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**(2011) 08 MAD CK 0102**

**In the Madras High Court**

**Case No :** Writ Petition No"s. 16217, of 2011 and MP. No"s. 1, 1, 1 and 1 of 2011 in all the WPs.

A. Mohammed Sitheeq

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 10-08-2011

**Acts Referred:**

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 7

**Citation :** (2011) 08 MAD CK 0102

**Hon'ble Judges :** N. Paul Vasanthakumar, J

**Bench :** Single Bench

**Advocate :** C. Prakasam, for the Appellant; V. Jayaprakashnarayanan, Additional Government Pleader, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

N. Paul Vasanthakumar, J.—These writ petitions are filed by the respective Petitioners praying to issue a Writ of Mandamus for bearing the

Respondents from detaining the Petitioner in W.P. No. 16217/2011; Petitioner's husband in W.P. No. 16432/2011; Petitioner's brother in W.P.

No. 16706/2011; and the Petitioner's sister's husband in W.P.N.18446/2011 u/s 3(1) of the Prevention of Black Marketing and Maintenance of

Supply of Essential Commodities Act, 1980 (Act 7 of 1980) (hereinafter referred to as the "Act").

2. In W.P. No. 16217 of 2011, according to the Petitioner, he is running modern rice mill in the name and style of M/S. Anandam Modern Rice at

Dindigul and he is also the Secretary of the Rice Mills Owners' Association (Tamil Nadu Civil Supplies Corporation) for the past several years. He

was appointed as hulling agent in Tamil Nadu Civil Supplies Corporation. The said

Corporation used to supply raw paddy for hulling purpose and the resultant rice are to be supplied to the Tamil Nadu Civil Supplies Corporation and charges will be paid to the Petitioner. The Petitioner was arrested in the year 2008 by the fourth Respondent and handed over to the Inspector of Police, C.S., CID, Madurai. The District Collector passed the detention order on 7.11.2008 and thereafter the Advisory Board found that the order of detention was not valid and he was released. Again on 17.7.2010, the fourth Respondent filed First Information Report No. 304/2010 alleging that in his godown, 188 bags of Public Distribution System rice was stored and hence he was arrested. According to the Petitioner, the action of the fourth Respondent is motivated. Again, a case was registered by the fourth Respondent in Crime No. 344/2011 and the Petitioner was arrested on 14.6.2011 and subsequently he was released on bail. Due to the said registering of case, the Petitioner apprehends that he may be detained u/s 3(1) of the said Act.

3. In W.P. No. 16432 of 2011, the Petitioner's husband Kolanji is running a Flour Mill at Kallakurichi. Petitioner's husband was originally doing rice business and he was arranging transport of rice bags in lorries from various trader's business premises to various Districts and States under the cover of valid permits. The Government of India introduced the scheme by name SGRY Scheme for helping poor families, who are hailing from the village side. As per the said scheme, the coolies are distributed by way of rice and money. The Petitioner's husband was arrested on 9.7.2011 by the third Respondent and the third Respondent recommended to the second Respondent for registering the case under Act 7 of 1980. The Petitioner apprehends that the second Respondent is taking steps to detain her husband Kolanji under the said Act.

4. In W.P. No. 16706 of 2011, the Petitioner's brother is running a rice mill in the name and style of "Kumaran Rice Mill" and he was appointed as hulling agent by the Tamil Nadu Civil Supplies Corporation, authorised to hull paddy supplied by the Tamil Nadu Civil Supplies Corporation for the purpose of distribution through the Public Distribution System. On 1.8.2010, the Inspector of Police, Chennai seized two lorries far away from the Petitioner's brother's rice mill on the alleged confession statement of the rice owner that he was going to sell the same to the Petitioner's brother.

Petitioner's brother approached this Court and obtained anticipatory bail. As per the terms and conditions of the Tamil Nadu Civil Supplies

Corporation, Petitioner's brother cannot deal with any private paddy and rice. According to the Petitioner, the third Respondent-Police came to

the Petitioner's brother's house on 13.7.2011 and asked him to co-operate with them for detaining him u/s 3(1) of the said Act. According to the

Petitioner the third Respondent did not seize any rice from Petitioner's brother, but they are going to set up a false case and going to register FIR

against the Petitioner's brother. Hence, the Petitioner filed this writ petition with the prayer as stated above.

5. In W.P. No. 18446 of 2011, the Petitioner's sister's husband A. Kannan was running rice business upto the year 2010. According to the

Petitioner, as the police registered false case against his sister's husband, he stopped the said rice business in the year 2010 itself and now he is

doing coolie work in a hulling mill at Thirukkanur, Puducherry Union Territory. Originally, Petitioner's sister's husband was arranging transport of

rice bags in lorries from various trader's business premises to various Districts and States under the cover of valid permits. The Government of India

introduced the scheme by name SGRY Scheme for helping poor families, who are hailing from the village side. As per the said scheme, coolies

are given by way of rice and money. The Petitioner's sister's husband was arrested on 2.8.2011 by the fourth Respondent and the Petitioner

apprehends that the fourth Respondent recommended to the second and third Respondents for registering the case under Act 7 of 1980 and the

second and third Respondents are taking steps to detain his sister's husband under the said Act. Hence this writ petition.

6. As the issue raised in these writ petitions are common, all these writ petitions are dealt with by this common order.

7. When the writ petitions were posted for admission on 7.7.2011 and 12.7.2011, viz., W.P. Nos. 16217 and 16432 of 2011, the learned

Additional Government Pleader was directed to take notice and to get instructions.

8. The learned Additional Government Pleader for the Respondents, on instructions, submitted that the prayer sought for in these writ petitions is

merely on apprehension and No. writ can be issued merely on the basis of apprehension. Section 3 of the Act empowers detention of any person for

violation of the provisions of the Act and only if detention order is passed, the same can be questioned. In support of his contention, the learned

Additional Government Pleader relied on a judgment of K. Mohanram, J., made in W.P. No. 12292 of 2007 etc., dated 15.5.2007, wherein similar

prayer made was elaborately dealt with and held that the writ petitions are not maintainable and observed that if any detention order is passed it is

open to the person concerned to file Habeas Corpus Petition by raising permissible grounds. The learned Additional Government Pleader also cited

the decision of the Supreme Court reported in Union of India (UOI) and Others Vs. Muneesh Suneja, and Division Bench of Bombay High Court

made in Crl.W.P. No. 103 of 2009, etc., dated 5.1.2001.

9. The learned Counsel for the Petitioners, on the other hand, submitted that if a detention order is passed, the petitioners' fundamental right will be

affected and therefore, the writ petitions filed at this stage are maintainable.

10. I have considered the rival submissions made by the learned Counsel for the Petitioners as well as the learned Additional Government Pleader

for the Respondents.

11. The issue regarding the maintainability of the writ petitions was considered elaborately in the above referred decision of this Court in W.P. No.

12292 of 2007 etc., dated 15.5.2007. I am in agreement with the views expressed by the learned Judge, as the learned Judge has followed several

decisions of the Supreme Court to arrive at a conclusion.

12. In support of his contention, the learned counsel for the Petitioners relied on the following decisions:

i) Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another,

ii) (2008) 16 SCC 14 (Deepak Bajaj v. State of Maharashtra and Anr.).

13. The decisions cited above by the learned counsel for the Petitioners are relating to the challenge made to the detention order or filed after the

order was passed, but before the actual detention/arrest and the said decisions are not applicable to these writ petitions i.e., pre-execution stage.

Here the Petitioners are praying for forbearing the Respondents from detention under s 3(1) of the Act merely on apprehension. Section 3(1) of the

Act reads as follows:

3. Power to make orders detaining certain persons.-(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Thus, power is vested with the Respondents to detain a person, if grounds are available to prevent a person.

14. It is a well accepted principle of law that normally writ of mandamus cannot be issued merely on apprehension as No. premature exercise of power is permissible. Passing of detention order is based on subjective satisfaction of the authority competent to pass orders. Whether the order

passed is vitiated on any ground or not, can be tested only after the order was passed and not before that. In paragraph 15 of the order of this

Court in W.P. No. 12292 of 2007 etc., dated 15.5.2007, K. Mohanram, J., held thus,

15..... in the batch of writ petitions only issuance of writ of mandamus is sought for which in effect amount to seeking of writ of prohibition only. In

these batch of writ petitions, admittedly orders of detention are yet to be passed and the Petitioners cannot speculate the grounds on which

detention orders may be passed. Without even knowing the Without even knowing the grounds of detention and the provisions of law contravened

of which is made as a ground of detention are also not known and as such the alleged lack of jurisdiction on the part of the Respondents cannot be

presumed. It is not the case of the writ Petitioners that the Respondents 1 and 2 do not have jurisdiction to pass the order of preventive detention

under the Black Marketing Act and therefore the authorities vested with statutory powers under the Act cannot be prevented from exercising

such powers. Therefore, as laid down in Isha Beevi on behalf of the minor Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The

Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others, if the Petitioners are to succeed they must first demonstrate total absence of

jurisdiction to proceed on the part of the Respondents. Therefore, in the considered view of this Court the above batch of writ petitions seeking issue

of writ of mandamus for bearing the Respondents from passing orders of detention under Section 3(1) of the Prevention of Black Marketing and

Maintenance of Supply of Essential Commodities Act, 1980 are not maintainable. The writ petitions are premature and not maintainable and

accordingly the above batch of writ petitions stand dismissed.

15. Therefore, these writ petitions are dismissed following the order made in W.P. No. 12292 of 2007 etc., dated 15.5.2007. No. costs.

Consequently, connected miscellaneous petitions are also dismissed.