of the Constitution.

9. For the sake of convenience, section 3(5) and 14(1) of the "Act 1980" are quoted as below :

(3) Power to make orders detaining certain persons.

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(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particular as, in the opinion of the State Government, have a bearing on the necessity for the order.

(14) Revocation of detention order. (1) Without prejudice to the provisions of Sec. 21 of the General Clauses Act of 1980, 1987 (10 of 1897), a detention order may, at any time, be revoked or modified.

(a) notwithstanding that the order has been made by an officer mentioned in subsection (3) of Sec. 3 by the State Government to which that officer is subordinate or by the Central Government ;

(b) notwithstanding that the order has been made by a State Government, by

the Central Government.

(2) The expiry of revocation of a detention order (hereafter in this subsection referred to as the earlier detention order) shall not (whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment Act of 1980, 1984) bar the making of another detention order (hereafter in this subsection referred to as the subsequent detention order) under Sec. 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.)

10. We have heard the learned counsel for the parties and we have gone through the contents of the writ petition and averments made in the counteraffidavit of both the Central Government as well as the State Government. We have also seen the original records presented before us.

11. It is true that report of the detention sent by the State Government on 26th September, 2005 was received by the Central Government on 5.10.05 and to the concerned official on 13.10.05 but the report was considered only on 16.11.2005, thereby the detention of petitioner was affirmed by the Central Government, however, no reasonable explanation has been forthcoming as to what has happened in the interregnum i.e. after receipt of report till the decision was taken by the Central Government. A full Bench as well as the Constitution Bench of this court has clearly held that under section 3(5) read with section 14(1) of the "Act 1980", the Central Government is duty bound to consider the report to provide procedural safeguards to the petitioner. Even if no specific word has been provided in section 14(1) but, the spirit of the "Act 1980" reveals that the consideration of report shall have to be made with promptness and with reasonable expedition. The Central Government is under legal obligation to consider the report for the purpose of taking decision either for revocation or modification.

The modification also includes affirmation i.e. decision with no variation or with zero vacation is also modification indicative of affirmation. Unexplained delay or nonindication of justification in the present case is tantamounting nonconsideration of the detention order by the Central Government. In our respectful consideration, the decisions of this Court as referred by the learned counsel for the petitioner as indicated above, squarely protects the cause of the petitioner and we can safely indicate that delay in taking the decision of Central Government on 16.11.05 not conveyed or revealed by way of affidavit even, is violative of procedural safeguards available to the petitioner under "Act 1980" and as such, the order of detention is liable to be set aside. In facts and

circumstances, we, therefore, set aside the detention order dated 30.9.05 (AnnexureN/1) passed by the District Magistrate, Imphal West. After such cancellation of the detention order, the petitioner shall be released forthwith unless he is required to be detained in connection with any other case or criminal offence.

12. With the above said observations and directions, this writ petition is allowed. No order as to cost.