

(1990) 01 MAD CK 0042
In the Madras High Court
Case No : Writ Petition No. 11394 of 1989

G. Pushpalatha

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 11-01-1990

Acts Referred:

Citation : (1990) CriLJ 2359

Hon'ble Judges : S.T. Ramalingam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : T.K. Sampath, for the Appellant; G. Krishnamurthy, Assistant Public Prosecutor, for the Respondent

Judgement

Sivasubramaniam, J.—This writ petition has been filed for issue of a habeas corpus to produce the body of the petitioner's husband, namely,

Govindan alias Choolai Govindan, before this Court and set him at liberty.

2. The first respondent passed the impugned order of detention in exercise of the power conferred by the sub-section (1) of S. 3 of Tamil Nadu

Act 14 of 1982 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

3. The facts leading to the impugned order have been elaborately set out in the order of detention and therefore it is unnecessary to repeat the

same here. Though the order of detention has been challenged on various grounds, Mr. T. K. Sampath, learned counsel for the petitioner confined

his arguments to only one point, namely, that the representation made by the detenu before the Advisory Board on 20-3-1989 was not placed

before the Government before passing the order of confirmation on 10-4-1989. According to the learned counsel, a written representation was

filed before the Advisory Board setting out the defence in detail and requesting for production of the personal search register and the lock-up

register from the concerned police station to show that the detenu was illegally detained in the police station for a number of days before the order

of detention came to be passed. The fact that such a representation was made before the Advisory Board is not in dispute now. It is contended on

behalf of the petitioner that those documents required by the detenu were very relevant documents to establish his case of illegal custody and

therefore they ought to have been made available to the detenu to enable him to make effective representation before the Advisory Board.

4. Mr. Krishnamurthi, learned Additional Public Prosecutor appearing for the respondents, submitted that the respondents are not concerned with

the representation made before the Advisory Board as it was entirely a matter for the Advisory Board to consider. Admittedly, the representation

made before the Advisory Board was not considered by the Government at the time of passing the order of confirmation. A stand was taken on

behalf of the respondent that it was not necessary for the Government to consider the representations of the detenu laid before the Advisory

Board. We are unable to appreciate the said contentions raised by the learned Additional Public Prosecutor.

5. It is well-established by now that all the representations made by the detenu and all the relevant materials which become available till the

Government passed the order of confirmation, have to be considered by the Government. This position has been considered by the judgment of

this court in *Madathi, A. v. The District Collector, Tirunelveli*, 1987 MLW (510, wherein it has been held as follows :-

It is admitted that no representation was submitted by the detenu to the Government. But, admittedly, a representation was presented to the

Advisory Board in person on 23-1-1987 when he appeared before the Advisory Board. From the counter of the second respondent, it is clear

that the representation submitted before the Advisory Board was not forwarded to the Government at all. The law requires that the representation

of the detenu should be considered by the Government even at the time of the passing of the confirmation order, but the Government could not do

so, since the representation has not been forwarded by the Advisory Board. Since the opinion of the Advisory Board discloses that a written

representation has been made by the detenu, even if the Board has failed to sent it, the Government ought to have sent for the same, considered it,

and then passed a final order. The counter also indicates that the Government was aware that there was a written representation. Under these

circumstances, we are of the view that the non-consideration of the representation of the detenu is violative of the constitutional provisions, and as such the order is vitiated.

In view of this legal position, there is no difficulty in holding that the non-consideration of the representation made by the detenu before the

Advisory Board and the failure to supply the documents required by the detenu will vitiate the order of detention.

6. In the result, the writ petition is allowed, the impugned order of detention is set aside and the detenu is directed to be set at liberty provided he is

not required in any other case.

7. Petition allowed.