

(2006) 04 GAU CK 0030
In the Gauhati High Court

Waikhom Muhindro Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Citation : (2006) 04 GAU CK 0030

Hon'ble Judges : D.Biswas, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : Jalal Uddin, N.Ibotombi Singh, Rajeet Sanjenbam, Advocates
appearing for Parties

Judgement

T.Nandakumar Singh, J.—The petitioner/detenu is challenging the detention order being No.Cril/NSA/No.113 of 2005, Imphal the 5.11.2005 issued by the District Magistrate, Imphal West for detaining the petitioner/detenu under Section 3(2) of the National Security Act, 1980 in exercising his power under Section 3(3) read with Home Department's order No.17 (1)49/80H (Pt) dated 6.9.2005 which had been approved and confirmed by the State Government by subsequent order. In the present writ petition, particulars of the subsequent order of the State Government for approval and confirmation of the detention order dated 5.11.2005 issued by the District Magistrate are not mentioned.

[2] Heard Mr.Rajeet Sanjenbam, learned counsel for the petitioner, Mr.Jalal Uddin, learned GA for respondent nos.1, 2 and 3 as well as Mr.K.Kumar, learned CGSC appearing for respondent no.4, Union of India.

[3] The fact, stated in short of the petitioner's case is that he was falsely implicated in FIR No.55(3)2005, Thoubal PS under Section 365 I.P.C and further he is also implicated in FIR No.146(10)2005 City P.S under Section 16/17/ UA(P) Amendment Act, 2004. He was detained under the National Security Act by an order of the District Magistrate mentioned above. The District Magistrate under his letter being No.Cril/NSA/No.113 of 2005 dated 9.11.2005 had furnished the grounds of detention to the petitioner.

[4] In para 6 of the said letter of the District Magistrate, dated 9.11.2005 it is clearly mentioned about the authority to whom the detenu has to file representation against the detention order. For better appreciation para 6 of the said letter of the District Magistrate is quoted hereunder:

¶6. That, you are hereby informed that you have the right to make representation to the Government of Manipur as well as to the Central Government against the order of detention passed against you and you are hereby afforded the earliest opportunity for making such representation if you wish to do so. The representation is to be sent through Addl. Superintendent of Manipur Central Jail, Sajiwa to the Chief Secretary, Government of Manipur respect of representation to the Government of Manipur and to ¶The Secretary to the Government of India Ministry of Home Affairs? (Department of internal Security) North Block, New Delhi 110001 in respect of representation to the Central Government and should be submitted within 3 (three) weeks from the date of detention. Further, you are informed that you have right to make representation to the detaining authority within 12 (twelve) days from the date of detention or till the order is approved by the State Government whichever is earlier. The representation is to be sent to the District Magistrate, Imphal West representation, if any would be placed before the Advisory Board within 3 (three) weeks time from the date of your detention and such other documents/papers connecting with your detention as the Government is bound under the law to produce before the Board for its consideration.¶

[5] Surprisingly the detenu filed his representation dated 5.11.2005 to the Chief Secretary, Government of Manipur against the detention order but no representation addressing to the Secretary to the Government of India, Ministry of Home Affairs (Department of Internal Security) North Block, New Delhi, was filed. The detenu/petitioner while forwarding his representation addressing to the Chief Secretary, Government of Manipur to the Addl. Superintendent Jail, Manipur Central Jail, Sajiwa, Manipur had simply noted that ¶Copy to (1) The Chief Secretary, Government of Manipur, (2) The District Magistrate, Imphal West, Manipur & (3) The Secretary to the Government of India, Ministry of Home Affairs (Department of Internal Security), North Block, New Delhi.¶

[6] The grounds for challenging the detention order in the present writ petition are that:

(1) There is non application of mind of the detaining authority in issuing the detention order inasmuch as the detention order was issued at the behest of the Police and para nos.1, 2 and 3 of the letter containing the ground of detention dated 9.11.2005 is an ad verbatim reproduction of para 11 to 13 of the history sheet accompanying the Police report dated 5.11.2005;

(2) There is an inordinate delay in disposing the representation by the Central Government even if there is no representation of the detenu addressing to the authority whose particulars are mentioned in para 6 of the letter of the District

Magistrate dated 9.11.2005 in the case of filing representation to the Central Government.

It may here be mentioned that the representation of the detenu dated 5.11.2005 was filed through the Addl. Superintendent, Manipur Central Jail, Sajiwa only on 12.11.2005.

[7] The respondent no.2 filed separate additional Affidavit in opposition and respondent nos.1 to 3 also filed their Affidavit in opposition. The Central Government, i.e respondent no.4 also filed Affidavit in opposition.

[8] The learned GA also made the relevant file of the Government of Manipur being No.17 (1) 962/2005H and also the file of the District Magistrate available before this court for perusal. This court has carefully gone through the files. From bare perusal of the para 4 of the said letter of the District Magistrate dated 9.11.2005 it is clear that the District Magistrate, after taking into consideration of the activities of the detenu/petitioner in the proximate base and also taking into consideration of the possibility of availability of bail facilities and becoming a free person had come to the conclusion that the petitioner/detenu would continue to indulge in the activities which are prejudicial to the security of the State and maintenance of public order and hence, the application of normal criminal law against the petitioner/detenu will not at all be effective to prevent him from commission of further prejudicial activities and alternative preventive measures was, therefore, called for.

[9] The detaining authority when coming to his subjective satisfaction for placing the petitioner under the NSA he had not only considered the history sheet of the petitioner/detenu prepared by the Superintendent of Police, Imphal West which had been forwarded to the detaining authority under his letter dated 5.11.2005 but also the documents referred in para 5 of the said letter of the District Magistrate dated 9.11.2005. It is up to the detaining authority to use the words of their choice in preparing the grounds of detention against the detenu and only because of using words in the grounds of detention similar with the words used in the history sheet prepared by the Superintendent of Police, Imphal West, it cannot be said that the detaining authority had mechanically issued the detention order.

[10] It is now well settled that the satisfaction of the detaining authority for placing a person under the NSA is only a subjective satisfaction. For this point it is not required to burden ourselves by referring to various decisions of the Apex Court. It would be sufficient to refer to:

- (1) Pushkar Mukherjee & 29 Ors vrs State of West Bengal: (1969) 1 SCC 10;
- (2) Choudarpu Raghunandan vrs State of T.M.: (2003) 3 SCC 754;
- (3) A.P. Saravanam vrs State of Tamil Nadu: (2001) 10 SCC 212;
- (4) Union of India vrs Paul Manickam: (2003) 8 SCC 342;

(5) Alijan Mian vrs District Magistrate, Dhanbad & Ors: AIR 1983 SC 1130;

[11] Further, it is also fairly well settled that the subjective satisfaction of the detaining authority should be reasonable and it is always open to the court exercising power of judicial review to see whether there has been due and proper application of mind to the relevant and vital materials and also that this court in exercising power under Article 226 of the Constitution of India is not sitting as an appellate authority of the detention order. This court in exercising writ jurisdiction is not reappreciating the evidence available on record for coming to a finding different to that of the detaining authority but this court is considering as to whether the subjective satisfaction of the detaining authority was not at all based on any material or not.

[12] Mr.Jalal learned GA appearing for the State respondents submits that the subjective satisfaction of the detaining authority arrived at while considering the materials and records was the cumulative result of all the grounds of detention. Further, according to the learned GA, no set standard had been laid down by the NSA for arriving at a subjective satisfaction of the detaining authority for detaining a detenu under the NSA. In the present case, the detaining authority had come to his subjective satisfaction on the basis of all the materials placed before him by the Superintendent of Police. It cannot be said that there was non application of mind of the detaining authority in issuing the detention order only on the ground that the words used by the District Magistrate in framing grounds of detention are similar with some of the words used by the Superintendent of Police, Imphal West in preparing the history sheet of the detenu which had been taken into consideration by the detaining authority.

[13] From perusal of the record as well as the detention order itself, ground of detention, this court is of the considered view that the detention order cannot be said to be illegal on the ground of non application of mind of the detaining authority inasmuch as the subjective satisfaction of the detaining authority are based on materials.

[14] Regarding the delay in disposal of the representation even if there is no representation of the detenu/petitioner addressing to the concerned authority of the Central Government, the Central Government filed Affidavitinopposition stating clearly that there is no delay in disposal of the representation of the detenu. The learned CGSC also strenuously submits that this practice of filing representation not to the concerned authority, was seriously viewed by the Apex Court in Union of India & Ors Vs Chaya Ghoshal (Smt) & Anr: (2005) 10 SCC 97. In that case, the Supreme Court held that where the ground of detention specifically indicates the authority to whom the representation is to be made, the detenu must state as to why the representation was made the President or Governor and not to the indicated authority. The detenu should honestly approach the real concerned authority. He should not adopt any dubious device to create a situation for delay in consideration of the representation. Para 16 of the judgment in the case of Union of India & Ors Vs Chaya Ghoshal (Smt) & Anr

(supra) is quoted hereunder:

?16. Coming to the question whether the representations to the President of India meets with the requirement of law, it has to be noted that in *Raghavendra Singh v. Supdt., Distt. Jail, Kanpur and Ramana Begum v State of A.P.* it was held that a representation to the President of India or the Governor, as the case may be, would amount to representation to the Central Government and the State Government respectively. But this cannot be allowed to create smokescreen by unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. Where the order (grounds) of detention specifically indicates the authority to whom the representation is to be made, such indication is also part of the move to facilitate an expeditious consideration of the representations actually made.?

[15] In the present case, as stated above, the detenu/petitioner had been informed in clear and unequivocal terms to whom the representation is to be addressed in the case of filing representation to the Central Government. But he was not filing the representation by addressing to the person to whom the representation was to be filed in case he wanted to file representation to the Central Government. Over and above, from perusal of the Affidavit in opposition filed by the Central Government there is no inordinate delay in disposing the representation filed by the detenu.

[16] From the above discussion, we are of the considered view that the two grounds for challenging the detention order in the present writ petition cannot be sustained in the eye of law. Such being the situation, the detention order cannot be said to be illegal. The writ petition is devoid of merit and the detention order is not required to be interfered with.

Accordingly writ petition is dismissed.