
(1991) 05 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 1936 of 1991

Zoii Nath Sarmah and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Terrorist and Disruptive Activities (Prevention) Rules, 1987 — Rule 487

Citation : (1992) CriLJ 2072

Hon'ble Judges : Manisana, J;M. Sharma, J

Bench : Division Bench

Advocate : S.N. Medhi, Rekha Chakraborty, Manjula Das and Z.N. Sarma, for the Appellant; M.A. Laskar, Addl. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—In this application under Article 226 of the Constitution of India the petitioners have challenged the circulars dated 19-2-1991 and 26-3-91 issued by the Inspector General of Prisons Assam.

2. The facts of the case may briefly be stated. The petitioner-1 Shri Zoii Nath Sarmah is an Advocate of this Court and is one of the political leaders in Assam. He was also a Minister. He along with the petitioner-2 Shri Imran Shah, who is also a politician, went to the District Jail at Mangaldoi on 19-3-91 to meet his clients who were under-trial prisoners. The petitioner-1 Shri Zoii Nath Sarmah made an application on 19-3-91 to the Superintendent of District Jail Mangaldoi for allowing him in his capacity as an advocate to interview his clients named in his application. But the Superintendent refused him permission in view of a circular issued by the Inspector General of Prisons Assam on 19-2-91. The circular runs as follows:

It has been reported to me that groups of Politicians have been visiting the Jails to meet the Extremist Prisoners arrested under TADA(P) or such other Act. In this connection, I am to state that Government do not consider this to be a

healthy practice in view of the present law and order situation of the State. You are, therefore, directed that no such visit should henceforth be allowed in violation of the provisions of Acts and Rules incorporated in the Assam Jail Manual. Any political leader/leaders, who desire to meet such extremist prisoners must first obtain permission from competent Court and an officer from the District Special Branch should be present at the time of meeting.

Violations of these instructions shall be viewed seriously.

(Emphasis added)

The circular was, however, modified by another circular dated 26-3-1991 in which it is stated :

...I am to say that if an advocate wants to interview his clients (who may be Extremist Prisoners) in connection with Court case, he may be allowed to interview the prisoners even if the advocate happens to be a political leader. But you must satisfy yourself (on the basis of Vakalatnama, etc.) that the said person is meeting his client in the capacity of a lawyer and not as a political leader.

(Emphasis added)

The petitioners have challenged both the circulars as already stated.

2. The circulars relate to a class of prisoners detained under the Terrorist and Disruptive Activities (Prevention) Act, 1987 or such other Act. Such prisoners have been designated as the "Extremist Prisoners." Under the circular political leaders who desire to meet the "Extremist Prisoners" must obtain permission from a competent Court and an officer from District Special Branch should be present at the time of meeting. Under the subsequent circular, an advocate who happens to be a political leader has been allowed to meet with "the Extremist Prisoners" in the capacity as an advocate, not as a political leader.

3. Clause (1) of Rule 472 of the Assam Jail Manual provides :

Unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing with their relatives, friends and legal advisers.

(Emphasis added)

4. Political leader is not expressly referred to in Clause (1) of Rule 472. Be that as it may, in *Sunil Batra Vs. Delhi Administration and Others etc.*, the Supreme Court has held :

We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers are part of prisoner's kit of rights and shall be respected.

(Emphasis added)

5. Rule 487 of the Jail Manual provides :

A Superintendent may refuse to allow any interview to which a prisoner would ordinarily be entitled under these rules but in every such cases, if in his opinion it is inexpedient in the public interests to allow any particular person to interview a prisoner or if other sufficient cause exists, he shall record his reasons for such refusal in his minute book.

(Emphasis supplied)

6. Under Rule 467, the Superintendent is the authority directly entrusted with statutory discretion to consider whether an individual will be allowed to interview a particular prisoner. The Superintendent has to exercise his independent judgment in individual cases taking into consideration the public interest or otherwise. Therefore, the Superintendent being an authority entrusted with statutory discretion, he must not while exercising his discretion act under the dictation of any other body or person. If he exercises his discretion under the dictation of a superior officer, it would amount to non-exercise of his power or non-application of his mind, and it will be bad. In other words, where the power to act belongs to an authority which ought to act independently, the action taken by him is invalid if he exercises his discretion under external dictation.

7. In the present case, the circular dated 19-2-91 indicates that the Inspector General of Prisons dictated the Superintendent in the matter of interviewing "Extremist Prisoners" by the political leaders, and, under the dictation of the Inspector General of Prisons, the Superintendent refused to petitioners to meet the prisoners. Therefore, the refusal of the Superintendent to allow the petitioners to meet the prisoners was invalid. In the corollary, the circular dated 19-2-91 is also invalid because the Inspector General of Prisons has no power to lay down such direction because there is no explicit statutory provision to the effect that such an instruction by a superior shall be binding on the Superintendent and, therefore, it is a clear-cut case of unlawful dictation interfering with the exercise of statutory discretion of the Superintendent.

8. Apart from the reasons stated above, the restriction under the impugned circular is unreasonable and excessive restriction for the following reasons. The circular directs to all the political leaders including a political leader who is a relative, friend or lawyer of an Extremist Prisoner. Therefore, the relative, friend or lawyer of such a prisoner who is ordinarily entitled to interview is also restricted as he happens to be a political leader. Such restriction imposes an unreasonable and excessive restriction upon the persons who are ordinarily entitled to interview an undertrial prisoner.

9. With regard to the second circular dated 26-3-91 modifying the first circular, the entire circular cannot be struck down in view of Clause (3) of Rule 472. Under Clause (3) person seeking an interview with an under-trial prisoner as

prisoner's legal adviser must satisfy the Superintendent that he is bona fide legal adviser of the prisoner and he has legitimate business with him. However, the expression "and not as a political leader" used in the last part of the circular is to be struck down in the light of discussion above as it cannot be saved from the Constitutional invalidity.

10. For the foregoing reasons, the petition is allowed, and the circular dated 19-2-91 issued by the Inspector General of Prisons Assam is quashed and the words "not as a political leader" employed in the last sentence of the second circular dated 26-3-91 issued by the Inspector General of Prisons Assam are struck out.

11. With the above observations and direction the petition is allowed and disposed of. No costs.

M. Sarma, J.

12. I agree.