

Yumnam Mangibabu Singh

Vs

State of Manipur and Others

Criminal Appeal No. 471 of 1982

(V. D. Tulzapurkar, R. B. Misra JJ)

17.09.1982

JUDGMENT

TULZAPURKAR, J. -

1. As we felt after fully hearing counsel on either side that the impugned order of detention herein deserved to be quashed, we by our Order dated September 9, 1982, directed the immediate release of the appellant and stated that our reasons would follow. We now proceed to give our reasons.
2. The appellant Yumnam Mangibabu Singh (the detenu) is a science graduate and was at the material time serving as Superintending Engineer (Class I post) in the Electricity Department of the Government of Manipur at Imphal. It is alleged that on May 13, 1981 he wrote a letter to Head Quarters, Peoples' Liberation Army, Eastern Region, an unlawful organisation in Manipur, promising financial help to the organisation in his official capacity. On October 31, 1981 the Army called him to its Head Quarters, Imphal and as soon as he reached there he was handed over at the police station on lodging a complaint (FIR) against him for offences under Section 121/121-A, IPC and 13 of U.A.P. Act. He was produced before Chief Judicial Magistrate on November 1, 1981 and was released on bell. However, at the instance of the police, when he visited the police station in the morning of November 21, 1981, he was served with detention order dated November 20, 1981 issued by the District Magistrate, Central Manipur (respondent 2) under Section 3(2) of the National Security Act, 1980 and on taking him into custody he was detained in Manipur Central Jail. The detention was effect with the view to preventing him from acting in any manner prejudicial to (a) the Security of the State and (b) maintenance of the public order. On November 23, 1981, he was served with grounds of detention along with some photostat copies of concerned documents, including a copy of a letter dated May 13, 1981, allegedly written by him (the subject-matter of the FIR). The Grounds of Detention as furnished to the appellant run thus :

(1)(a) You are the ardent sympathiser of the outlawed organisation, Peoples' Liberation Army ('P.L.A.' for short), and you have been extending financial help to the said organisation to enable it to carry on its illegal and violent activities. In pursuance of the same you voluntarily wrote a letter to the Head Quarter of P.L.A., Eastern Region where in you promised to misuse your official position to divert departmental funds for the unlawful activities of the said organisation.

(b) In pursuance of your said assurance you along with one Lourembam Brojendrakumar Singh of Mirangkhom paid a visit to the house of Laikangbam Iboyaima Singh, partner of M/s Win Supply Agency, in a Ambassador car (Mark IV) one morning in the month of May 1981. You obtained from the said Iboyaima Singh

four sets of bill forms and 3/4 leaves of the letter heads of the said firm. These bill forms and letter heads were obtained by you by means of extortion, as you were in a position to show favour to the said firm and similarly to show disfavour to the same, being in a position to grant/deny supply order to that firm.

(c) That thereafter you issued the four supply orders on May 18, 1981, May 20, 1981, May 25, 1981 and June 11, 1981 for a sum of Rs 3,96,560 in the name of M/s Win Supply Agency for supply of various materials for electrical installations. The supply orders were, however, actually given to one Sanjoy Sharma of Yumnam Leikai, Nambul Mapal, a member of P.L.A. and his other associates. To the same persons you had handed over the bill orders and letter heads extorted by you from M/s Win Supply Agency; the said Sanjoy Sharma and his associates presented these bill forms for payment.

Thus with your active and voluntary help you managed to divert a huge sum of government money to the said outlawed organisation, and helped them in waging war against the Government of India and Manipur.

(2) In view of the circumstances mentioned above and also of your being an ardent sympathiser of the outlawed organisation there is every likelihood that you shall continue to indulge in similar anti-national and unlawful activities thereby encouraging them to cause prejudice to the maintenance of public order. Hence the undersigned is compelled to order your detention under Section 3(2) of the National Security Act, 1980. I am satisfied that with a view to prevent you from acting in any manner prejudicial to the maintenance of public order and security of the State, I have made this detention order.

3. On November 27, 1981 the appellant submitted his representation to the Chief Secretary of the Government of Manipur against his detention, denying having had any connection with the P.L.A. or having acted in any manner prejudicial to the security of the State or maintenance of public order. He also reserved his right to file further representation after getting certain material and documents which were not supplied to him. The representation was rejected. Thereafter he filed a writ in the High Court of Manipur at Gauhati being Civil Rule (H.C.) No. 950 of 1981 challenging his detention on several grounds but the High Court negatived all the grounds of challenge and dismissed the writ petition by its orders dated January 25, 1982 and February 17, 1982. The decision of the High Court is challenged in the instant appeal. Alternatively, he has approached this Court by a writ petition under Article 32 of the Constitution of India, Challenging his detention. The appeal as well as the writ petition are being allowed for the reasons indicated below.

4. The main ground on which the impugned order of detention can be and has been successfully challenged by counsel for the appellant is that the constitutional safeguard of making effective representation against the detention, which is available to the appellant under Article 22(5), has been breached inasmuch as copies of certain statements which were material and which were taken into consideration by the detaining authority in arriving at its subjective satisfaction, were not supplied to him and thereby he was prevented from making effective representation. In the behalf counsel for the appellant referred to two statements - (a) statement of the appellant himself recorded on November 1, 1981 containing his alleged admission of a donation of Rs 1000 to P.L.A. and (b) statement of L. Iboyaima Singh, a partner of M/s Win Supply Agency, copies whereof have admittedly not been supplied to him even up to this date. Ground (1)(a) above clearly refers of a

course of conduct on the part of the appellant in the recent past suggestion rendering of financial help to P.L.A. by reciting that "you have been extending financial help to the said organisation to enable it to carry on its illegal and violent activities". But no particulars of any act or acts on the part of the appellant in that behalf have been given, though the detaining authority had before it the statement of the appellant recorded on November 1, 1981 containing the alleged admission on his part of having made donation of Rs 1000 to the P.L.A. Obviously, the statement of the appellant dated November 1, 1981 was most material and relevant to the alleged activities of the type attributed to him in the said ground. Even so no copy of the statement was furnished to the appellant. In *Khudiram case (Khudiram Das v. State of W.B., (1975) 2 SCR 832 : (1975) 2 SCC 81 : 1975 SCC (Cri) 435 : 1975 Cri LJ 446.)* this Court has taken the view that "it is the right and duty of the Court to examine what are the basic facts and materials which are actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and through other basic facts and materials were before it, it has not allowed them to influence its satisfaction" (SCC p. 96, para 13 : SCC (Cri) p. 450). It cannot be disputed that the statement of the appellant containing an alleged admission on his part of the type mentioned above would fall within the concept of basic facts and materials and since the statement was before the detaining authority it must have weighed with it in reaching the requisite satisfaction. The High Court has brushed aside the non-furnishing of a copy of this statement on the ground that after all it was an admission on the part of the appellant and as such no violation of Article 22(5) was involved. It is not possible to accept the view of the High Court for the simple reason that the appellant was entitled to put forth his case about it which could include either of an opportunity to do so.

5. Similarly, Grounds (1)(b) and (1)(c) clearly make out a case that the appellant had procured four sets of bill forms and three or four blank letter heads from Iboyaima Singh, a partner of M/s Win Supply Agency by exercising coercion, influence or extortion and on the point of alleged influence, coercion or extortion said to have been exerted on him, Iboyaima Singh must have said something in his statement and the appellant was, therefore, entitled to get a copy of his statement so that he could make his representation in that behalf. In other words, the statement of Iboyaima Singh was clearly material which influenced the mind of the detaining authority in reaching the requisite subjective satisfaction. Even so no copy of the statement of Iboyaima Singh has been furnished to the appellant and, in our view, non-furnishing of the copy of that statement has clearly prejudiced the appellant in exercise of his fight of making effective representation. The High Court has got over this glaring breach of this constitutional safeguard by observing that the statement of Iboyaima Singh constituted the source of information about procurement of bill forms and blank letter heads and as such the detenu was not entitled to know the source of information and evidence for making an effective representation. It is not possible to agree with the High Court that the statement of Iboyaima Singh constituted the source of information; the manner in which the bill forms and the blank letter heads were allegedly procured by the appellant, namely, by exercise of influence, coercion or extortion, which allegedly facilitated the diversion of government funds to the unlawful body, assumes considerable importance - regarding which the appellant ought to have been given an opportunity to have his say.

6. In our view, therefore, the non-furnishing of copies of aforesaid two statements really prevented the appellant from making effective representation against his detention and since the constitutional safeguard in this behalf was clearly breached the impugned detention order cannot be sustained.

7. There is yet one more aspects regarding the grounds of detention furnished to the appellant. After

setting out the particulars and materials of the alleged activities on the part of the appellant in paragraphs (1)(b) and (1)(c) the grounds go on to recite : "Thus with your active and voluntary help you managed to divert a huge sum of government money to the said outlawed organisation,...." In order words, a clear case of actual or accomplished diversion of government funds have been made out. Both in his special leave petition as well as in his writ petition the appellant has categorically averred (vide para 8 in S.L.P. as well as in W.P.) that "the office record shows that the said bills have not been paid as yet for want of sufficient funds; hence the question of diverting funds or helping the P.L.A. Organisation does not arise". In the counter-affidavits filed by the District Magistrate (the detaining authority) it has been stated "that the bills have not been paid is of no consequence. They were passed for payment". In other words, in the counter-affidavit a clear case of there being an attempt to divert government funds had been made out. In other words, it is a clear case of non-application of mind on the part of the detaining authority to the facts that obtained at the time of the passing of the impugned order. On this aspect the High Court has observed that in the grounds the expression used is 'manage' and even the process of diversion (meaning attempted diversion) would fall within the ambit of the expression and that Annexures 3, 4, 6 and 7 together constituted the materials leading to the aforesaid ground. In our view, the question is not whether the expression 'manage' is wide enough to include the process of diversion but the question is what case is the appellant called upon to meet. Has he to meet the case of actual or accomplished diversion of government funds or the case of an attempted diversion of government funds and if in this behalf the material on record shows that there was non-application of mind on the part of the detaining authority to the facts that obtained at the time of the passing of the impugned order, it can be said that the appellant was certainly prejudiced in the matter of making effective representation.

8. Having regard to the above discussion we are clearly of the view that in the facts and circumstances of the case the constitutional safeguard mentioned above was clearly breached and, therefore, impugned order deserves to be quashed. We, therefore, confirm the appellant's release already directed by our Order dated September 9, 1982.

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