

(1997) 02 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule (HC) No. 68 of 1996

Zubeni

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 226
Nagaland Security Regulation, 1962 — Section 7
National Security Act, 1980 — Section 3(1), 3(2), 8, 8(1)
Unlawful Activities (Prevention) Act, 1967 — Section 10, 11, 12, 13

Citation : (1997) 3 GLR 143

Hon'ble Judges : V. Dutta Gyani, Acting C.J.; N. Chowdhury, J

Bench : Division Bench

Advocate : N. Dutta and P.J. Phukan, for the Appellant; P.K. Khataniar, G.A., P.N. Choudhury and T. Khro, for the Respondent

Final Decision : Allowed

Judgement

V. Dutta Gyani, A.C.J.

1. By this petition under Article 226 of the Constitution, the Petitioner who is the wife of detenu Atoi Tangkhul, prays for issuance of a writ of Habeas Corpus, passed against him by Respondent No. 3 the Addl. Chief Secretary to the Govt. of Nagaland.

2. Basic facts leading to the detention order are- The detenu who claims to be running a Girls Hostel, at Chumukidema, near Patki Christian College Dimapur, was arrested by Army personnel on 30.6.96 around 2.30 A.M. Later on 18.6.96 he was handed over to Police, who arrested him u/s 7 of Nagaland Security Regulation, and Sections 10-13 of Unlawful Activities (Prevention) Act. On 8.7.96 he was ordered to be released on bail by the Court. Thereafter on 27.9.96 the impugned order of detention Annexure-1 was passed by Respondent No. 3 u/s 3(1)(2) of the National Security Act (for short the Act.)

3. The grounds of detention are set forth in Annexure-II which is reproduced hereunder:

Shri SSRCH, Atoi Tangkhul, NSCN (IM), S/o. Mikring Tangkhul, Ngaim Vill, Ukhrul Dist. Manipur.

Whereas the State Government of Nagaland have made detention order against you under Sub-section (2) of Section 3 of the National Security Act 1980.

Now, therefore, in pursuance of the Provision of Section 8 of the said Act, the State Government do hereby inform you that the said detention order has been made against you on the following grounds:

1. Defence of India.
2. The Security of the State of Nagaland.
3. The Maintenance of Public Orders.

The particulars which have a bearing on the matter are specified in the schedule attached.

You have a right to make a representation to the State Government against the above said order. You have also a right to claim a personal bearing before the Advisory Board.

4. Denying the allegation of being a hard-core activist of NSCN a banned organisation advocating liberation of Nagaland from Union of India the detention order has been challenged inter alia, on the following grounds:

1. The grounds of detention are entirely vague, the basic facts and material particulars were not furnished to the detenu and those furnished are irrelevant for the purpose of detention.
2. The in built procedural safeguards as provided in the Act have not been followed by the Respondents.
3. The impugned order has been passed without any application of mind.
4. The detenu has been denied an opportunity to make an effective representation and the one made, was inordinately delayed at every stage, there was unordinate delay in its disposal.
5. The Respondent in their affidavits have denied the contentions as raised and advanced by the Petitioner.
6. We have heard Mr. N. Dutta learned Counsel for the Petitioner and Mr. P.K. Khataniar Govt. Advocate for the Respondent State, who has also produced the record for Court's inspection.
7. So far as the first contention as raised by the Petitioner is concerned, while it is true that "Grounds" as contemplated by Section 8(1) of the Act means the

factual material on which the order of detention is primarily based, it includes all the basic facts and materials which have been taken into account, by the detaining authority in making the order of detention and an omission to supply and communicate such material to the detenu within the time prescribed would be fatal to his detention as has been pointed out by the Supreme Court, in *Hasheikh v. State of Gujarat* AIR 1981 SC 281, it is equally true that "grounds" should be so interpreted as to be in tune with the contemporary realities of the community and the object of the Act (See *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, when so interpreted, all that can possibly be said is the incoherent order of presentation of basic facts but this incoherence in presentation of basic facts cannot be allowed to annul the order, it would be nothing short of taking a too higher technical view of the matter.

8. Going through the grounds and the basic facts as supplied to the detenu which must be read as a whole and not in parts, one isolated from another, as has been pointed out in *Arun Ghosh Vs. State of West Bengal*, we have no hesitation in saying that they are germane and relevant to the object behind the passing of detention order. Activities such as recruiting youth to wage war against the established Government, instigating them to an armed struggle, certainly jeopardises the defence of India and endangers security of the State. Collecting funds by intimidating the public and by means of coercive methods does affect public order. There is a definite nexus between the two which cannot be disputed. Although the Petitioner has denounced these basic facts as false, but this Court while exercising its power in writ jurisdiction in such matters does not go into the question of truthfulness or falsity of allegations, it is a matter left to the competent Criminal Court, to be decided on trial. This Court is concerned with relevance and not truthfulness of the allegations.

9. The next point raised by the Petitioner is about non-compliance of the procedural safeguards as engrafted in the Act. Sub-clause (5) of Article 22 of the Constitution envisages two conditions, (i) communication of the ground on which the order of detention is based to the detenu, and (ii) affording the earliest opportunity of making a representation against the order. Dealing with this aspect of the matter and emphasising the importance of procedural safeguards, the Supreme Court in *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another*, has held as follows:

In a habeas corpus proceeding, it is not a sufficient answer to say that the procedural requirements of the Constitution and the statute have been complied with before the date of hearing and therefore, the detention should be upheld. The procedural requirements are the only safeguards available to a detenu since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are therefore to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

10. In the instant case alleged procedural lapses on the part of the Respondents relates to non-forwarding of detenu's representation and non-consideration thereof so much so even till the filing of the petition of 30th on November, 1996 and during its pendency the same has not been disposed of although it was submitted on 27th September, 1996 itself but the jail authority failed to transmit the same to the State Government as well as the Central Government. This averment is contained in para 6 of the petition. Affidavit-in-opposition filed by the detaining authority states:

That the statements made in paragraphs 6 and 7 are not admitted and denied by this deponent. The representation submitted by the detenu was disposed of as required under the law and as such the order of detention is not liable to be revoked on that ground.

11. The Petitioner has come out with specific case that the representation was submitted on 27th September, 1996 to the jail authority, and it was not promptly transmitted to the State Government and the Central Government. This fact is not controverted in the affidavit-in-opposition as filed by the detaining authority. The Superintendent, Central Jail, Dimapur is also a party as Respondent No. 4 but he has not filed any affidavit. In face of these specific averments it is no answer to the Petitioner's allegations about the belated despatch and non-disposal of representation to say that the representation submitted by the detenu was disposed of as required under the law. The authority must specifically state the date on which it was transmitted by the Jail authority, received by the State Government and when was it sent to the Central Government. It is important because Central Government has also power of revocation of the detention order passed by the State Government. It is significant to note that it is not the Respondents case that sufficient number of copies of the representation were not supplied to the jail Superintendent. The Union of India in its affidavit has stated that no such representation was received by it as such the question of its disposal does not arise, but natural, if it is not sent to the Central Government how can it be expected to dispose of the representation. It is for the State Government to satisfy that one of the most minimal of requirement envisaged by Article 22(5) of the Constitution namely an opportunity to make representation was in fact complied with. The affidavit as sworn and filed by the detaining authority is silent on the point. The representation as submitted by the detenu is available on record in the file as placed before us at page 34 and 35. It must be noted that this representation does not bear any date but the endorsement shows that it was received on 1.11.96. There is yet another endorsement which bears the date 2.11.96. The impugned detention order annexure-I was passed on 27th September, 1996 and on the same day the representation is claimed to have been submitted, but the record shows that it was received on 1.11.96. The affidavit as sworn by the Additional Chief Secretary, as extracted above, does not explain anything, although we have our own doubt as to how could it be that a detenu, on the same day when he was served with the detention order of 27th September,

1996, submit his representation. It was for the authorities to explain as to when the representation was actually received by the Jail Superintendent, when he forwarded to the State Government and when was it actually received in the office of the appropriate authority. All these pertinent questions have been omitted in the affidavit-in-opposition filed by the detaining authority. It is a poor apology, merely to say that the representation was disposed of in accordance with law when the detenu is complaining of its belated transmission and disposal.

12. Going by the date as borne out by record, i.e., 1.11.96, as the date of submission of representation, it is further evident from the file as produced before us, that it was 19.11.96 (page 3 of the file) that a tentative decision to reject it in the light of the report dated 8.11.96 of the Advisory Board was taken, which was again subject to approval, which appears to have been granted on 27.11.96, followed by an endorsement "early action please" on 29.11.96. Note sheet dated 5.11.96, at page 2 of the file contains a statement to the effect that an application was received from the detenu and his contentions noted. The report of the Superintendent of Police, Dimapur referred to, and grounds reiterated and lastly endorsing "Submitted please."

13. It would thus be seen that there was an apparent delay of 27 days in disposing of the representation. No attempt has been made to explain this delay. We need not cite authorities wherein 13 days, 16 days, 17 days unexplained delay in disposing detenu's representation has been held to be fatal to the continued detention of a detenu.

14. There is yet another aspect of this matter, the representation was not disposed of independently of the report of the Advisory Board. In fact, as noted above, it was attended to only on receiving the report of the Board. Needless to repeat that consideration of representation by the appropriate authority is independent of the reference to the Advisory Board. There are two distinct safeguards provided to the detenu. The Supreme Court in *Dr. Rahamatullah Vs. State of Bihar and Another*, had occasion to deal with such a situation and held as under:

The law is well settled that in case of preventive detention of a citizen, the obligation of the appropriate government is two-fold: (i) to afford the detenu the opportunity to make a representation and to consider the representation which may result in the release of the detenu, and (ii) to constitute a Board and to communicate the representation of the detenu along with other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is a two fold obligation of the appropriate government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate government and to have the representation once again considered by the government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion...

In the instant case, the State Government did not discharge the first of the two-fold obligation and waited till the receipt of the Advisory Board's opinion. There was, as pointed out above, an unexplained period of twenty-four days of non-consideration of the representation. This shows there was no independent consideration of the representation by the State Government; on the contrary they deferred its consideration till they received the report of the Advisory Board. This is clear non-compliance of Article 22(5) as interpreted by this Court. The order of detention is, therefore, liable to be quashed on this ground alone.

15. The point that still remains to be considered is about non-application of mind, which vitiates the subjective satisfaction of the detaining authority passing the impugned order, who in the instant case is the Additional Chief Secretary of the State, Respondent No. 3. It is significant to note that the ground of detention as (sic)mmunicated to the detenu is signed by Mr. M. Patton, Deputy Secretary, and not the detaining authority which prima facie shows that the detaining authority had not applied his mind to the grounds of detention. Going by the affidavit sworn by (sic) detaining authority, the point as raised is not substantiated.

16. We have already indicated above that the grounds of detention are germane and relevant to the object sought to be achieved by making the order of detention. (sic) because of the procedural lapse, on the part of the detaining authority and other (sic) of the State that Article 22(5), of the Constitution, as discussed above, has been violated, in as much as, the consideration of the representation submitted by (sic) detenu was inordinately delayed and no explanation therefore is offered by the (sic)aining authority in his affidavit.

17. In the result, the petition deserves to be allowed. It is accordingly allowed, The detenu be release forthwith, unless otherwise wanted in connection with some (sic) case or cases.