

Dinesh Sarkar @ Chandi Baruah @ Rabin Roy Vs Union of India (UOI) and Others

Court: Gauhati High Court

Date of Decision: Jan. 10, 2000

Acts Referred: National Security Act, 1980 â€” Section 3(2), 3(3)

Citation: (2000) 3 GLT 525

Hon'ble Judges: Brijesh Kumar, C.J.; D.N. Chowdhury, J

Bench: Division Bench

Advocate: N. Dutta and N.N.B. Choudhury, for the Appellant; C. Choudhury and K.K. Mahanta, for the Respondent

Final Decision: Allowed

Judgement

Brijesh Kumar, C.J.

This petition is preferred against the order of detention passed against the detenu u/s 3(2)(3) of the National Security

Act dated 3.4.1999.

2. We have heard Mr N. Dutta, learned Counsel for the Petitioner, Mr C. Choudhury, learned Sr. Govt. advocate appearing for the state and Mr

K.K. Mahanta, learned Sr. Central Govt. Standing Counsel appearing for the Union of India.

3. The question which is involved for consideration is short, hence we do not think it necessary to detail other facts which are not necessary for

considering the controversy. A perusal of the affidavit in opposition filed by the Central Govt. shows that the representation of the detenu was

received by the Central Govt. on 17.5.1999. On 18.5.1999 a crash wireless message was sent requiring the State Govt. to furnish the report of

the Advisory Board, the English translation of the representation of the detenu and the parawise comments. Though the required information was

still awaited, but for except the report of "the Advisory Board, neither the parawise comments on the representation of the detenu nor the English

version of the representation were received. Hence, it is stated in the affidavit in opposition, that to avoid further delay the case was processed on

merits without further awaiting for the parawise comments or English translation of the representation. After processing the matter it was placed

before the Under Secretary to the Govt. of India. Ministry of Home Affairs on 9.6.1999 and ultimately it was rejected by the appropriate authority

on 10.6.1999. Apart from the question of delay it is clear that the Central Govt. first thought it necessary to have the English translation of the

representation of the detenu. It was also thought necessary that it may have comments of the State Govt. on the representation of the detenu. In

that regard a crash wireless message was also sent to the State Government. The parawise comments and the English translation were not received

upto 9.6.1999. The period of near about three weeks had elapsed and, therefore, the Central Govt. proceeded to dispose of the representation

without the translated copy of the representation of the detenu and parawise comments of the State Govt. thereon. This can hardly be considered

to be proper consideration of the representation of the detenu. The representation was obviously in vernacular, therefore, it was thought necessary

that English translation should be available to consider it. It is not understandable as to the manner in which the appropriate authority could

appreciate the plea that might have been raised in the representation by the detenu. It is not the case of the Respondents, at least no such averment

has been made that translation of the representation was obtained by the appropriate authority from any other source. We feel that consideration of

the representation without understanding its contents is in fact no consideration of the representation at all. The requirement of law is not to go

through the formalities of disposing of the representation without properly considering the same with a view to avoid any further delay as indicated

by the Central Government. Consideration means a meaningful consideration of the points raised by the detenu and the first requirement of which

would be to understand the representation at least and in case, as admitted in this case, English translation which was required was not before the

authority concerned. However, the consideration of the representation of the detenu can hardly be considered to be a valid consideration by the

Central Government. In that view of the matter, in our view, the continued detention of the detenu is rendered illegal, in the result the petition is

allowed holding that the continued detention of the Petitioner is illegal. He shall be set a liberty forthwith unless he is wanted in any other case.