

(1995) 12 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20065 of 1995

B. Satyanarayana

APPELLANT

Vs

The Inspector of Vigilance Cell and Others

RESPONDENT

Date of Decision : 19-12-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5), 226
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 3(2), 7

Citation : (1996) 1 ALT 544 : (1996) CriLJ 1785

Hon'ble Judges : N.Y. Hanumanthappa, J;K.B. Siddappa, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, K. Vijaykumar Reddy and K. Showri Reddy, for the Appellant; A.G., for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The petitioner is the brother of one M. G. Venugopalaiah Setty, son of Anthaiah, 48 yrs., resident of Noonepalli, Nandyal, Kurnool district. He has filed this writ petition to declare the detention of Mr. G. Venugopalaiah Setty in Central Prison, Musheerabad, Secunderabad, by order of detention dated 28-7-1995, communicated on 31-7-1995 passed by the 2nd respondent - District Collector and Magistrate, Kurnool district, by virtue of the powers conferred u/s 3(2)(a) read with Section 3(1)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980), as illegal and void and set him at liberty forthwith.

2. The facts leading to the filing of this writ petition are as follows :-

The detenu Mr. G. Venugopalaiah Setty is a merchant in rice. He gets the rice hulled either in his own rice mill or in the mills taken on lease. He is diligent in complying with the several orders issued by the Government of Andhra Pradesh Pursuant to the powers conferred under Essential Commodities Act.

3. It is stated by the petitioner that for the previous levy period, the detenu delivered 4860 quintals of levy rice as against the fixed quota of 2816 quintals of

rice. He obtained release permit No. 460, dated 15-6-1995 with Machine No. 281241 for transporting 100 quintals of levy free rice to Bangalore. He engaged lorry ATO 6677 on 19-6-95. The said lorry was stopped on 20-6-1995 at Cheekala Bayalu village near Madanapalle by the Deputy Tahsildar, suspecting the genuineness of the release permit on the ground that the Check Post authorities notices that another lorry ATQ 3875 has passed through the check post on 19-6-1995 with the same permit No. 460, dated 15-6-1995, but with a different machine No 292718, transporting rice to Hosur, Tamilnadu. Hence, the said permit was referred to the 2nd respondent, which was found as genuine. In spite of the same, the respondents used to detain the lorry carrying rice belonging to the detenu illegally for the reasons best known to the check-post authorities. As the family of the detenu did not yield to the pressure of the respondents, the first respondent registered a case against the detenu and the driver of the lorry ATQ 3875, but no case was registered in respect of 100 quintals of rice transported by lorry ATQ 6677 which was detained on 20-6-1995. The detenu filed W.P. No. 15903/95 and in W.P. M.P. No. 19403 of 1995, this Court directed release of the lorry ATQ 6677 on 21-7-1995. Dissatisfied with the detenu approaching this Court for necessary relief and obtaining interim order in the above writ petition, the detention order impugned in this writ petition has been passed against the detenu by the District Collector & Magistrate, Kurnool, under S. 3(2)(a) read with S. 3(1)(a) of Prevention of Black-Marketing and Maintenance of supplies of Essential Commodities Act, 1980 (Act 7 of 1980), holding that the detenu has been indulging in illegal business of transporting rice for sale to other States with the forged release Certificates for pecuniary benefits contravening Clause 3 of A. P. Paddy (Registration on Movement) Order, 1987, Clause 3 of A.P.S.C.D. (L&D) Order 1982, and Clause 7(1) and (2) of A.P. Procurement of Rice (Levy) Order, 1984 read with Ss. 7 and 8 of Essential Commodities Act, 1955; and invoking the provisions of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, the 2nd respondent ordered to detain the detenu to prevent him from further acting in any manner prejudicial to the maintenance of supply and easy availability of rice essential to the community from the date of serving the copy of the order with a further direction that he should be sent to the Central Prison, Secunderabad.

4. The detenu was supplied with the grounds of detention, which are as follows :

The detenu is a licence holder to deal in rice, which is valid upto 31-3-1996. He has taken on lease Sri Saibaba Rice Mill under agreement dated 3-11-1993. He was found indulging in illegal business in rice, as a lessee of Saibaba Rice Mill for profiteering by preparing forged release certificates of levy rice of District Supply Officer, Kurnool, and transporting the rice for sale to other States with the assistance of detenu's son-in-law Mr. Nukala Ramesh and two others viz., Nuggu Pullaiah and T. Nutan Kumar and thus acting prejudicial to the maintenance and easy availability of supplies of rice essential to the community. The detenu having obtained the release certificate bearing permit No. 460 dt. 15-6-1995 for

transporting 100 quintals of rice to Bangalore, transported the said quantity of rice to Hosur, Tamilnadu, with a forged release certificate bearing the above said number and date, on the lorry ADQ 3875 and with false Way Bill No. 4139756, which was, on verification, found that the same was used for transporting rice bran to Pavan Traders, Nandyal. Thus, the detenu has used the Permit No. 460 twice viz. on 19-6-1995 and 20-6-1995 for both the lorries viz., ATQ 6677 and ADQ 3875.

5. A case has been registered against the detenu in cr. No. 46/VC-CTR/95 under Clause 3 of A. P. Paddy (Restriction on Movement) Order, 1987; Clause 3 of APSCD (L & D) Order 1982 read with S. 7 of Essential Commodities Act and the Inspector, Vigilance Cell, Flying Squad, Tirupathi arrested the detenu and Mr. N. Ramesh on 13-7-95 and stocks of the mill were seized.

6. It is also stated in the grounds that the detenu was found indulging in similar illegal acts since 1991 and the same was found by the Inspector of Vigilance Cell, Tirupathi when he checked the District Supply Office, Kurnool and found two more forged Release Certificates bearing Permit Nos. 2085 (Machine No. 433795) and 720 (Machine No. 003497), dated 18-5-1991 and 6-6-1993 respectively. The genuine Release Certificates were, in fact, issued to Ramalingeswara Modern Rice Mill, Kurnool and Sri Laxminarayana Industry, Nandyal, respectively.

7. Similarly, the detenu sent rice to Tamil Nadu Pursuant to the permit No. 1477/93-94, dt. 12-9-1994 with the Way Bill No. 4062189, but actually the said permit was issued to Balaji Modern Rice Mills, Atmakur and similarly, he transported rice to Maharashtra by falsely mentioning permit No. 1329 in the Way Bill No. 4062171, which permit was, in fact, given to Paramechwarra Products, Nandyal and thus, the detenu with forged release certificates transported rice to the other States.

8. The detenu also prepared forged release certificates and transported broken rice to Maharashtra. Thus, the detenu was found indulging in transporting rice outside State for pecuniary gain with forged release certificates and permits.

9. The above acts of the detenu resulted in causing prejudice to the maintenance of easy availability of rice to the consumers.

10. In the grounds of detention, it was made clear to the detenu that he has right to make a representation against the order impugned in this writ petition to the Chief Secretary to the Government, Government of Andhra Pradesh, the Advisory Board of the High Court of Andhra Pradesh, constituted by the State Government under S. 9 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 and Secretary to the Government, Government of India, Ministry of Civil Supplies, New Delhi.

11. After filing the writ petition, the writ petitioner sought for amendment of the prayer viz., the detention of the detenu is quite illegal and entitled for release, for the reason that there was delay in considering the representation given by

the detenu.

12. The respondents filed a detailed counter and additional counter denying the averments of the writ petitioner. According to the respondents, the detention is quite valid and lawful and the same is just and reasonable. Otherwise, the detenu would have continued with his activities prejudicial to the maintenance of easy availability of supplies of rice to the community and thus causing inconvenience to the society. They reiterated that the grounds made out against the detenu are quite correct.

13. The delay, if any, caused in considering the representation is a bona fide one, as earlier to the order of rejecting the representation, number of holidays intervened and as such, the Authorities are unable to consider the representation of the detenu within the statutory period. According to the respondents, the detention order is passed on considering the material available. There is no vagueness or remoteness in the order of detention. Therefore, the detention of the detenu is quite legal and just.

14. Mr. E. Ayyapu Reddy, the learned counsel for the petitioner, urged that the order of detention is quite vague. He contended that if the detenu has violated or contravened any Orders or provisions of the Essential Commodities Act, appropriate proceedings should have been initiated under law against the detenu, instead of taking a drastic step of curtailing his personal liberty viz., detaining him and sending him to Central Prison, Musheerabad. The grounds for detention are not only vague but they lack in proximity.

15. The explanation given in the additional counter-affidavit why the delay caused in considering the detenu's representation is far from truth.

16. The learned Advocate General submitted that the order of detention is a just one, since the detenu went to the extent of forging and fabricating the documents and transporting the rice with forged permits and release certificates, which act is a very serious one. The detention is supported by the grounds, which, in fact, are based on proper application of mind and the facts placed before the authorities. The delay in considering the representation and passing a final order is an excusable one and the same has been explained in the additional counter-affidavit. No illegality is made out and as such, no interference is warranted by this Court under Art. 226 of the Constitution of India.

17. As far as the grounds of detention are concerned, the same are enclosed to the order of detention. It is not the case of the detaining authority that for contravention of any of the levy orders, apart from imposing fine, etc., he can also be detained for his prejudicial behaviour. The Constitution of India has given an utmost importance to personal liberty. It's deprivation or denial shall be only in accordance with law. The order of detention shall be free from suspicion. The order of detention shall not suffer from any vagueness or remoteness. If there is any representation, subsequent to the order of detention, the same shall be considered within a reasonable time, failing which the detenu will be entitled to

be released. Subsequent to the detention order, if any representation is made, it is the duty of the Board constituted by the State Government to take appropriate decision within the time prescribed. In order to appreciate how far the detention is correct, it is proper to bear in mind the relevant provisions of the orders and also Ss. 7 and 8 of Essential Commodities Act.

18. So much of sacredness is attached to the personal liberty. If there is any detention, the Court has to see that the detention is justified by making reference to the grounds. The grounds of detention shall not be vague. Any vagueness will go to the aid of the detenu and it makes out a case for his release.

19. While dealing with the scope of S. 3 of Act 7 of 1980, a Division Bench of Karnataka High Court in *Smt. Leharibai v. The State of Karnataka* 1981 Cri LJ 1048 (Kant) has held as under :-

"The above Act confers on the executive an extraordinary power to detain a person without recourse to the ordinary laws of the land on the mere subjective satisfaction of a designated authority. The sufficiency of the grounds or the adequacy of the materials alleged against the detenu are not justiciable. However, the courts in view of the Constitutional pledge under Art. 22(5) against deprivation of the liberty of a person except in accordance with the procedure established by law should be alert while at the same time aware of the need for and the urgency of maintenance of supplies essential to the community which Act seeks to achieve. The detaining authority must in each case be shown to have applied its mind to the activities alleged against the person and indicate in its order itself that it is necessary to detain him from preventing commission of the acts falling under one or the other or both the heads set out under the Explanation to S. 3. If this is not so, then the authority can be taken to have not applied its mind but made the order mechanically. The order of detention in this case which by its first part stated that the authority was satisfied that it was necessary to detain the person for preventing him from acting in any manner prejudicial to the maintenance of supplies essential to the community and by its second part recited the source of its power of detention as Clause (b) of sub-section (2) of S. 3 was held not in conformity with the terms of S. 3 of the Act and the mandate of Art. 22(5) of the constitution though the authority had furnished to the detenu full particulars of his activities, the order by its mechanical reproduction of the words of sub-section (1) of S. 3 and its significant silence as to under which of the two clauses of the Explanation such activities fall succumbs to the plea that the order was made in a casual way and without application of the mind to the activities alleged against the detenu."

20. Under Art. 22(5) of the Constitution of India, every detenu has a right to know the grounds of which he has been detained and has a right to make a representation. In other words, the detaining authority must disclose reasons that there is cogent and relevant material constituting for detention. Earlier conviction or is undergoing imprisonment in connection with some other offence is not a ground to order such detention, as held by the Supreme Court in

Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, .

21. In a case where there is representation pursuant to the order of detention, the confirmation of order of detention without considering the representation is held as violative of Art. 22(5) of the Constitution of India in Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others, .

22. In the case on hand, it is contended that though the representation was given both to the Advisory Board and to the Government in the second week of August, 1995 i.e. 9-8-1995, which was received by the authorities on 11-8-1985, the order of confirmation of the order of detention was on 19-9-1995 i.e., the nearly after 13 days after the statutory period i.e., Act contemplates that any decision on any representation shall be within 30 days. Thus, there was a delay of 13 days. That delay itself is a ground for petitioner's release, but the State has explained the delay in its additional counter to consider the representation submitted by the father-in-law of the detenu, which reads as under :-

"It is submitted that the father-in-law had given a representation to the third respondent i.e. Government of Andhra Pradesh, on 9-8-1995 and the third respondent has received the same on 11-8-1995. After having received the same on 11-8-1995, the representation was forwarded to the Collector and District Magistrate, Kurnool, for his remarks on 22-8-95. (12th, 13th, 15th, 17th and 20th August are Public Holidays). The Collector and District Magistrate, Kurnool, has furnished parawise remarks to the said representation on 4-9-95. The Advisory Board in turn has met on 6-9-1995 to consider the representation of the detenu. The detenu was given an opportunity of personal hearing. The Advisory Board has perused the relevant records and communicated its opinion to the Government on the same day itself. The Government in turn has examined the opinion of the Advisory Board as well as the representation made by the detenu in detail at various levels as detailed below :-

The representation of the detenu and the opinion of the Advisory Board have been examined in detail and the file was submitted to Assistant Secretary to Government on 12-9-1995 (9-9-1995 and 10-9-95 being Public Holidays). Again the file was submitted to the Deputy Secretary to Government (Law and order) and the Secretary to Government (Political) on 14-9-1995. The file was submitted to the Chief Secretary to Government on 15-9-1995 and received back in the concerned Section on 18-9-1995 (17-9-95 being Sunday). The file along with drafts were submitted to the Assistant Secretary to Government and the Joint Secretary to Government (Protocol) on 18-9-1995 itself. The draft memo rejecting the representation of the detenu was issued on 18-9-1995. The detention orders were confirmed vide G.O. Rt. No. 4446, General Administration (Law and Order-III) Department, dated 19-9-1995."

23. Regarding the delay, there is no dispute. But we have to see whether such delay is properly explained and the same is reasonable interpreting Art. 22(5) of

the Constitution of India, in the case of Pabitra N. Rana Vs. Union of India (UOI) and Others, , the Supreme Court held unexplained delay in deciding the representation filed by the detenu is a clear violation and is sufficient to vitiate the detention. It is further observed by the Supreme Court as follows :-

"It is implicit in the language of Art. 22 that the appropriate Government, while discharging its duty to consider the representation cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. There was, therefore, no reason for the Government to wait for considering the petitioner's representation until it had received the report of the Advisory Board. As laid down in Sk. Abdul Karim v. State of West Bengal (1969) 2 SCWR 529, the obligation of the appropriate Government under Art. 22(5) is to consider the representation made by the detenu as expeditiously as possible. The consideration by the Government of such representation has to be, as aforesaid, independent of any opinion which may be expressed by the Advisory Board."

"The fact that Art. 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

Similar view has been taken by the Supreme Court in the case of Narinder Singh Suri Vs. Union of India (UOI) and Others, holding that the unexplained delay of 20 days in considering the representation of the detenu and further continuing him in detention was violative of Art. 22(5) of the Constitution of India and thus, the detenu was entitled to be released forthwith.

24. This legal position has been further reiterated by the Hon"ble Supreme Court in Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, while referring to the decisions in Jayanarayan Sukul Vs. State of West Bengal, ; Haradhan Saha Vs. The State of West Bengal and Others, and K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India (1991 AIR SCW 362). The Supreme Court observed as follows :-

"In K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India (supra) reviewing the case Law, the Constitution Bench held that the representation relates to the liberty of the individual; it is enshrined under Art. 21; therefore Clause (5) of Art. 22 cast a legal obligation on the Government to consider representation as early as possible and should be expeditiously considered and disposed of with a sense of urgency without an unavoidable 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 in this behalf within which the representation should be dealt with but the requirement is that there should not be any indifference or callous attitude in considering the

representation. Unexplained delay in disposing of the representation would be a breach of the constitutional mandate rendering the detention impermissible and illegal."

Therefore, on facts also, the decision rendered in Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, in all force applies to the case on hand. Though the State asserted that there is no delay, but after verifying the material produced before us, we agree with Mr. Ayyapu Reddy that there is delay in considering the petitioner's representation, though not 13 days, but 8 or 9 days. State has not properly explained why it kept the representation pending unconsidered. Further most of the grounds mentioned in the grounds of detention relate to past act of the detenu. They are vague. In respect of contravention of some of the Government Orders mentioned in the grounds of detention of detenu, it is submitted that the proceedings under other laws are initiated and they are pending. In our view, though the authorities have power to pass an order for detention of the detenu, in the case on hand, the order of detention suffers from vagueness, it is the resultant of non-application of mind on the part of the District Magistrate. The grounds of detention are either remote or stale in nature. When the proceedings under other laws are initiated against the detenu, again invoking the detention proceedings is not reasonable. The procedure followed in disposing of the representation of the detenu is not at all satisfactory. The delay of (9) days in not considering the representation of the detenu is not properly explained. Therefore, in our view, the unexplained delay in disposing of the representation would be a breach of the constitutional mandate rendering the detention impermissible and illegal. Hence, the detenu is entitled to be released forthwith.

25. For the reasons stated above, the writ petition is allowed. The order of detention, dated 28-7-1995 and its confirmation by the Government by order dated 19-9-1995 are quashed. The detenu shall be released forthwith in this case, if he is not required in any other case.

26. Petition allowed.