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**(1999) 08 MAD CK 0038**  
**In the Madras High Court**  
**Case No : H.C.P. No. 1821 of 1998**

Kothali Rajendran

APPELLANT

Vs

District Collector and District Magistrate and Another

RESPONDENT

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**Date of Decision :** 13-08-1999

**Acts Referred:**

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 10

**Citation :** (2000) CriLJ 1944

**Hon'ble Judges :** V. Bakthavatsalu, J;N. Dhinakar, J

**Bench :** Division Bench

**Advocate :** B. Pugalendhi, for the Appellant; S. Anbalagan, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

V. Bakthavatsalu, J.—The petitioner is the father of the detenu. The detenu namely Murugan has been detained by the first respondent under

Act 14 of 1982 after identifying him as a Goonda. The petitioner has come into adverse notice of the authorities in four cases registered under

several provisions of the Indian Penal Code. It is alleged in the grounds of detention that on 1-10-1998 at 8.30 a.m. the detenu indulged in the

acts of violence and that the bottles were broken and that nearby shop-keepers closed their shops in order to save their lives. The case in ground

case is registered in crime number 150 of 1998. On the basis of the above materials the detaining authority has come to the conclusion that the

detenu is a Goonda and accordingly the detention order was clamped on the detenu.

2. The petitioner has filed this petition challenging the detention on several grounds. One of the main grounds urged by the petitioner is that the

detention order, in Tamil, furnished to him, is defective and that it is not in conformity with the English version of the detention order. It would be

relevant at this stage to look into the grounds of detention. In paragraph 7 of the grounds of detention it is stated that any representation that is

made by the detenu will be duly considered by the Government and will also be placed before the Advisory Board" for consideration of his case

u/s 10 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug offenders. Forest Offenders, Goondas, Immoral Traffic

Offenders and Slum Grabbers Act (The Tamil Nadu Act 14 of 1982) (hereinafter referred to as the Act"). But in Tamil version of the detention

order the relevant passage reads thus:

It is thus seen that the sentence in the English version, i.e., the representation will be placed before Advisory Board" is missing in the Tamil Version.

Relying upon the above variation, it is contended on behalf of the detenu that the detenu was not informed that any representation considered by

the Government will also be placed before the Advisory Board.

3. On the other hand, the learned Additional Public Prosecutor relying upon several decisions, contended that in the Tamil Version, it is specifically

stated that his case will be placed before the Advisory Board as per Section 10 of the Act. The learned Additional Public Prosecutor placed much

emphasis on the word (\*\*\*) and he also contended that the word (\*\*\*) will include both ""case"" and ""representation"" and as such there is no

variation between English and Tamil Versions.

4. The Division Bench (N. Dhinakar, J. and V. Bakthavatsalu, J.) had an occasion to consider an identical question and the decision of the same is

reported in (1999) 1 MLW 339 (Devarajan v. State). In the above decision, this Division Bench has held that the failure on the part of the

Government to furnish correct and true translated version of English order in Tamil to the detenu would vitiate the order of detention.

5. The learned Additional Public Prosecutor cited number of decisions to substantiate his contention that the failure to incorporate in the Tamil

version of the detention order that ""the representation will be placed before an Advisory Board"" would not vitiate the detention order. Apart from

the reported case in Devarajan v. State, (1999)1 MLW 339 this Division Bench had an occasion to consider similar question in H.C.P. No.

1351/98. In the above case also the Division Bench has observed that in English version it is stated that ""the representation sent by the detenu will

be duly considered by the Government and will also be placed before the Advisory Board for consideration of his case u/s 10 of the Act""- and that

in the Tamil version of the detention order it is not specifically mentioned that the "representation will be placed before the Advisory Board".

6. It is seen from the decision cited by the learned Additional Public Prosecutor that the two different sets of Tamil translation came up "for

decision before several Division Benches of this Court. We feel that it is just and necessary to divide the above categories into two. The first

category of cases as appeared in the Tamil version of the detention order reads thus :

(Vernacular Matter Omitted)

The second category of Tamil Version reads thus;

(Vernacular Matter Omitted)

It is thus apparent that the Tamil language employed in the above categories are different. As regards the first category of Tamil version which is

referred to above, this Court had an occasion to consider the same, in Devarajan's case 1999 (1) MLW 339 referred to above. In the above

case, this Division Bench has also relied upon the earlier judgment of Division Bench of this Court in H.C.P. No. 1184 of 1997 dated 26-3-1998

and H.C.P. No. 6 of 1998 dated 30-4-1998 and 899 of 1997 dated 17-4-1998, In H.C.P. No. 1184 of 1997, the Tamil version of the detention

order regarding "representation" is akin to the Tamil version extracted in Devarajan's case.

7. The second category of Tamil version was the subject matter in H.C.P. No. 1434 of 1998 1999 (2) MLW (Cri) 810 and H.C.P. No. 899 of

1997. It is stated in the Tamil version of detention order in H.C.P. No. 899/97 at Paragraph 6 that ""the case of the detenu will be placed before

the Advisory Board as per Section 10 of the Act"". In the decision rendered in H.C.P. No. 1434 of 1998 by the Division Bench consisting of S.

Jagadeesan, J. and K. Gnanaprakasam, J. and the decision rendered in H.C.P. No. 1859/98 by the Division Bench consisting of the Chief Justice

and S. Jagadeesan, J. the second category of Tamil version which is referred to above, is found.

8. Now, we have to see whether the decisions rendered by several Division Benches of this High Court are uniform. With regard to the first

category of Tamil translation in H.C.P. No. 1184/97. the division Bench consisting of T. Jayarama Chouta, J. and V. Bakthavatsalu, J. has

observed that in the Tamil grounds of detention the words that ""any representation that is made will also be placed before the Advisory Board for

consideration"" has been omitted and that that will be sufficient to hold that the detention order is vitiated. But the Division Bench consisting of T.

Jayarama Chouta, J. and A. Raman, J., in H.C.P. No. 679/98 has observed that the meaning of the Tamil version is that any representation that is

made by him will be duly considered by the Government and he has got right to make representation before the Advisory Board and if he wants to

have hearing he can make a mention before the authority and that a reading of the Tamil version will go to show that all those which are mentioned

in English have been mentioned even in the Tamil version. In the judgment of the Division Bench consisting of C. Shivappa, J., and A. Ramamurthi,

J., in H.C.P. No. 1206/97 which relate to the first category of translation, the Division Bench has held that there is reference about the Advisory

Board and also Section 10 of the Act in the Tamil version of the detention order and such a variation would not vitiate the detention. All the above

cases except H.C.P 1206/97 were considered by us in Devarajan's case (1999) 1 MLW 339. While the matters thus stood another Division

Bench of this Court consisting of S. Jagadeesha, J. and K. Gnanaprakasam, J. in H.C.P. No. 1434/98 1999 (2) MLW 810 has held that in the

above Devarajan's case the word either ""representation or the "case" of the detenu will be placed before the Advisory Board"" is totally missing

and that so far as the case in H.C.P. 1434/98 1999 (2) MLW 810 is concerned it has been stated that the case of the detenu will be placed before

the Advisory Board for consideration in accordance with Section 10 of the Act. The Division Bench also relied upon the judgment rendered in

H.C.P. No. 679/98, dated 16-10-98 and also the judgment in H.C.P. No. 1206/97 dated 30-4-1998. It is seen from the perusal of the Tamil

version of the detention order that the Tamil version which is the subject matter in H.C.P. No. 679/98 and H.C.P. No. 1206/97 falls within the first

category, which is referred to above. The tamil version extracted in H.C.P. No. 1434/98 falls under second category. In the judgment rendered in

H.C.P. No. 1859 of 1998 dated 30-6-1999, the judgment rendered in H.C.P. No. 1434/98 dated 10-6-99 (1999 (2) Mad LW (Cri) 810) was

relied upon. The Tamil version which is the subject matter of H.C.P. No. 1859/98 also falls under the second category. In all the above cases the

judgment of this Division Bench, that is the case of Devarajan v. State, 1999 (1) MLW 339 was distinguished on the ground that the language

employed in both cases differ. In H.C.P. No.1859/93 the Division Bench consisting of Chief Justice and, Jagadeesan, J. has held that in

Devarajan's case the Division Bench has rightly held that the Tamil version of the grounds of detention is not in conformity with the English version.

In another decision rendered in H.C.P. No. 26/99 by a Division Bench of this Court consisting of V.S. Sirpurkar, J. and V. Kanagaraj, J. the

Division Bench did not approve the reasoning given in H.C.P. No. 1206/98. The Division Bench has held that it cannot be said that the judgments

in H.C.P. No. 1434 of 1998 1999 (2) MLW 810 and H.C.P. No. 1859/98 had any conflict with the judgment in Devarajan's case, decided by

us. Analysing the entire case law on the subject, the Division Bench, in H.C.P. No. 26 of 1999, has held that the law laid down in Devarajan's,

1999 (1) MLW 339 case which has been approved by the Division Bench consisting of the Honourable Chief Justice and S. Jagadeesan, J. later

on will have to be followed. It is thus seen that the judgment of the Division Bench in Devarajan's case, (1999 (1) MLW 339 with regard to the

first category of Tamil version has been approved and upheld by the subsequent Division Benches. Therefore, there can be no difficulty in holding

that if the Tamil version of the order contains the language shown in the first category, it would not be in conformity with the English version. The

Additional Public Prosecutor also now did not dispute the above proposition of law laid down in H.C.P. No. 26/99.

9. Regarding the second category of translation, it is contended by the learned Additional Public Prosecutor that the judgment of the Division

Bench in H.C.P. No. 1859/98 has to be followed. As already stated, the judgments rendered by the Division Bench consisting of S. Jagadeesan, J.

and K. Gnanaprakasam, J. and the division Bench consisting of Chief Justice and S. Jagadeesan, J. were in respect of Tamil version which falls

under the second category as regards the second category the Division Bench (N. Dhinakar, J. and V. Bakthavatsalu, J.) in H.C.P. No. 135/98

has held that the detenu must be informed that his representation will be placed before the Advisory Board in the language known to him and that it

is not sufficient to state that the case of the detenu will be placed before the Advisory Board as per Section 10 of the Act. The Division Bench has

allowed number of H. CPs. on this point. Though the judgment delivered by us in Devarajan's case (1999) (1) MLW 339 was considered in

subsequent division Bench cases, the judgment of this Division Bench regarding the second category of translated version was not cited before the

subsequent Division Benches consisting of S. Jagadeesan, J. and K. Gnanaprakasam, J. and the Chief Justice and S. Jagadeesan, J.

10. The second category of Tamil version came up for consideration before the Division Bench in H.C.P. No. 899/1997. The Division Bench has

held thus :

...We are afraid that that would not suffice. If the English version of the grounds of detention mentions in terms of Section 10 of the Act that the

representation would be placed before the Advisory Board, then, it was also imperative that the Tamil version of the grounds of detention should

also contain the assurance to the effect that his representation would be put before the Advisory Board. Omission of this assurance in the Tamil

version of the grounds of detention, in our opinion, would be fatal to the detention.

11. For the above proposition of law, the Division Bench has relied upon the earlier judgment of the Division Bench in H.C.P. No. 1184/1987

which relate to the first category of Tamil version. It is thus seen that the judgment of the Division Bench in H.C.P. No. 899/97 is the direct

decision regarding the second category of Tamil version. In fact, the Division Bench in H.C.P. No. 26 of 1999 has also pointed out that the above

judgment was not considered in H.C.P. No. 1206/97 on one aspect. The Division Bench in H.C.P. No. 26/99 again reiterated the earlier decision

as follows :

We have deliberately quoted the paragraph of the judgment in H.C.P. No. 899/97 as the same gives the clear ideas as to what alone was the

omission. The omission was only in respect of the assurance and nothing else than that. Thus, there was a judgment in the field wherein Section 10

was mentioned and yet, the view was taken that the omission of the assurance

would be fatal. Unfortunately, this aspect was not considered by the Division Bench while distinguishing the judgment in H.C.P, No. 1184/97 which alone was considered....

The Division Bench while considering the second category of Tamil version in H.C.P. No. 1424/98 1999 (2) MLW 810 and 1859/98 did not

refer to the judgment of the Division Bench in H.C.P. No. 899/97. Following the judgment of the Division Bench in H.C.P. No. 899/97, this

division Bench (N. Dhinakar, J. and V. Bakthavatsalu, J.) in H.C.P. No. 1351/98 has held thus :

....A reading of Section 10 of the Act will clearly show that the State has to mention two facts clearly in the order. Firstly, it must be stated that the

grounds of detention will be placed before the Advisory Board, Secondly, it must be stated that the representation made by the detenu will be

placed before the Advisory Board. In the above circumstances, the contention of the learned Additional Public Prosecutor that as it is stated in the

Tamil version of the grounds of detention that the case of the detenu will be placed before the Advisory Board for consideration as per Section 10

of the Act 14 of 1982 is sufficient, has got to be rejected.

12. In the above decisions the Division Bench has uniformly held that the detenu must be informed and assured that his representation will be

placed before the Advisory Board and that mere informing that the case of the detenu will be placed before the Advisory Board for consideration

will, not be sufficient. The subsequent Division Benches did not consider the ruling laid down by the Division Bench in H.C.P. No. 899/97 and

1351/98 and a batch of cases. When there is direct decision of two Division Benches with regard to the second category of Tamil version the

same should have been brought to the notice of the Division Bench which rendered the judgment in H.C.Ps. No. 1434 : 1999 (2) MLW (Cri) 810

and 1859/1998. If the Tamil version of the detention order regarding the representation as shown in H.C.P. No. 899/97 was produced before the

above Division Benches, the Division Benches would have taken a different view. On the other hand, the State has produced judgments which falls

under the first category. The judgments of the Division Bench in H.C.Ps. No. 1351/98 and 899/97 are earlier in point of time. As the judgment in

H.C.P. No. 1351/98 was not produced before the subsequent Division Benches,

the subsequent Division Benches have not considered the ruling laid down by the earlier Division Benches on this point.

13. In this case, it is not specifically stated in the Tamil version of the detention order that the representation of the detenu will be placed before the

Advisory Board. As already stated, Section 10 of the Act contains two clauses : the State has to place the grounds of detention and also the

representation made by the detenu before the Advisory Board for consideration. In English version the detenu was informed that any

representation made by the detenu will be duly considered by the Government and also will be placed before the Advisory Board for consideration

of his case u/s 10 of the Act. Therefore, in the Tamil version also it ought to have been stated that the representation will be placed before the

Advisory Board for consideration of his case u/s 10 of the Act. The word "case" or appeared in both versions is entirely different from the word

representation". The state is under the obligation to place the grounds of detention for consideration u/s 10 of the Act. That is why, the word

"case" is mentioned in the English version. If the words ""representation"" will be placed before the Advisory Board"" are not mentioned in Tamil

version it has to be held that there is variation between English and Tamil versions of the detention order. Therefore, in view of the judgments of the

earlier Division Benches and also the judgments of the Division Bench in H.C.P. No. 899/97, we hold that the failure to incorporate in the Tamil

version of the detention order that ""the representation made by the detenu will also be placed before the advisory Board"", is fatal and on that

ground the order of detention is vitiated.

14. The learned Additional Public Prosecutor contends that as there is conflicting judgment between different Division Benches, the case may be

referred to the Full Bench. There is no need to refer the matter to the Full Bench since the judgment rendered by us in Devarajan's case 1999 (1)

MLW 339 has been approved by all the division Benches. With regard to the second category of Tamil version there are two direct judgments of

the Division Benches which were not placed before the subsequent Division Bench. As already stated, if the Tamil version as contained in H.C.P.

No. 899/97 had been placed before the subsequent Division Benches the subsequent Division Bench would have affirmed our view. Hence we

hold that there is no need to refer the matter to the Full Bench.

15. The learned Additional Public Prosecutor contended that in this case the representation was placed before the Advisory Board and as such no

prejudice is caused to the detenu. We are unable to accept the above contention since in the case of breach of mandatory requirements the

question of prejudice could not and would not arise.

16. For the reasons stated above we hold that the Tamil version of the detention order is not in conformity with the English version of the detention

order and therefore, the order of detention is liable to be set aside.

17. In the result, the habeas corpus petition is allowed. The order of detention is set aside. The detenu is directed to be set at liberty forthwith

unless his detention is required in any other case.

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