
(2012) 11 MAD CK 0141
In the Madras High Court
Case No : H.C.P. (MD) No. 1081 of 2012

Kavitha

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)

Citation : (2013) 1 LW(Cri) 149

Hon'ble Judges : S. Nagamuthu, J; M. Jaichandren, J

Bench : Division Bench

Advocate : Veera Kathiravan, for the Appellant; C. Ramesh, Assistant Public Prosecutor, for the Respondent

Judgement

M. Jaichandren, J.—This Habeas Corpus Petition has been filed to call for the records relating to the order of the second respondent, dated 31.07.2012, made in P.D. No. 36/2012, and quash the same, and to produce the detenu, namely, Ponnusami, son of Kuppusami, aged about 31 years, confined in the Central Prison, Tiruchirappalli, before this Court and to set him at liberty. The petitioner has stated that the second respondent had passed the impugned detention order, dated 31.07.2012, under sub-section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982. (Tamil Nadu Act 14 of 1982), read with the order issued by the State Government, in G.O. (D) No. 143, Home Prohibition and Excise (XVI) Department, dated 18.7.2012, under sub-section (2) of Section 3 of the said Act, directing the detention of Velpandi, in the Central Prison, Tiruchirappalli, terming him as a "Goonda".

2. Even though various grounds had been raised by the petitioner, in the present Habeas Corpus petition, while challenging the impugned detention order, dated 31.7.2012, the learned counsel appearing on behalf of the petitioner had submitted that the said detention order, is liable to be set aside, merely on the

ground of delay in the disposal of the representation, dated 23.08.2012, made on behalf of the detenu.

3. It has also been pointed out that the representation made on behalf of the detenu, dated 23.8.2012, was received, on 29.08.2012, and the remarks were called for, on 31.08.2012. The remarks had been received, only on 12.09.2012, after a delay of 12 days, out of which 4 days i.e. 01.9.2012, 02.9.2012, 08.09.2012 and 09.09.2012 were government holidays. As such, there has been an actual delay of 8 days in dealing with the representation made on behalf of the detenu. The learned counsel also further pointed that the delay has been admitted in the counter affidavit filed by the respondents at Paragraph No. 5.

4. The learned counsel for the petitioner had submitted that the inordinate delay that had occurred in the disposal of the representation, made on behalf of the detenu, would vitiate the detention order passed by the Detaining Authority.

5. The learned Additional Public Prosecutor, appearing on behalf of the respondents, had submitted that the Habeas Corpus Petition, filed on behalf of the detenu, is premature in nature,

6. The learned counsel had relied on the decision of the Supreme Court, in D.M. Nagaraja Vs. The Government of Karnataka and Others, to state that there is no obligation on the part of the Detaining Authority or the State Government to dispose of the representation made on behalf of the petitioner, before the order of detention is approved.

7. In a number of decisions, the Apex Court, as well as the various High Courts, have made it clear that the delay in disposing of the representation would vitiate the order of detention. Some of them are as follows:

1. Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others,
2. Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi
3. Rajammal Vs. State of Tamil Nadu and Another,
4. Senthil Kumar Vs. The District Magistrate and District Collector and State of Tamil Nadu
5. Jakkulin Vs. State of Tamil Nadu (2008 (2) MLJ (Cri.) 1571).
6. State of Tamil nadu rep. by its Secretary to Government, Home, Prohibition and Excise (ix) Department, Secretariat, Chennai and another (2009(1) MWN (Cr.) 400 (DB).

7.1. In the decision, in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, the Supreme Court has held that the constitutional requirement of Article 22(5) will not be satisfied, unless the detenu is given the earliest opportunity to make a representation against the detention. Thus, it is clear that the State has a concomitant and corresponding duty to dispose of the

representation, without any delay. Therefore, the Supreme Court has repeatedly held that the State government is bound to consider the representation made on behalf of the detenu, at the earliest possible, as it is a mandatory obligation cast on it, by Clause (5) of Article 22 of the Constitution of India.

7.2. In *Ramamurthy Vs. The State of Tamil Nadu*, , this Court had set aside the order of detention on the ground of delay in considering the representation made on behalf of the detenu,

7.3. In a decision of the Constitution Bench of the Supreme Court, in *Jayanarayan Sukul Vs. State of West Bengal*, , it has been held as follows:-

The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities.

7.4. The Supreme Court, in *Mahesh Kumar Chauhan alias Banti Vs. Union of India and others*, , while dealing with a case of preventive detention, has observed that an undue and unexplained delay in the disposal of the representation of the detenu is in violation of Article 22(5) of the Constitution of India, rendering the detention order invalid.

7.5. In *Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others*, the Supreme Court has observed that a representation of a detenu, whose liberty is in peril, should be considered and disposed of, as expeditiously as possible. The continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. If any delay occurs in the disposal of a representation, such delay should be explained, by the appropriate authority, to the satisfaction of the Court.

7.6. In the decision, in *Maya Venkatesan Vs. State by Deputy Superintendent of Police, Crime Branch CID*, it has been held that it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of the delay, but how it is explained by the Authority concerned.

7.7. In the decision, in *Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9* and another 2007(2) MWN (Cr.) 145 (DB), this Court had held that an unexplained delay of three days in the disposal of the representation, made on behalf of the detenu, would be sufficient to set aside the detention order.

7.8. In *G. Kalaiselvi Vs. The State of Tamil Nadu* (2007(5) CTC 657), a Full Bench of this Court had held that it is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making a

representation and such right of the detenu, obviously, encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay, and the result of such representation should also be communicated without any such delay.

7.9. In *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, it has been held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safe guards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

7.10. In *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others*, 261), it had been held that any unexplained delay in the disposal of the representation made on behalf of the detenu would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

7.11. In fact, this Court, in its order, dated 9.11.2011, in *Smt. Sowdun Bivi Vs. The State of Tamilnadu* (H.C.P. No. 108 of 2011), has clarified the position relating to the issue regarding the consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, in *Rajammal Vs. State of Tamil Nadu and Another*, Thus, it is clear, from the catena of cases decided by the Supreme Court, that there is an obligation cast on the Detaining Authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the Constitution of India.

7.12. In *Rashid Sk. Vs. State of West Bengal*, the Supreme Court has held that the right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty-the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

7.13. In *Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others*, the Supreme Court has held thus:-

...the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal not only by the State Government under the relevant provision of the Statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or State Government, as the case may be, has caused delay due to negligence, callous inaction, avoidable red-tapism and undue protraction by the authorities concerned. Expedition is the rule and delay defeats mandate of Article 22(5) of

the Constitution of India.

7.14. In *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others*, the Supreme Court has held that an avoidable and unexplained delay in the disposal of the representation would result in rendering the continued detention of the detenu illegal and constitutionally impermissible.

7.15. In *Tara Chand Vs. State of Rajasthan and Others*, and *Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others*, the Apex Court has held that any inordinate and unexplained delay on the part of the Government, in considering the representation, renders the detention illegal.

7.16. In *Rajammal Vs. State of Tamil Nadu and Another*, it has been held as follows:-

It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay, Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest.

7. 17. In *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others*, it has been held as follows:-

... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

7.18. In a recent decision, in *Ummu Sabeena Vs. State of Kerala and Others*, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards.

The expression "as soon as may be", in Article 22(5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

8. In the present case, the delay caused in the disposal of the representation, dated 23.8.2012, made on behalf of the detenu, has not been properly explained by the respondents, In such circumstances, in view of the decisions cited supra, the detention order, dated 31.07.2012, passed by the second respondent, is set aside.

The detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause.