

(1999) 12 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 7652 of 1999

Bharatbhai Ramjibhai Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

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

Citation : (2000) CriLJ 2479 : (2000) 2 GLR 796

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Roopal R. Patel, for the Appellant; D.P. Joshi, AGP, for Respondent Nos. 1, 3 and 4 and P.J. Davawala, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The petitioner was detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), by virtue of an order passed by the District Magistrate, Ahmedabad, on 26th July, 1999, in exercise of powers u/s 3(2) of the said Act.

2. In the grounds of detention, various allegations have been made against the petitioner involving him in malpractices relating to forging of permits, signatures and securing supply of wheat and rice on basis of such forged documents.

3. The detention order was approved by the State Government on August 6, 1999. A representation was made on September 11, 1999 to the Central Government, which was considered and rejected by the Central Government on September 27, 1999.

4. The petitioner, by this petition under Article 226 of the Constitution, challenges the detention on various grounds. But the main ground is that there is an uncalled for delay in deciding the representation dated 11th September, 1999

and, therefore, the continued detention, thereafter, is bad in law.

5. The respondents have filed affidavits in reply. The state has filed two affidavits, the District Magistrate has filed two affidavits and one affidavit is filed on behalf of Government of India.

6. Ms. Patel, learned advocate appearing for the petitioner, submitted that by virtue of sub-section (4) of Section 3, the State Government was supposed to make a report to the Central Government within seven days of the date of approval, i.e. August 6, 1999. The representation was made on 11th September, 1999, which was received on 13th September, 1999, as per affidavit filed on behalf of the Central Government. By virtue of provisions of sub-section (4) of Section 3, it can reasonably be expected that the Central Government had a report of the State Government within seven days from the date of approval, i.e. 6th August, 1999. Ms. Patel, therefore, submitted that there was no need for the Central Government to call for parawise remarks from the State Government and, therefore, the delay that is caused in considering the representation, would vitiate the continued detention. Another fold of her argument is that the affidavit in reply filed by the Central Government does not indicate as to whether it was the authorised person who had called for the parawise remarks. If it was not the person authorised to consider the representation, then calling of the parawise remarks would indicate non-application of mind in calling of the remarks in a mechanical manner which resulted in delay in consideration of representation and, therefore also, the order would be vitiated. In support of her arguments, she has pressed into service the decision of the Apex Court in the case of P. Paulsamy Vs. Union of India and Another, . Ms. Patel, therefore, submitted that the respondents have not explained either of the two situations in the affidavit in reply. The delay in considering the representation would vitiate the detention and the petition may, therefore, be allowed.

7. Mr. Joshi, learned Assistant Government Pleader appearing for respondents No. 1, 3 and 4, submitted that, if the affidavits in reply filed by the detaining authority as well as on behalf of the State Government are considered, it is clear that there is no delay caused in passing of the order of detention or in making the report to the Central Government and, therefore, the petition may be dismissed.

8. Ms. Davawala, learned Additional Central Government Standing Counsel for the Government of India, respondent No. 2, submitted that as can be seen from the affidavit in reply filed by the Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, it is clear that the representation was received on 13th September, 1999, the parawise comments of the state Government on the representation were called for vide telegram dated 14th September, 1999, the same were received on 24th September, 1999; and the decision was taken on 27th September, 1999. So, actually, time consumed in considering the representation is only three days between 24th September, 1999 and 27th September, 1999, which cannot be considered as

delay. She submitted further that, it is true that report is received by the Central Government from the State Government ordinarily within the time stipulated u/s 3(4) of the PBM Act. But, at times, certain points are raised in the representation which may not have been dealt with in the report made by the State Government and, therefore, it becomes necessary to call for the parawise remarks of the State Government. She submitted that the affidavit is very clear on this point and, therefore, in absence of any delay, the petition may be dismissed.

9. Considering rival side contentions, the main factor that requires consideration is whether there was delay in considering the representation made by the detenu on 11th September, 1999. In this regard, there is no dispute that representation was made on 11th September, 1999. Admittedly, as can be seen from the affidavit on behalf of the Central Government, the representation was received on 13th September, 1999 and parawise comments of the State Government on the representation were called for telegraphically on 14th September, 1999. The same were received on 24th September, 1999 and decided on 27th September, 1999. The question that requires consideration is whether it was necessary for the Central Government to call for parawise comments of the State Government on the representation. The thrust of argument on behalf of the petitioner is that there was no need to call for the parawise remarks as the report of the State Government must have been with the Central Government, as it is required to be sent within seven days of the date of approval, i.e. 6th August, 1999. Unless contrary is pleaded by the Central Government, it can be presumed that the report must have been with it within seven days of the date of approval, i.e. 6th August, 1999. It may be noted, at this stage, that the affidavits filed on behalf of the detaining authority as well as the State Government do not indicate the date on which the report is made nor does it indicate the date of approval. However, when neither the Central Government nor the State Government nor the petitioner is coming out with a case that the State Government did not make report within time as required u/s 3(4) of the PBM Act, it can safely be presumed that the report must have been made within time, i.e. within seven days of the date of approval and it can also be presumed that the Central Government did have the report of the State Government when the representation dated 11th September, 1999 was received by the Central Government on 13th September, 1999. The affidavit in reply filed by the Central Government does not deal with this question as to why parawise remarks were called for particularly when, presumably, it already had the report of the State Government. There appears to be some substance in the argument advanced by Ms. Davawala that, at times, the report may not have dealt with the points raised in the representation and, therefore, parawise remarks are required to be called for. There is no explanation coming forward from the Central Government as to what were the points raised in the representation which were not dealt with in the report of State Government, for which parawise remarks were required to be called for from the State Government. On the contrary, the affidavit on behalf of the Central Government is silent on this point and this non-explanation cannot

lead to any presumption about the existence of such possibility and, therefore, when the Central Government had a report on hand, the calling of remarks, which has caused the delay in deciding the representation, was unwarranted.

10. Another point requires consideration whether the parawise remarks were called for at the instance of the person authorised to consider the representation. The affidavit in reply filed on behalf of the Central Government is silent on this point. It does not deal with as to at whose instance parawise remarks were telegraphically called for from the State Government on the representation and, therefore, it reflects non-application of mind to the issue at that very stage.

11. In this regard, the decision in the case of *R. Bhavsani v. Union of India* (supra) may be profitably employed. In that case, representation was received on 28th October, 1998. The comments of the sponsoring authority were called for on 29th October, 1998. The order calling for the comments was not passed by any of the officers empowered to do so. The comments were received on 10th November and the representation was decided on 12th November, 1998. In that case, the Apex Court held that delay from 28th October to 10th November, 1998 was uncalled for and unexplained. It was regarded as unreasonable and fatal to the order of detention. The Apex Court held that the representation was dealt in a routine manner without application of mind by the competent officer as to whether it was necessary to call for the comments of the sponsoring authority or not. The facts of that case are very similar to the facts of the present case. Here, no explanation is coming forward from the Central Government as to whether it was at the instance of the authorised officer that the parawise comments were called for and, therefore, the order of detention would stand vitiated. The petition, therefore, deserves to be allowed.

12. In the result, the petition is allowed. The order of detention dated 26th July, 1999, in respect of the petitioner-Bharatbhai Ramjibhai Parmar, is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.