

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.146/2015

Reena

.. Petitioner

vs.

- 1.Secretary to the Government
Food and Consumer
Protection Department
Ministry of Consumer Affairs
Food and Public Distribution System
Government of India
New Delhi-110 001.
- 2.The Additional Secretary to Government of India
Ministry of Consumer Affairs
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan
New Delhi-110 001.
- 3.State of Tamil Nadu
represented by Secretary to Government
Co-operation, Food, Consumer Protection Department
Secretariat, Chennai 600 009.
- 4.The District Collector and
District Magistrate Vellore District. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) vide Detention Order dated 21.12.2014 on the file of the 2nd respondent herein made in proceedings in C3.D.O.No.108/2014, and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Prakash @ Thirupathi, S/o.Raju, Male, aged 33 years, before this Court and set the petitioner's husband at liberty from detention, who is now detained at Central Prison, Vellore.

For petitioner : Mr.O.S.Thilak Pasumbadiyar

For RR1 & 2 : Mr.S.Arockiam,CGSC

For RR3 & 4 : Mr.M.Maharaja, APP

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

The Petitioner, who is the wife of the detenu, has filed this Petition challenging the order of detention passed by the 2nd respondent in C3.D.O.No.108/2014, dated 21.12.2014, branding the detenu as a "Black Marketer" under the Tamil Nadu Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act 7 of 1980].

2.Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 12.01.2015. According to the learned counsel for the petitioner, the representation, dated 12.01.2015 has been received by the Government on 19.01.2015 ; the remarks were called on 22.01.2015. But the said remarks were received only on 28.01.2015, after a delay of 6 days. He adds that though the file was submitted to the Under Secretary on 03.02.2015, the Minister has dealt with the said file of the detenu only on 06.02.2015 and the rejection letter though prepared on 09.02.2015, was sent to the detenu only on 09.02.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were three intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of three days in considering the representation, which remains unexplained. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.

3.Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 19.01.2015 and that was forwarded to the Detaining Authority, calling for remarks on 22.01.2015 itself and remarks were received by the Government on 28.01.2015 and ultimately, the representation was considered and rejected on 09.02.2015 and the result of the consideration was communicated to the detenu on 09.02.2015. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate

delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

4. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 12.01.2015 which was received by the Government on 19.01.2015, remarks have been called for from the Detaining Authority on 22.01.2015. But, remarks have been received by the Government only on 28.01.2015 and the case of the detenu was dealt with by the Minister only on 06.02.2015 and thereafter, the representation has been considered by the authorities concerned and rejected on 09.02.2015. From the above, it is clear that in between 22.01.2015 and 28.01.2015, there is a delay of six days. Even if we give concession to the three intervening holidays, namely 24.01.2015, 25.01.2015 and 26.01.2015, still there is a delay of three days, which remain unexplained.

6. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the delay of three days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7. In the judgment of the Hon'ble Supreme Court in Rajammal's case (cited supra), 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. As per the dictum laid down by the Supreme Court in above cited Rajammal's case, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here three days delay has not been properly explained at all.

9. As per the dictum laid down by the Supreme Court in above cited Rajammal's case, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly

explained by the authorities concerned. But, here the inordinate delay from 22.01.2015 to 28.01.2015, has not been properly explained at all.

10.Further, 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.

11.In the light of the above fact and law, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu.

12.Accordingly, the Habeas Corpus Petition is allowed and the Detention Order passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Secretary to the Government
Food and Consumer
Protection Department
Ministry of Consumer Affairs
Food and Public Distribution System
Government of India
New Delhi-110 001.

2.The Additional Secretary to Government of India
Ministry of Consumer Affairs
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan
New Delhi-110 001.

3.The Secretary to Government
Co-operation, Food, Consumer Protection Department
Secretariat, Chennai 600 009.

4.The District Collector and
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Vellore District.

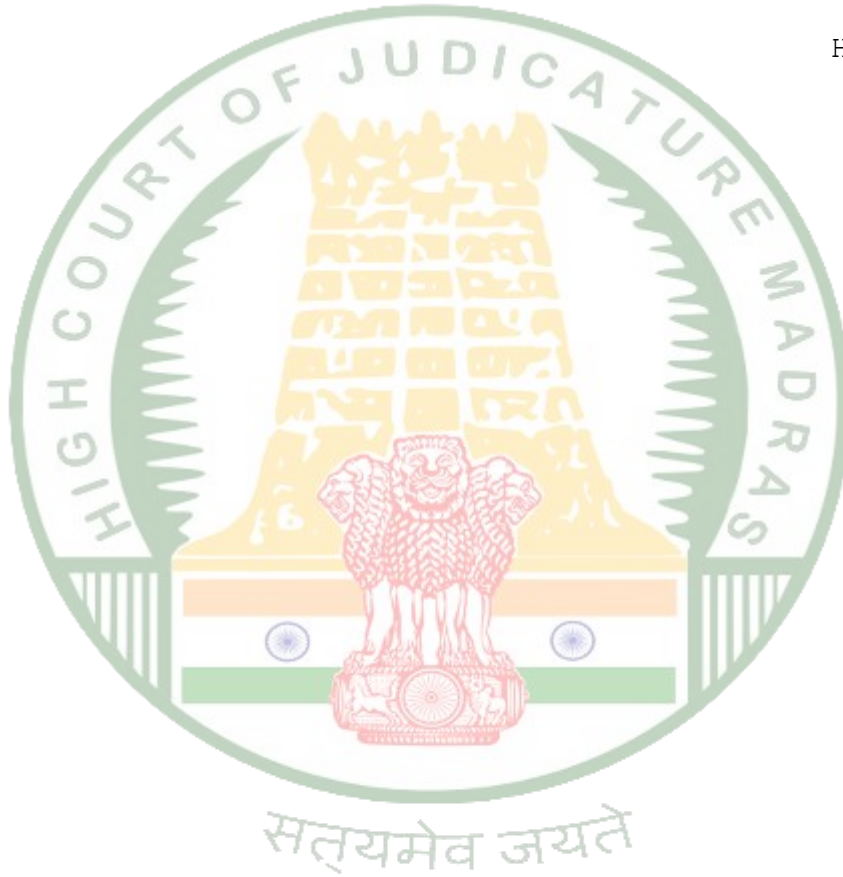
5.The Joint Secretary to Government,
Public (L&O) fort St.George, Chennai.

6.The Public Prosecutor, High Court, Madras.

7.The Superintendent of Central Prison, Vellore.

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