
(2017) 03 AP CK 0014
In the Andhra Pradesh High Court
Case No : 32225 of 2016

Smt.G.Jyothi

APPELLANT

Vs

The State of Telangana and another

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Constitution of India, Article 22(5) -
Protection against arrest and detention in certain cases
Narcotic Drugs and Psychotropic Substances Act, 1985, Section 12 -

Citation : (2017) 03 AP CK 0014

Hon'ble Judges : Suresh Kumar Kait, U. Durga Prasad Rao

Bench : DIVISON BENCH

Advocate : Challa Dhanamjaya

Judgement

1. Vide the present petition, the petitioner has challenged the detention order vide S.B.(I) No.356/PD/S-1/2016, dated 28.07.2016 whereby the detenu was detained on 29.07.2016 and since then he is in jail.

2. Learned counsel appearing on behalf of the petitioner has argued the only ground that the detenu was detained on 29.07.2016 and as per Section 8 of Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act) the detaining authority is duty bound to supply the relied upon documents in the known language of the detenu maximum within five days, so that he would be able to make an effective representation before the detaining authority. However, in the present case, the relied upon documents were not provided to the detenu within five days in the language known to him.

3. Learned counsel appearing on behalf of the respondents has fairly conceded that the relied upon documents could not be supplied to the detenu within five days however, supplied thereafter and he submits that if there is one or two days delay, that will not prejudice to the right of the detenu as held by the Supreme

Court in the case of Dr. Prakash vs. State of Tamil Nadu and others whereby the Honourable Supreme Court has held as under: Para-9. The learned counsel then contended that there is a total non-communication of grounds and the order of detention inasmuch as the same is supplied to him in a language not known to the petitioner. He submitted even though some of the copies of the document in Tamil was furnished to him on his demand on 28.2.2002 the same was far beyond the required time period and because of this belated supply of the document she was prevented from making an effective representation to the detaining authority. In this regard, we notice on receipt of the order and grounds of detention with enclosures, the detenu had written a letter to the 2nd respondent intimating him of his inability to read and write Tamil. In reply the detaining authority has denied the same immediately. However, he, along with the said letter, has supplied the copies of the said documents on 28.2.2002. It is true that the detaining authority in the order of detention has mentioned that if the detenu so chooses he may make a representation to him before the confirming authority, namely, the State Government confirms his order of detention. The detaining authority in his affidavit before this Court has stated that he received the representation of the petitioner and considered and rejected the same on 4.3.2002. Therefore, it is clear that the petitioner had sufficient time to make a representation to the detaining authority. At this stage, it may be relevant to notice that even though the detenu had no legal right to make a representation to the detaining authority, still the same was given to him and he did use this right, which representation was considered at an early date by the detaining authority and was rejected. By the delay of two days in furnishing the translated copies of the detenu, there was no prejudice caused to the petitioner in making his representation effectively to the detaining authority. Learned counsel submits that in the present case the relied upon documents were supplied to the detenu on the 6th day of detention of detenu. Therefore, no prejudice has been caused to the detenu for making an effective representation to the detaining authority. He further submits that detenu has three opportunities to make effective representation; first before the detaining authority, second to the Government i.e. Chief Secretary and third is the Advisory Board. Therefore, if the documents were supplied with one day delay, it will not affect the rights of the detenu.

4. Section 8 of the Act provides as under: Section 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 Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

As per the said provisions, it is clearly mentioned that the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to the detenu 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 Government. Thus, as per the said provisions, the respondents are duty bound to supply the relied upon documents as early as possible but not later than five days in the language known to the detenu. Purpose to supply documents as earliest is that as per Section 3(3) of the Act, the State Government has to approve the detention order within twelve days. Thus, the detenu has time only between the date of detention and date of approval to make the representation before the detaining authority. If the detention order is approved by the Government as provided under Section 3(3), in that context, the detaining authority would become *functus officio* and the detenu will lose his first right of making representation before the detaining authority.

5. Coming to the case on hand, the detention order was passed on 28.07.2016 and the detenu was taken into custody on 29.07.2016. Thereafter, the State Government has approved the said order on 05.08.2016. Thus, the detenu had only six days time to file effective representation before the detaining authority as admitted by the respondents that the relied upon documents were not supplied within five days. Thus, there was no opportunity to the detenu to make effective representation before the detaining authority.

6. Article 22(5) of the Constitution of India reads thus: Article 22(5) 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 As per the said provision, the detenu has right to make a representation before the concerned authority and if by the act of the respondents he failed to make an effective representation, such act of the respondents is in violation of Section 8 of the Act and Article 22(5) of the Constitution of India.

7. In case of *Kamleshkumarn Ishwardas Patel vs. Union of India and others* the Constitutional Bench of the Supreme Court held as under: para--34. In the National Security Act there is an express provision [Section 3(4)] in respect of orders made by the District Magistrate or the Commissioner of Police under Section 3(3) and the District Magistrate or the Commissioner of Police who has made the order is required to forthwith report the fact to the State Government to which he is subordinate. The said provision further prescribes that 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. This would show that it is the approval of the State Government which gives further life to the order which would otherwise die its natural death on the expiry of twelve days after its making. It is also the requirement of Section 3(4) that the

report should be accompanied by the grounds on which the order has been made and such other particulars as, in the opinion of the said officer, have a bearing on the matter which means that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of the order of approval. That appears to be the reason why Section 8(1) envisages that the representation against the order of detention is to be made to the State Government. The COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act do not require the approval of an order made by the officer specially empowered by the State Government or by the Central Government. The order passed by such an officer operates on its own force. All that is required by Section 3(2) of COFEPOSA Act and PIT Narcotic Drugs & Psychotropic Substances Act is that the State Government shall within 10 days forward to the Central Government a report in respect of an order that is made by the State Government or an officer specially empowered by the State Government. An order made by the officer specially empowered by the State Government is placed on the same footing as an order made by the State Government because the report has to be forwarded to the Central Government in respect of both such orders. No such report is required to be forwarded to the Central Government in respect of an order made by an officer specially empowered by the Central Government. Requirement regarding forwarding of the report contained in Section 3(2) of the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act cannot, therefore, afford the basis for holding that an order made by an officer specially empowered by the central Government or the State Government acquires deemed approval of that government from the date of its issue. Approval, actual or deemed, postulates application of mind to the action being approved by the authority given 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. Unlike Section 3(4) of the National Security Act there is no requirement in the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act that the officer specially empowered for the purpose of making of an order of detention must forthwith send to the concerned government the grounds and the supporting material on the basis of which the order of detention has been made. Nor is it prescribed in the said enactments that after the order of detention has been made by the officer specially empowered for that purpose the concerned government is required to apply its mind to the grounds and the supporting material on the basis of which the order of detention was made. The only circumstance from which inference about deemed approval is sought to be drawn is that the order is made by the officer specially empowered for that purpose by the concerned government. Merely because the order of detention has been made by the officer who has been

pecially empowered for that purpose would not, in our opinion, justify the inference that the said order acquires deemed approval of the government that has so empowered him, from the date of the issue of the order so as to make the said government the detaining authority. By specially empowering a particular officer under Section 3(2) of the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act the Central Government or the State Government confers an independent power on the said officer to make an order of detention after arriving at his own satisfaction about the activities of the person sought to be detained. Since the detention of the person detained draws its legal sanction from the order passed by such officer, the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on the order being revoked by the officer himself or by the authority mentioned in Section 11 of the COFEPOSA Act and Section 12 of the PIT Narcotic Drugs & Psychotropic Substances Act. There is nothing in the provisions of these enactments to show that the role of the officer comes to an end after he has made the order of detention and that thereafter he ceases to be the detaining authority and the concerned government which had empowered him assumes the role of the detaining authority. We are unable to construe the provisions of the said enactment as providing for such a limited entrustment of power on the officer who is specially empowered to pass the order. An indication to the contrary is given in Section 11 of the COFEPOSA Act and Section 12 of the PIT Narcotic Drugs & Psychotropic Substances Act which preserve the power of such officer to revoke the order that was made by him. This means that the officer does not go out of the picture after he has passed the order of detention. It must, therefore, be held that the officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the concerned government after he has made the order of detention. Therefore, by virtue of his being the detaining authority he is required to consider the representation of the person detained against the order of detention.

8. As per the aforesaid dictum of the Supreme Court, in case of COFEPOSA Act the detaining authority continued to be the authority even after approval of the Central Government or Advisory Board, thus the detaining authority does not lose its status till the order expires, lapses or quashed by the competent authority. Whereas, in the present case, as per the provisions of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986, the detaining authority ceases to be the authority on the day the detention order is approved by the State Government under Section 3(3) of the Act.

9. In the result, writ petition is allowed and further detention of detenu pursuant to proceedings No.S.B.(I) No.356/PD/S-1/2016 dated 28.07.2016 is hereby set aside. Consequently, the detenu viz. Gaddampally Vijay Kumar Reddy @

Rajeshwar Reddy @ Raju @ Reddy Mama s/o late G.Ramachandra Reddy shall be released forthwith, if he is not required in any other case.

10. Before parting, we have come across the cases where there are clear cut violations of the provisions of the Act. In the instant case, admittedly the relied upon documents were not supplied to the detenu within five days as prescribed under Section 8 of the Act.

11. Having come across such lapses often, we hereby direct the respondents to examine all the cases pending with them and if they found any clear violation of any of the provisions of the Act, the authorities shall, without wasting time of the Courts, come forward and admit such violations on the very first date of hearing, failing which, after enquiry if violations are found to be true, the authority concerned shall be mulcted with heavy costs.