

(2009) 09 GAU CK 0041

Gauhati High Court

Case No: Writ Petition (Criminal) No. 17 of 2009

Th. Hemanta Singh @ Th.
Ibomcha Singh

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision: Sept. 24, 2009

Acts Referred:

- National Security Act, 1980 - Section 8

Citation: (2010) 3 GLR 260

Hon'ble Judges: Jasti Chelameswar, C.J; Hrishikesh Roy, J

Bench: Division Bench

Advocate: T. Bidyut Bikash and R. Medhi, for the Appellant; T. Khro, for the Respondent

Final Decision: Allowed

Judgement

Hrishikesh Roy, J.

Heard the learned Counsel appearing for the petitioner. The respondents are represented by Ms. T. Khro, learned Government Advocate, Nagaland.

2. This petition is filed to challenge an order of detention dated 25.2.2009 passed by Deputy Commissioner, Dimapur under the provisions of the National Security Act, 1980 ("the NSA"). The said detention order was issued, while the petitioner was in custody following his arrest in connection with Dimapur Sub-urban Police Station Case No. 8/09. Subsequently by order dated 7.3.2009, the Special Secretary to the Government of Nagaland, Department of Home gave approval to the detention order dated 25.2.2009 passed by the Deputy Commissioner, Dimapur. The grounds of detention were also formulated by the Special Secretary.

3. The detention order is challenged, inter alia, on the grounds that the initial order of detention dated 25.2.2009, was not served on the detainee. It is also contended that the grounds of detention too were not served upon the petitioner within the time prescribed u/s 8 of the NSA. The detention order is also contended to be

vitiated on the ground that the detainee was not informed that he has a right to make a representation against the detention order before the detaining authority, i.e., the Deputy Commissioner, Dimapur.

4. The counter affidavit filed by the State authorities was somewhat evasive in as much the dates on which the detention order and the approval order dated 7.3.2009 were communicated were not mentioned and it was only averred that the concerned documents were served upon the detainee, within the stipulated time as per the NSA.

5. As this Court was unable to reach an appropriate conclusion as to whether service of the essential documents were actually made and if so whether within the time prescribed under NSA, by order dated 31.7.2009 granted time to the petitioner as well as to the respondents to bring on record, additional materials for the court to satisfy itself on the contentions raised to challenged the detention order.

6. Accordingly an additional affidavit has been filed by the wife of the detainee on 4.8.2009, wherein it is reiterated that not to talk of the grounds of detention and other contemporaneous documents, even the detention order dated 25.2.2009 was never served on the detainee. In fact it is averred by the wife of the detainee that on specific query made by her to her husband when she visited in Jail, the detainee informed his wife that grounds of detention and other documents were never served on him and the left thumb impression claimed to be that of the detainee showing proof of service of the detention order on 25.2.2009, is not the left thumb impression of the detainee.

It is further averred that although the detainee is not a sufficiently educated person but he is capable of putting his signature in English and he did acknowledge on 29.4.2009 by putting his own signature, the receipt of the communication dated 29.4.2009 made by the Government, communicating Central Government's decision dated 28.4.2009, rejecting his prayer for revocation of his detention and accordingly it is contended that the detainee would not put his thumb impression but would sign a document to acknowledge receipt.

7. Notwithstanding the above denial made in the affidavit filed by the wife of the detainee, the learned Government Advocate, Nagaland submits that the detention order dated 25.2.2009 was served on the detainee on that day itself. However, the learned Government Advocate submits that the grounds of detention and the Government approval order dated 7.3.2009 could be served on the detainee only on 11.3.2009.

8. To satisfy ourselves as to the contentions raised by the respective parties, we have perused the Government records produced by Ms. Khro, from which, we find that left thumb impression of the detainee is available, showing service of the detention order dated 25.2.2009. Of course it is claimed that the detainee is capable of putting his signature in acknowledgement of receipt of detention order and there

would not be any reason for him to give his left thumb impression for making such acknowledgement. It may not, however, be necessary for us to dwell on this aspect of the challenge to the detention order, as this case can be disposed off on other grounds.

9. The original record produced on behalf of the detaining authority shows similar acknowledgement by left thumb impression purportedly of the detainee, showing receipt of the grounds of detention along with other enclosures. Although the left thumb impression is claimed to have been given by the detainee himself, the detainee denies the same and an affidavit of denial is also filed by his wife.

More important is the fact that the grounds of detention and other enclosures were claimed to be served by the State on the detainee only on 11.3.2009.

10. u/s 8 of the NSA it is obligatory for the detaining authority to disclose the grounds of detention, ordinarily 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, to enable the detainee to make a representation against the detention order to the appropriate Government. In the present case, the detaining authorities themselves claim that, the grounds of detention was served on the detainee only on 11.3.2009.

Under such circumstances, even without examining as to whether the left thumb impression given in acknowledgement is that of the detainee or not, the service of the grounds of detention, beyond the period prescribed u/s 8 of the NSA, is undoubtedly established.

11. It is apparent from the detention order itself that the grounds for detention was not furnished to the detainee along with the detention order and it appears that the Deputy Commissioner who issued the detention order on 25.2.2009, neither prepared nor formulated the grounds of detention when he passed the detention order but it was the Special Secretary, Government of Nagaland who formulated the grounds on or after 7.3.2009 much after passing of the detention order.

12. It is difficult to comprehend an order of detention under NSA without formulation of the grounds for passing such a detention order and if the grounds of detention are found to be formulated subsequently, as has happened in the instant case, it is obvious that the detention order was passed by the Deputy Commissioner, without existence of the grounds of detention, which could have justified passing of the detention order.

13. That apart, the grounds of detention is claimed to be served by the detaining authorities only on 11.3.2009 (although the service itself is denied by the detainee) and, therefore, even if we disregard the claim of the detainee that he had not acknowledged the receipt of service of the grounds of detention by giving his LTI, there is a clear infringement of the provisions of Section 8 of the NSA. The detaining

authorities are required to served the grounds of detention (disregarding exceptional circumstances) not later than 5 days from the date of detention and since the date of detention was 25.2.2009, it was obligatory to serve the grounds of detention within 5 days by 2.3.2009 and since no exceptional circumstances are cited and no reasons were recorded, it is obvious that the service of the grounds of detention made on 11.3.2009, was definitely after the period prescribed u/s 8 of the NSA.

14. The Supreme Court in [Krishna Murari Aggarwala Vs. Union of India \(UOI\) and Others](#), has clearly held that the NSA does not contemplate a composite or a joint order to be passed by several authorities. Similarly in the case of Dhananjay Das v. District Magistrate, Darrang (1982) 2 SCC 529, it has been held that the grounds of detention must be in existence on the date when the order is passed and the authority concerned has to be satisfied about the grounds of detention as on the date of the order.

15. In the present case we find that the grounds of detention were not in existence and were not prepared at the time when the detention order dated 25.2.2009 was passed. Subsequent formulation of the grounds of detention by the approving authority, in view of the law laid down by the Supreme Court in Krishnamurari Agarwala (supra) and Dhananjay Das (supra) is obviously inconsistent with the scheme of the Act as the order of detention has to be based on the grounds of detention and the grounds must be in existence at the time of the detention order. That apart the ground of detention was served on the detainee, admittedly after the period prescribed by Section 8 of the NSA.

16. In view of our above findings, it may not be necessary to take note of the other grounds on which the writ petition is structured in as much as the impugned order dated 25.2.2009 is liable to be set aside and quashed only on the above conclusion.

17. In the result this writ petition is allowed by quashing the impugned detention order. The detainee Th. Hemanta Singh @ Th. Ibomcha Singh is directed to be released forthwith, unless his detention is warranted in connection with any other case.