

(2012) 11 MAD CK 0196
In the Madras High Court
Case No : H.C.P. No. 680 of 2012

R. Shanmugavalli

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22(3), 22(5)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates (Amendment) Act, 2006 — Section 2(h), 8(1)

Citation : (2013) 1 LW(Cri) 161 : (2012) MLJ(Cri) 590

Hon'ble Judges : P. Devadass, J;K.N. Basha, J

Bench : Division Bench

Advocate : Sunder Mohan for M/s. Karthik Jaganathan, for the Appellant; V.M.R. Rajendran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Devadass, J.—The wife of the detenu, namely, Ramu @ Gym Ramu, challenges the detention of her husband by the order of the second respondent dated 12.03.2012, branding him as "Slum Grabber" as contemplated u/s 2(h) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Act 14 of 1982). Based on the report of the Sponsoring Authority that the detenu has involved in certain cases and his remaining at large is prejudicial to the maintenance of public order, the Detaining Authority passed the impugned detention order on 12.03.2012. He was detained on 12.03.2012. The detention Order was served him on that day.

2. The learned Counsel for the petitioner, though challenged the detention order on several grounds, now confined his arguments with reference to infraction of Section 8(1) of Act 14 of 1982.

3. The learned Counsel for the petitioner would contend that the mandate of law

incorporated in Section 8(1) of Act 14 of 1982 is that the Booklet containing materials in support of the detention Order has to be supplied to the detenu within 5 days of his detention. However, in this case that has not been followed. It is infraction of his right to make effective representation guaranteed to him under Article 22(5) of Constitution of India.

4. The respondent filed counter containing details of the grounds upon which he has been detained. Mr. V.M.R. Rajendran, learned Additional Public Prosecutor reiterated them.

5. The detenu has been detained in pursuance of the detention order on 12.03.2012. The order of detention was served on him on 12.03.2012 itself. It is not in dispute that the grounds of detention was served on him only on 19.03.2012.

6. Article 22(5) Constitution of India declares that "when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

7. There is inbuilt condition of 5 days incorporated in Section 8(1) of Act 14 of 1982. It mandates that the booklet containing grounds and the necessary documents should be served on the detenu within 5 days of service of detention order upon him.

8. The said section 8(1) of Act 14 of 1982, runs as under:

8. Grounds of order of detention to be disclosed to persons affected by the order.- (1) When a person is detained in pursuance of a detention order, the Authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(Emphasis supplied by us)

9. Individual's liberty is sacrosanct. It must be zealously guarded (see Article 21 Constitution of India) unless it is abridged with the sanction of law (See Article 22(3) Constitution of India and Act 14 of 1982). And such law should provide procedural safeguard. In a way a check on arbitrary exercise of such power of detaining persons behind the bar without enquiry, trial or a charge - preventive detention. Thus, the idea behind incorporating such a time limit in Section 8(1) of Act 14 of 1982 is to enable the detenu to make the constitutionally guaranteed right of representation (see Article 22(5) of the Constitution of India). It is to enable him to make effective representation. There cannot be any exception to this. Since it is a matter concerned with curtailing of individual's liberty any violation of Article 22(5) of the Constitution of India cannot be countenanced. There cannot be any violation of statutory safeguards provided to the detenu in

Act 14 of 1982.

10. In this case, it has been very clearly demonstrated that the booklet has not been served upon the detenu within 5 days of his detention. It was served beyond 5 days of his detention. The respondents have not come forward with any counter explaining the delay.

11. Recently, a Division Bench of this Court, to which one of us is a party, in *Parapatty Suresh @ Sureshkumar and two others v. The Commissioner of Police, Salem City Police, Salem and others* [Order dated 12.10.2012 in H.C.P. Nos. 360, 617 and 1406/2012] had elaborately gone into this aspect, more particularly, Section 8(1) of Act 14 of 1982 on the anvil of Article 22(5) of the Constitution of India and the Division Bench also noticed decisions of Hon"ble Apex Court and also of Division Bench of this Court and observed as under:

21..

(a) The Constitution Bench of the Supreme Court in the decision reported in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, , while dealing with the issue of furnishing of the detention order and its grounds along with other materials to the detenu, held as hereunder:

11. ... In our opinion, if these two conditions are fulfilled, the objection against a later communication of details or facts is not sufficient to cause an infringement of the provision made in Article 22(5). The question has to be approached from another point of view also. As mentioned above, the object of furnishing grounds for the order of detention is to enable the detenu to make a representation i.e. to give him an opportunity to put forth his objections against the order of detention. Moreover, "the earliest opportunity" has to be given to him to do that. While the grounds of detention are thus the main factors on which the subjective decision of the Government is based, other materials on which the conclusions in the grounds are founded could and should equally be conveyed to the detained person to enable him to make out his objections against the order. To put it in other words, the detaining authority has made its decision and passed its order. The detained person is then given an opportunity to urge his objections which in cases of preventive detention comes always at a later stage. The grounds may have been considered sufficient by the Government to pass its judgment. But to enable the detained person to make his representation against the order, further details may be furnished to him. In our opinion, this appears to be the true measure of the procedural rights of the detained person under Article 22(5).

(Emphasis supplied)

(b) The Division Bench of this Court in the decision reported in (2011) 3 MLJ (Crl) 391 (*Mageswari v. Government of Tamil Nadu*) has considered the effect of non-serving of detention order and booklet and compliance of mandatory provision of section 8(1) of the Act 14 of 1982. After referring the provision, the Division Bench in para 7 held as follow:

7. Of course, the language of Section 8(1) does not refer to the supply of copies of the documents along with the grounds of detention. It simply refers to the communication to the detenu of the grounds on which the order of detention has been made. But, however, it was superadded with the rider specifying the purpose for which the grounds are to be communicated. The purpose enshrined therein is to afford the detenu the earliest opportunity of making an effective representation against the order of detention to the Government. The mere supply of the grounds of detention unaccompanied by copies of the materials relied on by the detaining authority, is of no use for the purpose of making an effective representation, at the earliest opportunity, against the order of detention. Therefore, we are of the view that the supply, of copies of materials relied on along with the grounds of detention is also the requirement of the said provision to enable the detenu to make an effective representation at the earliest point of time. In other words, the supply of grounds of detention as contemplated in Section 8(1), will include the supply of the copies of the relied on documents also and this view will also be strengthened by the fact that the abstract order of detention could not have been passed even before preparing the grounds of detention stating the reasons.

(Emphasis Supplied)

(c) The same view was taken in the subsequent Division Bench decisions of this Court reported in 2011 (1) MWN (Cr.) 560 (Govindammal v. The Commissioner of Police); (2012) 3 MLJ (CrI) 577 (K.R. Nath v. Secretary to Government); and (2012) 3 MLJ (CrI) 599 (Vinod v. State of Tamil Nadu).

12. The consistent judicial view of the Hon'ble Apex Court and the Division Bench of this Court is that there cannot be any violation of such statutory provisions in the matter of curtailing a person's liberty and the procedural safeguards incorporated in Section 8(1) of Act 14 of 1982, which is intended to enable the detenu to make effective representation constitutionally guaranteed to him must be strictly followed by the detaining authority.

13. In this case, it is a clear case of statutory violation and non observance of constitutional mandate. On this ground alone, the order of detention is vitiated and thus, it will not stand the test of law. In the result, the Habeas Corpus Petition is allowed. The detention order passed by the second respondent dated 12.03.2012 in C.M.P. 25/Slum Grabber/Salem City/2012 is set aside. The detenu viz., Ramu @ Gym Ramu, aged 49 years, detained in Central Prison, Salem is directed to be set at liberty forthwith unless he is required in connection with any other case.