

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED:19.12.2001

CORAM

THE HONOURABLE MR. JUSTICE S.JAGADEESAN

AND

THE HONOURABLE MR. JUSTICE P.THANGAVEL.

H.C.P.NO.1164 OF 2001.

R.Rani ... Petitioner

Vs.

1.State of Tamil Nadu,
rep. by Secretary to Government,
Public (SC) Department,
Fort St. George, Chennai-9.

2.Union of India,
rep. by Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

3.The Superintendent of Central
Prison, Chennai-3. ... Respondents.

Petition under Article 226 of the Constitution of India
to issue a Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Palanikumar.
For respondents 1 & 3: Mr.A.Navaneethakrishnan,
Addl. Public Prosecutor.

For respondent-2: Mr.Su.Srinivasan,
Addl.Central Govt.Standing Counsel.

: O R D E R

(This Order of the Court was delivered by S.Jagadeesan,J)

The petitioner is the wife of the detenu Ravikumar, son
of Govindan, who had been detained under the Conservation of Foreign
Exchange and Prevention of Smuggling Activities Act, 1974. It is stated

that the detenu made a bill of entry on behalf of one M/s. Majestic International for the import of 360 table fans. On opening the said consignment, a large number of electronic equipments and other items were found valuing Rs.90,94,760/- as against the declaration. Consequently proceedings were initiated against him and the order of detention was passed on 26.6.2001.

2. The detenu was served with a show-cause notice by the customs authorities on 26.7.2001 for which the detenu submitted a reply on 31.7.2001. The same was received by the authorities on 1.8.2001. The Advisory Board Meeting was held on 7.8.2001 and the order of detention was confirmed by the concerned authority on 10.9.2001.

3. It is the contention of the learned counsel for the petitioner that the show-cause notice issued by the customs authorities and the reply submitted by the detenu were not placed before the confirming authority before ever the order of detention was confirmed. The nonplacement of those documents would vitiate the impugned order of detention, since it has a bearing in respect of the subjective satisfaction to be formed by the confirming authority. The learned counsel for the petitioner also placed his reliance on the judgment of this Court in H.C.P.843/2000 dated 25.8.2000 wherein a reliance was placed yet another judgment of this Court in H.C.P.14444/99 dated 10.4.2001.

4. The learned counsel for the respondents contended that the said documents were not placed before the confirming authority. But, however, contended that the non-placement of those documents before the confirming authority will not vitiate the impugned order of detention, as the documents have no relevance for the confirming authority to confirm the impugned order of detention.

5. We carefully considered the above contention of the respective counsels. We also perused the records. Our work has been lessened in view of the earlier precedents relied upon by the learned counsel for the petitioner. In the judgment of the Division Bench of this Court, of which myself was a party, in the case of NOORUDEEN V. THE JOINT SECRETARY TO GOVERNMENT OF INDIA (HCP.843/2000 dated, 25.8.2000) it has been held as follows:-

"In fact, in identical circumstances when the reply submitted by the detenu to the show cause notice was not placed before the Advisory Board by the detaining authority, this court in H.C.P.No.1444 of 1999 dated 10.4.2000 has quashed the detention order. The relevant passage is extracted herein:

Mr. K.Kumar, learned Standing Counsel for the Central Government, however, tried to argue that as of course, the detenus under the COFEPOSA Act are given the chance to appear through the counsel before the Advisory Board and in this case also such an opportunity was given to the petitioner and it was only after hearing the counsel for the petitioner,

the Advisory Board has expressed its opinion. The learned counsel, therefore says that there was no prejudice and the petitioner himself could have put those documents before the Advisory Board. We are afraid in view of the aforementioned Division Bench judgments of this Court, we cannot accept this defence by the respondents. If there is a breach of duty in putting proper document before the Advisory Board, it would reflect against the rights of the detenu under Article 22(5) of Constitution of India to make an effective and quick representation before the authorities against the detention order. It is the task of the Advisory Board itself to see the justification of the detention order. Therefore, if the relevant and material documents like the show cause notice under Section 124 of the Customs Act and the reply thereto by the detenu are not put before the Advisory Board, we are afraid the necessary consequence must follow and the detention would then be liable to the vitiated.

This decision applies squarely to the instant case. Therefore, for the same reasons, we quash the detention order and the detenu is directed to be set at liberty, if he is not required in any other case by any other authority".

6. From the above laid principles, it is clear that the customs authorities are bound to place their show cause notice and the reply received from or on behalf of the detenu before the confirming authority, in case if the reply from the detenu is received much earlier to the confirmation of the detention order by the confirming authority. Consequently the non-placement of those relevant documents before the confirming authority vitiates the order of detention.

7. For the reasons stated above, the H.C.P. is allowed and the order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.

(S.J.J.)

(P.T.J.)

19.12.2001

Index:Yes.

Kkr

To

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2. Secretary,
Ministry of Finance
Department of Revenue,
New Delhi.

3.The Superintendent of Central
Prison, Chennai-3.

S.JAGADEESAN,J
AND
P.THANGAVEL,J

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