

(1991) 02 MAD CK 0100
In the Madras High Court
Case No : Writ Petition No. 14211

K.P. Murugesan

APPELLANT

Vs

State by Home Secretary, Prohibition and Excise Dept.,
Madras and District Magistrate and Collector, Salem Dt.

RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Constitution of India, 1950 — Article 22
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1991) LW(Cri) 460

Hon'ble Judges : Thanikkachalam, J;Mishra, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; R. Shanmughasundaram,
Assistant Public Prosecutor, for the Respondent

Judgement

Mishra, J.—The brother-in-law of the Petitioner herein has been detained u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act 1982 (Tamil Nadu Act 14 of 1982). The order of detention was passed on 17.8.90 and pursuant to that the Petitioner's brother-in-law Varadhan was taken into custody on 18.8.90.

2. We do not intend in this case to go into the grounds of detention or to examine whether there was any valid reason to detain the detenu u/s 3(1) of the Act or not. It has transpired in course of hearing of this petition that the Government order u/s 12(1) of the Act has been issued only on 19.11.90 in G.O. (d) No. 255 Home, (Prohibition and Excise (XIII) Department Section 10 of the Act states:

In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them u/s 9 the

grounds on which the order has been made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under Sub section (3) of Section 3 Section 11 provides for the procedure to be adopted by the Advisory Board and the submission of the opinion of the Board or its majority in the shape of a report to the State Government Section 12 of the Act however states:

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as they think fit.

2. In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith. Article 22 of the Constitution of India, which besides Article 21 provides for the rights that any person may have been subjected to any detention or custody states that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest nor shall be denied the right to consult and to be defended by a legal practitioner of his choice and that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Exception to that however has been enumerated in Clauses 3 and 4 thereof in which it is said that the rights aforementioned shall not be available to any person Who is for the time being is an enemy alien or to any person who is arrested or detained under any law providing for preventive detention.

3. Coming to the preventive detention Article 22(4) provides.

Now law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:

(a) An Advisory Board consisting of persons who are or have been or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

Provided that nothing in this Sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub clause (B) of Clause (7) or.

b. Such person is detained in accordance with the provisions of any law made by Parliament under Sub clauses (a) and (b) of Clause (7).

4. What follows from this is that there can be a valid preventive detention for a

period of three months unless the opinion of the Advisory Board consisting of persons enumerated therein is obtained before the expiration of the said period of three months that there is sufficient cause for such detention. In other words, there can be no valid detention in the eye of law after the expiry of the period of three months unless such opinion of the Advisory Board is utilised to confirm and thus continue the detention of such a person beyond the period of three months but not beyond the period prescribed by the preventive law under which action is taken. The Act has prescribed the maximum period of detention in Section 13 and states:

The maximum period for which any person may be detained in pursuance of any detention order made under this act which has been confirmed u/s 12, shall be twelve months from the date of detention.

Thus a reading of this provision together with the above provisions makes it imperative that the detention order must be confirmed by the State Government within a period of three months from the date of detention.

5. Any order of confirmation made after the expiry of three months fixed under Article, 22 of the Constitution of India shall be invalid.

6. Our above view finds support from a judgment of the Supreme Court dealing with a case of detention u/s 3(1) and (3) of the West Bengal (Prevention of Violent Activities) Act being President's Act 19 of 1970 and considering a similar provision u/s 12 thereof, the Supreme Court of India in the case of Shibapada Mukherjee Vs. The State of West Bengal, has said.

Section 10 of the present act requires the State Government to refer the case to the Board within 30 days from the date of detention and Section 11 requires the Board to submit its report within ten weeks from such date.

The reason for prescribing these periods is obvious, that is to enable the State Government to decide, in the event of the Board reporting that there is sufficient cause for detention to confirm the detention order and to continue the detention thereunder "for such period as it thinks fit.

Section 12(1). The significant words in Section 12(1) are the words "confirm" the detention order and continue the detention thereunder, for such period as" the State Government thinks fit. The order passed or the decision made u/s 12(1) by the State Government, thus, falls into two parts (a) confirming the detention order upon the report of the Board as to the sufficiency of the cause for detention and (B) deciding to continue the detention under that order. It is clear that without such a report, or in the event of the report that there is no sufficient cause for detention, the detaining authority can detain a person for three months only from the date of detention and detention for a period longer than that would clearly be illegal. Thus, detention on the strength of the detention order only can validly continue upto three months. On receipt of the Advisory Board's report, Government wants to continue the detention for a further period, it has got to

make an order or a decision to confirm that order and continue the detention, for without such an order of decision the detention would not validly subsist beyond the period of three months. Though therefore Section 12 does not in express terms lay down that the decision to confirm the detention order and to continue thereunder the detention is to be made before the expiry of three months, such a time limit, is implicit in the section. The reason is plain. As aforesaid, Government cannot keep a person under detention for a day longer than three months if the report of the Board does not justify the detention, The continuation of detention beyond three months can only be made upon the government obtaining a report showing sufficiency of cause before the expiry of the period of three months. It is to enable the detaining authority to continue detention beyond three months when detentions must end that the Act provides 30 days within which reference has to be made and ten weeks within which report has to be obtained. The two weeks left thereafter give time to the Government to decide whether or not the detention order should be confirmed and detention thereunder should be continued. If there is no such decision to confirm the order and to continue the detention thereunder, detention has to come to an end on expiry of three months from the date of detention. Such an order or decision has, therefore, to be made before the period of three months, for, without such an order the detention would otherwise cease to be valid.

6. Taking a similar view in the case of *Nirmal Kumar Khandelwal Vs. Union of India (UOI) and Others*, in which a person was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and reading in the words of Clause (f) of Sections 8 and 10 thereof, which are *pari materia* with the provisions in Sections 10 and 12 of Act 14 of 1982 under which the detenu herein has been detained the Supreme Court has said:

The key words in Clause (f) are those which have been underlined. These very words were also employed in Section 12(1) of the West Bengal Prevention of Violent Activities Act, 1970, the interpretation of which had come up for consideration in the context of Article, 22(4) of the Constitution in *Shri Ujjal Mandal Vs. The State of West Bengal*, These words also occurred in Sections 10 and 11 of the Preventive Detention Act, 1950, which were in, *pari materic* with Sections 11 and 12 of the Maintenance of Internal Security Act 1971. The expression May Confirm in Clause (f) of Section 8 is significant. It imports a discretion. Even where the Advisory Board makes a report that in its opinion, there is sufficient cause for the detention concerned, the Government may not confirm the detention order. Read in the light of Article 22(4) of the Constitution and the context of the words to "continue the detention" they definitely lead to the conclusion that the *sine qua non* for continuing the detention made beyond the period of three months, is the confirmation of the detention order by the appropriate Government. Conversely, the non-confirmation of the initial order by the appropriate Government before the expiry of the period of three months "detention, shall automatically result in revocation and termination of the legal authority for its continuance. This position is further clear from the language of

Section 10 which provides: The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Clause (f) of Section, 8 shall be one year from the date of detention. The crucial words in the Section are" which has been confirmed under Clause (f) of Section 8. They underscore the same policy which underlines the constitutional mandate in Article, 22(4). These words put it beyond doubt that if the initial order of detention is not confirmed by the appropriate Government within three months of the date of the detention, the detention after the expiry of that period ipso facto becomes unauthorised and illegal.

7. The words in Section 12 of the Act are the State Government may confirm the detention order and continue the detention. not exceeding the maximum period specified in Section 13 as they think fit which are similar to the words in Clause (f) of Section 8 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. The words in Section 13 of the Act are the maximum period for which any person may be detained in pursuance of any detention order made under this Act which has been confirmed u/s 12." Any detention under the Act therefore unless confirmed under 12 within a period of 3 months from the date of detention cannot be confirmed after the expiry of the said period and continued beyond the period of three months.

8. In the instant case, the confirmation of detention has come after the expiry of the said period of three months. There was no legal detention on 19.11.90 which could have been confirmed by the State Government. The detention of Varadhan beyond the period of three months from the date of detention, that is to say, 18.8.90 is without any authority of law.

9. In the result the writ petition is allowed. The Respondents are directed to release the detenu forthwith from custody unless wanted in connection with any other case.