

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION No.20484 of 2016

29.11.2016

Between:

B.Kumari

..Petitioner

And

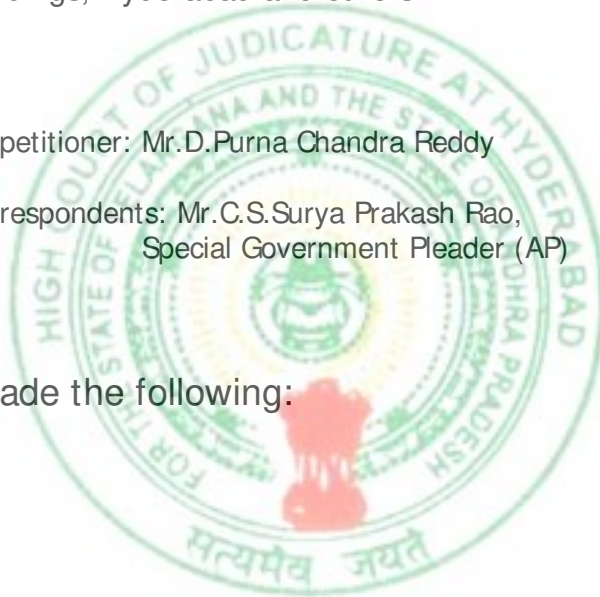
The State of Andhra Pradesh,
represented by its Chief Secretary,
Secretariat Buildings, Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.D.Purna Chandra Reddy

Counsel for the respondents: Mr.C.S.Surya Prakash Rao,
Special Government Pleader (AP)

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of *Habeas Corpus* for production of Chinthamakula Praveen (hereinafter referred to as 'the detenu'), who was detained in pursuance of the detention order, *vide* ROC No.C2/1824/2016, dated 30.04.2016, of respondent No.2.

2. During earlier hearing, the learned counsel for the petitioner, *inter alia*, argued that the representation, dated 11.06.2016, made by the petitioner – mother of the detenu and submitted to respondent No.1 on 13.06.2016 was not disposed of. As the counter-affidavit filed by respondent No.2 did not specifically deal with this aspect, we have adjourned the case to enable the respondents to file additional pleadings. Accordingly, the Secretary to Government (Political), General Administration Department, A.P. Secretariat, Velagapudi, Amaravathi, Guntur District, filed a counter-affidavit, wherein it was, *inter alia*, stated that an unsigned representation, dated 11.06.2016, was submitted by the petitioner to the Chief Secretary to Government of Andhra Pradesh on 13.06.2016 pertaining to the impugned order of detention; that the same was forwarded to the Secretary to Government (Political), General Administration Department on 15.06.2016; that on 23.06.2016, the Government called for remarks of the Collector on the said representation and that reminders were also issued on 06.07.2016 and 16.08.2016. It was further averred that the District Collector, Chittoor, submitted remarks *vide* his letter, dated 16.08.2016, and the same were received by the Government on 24.08.2016 and that on considering the said remarks, respondent No.1 rejected the petitioner's representation, *vide* G.O.Rt.No.1872, General Administration (Law & Order) Department, dated 01.09.2016.

3. The facts admitted in the counter-affidavit referred to above would show that there was a time lag of about 75 days in disposing of the petitioner's representation. In W.P.No.16231 of 2016, *vide* order, dated 09.11.2016, this Court has considered the effect of delay in disposing of the representation in detail and held as under:

"Under clause (5) of Article 22 of the Constitution of India, an obligation is cast on the authority making the detention order to afford the detenu the earliest opportunity of making a representation against the detention order. Interpreting this provision, the Supreme Court in *Rajammal (supra)* held as under:

"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. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in *K.M.Abdulla Kunhi Vs. Union of India*¹. The following observations of the Bench can profitably be extracted here:

It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained

¹ (1991) 1 SCC 476

delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

As respondent Nos. 1 and 2 failed to dispose of the representation of the petitioner without undue delay and also failed to explain the time lag between 11-05-2016 and 16-06-2016 by offering reasonable explanation, the impugned detention orders cannot be sustained in law as the same are in the teeth of clause (5) of Article 22 of the Constitution of India and the settled legal principles referred to above.

4. As the facts in the present case are similar to that in W.P.No.16231 of 2016 and as the respondents failed to explain the delay in disposing of the petitioner's representation by assigning sufficient reasons, the impugned detention order cannot be sustained in law.

5. Accordingly, the detention order *vide* ROC No.C2/1824/2016, dated 30.04.2016, of respondent No.2 is set aside. The Writ Petition is allowed and the detenu – Chinthamakula Praveen @ Lakshmipathi, S/o C.Subba Raju shall be released from detention forthwith, unless he is required in connection with any other case(s).

6. As a sequel to allowing the writ petition, W.P.M.P.No.36315 of 2016 filed by the petitioner for raising additional grounds shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

29th November, 2016
GHN