

(1996) 04 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6139 of 1996

Kundarapu Pavitra Devi

APPELLANT

Vs

The District Collector and District Magistrate, Karimnagar and
Others

RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11(1), 3(2)
Constitution of India, 1950 — Article 22, 22(5)

Citation : (1996) 3 ALD 380 : (1996) 2 ALD(Cri) 259 : (1996) 2 ALT 304 :
(1996) CriLJ 4061

Hon'ble Judges : V. Rajagopala Reddy, J; M.N. Rao, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for A. Prabhakar Rao, for the Appellant; Addl.
Advocate-General and Innayya Reddy, Standing Counsel, for Central
Government, for the Respondent

Judgement

M.N. RAO, J.—In this writ petition, the petitioner, Kundarapu Pavitra Devi, is challenging the order of detention passed by the District Collector and District Magistrate, Karimnagar, the first respondent, on 4-3-1996 under S. 3(2)(a) read with S. 3(1) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act") by which her husband, K. Damodar, a resident of Warangal Town, was detained for indulging in acts prejudicial to the maintenance of supplies of kerosene oil, a commodity essential to the community, by diverting subsidised kerosene oil meant for supplies in Karimnagar and Warangal Districts under the public distribution system for sale in blackmarket and thereby contravened Clause 3(i) of Kerosene (Restriction on Use and Fixation of Ceiling on Prices) Order and Clauses 3(i), 12(1)(ii) and (iii) and 28 of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. The grounds of detention dated 4-3-1996 supplied to the detenu are very elaborate, running to 12 1/2 typed foolscap pages. Although Shri Padmanabha Reddy, learned senior counsel, has addressed arguments on several

aspects, we are of the view that the writ petition must succeed on the short ground of inordinate delay in considering the representation of the detenu. In the additional counter-affidavit filed on behalf of the second respondent, the Government of Andhra Pradesh, Shri Rastogi, Secretary to Government (Political), General Administration Department, it is admitted that the detenu submitted a representation both to the State Government and the Central Government on 13-3-1996. A copy of the representation was received through the Superintendent, Central Prison, Warangal, on 15-3-1996 and, on the same date, the first respondent, namely, the Collector and District Magistrate, Karimnagar, was asked to send his parawise remarks. The State Government, on that very day, i.e. 15-3-1996, also forwarded the representation of the detenu to the Central Government requesting to consider the same under S. 14(1) of the Act and "communicate its decision directly to the detenu under intimation to the State Government". The para-wise remarks of the District Magistrate were received on 27-3-1996 and the same also were forwarded to the Central Government on 29-3-1996. A copy of the para-wise remarks was also forwarded to the Advisory Board on 29-3-1996. The Advisory Board met on 4-4-1996 and recorded the opinion that there was sufficient cause for detention of Shri Damodar. Actually the State Government passed the order on 15-4-1996 rejecting the representation of the detenu and the same was communicated to him through the Superintendent, Central Prison, on 16-4-1996. The decision of the Central Government, till now, has not been communicated either to the detenu of the State Government.

2. Under S. 3(4) of the Act the State Government is under an application to report the fact of detention to the Central Government together with the grounds on which the order has been made and the necessary particulars which have a bearing for ordering the detention. S. 14 of the Act confers power on the Central Government to revoke the detention orders. Ss. 3(4) and 14(1) of the Act are in pari materia with Ss. 3(2) and 11(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Interpreting the above two provisions the Supreme Court, in *Sabir Ahmed Vs. Union of India (UOI)*, , stated the legal position thus :

"Whether or not the detenu has under S. 11 a legal right to make a representation to the Central Government is not the real question. The nub of the matter is whether the power conferred by S. 11 on the Central Government carries with it a duty to consider any representation made by the detenu, expeditiously. The power under S. 11 may either be exercised on information received by the Central Government from its own sources including that supplied under S. 3 by the State Government, or, from the detenu in the form of a petition or representation. Whether or not the Central Government on such petition/representation revokes the detention is a matter of discretion. But this discretion is coupled with a duty. That duty is inherent in the very nature of the jurisdiction. The power under S. 11 is a supervisory power. It is intended to be an additional check or safeguard against the improper exercise of its power of

detention by the detaining authority or the State Government. If this statutory safeguard is to retain its meaning and efficacy, the Central Government must discharge its supervisory responsibility with constant vigilance and watchful care. The report received under S. 3, or any communication or petition received from the detenu must be considered with reasonable expedition. What is "reasonable expedition" is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable ted-tapism and unduly protracted procrastination."

3. Although the representation of the detenu was forwarded to the Central Government on 15-3-1996 and the para-wise remarks were sent on 29-3-1996 till now no decision was taken by the Central Government. The inaction on the part of the Central Government is clearly in breach of the constitutional mandate incorporated in Clause (5) of Article 22 of the Constitution of India.

4. The additional counter-affidavit, as already noticed supra, shows that the file was put up on 8-4-1996 to the Chief Secretary by the concerned Assistant Secretary although the Government had received the parawise remarks from the District Magistrate on 27-3-1996. The gap between these two dates is eleven days. Of these eleven days, four were public holidays - 28-3-1996 (Sri Rama Navami), 31-3-1996 (Sunday), 5-4-1996 (Good Friday) and 7-4-1996 (Sunday). The Chief Secretary signed the order on 11-4-1996 rejecting the representation of the detenu and the file was received back in the section on 12-4-1996. The succeeding two days, namely, 13th and 14th happened to be general holidays and the Government issued memo on 15-4-1996 informing the detenu that his representation was rejected and the same was communicated through the Superintendent, Central Prison, Warangal, on 16-4-1996.

5. It is seen from the additional counter-affidavit that the movement of the file for obtaining the orders of the Chief Secretary had commenced only on 8-4-1996 after the Government had received the opinion of the Advisory Board that there was sufficient cause for the detention of Shri Damodar. In other words, the Government actually had taken up consideration of merits of the representation only on 8-4-1996 after it had received the report of the Advisory Board.

There was no need for the Government to wait until the Advisory Board had expressed its opinion. In a similar fact - situation a Constitution Bench of the Supreme Court, in *Jayanarayan Sukul Vs. State of West Bengal*, , found fault with the attitude of the Government of West Bengal observing :

"In the present case, the State of West Bengal is guilty of infraction of the constitutional provisions not only by inordinate delay of the consideration of the representation but also by putting off the consideration till after the receipt of the opinion of the Advisory Board."

Reviewing the case-law on this aspect a two-member Bench of the Supreme Court in *Moosa Husein Sanghar Vs. State of Gujarat and others*, paragraph 13

held :

"These decisions show that in a case where the representation has been received before the case is referred to the Advisory Board, the appropriate Government must consider the same before the matter is referred to the Advisory Board and it would be justified in not considering the same only if there is no reasonable time to consider and dispose of the representation before the case is referred to the Advisory Board and in such a case the representation may be forwarded to the Advisory Board along with the case of the detenu."

6. The State Government, evidently, was under the mistaken impression that until it had received the opinion of the Advisory Board it should not proceed with the consideration of the representation on its merits. This view of the State Government is clearly wrong as can be seen from the legal position stated in the binding precedents cited supra. The Central Government also have not yet taken any decision on the representation of the detenu forwarded to it by the State Government on 15-3-1996. On both the counts we hold that the fundamental right of the detenu under Article 22(5) was breached. The writ petition is, therefore, allowed. The impugned order of detention dated 4-3-1996 passed by the Collector and District Magistrate, Karimnagar, in Rc. CC/Compl. 1/96 is quashed and the detenu, K. Damodar, who is now lodged in the Central Prison, Warangal, shall be set at liberty forthwith, if not required in connection with any other case.

7. Petition allowed.