
(1991) 11 MAD CK 0043
In the Madras High Court
Case No : Writ Petition No. 11260 of 1991

Govindarasu

APPELLANT

Vs

The State of Tamilnadu and Another

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) LW(Cri) 595

Hon'ble Judges : Maruthamuthu, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : R. Subadra Devi, for the Appellant; G.M. Syed Faziuddin, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.M. Natarajan, J.—This writ petition is filed under Article 226 of the Constitution of India by the detenu for the issuance of a writ of

habeas corpus for quashing the order of detention dated 11.5.1991 and for setting the detenu at liberty.

2. The detenu came to the adverse notice as Bootlegger in view of the adverse cases referred to in the preamble and he was detained on the basis

of the ground case.

3. The impugned order was passed by the District Magistrate and Collector of Thanjavur in exercise of the powers conferred under S.3(1) of the

Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas Immoral Traffic Offenders and Slum

Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) hereinafter called the Act with a view to preventing the detenu from acting in any manner

prejudicial to the maintenance of public order.

4. Though the learned counsel for the petitioner challenged the order on various grounds, confined her arguments to the only ground viz., the

Government Order G.O.Ms.No.109 Home/Prohibition and Excise Department dated 18.4.1991 does not speak about the circumstances

prevailing on the date of 18.4.1991 and which does not have application for exercising the said power on a later date, more so after 1-1/2 months,

from the date of the Government Order. The version of the Government Order G.O. Ms. No. 109 dated 18.4.1991 evidently did not intend to

exercise the powers conferred on that date i.e., 11.5.1991 on a future date, as the word "circumstances that are likely to be prevailed" is

conspicuously absent. The above word "evidently" means the circumstances in praesenti (i.e. 18.4.1991) that is prevalent on the date of the order

and it is further evident that the Government did not want the District Magistrate to exercise the powers for any subsequent periods as the

circumstances which are likely to prevail for the further periods has not been mentioned in the Government Order. Hence the detention order

clamped by the Collector has to be quashed on this ground alone.

5. It is in substance that there is no valid delegation by virtue of the above G.O. for passing the impugned order by the 2nd Respondent. No

counter has been filed. In this connection, learned counsel for the petitioner drew our attention to the decision in Vela @ Velangani & Joney v.

State W.P. No. 2397 of 1991 Order dated 11.10.1991 the Division Bench to which one of us viz., K.M. Natarajan, J., was a party, wherein

similar questions have been considered and found in favour of the detenu. In the above quoted case it was held by the Bench that there was no

valid allegation in favour of the detaining authority and as such the Government Order itself is held to be valid. The ratio Laid down in the above

decision is in all fours applicable to the facts of this case. Applying the said ratio we have no hesitation in holding that there was no valid delegation

in favour of the first respondent to pass the impugned order of detention and consequently the order is liable to be quashed. Accordingly, the writ

petition is allowed, the impugned order of detention is hereby quashed and the detenu is directed to be set at liberty forthwith unless he is required

in connection with any other case.