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(1989) 02 MAD CK 0043

In the Madras High Court

Case No : Writ Petition 9682 of 1988

Jayaprakash — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 13-02-1989

Acts Referred:
Constitution of India, 1950 — Article 22, 226

Citation : (1989) LW(Cri) 298

Hon'ble Judges : Janarthanam, J;Annoussamy, J

Bench : Division Bench

Advocate : S. Swamidoss Manokaran, for the Appellant; G.R. Edmund, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a petition by the friend of the detenu under Article 226 of the Constitution of India, for the issuance of a writ of habeas corpus quashing the order of detention passed against the detenu by the Commissioner of Police, Madras city, on 17-3-1988 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order as a Goonda.

2. The main ground urged before me by learned Counsel for the Petitioner is that the representation made by the detenu was not considered by the appropriate authority. This point was gone into elaborately by us in Elathe Mary v. Commissioner and Secretary to Govt. of Tamil Nadu, Prohibition & Excise Dept., Madras W.P. 7269/88 order dated 24-1-1989.

3. As per Section 8 of the Tamil Nadu Act 14 of 1982, representation from the detenu has to be made to the State Government, which implies that it should be considered by the same. The State Government, being a composite body works through any one of its human agency in conformity with the rules of business As per the rules of business which were in force at the time when the representation was considered and rejected, the authority to deal with the same is the Adviser

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to the Governor.

4. In the present case, the representation was considered and rejected by the Secretary to Government on 30-4-1988; on the footing of some sort of working arrangement made by the Adviser without any authority.

5. The consideration of the representation is an important guarantee of the right of the detenu under Article 22 of the Constitution of India and when it is not considered by the proper authority, as in the present case, the order of detention becomes void.

6. In the result, the writ petition is allowed and the order of detention is set aside.

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