

(2000) 11 GAU CK 0007

Gauhati High Court (Imphal Bench)

Case No: Writ Petition (Criminal) No. 2 of 2000

R.K. Lakhi Kumar

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: Nov. 10, 2000

Acts Referred:

- Constitution of India, 1950 - Article 21, 22, 226
- Maintenance of Internal Security Act, 1971 - Section 3(3)
- National Security Act, 1980 - Section 3(4), 8
- Preventive Detention Act, 1950 - Section 3(3)

Citation: (2000) 3 GLT 472

Hon'ble Judges: N.S. Singh, J; A.K. Patnaik, J

Bench: Division Bench

Advocate: Th. Madhu and Th. Basanta, for the Appellant; Ibohal Singh, for the Respondent

Judgement

A.K. Patnaik, J.

In this Habeas Corpus petition, the Petitioner has prayed for quashing the order of the detention dated 22.12.99 passed by the District Magistrate, Imphal West District, Manipur and the orders dated 3.1.2000 and 3.2.2000 of the Govt. of Manipur approving and confirming the said order of detention under the National Security Act, 1980 (for short the Act, 1980).

2. The facts relevant for the purpose of disposal of this writ petition briefly are that by an order passed on 22.12.99 by the District Magistrate, Imphal West District Manipur the Petitioner was detained under the Act, 1980. The Petitioner was thereafter served with the grounds of detention. The District Magistrate reported the fact to the State Govt. and the order of detention was approved by order dated 3.1.2000 by the State Government in the Home Department. The Petitioner submitted representation dated 10.1.2000 to the Chief Secretary to the Government

of Manipur through the Superintendent of Manipur Central Jail, Imphal against the order of detention. Simultaneously, the Petitioner also submitted representation dated 10.1.2000 to the Secretary, Govt. of India, Ministry of Home Affairs, Imphal (Annexure A/5) against the order of detention. The Government of India, Ministry of Home Affairs vide letter dated 28.1.2000 informed the Petitioner that his representation had been considered carefully but has been turned down by the Central Government. The Deputy Secretary (Home) to the Govt. of Manipur vide letter dated 29.1.2000 informed the Petitioner also that his representation has been considered carefully by the State Government and that the request of the Petitioner to revoke the detention order has not been acceded to. Thereafter by order dated 3.2.2000 of the State Government the order of detention was confirmed in consonance with the opinion of the Advisory Board. Aggrieved, the Petitioner has moved this Court in the present writ petition under Article 226 of the Constitution for appropriate relief.

3. Mr. Madhu, learned Counsel for the Petitioner, submitted that it would be very clear from the averments in the writ petition that while the Petitioner was detained on 22.12.99, the grounds of detention were served on him only on 3.1.2000. According to Mr. Madhu, u/s 8(i) of the Act, 1980 when a person is detained in pursuance of detention order, the authority making the order has to ordinarily communicate the detent die grounds of detention not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing not later than 10 days from the date of detention. Mr. Madhu stated that the Petitioner was detained on 22.12.99 but the grounds of detention were served on him 13 days thereafter i.e. on 3.1.2000, but no reasons whatsoever have been shown to have been recorded nor any exceptional circumstance indicated for such delay beyond 5 days in serving the grounds of detention on the Petitioner. It was next submitted by Mr. Madhu that the Petitioner submitted his representation to the State Government on 10.1.2000, but his representation was considered and rejected by the State Government only on 29.1.2000. There was, therefore, a delay of 19 days in disposing of the representation of the Petitioner. He submitted that Sub-section 4 of Section 3 of the Act, 1980 provides that a District Magistrate passing the order of detention has to "forthwith" report the fact of such detention to the State Government together with the grounds of detention on which the order has been passed and within 12 days of the passing of the order of detention the State Government has to approve the order of detention. In the present case the order dated 3.1.2000 of the State Government approving the order of detention passed by the District Magistrate would show that the fact of detention of the Petitioner was reported by the District Magistrate to the State Government in his letter dated 3.1.2000 i.e. on the 12th day after the passing of the order of detention. Therefore, the District Magistrate has failed to report the fact of detention of the Petitioner to the State Government "forthwith" and the order of detention is liable to be quashed on this ground alone. In support of his aforesaid submission, Mr. Madhu cited the

decisions of the Supreme Court in [Keshav Nilkanth Joglekar Vs. The Commissioner of Police, Greater Bombay, ,](#) [Gora Vs. State of West Bengal, ,](#) [Sk. Salim Vs. The State of West Bengal,](#) and [Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others,](#) and the unreported decision of this Court in WP (Crl) No. 13 of 1999, Shri Maisnam Sanathoi Meitei alias Jeet alias Bobino v. The District Magistrate, Imphal West, Manipur and 2 Ors. .

4. In reply Mr. Ibohal, learned Additional Govt. Advocate submitted that the order of detention was passed on 22.12.99 and the affidavit of the District Magistrate-Respondent No. 3 would show that the grounds of detention were served on the Petitioner on 27.12.99. Hence, the submission on behalf of the Petitioner that the grounds of detention were served on the Petitioner only on 3.1.2000 is not factually correct. He further submitted that in para-9 of the affidavit filed by the Deputy Secretary to the Govt. of Manipur on behalf of Respondent No. 1 it has been explained as to how the representation dated 10.1.2000 of the Petitioner was dealt with by different authorities from 10.1.2000 to 29.1.2000 and that there is absolutely no delay on the part of the authorities to dispose of the representation dated 10.1.2000 of the Petitioner. Mr. Ibohal cited the decision of the Supreme Court in [Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others,](#) that in each case it has to be ascertained whether the Central Government or the State Government, as the case may be, has caused delay due to negligence, callous inaction or avoidable redtapism and that the authority has to explain the delay by either filing a counter-affidavit by the officer concerned on behalf of the appropriate Government or by production of the record in dealing with the case and where the delay is sufficiently explained, it can be held that the representation has been disposed of expeditiously with least avoidable delay. He also relied on the decision of this Court in Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. 1997 Crl.L.J. 1574 in which the Court accepted the explanation of the authority for the delay of 7 days in disposing of the representation of the detenu against the order of detention.

5. Sub-section 4 of Section 3 of the Act, 1980 is quoted herein below:

When any order is made under this section by an officer mentioned in Sub-section (3) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government.

Provided that where u/s 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this Sub-section shall apply subject to the modification, that, for the words "twelve days" the words "fifteen days" shall be substituted.

A reading of the aforesaid Sub-section 4 of Section 3 of the Act, 1980 would show that the officer mentioned Sub-section 3, namely District Magistrate or the Commissioner of Police who has passed the order of detention must "forthwith" report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such Ors. particulars as, in his opinion, have a bearing on the matter. Thus Sub-section 4 of Section 3 of 1980 Act expressly states that the detaining authority has to report the fact of detention and furnish the grounds of detention and other particulars to the State Government "forthwith". This use of the language in Sub-section 4 of Section 3 of the Act is not without a purpose. The purpose behind the aforesaid provision is that if the fact of detention is reported to the State Government forthwith together with the grounds on which the detention order was made and other particulars, the State Govt. will be in a position to apply its mind and decide whether it will be approve or not" approve the order of detention passed by the detaining authority Within the maximum period of 12 days or 15 days as the case may be, permitted by the said Sub-section 4 of Section 3 of the Act, 1980 or the proviso thereof. The provision for approve of the order off detention by the State Government after full application of mind to the grounds of detention and other particulars is a very significant procedural safeguard provided by the Legislature to ensure that the personal liberty of a person is not casually interfered with by the authority.

6. In *K.N. Joglekar v. Commissioner of Police* (supra) the Supreme Court considered at length the word "forthwith" used in a similar provision in Sub-section 3 of Section 3 of the Prevention Detention Act, 1950 to the effect that the Commissioner passing the order of detention has to report the fact forthwith to the State Government and held that in each case where a grievance is made that the fact of detention had not been reported to the Government forthwith, the detaining authority has to satisfy the Court that in spite of all diligence it was not in a position to send the report earlier. In the said case of *K.N. Joglekar* (supra), the order of detention was passed on 13.1.56 but the Commissioner reported the fact of such detention to the State Government only on 21.1.56 and explained in his affidavit before the Court that it was not possible for him to send his report to the State Government earlier as the situation in the city of Greater Bombay was tense, pregnant with danger on 13.1.56 and continued to be so till 16.1.56 and actual rioting occurred and the riots continued till 22.1.56. The Supreme Court accepted the said explanation and held that the delay in submitting the report was due to causes not of the making of the Commissioner, but due to causes to which the activities of the detenu very largely contributed.

7. In *Gora v. State of W.B.* (supra) the Supreme Court had the occasion to consider a similar provision in Sub-section 3 of Section 3 of the Maintenance of Internal Security Act, 1971 which provided that the order of detention is to be reported forthwith to the State Government by the detaining authority. The Supreme Court held following its earlier decision in the case of *K.N. Joglekar* (supra) that the Court

must enquire whether the District Magistrate sent the report to the State Government with all reasonable despatch and without avoidable delay or whether in spite of all diligence the District Magistrate was not in a position to send the report earlier. In the said case of *Gora v. State of W.B.* (supra), the District Magistrate filed an affidavit explaining the delay for sending the report to the State Government. He had pointed out that on 29th December, 1973 the date on which the detention order was a Saturday and that on that day he had passed eight other orders of detention and the materials in connection with all these none cases had to be typed out by the typist which could not possibly be completed in one single day, 30th December, 1973 was a Sunday and therefore the earliest when the report could be submitted to the State Government was 31st December, 1973. On these facts, the Supreme Court accepting the affidavit of the District Magistrate held that the report was sent by the District Magistrate forthwith to the State Government.

8. In *SK Salim v. State of W.B.* (supra) the Supreme Court following its earlier decision in the case of *K.N. Joglekar* (supra) held that the word "forthwith" does not connote a precise time and even if the statute requires that the report shall be made "forthwith" its terms can be held to have been complied with if the report is made without avoidable or unreasonable delay. In *Navalshakar Ishwarlal Dave and Anr. v. State of Gujarat and Ors.* (supra) the Supreme Court while interpreting a similar provision in the Gujarat Prevention of Antisocial Activities Act, 1985 held that the expression "forthwith" requires that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. In WP (Crl.) No. 13/1999 *Shri Maisnam Sanathoi Meitei alias Thoiba alias Jeet alias Bobino v. The District Magistrate, Imphal West, Manipur and 2 Ors.*, the order of detention was quashed by a Division Bench of this Court on the ground that the detaining authority had not reported the fact of detention to the State Government "forthwith".

9. In the present case it is not disputed that the order of detention was passed on 22.12.99 and again it is not disputed that the fact of detention along with the grounds of detention and all particulars were furnished by the District Magistrate to the State Government only on 3.1.2000. 3.1.2000 was the 12th day from the date of detention. Consequently, the State Government hardly had any time to apply its mind to the grounds of detention and passed the orders approving the detention. Although the Petitioner in his writ petition and particular para-7 thereof has made a grievance of the delay on the part of the District Magistrate in submitting his report to the State Government about the detention of the Petitioner, no explanation whatsoever has been furnished by the District Magistrate in his counter-affidavit filed before the Court explaining the said delay. Thus, in this case, the procedural safeguard of the personal liberty of the Petitioner in Sub-section (4) of Section (3) of the Act, 1980 has been violated and the rights of the Petitioner under Articles 21 and 22 of the Constitution have been infringed. The continued detention of the Petitioner is liable to be quashed on this ground alone and it is not necessary for us

to deal with the other contentions raised by the Counsel for the Petitioner.

10. In the result we hold that the Petitioner cannot be continued to be detained and we accordingly quash the impugned orders relating to the detention of the Petitioner and direct that the Petitioner will be set at liberty forthwith unless he is wanted in some other case.