



IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

WRIT PETITION No.22583 of 2020

Between:

C. Vallemma W/o. Chinnabba,
Aged 43 years, R/o. Narasimhapuram Village,
Palasamudram Mandal, Chittoor District.

.. Petitioner

Versus

The State of Andhra Pradesh,
Represented by its Chief Secretary,
Secretariat Buildings, Amaravathi,
at Velagapudi, Guntur District, and others.

.. Respondents

ORDER PRONOUNCED ON 16.02.2021

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE C. PRAVEEN KUMAR

- | | |
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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? | No |
| 2. Whether the copy of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether Their Lordship/Ladyship wish to see the fair copy of the Judgment? | Yes |

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J



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.. Respondents

! Counsel for the petitioner : Mr. D. Purnachandra Reddy

**^Counsel for the respondents : Mr. Syed Khader Masthan, Spl.GP
for Additional Advocate General**

<Gist :

>Head Note:

? Cases referred:

1. (1991) 1 SCC 476

2. (2013) 4 SCC 435

3. 2020 SCC OnLine AP 653.

**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI****HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE****&****HON'BLE MR. JUSTICE C. PRAVEEN KUMAR****WRIT PETITION No.22583 of 2020***(Taken up through video conferencing)*

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Versus

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.. Respondents

Counsel for the petitioner : Mr. D. Purnachandra Reddy

Counsel for the respondents : Mr. Syed Khader Masthan,
Spl. GP, for Addl. AG

Date of hearing : 08.02.2021

Date of order : 16.02.2021

ORDER*per Arup Kumar Goswami, CJ*

This petition, in the nature of Writ of Habeas Corpus, was filed praying for release of C. Venkatesh, son of the petitioner, who is lodged in Central Prison, YSR Kadapa, and to set him free, after declaring his detention under Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders



and Land Grabbers Act, 1986 (for short, 'the Act'), as unconstitutional and illegal.

2. The second respondent- Collector & District Magistrate, Chittoor, passed an order dated 13.08.2020 in exercise of power conferred under Section 3(2) read with Section 3(1) of the Act and also keeping in view public interest, to detain the son of the petitioner from the date of service of the order upon him and to lodge him in Central Prison, YSR Kadapa. The grounds of detention in English and Tamil and the material in support thereof were served to the petitioner.

3. In the aforesaid order, it was indicated that the case of the son of the petitioner would be referred to the Advisory Board for review and opinion under Section 10 of the Act and it was also noted that the detenu would have a right to make representation (i) to the Collector & District Magistrate, Chittoor, before the order is approved by the Government or (ii) to the Chief Secretary, Government of Andhra Pradesh, Vijayawada, or (iii) to the Advisory Board or to all of them.

4. Heard Mr. D. Purnachandra Reddy, learned counsel for the petitioner, and Mr. Syed Khader Masthan, learned Special Government Pleader representing the learned Additional Advocate General, for the respondents.

5. Learned counsel for the petitioner has pressed into service only one ground, namely, unexplained delay in disposal of the representation submitted by the son of the petitioner, to contend that the order of detention is unconstitutional and illegal, which is sought to be controverted by Mr. Syed Khader Masthan, by placing reliance on the averments made in Paragraph 16 of the counter-affidavit filed by urging



that delay, if any, has been appropriately explained and, therefore, no interference is called for with the order of detention of the detenu.

6. Mr. D. Purnachandra Reddy, learned counsel, submits that the representation was submitted to the Government on 12.10.2020, which was received on 16.10.2020, and the same was rejected on 02.12.2020, which is after 47 days of the date of submission of representation. In support of his submission, learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in ***K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India and others***, reported in **(1991) 1 SCC 476**, ***Abdul Nasar Adam Ismail v. State of Maharashtra and others***, reported in **(2013) 4 SCC 435** and ***P. Aruna Kumari v. State of Andhra Pradesh and others***, reported in **2020 SCC OnLine AP 653**.

7. Having regard to the contours of controversy as presented by the learned counsel for the petitioner, it will not be necessary for us to refer to the grounds based on which the order under Section 3(1) and 3(2) of the Act was passed by the Collector and District Magistrate, Chittoor.

8. A perusal of Section 3 of the Act goes to show that the Government may, if satisfied with respect to any person of the class of persons as indicated in Section 3(1) that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. Section 3(2) of the Act provides that the Government, if satisfied that it is necessary, by order in writing, direct, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of jurisdictions of the District Magistrate or Commissioner of Police, the District Magistrate or Commissioner of Police may also exercise the



powers conferred under Section 3(1) of the Act for such duration as may be specified in the order of the Government. The proviso to Section 3(2) lays down that the order passed under Section 3(1) shall not in the first instance, exceed three months, but the Government, if satisfied, that it is necessary to do so, amend such order to extend such period from time to time by any period not exceeding three months at any one time. Section 3(3) of the Act enjoins that when an order is made under Section 3(2), the officer shall forthwith report the fact to the 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 12 days after the making thereof, unless in the meantime, it has been approved by the Government.

9. Section 9 of the Act provides for constitution of Advisory Boards and Section 10 requires the Government to place before the Advisory Board the grounds on which the order of detention 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 Section 3(3) within three weeks from the date of detention of the person. Section 11(1) requires submission of the report by the Advisory Board to the Government within seven weeks from the date of detention of the person concerned.

10. At this juncture, it would be relevant to take note of Article 22(5) of the Constitution, which provides that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been



made and shall afford him the earliest opportunity of making a representation against the order.

11. Thus, under Article 22(5) of the Constitution, the detenu has two rights: (i) to be informed, as soon as may be, of the grounds on which the order of detention is based, i.e., the ground which led to the subjective satisfaction of the detaining authority and (ii) to be afforded the earliest opportunity of making a representation against the order of detention.

12. It is now well established by series of judicial pronouncements that constitutional right to make representation under Article 22(5) of the Constitution, by necessary implication, also guarantees the constitutional right to a proper consideration of the representation.

13. The Constitution Bench of the Hon'ble Supreme Court in the case of ***K.M. Abdulla Kunhi*** (supra) observed that Article 22(5) of the Constitution casts a legal obligation on the Government to consider the representation as early as possible. While explaining the words "as soon as may be" as appearing in Article 22(5), it was observed that the same reflects the concern of the framers of the Constitution that the representation should be expeditiously considered and disposed of with a sense of urgency without any avoidable delay. The delay, if any, has to be considered in the facts and circumstances of the case and there can be no hard and fast rule in that regard. It was laid down that any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. It was further observed that the Government's consideration of the representation is for the purpose to find out whether the detention is in conformity with the power under the statute.



14. In ***Abdul Nasar Adam Ismail*** (supra), the Hon'ble Supreme Court referred to the judgment in ***K.M. Abdulla Kunhi*** (supra) and observed that though no time limit is prescribed for disposal of the representation, the constitutional requirement is that it must be disposed of as soon as possible. Though every day's delay in dealing with the representation of the detenu does not need to be explained, there should also be no supine indifference, slackness or callous attitude. It was observed if the inter-departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt a procedure calculated towards expeditious consideration of the representation.

15. In the aforesaid case, the Hon'ble Supreme Court, while holding on facts that there was no delay in disposal of the representation, recorded that there was unexplained delay in forwarding the representation by the Superintendent of Jail to the detaining authority. The Hon'ble Supreme Court further observed that delay in disposal of the representation has vitiated only the continued detention of the detenu and not the detention order and it does not affect the validity of the order of detention.

16. In ***P. Aruna Kumari*** (supra), at paragraph 16, it was noted as under:

"Admittedly, the representation dated 5.5.2020 was sent to the Government and it is to be presumed that it must have been received within a couple of days, as the counter filed by the Government is silent as to the date when it was received by the Government. In para 16 of the counter it is stated that the said representation was received by the Home



Department and thereafter with an endorsement dated 19.6.2020, it was forwarded to the GAD, which was looking after the preventive detention matters. The representation was received by the GAD on 19.6.2020 and as 20.6.2020 and 21.6.2020 were holidays, called for remarks from the District Collector on 22.6.2020 and thereafter rejected the representation on 26.6.2020. From a perusal of the above, it is clear that from 5-5-2020 onwards, the representation of the petitioner was lying with the Government till 19.6.2020 i.e., for nearly 40 days. No explanation is forthcoming in the counter as to why the representation was in the Home Department till 19.6.2020 without being attended to.”

17. In the aforesaid case, this Court, while holding that the basis for the detaining authority, in absence of any bail application being filed and pending consideration seeking release, to believe that there is a reasonable possibility of the detenu being released on bail, cannot be accepted, also recorded a finding that there was unexplained delay in considering the representation of the detenu and accordingly, had allowed the writ petition.

18. Let us now advert to the facts of the present case. It is not disputed that the representation dated 12.10.2020 was received on 16.10.2020. However, the same was sent to the Chief Minister and Principal Secretary to the Government (POLL) on 21.10.2020. That itself goes to show that the representation was not dealt with promptitude at that stage. After receipt of the same on 21.10.2020, the same was sent to the Deputy Secretary, GAD, on 22.10.2020. The representation was sent to the detaining authority by e-mail on 11.11.2020. There is no



explanation whatsoever why there was such a long gap of nearly 20 days in sending the e-mail to the detaining authority. The detaining authority submitted his remarks to the Principal Secretary (POLL) on 16.11.2020. It is admitted position that the representation was rejected on 02.12.2020. There is also no explanation why the interregnum period of 15 days was taken for consideration of the representation.

19. A representation submitted by a detenu, in the context of preventive detention, relates to the liberty of the individual, a cherished right enshrined in Article 21 of the Constitution.

20. On the basis of the facts alluded above, we are of the unhesitant opinion that there is unexplained delay in disposal of the representation, on account of which continued detention of the detenu would be unconstitutional and illegal.

21. In view of the above discussion, we direct that the detenu shall be released forthwith, if he is not required in any other case.

22. Resultantly, the writ petition is allowed. No costs. Pending miscellaneous applications, if any, shall stand closed.

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J

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HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE C. PRAVEEN KUMAR

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(Per Arup Kumar Goswami, CJ)

Dt: 16.02.2021

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