

(1994) 04 MAD CK 0007
In the Madras High Court
Case No : H.C.P. No. 2211 of 1993

Malayalam

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1994) 2 LW(Cri) 582

Hon'ble Judges : Jayarama Chouta, J;Arunachalam, J

Bench : Division Bench

Advocate : V. Ravi, for the Appellant; S. Shanmuga Velayudham, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Arunachalam, J.—Petitioner Malayalam has been detained as a bootlegger under Tamil Nadu Act 14 of 1982, in pursuance of an order of

detention dated 2.10.193, passed by the second respondent district Magistrate and Collector, Tiruchirapalli, with a view to preventing him from

acting in any manner prejudicial to the maintenance of public order and public health.

2. It will be totally unnecessary to state the facts in detail, which led to the passing of the impugned order, for this Habeas corpus petition, will have

to be allowed on the short ground of long and unexplained delay in the disposal of representation forwarded by the detenu to the State

Government.

3. We find that two representations were forwarded to the State Government, one by the son of the detenu dated 12.10.1993 and the other by the

detenu himself on 16.10.1993. The first representation was received by the State

Government on 14.10.1993. After a delay of six days, on 20.10.1993 parawar remarks were called for from the second respondent. They were received on 8.11.1993 and the representation was rejected on 11.11.1993. Though there is some delay evident, at certain points, we find that a few holidays had intervened and further comments had to be obtained from the second respondent who was stationed at Tiruchirapalli. Within a month of its receipt, representation sent by detenu's son had been disposed of, and if, in the view of the Supreme Court expressed recently, some leeway will have to be given for administrative delays, we cannot hold, on the peculiar facts available, that the first representation, forwarded by the son of the detenu, had not been considered continuously and expeditiously.

4. However, we find that the second representation dated 16.10.1993 forwarded by the detenu himself, to the State Government was disposed of after an extraordinary delay of two months, only on 16.12.1993. It is settled law that there is no right in favour of the detenu to get his successive representations based on the same grounds, rejected earlier, to be formally disposed of again. In any event, no period of limitation is fixed for such an application preferred for revocation of the impugned order. At the same time, it cannot mean that the second representation can be put too slumber, without being attended to, within a reasonable time.

5. We have perused the representation sent by the son of the detenu as well as the contents of the representation forwarded by the detenu himself.

The 1st representation is general, vague and hold, without making any reference to the grounds of detention. However, the second representation dated 16.10.1993, forwarded by the detenu, contains fresh circumstances and new factual constituents, challenging the validity of the impugned order. If the second representation did not contain new and relevant facts and circumstances, then the position might have been different. It will be useful, to refer to the decision of the Supreme Court in Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others, wherein it has been stated as follows:-

It is true that Section 14 of the Act Prevention of black marketing and maintenance of Supplies of Essential Commodities Act (7 of 1980) clothes the authority with the power of revoking the detention order, and such a power

carries with it the duty to exercise it whenever and as soon as change or new factors call for the exercise of that power. However, the duty to exercise it arises only where new and relevant facts and circumstances come to light. There is no right in favour of the detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. In any event, no period of limitation is fixed for disposal of such an application u/s 14. The afore quoted observations clearly postulate, that as and when changed circumstances or new factor called for exercise of the power of revocation, then a correlated duty will be cast on the authority concerned, to dispose of the said representation, as he would have done, if this representation was the first and the earliest.

6. Recently, the Supreme Court has reiterated the same view in *Rumana Begum v. State of A.P.* (1993 SCC (Cri) 551) wherein the following observations were made.

We may here advert to the other defence that the representation dated October, 6, 1991 was not the first representation and as the earlier representations had been disposed of with promptitude the delay in dealing with this repetitive and non-statutory representation does not vitiate the detention. We are afraid that none of the so-called earlier representations did really raise the question of the validity of the order of the detention, nor contain a prayer for its revocation. In one of them, the detenu aired a grievance that the records of medical treatment of his son who had undergone a series cranial surgery had not been restored. Another representation pertained to matters other than the validity of the detention.

We have been taken through the contents of the earlier representations relied upon by the Detaining Authority as having in effect and substance raised the validity of the detention. We are satisfied that the purpose and content of the representations cannot be understood the way the Detaining Authority wants us to understand. They dealt with matters other than the validity of the detention. The first and the only representation made by the detenu which raised the question was the validity of the detention was the one made on October 6, 1991 to the Governor for consideration which was greatly delayed. The position that a representation made to the Governor must be treated as one made to the Government

was rightly accepted by the High court on the analogy of the pronouncement of this Court in Raghavendra Sing v. Superintendent, Distt. Jail,

Kanpur (AIR 1983 SC 356). The decisions in Kubic Darusz v. Union of India (1990 SCC (Cri) 277) and Philip-pa Anne Duke v. State of T.N.

(1982 (2) SCC 399) relied on by Shri G. Prabhakar, learned counsel for the State of Andhra Pradesh, do not advance its case any further. The

first case is an illustration as to how a representation would require to be construed in favour and for the benefit of the detenu. The second case

deals with a non-statutory representation, presented to the Prime Minister in a foreign country.

In the facts of the case it requires to be held that the first representation made by the detenu for revocation was the one made to the Government

on October, 6, 1991. That, as observed earlier, was not disposed of expeditiously. There was unexplained and unreasonable delay. That itself, in

our opinion, vitiates the detention. It is not, therefore, necessary to consider the other contentions urged.

We are satisfied, on the contents of the representation sent by the detenu, though it is the second one, as primordial in effect and substance, having

raised the question of validity of the impugned detention.

7. It will be pertinent to notice, the observations of a single Judge of the Delhi High Court in Dhiraj Singh Madan Vs. Union of India and Others,

which clearly pinpoints our intended view. Those observations read as hereunder:-

It is a settled principle of law that repeated representations cannot be considered expeditiously and with due promptitude provided they are based

on the same facts and same cause of action. But if new facts are brought on record and new grounds are alleged then it would amount to fresh

representation. It would not amount to repeated representation. A fresh representation is required to be considered as expeditiously and with due

promptitude as the first representation is required to be considered under Art. 22(5) of the Constitution.

8. Let us now look into the manner in which the representation of the detenu was disposed of. This representation dated 16.10.1993, was

received by the Home Department, in the Secretariat, on 20.10.1993. This representation was dispatched from prison only on 19.10.1993. We

were told by the learned Addl. Public Prosecutor, that the prohibition, and Excise Department, received this representation only on 29.10.1993. It

is conceded, that the Home Department and the prohibition and excise Department are situated in the same building and that the Home Secretary

is also the Secretary for Prohibition and Excise Department. If that be so, it is not known as to why mere passing on of this representation to

another wing under the same Secretary, must have taken nine days. Again, we find that a letter calling for parawar remarks from the second

respondent was made ready on 1.11.1993, but dispatched only three days later on 4.11.1993. There is no reason why mere posting of a letter

must have taken three days. We will leave it at that. However, parawar remarks were received only on 7.12.1993 leading to rejection of

representation on 14.12.1993. Learned Additional Public Prosecutor stated, that no plausible explanation can be offered for the long day between

4.11.1993 and 7.12.1993. If that be so, it is clear that the representation of the detenu had been put in cold storage, for an unduly long period.

The entitlement of the detenu to have his representation considered expeditiously and continuously, has thus been thwarted in the instant case.

9. Whether the second representation requires disposal with the same sense of urgency and promptitude as the first, will always be a question of

fact and is bound to vary from case to case. No universal or rigid formula can be laid down. On that aspect. On the peculiar facts available in the

instant case we are satisfied, that the only effective representation, containing fresh factual constituents, had not been considered expeditiously and

with due promptitude, as mandated by the Constitution. On that sole ground, the detenu is bound to succeed.

10. Impugned order of detention is set aside. The detenu shall be set at liberty forthwith unless his detentions otherwise required "this Habeas

Corpus Petition is allowed.