IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUCHAL PRADESH)

SHILLONG BENCH

WP(Crl)No.(SH)269 of 2011

Smti Ricka N Sangma,
w/o Shri Kingkong Ch. Marak,
R/o Nogankat, P.O. Garobadha,
PS Tura, West Garo Hills District,
Meghalaya. :: Petitioner

-vs-

1. The State of Meghalaya,
Represented by the Commissioner &
Secretary to the Govt. of Meghalaya,
Political Department,
Shillong, Meghalaya.

2. District Magistrate,
West Garo Hills, Tura, Meghalaya.

3. Union of India,
Represented by the Secretary, Ministry of
Home Affairs, North Block,
New Delhi-110001 :::Respondents

WP(Crl)No.(SH)348 of 2011

Smti Natji R Marak
w/o the Detenue Shri Jean Ch Sangma
of Village Gaurapara,
PO Selsella
PS Tura
West Garo Hills District,
Meghalaya :: Petitioner

-vs-

1. The State of Meghalaya,
Represented by the Commissioner &

Secretary to the Govt. of Meghalaya,
Political Department,
Shillong, Meghalaya.

2. District Magistrate,
West Garo Hills, Tura, Meghalaya.

3. Union of India,
Represented by the Secretary, Ministry of
Home Affairs, North Block,
New Delhi-110001 :::Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI
(WP(Crl)(SH)No.269 of 2011)

Advocates for the Petitioner	:::	Mr R Kar, Ms S Bhattacharjee, Ms SG Momin
Advocate for the Respondent	:::	Mr P Dey, Addl. PP
Date of Hearing	:::	18.07.2012
Date of Judgment and order	:::	27.07.2012

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI
(WP(Crl)(SH)No.348 of 2011)

Advocates for the Petitioner	:::	Mr R Kar, Ms S Bhattacharjee, Ms SG Momin
Advocate for the Respondent	:::	Mr S Sen Gupta, Addl. PP
Date of Hearing	:::	18.07.2012
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JUDGMENT AND ORDER

Both these writ petitions (criminal) involving a common question of law were heard together and are now being disposed of by this common judgment. For the sake of convenience, I will first deal with the facts in WP(Cril) No. 269/2011, decide the same and thereafter apply my decision thereon on the facts of WP(Cril) No. 348/2011.

2. WP(Cril) No. 269 of 2011, which is a petition for writ of habeas corpus, is directed against the order dated 12.10.2011 issued by the District Magistrate, West Garo Hills District, Tura (respondent 2) detaining Mr Kingkong Ch. Marak under Section 3(1) of the Meghalaya Preventive Detention Act, 1995. The detention order has been passed on the ground that the detenu is an active member of Garo National Liberation Army (GNLA), which a dreadful militant outfit of Meghalaya and is involved in various anti-national and unlawful activities like extortion, kidnapping, ransom, disruption of public order etc. by use of deadly weapons, for which Tura PS Case No. 223(8)11 under Section 365/34 IPC and Tura PS Case No. 225(8) under Section 384/511 IPC have been registered against him. The grounds of detention were apparently furnished to him through the Superintendent District Jail, Tura. The detention order was approved by the State Government on 21.10.2011, but the same was apparently not placed before the Advisory Board by the State Government. The writ petition is opposed by the State respondents by filing their affidavit-in-opposition through the respondent No. 2. The stance taken by them in their affidavit-in-opposition is that they have never violated any right of the detenu guaranteed under Article 22(5) of the Constitution: they have furnished the grounds of

detention as well as other documents to enable him to make effective representation against the detention order. Contending that this writ petition is without merit, the respondent No. 2 urges this Court to dismiss the same.

3. The contention of Mr R Kar, the learned counsel for the petitioner is that the respondent No. 2 neither in his detention order nor in the grounds of detention ever informed the detenu of his right to make representation before the Central Govt, which is in contravention of the decision of the Division Bench of this Court in ***Rongjam Momim v. Unuion of India Manipur & Ors, 2005 (1) GLJ(DB) 285***. He, therefore, submits that the impugned detention order is liable to be quashed on this ground alone. On the other hand, Mr P Dey, the learned Addl. PP supports the impugned detention order and submits that no substantial infirmity can be pointed out by the petitioner warranting the interference of this court. He also submits that this court must take cognizance of the existing situation in Garo Hills which has disrupted the maintenance of the public order: there is rampant extortion going on there, and the activities of the terrorist can be substantially curbed by prolonging the detention of the detenu. He, therefore, strenuously urges this Court to dismiss the writ petition.

4. I have carefully gone through the impugned detention order. I have also given my thoughtful consideration to the submissions advanced by the learned counsel appearing for the rival parties. Even though the provisions of Meghalaya Preventive Detention Act do not expressly confer upon the Central Government the power to revoke the

detention order, such power is held to be implied. This, in turn, implies the duty of the detaining authority to inform the detenue of his right to make representation against his detention before the Central Government. This proposition of law is now firmly settled by the Division Bench of this Court in ***Rongjam Momim case (supra***. This is what the Division Bench said:

> *"9. The next point that would engage the attention of the Court is the right of the petitioner-detenue to file a representation to the Central Govt. Admi8ttedly, the petitioner was not apprised that he has any such right and no representation was filed by the detenue-petitioner before the Central Govt. the arguments advanced on this question by the rival parties have been elaborately noticed in a preceding paragraph of this order. In the case of Kamleshkumar (supra) , the Hon'ble Supreme Court, inter alia, was required to consider the question as to whether an officer empowered by the State Govt. under the provisions of COFEPOSA/PIT NDPS Acts to pass an order of detention, becomes functus officio after passing of the order so as to denude any power in the said empowered officer to vary or revoke the detention made. While answering the provisions of the COFEPOSA/PIT NDPS Acts as well as the National Security Act and took the view that notwithstanding the fact that under the aforesaid Acts, there is no provision for approval by the State Govt. of the order of detention made by the officer empowered by the State Govt. as in the National Security Act, it cannot be said that an order of detention passed by such an empowered officer is so passed on the basis of a deemed approval by the State Govt. so as to denude the empowered officer of any power to revoke the detention order passed by him. While considering the provisions of the National Security Act in the above context, the following observations made by the Apex Court would be relevant to the point at issue in the present case :*
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> > *'34. In the National Security Act, there is an express provision (section 3(4) in respect of orders made by the District Magistrate or the Commissioner of Police under Section 3(3) and the District Magistrate or the Commissioner of Police, who has made the order is required to forthwith report the fact to the State Govt to which he is subordinate. The said provision further prescribes that 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 Govt. This would show that it is the approval of the State Govt. which gives further life to the order which would otherwise die its natural death on the expiry of twelve days after its making. It is also the requirement of Section 3(4) that the report should be accompanied by the grounds on which the order has been made and such other particulars*

as, in the opinion of the said officer, have a bearing on the matter which means that the State Govt has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Govt is that from the date of such approval the detention is authorized by the order of the State Govt approving the order of detention and the State Govt is the detaining authority from the date of the order of approval."

In view of the aforesaid enunciation of the law under the provisions of the National Security Act and the provisions of Section 3(1) of the Meghalaya Act being pari material with the relevant provisions of National Security Act, there can be no manner of doubt that after the approval was granted in the present case by the State Govt by order dated 17.5.2004, the Central Govt was competent to revoke the detention order of the petitioner and, therefore, the petitioner had a right under Article 22(5) of the Constitution to be informed of his entitlement to file a representation to the Central Govt. The stage at which the petitioner should have been apprised of the aforesaid right, a point on which much emphasis has been laid by Shri U Bhuyan, learned Govt Advocate, according to us, would be of no consequence. It is not difficult to visualize a situation where the stage at which such a right of detenue accrues can be appropriate transposed.

For the aforesaid reasons, we unhesitatingly take the view that on both counts, i.e., the failure of the detaining authority to inform the detenue/petitioner of his right to file a representation to the detaining authority as well as to the Central Govt, the fundamental right of the petitioner under Article 22(5) of the Constitution has been infringed thereby vitiating, the impugned order of detention dated 17.5.04 as well as the order approving the same passed by the State Govt on 27.5.04."

5. There can be no dispute that the detaining authority did not inform the detenu of his right to make representation before the Central Government, which right has been raised to the level of his fundamental right under Article 22(5) of the Constitution. For this reason alone, the impugned order is not sustainable in law. As for the apprehension expressed by the learned State counsel, the Apex Court in ***Kamlseshkumar Ishwardas Patel v. Union of India***, ***(1995) 4 SCC 51*** had answered in the following manner:

"49. At this stage it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard ti the nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. We are not unmindful of the consequence of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of the persons sought to be preventively detained. These safeguards are required to be "zealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of activities of a particular person. We would, in this context, what was said earlier by this Court while rejecting a similar submission: (SCC para 4)

(Underlined for emphasis)

"May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to person detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus."

6. Need I say more? For what has been stated in the foregoing, this writ petition is allowed. Consequently, the detention order dated 12.10.2011 issued by the respondent No. 2 (Annexure 1) and the order dated 21.10.2011 issued by the Secretary to the Govt. of Meghalaya, Political Department (Annexure 5) are hereby quashed. The detenu shall be set at liberty forthwith unless he is wanted in connection with some other case(s).

7. Coming now to WP(Crl)(SH) No. 348 of 2011, this writ petition is also directed against the order dated 02.11.2011 (Annexure –I) issued by the District Magistrate, West Garo Hills District, Tura (respondent 2) detaining the husband of the petitioner, namely, Shri Jean Ch. Sangma, who has been detained in custody under Section 3(1), Section 3(1) of the Meghalaya Preventive Detention Act, 1995. The detenu was arrested and detained in connection with Tura PS Case No. 201(08)2011 under Section 395/397/386/511/307 IPC read with Section 27 Arms Act and the Tura PS Case No. 225(9) 2011 under Section 384 IPC. While he was in custody, the impugned detention order was issued upon him. The

detenu is also alleged to be an active member newly formed militant organization, namely, Garo National Liberation Army (GNLA), which is a dreadful militant in the State of Meghalaya and is alleged to be involved in various unlawful criminal activities like extortion, disruption of public order etc. by use of deadly weapons. The writ petition is opposed by the State respondents who have now filed their affidavit-in-opposition through the respondent No. 2. As in the previous case, the detaining authority has failed to inform the petitioner of his right to make representation before the Central Government, which is now held to be mandatory in view of the decision of this court in ***Ronjam Momin(supra).*** For this reason alone, as in the previous case, the impugned order cannot be sustained in law. No other issue survives for consideration.

8. For the same reason, the impugned detention order cannot be sustained in law. Resultantly, this writ petition succeeds. The impugned detention order dated 02.11.2011 issued by the District Magistrate, West Garo Hills, Tura at Annexure-I is hereby quashed. The respondent authorities are directed to release the detenu from detention forthwith unless he is required in connection with some other case(s).

JUDGE

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