

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

HCP.No.2823/2015

Sangeetha

..Petitioner

Vs

1.The Union of India
Rep.by its Secretary to Government
Ministry of Consumer Affairs
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, "Krishi Bhavan"
New Delhi 110 001.

2.The State of Tamil Nadu
Rep. by its Secretary to Government
Co-operation, Food & Consumer Protection
Department
2nd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai 600 009.

3.The District Collector &
District Magistrate
Krishnagiri, Krishnagiri District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus calling for the records of the 3rd respondent herein S.c.No.87/2015 dated 28.09.2015 and set aside the same and direct the respondents to produce the detenu namely Ilangovan, Son of Venkatesan, male, aged about 49 years who is the petitioner herein now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.K.S.Rajagopalan

For Respondents: Mr.S. Arockiam

CGSC for R1

Mr.M.Maharaja

Addl.Public Prosecutor for RR2 and3

ORDER

[Order of the court was delivered by S.NAGAMUTHU, J.]

The Petitioner, who is the wife of the detenu, viz., Ilangovan, son of Venkatesan, aged 49 years, has filed this petition challenging the order of detention passed by the 3rd respondent in S.C.No.87/2015 (CS) dated 28.09.2015, branding her husband 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 28.09.2015. According to the learned counsel for the petitioner, the representation, dated 28.09.2015, has been received by the Government on 29.09.2015. It is not mentioned as to when the remarks have been called for from the detaining authority. Even assuming that the remarks were called for from the detaining authority on the same day when the representation was received by the Government, i.e., on 29.09.2015, the remarks have been received by the Government only on 27.10.2015, with a delay of twenty eight days. He adds that the file was submitted to the Under Secretary on 04.11.2015 and further, the Minister has dealt with the said file of the detenu on 06.11.2015 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 twelve intervening holidays including Government 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 29.09.2015 and that was forwarded to the Detaining Authority, calling for remarks and remarks were received by the Government 27.10.2015 and ultimately, the representation was considered and rejected on 06.11.2015 and the result of the consideration was communicated to the detenu on 09.11.2015. 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 28.09.2015, which was received by the Government on 29.09.2015, remarks have been called for from the detaining authority. The remarks have been received by the Government on 027.10.2015, with a delay of twenty eight days and the case of the detenu was dealt with by the Minister only on 06.11.2015 and rejected on the same day. From the above, it is clear that in between 29.09.2015 and 27.10.2015, [i.e, the intermittent days between the remarks called for and the remarks received], there is a delay of 28 days. Even if we give concession to the twelve intervening holidays including Government Holidays, namely 02.10.2015 ; 03.10.2015 ; 04.10.2015 ; 10.10.2015 ; 11.10.2015 ; 17.10.2015 ; 18.10.2015 ; 21.10.2015 ; 22.10.2015 ; 23.10.2015 ; 24.10.2015 ; and 25.10.2015, 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 ten 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 28.09.2015, passed by the 3rd 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(J)

//True Copy//

Sub Assistant Registrar

gms

To

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

2. The Secretary to Government
State of Tamil Nadu
Co-operation, Food & Consumer Protection
Department
2nd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai 600 009.

3.The District Collector &
District Magistrate
Krishnagiri, Krishnagiri District.

4.The Superintendent of Central Prison
Salem.

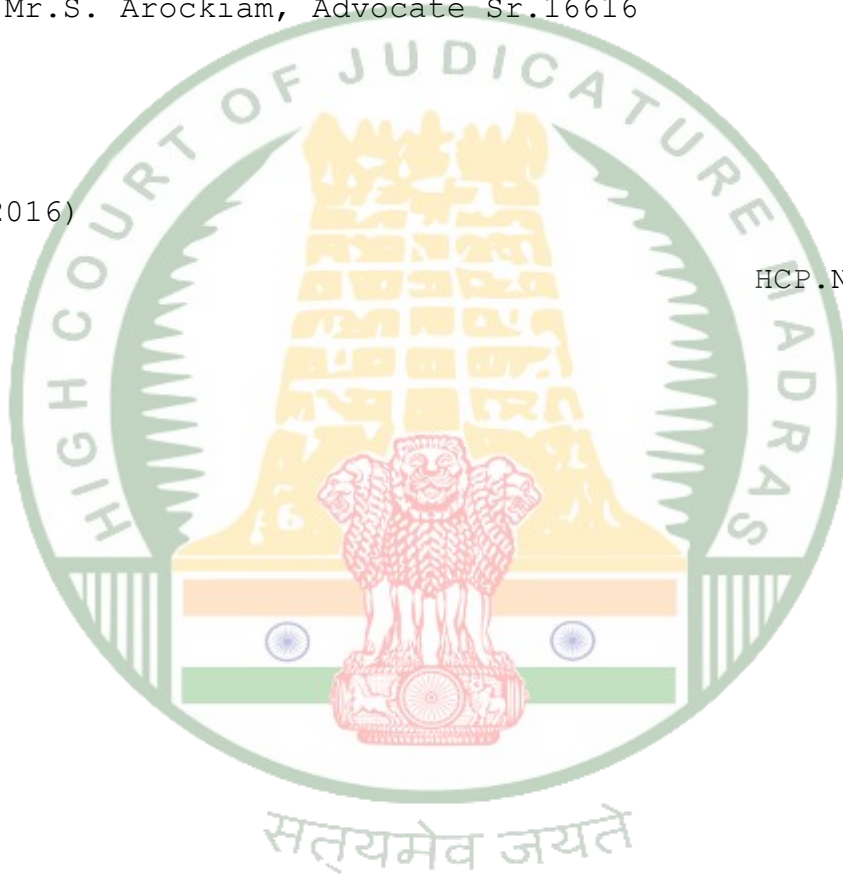
5.The Public Prosecutor, High Court, Chennai.

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

+ 1 cc to Mr.S. Arockiam, Advocate Sr.16616

MSM(CO)
EU(04/04/2016)

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