

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.402/2015

S.Kaviarasan

.... Petitioner

vs.

1.The Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution Department,
Room No.270, Krish Bhavan,
New Delhi-110 001

2.The Secretary to Government,
Food and Consumer Protection Department,
2nd Floor,
Namakkal Kavignar Maligai,
Secretariate,
Chennai-600 009

3.The District Magistrate and Collector,
Cuddalore District,
Cuddalore.

4.The Inspector of Police,
Civil Supplies C.I.D.,
Cuddalore Unit,
Cuddalore District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the detenu Thiru Senthil son of Kuppusamy, aged about 44 years, residing at South Street, Nattarmangalam Village, Kattumannarkoil, Cuddalore District, Tamil Nadu, now confined at Central Prison, Cuddalore, as per the order of the preventive detention passed by the 3rd respondent under Act 7 of 1980 before this Hon'ble Court and call for the records pertaining to detention order of the 3rd respondent in C3/D.O/3/2015 dated 28.01.2015 and to quash the same and set the detenu at liberty.

For petitioner : Mr.G.Pugazhenth
For R1 : Mr.Arockiam, A.C.G.S.C.
For R2 & R3 : Mr.M.Maharaja,A.P.P.

O R D E R

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

The Petitioner, who is the son of the detenu, has filed this Petition challenging the order of detention passed by the 3rd respondent in C3/D.O/3/2015 dated 28.01.2015, branding the detenu as a "Black Marketeer" 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 02.02.2014. According to the learned counsel for the petitioner, after passing of the detention order dated 28.01.2015, the petitioner as well as the detenu has made a representation dated 2.2.2015 to the third respondent, but the same was not disposed of till date. 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. The learned Additional Public Prosecutor fairly submits that the representation of the petitioner dated 2.2.2015 is still pending with the third respondent.

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

5. 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 in considering the petitioner's representation. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

6. 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."

7.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. In the present case, though the petitioner has made a representation on 3.2.2015, till date, the same has not been considered and delay also has not been properly explained at all.

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 the inordinate delay in considering the petitioner's representation 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 passed by the third 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

msk

To

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Civil Supplies C.I.D.,
Cuddalore Unit,
Cuddalore District

5.The Superintendent of Central Prison,
Cuddalore.

6.The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9

7.The Public Prosecutor, High Court,
Madras.

1 cc to Mr. .G.Pugazhenthiraj, Advocate Sr.No.29499

1 cc to Mr.S.Arockiam , Advocate Sr.No.29283

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raj(co)
pmk.1.7.2015

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