

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition No.649 of 2018

DATED:06-06-2018

Between:

MD. Sujatha ... Petitioner

And

The State of Andhra Pradesh
Represented by its Chief Secretary
Secretariat Buildings,
Amaravathi at Velagapudi
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. D. Purna Chandra Reddy

COUNSEL FOR THE RESPONDENTS: Mr. C.S. Suryaprakasha Rao,
Special Government Pleader
(AP)

THE COURT MADE THE FOLLOWING:

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

The detention of Mohammad Khasim, S/o. Isaq, husband of the petitioner, (hereinafter referred to as “the detenu”) under sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, is under challenge in this writ petition.

2. Shorn of unnecessary details, we would like to straight away refer to the submission advanced by Mr. D. Purna Chandra Reddy, learned counsel for the petitioner, namely, that the impugned detention order is liable to be quashed on the sole ground that the representation made by the petitioner on 18.12.2017 and received by the General Administration Department of respondent No.1 on 21.12.2017 was not considered and disposed of till the writ petition was filed on 02.01.2018 and that even thereafter also there is an inordinate delay in disposal of the representation which was eventually done on 27.03.2018. In support of his submission, the learned counsel placed reliance on the judgment of the Supreme Court in **Rajammal v. State of Tamil Nadu**¹ and **Ranbir Singh v.**

¹ (1999) 1 SCC 417

T. George Josep, District Magistrate, Meerut² and the judgments of this Court in **K. Swapna v. State of Andhra Pradesh³** and in W.P. No.16211 of 2016, dt.26.10.2016.

3. The learned Government Pleader for Home (AP) while not disputing the fact that the representation made by the petitioner was disposed of only on 27.03.2018, i.e., almost one hundred days after the receipt of the same, however, made a strenuous effort to convince this Court not to nullify the detention order only on the ground of delay in disposal of the representation. He has invited this Court's attention to the additional counter affidavit filed by respondent No.2 wherein he has *inter alia* averred as under:

“In reply to Ground No.(xiii) raised in Para-4 of the affidavit filed in support of I.A. No.1 of 2018 in W.P. No.649/2018, it is submitted that the petitioner has submitted a representation dated 18.12.2007 to the Chief Secretary, State of Andhra Pradesh with a request to set aside the order of detention passed against the detenu for various reasons mentioned in the representation. The said representation was received by the Government on 21.12.2017. The Assistant Secretary to Government, General Administration (PAGB.I) Department forwarded the said representation to the Home Department vide U.O.No.48023/37/2018-PAGB, 1-GAD, dated 30.1.2018 for taking necessary action. On receipt of the said representation, the Special Chief Secretary to Government, Home (Gen.B) Department, dated 7.3.2018

² 1990 (Supp) SCC 54

³ 2017 (1) ALT (CrI.) 262 (DB)

transferred the same to General Administration (SC.I) Department through Memo No.5073/Gen.B/A2/2018, dated 7.3.2018 as the General Administration Department is dealing with the matters pertaining to P.D. Act. The matter was placed before the Secretary to Government (Poll.) General Administration (SC.I) Department on the same day, and 10th and 11th being Second Saturday and Sunday, on 12.3.2018 a Memo No.268/SC.I/A3/2017-3 was issued to the Commissioner of Police, Visakhapatnam, requesting to furnish detailed remarks on each contention raised by the petitioner for taking further necessary action in the matter. The Commissioner of Police, Visakhapatnam, vide letter dated 14.3.2018 submitted remarks on the representation. Thereafter the file was processed and the same was placed before the Chief Secretary. Subsequently, the Assembly Session commenced and the officials were busy with the same. The Chief Secretary also not attended the office certain days due to demise of his mother.”

The learned Government Pleader also relied upon the judgment of the Apex Court in **Vinod K. Chawla v. Union of India**⁴.

4. We have carefully considered the respective submissions of the learned counsel for the parties.

5. In **Rajammal** (1 supra) the Supreme Court held as under:

“7. 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

⁴ (2006) 7 SCC 337

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 v. Union of India* [(1991) 1 SCC 476 : 1991 SCC (Cri) 613]. The following observations of the Bench can profitably be extracted here: (SCC p. 484, para 12)

“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.”

Based on the aforementioned reasoning, the Supreme Court set aside the detention order merely on the ground that the authority concerned failed to explain the delay between 09.02.1998 and 14.02.1998 in disposing of the representation. Following the said judgment, in **K. Swapna** (3 supra) a Division Bench of this Court, speaking through one of us (Justice C.V. Nagarjuna Reddy), quashed the detention order as

the respondents therein failed to explain the time lag between 11.05.2016 and 16.06.2016 in disposal of the representation against the detention order. This Court held that the undue delay in disposing of the representation falls foul of clause (5) of Article 22 of the Constitution of India.

6. In **Vinod K. Chawla** (4 supra) on which heavy reliance is placed by the learned Government Pleader, the representation against the detention order was made on 24.03.1998 and subsequently the same was rejected by the detaining authority on 21.04.1998 and also by the Central Government on 29.04.1998. After referring to the judgments in **L.M.S. Ummu Saleema v. B.B. Gujaral**⁵, **Madan Lal Anand v. Union of India**⁶, **Kamarunnissa v. Union of India**⁷ and **Birendra Kumar Rai v. Union of India**⁸ the Supreme Court held that as the respondents therein have offered sufficient justification for taking nearly one month time in disposal of the representation, the detention order could not be quashed.

7. The reasons contained in paragraph 3 of the additional affidavit, as reproduced above, do not offer any justification for the unduly long time of nearly one hundred days in disposal of

⁵ (1981) 3 SCR 647

⁶ 1990 CrL LJ 659

⁷ 1991 CrL LJ 2058

⁸ 1993 CrL LJ 158

the representation. When the representation was received by the General Administration Department on 21.12.2017 it has taken about forty days for it to forward the same to the Home Department, which in turn has taken nearly five weeks to transfer the same to the General Administration Department. No semblance of explanation has been offered for the extraordinary delays caused in both the departments. It is therefore idle for the respondents to place reliance on the judgment in **Vinod K. Chawla** (4 supra), where the Supreme Court found every justification for the delay in disposal of the representation. The respondents, in our opinion, have acted with such indolence and inertia that we have no hesitation to hold that they have not shown the sensitivity that is required in dealing with the personal liberty of a citizen. The lethargy shown by respondent No.1 in disposal of the representation can under no circumstances be justified or appreciated. Following the ratio laid down in the judgments of the Apex Court and this Court as referred to supra and as the respondents have failed to offer reasonable justification to keep the representation pending for more than three months, the impugned detention order cannot be sustained.

8. For the aforementioned reasons, the writ petition is allowed with costs of Rs.10,000/- (Rupees Ten Thousand Only). The impugned detention order, as confirmed by respondent No.1, vide G.O. Rt. No.2654, dt.29.11.2017, is set aside. The detenu is directed to be released from the detention forthwith, if he is not required in any other case.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

06-06-2018

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Note: LR copies to be marked.

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