

STATE OF MANIPUR AND ORS.

A

v.

SANASAM ONGBI AND ANR.

OCTOBER 13, 1999

[G.B. PATTANAİK, M. SRINIVASAN AND S.N. PHUKAN, JJ.]

B

National Security Act, 1980 :

Section 3(5)—Expression “within seven days report the fact to the Central Government”—Scope and meaning of.

C

Preventive Detention—Order passed by State Government—Obligation to send report to Central Government—Held requirement is State Government should send the report within seven days from passing of order of approval—It is not necessary that such report should reach the Central Government within seven days.

D

The detention order passed by the appellant-State under section 3(3) of the National Security Act, 1980 against the respondent was quashed by the Gauhati High Court on the ground that there has been an infraction of sub-section (5) of Section 3 inasmuch as the report of the State Government did not reach the Central Government within seven days of the date of approval. The State preferred an appeal before this Court. On the question 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 prescribed period of seven days:

E

F

Allowing the appeal, this Court

HELD : 1. The Division Bench of 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 of the expression “within seven days report the fact to the

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A Central Government” is erroneous. [646-B; C]

2. Under Section 3(5) of National Security Act, 1980, 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. 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. [643-F; G; H; 645-E; F]

D *Vinayak Ramchandra Sakhalkar and Etc. Etc. v. D. Ramchandran, Commissioner of Police, Thane and Ors. Etc.*, [1985] Criminal Law Journal (Vol. 91) 1257; *Guru Charan Singh v. Superintendent, Central Jail, Bareilly & Ors.*, (1986) Allahabad Law Journal (Vol. 84) 1172 and *Jivrajbhai Vrajlal Patel v. State of Gujarat & Ors.*, (1988) 1 Gujarat Law Reporter 17, overruled.

E *Nizam Babarniya Bhatt v. A.S. Samra, Commr. of Police, Bombay*, (1994) 1 Maharashtra Law Journal 6; *Yogendra Singh v. State of Bihar & Ors.*, [1985] Vol. 91 Criminal Law Journal 889; *Ullas Sahu & Etc. v. District Magistrate, Cuttack & Ors.*, [1988] Crl. Law Journal (Vol. 94) 32, approved.

F *Sher Mohammed v. The State of West Bengal*, AIR (1975) SC 2049, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 345 of 1997.

G From the Judgment and Order dated 20.9.96 of the Gauhati High Court in C.R.H.C. No. 41 of 1996.

Ms. S. Janani for the Appellants.

H K.V. Vijayakumar for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK, J. This appeal by grant of special leave is directed against the Judgment dated 20.9.96 of the Gauhati High Court in C.R.(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 a 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 has been conflicting decisions of the High Courts on the point involved and there has 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 prescribed period of seven days. Section 3(5) of the Act reads thus :

"Section 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 together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

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

A before the Bombay High Court in the case of *Vinayak Ramchandra Sakhalkar and etc. etc. v. D. Ramchandran, Commissioner of Police, Thane and Ors. etc.*, (1985) Criminal Law Journal (Vol. 91) 1257. 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

B 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. Superintendent, Central Jail, Bareilly and Ors.*, (1986) Allahabad Law Journal (Vol. 84) 1172, and the Allahabad High Court relied upon the aforesaid decision of the Bombay High Court and came to the conclusion that the expression

C "report the fact to the Central Government within seven days" mean to communicate the fact within seven days and, therefore, it is quite obvious that unless the facts 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 the Prevention of Black-marketing

D and Maintenance of Supplies of Essential Commodities Act, 1980, came up for consideration before the Gujarat High Court in the case of *Jivrajbhai Vrajlal Patel v. State of Gujarat & Ors.*, (1988) 1 Gujarat Law Reporter P.17. 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

E 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 the State Government has forwarded that 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 Section 3(5)

F cannot be said to have been complied with in its 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

G Bench of the said High Court in the case of *Nizam Babamiya Bhatt v. A.S. Samra, Commr. of Police, Bombay*, (1994) 1 Maharashtra Law Journal P.6. the aforesaid Full Bench has considered the Gujarat High Court's decision and the decision of the Division Bench of the Allahabad High Court and came to the conclusion that the views expressed by the Gujarat and

H Allahabad High Courts and 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 Patna High Court in the case of *Yogendra Singh v. State of Bihar and Ors.*, (1985) Vol. 91 Criminal Law Journal 889, and the Court held that "where the State Government had approved the detention order by order dated 5.11.1983, and the report had been sent to the Central Government on 12.11.1983, the order of detention could not be challenged on the ground that it was the legal obligation 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 and etc. v. District Magistrate, Cuttack and Ors.*, (1988) Criminal Law Journal (Vol. 94) 32, 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.

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 Patna and Orissa High Courts and we hold that the law laid down by the Allahabad High Court and Gujarat High Court is not correct. The learned counsel, appearing for the detenu placed reliance on a decision of this Court in the case of *Sher Mohammad v. The State of West Bengal*, AIR (1975) SC 2049. In the aforesaid decision, Section 3(4) of the Maintenance of Internal Security Act, came up for consideration and this Court held that a communication made to the

- A Central Government prior to the approval of the detention order by the State Government cannot be held to be a compliance of Section 3(4) of MISA. The question which falls for consideration in the case in hand was not before the Court in the aforesaid case nor it has been answered and as such the aforesaid decision is of no assistance. In the aforesaid premises
- B we hold that the Division Bench of 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 of the expression "within seven days report the fact to the
- C 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.

T.N.A.

Appeal allowed.