(2005) 01 MAD CK 0122

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 117 of 2004

V. Lakshmikanthan		APPELLANT
	Vs	
The Commissioner of Police and The Secretary to Government, Government of Tamil Nadu Prohibition and Excise Department		RESPONDENT

Date of Decision: Jan. 18, 2005

Acts Referred:

• Constitution of India, 1950 - Article 22

• Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 - Section 3(1)

Hon'ble Judges: S. Ashok Kumar, J; P.D. Dinakaran, J

Bench: Division Bench

Advocate: A.K. Azhagarsami, for the Appellant; Chellapandian, APP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.D. Dinakaran, J.

The challenge in this writ petition is to the order of detention passed by the first respondent dated 25.9.2004 against one Masilamani @ Manikandan (hereinafter referred as the "detenu") branding him as a "Goonda" and directing preventive detention u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders. Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The only point that is pressed into service by Mr. A.K. Azhagarsami, learned counsel appearing for the petitioner, is that the detenu''s representation dated "nil", received on 25.10.2004, has not been dealt with the usual and required alacrity and

it has been disposed of in a most lethargic and delayed manner.

3. The learned counsel appearing for the petitioner submitted that the representation dated "nil" was received by the Government on 25.10.2004 and remarks were called for from the detaining authority on the same day. The said representation reached the detaining authority on 28.10.2004 and the detaining authority in turn called for para-wise remarks from the Sponsoring Authority on 29.10.2004, and the Sponsoring Authority submitted his remarks on 2.11.2004, which has been received by the Government on 4.11.2004. Even though the file has been put up along with the remarks on 5.11.2004 and the same has been considered by the Under Secretary and Deputy Secretary, on the same day, and afterwards placed before the concerned Minister on 8.11.2004, the Minister has considered and passed orders only on 16.11.2004, namely, after 9 days.

4. Thus, as seen from the records, we find there is an unexplained delay between 8.11.2004 and 16.11.2004. Even considering 13th and 14th of November 2004 happened to be Government Holidays, being Saturday and Sunday, there is a delay of 7 days. The learned Additional Public Prosecutor is not in a position to explain the said delay. It is obvious that requirement laid down by the Constitution has not been satisfied in this case. The detenu is entitled to receive a consideration of his representation by the State Government as expeditiously as possible which the Government failed to do so, and consequently his continuance in detention thereafter is illegal. The right to to make representation against the order of detention is not only a constitutional right but a statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning. By this delay there is an infraction of the Constitutional right guaranteed to a detenu under Article 22 of the Constitution of India, which vitiates the order of detention.

5. In the result, the Habeas Corpus Petition is allowed. The order of detention dated 25.9.2004 is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.