

(1989) 07 GUJ CK 0015

In the Gujarat High Court

Case No : Spl. Criminal Application No. 294 of 1989

Babubhai Bhimjibhai

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 04-07-1989

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
General Clauses Act, 1897 — Section 10, 3(3), 9
Maintenance of Internal Security Act, 1971 — Section 3(4)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(2), 3(3), 3(4)

Citation : (1990) CriLJ 1959 : (1990) 1 GLR 75

Hon'ble Judges : J.U. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : H.L. Patel, for the Appellant; S.T. Mehta, Assistant Public Prosecutor (for Nos. 1, 2 and 4) and H.N. Bhagat, (for No. 3), for the Respondent

Final Decision : Allowed

Judgement

A.P. Ravani, J.—The petitioner has been detained pursuant to order dated January 10, 1989 passed by the District Magistrate, Panchmahals at Godra. The order of detention is passed under the provisions of the Prevention of Black Marketing and Maintenance of supplies of Essential Commodities Act, 1980 (for short "the Act").

2. The petitioner is a licence holder, issued under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as the Control Order of 1981). This control order is issued under the provisions of Essential Commodities Act, 1955. As disclosed in the grounds of detention supplied to the petitioner-detenu it is alleged that the petitioner indulged in several irregularities in respect of essential commodities such as wheat, rice, sugar and pamolein Oil. It is inter alia alleged that he did not maintain proper accounts; that he issued fake bills and that the stock which

was meant for distribution to the card holders was not distributed to them, but he sold away the same in the open market in contravention of the relevant provisions of the Control Order, 1981 and that of the Essential Commodities Act, 1955. On the basis of the material placed before him, the detaining authority was satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of essential commodities. Hence the order of detention. The petitioner has challenged the legality and validity of the said order and has prayed that he be set at liberty forthwith.

3. The order has been passed by the District Magistrate. Therefore, as provided under Sections 3(2) and 3(3) of the Act, the order can remain in force for a period of twelve days unless the same is, in the meantime approved by the State Government. It is an undisputed fact that the order has been passed on January 10, 1989 and it has been approved by the State Government on January 23, 1989. Thus the order has not been approved within the period of 12 days from the date of passing of the order. The period of twelve days expired on January 22, 1989 while the order has been approved on January 23, 1989. Therefore, the question: can the approval of the order of detention by the State Government on 13th day, i.e. after the order of detention having lost its efficacy and after it became a dead letter can be validly approved and can such approval infuse life therein? If not, can it be allowed to remain in operation?

4. Learned counsel for the respondents submits that January 22, 1989 was Sunday and, therefore, the Government offices of the State Government were closed as it was a public holiday. Since the offices were closed on January 22, the order of detention could not be approved on the 12th day, but the same has been approved on the next working day, i.e. on January 23, 1989. Therefore, it is contended that the order of detention cannot be invalidated on this ground. In support of this contention reliance is placed on the provisions of Section 10 of the General Clauses Act (1897).

5. The aforesaid contention cannot be accepted. Certain procedural safeguards are engrafted in all the statutes relating to preventive detention. These procedural safeguards are to be strictly complied with by the authority concerned. In the case of *Sher Mohammad alias Seru Vs. The State of West Bengal*, similar question arose in the context of the provisions of Section 3(4) of Maintenance of Internal Security Act, 1971. As per the said provisions of the Maintenance of Internal Security Act, the State Government was required to report the fact of approval of the order of detention to the Central Government within seven days. There was delay in reporting the fact of approval to the Central Government. In this connection the Supreme Court observed that the procedural mandate is inviolable except on peril of the order being voided. In para 5 of the judgment the Supreme Court has further observed as follows:

"In short, there has been an infringement of the procedural safeguard. This Court has, in several rulings held that the liberty of the citizen is a priceless freedom,

sedulously secured by the Constitution. Even so, during times of emergency, in compliance with the provisions of the Constitution, the said freedom may be curtailed, but only in strict compliance with statutory formalities which are the vigilant concern of the courts to enforce."

In view of the aforesaid settled legal position the learned counsel for the respondents has not disputed the mandatory, character of the provisions of Section 3(3) of the Act.

6. Section 3(3) of the Act inter alia provides that when any order is passed by an officer mentioned in Sub-section (2) of Section 3 he shall forthwith report the fact to the State Government to which he is subordinate 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. It is further provided that no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government. The scheme of the Act is such that the District Magistrate or the Commissioner of Police may pass an order of detention as provided u/s 3(2) of the Act. But such order would have maximum life of twelve days. Beyond the period of twelve days such orders cannot remain in force. If such order is to remain in force, even beyond the period of twelve days, it has got to be approved by the State Government within its lifetime, i.e. within twelve days. This is the only meaning which can be given to the expression "unless in the meantime" occurring in the section. If the life of the order is to be extended beyond the period of twelve days, only when the order is alive the life is required to be injected therein by the State Government by approving the same. It cannot be done after the order gets itself extinguished. The State Government cannot approve a dead order and inject life into it. It is beyond the scope of the power of the State Government. The very pre-condition of the exercise of power of approving an order passed by an officer mentioned in Section 3(2) of the Act is that it can be exercised "in the meantime", i.e. within a period of 12 days. This provision does not prescribe a period of limitation for anything to be done by any particular authority. It prescribes the period of life for which an order of detention passed by an officer under the provisions of Section 3(2) of the Act will remain in force. This is a vital distinction to be borne in mind.

7. In this context the provisions of Section 10 of the General Clauses Act (1897) on which reliance is placed may be examined. The section reads as follows:

"10. (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which

the Indian Limitation Act, 1877 applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

Analysing the section it becomes clear that for applicability of the section the following conditions should be fulfilled :

- (1) The period should have been prescribed for the performance of the act;
- (2) Such act is required to be done or taken in any court or office; and
- (3) The prescribed period should expire on a holiday."

If all the aforesaid conditions are fulfilled, and it is also shown that the act which was directed or allowed to be done within a prescribed period has, been done on the next working day, then only as per the provisions of the section the act should be considered to have been done within that prescribed period. However, Section 3(3) of the Act does not provide any period of limitation. It deals with the scope and extent of power conferred on officers mentioned in Section 3(2) of the Act. The Officers mentioned in Section 3(2) of the Act are empowered to pass detention order which will have limited life of twelve days. This provision has nothing to do with the period of limitation. The second condition of the applicability of the section is that an act is required to be taken or done in a court or office. This is also not applicable. The act of approval of the order of detention can be performed by the State Government anywhere and at any time. The appropriate officer of the Government exercising powers on behalf of the Government can pass an order of approval during the office hours as well as outside the office hours. Such order can be passed in office and outside the office also. Similarly, such an order can be passed even on holidays. Just as an order of detention can be passed on holiday, similarly, it can also be approved on a holiday. It may be approved in office or outside the office, during the office hours or outside the office hours. The State Government is not required to undertake the exercise of approving the order of detention in a court or in an office. Therefore, interpreting the provisions of Section 10 of the General Clauses Act, 1897 it is evident that the provisions of the section cannot be applied to the actions to be taken by the Government under the provisions of Section 3(3) of the Act.

8. Section 10 of the General Clauses Act, 1897 came up for interpretation before the Supreme Court in the case of H.H. Raja Harinder Singh Vs. S. Karnail Singh, . The Supreme Court has described the provisions of Section 10 of the General Clauses Act 1897 as beneficial one (para 6 of the judgment). The provision is made "to enable a person to do what he could have done on a holiday, on the next working day". Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section, the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that

section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. In the context it should be emphasised, that such act is required to be performed in a Court or office. Such a beneficial provision cannot be interpreted liberally so as to curtail the liberty of a citizen, otherwise than in accordance with law. Such a construction would be both beyond the scope of the provisions of the section and also against the object with which the provision is enacted by the legislature. The object of the provision is beneficial. It is not detrimental. It is with a view to enable a person to do something which he could not do for no fault of his own. It is not meant to harm him. It is enacted for doing something good to him. Therefore, both from the point of view of scope of the section and the object with which it is enacted the provisions of Section 10 of the General Clauses Act (1897) cannot be invoked and the respondents cannot be given the benefit of the same.

9. If the interpretation of Section 10 of the General Clauses Act, 1897 canvassed by the learned counsel for the petitioner is accepted, it would run counter to the provisions of Article 21 of the Constitution of India. Article 21 inter alia provides that no person shall be deprived of his personal liberty except according to procedure established by law. In the instant case the procedure established by law is contained in the provisions of Section 3(2) and 3(3) of the Act. Section 3(2) empowers the District Magistrate or Commissioner of police to pass an order of detention and detain a person for a period of twelve days. Beyond that period (of twelve days) if such detention is to remain in operation, in the meantime i.e. within a period of twelve days, the State Government must approve the order of detention passed by the District Magistrate or Commissioner of Police. This procedural requirement is mandatory. This is not mere procedural formalities. It is a matter of substance also. In such matters there cannot be any post facto approval. Because after expiry of the period there will be nothing to approve. The order itself would have become extinct, and there would be no life in it. On the expiry of the period of twelve days the order of detention passed by the District Magistrate or Police Commissioner comes to an end. In absence of approval of the order of detention within prescribed period, the detention of any person beyond the prescribed period, even for moment would be otherwise than in accordance with law. If the detention is to continue beyond the period of twelve days before expiry of the period of twelve days, the order of detention passed by the District Magistrate or the Commissioner of Police as the case may be should have been approved by the State Government. Then only further, preventive detention can be said to be in accordance with the procedure established by law. If there are two possible interpretations of any provision of law and one of them is counter to the constitutional provisions and is likely to encroach upon the fundamental rights of a citizen, such interpretation has got to be avoided. The interpretation which is more in accord with the provisions of the Constitution and the fundamental rights of citizens should be adopted.

10. In this connection reference may be made to a decision of the Supreme Court in the case of Chaganti Satyanarayana and Others Vs. State of Andhra

Pradesh, . Therein the provisions of Section 167 of Criminal Procedure Code came up for interpretation. As provided u/s 167, if charge sheet is not filed within a period of sixty/ninety days as the case may be, the accused would be entitled to be released on bail. In this connection provisions of General Clauses Act, 1897 and Limitation Act, 1963 were sought to be invoked. Repelling the contention after referring to the language of Section 167(2) of the Criminal Procedure Code and the proviso thereto, in para 32 of the judgment the Supreme Court has observed as follows:

"As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the General Clauses Act or seek guidance from the Limitation Act to construe the terms of the proviso."

Thus it is evident that the cases in which the question of individual liberty of a citizen is involved, the courts have to look at the slightest infringement or abridgement thereof seriously.

11. Learned counsel for the respondents relied upon Division Bench decision of this High Court in the case of Rajibhai T. Choitani v. State of Gujarat, reported in (1989) 30 Guj. LR 309. In that decision one of us (myself) was a party. Therein the question arose as to whether there was delay in reporting to the Central Government about the detention of the petitioner-detenu as required u/s 3(4) of the Act. Section 3(4) of the Act inter alia provides that whenever the State Government approves the order of detention passed by an officer of the State Government the State Government has to report within seven days the fact of detention to the Central Government together with the grounds on which the order has been passed and such other particulars as in the opinion of the State Government have a bearing on the necessity of the order. The question arose as to whether such report was made within seven days or not. In that context, for the purposes of computing the period, reference was made to the principles underlying the provisions of Section 9 of the General Clauses Act 1897. In the judgment it is inter alia observed as follows:

"It. is therefore, clear that Section 9 of the General Clauses Act statutorily recognises the well established principle applicable to construction of statutes that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Hence apart from Section 9 of General Clauses Act the above principle will apply."

From what is stated hereinabove it should be clear that the court has not applied the provisions of the General Clauses Act 1897 to the question involved in that case. On the contrary it is made clear that even apart from the provisions of General Clauses Act how a statute was required to be interpreted. Moreover, in that case the question did not arise as to whether the provisions of Section 10 of the General Clauses Act, 1897 would be applicable or not. Therefore, the reliance placed on the aforesaid decision is of no help to the respondents.

12. In the facts of the case it is clear that the requirement of approving the order of detention passed by the District Magistrate within twelve days as provided u/s 3(2) of the Act has not been fulfilled. After the expiry of twelve days, there cannot be any approval of the order of detention because after the expiry of twelve days there was no order in existence. By that time it has already got itself extinguished: For this reason and for the reasons stated hereinabove, the continued detention of the petitioner cannot be held to be legal and valid.

13. In the result, the petition is allowed. The continued detention of the petitioner-detenu is held to be illegal and void. The petitioner is ordered to be released forthwith if not required in any other case. Rule made, absolute accordingly.