
(2013) 04 GAU CK 0001
In the Gauhati High Court
Case No : WP (Criminal) No. 16 (K) of 2012

Wapang Meren Jamir

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

National Security Act, 1980 — Section 10, 3(1), 3(1)(2), 3(3), 3(4)

Citation : (2013) CriLJ 4361 : (2013) 3 GLT 548

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : V. Theyo, for the Appellant; T.B. Jamir, CGC and Mr. K. Wotsa, GA, for the Respondent

Final Decision : Dismissed

Judgement

Prasanta Kumar Saikia, J.—In this proceeding the detention order dated 2.11.2012, passed by the District Magistrate, Dimapur detaining the petitioner u/s 3(1) and (2) of the National Security Act, 1980 (NSA in short) at Central Jail, Dimapur, the approval order passed by Advisory Board as well as the confirmation order dated 9.11.2012 passed by the Chief Secretary to the Government of Nagaland detaining the petitioner for a period of 1 year w.e.f. 2.11.2012 have been called into question. I have heard Mr. V. Theyo, learned counsel for the petitioner as well as Mr. K. Wotsa learned counsel for the State respondents and Mr. T.B. Jamir, learned counsel for the Union of India.

2. The brief facts, as stated in the writ petition and which are necessary for disposal of the present proceeding are that the petitioner herein Sri Wapang Meren Jamir was arrested by the 20th Assam Rifles on 30.10.2012. Mr. Wapang Meren Jamir was then handed over to the police. In that connection, an FIR was lodged with O/C, Medziphema Police Station on the basis of which Medziphema P.S. Case No. 19/2010 was registered.

3. It was stated that the petitioner was arrested on some specific information

and a huge quantity of arms and ammunitions and other articles were recovered from him. The articles recovered from are (1) AK 47 rifle, (2) 2 Mag. 89 rounds ammunitions of AK 47 (3) one 9 mm pistol with one Mag. and 5 pistols, 51.75 mm pistols with one Mag and one Nokia mobile handset. All those articles more particularly the arms and ammunitions are said to have been possessed by the aforesaid person most illegally.

4. In the meantime, S.P., Dimapur, formulated a proposal for arresting of the petitioner under the NSA on the basis of information that the petitioner is a active member of a banned organization viz NSCN who later switched on to GPRN (NSCN) in the year 2008 as Leacy. It is also the contention of the SP, Dimapur that the petitioner is a threat to defence of India, security of Nagaland and maintenance of peace public order.

5. The District Magistrate on the receipt of such application together with other documents, attached therewith, passed the order u/s 3(1)(2) of the NSA Act on 2.11.2012 and ordered that the petitioner to be detained in Central jail, Dimapur. Such detention order was said to been passed in order to prevent the petitioner from acting in a manner prejudicial to the defence of India, security of the State and maintenance of peace and order.

6. On the same day, the petitioner was furnished with the grounds of detention and was also informed that he could make a representation against his detention to the State Government as well as to the Central Government seeking revocation of detention order passed on him. In the meantime, he requested the State Government to approve the detention order passed on 2.11.2012.

7. On being so requested, the State Government approved the detention order authorising the detention of the petitioner in custody for a period of one year w.e.f. 2.11.2012. In due course, the petitioner preferred an application before the Advisory Board, constituted u/s 9 of the NSA. However, same was said to have been turned down most mechanically. According to the petitioner the State Government to reject his representation seeking the revocation of detention order and they did so in a most perfunctory way.

8. It has been alleged that in passing the detention order, the District Magistrate, Dimapur had passed such order mechanically without applying his mind to the matter placed before him. According to learned counsel for the petitioner, the District Magistrate must have arrived at subjective satisfaction on the necessity of detaining a person and such satisfaction must have been made on the objective basis. In that connection, learned counsel for the petitioner has relied on the decision this Court passed in the case of J. Sangwo Janger Vs. Union of India & Ors. reported in 2011 (5) GLT 336.

9. For ready reference, the relevant part of the agreement is reproduced below:--

The Apex Court as well as this Court in a number of cases have held that the District Magistrate or the other detaining authorities empowered under the Act

must record its satisfaction on the basis of materials/documents placed before him that the prevailing circumstances are such that the detention of the person has become necessary. The satisfaction must be subjected and based on materials on record. It is apparent from the detention order that the District Magistrate concerned has not referred himself to or perused the records and the materials placed before him to be satisfied himself with the same for passing a detention order against the petitioner.

Without referring to various other decisions of the Apex Court in this regard we would choose to refer ourselves to a recent decision of the Apex Court in *Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others*, wherein it has been held that there must be a reasonable basis for the detention order and there must be material to support the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion and accordingly determine, if there is an objective basis for subjective satisfaction. It is also held that the subjective satisfaction must be twofold. Firstly, the detaining authority must be satisfied with the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order. Secondly, the authority must be satisfied that it is necessary to detain a person in order to prevent from so acting. The subjective satisfaction of the detaining authority i.e. the District Magistrate, in the present case, on objective basis i.e. the material collected and placed before the detaining authority is the sine qua non of order passed otherwise should be treated as invalid and illegal.

10. The detention order has again been challenged on the count that under the law, the respondents are under an obligation to inform the detenu that his case has been placed before the Advisory Board for its consideration. But in the present case, the detenu (the petitioner) was not informed that his case placed before the Advisory Board for its consideration for which he was not sure if his case was ever considered by the Advisory Board. Even if his case was considered by Board the petitioner was not given personal hearing and it makes detention order unsustainable in law.

11. It is also in the contention of the petitioner that the detention order does not specify the period for which such detention order has been made. Under the law, the detaining authority is duty bound to specify the period for which detention order has been passed. According to the petitioner, such a lapse on the part of the detaining authority also makes the detention order illegal and it, in turn, makes the detention order unsustainable in law as well. The petitioner has, therefore, urged this Court to set aside the detention order and all subsequent order(s) passed by the State Government.

12. The State respondents Nos. 1 to 5 have filed counter affidavit disputing the claims, made by the petitioner. On the other hand, the Union of India also files separate affidavit in respect of the allegation that the learned District Magistrate, Dimapur, did not pass the order of detention on basis of his subjective

satisfaction, made on objective basis, the State respondents replies as follows:--

Para 8(A). The Petitioner/Detenué was apprehended on 30.10.2012 by personnel of 20 Assam Rifle who had conducted raid on his residence at Kukidolong basing on specified information:

The following Arms and Ammunitions were recovered and seized from his residence 1(one) Ak-47 Rifle with 2(two) Magazines and 89 live rounds, 1 (one) 8mm pistol and 1 Magazine and 5 live round and 1 (one) 7.65mm pistol with 1 Magazine and 3 live rounds. Recovery of the stated Arms and Ammunitions from the residence of the petitioner/Detenué amounts to severe violation of the Law of the Land and possess grave threat to the defence of India, security of the State and maintenance of Public order. Hence the detention order passed against the Petitioner/Detenué under the National Security Act as per the merit of the case.

13. In regard to the alleged right of the detenué that he must have been informed that the matter relating his detention under the NSA has been placed before the Advisory Board for its consideration, it has been contended that the law does not give such right to a person detained under NSA. The relevant part of the counter affidavit is reproduced below:--

Para 8(G). That the averment made in the para of the Writ Petition is denied by the answering respondents. All relevant case records in respect of the detenué were forwarded to all NSA Advisory Board within the time period stipulated by the Act (referred to as Annexure II), however there is no provision in the Act to inform the Detenué about the forwarding of the case to the board. In the instant case, as in other cases, the Board had heard the Petitioner/Detenué in person while taking up his case. And his detention under the National Security Act has been upheld by the Board. The report of the Board which was submitted within time required and the confirmation order are enclosed herewith as Annexure-III & Annexure-IV.

14. In regard to the allegation that the detention order is bad for not specifying the period of detention therein, the State respondents in their counter affidavit reply as follows:--

Para 8(E) That the averment made in the para of the writ petition is a matter of technical importance. It is a fact Sec. 3(4) of the NSA 1980, specify that no detention order passed by the District Magistrate shall remain in force for more than 12(twelve) days alter the making thereof unless in the meantime, it has been approved by the State Government. It may be noted that the Act do not make it mandatory for a District Magistrate to mention the period of Detention in its order. In the instance case, the Detention Order passed the District Magistrate on 2.11.2012 was approved by the appropriate State Govt. Authority on 7.11.2012 and approval Order issued on 9.11.2012. The stated provision was adhered to.

15. I have heard the learned counsel for the petitioner, State respondent as well

as counsel for the Union of India. I have also gone through the writ petition, the counter affidavit along with the documents attached therewith as well as the file bearing No. CON/NSA/63/2012. Coming to the first allegation above, I have found that in detaining a person under NSA, the detaining authority must have subjective satisfaction on such matter made on objective basis.

16. Equally importantly, such subjective satisfaction made on objective basis must have led the detaining authority to the conclusion that the detainee has been indulging in prejudicial activities prejudicial to the State etc. Such subjective satisfaction must have required the detaining authority to conclude that prejudicial activities of the detainee cannot be prevented unless he is detained under the NSA.

17. In that connection, we may profitably pursue the decision of this Court in the case of Roshan Rhi @ Rosu Vs. State of Nagaland reported in 2011 (5) GLT 333 in the case Roshan Rhi @ Rosu (supra) this Court held as follows:--

Without referring to various other decisions of the Apex Court in this regard we would choose to refer ourselves to a recent decision of the Apex Court in Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, wherein it has been held that there must be a reasonable basis for the detention order and there must be material to support the same. The Court is entitled to scrutinise the materials relied upon by the authority in coming to its conclusion and accordingly determine, if there is an objective basis for subjective satisfaction. It is also held therein that the subjective satisfaction must be two fold. Firstly, the detaining authority must be satisfied with the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order. Secondly, the authority must be satisfied that it is necessary to detain a person in order to prevent him from so acting.

18. Coming back to our case, I have found that while praying for detaining the petitioner under the NSA, the SP, Dimapur forwarded to the District Magistrate, Dimapur the following documents-

- (1) Copy of the FIR drawn in connection with Dimapur Medziphema P.S. Case No. 19/2012 u/s 25(1)(a) and read with 78 of the NSA Act,
- (2) Copy of the seizure memo,
- (3) Photograph of the accused person,
- (4) Joint interrogation report and
- (5) Arrested memo.

19. Those documents coupled with averments, made in counter affidavit reveal that the District Magistrate, Dimapur, on the perusal of the prayer of the S.P. Dimapur having regard to the documents attached therewith formulated a proposition for detention of the petitioner under NSA. These clearly show that

the detention order aforesaid was passed by District Magistrate on satisfying that petitioner needs to be detained under NSA.

20. This also shows that detention order was made on the objective assessment on the basis of materials collected by S.P. Dimapur. These are also testimony to the fact that District Magistrate, Dimapur also entertained an opinion that the petitioner's being at large is prejudicial to the interest of defence of India, safety and security to the State of Nagaland and maintenance of public order in Nagaland.

21. The alleged recovery of large numbers of extremely sophisticated arms and ammunitions from the possession of the petitioner coupled with the allegation that the petitioner is said to be a hardcore member of a banned organization supports more and more the apprehension of the District Magistrate, Dimapur that petitioner had been indulging in activities prejudicial in the interest of all the stake holders aforesaid.

22. On considering the materials on record more and more together with averments, made in the counter affidavit, submitted by respondent No. 1 to 5, I have also found that on such materials, Deputy Commissioner, Dimapur appears to have concluded that the prejudicial activities of the detenu/petitioner cannot be prevented unless he is booked under NSA.

23. In the face of the above, it cannot be said that learned District Magistrate authorised the detention of the detenu/petitioner mechanically without applying his mind to the materials placed before him. The fact that the assertion made in the affidavit in para-8 did not at all denied by the petitioner makes such conclusion more and more inevitable.

24. Coming to the allegation that the detention authority by not informing the petitioner that his case has been forwarded to the Advisory Board for its consideration has committed serious infringement of his right conferred on him by the NSA, I have found on the perusal of laws, more particularly u/s 10 of the Act that law does not require the authority who detained a person under NSA to inform him that his case has been forwarded to the Advisory Board for its consideration. Being so, this allegation too is found to be without any substance.

25. In so far, the other 3rd such allegations is concerned, I have found that said allegation has adequately been answered by this Court in the case of Roshan Rhi @ Rosu (supra). The relevant part is recorded as below:--

Mr. Zho, learned counsel for the petitioner submits that the impugned detention order dated 19.05.11 has not specified the period for which the petitioner was detained under the Act According to him, u/s 3(3) of the Act the detaining authority i.e. the District Magistrate, is bound to specify the period of detention. He also submits that the initial period of detention order can be passed for a period of 3 months only. The said period must be mentioned in the detention order and if the period is not mentioned therein, the detention order renders

invalid and illegal. He relies on the decision in *Amrit Ballav Goswami @ Mizu Phukan Vs. Union of India (UOI) and Others*, , wherein it has been held that detention order without specifying the detenu's period of detention, is violative of Section 3(3) of the Act. The submission of the learned counsel for the petitioner is not acceptable to us in view of another decision of a Division Bench of this Court in *State of Manipur and Others Vs. Arambam Kameshwar Singh*, . wherein it has been held that it is not necessary to specify the period of detention in the detention order and the. detention order on that ground does not become invalid merely because the period of detention has been specified. The aforesaid position of law has been clarified on the basis of a decision of the Apex Court in *Mrs. T. Devaki Vs. Government of Tamil Nadu and others*, . In view of the above settled position of law, we do not accept the submission of the learned counsel for the petitioner.

26. The decision so rendered in the case of in *Ringahao Horam, Mrs. Piskim Shimary* (supra) clearly reveals that 3rd allegation too have no legs to stand on.

27. In view of the above, I am of the opinion that the petitioner could not show that there was any infringement in passing the impugned detention order requiring this Court to set aside the order aforesaid.

28. This proceeding is dismissed. No costs. Return the file aforesaid forthwith to the department concerned.