

PETITIONER:
RAJAMMAL

Vs.

RESPONDENT:
STATE OF TAMIL NADU AND ANOTHER

DATE OF JUDGMENT: 14/12/1998

BENCH:
K.T. THOMAS, D.P.WADHWA, & SYED SHAH MOHAMMED QUADRI.

JUDGMENT:

THOMAS, J.

Leave granted.

Smt. Rajammal, a thirty two year old is kept under detention dubbing her as a "bootlegger", as per the detention order passed under Section 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 14/1982) (hereinafter referred to as the TN Act). The aforesaid order was passed by the Government of Tamil Nadu on 18.12.1997 and she continues to be in detention. A representation forwarded by her on 13.1.1998, was rejected by the Government of Tamil Nadu. She filed a habeas corpus petition before the High Court of Madras in which the detention order was challenged mainly on three grounds. first is that there was delay in considering the representation submitted on her behalf. Second is that her family members were not informed about the place of detention nor even about the detention. The third is that report of the Advisory Board was not submitted within the statutory period of seven days as contemplated under Section 11 of the TN Act. A Division Bench of the Madras High Court has repelled all the aforesaid three contentions and dismissed her petition. This appeal has, therefore, been filed by special leave challenging the judgment of the High Court.

Learned counsel for the appellant has, however, confined the challenge to the first ground aforementioned, namely, there was delay in considering the representation submitted on behalf of the detenu. The factual position is the following:

The representation was sent by her 13.1.1998 which after passing through the prescribed route reached the Secretary to the Government of Tamil Nadu (Prohibition and Excise Department) on 5.2.1998. The Minister concerned rejected the representation on 14.2.1998. According to the learned counsel, the delay is the interval between the aforesaid two dates and there is no valid justification thereto and hence the detention must be treated as vitiated. Reliance was placed by the learned counsel on the decision

of this Court in Mohinuddin vs. District Magistrate, Beed (1987 (4) SCC 58).

In the affidavit sworn to by Sri R. Poornalingam, IAS, Secretary to the Government, (Prohibition and Excise Department) in answer to the contentions of the appellant in the Special Leave Petition the delay is sought to be explained in the following lines:

"The remarks were submitted with the relevant files before the Under Secretary of the concerned Department on 6.2.1998. The file was considered by the Under Secretary on 9.2.1998 as 7.2.1998 and 8.2.1998 were holidays in view of Saturday and Sunday and sent to Deputy Secretary on 9.2.1998 itself. Thereafter the file was considered by the Deputy Secretary on 9.2.1998 itself. Thereafter the file was considered by the Deputy Secretary who in turn sent the same to the Minister for Law for approval. The representation was considered and rejected by the Minister for Law on 14.2.1998 as he was away on camp from Headquarter on the dates in between. Thus the file was not unnecessarily held up at any level but moved from level to level promptly."

According to the learned counsel it is no explanation that the Minister concerned was away on camp from the Headquarters, particularly since a similar stand was disapproved in Mohinnuddin's case (supra). A two Judge Bench in the said decision declined to accept the explanation that "the Chief Minister was preoccupied with very important matters of the State which involved tours as well as two Cabinet meetings at Pune on October 28 and 29, 1986 and at Aurangabad on November 11 and 12, 1986." Learned Judges further observed that "in view of the wholly unexplained and unduly long delay in the disposal of the representation by the State Government, the further detention of the appellant must be held illegal and he must be set at liberty forthwith."

Learned counsel also cited an earlier two Judge Bench decision of this Court in Raghavendra Singh vs. Superintendent, District Jail, Kanpur (1986 1 SCC 650) in which similar delay of a few days in considering the representation was found to have vitiated the detention. That is a case where delay was held to be "wholly unexplained". A three Judge Bench of this Court in Rumana Begum vs. State of Andhra Pradesh (1993 Supp. 2 SCC 341) disapproved the delay in considering the representation on the mere ground that the representation on the mere ground that the representation was not addressed to the Chief Secretary. That was a case where representation was sent to the Governor. Hence it was found that there was unexplained and unreasonable delay and consequently the detention was held vitiated. We are reminded of the following observations made by this Court in Kundanbhai Dulabhai Sheikh vs. District Magistrate, Ahmedabad (JT 1996 (2) SC 532 = 1996 (3) SCC 194):

"In spite of law laid down above by this Court repeatedly over the past three decades, the

Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the secretariat for various reasons including red tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the government itself on account of his representation not being disposed of at the earliest."

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 and B.L. Abdul Khader vs. Union of India and others (1991 (1) SC 476). The following observations of the Bench can profitably be extracted here:

"IT is a constitutional mandate commanding the concerned authority 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 concerned detention law, 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."

The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, it any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as

well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14.2.1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.

Mr. V.R. Reddy, learned senior counsel for the State of Tamil Nadu referred to a decision of this Court in *Mrs. U. Vikayalakshmi vs. State of Tamil Nadu* and another (AIR 1994 SC 165) to contend that it could not be said that there was any delay in considering the representation from 9.2.1998 to 14.2.1998. In that case also the detention was under Section 3(1) of the Act. The detenu made representation against the detention which was received by the State Government conveyed the rejection of the representation on 23.6.1992. The detenu received the rejection order on 26.6.1992. It was submitted that there was an inordinate long delay in dealing with the representation and that the detenu was entitled to have the detention order quashed. This Court noticed that in the counter affidavit filed by the Deputy Secretary to the State Government the manner in which the representation was dealt with after its receipt on 18.5.1992 had been stated in detail. The Court then observed:

"We have perused the stages through which the file containing the representation was dealt with promptly and there was no indifference lethargy or negligence in dealing with the same. The file was not unnecessarily held up at any level but moved from level to level promptly. We are, therefore, satisfied that the explanation tendered by the Deputy Secretary in this behalf is acceptable and does not detract any lack of sense or urgency in dealing with the representation. We, therefore, do not see any merit in the first contention."

In the present case, however, there is no explanation forthcoming as to why the representation could not be dealt with by the Minister concerned from 9.2.1998 to 14.2.1998.

We are, therefore, of the opinion that the delay from 9.2.1998 to 14.2.1998 remains unexplained and such

unexplained delay has vitiated further detention of the detenu. The corollary thereof is that further detention must necessarily be disallowed. We therefore allow this appeal and set aside the impugned judgment. We direct the appellant-detenu to be set at large forthwith.

JUDIS