

W.P.(MD)No.4804 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	03.01.2025
Delivered on	07.01.2025

CORAM**THE HON'BLE MR.JUSTICE N.ANAND VENKATESH****W.P.(MD)No.4804 of 2023**

R.Eswaran

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Home Prohibition and Excise (XIII) Department,
Chennai.

2.The District Collector,
Dindigul District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to pay compensation of Rs.10 lakhs to the petitioner for his illegal detention order passed by the second respondent dated 23.11.2022, based on the petitioner's representation dated 16.11.2022 within time framed by this Court.



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For Petitioner : Mr.S.Karthik

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by
Mr.S.Ravi
Additional Public Prosecutor

ORDER

The petitioner was detained under Act 14 of 1982 by virtue of an order of detention passed by the District Collector, Dindigul District, dated 23.11.2021. The Advisory Board through proceedings dated 30.12.2021 came to a conclusion that no sufficient cause has been shown for the detention of the petitioner and accordingly opined that the Government must revoke the order of detention. The Government Order was passed only on 14.03.2022 revoking the detention order and the petitioner was released only on 17.03.2022. In the light of the detention from 30.12.2021 till the release on 17.03.2022 not being backed by law, the present writ petition was filed before this Court seeking for compensation.



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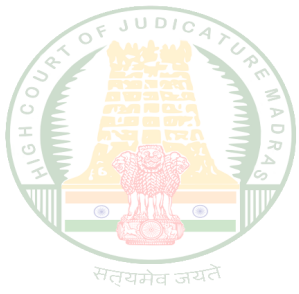
2. When the writ petition came up for hearing on 07.11.2024,

this Court passed the following order:

“The writ petition has been filed for a direction to the respondents to pay compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the petitioner on the ground that the petitioner was kept in illegal detention.

2.The petitioner was detained under the Act 14 of 1982 on 23.11.2021. The Advisory Board through proceedings dated 30.12.2021 came to a conclusion that no sufficient cause has been shown for the detention of the petitioner. This report of the Advisory Board was received by the Government on 31.12.2021. In spite of the same, the petitioner continued to languish in the prison till the Government Order was passed on 14.03.2022 and the petitioner was let out/released only on 17.03.2022.

3.The counter-affidavit filed by the second respondent does not explain as to why the petitioner was kept inside jail after the Advisory



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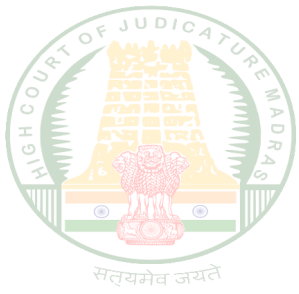
Committee had expressed its opinion on 30.12.2021. If no explanation is forthcoming, the detention of the petitioner from 31.12.2021 till 16.03.2022 has to be construed as illegal. In which case, the petitioner will be entitled for payment of compensation. Such right flows to the petitioner under Article 21 of the Constitution of India.

4.The learned Additional Public Prosecutor seeks for sometime to take instructions as to why the petitioner continued to be kept inside prison for the period up to 16.03.2022.

5.Post this writ petition under the caption 'for orders' on 28.11.2024."

3.The writ petition was thereafter listed for hearing on 12.12.2024 and the following order was passed by this Court:

“Pursuant to the earlier order passed by this Court, an additional counter-affidavit has been filed by the first respondent and the relevant portions are



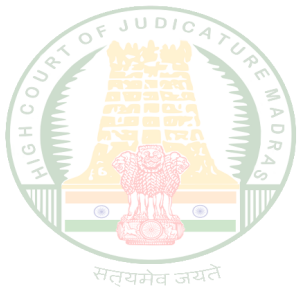
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extracted hereunder:

“3. It is respectfully submitted that the District Magistrate and District Collector, Dindigul District had issued Detention Order No. 113/2021 dated 23.11.2021 against Thiru Eswaran, S/o. Ramuthevar under the Tamil Nadu Act 14/1982. The Order of Detention was approved by the Government in G.O.(Rt) No. 5987, Home, Prohibition & Excise (XIII) Department, dated 04.12.2021. The Advisory Board reviewed this case on 30.12.2021 and opined that there is no sufficient cause for the detention of Thiru. Eswaran and the report of the board was received in Government on 31.12.2021. The file was submitted on 03.01.2022 (Government Holidays 01.01.2022 and 02.01.2022) and it was approved by the Under Secretary and Deputy Secretary on the same day itself. Subsequently, the file was circulated to Office of the Hon'ble Minister (Electricity, Prohibition and Excise) on 03.01.2022 and the Hon'ble



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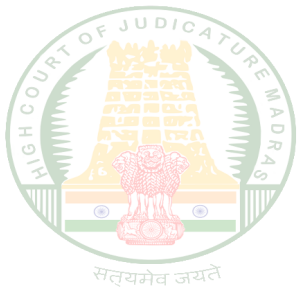
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Minister approved the file on 04.01.2022, but the file was received by this department only on 14.03.2022.

Immediately, the Government have revoked the order of Detention in G.O (Rt) No. 1340. Home. Prohibition & Excise (XIII) Department, dated 14.03.2022 and forwarded the copy to the Jail Authorities. The detenu was released forthwith from Prison on 17.03.2022.

4. It is respectfully submitted that in the third adverse case, the detenu applied for bail in CrI.M.P.No. 160/2022 only during last week of January and he was enlarged on bail only on 28.01.2022. Thereafter, applied for bail in the ground case and enlarged on bail and executed sureties only on 02.02.2022. Apart from these three adverse cases and one ground case, the Writ Petitioner involved in 22 other cases.”

2. The learned counsel appearing for the petitioner seeks for some time to get instructions.



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3. Post this case on 19.12.2024 at 02.15

p.m.”

4. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing on behalf of the respondents.

5. The learned counsel for the petitioner submitted that there was absolutely no justification to detain the petitioner in prison till 17.03.2022 and when the said detention is illegal, the petitioner is entitled for payment of compensation.

6. Per contra, the learned Additional Advocate General submitted that even though the advisory board through proceedings dated 30.12.2021 gave its opinion, a process has to be completed before the petitioner is released and it took sometime to complete the process. The learned Additional Advocate General submitted that the process undertaken has been clearly explained in the additional counter-affidavit and there is no illegal detention of the petitioner. Apart from the same,



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there are 25 previous cases against the petitioner and the petitioner is a history sheeter and was involved in commission of various offences. It was further contended that the petitioner is not entitled for payment of compensation.

7.This Court has carefully considered the submission made on either side and the materials available on record.

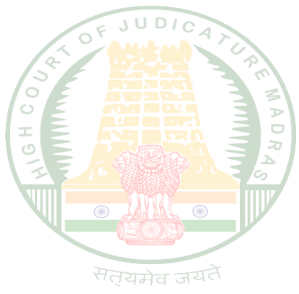
8.Since there is no other controversy on the facts of the case, this Court can straightaway go into issue involved in this case. The advisory board through proceedings dated 30.12.2021 concluded that there is no sufficient cause shown for the detention of the petitioner. Once such an opinion is given, it binds the Government and the detenu has to be released at the earliest point of time. On a careful reading of the additional counter-affidavit filed by the first respondent, it is seen that the proceedings of the advisory board was approved up to the Ministry as early as on 04.01.2022. Whereas, the file was received by the first respondent only on 14.03.2022 and the petitioner was released on 17.03.2022. Hence, there is absolutely no explanation as to why there is a



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delay from 05.01.2022 till 17.03.2022. This period during which the petitioner was detained, clearly constitutes illegal detention. It is trite law that any detention must satisfy the fundamental right guaranteed under Article 21 of the Constitution of India. This Article categorically states that no person can be deprived of his life or personal liberty except according to procedure established by law. An attempt is being made on the side of the respondents to portray as if the petitioner is a history sheeter who is involved in commission of various offences and therefore, there is no justification to grant compensation to the petitioner.

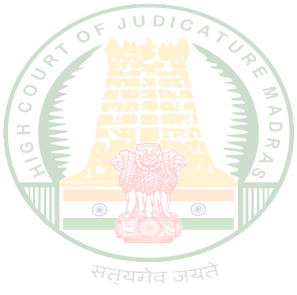
9.The fundamental right guaranteed under Article 21 of the Constitution of India only uses the word “Person” and it does not distinguish between a good person and a bad person. No law can say that only a paragon of virtues can be paid compensation and others are not entitled for the same. Such stand taken by the respondents is wholly unsustainable and it violates the fundamental right that has been given to a person under Article 21 of the Constitution of India.



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10.This Court finds that there was absolutely no justification to detain the person after the advisory board found that there was no justification to continue the detention of the petitioner through proceedings dated 30.12.2021. The process was over in getting the approval as early as on 04.01.2022. However, the first respondent passed the Government Order only on 14.03.2022 and the petitioner was released from prison on 17.03.2022. The period at least from 05.01.2022 to 17.03.2022 has to be construed as a period of illegal detention faced by the petitioner. Once this Court comes to the conclusion that there is illegal detention, the petitioner will be entitled for payment of compensation. This is based on the latin maxim *Ubi jus ibi remedium* which means that where there is a right, there is a remedy. This principle was gone into in detail by the Supreme Court in ***D.K.Basu v. State of West Bengal***, reported in (1997) 1 SCC 416.

11.In the light of the above discussion, there shall be a direction to the respondents to pay a compensation of a sum of Rs. 50,000/- (Rupees Fifty Thousand only) to the petitioner within a period of four weeks from the date of receipt of a copy of this order.



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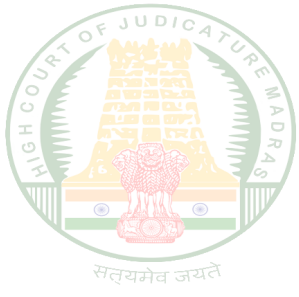
12.This Writ Petition is accordingly allowed with the above direction.

07.01.2025

NCC : Yes
Index : Yes
Internet : Yes
PKN

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home Prohibition and Excise (XIII) Department,
Chennai.
- 2.The District Collector,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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Dated: 07.01.2025