

State of Manipur and Others

Vs

Sanasam Ongbi and Another

Criminal Appeal No. 345 of 1997

(G. B. Pattanaik, M. Srinivasan, S. N. Phukan JJ)

13.10.1999

JUDGMENT

PATTANAIL, J.-

1. This appeal by grant of special leave is directed against the judgment dated 20-9-1996 of the Gauhati High court in CR (HC) No. 41 of 1996. In a writ petition filed by a detenu, who was detained under Section 3(3) of the National Security Act, the High court quashed the order of detention on the conclusion that there has been an infraction of Sub-section (5) of Section 3 of the national Security Act, 1980 (hereinafter referred to as "the Act") inasmuch as the report of the State Government did not reach the Central Government within seven days of the date of approval. Though, pursuant to the order of the High court, the detenu has already been released but this court granted leave as it was brought to the notice of the court that there had been conflicting decisions of the High courts on the point involved and there had been no authoritative pronouncement of this Court. The Short question that arises for consideration, therefore, is whether the obligation of the State Government under Section 3(5) of the Act can be said to have been fully discharged if the report in question is forwarded to the Central Government within the prescribed period of seven days or the said report should reach the Central Government within the proscribed period of seven days. Section 3(5) of the Act reads thus:

"3 (5) when any order is made or approved by the State Government under this section, the State government shall, within seven days, report the fact to the Central Government shall, within seven days, report the face to the Central Government together with the grounds on which the order has be made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

2. On a plain reading of the section, it appears to us that the statutory obligation on the state Government is to report the fact to the Central Government together with the grounds on which the order has been made within seven days of the date of approval when the order is made by any other authority than the State Government and within seven days of the date of the order when the order is made by the State Government itself. The language of Section 5 is not susceptible of the construction that the report itself should reach the Central Government within seven days prescribed under the said sub-section, which would be an impossible burden in certain circumstances. This question came up for consideration before the Bombay High court in the case of Vinayak Ramchandra Sakhalkar v. D. Ramchandran, Commr. Of Police<sup>1</sup>. The Court interpreted the expression "report the fact" in Section 3(5) of the Act to mean that the report sent by the State government under Section 3(5) of the Act must be received by the Central Government within the

prescribed period of seven days. The question also came up for consideration before the Allahabad High court in the case of *Guru Charan Singh v. Supdt., Central Jail*<sup>2</sup> and the Allahabad High Court relied upon the aforesaid decision of the Bombay High court and came to the conclusion that the expression "report the fact to the Central Government within seven days" means to communicate the fact within seven days and, therefore, it is quite obvious that unless the fact of detention is communicated to the Central government within seven days, it cannot be said that the mandate of Section 3(5) is complied with. A similar provision in Prevention of Black-marketing and Maintenance of supplies of Essential commodities Act, 1980, came up for consideration before the Gujarat High Court in the case of *Jivrajbhai Vrahlal Patel v. State of Gujarat*<sup>3</sup>. Section 3(4) of the said Act enjoins upon the State Government to report the factum of detention to the Central Government within seven days. The High Court construed the said provision and held that the law enjoins that the report should actually reach the Central government and the fact that State Government has forwarded the report within seven days is not sufficient. The Gauhati High court in the impugned judgment relied upon the decision of the Bombay High Court and the decision of the Allahabad high court and came to the conclusion that the provisions of the Section 3(5) cannot be said to have been complied with in their true spirit as the report in question did not reach the Central government within the period of seven days as indicated in sub-section (5) of Section 3 of the Act. The interpretation to the provisions of Section 3(5) of the Act given by the Bombay High court referred to earlier has not been accepted by the Full Bench of the said High Court in the case of *Nizam Babamiya Bhatti v. A.S. Samra, Commr. Of Police*<sup>4</sup>. The aforesaid full Bench had considered the Gujarat High Court's decision and the decision of the Division Bench of the Allahabad High court and come to the conclusion that the views expressed by the Gujarat and Allahabad High courts and the division Bench of Bombay High court cannot be accepted. The Full Bench held that the requirement of Section 3(5) is that the State Government should send the report within seven days from the passing of the order or approval thereof and it is not necessary that such report should reach the Central Government within that stipulated period. This question has been considered by a Full Bench of the Patna High Court in the case of *Yogendra Singh v. State of Bihar*<sup>5</sup> and the court held that:

"Where the State Government has approved the detention order by order dated 5-11-1983, and the report had been sent to the Central Government of 12-11-1983, the order of detention could not be challenged on the part of the detaining authority to make a report to the Central Government within seven days. It cannot be said that the report ought to have reached the Central government within seven days because the obligation imposed upon the State Government under Section 3(5) is that the State Government should send a report and it is not that the report should reach within a period of seven days."

To the same effect is the decision of the Orissa High Court in the case of *Ullas Sahu v. district Magistrate, cuttack*<sup>6</sup> whereunder the Orissa High Court differed from the views taken by the Bombay and Allahabad High courts and came to the conclusion that the obligation on the state under Section 3(5) of the Act is not that the report should reach the central Government within the period of seven days as provided therein.

3. Having examined the divergent views of different High Courts as noticed above as well as on a construction of sub-section 5) of Section 3 of the Act we have no hesitation to hold that the expression "report the fact to the Central Government" cannot be equated with the fact that the "report should reach the central Government" within the period of seven days as provided in sub-section 5) of Section 3. We are in respectful agreement with the views expressed by the full Bench

of the Bombay High Court as well as the division Bench of the Patna and Orissa High courts and we hold that the law laid down by the Allahabad High Courts and we hold that the law laid down by the Allahabad High court and the Gujarat High court is not correct. The learned counsel appearing for the detenu placed reliance on decision of this court in the case of Sher Mohammad v. State of W.B.<sup>7</sup> In the aforesaid decision, section 3(4) of the Maintenance of Internal Security Act, come up for consideration and this court held that a communication made to the Central Government prior to the approval of the detention order by the MISA. The question which falls for consideration in the case in hand was not before the Court in the aforesaid case nor had it been answered and as such the aforesaid decision is of no assistance. In the aforesaid premises we hold that the division bench of the Gauhati High Court committed error in coming to the conclusion that there has been an infraction of /Section 3(5) of the Act as the report and the other documents did not reach the Central Government within the period of seven days as provided in sub-section (5) of Section 3 of the Act. The construction put forth by the High court on the expression "within seven days report the fact to the Central Government" is erroneous. The impugned decision accordingly does not lay down the correct law. The appeal is allowed and the writ petition filed by the detenu in the High Court stands dismissed.