

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM

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

H.C.P.No.670 of 2015

Jailani

..Petitioner

vs.

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

2.The State of Tamil Nadu
rep. By the Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Chennai - 9.

3.The District Collector and District
Magistrate, Vellore District,
at Vellore.

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the order passed by the third respondent in C3.D.O.No.12/15 dated 02.02.2015 and set aside the same and produce the detenu Thiru.Bilal, aged about 30 years, son of Hussain, who is detained in Central Prison at Vellore, before this Court and set him liberty.

For Petitioner : Mr.A.Rajesh Kanna

For Respondents: Ms.N.K.Nithilavani, CGSC for R1
Mr.M.Maharaja,
Addl. Public Prosecutor for R2 & R3

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 third respondent in C3.D.O.No.12/2015 dated 02.02.2015, branding the detenu as a "Black Marketeer" under the 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 06.03.2015. According to the learned counsel for the petitioner, the representation, dated 06.03.2015 has been received by the Government on 10.03.2015 ; the remarks were called on 12.03.2015. But the said remarks were received only on 31.03.2015, after a delay of 13 days. He adds that though the file was submitted to the Under Secretary on 09.04.2015, the Minister has dealt with the said file of the detenu only on 17.04.2015 and the rejection letter was sent to the detenu on 20.04.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 6 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 13 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 10.03.2015 and that was forwarded to the Detaining Authority, calling for remarks on 12.03.2015 itself and remarks were received by the Government on 31.03.2015 and ultimately, the representation was considered and rejected on 20.04.2015 and the result of the consideration was communicated to the detenu on 21.04.2015. 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 citations 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 06.03.2015 which was received by the Government on 10.03.2015, remarks have been called for from the detaining authority on 12.03.2015. But, remarks have been received by the Government only on 31.03.2015 and the case of the detenu was dealt with by the Minister only on 17.04.2015 and thereafter, the representation has been considered by the authorities concerned and rejected on 20.04.2015. From the above, it is clear that in between 12.03.2015 and 31.03.2015, there is a delay of 13 days. Even if we give concession to the 6 intervening holidays, namely 14.03.2015, 15.03.2015, 21.03.2015, 22.03.2015, 28.03.2015 and 29.03.2015 respectively, still there is a delay of 7 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 7 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 detenue 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 11 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 12.03.2015 to 31.03.2015, 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 dated 02.02.2015, 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/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mmi

To

1.The Secretary to Government of India,
Ministry of Consumer Affairs,
Foods and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
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2.The Secretary to Government,
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3.The District Collector and District
Magistrate, Vellore District,
at Vellore.

4.The Superintendent,
Central Prison, Vellore.

5. The Joint Secretary to Government
Public (law and order)
Fort Saint George, Chennai-9

6.The Public Prosecutor,
High Court, Madras.

1 cc to M/s.N.K. Nithilavani, CGSC, Sr. 31060

H.C.P.No.670 of 2015

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