

(2008) 10 MAD CK 0006
In the Madras High Court
Case No : H.C.P. (MD) No. 488 of 2008

Ravinthiran @ John Ravinthiran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2008) 10 MAD CK 0006

Hon'ble Judges : R. Subbiah, J;R. Regupathi, J

Bench : Division Bench

Advocate : C. Mayilvahana Rajendran, for the Appellant; N. Senthur Pandian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Regupathi, J.—The Petitioner is the father of the detenu by name Danielraj. He challenges the impugned order of detention in H.S.

(M)Confdl. No. 14/2008, dated 04.04.2008, detaining his son as ""Goonda"" as contemplated under the Tamil Nadu Prevention of Dangerous

Activities of Boot Leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video

Pirates Act, (Tamil Nadu Act 14 of 1982).

2. Learned Counsel for the Petitioner points out that the order of detention has been passed on 04.04.2008, a representation has been sent to the

Detaining Authority on 12.04.2008 and the same was considered and rejected on 24.04.2008; and submits that in the meantime, the file has been

forwarded to the Government and the order of detention was approved on 15.04.2008. According to him, soon after despatching the file to the

Government, if any representation is received by the Detaining Authority, he

should forward such representation to the Government for necessary action; but in the case on hand, consideration of the representation by the Detaining Authority on 24.04.2008 i.e., after approval of the detention by the Government on 15.04.2008 has prejudiced the detenu and taken away the valuable right guaranteed under the Constitution of India.

Learned Counsel relied on a Division Bench decision reported in 2006 (1) LW (CrL.) 369 (Rajeswari v. The Secretary to Government, Prohibition

and Excise Department and Anr.) and submitted that since the Detaining Authority has passed orders on the representation exceeding his powers,

the impugned order of detention is vitiated.

3. Per contra, the learned Additional Public Prosecutor submits that the order of the detention has been approved by the Government on

15.04.2008 and the representation sent to the Detaining Authority was rejected only on 24.04.2008.

4. We have perused the materials available on record and carefully considered the rival contentions raised on either side.

5. Section 3(3) of the Tamil Nadu Act 14 of 1982 reads as follows:

(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 State

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 twelve days after the making thereof, unless, in the meantime, it has been approved

by the State Government.

No doubt, as prescribed above, the Detaining Authority has rightly forwarded the file for approval to the Government within 12 days and it was

approved on 15.04.2008. But, it is seen that the Detaining Authority, after approval of the detention on 15.04.2008, failed to forward the

representation to the Government but proceeds to dispose of the same on 24.04.2008, which exercise is totally unwarranted on his part. In such a

situation, the Detaining Authority has no power to deal with or pass orders on the representation. It is useful to extract here the observation of the

Division Bench in the case as reported in 2006 (1) LW (CrL.) 369 (cited Supra)

5. It is true that the Government approved the detention order on 18.11.2005. In such circumstances, having received the representation on

21.11.2005 by the District Collector, it is but proper on his part to forward the same to the Government, since after approval of the detention

order by the Government, he has no power to pass an order on the representation....

Likewise, in *Puranlal Lakhanpal Vs. Union of India (UOI)*, , it was held thus:

the detaining authority is obliged to forward all the subsequent materials having a bearing on the matter to the Government and to the Board and

that otherwise the action of the detaining authority in withholding of subsequent information tending to falsify or belie the earlier materials on which

the detention order was passed, would stand unchallenged and there is a danger of withholding all materials on the matter in issue in order to

sustain the order of detention, which would definitely lead to a situation where the personal right and liberty of a person would be at stake at the

hands of the Executive and the safeguard provided by the Constitution for the protection thereof would be impaired.

6. Thus when the Detaining Authority, exceeding his powers, has erroneously taken up the exercise of dealing with the representation and further,

when such representation was not considered by the Government, we are of the considered view that the detenu is greatly prejudiced and his

valuable right is taken away; as a result, the ultimate order of detention is vitiated.

7. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention dated 04.04.2008 passed in H.S.(M)Confdl. No.

14/2008 by the second Respondent is quashed. The detenu is directed to be set at liberty forthwith unless his custody is required in connection

with any other case or cause.