

(1992) 07 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No. 2938 of 1992

Vajiram

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Citation : (1992) CriLJ 3747

Hon'ble Judges : N. Arumugham, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : Mrs. R. Subadra Devi, for the Appellant; Mr. S. Shanmughavelayutham, Addl. P.P., for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition is filed by the detenu himself under Article 226 of the Constitution of India, seeking for the issuance

of a Writ of Habeas Corpus quashing the order of detention dated 4-11-1991 and set the petitioner at liberty. The petitioner at liberty. The

petitioner came to the adverse notice as a bootlegger in view of the four cases mentioned in the preamble of the grounds of detention and was

detained on the basis of the ground case. The impugned order was passed by the District Magistrate and District Collector, North Arcot

Ambedkar District, Vellore, the second respondent herein in exercise of the powers conferred by Section 3(1) of the Tamil Nadu Prevention of

Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982

(Tamil Nadu Act 14 of 1982) with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order.

2. Though the learned counsel for the petitioner, Mrs. R. Subadra Devi, raised

various grounds mentioned in the affidavit of the petitioner, she confined her arguments on ground (d) where it is stated that the petitioner sent a written representation to the Government on 20-11-1991 and the same was rejected on 19-12-1991. The Government took 29 days in disposing the representation and it shows that it has not disposed of the representation with utmost expediency and therefore the detention order is vitiated. In reply to the said averment it is stated in the counter-affidavit filed by the first respondent, in para 5, that the representation dated 20-11-1991 was received by the Government on 22-11-1991 through the Superintendent, Central Prison, Vellore. Due to other time-bound work, the office examined the representation and the parawise remarks were called for from the second respondent in Government letter dated 25-11-1991. The parawise remarks of the second respondent were received on 9-12-1991. The representation along with the parawise remarks of the second respondent was carefully considered with connected records on 11-12-1991 and 12-12-1991. The connected file was submitted to the officers on 12-12-1991. The Under Secretary, the Deputy Secretary and the Secretary to Government have seen the file on 13-12-1991. After obtaining orders in circulation, on 16-12-1991 the request of the detenu was rejected on 16-12-1991. The rejection order was issued by Government letter dated 19-12-1991 and it was served on the detenu on 24-12-1991. In the counter-affidavit filed by the second respondent it is stated in para 5 that the representation was received in his office on 28-11-1991. The remarks of the sponsoring authority were called for on 29-11-1991 and the same were received on 4-12-1991. A reply has been submitted to the Government on 5-12-1991.

3. When we asked the learned Additional Public Prosecutor as to whether there is any reason for the delay at every stage, except narrating the various dates mentioned above, he fairly conceded that he cannot give any reason for the delay. Though the representation was received by the Government on 22-11-1991, there is no acceptable explanation on the side of the first respondent for not calling for remarks till 25-11-1991. Now in order to get over the delay, it is stated that due to other time-bound work, the office was unable to examine the representation and the parawise remarks were called for only on 25-11-1991. We do not find any

justification in the said reasoning put forward on behalf of the Government in calling for the parawise remarks. Further, there is a delay of 13 days in getting the parawise remarks. This delay remains unexplained. Even though it is stated by the second respondent that he received the representation on 28-11-1991 and the remarks were called for the next day, the sponsoring authority submitted the remarks only on 4-12-1991. There is absolutely no explanation for this delay on the part of the sponsoring authority and no affidavit of the sponsoring authority was filed. Even though it is stated that the second respondent submitted the remarks on 5-12-1991, the Government received it only on 9-12-1991. It is not known how this delay occurred. After receipt of the parawise remarks, the file was put up before the Under Secretary only on 13-12-91, even though it is stated that the representation and connected records were carefully considered on 11-12-91 and 12-12-91. It is not known who examined the representation and the connected file in between those days. We are of the view that only in order to get over the delay, an attempt is made on behalf of the first respondent stating that the parawise remarks of the second respondent and the connected records were carefully examined on 11-12-91 and 12-12-1991. But, they have failed in their attempt to explain the same. Even though the Secretary to Government has seen the file on 13-12-1991, it is not known why there was a delay in getting the rejection order on 16-12-1991. It is simply stated that the rejection order was obtained after circulation. Then the rejection order was issued on 19-12-1991. There is not explanation for the subsequent three days in issuing the rejection order. Further there is no explanation for 5 days delay in serving the order on the detenu. Thus, it is seen that at every stage there is unreasonable and inordinate delay and this delay would in our view vitiate the impugned order of detention as the constitutional safeguards provided under Article 22(5) of the Constitution have not satisfied.

4. In the result, the writ petition is allowed, the order of detention is quashed and the detenu is directed to be set at liberty forthwith unless he is required in connection with any the cause.

5. Petition allowed.