

Subaitha Kathoon Vs. the Additional Secretary

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Court : Chennai

Decided On : Nov-16-2011

Judge : M.Jaichandren; S.Nagamuthu, Jj.

Acts : [Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980](#); [Constitution of India](#) - Articles 22, 21

Appeal No. : H.C.P.(MD)No.713 of 2011

Appellant : Subaitha Kathoon

Respondent : The Additional Secretary

Judgement :

1. The petitioner is the wife of the detenu-Babu @ Sathick Basha, aged about 40 years, who has been detained in the Central Prison, Thiruchirappalli, by the order of the third respondent, C.P.O./TRC/B.M./D.O.No.08/2011, dated 09.08.2011, under the provisions of the [Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980](#). Challenging the detention order, the petitioner is before this Court, by way of the present Habeas Corpus Petition.

2. Even though a number of grounds have been raised in the present Habeas Corpus Petition, challenging the detention order passed by the detaining authority, on 09.08.2011, the learned counsel appearing on behalf of the petitioner, had raised the ground of delay, as the only ground, for this Court to set aside the detention order, dated 09.08.2011.

3.The learned counsel for the petitioner had stated that the petitioner had submitted a representation, on 16.08.2011, and the said representation was received by the detaining authority, on 30.08.2011 and the remarks relating to the representation had been received, on 27.08.2011. However, the file relating to the matter had been submitted, only on 22.09.2011, i.e., after a delay of 26 days.

4.Even though a detailed counter has been filed by the third respondent, there is no acceptable explanation shown therein, explaining the delay pointed out by the learned counsel for the petitioner. It is a well settled position in law, as laid down in a catena of cases decided by the Apex Court, as well as the High Courts, that the unexplained delay in the disposal of the representation made on behalf of the detenu would be fatal to the order of detention passed by the detaining authority.

5.In such circumstances, we are of the view that the impugned order of detention, passed by the detaining authority, is liable to be set aside.

6. In a number of decisions, the Apex Court, as well as the various High Courts, have made it clear that the delay in disposing of the representation would vitiate the order of detention. Some of them are as follows:

1. Binod Singh Vs. District Magistrate, Dhanbad (AIR 1986 SC 2090)
2. Rivadeneyta Ricardo Agustin Vs. Government of Delhi (1994 SCC (Cri) 354)
3. Rajammal Vs. State of Tamil Nadu and another (1999 SCC (Cri) 93)
4. Senthil Kumar Vs. District Magistrate and District Collector (2008(2) MLJ (Crl.) 1071)
5. Jakkulin Vs. State of Tamil Nadu (2008 (2) MLJ (Crl.) 1571)
6. State of Tamil Nadu rep. By its Secretary to Government, Home, Prohibition and Excise (IX) Department, Secretariat, Chennai and another [(2009(1) MWN (Cr.) 400 (DB)]

6.1. In the decision, reported in Prabhu Dayal Deorah Vs. District Magistrate, Kamrup and others (AIR 1974 SC 183), the Supreme Court has held that the

constitutional requirement of Article 22(5) will not be satisfied, unless the detenu is given the earliest opportunity to make a representation against the detention. Thus, it is clear that the State has a concomitant and corresponding duty to dispose of the representation, without any delay. Therefore, the Supreme Court has repeatedly held that the State government is bound to consider the representation made on behalf of the detenu, at the earliest possible, as it is a mandatory obligation cast on it, by Clause (5) of Article 22 of the [Constitution of India](#).

6.2. In Ramamurthy Vs. The State of Tamil Nadu (2006(4) CTC 181), this Court had set aside the order of detention on the ground of delay in considering the representation made on behalf of the detenu.

6.3. In a decision of the Constitution Bench of the Supreme Court, in Jayanarayan Sukul Vs. State of West Bengal, (1970(1) SCC 219), it has been held as follows:-

The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities.

6.4. The Supreme Court, in Mahesh Kumar Chauhan alias Banti Vs. Union of India & Others (1990) 3 SCC 148), while dealing with a preventive detention case, has observed as under:

Except merely mentioning that the representation was forwarded to the concerned sponsoring authority on August 25, 1989 and the comments from the sponsoring authority was received by the Department on September 11, 1989, there is absolutely no explanation as to why such a delay had occurred. This undue and unexplained delay is in violation of Article 22(5) rendering the detention order invalid.

6.5. In RAMA DHONDU BORADE VS. V.K.SARAF, COMMISSIONER OF POLICE (1989) 3 SCC 173), the Supreme Court has observed as follows: A representation of a detenu whose liberty is in peril should be considered and disposed of as expeditiously as possible; otherwise, the continued detention will render itself impermissible and invalid as being violative of Article 22(5). If any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court. In case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable - indeed appropriate - for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay. In absence of any explanation, Court cannot wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of a very serious nature as in the present case

6.6. In the decision reported, in Venkatesan @ Maya Venkatesan (2007(1) MLJ (CrL.) 1176), it has been held as follows: 10..... thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence, on this ground also the order of detention is liable to be quashed.

6.7. In the decision, reported in Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9 and another [2007(2) MWN (Cr.) 145 (DB)], this Court had held that an unexplained delay of three days in the disposal of the representation, made on behalf of the detenu, would be sufficient to set aside the detention order.

6.8. In Kalaiselvi.G. Vs. The State of Tamil Nadu (2007(5) CTC 657), a Full Bench of this Court had held as follows: 26.The last contention is relating to delay in

disposal of the representation. It is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making representation and such right of the detenu obviously encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay and the result of such representation should also be communicated without unnecessary delay. This position is apparent from several decisions of the Supreme Court, including the decision *Usha Agarwal vs. Union of India and others* (2007 (1) SCC 295), wherein, after referring to the Constitution Bench decision of the Supreme Court in *Kamleshkumar Ishwandas Patel vs. Union of India*, (1995) 4 SCC 51, it was observed: This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention.

6.9. In *Rekha Vs. State of Tamilnadu* (2011(5) SCC 244), it has been held that the personal liberty of a person is protected, under Article 21 of the [Constitution of India](#). As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the detaining authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safe guards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

6.10. A dissenting note seems to have emerged from the decision of the Supreme Court, in *D.M.Nagaraja Vs. The Government of Karnataka and others* [(2011(2) TLNJ 361 (Criminal)], wherein, it has been held that there is no constitutional mandate, under Clause (5) of Article 22, much less any statutory requirement, to consider the representation, made on behalf of the detenu, before the order of detention is confirmed. However, it is needless to point out that the correct position of law has been enunciated by the Supreme Court, in its decision, in *K.M.Abudlla Kunhi Vs. Union of India* (1991(1) SCC 476), wherein, it had been held as follows:

12..... The requirement however, is that there should not be supine indifference slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.....

6.11. In fact, this Court, in its order, dated 9.11.2011, in Smt.Sowdun Bivi Vs. The State of Tamilnadu (H.C.P.No.108 of 2011), has clarified the position relating to the issue regarding the consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, reported in Rajammal Vs. State of Tamil Nadu and another (1999 AIR SCW 139). Thus, it is clear from the catena of cases decided by the Supreme Court that there is an obligation cast on the detaining authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the [Constitution of India](#).

7.In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the third respondent, in his Proceedings C.P.O./TRC/B.M./D.O.No.08/2011, dated 09.08.2011, is set aside. Accordingly, the detenu is directed to be released, forthwith, unless his presence is required in connection with any other case or cause.

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