

Gauhati High Court

Kshetrimayum Maipak Devi vs State Of Manipur And Ors. on 30 November, 1999

Author: D Chowdhury

Bench: D Chowdhury, P Phukan

JUDGMENT D.N. Chowdhury, J.

1. By this application under Article 226 of the Constitution of India, the petitioner, the mother of the detenu, viz., Kshedtrimayam Noyon Meitei alias Laba alias Hemanta alias Ibohal Achouba (46). son of Ksh. Amu Singh Meitei of Sekta Awarg Leikai, P. S, Lamlai, hereinafter referred to as the detenu, sought for a writ of habeas corpus challenging the detention order dated 21.4.1999, of the detenu who was detained under Section 3(2) of the National Security Act, 1980, hereinafter referred to as the Act. The order of detention was passed on 21.4.1999 by the District Magistrate, Imphal East and the grounds of detention was served on him on 29th April, 1999 through the Superintendent of Manipur Central Jail, Imphal. The detenu submitted his representation challenging the detention order dated 21.4.1999 on 7th May, 1999 through the Jail Superintendent. The order of detention of the detenu was confirmed by an order dated 2.6.1899 further fixing the period of detention of the detenu for a period of twelve months from the date of his detention.

2. Mr. HNK Singh, the learned senior counsel appearing on behalf of the petitioner confined his challenge to the detention order only on the ground of breach of the mandate of section 8(1) of the Act. The learned senior counsel drew our attention to the detention order and submitted that while the order was passed on 21-4-99, the grounds of detention were served on him only on 29-4-99, i.e., beyond the period prescribed by the Statute. Mr. HNK Singh, the learned Senior Counsel appearing on behalf of the petitioner pointed out that in the affidavit also, respondent No. 4, the District Magistrate, failed to explain as to why the grounds of detention could not be served on the detenu within the period prescribed. The learned Senior counsel submitted that Section 8 of the Act defines the outer limit for service of such grounds. The learned senior counsel for the petitioner further submitted that as per Section 8(1) of the Act, when a person is detained pursuant to an detention order under the Act, the authority making the detention order "as soon as may be" and ordinarily "not later than five days", is to communicate to the detenu the grounds of detention on which the order is made affording him the "earliest opportunity" of making a representation against such detention order before the appropriate authority. The scheme of the Act further provides an outer limit beyond five days, but not later than ten days from the date of detention only in "exceptional circumstances and for reason to be recorded in writing" The learned counsel submitted that this is the mandate of the statute which emanated form the spirit of Article 22 of the Constitution of India. Since in the case in hand, apparently there was a breach of Section 8(1) of the Act, there is no justification for continance with the order of detention passed against the detenu, submitted the learned senior counsel for the petitioner.

Mr. Th. Ibohal, the learned Advocate appearing on behalf of the Government, relying on the affidavit filed by the respondents/State, sought to support the detention order and further submitted that the grounds of detention were duly served on the detenu within time. As to the date on which the grounds of detention were served, the learned Govt. Advocate fairly submitted that the grounds for detention was served on the detenu on 29-4-99. From the records of the proceedings

and the relevant files, it does appear that the grounds of detention was served on the detenu on 29-4-99, which also contained an endorsement of the officer of the Jail authority to the effect "Received the same copy thereby, 6-5-99, 5-30 P.M.". From the aforesaid facts and circumstances, there is now no doubt/ dispute that the grounds of detention were not served on the detenu within the time specified.

Mr. Ibohal, the learned Govt. Advocate, further sought to justify the said action on the part of the State machinery on the ground of creation of a new district and submitted that in the circumstance, the Court may be pleased to take a pragmatic view and take note of the reason/ground for not being able to serve the grounds of detention within the stipulated time frame. The learned Govt. Advocate submitted that in the circumstances as aforesaid, this is a case where the Court should take a lenient view in interpreting Section 8 of the Act.

Mr. N. Ibotimbi Singh, learned CGSC who was also present in the Court, did not make any submission since the grounds alleged on behalf of the petitioner does not directly have any bearing on the Central Government.

3. The content of Section 8 of the Act is mandatory in extent. The Statute made it obligatory on the detaining authority to furnish the grounds of detention within the time specified in Section 8(1) of the Act. Clause (5) of Article 22 of the Constitution casts an obligation on the detaining authority to afford the detenu earliest opportunity of making a representation against the order of his detention. Section 8 of the Act carries the spirit of Article 22 of the Constitution of India. The right to make a representation indubitably carries with it the obligation to furnish the grounds of detention to the detenu at the earliest convenience. The right involves the liberty of a citizen and in those circumstances, there cannot be any question of giving any latitude interpreting the provisions of the Act. Since the matter involves individual liberty of a person and relates to detention without trial, in that setting, it is to be interpreted strictly in terms of its spirit. In *Hem Lall Bhandari v. State of Sikkim and others*, reported in AIR 1987 SC 762, the Supreme Court did not countenance any reason in the contention for condoning the delay in communication of the grounds of detention and held :

"... To accept this contention would be to destroy the effect of the mandate of the section. The section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must be supported by an order recording reasons. If reasons are not so recorded the order of detention will automatically fail. Even if reasons are recorded they have to inspire ....."

Here is a case, where no reasons are indicated anywhere in the office file as to why the grounds could not be furnished within the time-frame set-out by the Act. The question as to whether there is/was exceptional circumstances, is a question of fact ; but that/ those circumstances does/do not arise in this case since no such circumstances/reasons are/were recorded in the file in writing. In these circumstances, we are of the view that further detention of the detenu is not sustainable and accordingly, the detenu is entitled to be released.

The respondents/authorities are accordingly, directed to release the detenu viz., Ksh. Noyon Meitei alias Laba alias Hemanta alias Ibohal Achouba, forthwith from detention if he is otherwise not required to be detained in connection with any other case.

4. The writ petition stands allowed.