

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 16231 OF 2016

Between:

K.Swapna ... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Chief Secretary,
Secretariat Buildings,
Hyderabad, and others ... Respondents

Date of Order Pronounced : 09-11-2016

SUBMITTED FOR APPROVAL:

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+WRIT PETITION No. 16231 OF 2016

%Dated: 09-11-2016

#K.Swapna,

W/o A.Kamal Kishore, 27 years,

D.No. 28-1414/A, Ramnagar Colony,

Chittoor, Chittoor District

... Petitioner

VERSUS

\$The State of Andhra Pradesh,

Rep. by its Chief Secretary,

Secretariat Buildings,

Hyderabad, and others

... Respondents

!Counsel for the petitioner : Sri D.Purna Chandra Reddy

^Counsel for the respondents : Special Government Pleader (A.P.)

<GIST :

>HEAD NOTE :

?Cases referred :

1. (1999) 1 SCC 417
2. (1991) 1 SCC 476

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.P.No. 16231 OF 2016

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

This Writ Petition is filed by the wife of A.Kamal Kishore (hereinafter referred to as 'the detenu') assailing proceedings vide Roc.No. C2/1352/2016 dated 15-03-2016 of respondent No. 2 as confirmed by G.O.Rt.No. 943 General Administration (Law & Order) Department dated 02-05-2016 and issue a Writ of *Habeas Corpus* for setting the detenu free from detention.

2. In the manner we propose to dispose of the Writ Petition, it is not necessary to refer to the facts in detail. It will suffice to note that, one of the legal grounds on which the detention is challenged is that, there is undue delay in disposal of the representation of the wife of detenu and that, therefore, the detention is liable to be declared as unconstitutional on this ground alone. The petitioner pleaded that against the detention of the detenu, the petitioner has made her representation on 03-05-2016 to respondent No. 1 and that it is only in the third week of June, 2016, that the rejection order was served on the detenu in jail. Sri D.Purna Chandra Reddy, learned counsel for the petitioner, has placed reliance on the judgment of the Supreme Court in ***Rajammal Vs. State of Tamil Nadu and another***¹ in support of his submission that unexplained delay in disposal of the representation vitiates the detention order. In the counter affidavit filed by respondent No. 2, it is *inter alia* stated that the petitioner's representation dated 03-05-2016 was received by respondent No. 1 on 16-05-2016 (learned

¹ (1999) 1 SCC 417

Special Government Pleader submitted that the date 16-05-2016 is a mistake for 11-05-2016), that on 19-05-2016, the Government called for remarks from respondent No. 2, that respondent No. 2 submitted the remarks through his letter dated 21-05-2016 and the same was received by respondent No. 1 on 08-06-2016. He has further submitted that after receipt of the remarks, respondent No. 1 has considered the representation of the petitioner and rejected the same on 16-06-2016.

3. Learned Special Government Pleader placed before us the record, a perusal of which shows that the remarks purportedly sent through letter dated 21-05-2016 are shown to have been received at the end of respondent No. 1 on 08-06-2016. Though on the top of the remarks, an endorsement is made to the effect that the same were received by speed post with certain numerals written thereunder and the same was shown to have been received on 08-06-2016, the speed post cover has not been available on file. Moreover, the seal placed on the first page of the remarks, which also purports to show that it is received on 08-06-2016 by L & O Section, does not contain any signature. Except the submission of respondent No. 1 that he has sent the remarks through speed post on 21-05-2016, no material is placed in support of the said averment. Assuming that respondent No. 1 has received the remarks on 08-06-2016 as noted above, there is no material on record to show that respondent No. 2 has sent the remarks on 21-05-2016. When the communication inviting the remarks was sent by respondent No. 1 to respondent No. 2 on 19-05-2016 and respondent No. 2 could receive the same before 21-05-2016, we do not find any reason whatsoever for the remarks stated to have been sent by respondent No. 2 taking 18 days' time to reach respondent No. 1.

4. From these facts, we are of the opinion that respondent Nos. 1 and 2 were not diligent in dealing with the representation of the petitioner. 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**². The following observations of the Bench can profitably be extracted here:*

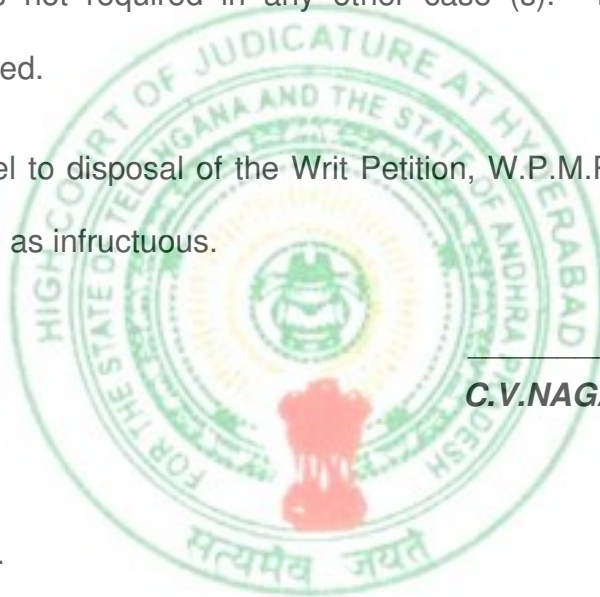
It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers 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 delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

² (1991) 1 SCC 476

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.

5. For the aforementioned reasons, the impugned detention orders are set aside with the direction that the detenu shall be released forthwith from the detention if he is not required in any other case (s). The Writ Petition is, accordingly, allowed.

6. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 27487 of 2016 shall stand closed as infructuous.



C.V.NAGARJUNA REDDY, J.

Date: 09-11-2016.

Note:

L.R. copies to be marked.

B/O

JSK

M.S.K.JAISWAL, J.