

**(2004) 11 GAU CK 0018**

**Gauhati High Court**

**Case No:** Writ Petition (Criminal) 36 of 2004

Mahesh Basumatary

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** Nov. 29, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 22(5)
- National Security Act, 1980 - Section 3(3)

**Citation:** (2005) 1 GLR 667 : (2005) 1 GLT 264

**Hon'ble Judges:** D. Biswas, Acting C.J.; Ranjan Gogoi, J

**Bench:** Division Bench

**Advocate:** R.P. Goyari, for the Appellant; S. Ali, G. Deka and H. Rahman, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Ranjan Gogoi, J.

The detention of the petitioner made by order dated 18.6.2004 passed by the District Magistrate, Kokrajhar u/s 3(3) of the National Security Act, 1980 (hereinafter referred to as the Act) has been put to challenge in the present writ application. The aforesaid order of detention has been approved by the State Government on 23.6.2004 and the representations filed by the petitioner-detenu to the State Government as well as to the Central Government have been rejected. The Advisory Board constituted under the provisions of the Act has also recommended the detention of the petitioner and on the basis of the opinion rendered by the Advisory Board, the State Government has confirmed the detention of the petitioner under the provisions of the Act.

2. We have heard Mr. P. Goyari, learned counsel for the petitioner-detenu, Shri S. Ali, learned Addl. Advocate General, Assam assisted by Smri G. Deka as well as Mr. H. Rahman, learned Sr. CGSC.

3. Three contentions in the main have been advanced by Mr. P. Goyari, learned counsel appearing for the petitioner-detenu in support of the challenge made. The learned counsel has argued that notwithstanding the recital made in the grounds of detention to the effect that a copy of the FIR, Seizure List, copies of the Statement are furnished to the detenu, the detenu was not served with any of the aforesaid documents. The aforesaid fact, it is urged, was pointed out in the representations filed by the detenu to the State Government and Central Government. As the aforesaid documents have been relied upon in reaching the satisfaction that the detention of the petitioner is necessary, non-furnishing of the same has vitiated the right of the petitioner-detenu to file an effective representation against his detention as guaranteed by Article 22(5) of the Constitution and, therefore, the detention of the petitioner is contended to be vitiated in law. Next, the learned counsel for the petitioner has argued that the detention order and the grounds of detention have been furnished to the detenu in English language with which the detenu is not conversant and proficient. The detenu, according to the learned counsel for the petitioner, had sought for translated copies of the detention order and the grounds of detention, which were not furnished to him. The detention is, therefore, contended to be vitiated on the aforesaid score. Lastly, it has been contended that the representation dated 24.6.2004 filed by the petitioner against his detention was disposed of by the State Government on 13.7.2004 and detenu was communicated the order of rejection on 14.7.2004. The representation to the Central Government filed on the same date i.e. 24.6.2004 was also rejected by the Central Government on 16.8.2004 and a communication to the aforesaid effect was sent to the detenu by WT Message dated 17.8.2004. In both the cases, there has been inordinate delay in disposing of the petitioner's representations thereby vitiating the detention of the petitioner.

4. Controverting the arguments advanced on behalf of the petitioner, Mr. S. Ali, learned Addl. Advocate General, Assam has contended that it is not correct that the detenu was not furnished with copies of the documents mentioned in the grounds of detention, as contended. Mr. Ali, has argued that the documents relied upon by the detaining authority were furnished to the detenu along with the grounds of detention and the detenu had put his signature in token of receipt of the requisite papers which signature has been duly attested by the Assistant Jailor, District Jail, Kokrajhar where the detenu was lodged. Mr. Ali has referred to the statements made in paragraph 5 of the counter affidavit filed on behalf the State Respondents to the effect that the documents relied upon by the detaining authority, i.e. FIR, Seizure lists, written statements were duly received by the detenu. Mr. Ali has also argued that the petitioner-detenu on receipt of the order and grounds of detention had not indicated that the same were unintelligible to him because of lack of knowledge of English on the part of the detenu and no demand for translated copies of the aforesaid documents were made by the detenu. According to Shri Ali it is only in the representation(s) filed against the detention order that the said facts

were alleged. It is further argued that the case of the petitioner-detenu as stated in the representation is that he is proficient/fully conversant in English language. Mr. Ali, therefore, has argued that on the above facts, it cannot be said that the petitioner-detenu was wholly ignorant of the contents of the order and grounds of detention. In any case the petitioner-detenu had submitted an elaborate representation against his detention and therefore, no prejudice was caused to the detenu on the grounds alleged. Lastly, Mr. Ali has argued by referring to the contents of paragraph 2 of the counter affidavit of the state respondent, that the representation filed by the detenu to the State Government on 24.6.2004 was dispatched on the same day by the District Magistrate, Kokrajhar and was received by the State Government on 30.6.2004. Thereafter, it was put up to the Hon"ble Chief Minister on 7.7.2004 after being duly examined and processed and the Hon"ble Chief Minister passed the order rejecting the representation on 13.7.2004. The time taken to dispose of the petitioner's representation by the State Government is not unreasonable and there has been no inordinate delay on the part of the State Government in this regard, it is argued. The learned Addl. Advocate General has, therefore, contended that there is no infirmity in the detention of the petitioner, which would call for any interference by this Court.

5. Mr. Rahman, learned Sr. CGSC by referring to the counter affidavit filed on behalf of the Union has argued that the representation dated 24.6.2004 filed by the detenu before the Central Government was received in the Home Ministry on 29.6.2004 and in the concerned desk of the Ministry on 2.7.2004, The representation of the detenu to the Central Government though forwarded by the State Government, was not accompanied by any para-wise comments and therefore, the Central Government sent WT Messages to the State Government on 9.7.2004, 16.7.2004, 23.7.2004, 30.7.2004 and 6.8.2004 requesting the State Government to furnish the necessary comments of the State Government on the detenu's representation. The para-wise comments were furnished by the State Government on 10.8.2004 whereafter on 16.8.2004, the Central Government took the decision to reject the petitioner's representation which decision was communicated to the detenu by WT message issued on the next day, i.e., on 17.8.2004. On the above facts, Mr. Rahman has argued that the time taken by the Central Government to dispose of the petitioner's representation stands satisfactorily explained. There are no latches and unexplained circumstances in the action of the Central Government in dealing with the petitioner-detenu's representation.

6. The rival submissions advanced by the learned counsel for the respective parties have received our due consideration.

Insofar as the first question, i.e., non-supply of the documents mentioned in the grounds of detention like FIR, Seizure list, statements etc. is concerned, what has been noticed by us is that the receipt of the order as well the grounds of detention, in which it has been recorded that the copies of the above documents are enclosed,

have been signed by the petitioner-detenu on 19.6.2004 in token of acceptance of the same and the said signature had been verified by the Assistant Jailor, District Jail, Kokrajhar. That apart, the petitioner-detenu did not raise any objection with regard to the alleged non-furnishing of the documents after receipt of the grounds of detention in jail and waited until 24.6.2004 to take the said plea in the representation filed by him against the order of detention. We have also noticed that in the counter affidavit filed by the State respondents, it has been clearly and categorically stated that the documents mentioned in the grounds of detention have been served on the petitioner-detenu. In such a situation, we are unable to hold that the plea taken by the petitioner-detenu that the documents relied upon had not been furnished to him, has been substantiated in a meaningful manner the first ground urged, therefore, does not have the approval of the Court.

Coming to the second ground raised on behalf of the petitioner-detenu that the order and ground of detention were not furnished to him in his mother tongue, i.e. Bodo language, what must be noticed is that no demand for translated copies of the order and grounds of detention had been made by the petitioner-detenu after being served with the aforesaid order and grounds. It is only in the representation dated 24.6.2004 that the petitioner-detenu has taken the aforesaid plea. In this regard, it would be significant to note that what has been stated by the petitioner detenu in his representation dated 24.6.2004 is that he is not proficient/conversant with the English Language. A perusal of the representation filed by the petitioner-detenu would go to show that it is a well-articulated and comprehensive representation touching upon different aspects of the detention order. What, therefore, transpires from the totality of the facts of the case is that the petitioner-detenu's understanding of the order and grounds of detention as reflected in his representation dated 24.6.2004 can hardly be faulted. In such a situation, it will be difficult for this Court to hold that there was any obligation on the part of the detaining authority to furnish to the petitioner translated copies of the order and grounds of detention and that the failure to do so has vitiated the detention order. It is our considered view that the test to be applied in this regard must be a pragmatic one. In reaching the conclusion recorded above, we draw assistance from the following passage of the judgment of the Apex Court in the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, "Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards have to be ensured that, yet these must be looked at from pragmatic and common sense point of view. The exercise of the power of preventive detention must be strictly within the safeguards provided. We are governed by the Constitution and our Constitution embodies a particular philosophy of Government and a way of life and that necessarily requires understanding between those who exercise powers and the

people over whom or in respect of whom such power is exercised. The purpose of exercise of all such powers by the Government must be to promote common well being and must be to serve the common good. It is necessary to protect therefore the individual rights insofar as practicable, which are not inconsistent with the security and well being of the Society. Grant of power imposes limitation on the use of the power. There are various procedural safeguards and we must construe those in proper light and from, pragmatic common sense point of view. We must remember that observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

As has been set out by Thomas Jefferson "To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means" (Thomas Jefferson, writings (Washington ED.) V. 542-545 and the Constitution between Friends by Louis Fisher 4&). By the aforesaid approach both justice and power can be brought together and whatever is just may be powerful and whatever may be powerful may be just."

7. The discussions that have preceded will now require the Court to consider the ground of delay in disposing the petitioner's representation dated 24.6.2004 by the State and Central Government as urged on behalf of the petitioner-detenu.

The representation dated 24.6.2004 filed by the detenu before the State Government was forwarded by the District Magistrate, Kokrajhar to the State Government on the same day. It was received by State Government at Dispur on 30.6.2004. The period of 5 days taken for disposal of the representation cannot be faulted with. The representation was put up before the Hon'ble Chief Minister for his order on 7-7-2004 and the period of about a week taken to process and examine the representation of the petitioner-detenu cannot be considered to be unreasonable. Similarly, the time taken upto 13.7.2004 by the Hon'ble Chief Minister of the State to pass necessary orders on the representation again cannot be considered unreasonably long. That the State could have acted in the matter with some more expedition is a view that can possibly be taken but the same cannot lead us to the conclusion that there has been any inordinate delay in disposing of the petitioner-detenu's representation by the State so as to enable us to hold that the petitioner's fundamental right under Article 22(5) has been infringed.

8. Insofar as the Central Government is concerned, the representation of the detenu was received in the Ministry of Home Affairs on 29.6.2004 and was put before the concerned desk on 2.7.2004. As the para-wise comments of the State on the representation filed by the petitioner-detenu was not forwarded to the Central Government along with the representation, the Central Government sent repeated WT messages on 9.7.2004, 16.7.2004, 23.7.2004, 30.7.2004 and 6.8.2004 to the State

Government requesting for para-wise comments. Eventually, the para-wise comments were received on 10.8.2004, whereafter, the decision to reject the petitioner's representation was taken on 16.8.2004 and communicated to the detenu on 17.8.2004. Though time was taken by the Central Government from 29.6.2004 to 16.8.2004 to dispose of the petitioner's representation, it is our considered view that having regard to the WT messages sent from time to time by the Central Government requesting the State to furnish the para-wise comments, it cannot be said that the Central Government is guilty of any inaction or latches in disposing of the petitioner's representation. The facts noted by us amply demonstrate that the Central Government had taken the requisite steps from time to time to dispose of the petitioner's representation and when the para-wise comments were received on 10.8.2004, the decision was taken to reject the petitioner's representation on 16.8.2004. In this regard we have perused the records in original placed before the Court by the learned Sr. CGSC, which would substantiate that necessary steps, as claimed, had been taken by the Central Government to obtain the para-wise comments from the State Government. On the above facts we are satisfied that the time taken by the Central Government in disposing of the petitioner-detenu's representation has been explained to the satisfaction of the Court.

9. For the aforesaid reasons, we do not consider the present to be a fit case for interference. We accordingly consider it appropriate to dismiss the writ petition. However, having regard to the facts and circumstances of the case, there shall be no order as to costs.