

Rajendran Vs. the State Rep by

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Court : Chennai

Decided On : Jan-09-2013

Judge : M.Jaichandren

Appellant : Rajendran

Respondent : The State Rep by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN and THE HONOURABLE MR.JUSTICE S.NAGAMUTHU H.C.P(MD)No.1422 of 2012 Rajendran .. Petitioner vs The State rep by 1.The Secretary to the Government of Tamilnadu Home, Prohibition and Excise Department, Fort St. George, Chenna

009. 2.The Commissioner of Police, Trichirapalli City. .. Respondents Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the second respondent, pertaining to the detention order made in C.P.O./TC/IS/D.O.No.71/2012, dated 17.10.2012 in detaining the detenue as Goonda under THE TAMILNADU ACT 1.of 1982 and quash the same and direct the respondents to produce the said detenue, namely Ganapathy, aged 23 years S/o Rajendran, who is detained in the Central Prision, Trichy before this Court and set him at liberty. !For petitioner ... Mr.N.Shankar Ganesh ^For respondents ... Mr.C.Ramesh Additional Public Prosecutor :ORDER (Order of the Court was made by M.JAICHANDREN,J) This Habeas Corpus Petition has been

filed to call for the records relating to the order of the second respondent, dated 17.10.2012, made in C.P.O/T.C/I.S/D.O.No.71/2012, and quash the same, and to produce the detenu, namely, Ganapathy, son of Rajendran, aged about 23 years, confined in the Central Prison, Tiruchirappalli, before this Court and to set him at liberty.

2. The petitioner has stated that the second respondent had passed the impugned detention order, dated 17.10.2012, under sub-section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug- offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982. (Tamil Nadu Act 14 of 1982), read with the orders issued by the State Government, in G.O.(D).No.117, Home, Prohibition and Excise (XVI) Department, dated 18.07.2012, under sub-section (2) of Section 3 of the said Act, directing the detention of Ganapathy, in the Central Prison, Tiruchirappalli, terming him as a 'Goonda'.

3. Even though various grounds had been raised by the petitioner, in the present Habeas Corpus petition, while challenging the impugned detention order, dated 17.10.2012, the learned counsel appearing on behalf of the petitioner had submitted that the said detention order C.P.O/T.C/I.S/D.O.No.71/2012, is liable to be set aside, merely on the ground of delay in the disposal of the representation, dated 06.11.2012, made on behalf of the detenu.

4. It has also been pointed out that the representation made on behalf of the detenu, dated 06.11.2012, was received, on 12.11.2012, and the remarks were called for, on 14.11.2012. The remarks had been received, only on 20.11.2012 after a delay of 6 days, out of which 2 days i.e. 17.11.2012 and 18.11.2012 were government holidays. As such, there has been an actual delay of 4 days in dealing with the representation made on behalf of the detenu.

5. The learned counsel for the petitioner had submitted that the inordinate delay that had occurred in the disposal of the representation, made on behalf of the detenu, would vitiate the detention order passed by the Detaining Authority.

6. The learned Additional Public Prosecutor, appearing on behalf of the respondents, had submitted that the Habeas Corpus Petition, filed on behalf of the detenu, is premature in nature.

7. The learned counsel had relied on the decision of the Supreme Court, in D.M.Nagaraja Vs. Government of Karnataka and others, reported in (2011) 10 SCC 215, to state that there is no obligation on the part of the Detaining Authority or the State Government to dispose of the representation made on behalf of the petitioner, before the order of detention is approved.

8. 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 198 SC 2090).
2. Rivadeneyta Ricardo Agustin Vs. Government of the NCT 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 (Cri.) 1071).
5. Jakkulin Vs. State of Tamil nadu (2008 (2) MLJ (Cri.) 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)).
8.1. In the decision, in Prabhu Dayal Deorah Vs. District Magistrate, Kamrup and others, (AIR 197 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.
8.2. 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.
8.3. 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." 8.4. The Supreme Court, in Mahesh Kumar Chauhan alias Banti Vs. Union of India & Others, (1990) 3 SCC 148, while dealing with a case of preventive detention, has observed that an undue and unexplained delay in the disposal of the representation of the detenu is in violation of Article 22(5) of the Constitution of India, rendering the detention order invalid. 8.5. In Rama Dhondurao Borade Vs. V.K. Saraf, Commissioner of Police and Others, (1989) 3 SCC 173, the Supreme Court has observed that a representation of a detenu, whose liberty is in peril, should be considered and disposed of, as expeditiously as possible. The continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. 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. 8.6. In the decision, in Venkatesan @ Maya Venkatesan (2007(1) MLJ (Cr.) 1176), it has been held that 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 the delay, but how it is explained by the Authority concerned. 8.7. In the decision, in Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamil Nadu, 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. 8.8. In G. Kalaiselvi Vs. The State of Tamil Nadu (2007(5) CTC 657), a Full Bench of this Court had held that it is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making a 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 any such delay. 8.9. 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 part of 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. 8.10. In *K.M.Abdulla Kunhi Vs. Union of India*, (1991(1) SCC 476), it had been held that any unexplained delay in the disposal of the representation made on behalf of the detenu would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. 8.11. 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, 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. 8.12. In *Rashid sk. v. State of West Bengal*, reported in, 1973 (3) SCC 476, the Supreme Court has held that the right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion. 8.13. In *Ram Sukrya Mhatre v. R.D.Tyagi and Others*, 1992 Supp (3) SCC 65, the Supreme Court has held thus;- "...the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal not only by the State Government under the relevant provision of the Statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or State Government, as the case may be, has caused delay due to negligence, callous inaction, avoidable re-tapism and undue protraction by

the authorities concerned. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India." 8.14. In *Aslam Ahmed Zahire Ahmed Shaik v. Union of India and others*, reported in 1989 SCC (CrI) 554, the Supreme Court has held that an avoidable and unexplained delay in the disposal of the representation would result in rendering the continued detention of the detenu illegal and constitutionally impermissible. 8.15. In *Tara Chand v. State of Rajasthan and Others*, 1980 (2) SCC 32 and *Raghavendra Singh v. Superintendent, District Jail, Kanpur & Others*, (1986) 1 SCC 650, the Apex Court has held that any inordinate and unexplained delay on the part of the Government, in considering the representation, renders the detention illegal. 8.16. In *Rajammal v. State of Tamil Nadu & Others*, 1999 (1) SCC 417, it has been held as follows:- "It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words 'as soon as may be' in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. 8.17. In *K.M. Abdulla Kunhi v. Union of India*, (1991) 1 SCC 476, it has been held as follows:- "... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal." 8.18. In a recent decision, in *Ummu Sabeena Vs. State of Kerala*, 2011 STPL (Web) 999 SC, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

9. In the present case, the delay caused in the disposal of the representation, dated 06.11.2012, made on behalf of the detenu, has not been properly explained by the respondents.

10. In such circumstances, in view of the decisions cited supra, the detention order, dated 17.10.2012, passed by the second respondent, is set aside and the Habeas Corpus Petition stands allowed. The detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause. jkr To 1.The Secretary to the Government of Tamilnadu Home, Prohibition and Excise Department, Fort St. George, Chenna

009. 2.The Commissioner of Police, Trichirapalli City. 3.The Additional Public Prosecutor Madurai Bench of Madras High Court, Madurai.

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