
(2014) 09 AP CK 0183
In the Andhra Pradesh High Court
Case No : W.P. No. 22250 of 2014

M.V. Indumathi

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 3

Citation : (2015) 1 ALD(Cri) 133

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : T. Niranjan Reddy for T. Nagarjuna Reddy, Advocates for the Appellant; P. Venugopal, Advocate General, State of A.P. for Government Pleader for General Administration, Advocates for the Respondent

Judgement

Nooty. Ramamohana Rao, J.—A writ of mandamus was sought for, for declaring the detention order passed by the 2nd respondent the Collector and District Magistrate, Chittoor, through his proceedings, dated 3.6.2014, as confirmed by the 1st respondent State Government, through their G.O. Rt. No. 2615, General Administration (Law & Order) Department, dated 16.7.2014, as unconstitutional and illegal and consequently, to direct release of the husband of the writ petitioner, the detenu, by name Sri Mittapally Vijaya Babu @ Vijayananda Reddy, S/o. M.A. Chinnappa Reddy. Heard Sri T. Niranjan Reddy, learned Senior Counsel for the petitioner and Sri P. Venu Gopal, learned Advocate General, State of Andhra Pradesh for the respondents.

2. On 3.6.2014, the Collector and District Magistrate, Chittoor as passed an order, exercising the power available to him, under sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, Act 1 of 1986 (henceforth, referred to as "the Act"), preventively detaining the husband of the petitioner. Elaborate reasons have been set out

therein. This order of preventive detention came to be approved by the State Government, through their orders passed on 16.7.2014 in G.O. Rt. No. 2615 General Administration (Law & Order) Department.

3. The short question, which was raised, at the very outset, by the learned Senior Counsel, Sri T. Niranjan Reddy, is that under sub-section (3) of Section 3, when any order is made under this section, by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the Government. Therefore, Sri Nagarjuna Reddy would contend that within 12 days from 3.6.2014, the date on which the District Collector has passed the order of detention under sub-section (2) of Section 3, the said order was required to be confirmed by the State Government, whereas, in the instant case, it was confirmed nearly 43 days later on 16.7.2014 by the State Government. Therefore, the order of confirmation passed by the State Government is clearly illegal, being in direct conflict with the requirement of its approval within 12 days. The learned Senior Counsel would further submit that the language employed by the Legislature is very clear and the intention is spelt out, in no unmistakable terms, by setting out that no such order of detention shall remain in force for more than 12 days. Therefore, it is contended that the order of detention cannot be treated to have been in force at all.

4. The learned Advocate General tried to sustain the order on various other grounds, but however, it is worthy to recall the principle that the provisions of this Act are liable to be construed very strictly, as they perilously deal with the life and liberty of a citizen. No allowance can be provided for the State Government or for the detaining authority not to have followed the provisions contained in the Act strictly, in any manner. In fairness to the learned Advocate General, it must be stated that he does not dispute the legal principles on the subject in this regard nor would the learned Advocate General dispute the dictum laid down by the Constitution Bench of the Supreme Court in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, wherein, in Paragraph 34, it has been set out that approval, actual or deemed postulates application of mind to the action being approved by the authority giving approval. Approval of an order of detention would require consideration by the approving authority of the grounds and the supporting material on the basis of which the officer making the order had arrived at the requisite satisfaction for the purpose of making the order of detention.

5. Since, in the instant case, the approval has not been accorded by the State Government within the period specified under sub-section (3) of Section 3 of the Act and also in view of the language employed therein that no order of detention shall remain in force for more than 12 days, I am of the opinion that the order passed by the State Government contained in their G.O. Rt. No. 2615, General

Administration (Law & Order) Department, dated 16.7.2014 deserves to be set aside. At the same time, in view of the language employed, the order of detention is to be declared as not effective as of now. The detenu shall be released forthwith unless he is required in connection with any other case.

6. With this order, the writ petition stands allowed. No costs. Consequently, the miscellaneous applications, if any shall stand disposed of.