IN THE GAUHATI HIGH COURT

THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH.

SHILLONG BENCH.

WRIT PETITION(CRL) No. (SH) 228/2011

Shri Babith S Sangma,
Guardian of the Detenue. (Brother)
Resident of Village Balnanggre,
P.O. Garobadha,
P.S. Tura,
West Garo Hills District
Meghalaya. : Petitioner

-Vs-

1.The District Magistrate,
West Garo Hills, Tura.

2.The State of Meghalaya,
Represented by the Commissioner & Secretary,
Political Department, Shillong.

3.The Union of India,
Represented by the Secretary,
Home, New Delhi. . : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI
THE HON'BLE MR JUSTICE P.K. SAIKIA

For the Petitioner	:	Mr R Kar, Mrs B Bhattacharjee, Ms SG Momin, Advs
For the Respondents	:	Mr K Khan, GA.
Date of hearing	:	***12.04.2012***
Date of Judgment & Order	:	***25.05.2012***

JUDGMENT AND ORDER(CAV)

(***P.K. Saikia, J***)

In this proceeding, the detention order dated 17.06.2011 passed by the learned District Magistrate, West Garo Hills District, Tura, order dated 17.06.2011, passed by the Government of Meghalaya confirming the

detention order and the order dated 28.06.2011passed by the Governor of Meghalaya approving the order of detention are all called into question.

2. The facts necessary for disposal of this present proceeding are that Shri David S. Sangma, the brother of the petitioner herein, was arrested by the Police in connection with Tura P.S. Case No. 261(10) 2010. He was thereafter arrested in connection with Tura P.S. Case No. 262(10) 2010 and Tura P.S. Case No.124 (5) 2011 as well and was kept under continued detention.

3. While he was in custody in connection with the cases aforesaid, on 17.06.2011, he was served with detention order passed under Section 3(1) of the Meghalaya Preventive Detention Act, 1995 (hereinafter referred to as “the Act of 1995”), alleging that he has been involved in serious subversive and seditious activities and these make his being at large is prejudicial to the security of State, maintenance of public order and he became a threat to life and property of the citizen.

4. On the same day, he was also furnished with the grounds of detention to facilitate him with an opportunity to make effective representation in time to the various authorities specified therein, namely, 1. District Magistrate, West Garo Hills, Tura 2. State of Meghalaya and 3. Central Govt. (Govt. of India) as well as to the Advisory Board at Gauhati High Court at Guwahati.

5. In due course, the order of detention was approved by Govt. of Meghalaya and detention order was confirmed extending the period of detention for a period of three years from the date of detention. It is that detention order, dated 17.06.2011, approval order dated 28.06.2011 and confirmation order dated 17.08.2011 have been put to challenge in this proceeding alleging several infirmities in the detention order and all other subsequent order(s).

6. The infirmities which allegedly afflicted the orders in question are (i) the copies of the order of detention was not served on the parents of the detenu; (ii) the District Magistrate arbitrarily and whimsically took the decision to detain the detenu aforementioned; (iii) the grounds on which the detention order was made either irrelevant or non-existent, when the detention order was passed; (iv) the order in question was passed on extraneous materials and (v) the order was passed mechanically without application of mind to the materials, placed before the District Magistrate.

7. It is also been contended that some very vital documents on the basis of which detention order was said to have been made were not furnished to the detenu which prevented him from making effective representation to the authorities concerned. However, he had gathered information from his own sources and came to know that his name did not figure in any of the cases in connection of which, he was kept in detention under the Act of 1995.

8. However, he had submitted a common representation to the authorities concerned on the basis of information, he collected on his own. According to him, he submitted the representation to the Superintendent District Jail, Tura, on 20.06.2011 and same was addressed to the District Magistrate, Tura, the State Government and the Central Govt. (Union of India) incorporating therein the infirmities which he had noticed in the order(s) aforesaid.

9. He further submitted that such representation was made to all the authorities beseeching them to revoke the detention order which is alleged to be unsustainable in law for those orders not being in tune with the requirement of constitutional mandate as well as mandate imposed by statutory and rule of natural justice.

10. It has further been contended that while the detenu was awaiting a reply to his representation, on 17.08.2011, he, to his utter surprise, came to know that the Govt. of Meghalaya had confirmed his detention order. However, till the time of filing of this writ petition, the petitioner was not aware of as to what had happened to the representations, he had submitted to the concerned authorities on 20.06. 2011.

11. With the above allegations, Shri Babith S Sangma, the petitioner, the brother of the detenu had approached this Court seeking invoking its extra ordinary jurisdiction to quash the detention order and all subsequent order(s), passed in consequence of the detention order dated 17.06.2011. On the receipt of the petition, this Court issued notices to all the State respondents. Only respondent No.1 filed counter affidavit resisting the claim of the writ petitioner herein.

12. Respondent No.1 (District Magistrate) has filed counter affidavit disputing the claims of the writ petitioner who has prayed for quashing of the detention order dated 17.06.2011 and all the subsequent order(s). In his counter affidavit, the respondent No.1 took the stand that the concerned Police authority had produced before him enormous materials of extremely incriminating nature.

13. He, therefore, very carefully considered all the materials, placed before him and on such a perusal, he was convinced that detenu's being at large would be profoundly prejudicial to the safety of the State, maintenance of law and order as well as a threat of life and public property of the citizen. Once he entertained above conclusion, he issued the detention order dated 17.06.2011.

14. According to him, the decision which he has taken would easily pass the test of assessment done objectively. The order, so passed, was served on all concerned including the detenu. Being so, the allegations that he passed the detention order dated 17. 06. 2011 whimsically, without

application of mind to the materials, placed before him and on extraneous consideration, are founded not on facts but on fiction instead.

15. The further case of the respondent No.1 was that he never ever receives any representation, submitted by the detenu seeking revocation of the detention order on certain alleged infirmities incorporated therein. He, however, admitted that he received a copy of such a representation from the State Govt. requiring him to give parawise comments on the representation, submitted by the detenu.

16. In response to above direction, he rendered parawise comments on the representation, submitted by the detenu and forwarded the same to the State Govt. for doing further needful. In the above premise, he has submitted that there was no infirmity, whatsoever, in the order(s) impugned and as such, he urges this Court to dismiss the proceeding instead.

17. We have heard the learned counsel for the respective parties keeping in view the materials on record. Before we could consider other allegations against the impugned order, let us see whether the detenu had ever made any representation to the authorities, so mentioned in the grounds of detention order dated 17.06.2011 and if so, whether the authorities aforesaid have disposed of the representation expeditiously as required under Article 22 (5) of the Constitution of India.

18. Before averting to the rival submissions advanced by the parties before this Court, we need to know how the Constitutional Courts of the Country view the delay in disposing of the representation submitted by the detenu seeking revocation of the detention order made under the preventive law.

19. In this connection, we may profitably peruse the decision of the Hon'ble Supreme Court in ***Rama Dhondu Borade Vs. V.K. Saraf,***

Commissioner of Police and Others reported in ***(1989) 3 SCC 173***, wherein it was held as follows:

> *"19. The propositions deducible from the various reported decisions of this Court can be stated thus:*
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> *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 the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty ---- the highly cherished right ---- which is enshrined in Article 21 of the Constitution.*
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> *20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22 (5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.*
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> *21. Coming to the facts of this case, we shall now examine whether the delay that had occurred in consideration and disposal of the representation of the detenu is so inordinate and unreasonable vitiating the order of detention or whether that delay is satisfactorily explained by respondent No.3.*
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> *22. In the instant case, the gap between the receipt and the disposal of the representation is 28 days but up to the date of service of the order of rejection on the detenu the delay amounts to 32 days. The only explanation offered by respondent No.3 is that further information required from the State Government was received by respondent No.3 on October 17, 1988 after a delay of nearly 14 days and then the representation of the detenu was disposed of on October 27, 1988 within which period there were certain holidays. Barring that, there is no other explanation. This delay when scrutinized in the light of the proposition of law adumbrated above, we are of the view that there is an inordinate and unreasonable delay and the present explanation given by respondent No.3 is not satisfactory and acceptable".*

20. Similar view has been rendered in the case of ***Solomon Castro Vs. State of Kerela and Others reported in (2000) 9 SCC 561***, In the case of ***Solomon Castro Vs. State of Kerela and Others (Supra),*** Hon'ble Supreme Court held as follows:

> *"4. It has been repeatedly stated by this Court that representation of the detenu is required to be considered and disposed of as expeditiously as possible by the Government. In Rajammal v. State of T.N., this Court again reiterated the constitutional obligation of the Government to consider the representation forwarded by the detenu without delay and observed that even though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. If there is delay in considering the representation the court can consider whether the delay was occasioned due to permissible reasons or unavoidable causes. In the present case there is absolutely no explanation for justifying the delay between 9-4-1999 to 23-4-1999 and thereafter till 28-4-1999. In this view of the matter, the impugned order passed by the detaining authority requires to be quashed and set aside."*

21. In the case of of ***T.D. Abdul Rahman Vs. State of Kerela reported in AIR 1990 SC 225,*** the Hon'ble Supreme Court has reiterated the views rendered in the cases aforementioned. In the case of ***T.A. Abdul Rahman V. State of Kerela and Others (Supra)*** Hon'ble Supreme Court again held as follows:

> *"The representation of the detenu in the case has not been given prompt and expeditious consideration, and was allowed to lie without being properly attended to. The explanation offered that the delay hgas occurred in seeking the comments of the Collector of Customs etc. is not a convincing and acceptable explanation. The delay of 72 days in the absence of satisfactory explanation is too long a period of ignoring the indolence on the part of the concerned authority. There was also casual and indifferent attitude on the part of the authorities. Hence it must be held that the unexplained delay in disposal of the representation of the detenu is violative of Art.22 (5) of the Constitution of India, rendering the order of detention invalid."*

22. Coming back to our case in hand, we have found that the detenu categorically claims that on 20. 06. 2011 itself, he submitted a common representation to the Superintendent of District Jail, Tura for onwards transmission to the authorities mentioned therein, namely, (a) District Magistrate, Tura, (b) Principal Secretary, Political Department, Govt. of Meghalaya, Shillong and (c) Secretary, Ministry of Home Affairs, New Delhi requesting them to revoke the detention order.

23. This claim of the detenu was denied by the respondent No.1 since he has taken the stand before this Court that at no point of time, he received a copy of common representation, addressed to the authorities aforesaid alleging serious infirmities in the detention order and requesting them to revoke such order of detention. But he admitted that he received a

copy of the representation dated 20.06.2011 on being forwarded by the respondent No.2 which required him to render parawise comments on the aforesaid representation. In response to such direction, he furnished parawise comments on the representation and forwarded it to the respondent for its doing needful.

24. In order to ascertain the veracity of the claim made by the respondent No.1, this Court had called for the relevant record from the concerned authority .On the perusal of the relevant file, it is found that on 20.06.2011 itself , the Superintendent of District Jail, Tura had received a common representation, submitted by the detenu.

25. Said common representation was addressed to (a) the District Magistrate, Tura, (b) the State Government and (c) the Central Govt. (Union of India). More important, the concerned official of the aforesaid Jail had acknowledged the receipt of such representation by putting his initial thereon. It is however nobody's case that the Jail authority did not receive the aforesaid representation.

26. Here, it is also worth-noting that it is not in dispute that one copy of common representation, addressed to three different authorities, was received by the respondent No.2 on 01.07.2011. It is also not in dispute that on the receipt of such representation, a process had been initiated by the respondent No.2 to address those grievances and parawise comments, sought for from the Deputy Commissioner, Tura, on such a representation, was the outcome of such an initiative.

27. Thus, when the materials on record empathically show that on 20.06.2011, the detenu had submitted a common representation, addressing the respondent No.1, 2, & 3 seeking their intervention in revoking the detention order, when there is evidence on record that same was received by the concerned Jail authority on that day itself and when there is evidence to show that respondent No.2 too was furnished with a

copy of one such common representation, it is quite difficult to believe that the respondent No.1 did not receive the same despite same being received by an authority subordinate to him on 20.06.2011 itself.

28. The above makes it obligatory on the part of the respondent No.1 to explain as to how the representation, addressed to him, missed the destination despite same being submitted as early as 20.06.2011 and inspite of same being received by an authority subordinate to respondent No.1. Unfortunately, the respondent No.1 did nothing to explain the above. In the teeth of such a failure, we are unable to persuade ourselves to accept the contention of the respondent No.1 that he did not receive the representation, submitted by the detenu on 20.06.2011.

29. To put it little differently, the representation dated 20.06.2011 was duly received by the respondent No.1. Once it is found that the respondent No.1 received the representation seeking his intervention in regard to revocation of the detention order, it automatically flows there-from that he is duty bound to consider the representation and to take necessary decision thereon as expeditiously as possible and to communicate the same to the detenu concerned without any delay.

30. However, we are constrained to hold that the respondent No.1 did not do anything to discharge his obligation, imposed by both the Constitution of India and the statute which authorized such detention. Instead, he doled out, of course unsuccessfully, the plea that he never / ever received the copy of representation in question. This is in our considered opinion more than enough to set aside the detention order in question.

31. Even if we assume for the sake of argument for a moment that the respondent No.1 did not receive any representation from the Jail authority, the detention order is found untenable for other reasons also. We have already found that the detenu submitted the common representation

before the concerned Jail authority on 20.06.2011and a copy of the same was received by respondent No. 2 on 01.07.2011.

32. On perusal of the file before us, we have found that respondent No.2 had considered such a representation and was pleased to reject the same. We have also found that the order rejecting the representation was signed only on 02.09.2011. Thus, the respondent No.2 took a period as long as 72 days in disposing of the representation, submitted by the detenu seeking revocation of the detention order dated 17.06.2011. Such a delay is absolutely unreasonable to say the least.

33. Worst still, there is nothing on record to show that even such a belated order of rejection had ever been communicated to the detenu. The fact that in his writ petition, the brother of the detenu clearly states that the fate of said representation was not known to them till the filing of this writ petition before this Court, doubly confirmed that the detenu was never informed of fate of his representation. This is one more telltale testimony of obligation, imposed by the statute and the Constitution on the authority concerned having been violated with impunity.

34. Resultantly, this writ petition is allowed. The impugned detention order dated 17.06.2011 (Annexure-1), the order dated 28.06.2011 approving the detention order and the order dated 17.08.2011 confirming the impugned detention order (Annexure-4) are hereby set aside.

35. The respondent authorities are, accordingly, directed to release forthwith the detenu from detention unless he is required to be detained in connection with some other case(s).

36. Return the File bearing No.POL 128/2011/Pt immediately.

JUDGE **JUDGE**

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