

(1999) 06 MAD CK 0012
In the Madras High Court
Case No : H.C.P. No. 1434 of 1998

Saroja

APPELLANT

Vs

District Collector and District Magistrate of Cuddalore District,
Cuddalore and The Secretary to Government, Prohibition and
Excise Department, Fort St. George, Madras-9

RESPONDENT

Date of Decision : 10-06-1999

Acts Referred:

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 10, 2(f)

Citation : (1999) 2 LW(Cri) 810

Hon'ble Judges : S. Jagadeesan, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : B. Kumar, for Mr. S.E. Victor, for the Appellant; Anbalagan, Assistant
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The wife of the detenu, has filed this petition challenging the order of the detention of her husband Pandiyan on the

ground that he is a "Goonda" as defined u/s 2(f) of the Tamil Nadu Act 14 of 1982. It is unnecessary to elaborate the facts with regard to the

ground case or adverse case in view of the only point urged by learned Senior counsel for the petitioner that there is difference between the English

version of the order of detention and the Tamil version of the order of detention and that itself vitiates the order of detention. The relevant portion

of the order of detention, for the purpose of disposal of the writ petition, is the following:

Thiru Pandiyan @ Othakkal Pandiyan is informed that he has a right to make representation in writing against the order in which he is kept in

detention. If he wished to make such representation he should address it to the Secretary to Government. Prohibition and Excise Department

Chennai-9 and forward it through the Superintendent of Prison in which he is confined as expeditiously as possible. He is further informed that he

has the right to make representation to the Chairman, Advisory Board, No. 26, Greenways Road, Sudar Building, Chennai-28 through the

Superintendent of the concerned Central Prison. Any representation that is made by him will be duly considered by the Government and will also

be placed before the Advisory Board for consideration of his case u/s 10 of the Tamil Nadu Prevention of Dangerous Activities of Boot loggers.

Drug offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act 1982 (Tamil Nadu Act 14 of 1982). He is informed that he

is entitled to be heard in person by the Board.

The Tamil version which forms the base for the argument is as follows:

The contention of learned counsel for the petitioner is that in the English version, it is clearly stated that the detenu has the right to make

representation to the Chairman Advisory Board, through the Superintendent of concerned Central Prison. Any representation that is made by him

will be duly considered by the Government and will also be placed before the Advisory Board for consideration of his case u/s 10 of the Tamil

Nadu Act 14 of 1982, whereas in Tamil version, it has been stated that the detenu has got a right to make the representation to the Advisory

Board, which will be duly considered by the Government. The detenu's case will be placed before the Advisory Board u/s 10 of the Tamil Nadu

Act 14 of 1982. The failure to mention in the Tamil version to the effect that the detenu's representation will be placed before the Advisory Board

would make it clear that there is discrepancy in the translation and the detenu has not been furnished with true version of translation. Hence the

order is vitiated. In fact, the learned Senior Counsel for the petitioner, relied upon a recent Judgment of this Court reported in 1999 (IT) CTC. 175

(Devarajan v. State) 1999 LW(Crl) 339 We have carefully considered the Judgment relied upon by learned Senior Counsel for the petitioner

wherein the Tamil version of the order of detention is as follows:

In the Tamil version of the case relied upon by learned Senior Counsel for the petitioner the sentence that either the representation of the case of

the detenu will be placed before the Advisory Board is totally missing. On that ground the Division Bench has held that the Tamil Version is not in

conformity with the English version and gave the benefit. So far as the case in hand is concerned it has been categorically stated that the case of the

detenu will be placed before the Advisory Board for consideration in accordance with Section 10 of the Tamil Nadu Act 14 of 1982.

2. Learned Additional Public Prosecutor relied upon an unreported Order of this Court in H.C.P. No. 679 of 1998 dated 16.10.1998 Chandra v.

State wherein in an identical facts learned Judges have held as follows:

The grievance of the learned advocate for the petitioner was that any representation that is made by him will be duly considered by the

Government and will also be placed before the Advisory" Board for consideration of his case has not been translated in the Tamil version. We

have been taken to the Tamil version furnished to the detenu. Even in the Tamil version, we can gather that this fact has been mentioned, though not

in the form given in the English version, the meaning of the Tamil version that any representation that is made by him will be duly considered by the

Government and he has got right to make a representation before the Advisory Board and if he wants to have a hearing he can make a mention

before the authority. A reading of the Tamil version will go to show that all those which are mentioned in English have been mentioned even in the

Tamil version. Hence, we cannot accede to the arguments advanced by the learned advocate on this point.

3. The principles laid down by a Division Bench of this Court in H.C.P. No. 679 of 1998 is that it is sufficient to inform the detenu though he has

right to make a representation before the Advisory Board and if he wants both he can make a mention before the authority. In fact, this Judgment

has been confirmed by the Supreme Court since the SLP preferred against the same was dismissed by the Apex Court in SLP No. 3830 of 1998

dated 25.1.1999. Even though the dismissal order at the admission stage cannot be taken as a precedent, but the fact remains that the principles

laid down by this Court, in H.C.P. No. 679 of 1998 had been accepted and confirmed by the dismissal of the above S.L.P.

4. Yet another unreported order of this Court relied upon by learned Additional Public Prosecutor is H.C.P. No. 1206 of 1997, dated 30.4.1998

wherein also the Division Bench consisting of C. Shivappa, J and A. Ramamurthi, J. have held that it is sufficient if the detenu had been informed

that the matter will be referred to the Advisory Board in accordance with Section 10 of the Tamil Nadu Act 14 of 1982. The relevant portion of

the order is as follows:

No doubt in the English version, it is stated that the representation will be duly considered by the Government and will also be placed before the

Advisory Board for consideration of his case u/s 10. It is pertinent to point out that there is a reference about the Advisory Board and also section

10 of Act 14 of 1982. There is no dispute that Section 10 relates to reference to the Advisory Board. In fact, Section 10 has been introduced only

for the purpose of placing the paper before the Advisory Board constituted u/s 9. When Section 10 has been specifically made mention in the

Tamil version. It is not necessary that the placing of the paper also should be made mention of. The petitioner had already been forewarned and

informed about section 10 even in the Tamil version. We are of the view that when Section 10 has been made mention not only in the English

version but also in the Tamil version, as it relates to reference to the Advisory Board no prejudice is caused to the petitioner by the omission of

placing the paper before the Advisory Board in the Tamil version, if section 10 has not been incorporated, then there would be some force in the

contention of the learned counsel. Act 14 of 1982 has been passed only as preventive measure and one cannot expect that the translation should

be in the manner in which they want. When once it is admitted that section 10 relates to reference to the Advisory Board, we are unable to accept

the contention of the learned counsel and this will not affect the case of the respondent in any way.

5. In this case learned Judges have also referred to H.C.P. No. 1184 of 1979 wherein the Division Bench of this Court has held that the non-

mentioning of the fact that the representation of the detenu will be placed before the Advisory Board for consideration would vitiate the order. In

fact in H.C.P. No. 1184 of 1979 there is nothing on record to show that either the Tamil version of the detention order refers or mentions Section

10 of the Tamil Nadu Act 14 of 1982 or whether there is any discrepancy in the translation as pointed out in this case. A perusal of the judgment

clearly reveals that there is conspicuous absence of the sentence that the representation of the detenu will be placed before the Advisory Board which makes all the difference. Unfortunately, the Order in H.C.P. No. 1206 of 1997 was not placed before the Division Bench which heard the case reported in 1999 (IT) C.T.C.175 , cited supra. Though the Additional Public Prosecutor has drawn our attention of the said order of the Division Bench reported in H.C.P. No. 679 of 1998; the learned Judges have not discussed the same. However, the learned Judges have proceeded on the basis that there is a patent omission of sentence and considered whether the Tamil translation contains the true and correct version of the English version. Since the particular sentence was omitted to be mentioned in the Tamil version, the learned Judges allowed the petition and hence on the facts of the case that the principles laid down in 1999 (IT) C.T.C. 175 cited supra, will not be helpful for the petitioner for the release of the detenu. On the other hand the principles laid down in both the unreported order in H.C.P. Nos. 679 of 1998 as well as 1206 of 1997 by different Benches of this Court would be applicable for the facts of this case. Hence accepting the views taken by those two Division Benches, we are of the view that there are no merits in the H.C.P. and accordingly the same is dismissed.