courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 22/10/2025

Khundongbam Tomba Singh @ Sunil@Pambei Vs State of Manipur & Ors.

Writ Petition (Criminal) No. 65 of 2006

Court: Gauhati High Court (Imphal Bench)

Date of Decision: Jan. 1, 2008

Acts Referred:
Constitution of India, 1950 â€" Article 21, 21, 22(5), 22(5)#National Security Act, 1980 â€" Section 14, 14, 3(5), 3(5)

Citation: (2008) 2 GLT 404

Hon'ble Judges: B.D.Agarwal, J and M.B.K.Singh, J

Bench: Division Bench

Advocate: K.Kumar, S.Lakhikanta Singh, Th.Ibohal Singh, Advocates appearing for Parties

Judgement

B.D. Agarwal,J.

1. The writ petitioner is under preventive detention under the provisions of National Security Act, 1980 (NS A in brief). The petitioner was

arrested on 05.09.2006 from Coimbatore, Tamil Nadu in connection with Imphal PS Case No. 284 (10)2004 u/ss 121, 121A, 124A/120B/400

IPC, 5 Expl. Subs.Act & 10/13 UA(P) Act. When the detenu was brought to Imphal, he was detained under NSA vide order dated 18.9.2006

issued by the District Magistrate, Imphal West, Manipur. The grounds of detention were served to the detenu by the District Magistrate on

23.09.2006. Thereafter, the petitioner submitted a representation to the District Magistrate on 27.9.06. On that very day itself, the State

Government had also approved the order of detention under section 3(4) of the NSA. The District Magistrate considered and rejected the

representation on 03.10.2006. Thereafter, the detenu submitted his representation to the Government of Manipur as well as to the Government of

India separately on 07.10.2006. The representations were forwarded to the State Government by the Superintendent of Central Jail, Imphal on the

same day. The State Government was prompt enough to consider and reject the representation on 11.10.2006. However, the representation

submitted to the Central Government came to be considered and rejected only on 18.01.2007 i.e. after 102 days. Because of this inordinate delay

in consideration of the representation, the detenu has challenged the detention order dated 18.9.2006 issued by the District Magistrate under

Memo No. CRL/NSA/N0.51(AnnexureA/l).

2. We have heard Shri S. Lakhikanta, learned counsel for the writ petitioner. We have also heard Shri Th. Ibohal, learned Addl. GA representing

the respondents No. 1,2,3 and 4 and Shri K. Kumar, learned CGSC represented the Union of India (the respondent No.5). We have also

perused the affidavit, counteraffidavits and documents furnished by both sides.

3. The detention order has been basically challenged on the ground of long delay in considering and rejecting the representation. The learned

counsel for the petitioner submitted that delay and latches committed by the respondents in considering the representation has infringed fundamental

rights of the detenu enshrined under Articles 21 and 22(5) of the Constitution of India. To justify inordinate delay in considering the representation,

the learned counsel for the petitioner has drawn our attention to certain relevant dates and correspondences that took place between different

authorities.

4. On the other hand, it was the submission of the learned CGSC that the representation dated 07.10.06 was received by the Central Government

only on 30.11.06 but the same could not be examined and considered for want of parawise comments from the State Government. According to

the learned CGSC, the parawise comment was received on 15.01.2007 and thereafter, it was processed and considered within 5 days and as

such, there was not delay or laches in complying its statutory duty by the Central Government. It would be apposite to reproduce the relevant

statements of respondent No.5 made in their affidavit:

6. That there is no legal obligation on respondent No.5 to call for representation from the petitioner. As mentioned by the detenu his

representation dated 07/10/2006 made by the petitioner was received by the Central Government in the concerned section in the Ministry of

Home Affairs on 30/11/2006 through the Government of Manipur vide their letter No. 17(1)/1056/2005H dated 11.10.2006. It is stated that

along with the representation the parawise comments on the representation were not received from the State Government. Therefore, the Central

Government vide this Ministry''s wireless Message dated 01/12/2006 and subsequent reminders dated 11/12/2006,19/12/2006 and 03/01/2007

requested the State Government to send the parawise comments on the representation. It is mentioned that on 02.01.2007 this Ministry received

the Writ Petition filed by the detenu. The Writ Petition was put up before the Under Secretary (NSA) on 03.01.2007. The Under Secretary (N S

A) has directed after consultation with Deputy Secretary (S) on 04.01.2007 that examine the representation before filing the Counter Affidavit. A

Fax Message was there fore send to State Govt./District Magistrate, Imphal West, Manipur on 04.01.2007 for the parawise comments. The

Government of Manipur furnished the same vide their letter No. 17(1)/l 049/2005H dated 02/01/2007 and the same was received by the Central

Government in the concerned desk of Ministry of Home Affairs on 15/01/2007.

8. It may also be mentioned that the parawise comments of the State Government on the representation of the detenus are necessary to be

examined since it is observed that generally in all cases the detenu denies all the allegations against him and states that he is not guilty and that the

detention order be revoked. The de taming authority in its parawise comments received through the State Government or directly from District

Magistrate refutes the arguments presented by the detenu in his representation, as they are charged with the responsibility of maintaining public

order. They highlight the reasons as to why the detenu has been detained and should be kept under detention. Hence the Central Government

considers it judicious to give due consideration to the averments made by the detenu and the State Govt. before arriving at a decision for revoking

the detention order or otherwise.

5. It was the submission of Shri Th. Ibohal, learned Addl. GA that submission of parawise comment is not sine qua non by the State Government.

In other words, it was the contention of the learned Addl. GA that the Central Government should assign reasons for such comments from the

State. From this submission of learned Addl. GA, it can be inferred that it is the stand of the State that Central Government should examine and

consider the representation without waiting for any comment from the State. The learned Addl. GA also submitted that although the representation

was dispatched to the Central Government on 11.10.2006 but due to postal department''s lapses, the representation did not reach the Central

Government till 30.11.2006. Hence, the State Government cannot be held responsible for this part of the delay.

6. From the statements made in the writ petition and affidavits, we find that the District Magistrate as well as the State of Manipur acted promptly

for considering the representation. In other words, there was no negligence on their part. Hence, we are required to examine whether the time

taken by the Central Government to consider the representation for want of parawise comment from the State can be said to be justified

explanation for the delay.

7. The right of a person detained under preventive detention laws, including the NSA, for submitting representation against the detention flows from

Article 22(5) of the Constitution of India. Apart from this fundamental right, such legal right has also been incorporated in the NSA. The role,

duties and powers of the State and Central Government have been laid down under section 3(5) and 14 of the NSA. The relevant part of the said

provisions are reproduced below:

3(5) When any order is made or approved by the State Govt. under this section, the State Govt. shall, within seven days, report the fact to the

Central Govt. together with the grounds on which the order has been made and such other particulars as, in the opinion of the state government,

have a bearing on the necessity for the order.

14. Revocation of detention orders (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a

detention order may, at any time, be revoked or modified,

(a) Notwithstanding that the order has been made by an officer mentioned in subsection (3) of sections, by the State Government to which that

officer is subordinate or by the Central Government;

(b) Notwithstanding that the order has been made by a State Government, by the Central Govnernment.

(2) xxx xxx xxx xxx

8. A special bench of Gauhati High Court had the occasion to examine the rights of a detenu under NSA to submit representation against his

detention as provided under section 8(1) and Article 22(5) of the Constitution. While examining the said legal question, this Court in the case of

Konsam Brojen Singh @ Basan Vs. State of Manipur & Ors., reported in 2006 (1) GLT375 (F.B.) has defined the fundamental rights of the

detenu in the following words:

37. It confers specific fundamental rights and imposes constitutional obligation and commands the authority making the order to communicate the

grounds, as soon as may be, on which the order has been made. The second right given to the detenu relates '' the earliest opportunity'' of making

the representation against the order. The provision does not specify as to whom such a representation could be made but the representation to be

made is against the order of detention passed by the authority. The right to make a representation against the detention order itself is a distinct

fundamental right guaranteed under Article 22(5) of the Constitution. Even in the absence of any such provision, in a given preventive detention

law, the detenu has fundamental right of making representation against the order of detention. The legislature in due recognition of such a

guaranteed fundamental right may provide for the procedure and other details and may specify the authority to whom such a representation could

be made. The right to make such a representation is, thus, traceable to guaranteed fundamental rights and not to any municipal law.

38. In Kamleshkumar Ishwardas Patel v. Union of India, [(1995) 4 SCC 51)] the Supreme Court in an authoritative pronouncement held '''' the

object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the

said representation has to be made to the authority which can grant such a relief, i.e. the authority which can revoke the order of detention and set

him liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is

recognized by Section 21 of the General Clauses Act, 1897 though it does not flow from it. It can, therefore, be said that Article 22(5) postulates

that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such as

representation can be made to any other authority which is empowered by law to revoke the order of detention.

9. Earlier to that, the Apex Court had also examined the right to make a representation to an authority not so specified in the provisions of NSA. In

Mohammad Yousuf Rather Vs. State of & K [AIR 1979 SC 1925, (1979) 4 SCC 3 70] the Supreme Court has observed that the interpretation

of Article 22(5), consistently adopted by the Court, is perhaps, one of the outstanding contributions of the Court to advance the cause of human

rights. It is therefore obvious even in the absence of such a provision in National Security Act, 1980; the detenu still would have right to make a

representation against the order of detention. The right to make a representation to the detaining authority by a detenu in addition to his right to

make such a representation to the appropriate Government is rooted in Article 22(5) of Constitution of India.

10. The role of the Central Government in the matter of preventive detention under the NS A also came up for consideration before this Court in

the case of Somi Angkang Vs. Union of India, [(1985) 2 GLR 1]. Their Lordships summarized to the utility of section 3(5) and 14(1) of the NSA

in the following language:

6.....There is no dispute at the Bar that on any order of detention made or approved by the State Government under section 3 of the Act, it is

bound to report the fact of detention to the Central Government together with the grounds on which the order has been made and such other

particulars as, in the opinion of the State Government, have a bearing on the necessity of the order. This is a mandatory provision and one cannot

overlook it. It is a compulsive necessity and direction to send the report and document within a stipulated time. The report must be sent

expeditiously and the period for dispatch of the report has been specified. Section 3(5) commands the State to despatch the report expeditiously

and limits the time. Further the essential facts and documents have directed to be despatched along with the record, which includes the grounds of

detention. The necessity of quick despatch as well as the necessity for sending the grounds of detention is too obvious. In other words, the

recipient is to perform his part of the obligation as designed under section 3(5) of obe Act. On receipt of the report, the Central Government is

also obligated to dispose of the report as expeditiously as possible; otherwise, there is no purpose in submitting the report within a period of seven

days. Further, there was no necessity to transmit the grounds of detention along with other materials and documents, unless it was meant to achieve

certain objective. It is hardly possible to accept that the provision of section 3(5) was so designed as not to serve any positive purpose. We are of

the firm opinion that not only the Central Government is duty bound to consider the report, but it must do so with reasonable expedition and it must

perform the duties and obligations enjoined under section 14(1) of the Act.

11. Under section 3(5) of the NSA the State Govt. is required to submit a report to the Central Government and this report should be

accompanied with grounds of detention and such other particulars that have bearing on the detention. Hence, any report to the Central

Government sans representation of the detenu can only be termed as an incomplete report and no judicious decision about the justification of the

detention by the Central Govt. can be taken. On this analogy we also hold that in the case in hand even though the representation was not

addressed to the Central Government, the same got the legal colour of addressing it to all the competent authorities. It is because the Central

Government is also a statutory authority to examine the legality of the detention, having supervisory power and the representation has direct bearing

on the legality of the detention.

12. It is true that neither Article 22(5) of the Constitution of India nor NS A has prescribed time limit for consideration of representations.

However, if one looks at various provisions of NSA, prescribing specific periods for furnishing grounds of detention, approval of the detention by

the State Government, submitting report to the Central Government and Advisory Board, the period prescribed for considering the detention order

and representations by the Advisory Board, etc. the intention of the legislature can safely be inferred that representations of detenus have to be

considered with all promptitude.

13. The Hon''ble Supreme Court, in the case of KM Abdulla Kunhi & B.L. Abdul Khader Vs. Union of India & Ors., [(1991) 1 SCC 476(C/B)}

has held that the representation relates to the liberty of the individuals, the highly cherished right enshrined in Article 21 of the Constitution, Clause

(5) of Article 22 castes a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate

commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as

expeditiously as possible. The words ""as soon as may be"" occurring in clause (5) of Article 22 reflects the concern of the framers that the

representation should be expeditiously considered and disposed of with the sense of urgency without any unavoidable delay.

14. Again, in the case of Rama Dhondu Borade Vs. V. K. Saraf, Commissioner: of Police & Ors., [(1989) 3 SCC 173], the Apex Court

reiterated that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India.

Correspondingly there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation

questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within

reasonable dispatch and to dispose of the same as expeditiously as possible.

15. In the case of Rajammal Vs. State of T. N. & Anr.[(1999) 1 SCC 417], the Apex Court restated the legal principle in the following words:

8. The position, therefore, now is that if delay was caused on account of any indifference, or lapse in considering the representation, such delay

will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the

representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So, test is not the duration or

range of delay, but how it is explained by the authority concerned.

16. For brevity of judgment, we are refraining from adverting of scores of other authorities on this point. Suffice is to hold that even though there is

no fixed period of time for disposal of representation the underline message in the law is that all the concerned authorities, who are empowered to

issue, approve or revoke detention orders are duty bound to consider and dispose of the representations as expeditiously as possible. By now, it is

also the settled principle of law that even if some delay in consideration of the representation may not become fatal to the detention but

nonexplanation of the same would certainly impeach the detention order.

17. As noted earlier, it is the defence of the Central Government that the representation could not be considered for nonreceipt of parawise

comment from the State Goveminent. We also find from the affidavit of the respondent No.5 that the State had to be reminded for furnishing their

comments by sending WT Message on 01.12.2006 followed by reminders on 11.12.06,19.12.06 and 03.01.2007.

18. We have given our anxious considerations on the question whether forwarding of parawise comments by the detaining authority/State to the

Central Government is mandatory. It is true that the law has not laid down any such condition. At the same time, Section 3(5) of NSA speaks

about furnishing a complete report and other particulars to the Central Government to consider the justification of detention and pass appropriate

order u/s 1. The Central Government has also emphasized the need for furnishing comments by the State to give a judicious decision. However, it

is the liberty of the detaining/State authority to furnish their comments on the statements made in the representation of the detenu. It is in their

interest to justify their detention order. Enclosing such comments with the representation also helps the Central Government to make an objective

assessment of detention and consideration of the representation. At the same time, we hasten to add here that the Central Government ought not to

have waited for more than six weeks to get comments from the State. Hence, this period certainly falls within the phrase ""unexplained delay.

19. According to the respondent No.5, the representation dated 07.10.06 was received by them only on 30.11.2006. The respondent No.1 has

stated in Para No. 5 of the affidavit that the representation was forwarded to the Central Government on 11.10.2006. It is true that the record

indicates that the representation was forwarded to the Government of India on 11.10.2006 by speed post. However, no postal receipt is available

in the record to take a view that it was actually dispatched by speed post, in terms of the forwarding letter. In this regard, we entertain some doubt.

In our view, had it been dispatched promptly and that too by speed post, there would not have been any cause for taking six weeks" period for

delivering the letter. It would be worthwhile mentioning here that the detention order was separately forwarded to the Central Government as

envisaged under section 3(5) of the NSA on 28.9.2006 and it reached the Ministry of Home Affairs, GOI, on 12.10.2006. Contrary to that the

representation took more than six weeks to reach the same Ministry of the Central Government. This delay must have occurred due to certain

lapses at the end of the State Government.

20. From the above discussion, it clearly emerges that lapses and lacunae resulted into loss of 102 days in considering the representation by the

Central Government. The explanation for this delay is not acceptable, keeping in mind the rigour of the law as well as the nature of the detention.

21. In view of the reasoning given hereinabove, we hold that the writ petitioner is entitled to be released on account of inordinate delay and

unexplained delay in disposal of his representation which amounts to violation of the constitutional mandate enshrined under article 22(5) of the

Constitution of India. Consequently, the habeas corpus petition stands allowed. It is directed that the writ petitioner shall be set at liberty forthwith

unless wanted in any other cases.