

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.34836 OF 2018

ORDER: (Per Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed challenging the impugned detention order No.613/WRC/CSB-XI/2018, dated 26.05.2018 passed by the 2nd respondent, which is confirmed by the 1st respondent vide G.O.Rt.No.1381, General Administration (Spl.(Law and Order) Department dated 16.07.2018 against one Muthu Gnanavel S/o.Muthu (hereinafter referred to as 'detenue') as illegal and consequently, to quash the same.

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the wife of the detenue. The 2nd respondent passed impugned detention order dated 26.05.2018 basing on the five criminal cases registered against detenu and the same is confirmed by the 1st respondent by its order dated 16.07.2018, without appreciating the material on record. The detaining authority failed to furnish relevant material papers to the detenue before passing the detention order, which is illegal. Though the wife of the detenue submitted representation to the 1st respondent, no action is being taken on the same, as such, the detention order passed by the 2nd respondent is liable to be set aside on this ground alone.

3. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the Writ Petition and justified the reasons for passing detention order against detenu.

4. Reply affidavit is filed by the petitioner denying the averments raised in the counter affidavit of the 2nd respondent.

5. Heard Sri D.Purna Chandra Reddy, learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

6. Though the learned counsel for the petitioner challenged the impugned detention order on several grounds, he vehemently contended that there is an inordinate delay in considering the representation of the wife of the petitioner by the 1st respondent. He submitted that the wife of the detenu made representation to the 1st respondent on 27.08.2018, the same was rejected by the 1st respondent on 22.09.2018 i.e., after delay of 25 days, without there being any substantial reason, as such, on this ground alone, the impugned detention order is liable to be set aside. In support of his contentions, he relied on the judgments reported in **Rajammal v. State of Tamil Nadu**, **Rashid Kapadia v. Medha Gadgil**, **K.M.Abdulla Kunhi and B.L.Abdul Khader v. Union of India and others**, **Abdul Nasar Adam Ismail v. State of Maharashtra**, **Smt. Shalini Soni v. Union of India** and order of Division Bench of this Court in **WP No.24909 of 2016 dated 04.01.2017**.

7. Per contra, learned Government Pleader for Home submitted that the representation of the petitioner dated 27.08.2018 received

on the same day by the 1st respondent and rejected on 22.09.2018 stating there are no valid grounds to revoke the detention order.

8. Having regard to the rival contentions raised by both the parties, the only point that arises for consideration in this Writ Petition is whether there is any delay in considering the representation of the wife of the detainee against the detention order? If so, whether such delay is for valid reasons?

9. It is well settled law that the consideration of the representation by the Government is for a different purpose, namely to find out whether the detention is in conformity with the power under law. Though there is no need of passing any speaking order, but at the same time, there should be real and proper consideration by the Government. In this case, the impugned detention order passed by the 2nd respondent vide proceedings C.No.613/WRC/CSB-XI/2018 dated 26.05.2018 against the detainee was approved by the 1st respondent vide G.O.Rt.No.1024, dated 29.05.2018 and same is confirmed by the 1st respondent vide G.O.Rt.No.1381 General Administration (Spl.(Law and Order) Department dated 16.07.2018. Thereafter, the wife of the detainee made representation on 27.08.2018 to the 1st respondent and same was rejected on 22.09.2018. Learned counsel for the petitioner vehemently contended that only after filing of this Writ Petition challenging the detention order on several grounds, the 1st respondent, rejected the representation of the detainee vide

Government Memo No.152/A2/2018-2, dated 22.09.2018. Admittedly, the Writ Petition is filed on 20.09.2018 and the representation of the wife of the detenu dated 27.08.2018 was rejected on 22.09.2018 i.e., after 25 days of passing of final orders i.e., after filing of writ petition. Though there is a delay of 25 days in considering the representation of the wife of detenu, no explanation is forthcoming from the 1st respondent substantiating such delay in the counter affidavit filed by the 2nd respondent.

10. In **Rajammal v. State of Tamil Nadu (supra)**, the Hon'ble Supreme Court while considering the similar issue, interpreting clause (5) of Article 22 of the Constitution of India, it is 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."

Following the ratio laid down in the aforesaid judgment of the Supreme Court, Division Bench of this Court in WP No.24909 of 2016 quashed the impugned detention order therein.

11. In the light of the principles laid down in **Abdul Nasar Adam Ismail (supra)**, Division Bench of this Court in the judgment dated 04.12.2018 in WP No.37979 of 2018 held as under:

“Therefore, the principles mentioned above can be summarized as under:

1. The detainee has a right to submit his representation. The earliest opportunity to submit his representation must be given to the detainee by the Government.
2. Once the representation is submitted before the Government, the Government cannot maintain a studied silence over the representation.
3. It is only when relevant documents or reports are required to be considered by the Government, such as the report of the Advisory Board, that the Government would be justified in waiting for the same and deciding the representation only after receiving the relevant documents and reports.
4. The Government must decide the representation as expeditiously as possible.
5. The delay in deciding the representation, if any, should be explained to the Court by giving cogent and convincing reasons for the delay.
6. If no such reasons are stated by the Government, the continued detention of the detainee would become illegal.”

As already stated supra, the impugned detention order was confirmed by the 1st respondent on 16.07.2018 and the wife of detainee made representation on 27.08.2018, which was rejected on 22.09.2018. Thus, there is a delay of 25 days in considering the representation by the Government. There is no reason forthcoming from the Government much less substantial reason for such delay in considering the representation of the wife of the detainee in the counter affidavit. In the absence of such explanation on the part of

the 1st respondent, the impugned detention order is liable to be set aside.

For the aforesaid reasons, the impugned detention orders dated 26.05.2018 and 16.07.2018 passed by the respondent Nos.2 and 1 respectively, are quashed on the sole ground of unexplained delay in disposing of the representation d'ated 27.08.2018 made by the wife of the detainee. Accordingly, the Writ Petition is allowed and the detainee –,Muthu Gnanaval S/o. Muthu, is directed to be released forthwith from the detention, if he is not required in connection with any other criminal case(s).

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

15th March, 2019
kvs

**HON'BLE THE CHIEF JUSTICE
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AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

P.D Judgment for Lordship's kind perusal

WRIT PETITION No.34836 OF 2018

(per Hon'ble Sri Justice A.Rajasheker Reddy)

Date: March, 2019

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