

DISTRICT: SOUTH 24-PARGANAS.

IN THE HIGH COURT OF CALCUTTA
APPEAL FROM CONSTITUTIONAL WRIT
JURISDICTION
(MANDAMUS APPEAL)
APPELATE SIDE

MEMORANDUM OF APPEAL FROM ORIGINAL ORDER NO. 301 OF 2006

F.M.A. NO. 799 OF 2006

M.A.T. NO. 1858 OF 2006

ARISING PIT OF W.P. NO. 9504(W) OF 2006

In the matter of:

1. BA AUNG

Son of Late Tun Tha Phu

2. SOE WIN

Son of Late Ukyaw Zan

Both present in Dum Dum Central Correctional Home
and both having their place of residence in Kolkata at
C/O.H.R.I., Sohini Apartments, 3, Parbaty Chakraborti
Lane, Kolkata – 700 026.

.....Petitioners

Versus

Union of India & Ors.Respondents

Mr. M.P. Chakarborty

Mr. Debashish Banerjee

Mr. Dipendra Mullik

.....for Appellants

Ms. Anwara Qureishi

....for Union of India

In Re: CAN 3708 of 2006

On 12th December 2006 in presence of the learned Counsel for the State, Mr. Anup Kumar Das, an order was passed on receipt of Commissioner of Ministry of Home, Union Government and the State Government, directing the State Government to inform this Court as to whether the State Government wanted detention of the petitioners for any other purpose or not. We also desired that an affidavit, in regard thereto, be filed by the State Respondent and as such the matter was adjourned till 21st of December 2006.

In spite of the aforesaid order being passed, today no one appears on behalf of the State Government nor has any affidavit been filed. We fail to understand as to why the State Government has not responded to the order passed on 12th December 2006. The detention is continuing and in our view the same is without authority of law which really affects the personal liberty of the persons concerned. Central Government has decided to allow the detainees to leave for Sweden. In view of the silence being maintained by the State Government, we can safely presume that the State Government does not require detention of the appellants for any other purpose and we record the State Government is deemed to have consented to the decision taken by the Central Government.

We, therefore, allow the writ petitioners to have the exit permission strictly in accordance with the decision of the Central Government. The petitioners would thereafter be released for that purpose and the jail authorities are directed to handover the petitioners to the United Nations High Commissioner for Refugees with the prior intimation and communication to the Ministry of Home Department,

Government of West Bengal as well as to the Ministry of Home Department, Union of India. The said authorities thereafter shall allow the petitioners to leave for Sweden.

The appeal and the application, being CAN 3708 of 2006, stand disposed of.

Urgent Xerox certified copy, if applied for, be given to the parties on priority basis.

Sd/-

(Kalyan Jyoti Sengupta, J

Sd/-

Arun Kumar Bhattacharya, J