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**Court** : Chennai

**Decided On :** Jan-05-1994

**Reported in** : 1994CriLJ1904

**Judge** : T.S. Arunachalam and ;Thangamani, JJ.

**Appeal No.** : H.C.Ps. Nos. 1315 and 1329 of 1993

**Appellant** : Govindan Alias Sadayan

**Respondent** : State of Tamil Nadu and Another

**Advocate for Def.** : S. Shanmiughavelayutham, Addl. P.P.

**Advocate for Pet/Ap.** : P.V. Bakthavatsalam, Adv.

**Judgement** :

**Arunachalam, J.**

1. Both these habeas corpus petitions are disposed of together by a common order, since detenu concerned in each one of these petitions are stated to be involved in the same ground crime and the argument advanced is identical.

2. Govindan alias Sadayan petitioner in H.C.P. No. 1315 of 1993 is the further of detenu Dhanapal alias Chinnavan, who has been detained as 'goonda' under Tamil Nadu Act 14 of 1982, in pursuance of an order of detention dt. 3-6-1993

passed by the second respondent, District Magistrate and Collector, Salem, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order.

3. Palanisamy, petitioner in H.C.P. No. 1329 of 1993 is the brother of detenu Veerasamy, who has been similarly detained by the second respondent as a 'goonda' by his order dt. 3-6-1993.

4. Since these habeas corpus petition can be decided without going into the facts in detail, which led to the passing of the impugned orders, we refrain from stating those facts.

5. Mr. P. V. Bakthavatsalam, learned counsel appearing on behalf of the petitioners in each one of these cases, submitted that a common representation, was forwarded by the petitioner, Govindan alias Sadayan and Palanisamy, to the Secretary, Home and prohibition Department, Fort St. George, Madras, pleading for revocation of orders of detention, passed against detenus concerned on 28-7-1993, by registered post acknowledgment due. The said representation has not yet been disposed of. He then placed before us, not only a copy of the representation but also the postal receipt issued for registration of the representation, as well the acknowledgment, confirming the receipt of representation, by the State Government.

6. Mr. S. Shanmughavelayudham, learned Addl. Public Prosecutor, after verifying the detention files and obtaining instructions from the officers present in court, stated that no representation had been received from either of the petitioner and hence question of disposal of a non-existing representation, could not have arisen.

7. In the past, we have come across similar such acknowledgment, signed by a particular official, of the State Secretariat. He then worked in the Tapal Section. His name is Mr. S. Subramaniam. Officers present in court, after perusing the initials of S. Subramaniam in the acknowledgment, produced by petitioner's counsel, state that it appeared to be the initials of S. Subramaniam. Since we felt, that there was some hesitation on the part of the officers present to confirm that the acknowledgment had in fact been signed by S. Subramaniam, we directed

learned Addl. Public Prosecutor to cause appearance of the said Subramaniam before us in the afternoon session yesterday. On his appearance, we confronted him with the acknowledgment form. He admitted that he is the signatory in the said acknowledgment form. He was also certain, that in respect of this acknowledgment, he had received a communication, which he had forwarded to the concerned section in the State Secretariat. According to him, whenever he forwarded such communications, he was not in the habit of obtaining acknowledgments from the receiving section. It is not disputed by him, that he is expected to maintain a register, wherein he is bound to make entries of all communications, received by registered post acknowledgment due. He produced the register before us and, after verification, state, that between 28-7-1993 and 4-8-1993, no entries have been made in the register, in respect of the representation forwarded by the petitioners, in these habeas corpus petitions. He then referred to the other pages of the register and stated that the entry has been made in respect of this representation, though he had certainly received the representation, which he had forwarded to the concerned section, after initialling in the postal acknowledgment form. He claims that he was overworked and hence he had not made any entry in respect of this acknowledgment in the concerned register. It is possible to comprehend human error. But this official had, even in the past, not been able to account for communications, admittedly, received by him, for which he had signed in the respective postal acknowledgment forms. Prima facie, it appears to be a course of conduct that after obtaining certain communications and acknowledging the same, he is not able to account for them. If, in fact, he had forwarded these communications to some other department of official in the receiving department, must be accountable for the same. It may be a lapse on the part of S. Subramaniam or on the part of the official in the receiving section or both of them. As long as the respondent is not able to place before us the communication, which is the subject-matter of the acknowledgment produced before us, we have to take it that, in fact, the State Government had received the representation forwarded jointly by the petitioners to the Secretary, Home and Prohibition Department, Madras. We are satisfied, on the basis, on the acknowledgment produced by petitioner's counsel, that such a representation had been received early in August, 1993. Non-disposal of such representation, for over

five months, would certainly be sufficient, not to allow the impugned orders of detention, to survive any longer. Procedural mandates will have to be strictly followed, and in this case prejudice to the detenus, is also so apparent. On this sole ground, impugned orders of detention cannot be sustained and they shall stand set aside. Detenus concerned in each one of these habeas corpus petitions shall be set at liberty forthwith, unless their detention are otherwise required. Both these habeas corpus petitions are allowed.

8. Before parting with these cases, we are bound to refer to the observations made by another Division Bench of this Court, to which one of us (Arunachalam, J.) was a party, in H.C.P. Nos. 284 of 1993 (S. Tirupathi v. District Magistrate and Collector, Pudukottai) and 1135 of 1993, by orders dt. 23-8-1993 and 24-8-1993 respectively.

'This is a concrete case where the acknowledgment produced by petitioner's counsel has been accepted to be genuine by the respondent. A copy of the representation in Telugu has also been produced before us. In the absence of any explanation by the respondent that the acknowledgment refers to any other communication, it has to be taken that the acknowledgment refers to the representation sent by the petitioner on behalf of her brother, the detenu, as contended by Mr. B. Kumar. It is, therefore, apparent that the representation which should be held to have been duly received, had not been considered. Whatever be the reason, by the authorities, who are bound to consider the same in view of the constitution mandates, furnishing an opportunity to the detenu to make his representation against the order of detention. The failure to consider the representation amounts to violation of Article 22(5) of the Constitution of India which renders the continued detention illegal. It is rather unfortunate that the respondent has taken a stand that the representation is not available in the detention file. In the event of this representation not having been received, as stated earlier, respondent must be able to provide information as to the communication to which this specific acknowledgment relates. It is this content, we are of the opinion that haphazard signing of acknowledgment forms by Assistants in the tapal section in the Prohibition and Excise Department, with any control, for making them to account for the same, can lead to disastrous results. The Assistant

in the tapal section, as soon as he is receives a communication and signs the postal acknowledgment form, is bound not only to mention the date of receipt in the said acknowledgment, but also affix the official seal of his department in the said acknowledgment to indicate the authentic nature of the acknowledgment. The seal of the Department should also contain the date of receipt. Even otherwise, the receiving Assistant is bound to note the date of receipt below his signature in ink. Otherwise, it is easily possible to visualise that these officials can very well sign acknowledgment forms elsewhere other that in their office, to put the Department in the predicament. It is not for the first time, that we come across an instance of this nature, where receipt of communication on the basis of acknowledgment by an official has been affirmed by the respondent, but no further steps have even been attempted to be taken to set right this grave lacuna. We are informed, that the same official continues to operate from the same seat. We cannot overlook that the whole procedure of taking action under preventive detention law could be thwarted cunningly with an ulterior motive by producing of acknowledgment and feigned non-receipt of the representation (communication). This is very serious matter which, on the one hand, offects the liberty of citizens, and on the other thwarts the law under the preventive detention, even in cases where the detention may be justified.'

'In the past, this Court has observed that the officials responsible for such lacuna will have to be proceeded with in accordance with law. We reiterate the same, that at least in future the receiving official should not only affix his signature, but also note down the date in ink under this signature. He must also affix the official seal in the postal acknowledgment or any other acknowledgment of similar nature. Receipt of communication should be entered in a register and the authority to which it is forwarded, after receipt, should also be entered in the same register. Unless this procedure is followed, instances of this nature are bound to be more pronounced, since, as stated earlier, several such instances had come to our notice in the past.'

(Paragraphs 5 and 6 in HCP No. 284/93).

'However, before parting with the case, we must express our anguish at the manner in which Thiru S. Subramaniam, an Assistant in the Tapal Section, has been freely affixing his signatures in postal acknowledgment forms, without accounting for the communications, which he had received for which he had acknowledged. This is not the first time that we are coming across a case in which after acknowledging of the receipt of communication, the communication itself is not to be found in the detention file. Yesterday (23-8-1993) we disposed of HCP No. 284 of 1993 in which a similar infirmity was noticed. Earlier, on two other occasions, we have come across, a similar lacuna. It appears that Thiru S. Subramaniam continues in the same seat for the past several years and every time we have noticed a similar infirmity, he was in charge of that particular seat. It that be so, it will be necessary that immediate action will have to be taken against the said Assistant Thiru S. Subramaniam, for, otherwise a duty cast on the State Government, to dispose of representations received from the detenus expeditiously can be cunningly thwarted, be it either due to callous negligence on the part of the Assistant or due to a motive deliberate. The concerned Authority must immediately take action against Thiru S. Subramaniam, Assistant in the Tapal Section, prohibition and Excise Department, Fort St. George, Madras-9. He must be immediately shifted from Tapal Section and afforded sufficient opportunity to put forth his case in accordance with rules. In the event of the erring official being found guilty, stringent action will have to be taken.'

(paragraph 3 in H.C.P. No. 1135/92).

9. We are now told, by the learned Public Prosecutor that the said Subramaniam has been shifted from tapal section to some other Department. Whatever it be, on this serious lacuna, suitable action will have to be initiated and against erring officials, who are responsible, for the missing of communication, correlatable to the acknowledgment, produced before us. We are handing over the copy of representation sent on behalf the detenus, registration receipt and the postal acknowledgment, to the learned Public Prosecutor for safe forwarding to the State Government, to facilitate proper enquiry being conducted against erring officials. We hope that these lapses will not, any more, occur, for quite often we have pointed out, with anguish, grave lacuna in the processing of preventive orders.

10. Petitions allowed.

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