

(2004) 09 MAD CK 0071

Madras High Court

Case No: Writ Petition No. 26265 of 2004 and W.P.M.P. No. 31925 of 2004

The Government of Tamil Nadu

APPELLANT

Vs

The Secretary Review Committee
on POTA, R.R. Gopal @
Nakkeeran Gopal, A. Kamaraj
Associate Editor, Nakkeeran and
S. Ramanathan

RESPONDENT

Date of Decision: Sept. 14, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M. Chockalingam, J

Bench: Single Bench

Advocate: A.L. Somayaji A.A.G. Assisted by S. Venkatesh, Special Government Pleader, C. Manishankar, Special Public Prosecutor and S. Jayakumar, Additional PP, for the Appellant; Shanmugasundaram, for P.T. Perumal for RR2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

With the consent of both the parties, the writ petition itself is taken up for disposal.

2. Invoking the writ jurisdiction of this Court, the petitioner State has brought forth this writ petition seeking a writ of certiorari to call for the

records of the first respondent Review Committee on POTA dated 11.9.2004 and quash the same.

3. This Court has heard Mr.Somayaji, learned Additional Advocate General, appearing for the petitioner, and also Mr.Shanmugasundaram, Senior

Counsel, appearing for the respondents 2 to 4, and perused the affidavit in support of the writ petition.

4. Admittedly, the second respondent herein moved a bail application before the Special Court in Crime No.1/2003, which was dismissed on

4.8.2003. Thereafter, he challenged the said dismissal order before this Court in C.A.No.1219/2003, wherein this Court granted bail to him on

19.9.2003. It is not in dispute that the State filed a SLP before the Supreme Court in Crl.Appeal No.1235/2003, and the Supreme Court set aside

the judgment of this Court on 26.9.2003. Pursuant to a complaint by the respondents 3 and 4 herein against the arrest of the second respondent,

show cause notices were issued to the State by the Review Committee on POTA as to whether it was a fit case for proceeding against the second

respondent. The State filed its objection on 2.12.2003. Thereafter, the petitioner has moved this Court by way of a writ petition in WP Nos.35749

and 35750 of 2003 seeking for a writ of prohibition restraining the first respondent herein from proceeding further in the matter. In the said writ

petition, this Court had issued directions to the Review Committee to first decide the preliminary objections filed by the State. It remains to be

stated that the Supreme Court upheld the validity of POTA in its judgment dated 16.12.2003 reported in People's Union for Civil Liberties and

Another Vs. Union of India (UOI), . The preliminary objections filed by the State were over-ruled by the Review Committee on 23.1.2004, and

the writ petition filed by the State against the order of the Review Committee, was disposed of on 4.2.2004, and the SLP was also rejected by the

Apex Court on 8.3.2004. On 16.2.2004, the petitioner State filed the entire documents relating to Crime No.1/2003 before the Review

Committee as per its directions. The Supreme Court, while considering the SLP (Crl.)Nos.5668-5669/2003, filed by the State, directed the first

respondent to consider the case of the second respondent and give its report by 31.8.2004, and extension of time, sought for, was also granted till

30.9.2004. The writ petition filed by the second respondent in Writ Petition (Crl.) 56/2003 was disposed of by the Supreme Court, wherein a

direction was given that the interim order dated 16.6.2003, by which the State was directed not to file the charge sheet, would continue to remain

in operation for a period of six weeks. On hearing the submissions on the question of supply of documents, the Review Committee on POTA

issued directions, which are being challenged in this writ petition.

5. The learned Additional Advocate General would submit that the order of the first respondent is contrary to law, violative of principles of natural justice and without jurisdiction; that the power exercised by the first respondent under Sec. 60 of POTA is neither judicial nor quasi-judicial, but only administrative; that it is obligatory on the part of the administrative authority to assign and communicate the reasons for their conclusion; that in the instant case, the first respondent has stated that the reasons for conclusion would follow in due course, which is nothing but total abdication of its legal obligation; that a perusal of the order dated 11.9.2004 would go to show that it does not state as to how such conclusions were arrived at; that it is pertinent to note that the accused is not entitled to the copy of the statements u/s 161(3) of the Cr.P.C. and other documents before filing of the final report under Sec. 173(1) of the Cr.P.C.; that the Review Committee, which is not a Court, cannot deviate from the procedure prescribed in the Cr.P.C., especially when the provisions of POTA are governed by the provisions of the Cr.P.C.; that the scope for exercise of power by the first respondent can, at best, be only administrative in nature; that the first respondent cannot interfere with the course of investigation; that the first respondent does not have the jurisdiction to call for the statements of the witnesses, case diaries, police diaries, etc.; that at this stage, the accused cannot claim any right to be heard, and for these reasons, the order of the first respondent is liable to be quashed.

6. In support of his contention, the learned Additional Advocate General relied on the following decisions: (1) 1988 L.W. (Cri.) 503 and (2) State of Punjab Vs. Bhag Singh, .

7. Countering to the above contentions, the learned Senior Counsel for the respondents 2 to 4 would argue that the direction of the Review Committee on POTA are well within its powers and jurisdiction; that as per Sec. 30 of POTA, the second respondent is entitled to have the copy of the documents relied on by the State; that he should be made known of the accusations made and also the materials, upon which the accusations are based, and hence, the copies of all the documents relied upon by the State should be furnished to him. Added further the learned Senior

Counsel that the denial of the copies of the said documents would be against the principles of natural justice; that whenever any citizen is detained

under any other enactment like Preventive Detention Act, he is to be furnished with all the copies of the documents and statements recorded from

the witnesses, enabling him to understand the accusations made against him and the basis therefore also; that equally, the second respondent

detained under the provisions of POTA cannot be denied the copies of the same; that the Review Committee after appraising both factual and legal

positions, has directed the State to furnish copies, and hence, the order of the first respondent has got to be sustained.

8. In support of his contentions, the learned Senior Counsel relied on the following decisions: (1) Mrs. Maneka Gandhi Vs. Union of India (UOI)

and Another, .

9. The impugned order of the first respondent Review Committee on POTA runs as follows:

Having heard at length the learned Counsel for the parties on the plea of privilege raised by the State of Tamil Nadu regarding supply of copies of

material to the opposite party, the Review Committee gives the following directions:

1. The Government of Tamil Nadu shall supply to the opposite party a set of the documents, statements, etc. on which it proposes to rely for

prosecution of R.R. Gopal @ Nakkheeran u/s 4 POTA, subject to the following directions.

2. The Government of Tamil Nadu is permitted, for purposes of protection of witnesses, to suitably substitute the names addresses and description

of witnesses by dummy names.

3. The set of documents thus prepared shall be supplied by the Government of Tamil Nadu to the opposite party by 14th September 2004.

4. One set of documents so supplied to the opposite party shall be submitted by the Government of Tamil Nadu, in the Office of the Review

Committee, also by 14th September 2004.

5. The Government of Tamil Nadu shall also supply, in sealed cover, a list containing names, addresses and description of the witnesses, and their

corresponding dummy names, along with the set of documents mentioned in direction No.4 above.

6. The detailed reasons for these directions shall follow in due course.

7. The case shall be taken up for further hearing, on day-to-day basis, starting at 11 a.m. on 16th September 2004, in the Committee room "C" at

Vigyan Bhawan, New Delhi.

10. As could be seen above, the State as petitioner, has come before this Court to quash a direction, issued by the Review Committee on POTA,

as extracted above, directing the petitioner State to furnish the documents to the second respondent herein, pending the enquiry before the Review

Committee on POTA. In the instant case, quite evident it is that both the parties have approached the Hon"ble Apex Court for directions then and

there, and the Apex Court has also passed orders thereon. Thus, the Apex Court is seized of the matter. In such circumstances, without going into

the merits or otherwise of the rival contentions put forth before this Court, this Court is of the considered opinion that it would not be proper on the

part of this Court to pass any order or issue any directions in this regard. Therefore, this Court cannot grant the relief as asked for by the State in

this writ petition. Accordingly, this writ petition is dismissed at the admission stage itself. No costs. Consequently, connected WPMP is also

dismissed.