



W.P.No.34725 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.34725 of 2014
and M.P.No.1 of 2014

A.K.Siva

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Home Affairs,
St. George Fort, Chennai.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
3. Thiru.Shanmugam I.A.S.,
Office of the District Collectorate,
Kancheepuram District, Kancheepuram.
4. Thiru.Vijayakumar I.P.S.,
Office of the Superintendent of Police,
Kancheepuram District, Kancheepuram.
5. Thiru. Balu,
Office of the Inspector of Police,
C1-Sriperumputhur Police Station,
Sriperumputhur.
6. Thiru.Dharmaseelam,
Office of the Assistant Commissioner of Labour-I,
SIPCOT Campus, Irungattukottai,
Sriperumputhur.

... Respondents



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to take appropriate action against the respondents 3 to 6 based on the representation made by the petitioner dated 18.12.2014 and further direct the respondents 3 to 6 to pay compensation as jointly & severally for the illegal detention & confinement invoked against the petitioner.

For Petitioner : Mr.S.Parthasarathi
For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.S.Ravichandran,
Additional Government Pleader
[R1 and R2]

ORDER

The writ of mandamus has been filed to direct the respondents 1 and 2 to take appropriate action against the respondents 3 to 6 based on the representation made by the petitioner dated 18.12.2014 and direct the respondents 3 to 6 to pay a compensation of Rs.10,00,000/-.

2. The petitioner states that he is the District Secretary of a Trade Union, Kanchipuram called as Puthiya Jananayaga Thozhilalar Munnani (NDLF)- Tamil Nadu, a registered trade union. The trade union has been functioning for the past more than 27 years throughout the State of Tamil



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Nadu with an aim to protect the rights of the working class and develop their life style. He further states that his trade union is influenced by “Marxism” ideology and carry out the movement in order to fulfill their obligations.

3. The learned counsel for the petitioner states that three criminal cases were registered against the writ petitioner to investigate the offences committed by the Trade Union members for conducting agitations and to protect the rights of the workmen.

4. On 21.06.2014, a criminal case was registered by the Orakadam Police Station against the writ petitioner and two others, who were union members in Cr.No.212 of 2014, for the alleged offences under Sections 143, 188, 341, 353 of IPC r/w Section 7(2) of CLA Act. The union members have not involved in any offences as alleged by the police. However, the petitioner and two others were arrested by the police on 26.06.2014 and subsequently released on bail. Another criminal case was registered by the Vishnukanchi Police Station on 15.08.2014 against the petitioner and 167 workers in Cr.No.610 of 2014 for the alleged offences under Sections 143, 188, 341, 332 of IPC r/w Section 7(1) (a) of CLA Act and Section 3(1) of TNPRDL Act and the third criminal case was



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registered by the Sriperumbuthur Police Station against the petitioner and three workers in Cr.No.758 of 2014 on 13.09.2014 for the alleged offences under Section 294(b), 353, 506(i) of IPC r/w Section 7(1) (a) of CLA Act.

5. The learned counsel for the petitioner mainly contended that the petitioner is a trade union activist and therefore, invoking Act 14 of Tamil Nadu Act, 1982 against the petitioner is untenable. The respondents 3 to 6 were intentionally harassing the petitioner unnecessarily by implicating the petitioner under the provisions of the Act 14 and the petitioner has been wrongly considered as “GOONDA” within the definition of Section 2(f) of Act 14. Since the respondents 3 to 6 were falsely implicated the petitioner by detaining him under Act 14 of 1982, the petitioner has constrained to move the present writ petition seeking appropriate action against the respondents 3 to 6 and also to grant compensation.

6. At the outset, it is contended that the petitioner cannot be designated as “Goonda” within the meaning of Act 14 and thus, the authorities have exercised their power excessively and detained the petitioner under Act 14, which caused agony to the petitioner and his



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family members. Thus, the petitioner is entitled for the relief.

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7. The learned Additional Government Pleader relied on the counter filed by the second respondent i.e., Director General of Police. The counter filed by the second respondent reveals that the fifth respondent had submitted proposals for detaining the petitioner even before passing the interim order in W.P.No.26536 of 2014 dated 25.09.2014. The detaining authority i.e., the third respondent herein, who was not a party to the proceedings in W.P.No.26536 of 2014 had detained the petitioner as “Goonda”vide proceedings dated 25.09.2014 under the provisions of the Tamil Nadu Act 14 of 1982. The Inspector of Police within whose jurisdiction, the accused is arrested, can send a proposal to the concern District Collector /Commissioner of Police to detain the said accused. On receipt of such proposal, the detaining authority will independently verify and scrutinize the materials viz., the previous cases and any materials necessary to pass detention order and on getting subjective satisfaction of the materials, will pass the detention order and that will be directly served to the accused whose he is confined.



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8. Sections 3(2), 3(3), 4, 8(1), 8(2), 9(1), 9(2), Section 10 and

Section 16 have been relied on by the second respondent, which read thus:

“Section 3(2) *If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, 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, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section, Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.*

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government. Power to make orders detaining certain persons.

Section-4 *A detention order may be executed at any place in the State in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)*

Section-8(1) *When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on*



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which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose

Section-9 (1) *The State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act*

(2) Every such Board shall consist of a Chairman and two other members, who are, or have been Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.

Section-10 *In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3.*

Section-16 *No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.*

9.The second respondent has stated that the authorities have no motive against the petitioner to detain him as “Goonda”. The detaining authority was not a party to the proceedings in the W.P.No.26536 of 2014 since the proposal was submitted to detain the petitioner even before the interim order passed in the writ petition. Pertinently, the first respondent



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did not approve the detention and therefore, it is clear that the respondents have no intention or motive against the petitioner to detain him as “Goonda” under the Tamil Nadu Act 14 of 1982.

10. Considering the submissions made by the respective learned counsel appearing on behalf of the respective parties to the lis on hand, it is not in dispute that three criminal cases were registered against the writ petitioner relating to trade union activities. Whether a person who has involved in a criminal case is to be detained under the Act 14 of 1982 or not is to be decided subjectively by the competent authority. The materials available on record must be taken into consideration, while taking a decision.

11. A wrong or erroneous administration taken by the executives are one aspect and the decisions taken with an ill-motive or ulterior motive is another aspect. Certain administrative decisions taken in good faith by the executives are found to be wrong, then the said erroneous decision would not provide a ground for seeking compensation. The decisions taken in good faith is always protected under law. Sufficiency of records available on file is the subjective satisfaction of the competent



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the authorities in good faith found to be wrong by the higher authorities or by the Courts, then it is liable to be set aside, but the aggrieved person cannot seek compensation merely on the ground of the said wrong decision.

12. Courts are bound to distinguish and draw a line between a wrong decision taken by the executives in good faith and the decisions taken with an ulterior motive or with a *mala fide* intention. Only thereafter the question of considering the compensation would arise. Merely raising a ground that the authorities have intentionally taken a wrong decision would be insufficient to form an opinion that the person aggrieved is entitled for compensation.

13. In the event of considering such broad or vague grounds, the same would cause prejudice to the administrative functions. Thus, all wrong decisions cannot be a ground for claiming compensation, but the decision taken with an ulterior motive or with a *mala fide* intention or to penalize a person alone would be a ground to consider the cases for grant of compensation or otherwise.



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14. In the present case, the petitioner has raised certain allegations against the respondents. However, it is for him to establish the same beyond any pale of doubt. The allegations are to be verified by the 2nd respondent and if at all any such allegation is established, then alone, appropriate action should be initiated against the officials, but not otherwise. Whenever a complaint has been received by the higher authorities in respect of such allegations against the subordinate authorities, then the competent authority has to conduct a preliminary enquiry and ascertain the correctness or truthfulness of the allegations and thereafter, initiate actions against the officials. A recent trend being developed is that complaint against the police officials are filed frequently whenever a criminal case has been registered. Such practice of the accused persons at no circumstances be encouraged by the Courts or by the higher authorities. A preliminary enquiry in this regard is warranted for continuing any further action against the law enforcing authorities.

15. Therefore, merely detaining a person under the provisions of the Tamil Nadu Act 14 of 1982, would be insufficient to consider a case for grant of compensation. The allegations raised by the petitioners are to



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be carefully considered with reference to the documents and evidences
and thereafter, appropriate action is to be initiated.

16. In the present case, the petitioner has not established any such allegations to the satisfaction of this Court, warranting any further action and therefore, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
mp/kak

To

1. The Secretary to Government,
Department of Home Affairs,
St. George Fort, Chennai.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.



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S.M.SUBRAMANIAM, J.

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