

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1803/2015

L.Mani

..Petitioner

vs.

- 1.The State of Tamilnadu,
re. by its Secretary to Government
Department of Cooperation, Food & Consumer
Protection, Fort St George, Chennai-9.
- 2.The District Magistrate & District Collector
Namakkal District, Namakkal.
- 3.The Government of India, rep by its
Addl. Secretary to Government
Ministry of Food and Consumer Affairs
and Public Distribution, 270, Krishi Bavan
New Delhi 110001.

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to produce the body of the brother of the petitioner by name Rajendiran, aged 44 years/detenu before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order made in CMP No.01/PBMMSEC Act/2015 [F3] dated 15.07.2015 on the file of the 2nd respondent, quash the same.

For petitioner : Mr.N.Manokaran
For RR1 & 2 : Mr.M.Maharaja,APP
For R3 : Mr.G.Venkatesan, CGC

O R D E R

(Order of the Court was made by R.SUDHAKAR, J.)

The Petitioner, who is the brother of the detenu, viz., Rajendiran, son of Lingamoorthy, aged 44 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in CMP No.01/PBMMSEC Act/2015 [F3] dated 15.07.2015, branding his brother as a "BLACK MARKETER" under Section 3(1) R/W 3[2][a] of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central 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 25.07.2015. According to the learned counsel for the petitioner, the representation, dated 25.07.2015, has been received by the Government on 29.07.2015 but the remarks have been called for from the detaining authority only on 04.08.2015, after a delay of six days and the remarks have been received by the Government only on 17.08.2015, after a delay of thirteen days. He adds that the file was submitted to the Under Secretary on 20.08.2015 and further, the Minister has dealt with the said file of the detenu on 27.08.2015 after a delay of three days from the date on which, the Law Secretary has dealt with the same and rejected on the same day. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were ten intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of sixteen days, 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 25.07.2015 and that was forwarded to the Detaining Authority, calling for remarks on 04.08.2015 and remarks were received by the Government on 17.08.2015 and ultimately, the representation was considered and rejected on 27.08.2015 and the result of the consideration was communicated to the detenu on 31.08.2015. 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 25.07.2015, which was received by the Government on 29.07.2015, remarks have been called for from the detaining authority on 04.08.2015, i.e., after a delay of six days. The remarks have been received by the Government on 17.08.2015, i.e., after a further delay of thirteen days and the case of the detenu was dealt with by the Minister only on 27.08.2015 and rejected on the same day. From the above, it is clear that in between

29.07.2015 and 04.08.2015, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 6 days ; in between 04.08.2015 and 17.08.2015, [i.e, the intermittent days between the remarks called for and the remarks received], there is a further delay of 13 days ; and in between 24.08.2015 and 27.08.2015 [i.e, the intermittent days between the file dealt with by the Law Secretary and the Minister], there is a delay of 3 days. Even if we give concession to the six intervening holidays, namely 01.08.2015, 02.08.2015, 08.08.2015, 09.08.2015, 15.08.2015 and 16.08.2015, still there is a delay of sixteen 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 thirteen 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 sixteen days delay has not been properly explained at all.

9.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.

10.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.

11.Accordingly, the habeas corpus petition is allowed and the detention order dated 15.07.2015, 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(CS V)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Secretary to Government
State of Tamilnadu,
Department of Cooperation, Food & Consumer
Protection, Fort St George, Chennai-9.
 - 2.The District Magistrate & District Collector
Namakkal District, Namakkal.
 - 3.The Addl. Secretary to Government
Government of India,
Ministry of Food and Consumer Affairs
and Public Distribution, 270, Krishi Bavan
New Delhi 110001.
 - 4.The Public Prosecutor, High Court, Madras.
 5. The Joint Secretary to Government,
Public (Law & order), Fort St. George,
Chennai-9.
 6. The Superintendent, Central Prison, Salam.
- + 1 cc to Mr.N. Manokaran, Advocate sR.67185

H.C.P.No.1803/2015

SCD(CO)
Eu 08.1.16