

Lakmi Mongsang Vs State of Nagaland and Others

Court: Gauhati High Court

Date of Decision: Aug. 16, 2004

Acts Referred: Constitution of India, 1950 " Article 22(5)
National Security Act, 1980 " Section 12(1), 12(2), 3(1), 3(2)

Citation: (2005) 3 GLR 144 : (2004) 3 GLT 287

Hon'ble Judges: P.P. Naolekar, C.J; A.H. Saikia, J

Bench: Division Bench

Advocate: A.K. Bhattacharyya, K. Agarwal, Avijit Das, A. Hazarika, K.K. Bhattacharjee and A. Bhuyan, for the Appellant; G.A. Nagaland, Sr. C.G.S.C., for the Respondent

Judgement

P.P. Naolekar, C.J.

This petition is by the wife of the detenu named Shri Kamal Khartu Mongsang. On 08.11.2003, the detenu was

served with an order of detention dated 06.11.2003 issued by the State Government of Nagaland under the signature of the Additional Chief

Secretary (Home), Government of Nagaland detaining him under Sub-section (1) and (2) of Section 3 of the National Security Act, 1980. The

detenu was also served with the particulars in support of the grounds of detention on 08.11.2003 along with the order of detention. After service

of the detention order and grounds of detention, the detenu has not made any representation either to the State Government or to the Central

Government. On 11.12.2003 the Secretary to the Government of Nagaland issued an order confirming the detention in exercise of powers under

Sub-sections (1) and (2) of Section 12 of the National Security Act, 1980. The order of detention dated 06.11.2003 may be reproduced

hereunder, which reads :

GOVERNMENT OF NAGALAND

HOME DEPARTMENT; POLITICAL BRANCH

ORDER

No. CON/NSA/01/2003/472 Dated Kohima the 6th Nov., 2003.

Whereas the State Government of Nagaland is satisfied that with a view to prevent Shri Kamal Khartu Mongsang @ Dr. Kumar, Counterfeit

Currency Racketeer, s/o Lt. Bahadur Thapa Magar, Village Paku, District Arghakhachi, Nepal, from acting in any manner prejudicial to the

Security of the State of Nagaland and Maintenance of public order, it is necessary to detain him under Sub-sections (1) and (2) of Section 3 of the

National Security Act, 1980.

Now, therefore, in exercise of powers conferred by Sub-sections (1) and (2) of Section 3 of the said Act, the State Government hereby orders

that Shri Kamal Khartu Mongsang @ Dr. Kumar, Counterfeit Currency Racketeer be detained and kept in Central Jail, Dimapur.

By order and in the name of the Governor of Nagaland.

(P. Talitemjen Ao)

Addl Chief Secretary (Home)

2. From the aforesaid order, it is clear that the detenu was detained for acting in a manner prejudicial to the security of the State of Nagaland and

maintenance of public order. Thus, the order of detention is on two counts - (1) security of the State of Nagaland and (2) the maintenance of

public order. The order of confirmation issued by the Secretary to the Government of Nagaland, Home Department on 11.12.2003 refers to the

opinion of the Advisory Board that the detention of the detenu is justified under the National Security Act, 1980 and his detention will be necessary

in order to prevent him from further indulging in activities highly prejudicial to the Defence of India, security of the State of Nagaland and

maintenance of public order. After referring to the opinion of the Advisory Board the order of detention was confirmed by the Secretary to the

Government of Nagaland, Home Department by order dated 11.12.2003.

3. Heard Mr. A. Das, learned counsel for the petitioner, Mr. M.N.B. Choudhury, learned Government Advocate for the State of Nagaland and

Mrs. G. Sinha, learned CGSC.

4. It is submitted by the learned counsel for the petitioner that the detenu had not been given the opportunity, as provided under Article 22(5) of

the Constitution of India, to make representation against the newly added ground in the detention order i.e. the activities of the detenu are highly

prejudicial to the defence of India and, therefore, the order dated 11.12.2003 confirming the detention requires to be quashed.

5. On the other hand, it is submitted by the learned State Counsel that the order of detention has not been issued by the State Government taking

into consideration three grounds namely, (1) activities of the detenu is highly prejudicial to the defence of India, (2) security of the State of

Nagaland and (3) maintenance of public order, but in fact, it has been issued only on two grounds of which the detenu has been initially detained

and third ground has been referred in the order merely as an opinion of the Advisory Board, therefore, the order of confirmation of detention is to

be read as if it has been passed only on two grounds namely, security of the State of Nagaland and maintenance of public order only.

6. To appreciate the rival contention, we shall take into consideration the order of detention dated 06.11.2003 and the order dated 11.12.2003.

On plain reading of these two orders, it is clear to us that on 06.11.2003 the detention order has been issued detaining the detenu taking his

activities (1) to be prejudicial to the security of the State of Nagaland and (2) maintenance of public order. The confirmation order issued by the

State Government, has referred to the opinion of the Advisory Board wherein according to the order, the Advisory Board was of the opinion that

(1) the detenu's activities are highly prejudicial to the defence of India (a ground which has not been mentioned in the detention order) (2) security

of the State of Nagaland and (3) maintenance of public order. At this stage we may also refer to the opinion of the Advisory Board. We find that

the recommendation of the Advisory Board to continue detention of the detenu is that the detenu's activities are prejudicial to the security of the

State of Nagaland and maintenance of public order. The ground, which is attributed to the opinion of the Advisory Board, namely, activities of the

detenu is highly prejudicial to the defence of India, does not find place in the opinion of the Advisory Board.

7. Facts clearly indicates that the order of confirmation of the detention of the detenue issued by the Secretary to the Government of Nagaland is

based on three grounds - (1) security of the State of Nagaland, (2) maintenance of public order and (3) activities of the detenu is highly prejudicial

to the defence of India. By catena of decisions, which is the subject-matter of repeated pronouncement by the Court in *The State of Bombay v.*

Atma Ram Shridhar Vaidya, reported in AIR 1954 SC 157 ; *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, ; *Shibban Lal*

Saksena Vs. The State of Utter Pradesh and Others, ; *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, and other decisions of the

Apex Court the interpretation of Article 22(5) of the Constitution of India, has consistently been adopted of the law, which is now well settled, that

the detenu has two rights under Article 22(5) of the Constitution - (1) to be informed, as soon as may be, of the grounds on which the order of

detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to be afforded the earliest

opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a

representation which on consideration may obtain relief to him.

8. There is distinction between the supplementary ground or the additional ground and supplementation of the particulars of the facts, which are

already mentioned in the detention order or of giving particulars of facts in addition to the facts mentioned in the ground to lead to the conclusion of

facts contained in the ground originally furnished. The Constitution Bench of the Apex Court has very succinctly drawn this distinction in the matter

of *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, where the Apex Court has said :

15. The argument that supplementary grounds cannot be given after the grounds are first given to the detenu, similarly requires a closer

examination. The adjective "supplementary" is capable of covering cases of adding new grounds to the original grounds, as also giving particulars of

the facts which are already mentioned, or of giving facts in addition to the facts mentioned in the ground to lead to the conclusion of fact contained

in the ground originally furnished. It is clear that if by "supplementary grounds" is meant additional grounds, i.e. conclusions of fact required to bring

about the satisfaction of the Government, the furnishing of any such additional grounds at a latter stage will amount to infringement of the first

mentioned right in Article 22(5) as the grounds for the order of detention must be before the Government before it is satisfied about the necessity

for making the order and all such grounds have to be furnished as soon as may be. The other aspects, viz., the second communication (described

as supplemental grounds) being only particulars of the facts mentioned or indicated in the grounds firstly supplied, or being additional incidents

which taken along with the facts mentioned or indicated in the grounds firstly supplied, or being additional incidents which taken along with the facts

mentioned or indicated in the grounds already conveyed lead to the same conclusion of the fact, (which is the ground furnished in the first instance)

stands on a different footing. These are not new grounds within the meaning of the first part of Article 22(5). Thus, while the first mentioned type of

additional" grounds cannot be given after the grounds are furnished as soon as may be, but provided they are furnished so as not to come in

conflict with giving the earliest opportunity to the detained person to make a representation will not be considered an infringement of either of the

rights mentioned in Article 22(5) of the Constitution.

9. According to the Apex Court, if the ground stated in the detention order is supplementary ground or an additional ground, it will amount to

infringement of the first mentioned right in Article 22(5) as it would not afford an opportunity to the detenu to make a representation against the

ground, which forms part of the detention order. On the other hand, if it is merely a supplementation of facts which are already been communicated

to the detainee or the additional facts mentioned in the grounds to lead to the conclusion of fact contained in the grounds originally furnished,

addition or supplementation of such facts subsequently, would not invalidate the detention order.

10. In the present case, by no stretch of imagination, the third ground, namely, the detainee's activities are highly prejudicial to the defence of India,

can be said to be a ground incorporated in the grounds, that is, security of the State of Nagaland and maintenance of public order. We have no

hesitation in holding that the third ground on which the detention order has been issued is an additional or supplementary ground of detention for

which the detainee has not been given any opportunity of representation. The detaining authority has given an extra ground for detaining the

detainee, apart from the two grounds. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner

and to what extent each of these grounds operated in the mind of the appropriate authority and contributing to the creation of satisfaction on the

basis of which the detention order was made. Therefore, it is not possible for us to say that the other grounds, of which the detainee has been given

opportunity to make representation, are quite sufficient to sustain the order, as if it amounts to substituting of a decision of the executive authority,

which is against the legislative intent underlined in the National Security Act, 1980. The addition of the new ground, of which opportunity was not

afforded to the detainee and resultant order of detention, is contrary and has infringed the right conferred on the detainee under Article 22(5) of the

Constitution of India. That being the case, we set aside the order of detention and direct immediate release of the detainee, if he is not otherwise

required in any other matter.