
(1997) 09 MAD CK 0023
In the Madras High Court
Case No : H.C.P. No. 601 of 1997

Smt. Chakkraththai

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 14

Citation : (1997) 2 CTC 428

Hon'ble Judges : S. Thangaraj, J;C. Shivappa, J

Bench : Division Bench

Advocate : R. Ashokan, for the Appellant; S. Anbalagan, Additional Public Prosecutor, for the Respondent

Judgement

C. Shivappa, J.—The wife of the detenu has challenged the order of detention, dated 5.6.1997, passed by the District Magistrate and

District Collector, Dharmapuri, in exercise of the powers conferred u/s 3(2)(a) read with Section 3(1) of the Essential Commodities Act, 1980

(hereinafter referred to as "the Act"), with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of Supplies of

Essential Commodities like P.D.S. Rice (Public Distribution System for Ration Cards) to the Public of Tamil Nadu.

2. It is the case of the petitioner that though the name of her husband was not cited as an accused in the F.I.R., he was detained on 7.6.1997 under

the Act. However, as an abundant caution, he moved anticipatory bail in CrI. O.P.No. 5956 of 1997 and was released by order dated 21.5.1997,

with a condition that he shall report before the Triplicane Police Station, Triplicane, Chennai, every day until further orders. When he was

complying with the condition, the sponsoring authority arrested him in the second adverse case in Crime No. 207 of 1996 on the file of the Civil

Supplies C.I.D., Vellore and remanded to judicial custody on 28.5.1997. It is her case that the detenu has been implicated in three adverse cases

and in one ground case, which are foisted for the purpose of detaining the detenu under the Act.

3. It is further contended that a representation dated 22.6.1997 was given to the respondent No. 1, seeking certain documents like bail

applications, bail orders and the documents relied on in the grounds of detention, which is still pending consideration by the respondent No. 1. The

documents relied on in the grounds of detention have not been placed before the detaining authority and the subjective satisfaction arrived at was

not based on the materials, consequently, the detention is illegal, arbitrary and not valid and the English version of the grounds was not properly

translated into Tamil.

4. In the counter-affidavit, the respondents have denied the allegations that the detenu was involved in the adverse case and ground case falsely,

and defended the order of detention that it was passed after due investigation and verification of the statements of the lorry driver Ekambaram and

others. The allegation that certain documents relating to the order of detention were not placed before the detaining authority is also denied and it is

contended that enough materials were placed before the detaining authority based on which the detaining authority has satisfied himself that the

detenu is a black marketer transporting and selling (PDS) ration rice to other States in contravention of the Act.

5. Though several points were urged, learned counsel for the petitioner confined his submission that the detenu was not informed of his

constitutional right to make a representation to the Central Government and in the grounds of detention, it is nowhere mentioned that he was

informed about his constitutional right to make such representation.

6. The short question for consideration is whether the order of detention stands vitiated, if the detenu is not informed of his constitutional right to

make representation to the Central Government.

7. Section 14 of the Act contemplates revocation of detention orders, which is as follows:

Revocation of detention orders:- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention

order may, at any time, be revoked or modified:

(a) Notwithstanding that the order has been made by an officer of a State Government, by that State Government, or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, or by the Central

Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person in any case

where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the

case may be, is satisfied that such an order should be made.

In ground No. 6 of the grounds of detention, the detenu was informed that ""he has the right to make a representation in writing against the order in

which he is kept in detention. If he wishes to make such representation, he should address it to the Secretary to Government, Food and Consumer

Protection Department, Chennai-9 and forward it through the Superintendent, Central Prison, Vellore in which he is confined as expeditiously as

possible. Such representation will be duly considered by the Government and will be placed before the Advisory Board for consideration of his

case u/s 10 of the Act."" He was also informed that he was entitled to be heard in person by the Advisory Board. But, his right to make

representation to the Central Government was not notified to him.

8. In *Kamaleshkumar Iswardas Patel v. Union of India*, 1995 SCC (Cri.) 643 , the Supreme Court has held that failure on the part of the detaining

authority to inform the detenu that he has a right to make representation to the detaining authority himself has resulted in denial of a constitutional

right guaranteed under Article 22(5) of the Constitution. In *Nutan J. Patel v. S.V. Prasad and Anr.*, 1996 SCC (Cri.) 269, the Apex Court has

reiterated the same view and set aside the order of detention.

9. The right to make representation against the detention flows from the constitutional guarantee enshrined in Article 22(5). It casts an obligation on

the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. Once it is realised that Article 22(5)

confers a right of representation, the next question is to whom must the representation be made. The grounds of detention clearly informed the detenu that he can make representation to the State Government, the Central Government as well as the Advisory Board. There can be no doubt that the representation may be made to the authority which has the power to rescind or revoke the decision if need be. Under Article 22(5), therefore, it has to be construed to mean that the person detained has a right to make representation against the order of detention not only to the Advisory Board, but also to the detaining authority, i.e., the authority that has made the order of detention or ordered for continuance of such detention, which is competent to give immediate relief by revoking the said order, as well as any other authority which is competent under law to revoke the order of detention and thereby give relief to the person detained. The right to make representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make representation against the order of detention to the authorities who are required to consider such representation.

10. When Section 14 of the Act contemplates revocation of detention orders by the Central Government, having not mentioned the same in the grounds that the detenu has a right to make representation to the Central Government, the right of the detenu to make effective representation has been prejudiced, which results in vitiating the order of detention. Thus, we answer the question holding that the non-information as to the right of representation to the Central Government invalidates the order.

11. For the reasons aforesaid, the impugned order of detention, dated 5.6.1997 by the respondent No. 2, detaining the detenu R. Subramani, is set aside and the detenu is directed to be set at liberty forthwith, if not required in connection with any other case.