

(2015) 02 MAN CK 0010
In the Manipur High Court
Case No : Writ Petition (Cril) No. 40 of 2014

Yumnam Shanti Devi

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5)

National Security Act, 1980 — Section 3

Unlawful Activities (Prevention) Act, 1967 — Section 16, 17, 20

Citation : (2015) 02 MAN CK 0010

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

Bench : Division Bench

Advocate : Ph. Sanajaoba, for the Appellant; A. Vashum, G.A. and S. Rupachandra, ASG, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner is the mother of the detenu, Moirangthem Gandhi Singh. By order dated 26.9.2014 passed by the District Magistrate, Imphal West, in exercise of powers conferred under sub-section 3 of Section 3 of the National Security Act, 1980, the detenu has been detained as a preventive measure. The said order of detention has been challenged in the writ petition.

2. From the ground of detention, it appears that the detenu was arrested on 9.7.2014 by a police team of CDO Imphal West and at the time of arrest from his house, a vehicle, one mobile hand set and one Sim Card were seized. The detenu, thereafter, was handed over to the Officer in-Charge of Imphal Police Station with a written report and on the strength of the report of the Officer in-charge, Imphal Police Station, F.I.R. case No. 250(7)2014 IPS was registered for commission of offence u/s. 16/17/20 UA (P) Act and 3 Expl. Subs. Act. He was remanded to Jail custody till 22.7.2014 and thereafter when the detenu was in judicial custody, the order of detention was passed.

3. Mr. Ph. Sanajaoba, learned counsel appearing for the petitioner raised only

one issue challenging the order of detention. It was submitted by the learned counsel for the petitioner that after the order of detention was passed and grounds of detention were served on the detenu, a representation was filed by the detenu before the Advisory Board as well as to the Central Govt. Even though no representation was filed specifically before the State Govt. the representation addressed to the Advisory Board was processed by the State Govt. and sent to the Advisory Board. Therefore, though the State Govt. was aware of such a representation addressed to the Advisory Board, it did not independently consider the representation and consequently no order has been passed by the State Govt. on the representation of the petitioner addressed to the Advisory Board.

Mr. Vashum, learned GA appearing on behalf of the State respondents submitted that admittedly the petitioner had not given any representation to the State Govt. Therefore, question of consideration of such representation did not arise and therefore the detenu cannot take advantage of non consideration of the representation.

4. In order to answer the issue raised by the learned counsel for the petitioner, it is necessary to refer to a judgment of this Court in the case of Smt. Takhellambam Ongbi Mala Devi vs. State of Manipur and 2 Ors vide WP (Crl.) No. 31 of 2014. In the said case, no representation had been addressed to the State Govt. by the detenu and only one representation was given by the detenu for consideration by the Advisory Board. Relying on two decisions of the apex Court, this Court held that merely because the representation of the detenu was addressed to the Advisory Board, the State Govt. cannot absolve the duty 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 Govt. will result in violation of the fundamental rights of the detenu guaranteed under the Constitution. The two decisions of the Apex Court referred to in the said judgment are- Smt. Gracy Vs. State of Kerala and another, followed subsequently by the Apex Court again in the case of Moosa Husein Sanghar Vs. State of Gujarat and others, .

5. Since, admittedly in the present case, the representation of the detenu addressed to the Advisory Board was processed by the State Govt. and the State Govt. was aware of such representation it should have been independently dealt with followed by a decision. Having not done so, the fundamental rights of the detenus have been violated. Consequently, the order of detention becomes unsustainable.

6. We, for the reasons stated above, allow the writ petition, quash the impugned order of detention at Annexure-N/1 dated 26th Sept. 2014 and direct that the detenu namely, Moirangthem Gandhi Singh be set at liberty forthwith unless his detention is required in any other case.