

(2011) 10 MAD CK 0073

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 593 of 2011

K. Narayanan

APPELLANT

Vs

The District Collector
and District Magistrate,
Tirunelveli District,
Tirunelveli, The
Secretary to
Government of Tamil
Nadu, Food,
Co-Operation and
Consumer Department,
Secretariat, Chennai -
600009, The Additional
Secretary, Government
of India, Department of
Consumer Affairs,
Room No. 270, Krishi
Bhavan, New Delhi -
110001 and The
Secretary to
Government, Food and
Consumer Protection
Department,
Government of India,
New Delhi - 110001

RESPONDENT

Date of Decision: Oct. 20, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21
- Tamil Nadu Kerosene (Regulation of Trade) Order, 1973 - Section 17

Hon'ble Judges: V. Periya Karupiah, J; M. Jaichandren, J

Bench: Division Bench

Advocate: S. Saji Bino, for the Appellant; A. Ramar, Additional Public Prosecutor for R1 and 2 and Mr. K. Irulappan, Central Government standing counsel for R3 and 4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Periyakaruppiah, J.

This Habeas Corpus Petition has been filed by the brother-in-law of the detenu seeking for a direction, directing the respondents herein to produce the detenu K. Shanmugam, S/o. Kailasa Thevar, aged about 47 years, who has been termed as "Black Marketeer", now confined in Central Prison, Palayamcottai and call for records pertaining to the impugned order of detention in MHS Confdl. No. 33/201 dated 14.07.2011 passed by the 1st respondent herein and quash the same and set the detenu at liberty.

2. We have heard Mr.S.Saji Bino, Learned Counsel appearing for the petitioner and Mr.A.Ramar, learned Senior standing counsel for the respondents 1 and 2 and Mr.K.Irulappan, learned Central Government standing counsel appearing for the respondents R3 and 4.

3. The Learned Counsel for the petitioner would submit in his argument that the impugned order of detention, passed under Act 7 of 1980, terming the detenu K.Shanmugam, as "Black Marketeer" is not sustainable. He would further submit that the detaining authority has failed to see the real causes for detaining the detenu under the said Act. He would vehemently stress in his argument that the representation, given by the petitioner on 19.07.2011, was received by the Government on 21.07.2011 and remarks was called for on 22.07.2011 and till date, the remarks has not been submitted, which resulted in not considering the representation before approval of the detention by the Government. He would further submit in his argument that this delay cum negligence would certainly vitiate the detention order since it has not been explained in the counter. He would also refer to the judgment of this Court in Sumaiya Vs. the Secretary to Government, Prohibition & Excise Department, Government of Tamil Nadu, Fort. St. George, Chennai-9 and another reported in 2007 (2) MWN (Cr.) 145 (DB) that even a three days delay in considering the representation is fatal to the detention order passed. He would further submit that the unexplained delay caused in considering the representation would vitiate the detention order and several judgments of this Court have categorically laid down to that effect and therefore, the detention order, passed by the detaining authority, has no legs to stand. He would further submit that the detenu is now put in the jail under the guise of detention order which is illegal and hence, the petition filed by the wife of the detenu may be allowed and the detention order has to be quashed and the detenu may be set at liberty.

4. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 would submit in his argument that no doubt there is a delay in considering the representation given to the Government and however, the delay has been explained and condonable.

He would further submit that the detention authority has come to the conclusion that the detenu is a black marketeer, on considering the ground case. He would also submit that the alleged non consideration of the representation will not be fatal since the offence committed by the detenu is serious one. Therefore, it could be considered as vitiating the detention order. Therefore, he would request the Court to reject the plea of the petitioner and dismiss the petition.

5. We have anxiously considered the arguments advanced on either side.

6. The main reason stated by the detaining authority for ordering the detention order was that the Black Marketeer had been dealing in Kerosene, which is an Essential Commodity, as per the definition of Essential Commodities Act, 1955 and it was being done for selling them at a higher price in Black Market in order to make gain, which would defeat the provisions of Section 17 of Tamil Nadu Kerosene (Regulation of Trade) order 1973 and Essential Commodities Act, 1955 and his activities are prejudicial to the maintenance of supplies of commodities essential to the community and the normal criminal law will not have a desired effect by effectively preventing him from indulging in such activities. Further, the detention authority also apprehended that a bail petition had been filed before the learned Judicial Magistrate No. 2, Tirunelveli, in Cr.M.P. No. 1010 of 2011 dated 13.07.2011 and it was pending before the said Court and therefore, there was a chance for him to come out of bail.

7. Even though the reasons stated for by the detention authority are relevant to some extent, there is no adverse case pending against the detenu.

8. As regards the delay put forth by the Learned Counsel for the petitioner, we can see that the proforma submitted by the learned Additional Public Prosecutor, which would show that the remarks on the representation was called for on 22.08.2011, but, till date, the remarks has not been submitted. It is nothing but the gross omission in considering the representation submitted on behalf of the detention authority and the Government has not explained the delay nor the non consideration of the representation. It could be perceived that the Government neither considered nor rejected the representation and communicated the same to the detenu.

9. Will these failures of government make the detention order, vitiate the detention order is the question to be decided.

10. In the said circumstances, the judgment of this Court in Sumaiya Vs The Secretary to Government, Prohibition & Excise Department, Government of Tamil Nadu, Fort. St. George, Chennai-9 and another reported in 2007 (2) MWN (Cr.)145 (DB) is squarely applicable to the present case. The relevant passage in the said judgment following the principle laid down by the Honourable Apex Court in [K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India \(UOI\) and Others and State of Karnataka and Others](#), would be thus:

8. That part, it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal vide [K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India \(UOI\) and Others and State of Karnataka and Others](#), .

11. In the said case, this Court has considered three days delay in considering the representation left unexplained and therefore detention order was quashed. A Similar view has been taken by this Court in yet another judgment in Venkatesan @ Maya Venkatesan reported in (2007) 1 MLJ (Crl)1176 which is as follows:

10...Thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence, on this ground also the order of detention is liable to be quashed.

12. Applying the principles laid down in the aforesaid judgment of this Court and the principle laid down by the Honourable Apex Court in [K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India \(UOI\) and Others and State of Karnataka and Others](#), , we are of the firm view that the delay in considering the representation made by the petitioner and the non consideration of the representation are still left unexplained and in our considered opinion, it vitiates the impugned order of detention. Therefore, we are inclined to allow the petition by quashing the impugned order of detention dated 14.07.2011 passed by the 1st respondent.

13. Accordingly, the order of detention, passed against the detenu K.Shanmugam, is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.