

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP(crl.) NO. 04(AP)2018

1. Sri Tarh Silup

Son of Shri Tarh Nyajeng
Resident of RWD Colony
Itanagar, PO/PS- Itanagar
District – Papum Pare
Arunachal Pradesh
Mobile No. 843869556

2. Sri Tai Ligu

Son of Shri Tayem Ligu
Resident of Ganga
Itanagar, PO/PS- Itanagar
District – Papum Pare
Arunachal Pradesh

.....*Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh, through the learned Public Prosecutor, Arunachal Pradesh.
2. The Commissioner(Home), Government of Arunachal Pradesh, Itanagar.
3. The District Magistrate, West Kameng District, Bomdila, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner : Mr. C.W. Mantaw
Mr. B. Kri

Advocates for the respondents: Mr. Kardak Ete, Senior Addl. Advocate
General, Arunachal Pradesh
Mr. Suu Tapin, Senior Govt. Advocate

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 25.09.2018

Date of Judgment & order : 04.10.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. C. W. Mantaw, learned counsel, appearing on behalf of the petitioners.

Also heard Mr. Kardak Ete, learned Senior Addl. Advocate General, Arunachal Pradesh, assisted by Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of the State Respondents.

2. This is an application under Article 226 of the Constitution of India, praying for issuance of a writ in the nature of *habeas corpus* or any other writ or direction of like nature for releasing the two detenues from custody. The two detenues, namely, Shri Tarh Reekam and Shri Suraj Ligu, have been kept under detention w.e.f. 24.07.2018, pursuant to the passing of 2 (two) separate impugned orders, both dated 23.07.2018, by the Deputy Commissioner-cum-District Magistrate, West Kameng District, Bomdila.

3. By filing the instant petition, the writ petitioners, who are related to the two detenues, have sought for quashing of the two orders of detention. Be it stated herein that the two detenues belong to a students' organization in the State of Arunachal Pradesh under the name and style of 'Student's United Movement of All Arunachal' (SUMAA, for short) which was established in the year 2016. According to the petitioners, the main object of SUMAA is 'educate, empower and protection'. The first detinue Shri Reekam is the convenor while the latter detinue Shri Ligu is the General Secretary of SUMAA.

4. Claiming the implementation of the Tibetan Refugee Policy, 2014, to directly affect the rights and privileges of the indigenous tribes of the State of Arunachal Pradesh, SUMAA placed several representations before the State Government seeking its non-implementation. However, as the State Government did not make any positive response to their demands, SUMAA as a result, decided to conduct a mass rally on the issue. Accordingly, members of SUMAA submitted

an application on 10.07.2018 before the Deputy Commissioner, West Kameng District, Bomdila, with a prayer for granting them permission to conduct a rally on 13.07.2018 at Bomdila region. Permission to conduct the rally was granted by the District Magistrate vide communication, dated 11.07.2018. The rally was, thus, conducted peacefully on 13.07.2018. Besides the permission letter, dated 11.07.2018, a separate executive order with the same date, was passed by the District Magistrate u/ss. 144 and 144A of the Code of Criminal Procedure, 1973, as a preventive measure and with a view to maintain peace and tranquility in the area. A copy of the same was also served to the executive member of SUMAA.

5. However, to the utter surprise of the petitioners, the Deputy Commissioner-cum-District Magistrate, West Kameng District, Bomdila, passed the two preventive detention orders, as aforementioned on 23.07.2018 in exercise of the powers conferred by Section 3(1) of the Arunachal Pradesh Unlawful Activities(Prevention) Act, 2014 (Act of 2014, for short). As a result, the two detenues were arrested and detained at Jolly District Jail. By order, dated 04.07.2018, the District Magistrate concerned, detained the detenues at Jolly District Jail by mentioning that the reason of the detention was in order to maintain peace and tranquility in the district and they were directed to be detained for a period of 12 days.

6. According to the petitioners, by the time, the writ petition was filed, the detenues were already detained for a period of 14 days without the approval of the State Government and in violation of Section 3(2) of the Act of 2014. Therefore, the same amounted to violation of the Fundamental Rights of the detenues guaranteed under Article 21 of the Constitution of India. The petitioners claim that while the executive order, dated 11.07.2018, U/s. 144 and 144A of the Code of Criminal Procedure, 1973, passed by the District Magistrate of West Kameng District at Bomdila, was still in force when the detenues were detained, the respondent authority concerned could have easily invoked the provision of Section 195 of the Code of Criminal Procedure, 1973. However, the District Magistrate concerned, instead, hastily, detained the two detenues in the

garb of the provision of Section 3 of the Act of 2014, for breach and violation of order, dated 11.07.2018, by mentioning that there was apprehension of breach of peace and tranquility in the district.

7. Appearing for the detenues, Mr. Mantaw, learned counsel, submits that though the relatives of the detenues were initially allowed to meet them in jail but, however, they were denied to meet them subsequently. For this reason, the petitioners had to file I.A. No. 142(AP)2018, before this Court, seeking a direction to the respondent authorities to allow the petitioners and the relatives of the detenues to meet them at Jully District Jail. Consequently, the respondent authorities allowed the petitioners to meet the detenues. The learned counsel further submits that after obtaining due permission, SUMAA conducted a rally in Bomdila region on 13.07.2018. Had there been any kind of illegal or unlawful activities committed on the day of the rally, every action available under the law, could have been initiated by the respondent authorities upon the members of SUMAA who were found to be indulged in such kind of activities. But surprisingly, after a gap of 10 days from the date of the rally, the same authority who gave permission to hold the rally i.e. the District Magistrate, West Kameng District, Bomdila, passed the impugned orders, both 23.07.2018 as well as a common remand order, dated 24.07.2018, remanding the detenues to Jully District Jail for 12 days w.e.f. 24.07.2018.

8. Mr. Mantaw, learned counsel, by referring to Section 2(viii) of the Act of 2014, submits that 'unlawful person' as defined under the said provision, means a person who indulges in any unlawful activity or promote or abets in illegal organization/activities declared as prohibited by the State Government which are harmful to maintenance of public order or supply of daily essential services and goods to public either, directly, or, indirectly. Therefore, the ingredients required to constitute 'unlawful activity' are, acting in such a manner, causing or likely causing a direct or indirect feeling of insecurity, danger or fear, amongst individuals, public or any section of the public or public health or ecological system or destruction of daily essential services to the public or any kind of loss

or damage to the public exchequer, etc. Learned counsel also submits that such ingredients against the two detenues are missing in the instant case. Therefore, the organization SUMAA, not being a prohibited organization, the District Magistrate concerned, could not have issued the two impugned orders, detaining the detenues under the Act of 2014.

9. Mr. Mantaw, further submits that the impugned detention order, dated 23.07.2018 against the detenu Shri Ligu also makes a mention about his involvement in Case No. 84/2014 and Case No. 316/2016 under the Itanagar Police Station. But, however the fact is that the said detenu has already been discharged by the learned Chief Judicial Magistrate, Capital Complex at Yupia, on 07.02.2017. Therefore, the impugned detention order is only misconceived and unsustainable even on this count.

10. Mr. Mantaw, learned counsel, also submits that in view of invoking of section 144 of the Code of Criminal Procedure, 1973, the detenues could have been directed to execute peace-keeping bond U/s. 107 of the Code of Criminal Procedure, 1973, or even, could have been arrested as a preventive measure U/s. 151 of the Code of Criminal Procedure, 1973. However, by invoking Section 3 of the Act of 2014, instead, the Fundamental Rights of the detenues guaranteed under Article 21 of the Constitution of India, have been illegally taken-away from them. To substantiate his submission, learned counsel places his reliance upon the case of ***Rekha v. State of Tamil Nadu*** reported in **(2011) 5 SCC 244**. By referring to ***Rekha*** (supra), he submits the when there are ordinary laws available to deal with the situation, recourse to a preventive detention law, was held to be illegal by the Apex Court. The preventive law under the Act of 2014, therefore, is to be used most sparingly since it curtails the liberty of an individual which is one of the most important right in a democratic set-up. He, thus, submits that under the facts and circumstances, the two impugned detention orders, both dated 23.07.2018, passed against the two detenues, should be set aside and quashed.

11. Mr. Ete, the learned Senior Addl. Advocate General, Arunachal Pradesh, appearing for the respondents, by referring to the affidavit-in-opposition filed by the Respondents No. 1 & 2, on 23.08.2018, submits that the District Magistrate, West Kameng District, Bomdila, submitted a comprehensive report to the Chief Secretary to the Government of Arunachal Pradesh, vide her letter, dated 27.07.2018, regarding the detention orders passed against the executive members of SUMAA. In the said report, it was indicated that the members of SUMAA were engaged in forceful collection of money and materials from business establishments of various markets across the West Kameng District. They issued threats to various sections of the people of Tibetan origin running their business in Bomdila, asking them to return to their designated camps. Members of SUMAA were also involved in forceful gathering of students by using intimidatory tactics to suit their vested interest in the district. In fact, during the meeting, the SUMAA members threatened to come in large numbers to vandalize and demolish the building structures belonging to the community of Tibetan origin on 23rd and 24th of July, 2018, in the district. Such threats were also given to the locals if they allowed their trade licenses to be used by Tibetan businessmen. In the process, they forcefully used private and commercial taxis and forcefully took fuels from petrol pumps without making any payment. The situation, thus, demanded prohibitory measures in order to ensure peace and tranquility in the district. The prohibitory orders U/s. 144 of the Code of Criminal Procedure, 1973, had also been invoked in larger public interest.

12. Mr. Ete, the learned Senior Addl. Advocate General, Arunachal Pradesh, further submits that the Respondent No. 3 has also filed the affidavit-in-opposition on 27.08.2018 whereby a similar stand is taken. The Respondent No. 3, besides this, has also enclosed a Memorandum submitted by West Kameng Indigenous People's Society (WKIPS) before the Deputy Commissioner of West Kameng District on 21.07.2018 to substantiate the atmosphere of fear and unrest created by SUMAA and to justify invoking of the Act of 2014. Under the circumstances, the learned Senior Addl. Advocate General, Arunachal Pradesh, submits that the detention orders passed by the District Magistrate concerned,

was approved by the State Government vide order, dated 01.08.2018 and pursuant to which, the matter was referred to the Advisory Board constituted in terms of Section 9 of the Act of 2014. Such reference was made by the Home Department of the Government of Arunachal Pradesh, on 09.08.2018 to the Advisory Board against the two detenues as well as one Shri Tagru Tame who is the President of SUMAA. However, the detention order against the said person could not be executed since he has absconded. Mr. Ete, learned Senior Addl. Advocate General, Arunachal Pradesh, submits that pursuant to the reference made to the Advisory Board, the two detenues were produced before the Advisory Board on 22.08.2018 at Guwahati. After the Advisory Board interacted with the detenues, a report was prepared on the next day i.e. 23.08.2018. As per the report, the Advisory Board, after examining all the materials that were produced including the CDs and also the video film recorded on the day of the rally held at Bomdila market, were of the unanimous opinion that there existed sufficient grounds for detention of all the three persons including the present two detenues for their involvement in unlawful activities as defined under Clause 2 (xi) and (xii) of the Act of 2014. The State Government, after receipt of the report and after due consideration, have accepted the same vide order, dated 03.09.2018.

13. In support of his submissions, Mr. Ete, learned Senior Addl. Advocate General, Arunachal Pradesh, relies upon the following decisions:

- (i).** *Haradhan Saha v. State of West Bengal & ors.*, reported in **(1975) 3 SCC 198**
- (ii).** *Subramanian v. state of T.N. & anr.* reported in **(2012) 4 SCC 699**
- (iii).** *Gautam Jain v. Union of India & anr.*, reported in **(2017) 3 SCC 133**

14. I have heard the submissions advanced by the learned counsels for the rival parties and I have also perused the materials made available on record including the records produced by the learned Senior Addl. Advocate General, Arunachal Pradesh.

15. The question to be decided is as to whether under the facts and circumstances, the District Magistrate, West Kameng District, Bomdila, could have directed the detention of the detenues vide its impugned orders, both dated 23.07.2018. The facts, not in dispute, is that, SUMAA conducted a mass rally at Bomdila on 13.07.2018 to project their grievances against the implementation of the Tibetan Refugee Policy, 2014, which, according to them, was affecting the rights and privileges of the indigenous tribes of the State of Arunachal Pradesh.

16. Prior to holding of the mass rally, SUMAA appears to have submitted a number of representations to the State authorities to address the situation. However, as their demands were not attended to, they decided to hold a rally and for which, permission was sought from the Deputy Commissioner-cum-District Magistrate, West Kameng District, Bomdila. Accordingly, permission was granted on 11.07.2018, for holding the rally on 13.07.2018. Although, it is claimed by the petitioners or the detenues that the rally held on 13.07.2018, went-out peacefully, the fact remains that even before such a rally was held, various activities which have been undertaken by the organization, can be noticed from the affidavit-in-opposition filed by the Respondent No. 3 on 27.08.2018 showing the day-to-day activities of the organization starting from 03.07.2018 to 21.07.2018. Importantly, it may be noticed that a report was received from the Superintendent of Police, Bomdila, regarding *gherao* of Bomdila Police Station by members of SUMAA and also assault of the Manager of a Hotel, namely, Hotel Elysiem, Bomdila. Amongst others arrested due to the incident, was detenu Sri Ligu.

17. On 17.07.2018, a meeting was conducted by the same organization with the Bomdila Bazaar Committee where the members of the organization asked the Bazaar Committee to provide them certain items as per the list prepared by them on the next visit. They threatened to vandalize/demolish the buildings and structures in Bomdila on the next visit and for which reason, the security in the entire Bomdila township had to be enhanced. As may be noticed, the detenu Tarh Reekam is the convenor and Suraj Ligu is the General Secretary of the

organization while Tagru Tame the President could not be arrested since has has absconded.

18. The various activities as demonstrated in the affidavit-in-opposition would go to show that the same is beyond the objectives of the organization i.e. educate, empower and protection. A perusal of the records produced by the learned Senior Addl. Advocate General, Arunachal Pradesh, also reveals that the Deputy Commissioner-cum-District Magistrate, West Kameng District, Bomdila, had issued advisory to various educational institutions to take precautionary measures for the safety of students. Besides this, the Memorandum submitted to the Deputy Commissioner of West Kameng District by the organization, shows that if the demands placed therein, were not made within the stipulated time, the organization will take necessary action for protection of the rights and privileges of the indigenous people. The detenues being the office bearers of the organization, the State Government through the district administration, have decided to address the issue by invoking the Act of 2014.

19. The Apex Court in *Rekha* (supra) held that Article 21 of the Constitution of India is central to the whole chapter of Fundamental Rights of our Constitution. The right to liberty means that before sending a person to prison, a trial must ordinarily be held, giving him the opportunity of placing his defence, through his lawyer. But, when the ordinary criminal law will not be able to deal with the situation, then and only then, can the preventive detention law can be taken recourse to.

20. The facts in that case i.e. *Rekha* (Supra), was that the detenu was selling expired drugs after changing their labels. It was under such circumstances, that the Apex Court held that the relevant provisions under the IPC as well as the Drugs and Cosmetics Act being sufficient to deal with such situation, the detention order in question, was illegal.

21. The facts, in the instant case, are, however, different. Not only was there a situation on the day of the rally, but, even prior to holding of the rally and soon thereafter, as well; wherein the members of the organization, to press through their demands, had resorted to interfering with the administration of the district, as can be seen from the records.

22. Seemingly, under such situation, the district administration was left with no option but to invoke the Act of 2014. In the case of *Haradhan Saha* (supra), the Apex Court held that the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future, behaviour of a person based on his past conduct in the light of the surrounding circumstances. Therefore, merely, because a detenu is liable to be tried in a criminal court for commission of a criminal offence, would not by itself debar the Government from taking action for his detention under a preventive law.

23. Similar was the observation of the Apex Court in the case of *Subramanian* (supra), wherein the Apex Court held that on the basis of the incident and also the past incidents mentioned in the grounds of detention, the detaining authority having arrived at a subjective satisfaction that the detenu, by his actions, have acted in a manner prejudicial to the maintenance of public order, detention of the detenu was found to be justified. Thus, the findings of the High Court in this regard, was upheld.

24. In the case of *Gautam Jain* (supra), the Apex Court held that where the detention order is based on more than one ground, independent of each other, detention order would survive even if one of the grounds is found to be non-existing or legally sustainable. However, where the detention order is found with on one composite ground, it would be vitiated if such ground is found fault with. Therefore, the contention of the learned counsel for the petitioners Mr. Mantaw, that since the detenu Suraj Ligu has already been discharged in connection with Itanagar Police Station cases, one of the grounds for his detention being his

involvement in the criminal case registered with Itanagar Police Station, his detention being unsustainable cannot be accepted.

25. As aforementioned, the Advisory Board constituted under the Act of 2014, after thorough examination of the materials produced before it, and upon interaction with the detenues themselves, found that there were sufficient grounds for their detention under the Act of 2014. That being the position, I am of the considered view that interference of this Court in exercise of powers conferred under Article 226 of the Constitution of India, is not called-for.

26. However, while taking this view, it may be noted that as per the Act of 2014, the maximum period for which any person can be detained pursuant to the detention order which has been confirmed U/s. 12, is up-to 6(six) months from the date of detention. Therefore, it will be incumbent upon the State respondents to keep this in mind, more so, when the order, dated 03.09.2018 produced by the learned Senior Addl. Advocate General, Arunachal Pradesh, confirming the order of detention passed by the Deputy Commissioner-cum-District Magistrate, West Kameng District, Bomdila, does not contain any specific period of detention of the detenues. In other words, the State respondents shall not keep the detenues under preventive custody longer than the situation demands or beyond the prescription of the Act of 2014.

23. But for the aforesaid observation, the writ petition stands dismissed.

24. The records produced by Mr. Ete, learned Senior Addl. Advocate General, Arunachal Pradesh, be returned back forthwith.

JUDGE

Bhaskar