

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

W.P.Nos.19165 and 19281 of 2018

Date : 25-07-2018

W.P.No.19165 of 2018

Between :

D. Ramaswamy

... Petitioner

And

The State of Telangana,
Rep.by its Chief Secretary to Government,
General Administration (L&O)Department,
Secretariat Buildings, Hyderabad

.... Respondents



Counsel for petitioners : Sri C.R. Sudhakar

Counsel for respondents : Assistant Government Pleader
for Home (TS)

The Court made the following :

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

These two Writ Petitions have been filed for issue of Habeas Corpus to direct the respondents to release the detenus by setting aside the respective detention orders as confirmed by respondent No.1 in G.O.Rt.No.576, dt.24-3-2018 and G.O.Rt.No.575, dt.24-3-2018, respectively.

At the outset, it needs to be noted that the initial detention orders passed by respondent No.2 were challenged in W.P.No.5756 of 2018 and W.P.No.5782 of 2018, respectively. A Division Bench of this Court repelled the challenge on merits and upheld the detention orders. However, questioning the orders passed by respondent No.1 confirming the detention orders by the impugned G.Os., these Writ Petitions are filed on behalf of the detenus.

At the hearing, Sri C.R. Sudhakar, learned Counsel for the petitioners, submitted that the impugned orders confirming the detention orders passed by respondent No.2 are liable to be set aside on the sole ground that the period of detention has been specified as 12 months contrary to Section 3(2) of the Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act"). In support of

his submission, the learned Counsel has placed reliance on the Judgment of a Division Bench of this Court in **Poosala Narasayya Vs. State of A.P**¹ wherein, considering the proviso to sub-section (2) of Section 3 of the Act, it was held that the State can extend the period of detention for a period not exceeding three months at any one time and therefore the order of confirmation of detention for a period of 12 months at a time is not sustainable.

The learned Assistant Government Pleader for Home (TS) opposed the above submission and stated that the Judgment in **Poosala Narasayya** (1-supra) did not lay down the correct law. In support of this submission, he has relied upon the Judgment of the Supreme Court in **Aravind Choudhary Vs. State of Telangana**².

In **Aravind Chowdhary** (2-supra), the Supreme Court declined to follow the Judgment in **Cherukuri Mani Vs. Chief Secretary, Government of A.P.**³ which laid down that the period of detention at one time cannot exceed three months. In that context, the Supreme Court observed as under:

“Learned counsel for the appellant, inter alia, relied upon the judgment of Court in 2015(13) SCC 722 –

¹ 2006(2) ALD (CrI) 267

² CrI.A.No.924 of 2017, dated 5-5-2017

³ (2015(3) SCC 722)

Cherukuri Mani W/o. Narendra Chowdari Vs. The Chief Secretary, Government of Andhra Pradesh & Ors., and submitted that the period of detention cannot exceed three months as laid down in the said judgment.

We are unable to accept the submissions made by the learned counsel as the limit of three months is applicable to Section 3(2) of the above said Act and not to Section 3(1). This is clear from three judge Bench judgment of this Court in 1990(2) SCC 456 T. Devaki Vs. Government of Tamil Nadu and others laying down as follows:

“The expression “the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order” occurring in sub-section (2) of Section 3 relates to the period for which the order of detention issued by the State Government is to remain in force and it has no relevance to the period of detention. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained.”

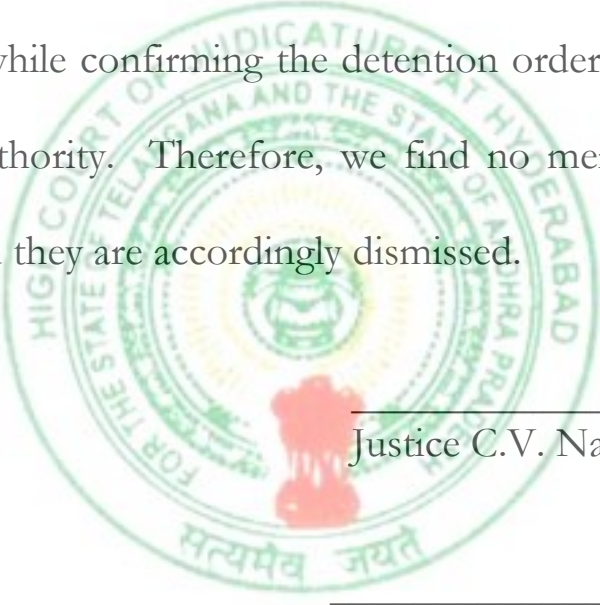
The observations in judgment of this Court in Cherukuri Mani W/o. Narendra Chowdari (supra) cannot be read contrary to the observation in judgment of three Hon'ble Judges. Thus, limitation of period for delegation under Section 3(2) does not control the period of detention for which power is exercised by the State Government which is laid down in Section 13 of the Act.”

In the light of the Judgment in **Aravind Chowdhary** (2-supra), rendered following the Judgment of the three-Judge Bench in **T. Devaki Vs. Government of Tamil Nadu**⁴, we find merit in the submission of the learned Assistant

⁴ 1990(2) SCC 456

Government Pleader that **Poosala Narasayya** (1-supra) did not lay down the correct law.

The above discussion leads us to the conclusion that while the maximum period of three months' detention at a time stipulated under the proviso to sub-section (2) of Section 3 of the Act is applicable to the power of the delegated functionary, the said provision does not control the power of the Government to stipulate the maximum period of detention of 12 months while confirming the detention order passed by the delegated authority. Therefore, we find no merit in the Writ Petitions and they are accordingly dismissed.



Justice C.V. Nagarjuna Reddy

Justice Gudiseva Shyam Prasad

Date : 25-7-2018

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