
(2014) 10 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 28696 of 2014

J. Bujji

APPELLANT

Vs

Government of A.P.

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 11, 11(2), 2(a), 2(g), 3(1)

Citation : (2015) 1 ALD(Cri) 892 : (2014) 6 ALT 421

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : S. Dushyanth Reddy, H. Prahalada Reddy and T. Nagarjuna Reddy, Counsel, Advocate for the Appellant

Judgement

Vilas V. Afzulpurkar, J.—Heard.

In all these matters, the orders of detention passed by the Collector and District Magistrate-2nd respondent are questioned by the near relatives of the detenus. The orders show that they are passed under Section 3(1) and (2) read with Sections 2(a) and 2(g) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, giving various reasons in support of the said orders. It is also not in controversy that in each of the detention orders, the Collector and District Magistrate has directed that detenu shall be detained for a period of ten months. The respective orders with respect to each of the petitioners are questioned in these writ petitions on various grounds including the ground that the Collector and District Magistrate has no power to prescribe the period of detention and a power to determine the period is only vested with the Government, subject to opinion of the Advisory Board. This aspect is primarily urged and is supported by case law as discussed hereunder.

Though the learned Advocate General has filed a counter affidavit as well as the

set of relevant papers in all these writ petitions, on the above contention mentioned hereunder, since there is no controversy as the issue is settled by the decisions of the Supreme Court as well as this Court, the said counter affidavit and relevant papers are not referred to in detail, since the writ petitions are being heard and disposed of on the first contention aforesaid.

2. The legal position in this regard is settled by a decision of the Hon''ble Supreme Court in Makhan Singh Tarsikka Vs. The State of Punjab, , para "4" thereof is extracted hereunder:-

"Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (S. 9) and provides that if the Board reports that there is sufficient cause for the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (S. 11). It is, therefore, plain that it is only after the Advisory Board, to which the case had been referred, reports that the detention is justified, the government should determine what period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported. The learned Advocate General, however, urged that in view of the provision in S. 11(2) that if the Advisory Board reports that there is no sufficient cause for the detention the person concerned would be released forthwith, the direction in the order dated 30-07-1951 that the petitioner should be detained till 31-03-1952 could be ignored as mere surplusage. We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

3. This court also considered the very question of law in W.P. No. 23874 of 2014 and the similar detention order was set aside by order, dated 22-09-2014.

4. In view of the said question of law having been decided by the Hon''ble Supreme Court as well as this Court, the orders impugned herein also cannot be sustained on that ground. Hence, while leaving the other contentions of the respective petitioners open, the impugned orders are set aside. The detenus shall be released forthwith, unless they are required in connection with any other case.

5. Accordingly, the writ petitions are allowed. No order as to costs. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed.