

(2000) 01 GAU CK 0008

Gauhati High Court

Case No: Writ Petition (Criminal) No. 55 of 1999

Dinesh Sarkar @ Chandi Baruah
@ Rabin Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Jan. 10, 2000

Acts Referred:

- National Security Act, 1980 - 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.