
(1997) 01 MAD CK 0047

In the Madras High Court

Case No : H.C. Petns. No's. 503, 535, 623, 659, 705, 713, 837 and 843 of 1996

Muniappan and others

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Constitution of India, 1950 — Article 155, 163(1), 164(2), 172, 174

Citation : (1997) CriLJ 3286

Hon'ble Judges : K.M. Natarajan, J;Janarthanam, J

Bench : Division Bench

Advocate : S. Swamidoss Manoharan and A. Ramesh, for M/s. Ram and Ram, K. Balaji and N. Doraisamy, for G. Elangovan, V. Parthiban and Lenin, for M/s. Lenin and Bhagya, D. Thirumurthy and K. V. Sridharan, for the Appellant; Syed Fasuddin, Assistant Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.—Desirable it is to pen down a common order in all these actions, inasmuch as the point urged or canvassed for

consideration is one and the same.

2. The alleged detenus in three actions, namely, H.C.P. Nos. 535, 659 and 713 of 1996, it is said are goondas.

3. The alleged detenus in the other cases, five actions, namely, H.C.P. Nos. 503, 623, 705, 837 and 843 of 1996, it is said, are bootleggers.

4. No doubt the detaining authorities, in all these actions, are different and the impugned orders of detention had been passed separately against the

alleged individual detenus.

5. In all these actions, representations for and on behalf of the detenus had been made in the month of April, 1996 that is to say, much earlier to the

holding of elections to the Tamil Nadu Legislative Assembly.

6. We can take judicial notice of the fact that the elections to the Tamil Nadu Legislative Assembly took place in two phases, namely, first on the

26th of April, 1996 and the second on the 2nd of May, 1996. We can also take judicial notice of the fact that counting of votes commenced on

8th May, 1996 and subsequent dates and the New Ministry was sworn in on 13th May, 1996. According to Mr. Syed Fasuddin, learned

additional Public Prosecutor, subsequent to the swearing in of various Ministers, the allocation of portfolios to them was made on 14th May, 1996.

7. We may also refer to here the various dates of representations made for and on behalf of the respective detenus involved in all these actions.

(a) In H.C.P. Nos. 535 and 659 of 1996, the representations for and on behalf of the respective alleged detenus were stated to have been made

on 16-4-1996 and received by the Government on 17-4-1996, besides these representations being rejected on 30-5-1996.

(b) The representation in H.C.P. No. 713 of 1996, dated 19-4-1996 had been received on 23-4-1996 and rejected on 30-5-1996.

(c) The representation in H.C.P. No. 503 of 1996, dated 18-4-1996 was, received on 23-4-1996 and had been rejected on 3-6-1996.

(d) The representation in H.C.P. No. 623 of 1996, dated 4-4-1996 had been received on 9-4-1996 and rejected on 3-6-1996.

(e) The representation in H.C.P. No. 705 of 1996, dated 23-4-1996 had been received on 30-4-1996 and rejected on 30-5-1996.

(f) The representation in H.C.P. No. 837 of 1996, dated 29-4-1996 had been received on 8-5-1996 and rejected on 30-5-1996.

(g) The representation in H.C.P. No. 843 of 1996, dated nil had been received on 26-4-1996 and rejected on 29-5-1996.

8. In all these actions, according to learned Additional Public Prosecutor, the process of consideration upto the stage of Under Secretary was

completed on 6-5-1996 and the relevant files had been submitted to the then Minister for Law (in charge) on 7-5-1996. 8-5-1996 was stated to

be a holiday on account of counting of votes. On 9-5-1996, the relevant files had been taken to the Office of the Minister for Law. It appears, the

Office of the Minister for Law refused to receive the files and consequently, the then Under Secretary, Prohibition and Excise Department of the

State of Tamil Nadu made an endorsement in all the relevant files as below :

Refused to receive the file in the Office of the then Law Minister.

Of course, on different dates, such refusal was made.

9. Because of the refusal by the Office of the then Minister for Law (in charge) to receive the relevant files for passing necessary orders, the

Prohibition and Excise Department was put to the necessity of again circulating the relevant files, only subsequent to the swearing in of the new

Ministry, which event happened, as already indicated, on 13-5-1996 and allocation of the portfolios to the Ministers, which event happened, again

as already indicated, on 14-5-1996. It is thus crystal clear that because of the refusal of the Office of the Minister for Law (in charge) to receive

the relevant files, the Prohibition and Excise Department, was put to the necessity of circulating the relevant files again, after the swearing in of the

new Ministry and subsequent event of allocation of the respective portfolios. Thus, in that process, delay has occurred in consideration and

disposal of the respective representations.

10. The common question that urged for consideration in all these actions is :

Whether the alleged refusal of the then Minister for Law (in charge) would amount to failure to discharge the constitutional and statutory obligation

inhering in his favour in the consideration and disposal of the representations and the delay occurred consequent thereto could be construed as a

factor vitiating the respective impugned orders of detention passed in all these actions ?

11. Articles 83 and 172 of the Constitution of India deal respectively with the duration of the Houses of Parliament and State Legislatures.

Likewise, Articles 85 and 174 deal respectively with sessions, prorogation and dissolution of Parliament and State Legislatures. Thus, the House of

the People may be dissolved either by expiry of its term of five years under Article 83(2) or by an order of dissolution made by the President at

any time earlier, under Article 85(2)(b). In either case, the members of the House cannot continue in office beyond six months since the dissolution,

by reason of Article 75(5), which provides that a Minister, who for any period of six consecutive months, is not a member of either House of

Parliament shall at the expiration of that period cease to be a Minister.

12. Article 74(1) provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President, who shall

in the exercise of his functions, act in accordance with such advice.

13. An analogous provision as available in relation to the State is traceable to Article 163(1), which is more or less couched in the same terms as couched in Article 74(1).

14. Article 75(3) provides that the Council of Ministers shall be collectively responsible to the House of the People. Analogous to such a provision is traceable to Article 164(2) in relation to a State.

15. By reason of the provisions in Articles 75(5) and 74(1), the Council of Ministers need not resign or be dismissed immediately upon the dissolution. The President must have a Council of Ministers to aid and advice him so long as such Council is available under the provisions of the Constitution.

16. In *U.N.A. Rao Vs. Smt. Indira Gandhi*, , it has been held that it cannot be said that on the dissolution of the House of the People the Prime Minister and other Ministers must resign or be dismissed by the President.

17. What is applicable to the Union Minister is also applicable to the State Ministry, in view the analogous provisions, as stated earlier by us.

18. In *Thiru K.N. Rajgopal Vs. Thiru M. Karunanidhi and Others*, , the Apex Court in a crisp and short judgment, after referring to the case of *U.*

N. R. Rao (supra) said as below :

We have just delivered judgment in *U.N.A. Rao Vs. Smt. Indira Gandhi*, . A similar question arises in this appeal, but with respect to the Chief

Minister and the Ministers of the State of Tamil Nadu. The relevant articles are worded similarly. The only difference is that the Governor is not

elected but he is appointed by the President under Article 155 of the Constitution and Article 356 of the Constitution makes provisions in case of

failure of constitutional machinery in the State. But when an Assembly is dissolved, there is no failure of the constitutional machinery, within Article

356. Article 164(2), which provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State has to

be read in the same manner as we have read Article 75(3). Following our reasoning in that appeal this appeal must fail. In the result, the appeal is

dismissed but with no order as to costs.

19. From what has been stated above, it is thus crystal clear that the fact that

the Assembly is dissolved cannot at all mean that the Chief Minister and other Council of Ministers cannot at all remain in office even till the swearing in of the new Ministry. Such being the case, there is a constitutional mandate inhering in favour of the then Minister for Law to discharge his constitutional and statutory functions till the new Ministry is sworn in.

20. In these instant cases, the then Minister for Law (in charge) admittedly failed to discharge his constitutional and statutory functions, in the sense of his refusal in the matter of consideration and disposal of the respective representations sent for and on behalf of the respective alleged detenus, which resulted in the further delay being caused in the process of consideration and disposal of those representations, subsequent to the swearing in of the new Ministry and the allocation of the portfolios to the new Minister for Law. As such, the delay so caused in the consideration and disposal of the respective representations must have to be construed, on the facts and in the circumstances of the cases, as a factor, vitiating the impugned orders of detention of the respective detenus in all these actions.

21. In fine, all these habeas corpus petitions are allowed. The respective impugned orders of detention are set aside and the respective detenus are ordered to be set at liberty forthwith, unless and until they are required to be detained in connection with any other cause or case.

22. Petition allowed.