
(2011) 07 MP CK 0010

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6156 of 2009

Brijesh Dubey and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22(3), 22(5)
Essential Commodities Act, 1955 — Section 3
Land Acquisition Act, 1894 — Section 28A
National Security Act, 1980 — Section 3, 3(2)
Penal Code, 1860 (IPC) — Section 188, 420
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3, 3(1)

Citation : (2012) 1 Crimes 188 : (2011) ILR (MP) 2354 : (2011) 3 MPJR 258

Hon'ble Judges : Sheel Nagu, J; S.K. Gangele, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—The Order of the Court was delivered by :-The petitioners have filed this petition against the order of detention dated 13-10-2009. By the aforesaid order the District Magistrate ordered that in order to maintenance of public peace, the detention of the petitioners is necessary, hence, the District Magistrate ordered detention of the petitioners u/s 3(2) of the National Security Act, 1980. The appropriate Government affirmed the order of the detention vide order dated 24-10-2009.

2. Initially the petitioners filed the petition against the order of detention and subsequently the petitioners amended the petition and also challenged the order of approval dated 24-10-2009. It is an admitted fact that the petitioners have filed this petition challenging the orders of detention and approval at pre-execution stage, meaning thereby the petitioners have filed this petition when they were not in detention.

3. It is submitted by the petitioners that they had been running a unit in the

name of M/s Hind Diary and Food Products, which is partnership firm. The petitioners' firm had been producing Ghee in the name of Gwala Shri and Shri Anmol Pure Desi Ghee.

4. The Collector in the grounds of detention has mentioned that the petitioners had been producing synthetic Ghee and they were in the business of production of aforesaid Ghee. By the aforesaid activities of the petitioners, there was danger to the health of general public and due to the aforesaid activities of the petitioners persons were not coming forward to depose against the petitioners. It has further been mentioned in the grounds of detention that the Food Inspector Mr. Dharmendra Kumar Soni and Shri Rajesh Kumar had taken samples of Ghee of Hindi Diary and Food Products on 8-11-2008 and both the samples were found adulterated and misbranded and the District Magistrate was found the petitioners guilty under Sections 420 & 188 of IPC. Again on 3-10-2009 a team of Food Inspectors inspected the premises of petitioners named as M/s Hind Diary and Food Products and during inspection it was found that there was 8380 litre synthetic Ghee. Samples were taken by the officers and sent for analysis to the State Food Analysis Laboratory and as per the report of the Laboratory dated 12-10-2009, the samples were found misbranded and adulterated. Earlier also a criminal case was registered before the Court of Chief Judicial Magistrate, Sheopur and in the aforesaid case vide judgment dated 13-1-2005 a punishment of one year with fine of Rs.300/- was imposed against the petitioners. In another case No. 10/95, the Chief Judicial Magistrate Sheopur also imposed a punishment of one year with fine of Rs.300/- vide judgment dated 13-1-2005.

5. Looking to the aforesaid activities of the petitioners and the fact that the petitioners were involved in manufacturing of synthetic Ghee, the detention of the petitioners is necessary under National Security Act, 1980. Subsequently, the orders passed by the District Magistrate have been affirmed by the Government.

6. The petitioners in the writ petition have contended that earlier orders of detention were passed against one Bansilal and others persons. This Court vide order dated 14-12-2009 quashed the detention orders against the aforesaid persons, hence, the present petition is also liable to be allowed.

It has further been submitted that earlier samples were taken of the petitioners' firm, which were not found adulterated, in spite of that again and again samples were taken. It has further been submitted that there is a special law in regard to dealing with the offence under the provisions of Prevention of Food Adulteration Act, 1954 and also the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, hence, the District Magistrate has no power to invoke the provisions of National Security Act, 1980.

Learned counsel for petitioners raised same grounds in his arguments. He also submitted that the orders passed by the District Magistrate is against the provisions of Section 3 of the National Security Act, 1980 and the grounds mentioned along with the orders of detention are vague hence, this Court has

power and authority to quash the order of detention at pre-execution stage also. In support of his contentions, learned counsel relied on the following judgments :-

- i) (2011) 5 SCC (Rekha Vs. State of Tamil Nadu Through Secretary to Government and Another);
- ii) Tahsildar Singh Vs. State of M.P. and Others,
- iii) Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others,
- iv) (2008) 16 SCC 14 (Deepak Bajaj Vs. State of Maharashtra and Another);
- v) Ravi Tiwari and Another Vs. Union of India (UOI) and Others,
- vi) T.A. Abdul Rahaman Vs. State of Kerala and others,
- vii) Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another,
- viii) AIR 1982 SC 469 (Smt. Bimla Dewan Vs. Lieutenant-Governor of Delhi);
- ix) Krishna Murari Aggarwala Vs. Union of India (UOI) and Others,); and
- x) Rameshwar Lal Patwari Vs. State of Bihar,

7. Contrary to this, learned Government Advocate has submitted that the District Magistrate has power to invoke the provisions of National Security Act because the provisions of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 have no overriding effect over the provisions of National Security Act, 1980.

He further submitted that at pre-execution stage, the Court has limited power of judicial review of the order of detention passed under the National Security Act, 1980. He further submitted that there are grounds to pass an order of detention against the petitioners because the petitioners were in the trade of manufacturing of synthetic Ghee, which is harmful and dangerous to the life of citizens. In spite of that they had been continuing the business even after conviction by the courts. Hence, the order is in accordance with law. In support of his contentions, learned counsel "relied on the following judgments :-

- i) State of Maharashtra and Others Vs. Bhaurao Punjabrao Gawande, and
- ii) David Patrick Ward and Another Vs. Union of India (UOI) and Others,

8. The question of consideration before this Court is what are the grounds available under Article 226 of the Constitution of India against the order of detention passed under the provisions of National Security Act, 1980 of pre-execution stage because it is an admitted fact that in the present petition, the petitioners did not surrender before the appropriate authority in compliance to the orders of detention. They filed this petition at pre-execution stage.

9. The Three Judges Bench of Hon"ble Supreme Court in the case of Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia

and Another, has considered the power of judicial review under Article 226 of the Constitution of India of detention order when it has been challenged at pre-execution stage and held as under :-

28. It is to prevent the possible abuse of this draconian measure that the legislature has taken care to provide certain salutary safeguards such as (1) the obligation to furnish to the detenu the grounds of detention ordinarily within five days and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of detention, (ii) the right to make representation against the order of detention, (iii) the constitution of Advisory Board consisting of persons who are or have been qualified to be appointed as Judges of the High Court, (iv) the reference of the case of the detenu to the Advisory Board within five weeks of the date of detention, (v) the hearing of the detenu by the Advisory Board in person and the submission by the board of its report to the government within 11 weeks from the date of detention, (vi) the obligation of the government to revoke the detention order if the Advisory Board reports that there is in its opinion no sufficient cause for the detention of the person concerned, (vii) the provision of the maximum period for which a person can be detained and (viii) revocation of the detention order by the government on the representation of the detenu independently of the recommendation of the Advisory Board, etc. In addition, the detenu or anyone on his behalf has a right to move the High Court and the Supreme Court by way of a habeas corpus petition challenging the detention on various grounds which are already pointed out above while discussing the various authorities. It must further be appreciated that the validity of the Act in question being permitted to be enacted by the Constitution, has also been upheld by this Court with all its present provisions as they stand. Howsoever, repugnant the notion of preventive detention may be to the champions of individual liberty, it has also to be remembered that the power to make such a law even during peacetime has been incorporated in the Constitution many of whom had tasted the bitter fruits of such detention law during the struggle for freedom. Whatever may, therefore, be one's own notions about the dimensions of individual liberty, one must accept the provisions of the Constitution as enacted by the mature vision and seasoned experience of the Constitution-makers. We must also not lose sight of the fact that over the years, by and large, the judiciary has interpreted the Act and the orders made thereunder strictly so as to give to the detenu the benefit of every unexplained error of omission and commission and has either struck down the order itself or has held its further operation illegal.

29. The whole thrust of the first three contentions advanced by Shri Jain for the respondent is not only directed against the impugned order but also against the provisions of the Act and the Constitution. His contention that since the individual has an absolute right to liberty, the burden is on the State to satisfy that it is necessary to deprive the individual of his liberty before apprising him of the grounds of his detention, is clearly against the relevant provisions of Article 22 of the Constitution. The right to liberty protected by Article 21 has been limited by

Article 22 which permits arrest for punitive and preventive detention, provided the safeguards mentioned therein are observed. The provisions of Article 22(3) (b) permit the arrest or detention of a person under any law providing for preventive detention without complying with the provisions of sub-clause (1) and (2) of Article 22 which require that no person who is arrested shall be detained in custody, among other things, without being informed "as soon as may be" of the grounds of such arrest and that he shall not be denied the right to consult and to be defended by a legal practitioner. He shall also be required to be produced before the nearest magistrate within twenty-four hours of his arrest. Although sub-clause (5) of Article 22 also requires that the person detained under a preventive detention law would be communicated the grounds of his detention "as soon as may be", it also does not specify the maximum period within which the grounds are to be so communicated. In other words, the provisions of the Constitution permit the legislature to make a law under which a person may be arrested and detained without first communicating to him the grounds of his arrest. The provisions of Section 3(3) of the present Act which are made for the purpose of Article 22(5) of the Constitution provide that ordinarily the grounds of arrest shall be communicated within the maximum period of 5 days, and in exceptional circumstances and for reasons to be recorded in writing they shall be communicated within a period of 15 days from the date of the detention. These provisions of the Act have not been faulted on any account. In the face, therefore, of the clear provisions of the Constitution and of the valid Act, it is not open to contend that the provisions of Articles 14, 19 and 21 of the Constitution prevent a person being deprived of his liberty without first apprising him of the grounds of his arrest. For this very reason, it is also not open to contend that since the State has all the facts in its possession which require the arrest and detention of the person, it must first disclose the said facts before depriving him of his liberty. Since the provisions of Article 22 of the Constitution pointed out above and of the Act made thereunder permit the State to arrest and detain a person without first disclosing the grounds, even though they are in its possession before or at the time of his arrest, this argument is not tenable in law. It must further be remembered that though the provisions of the Constitution and the law enacted for the purpose enable the State or its delegate the detaining authority to detain a person without first disclosing the grounds of detention they do not preclude them from serving the grounds of detention on the detenu along with the order of detention. In fact very often they do so. But Shri Jain's argument goes still further and requires that the order of detention and the grounds of detention should be served on the proposed detenu in advance to enable him to challenge them in a court of law before submitting to the order. In advancing this contention, Shri Jain not only wants to secure to the proposed detenu the right to seek the judicial review of the detention order even before it is executed but also to enable him thereby to by-pass the procedure laid down by the law to challenge it after it is executed. To that extent this contention requires the Court to go a step further and to do something more than what it does or would do while entertaining grievances against orders passed under

other law. The justification advanced to claim this superior right is that under the detention law what is infringed is the liberty of the individual and no individual should be required to surrender it without a prior right to challenge the order in question. As has been elaborately discussed above, however vital and sacred the liberty of the individual, for reasons which need not be discussed over again here, the responsible framers of the Constitution although fully conscious of its implications have made a provision for making a law which may deprive an individual of his liberty without first disclosing to him the grounds of such deprivation. It is not, therefore, possible for us to accept the three contentions.

30. As regards his last contention, viz., that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based and it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under ail laws. It is in pursuance of this self-evolved judicial policy and inconformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Article 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the

courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the act and under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other grounds does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

The Hon"ble Supreme Court has clearly held that the Court has very limited scope in regard to judicial scrutiny of a detention order at pre-execution stage and six circumstances have been enumerated by the Hon"ble Supreme Court on which the Court has power of Judicial scrutiny of a detention order under Article 226 of the Constitution of India.

10. The aforesaid judgment has further been considered by another Three Judges Bench of the Hon"ble Supreme Court in the case of Naresh Kumar Goyal Vs. Union of India (UOI) and Others, and has held as under :-

9. It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and purpose of detention is snapped. (See : P.U. Iqbal Vs. Union of India (UOI) and Others, ; Ashok Kumar Vs. Delhi Administration and Others, and Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another,

11. It is not necessary for us to multiply authorities because no exception can be taken to the above proposition enunciated by this Court in a series of decisions

12. Mr. B.B. Singh, learned counsel appearing on behalf of the State of Bihar, submitted before us that the question involved in the instant appeal is not whether the order of detention should be struck down on the ground that the State of Bihar has not taken necessary steps to implement the order of detention, but whether at the pre-arrest stage the High Court should have exercised its jurisdiction under Article 226 of the Constitution of India to quash the order of detention on such grounds. He submitted that the decisions of this Court have taken the view that exercise of discretion under Article 226 of the Constitution of India can be justified only in appropriate cases and the scope for interference is very limited. Normally the Court would not interfere with the order of detention at a pre-arrest stage under Article 226 of the Constitution of India. He submitted that there are only 5 exceptions to this rule which would justify interference by the Court at the pre-execution stage with the order of detention. Those five situations have been enumerated in the case of *Additional Secretary to the Government of India and Others v. Smt. Alka Subhash Gadia and Another*, 1992 Supp (1) SCC 46;

"As regards his last contention, viz., that to deny a right to the proposed detainee to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law- only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined

to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detainee is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are *prima facie* satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detainee, but prevents their abuse and the perversion of the law in question.

13. In *Union of India and Others Vs. Parasmal Rampuria*, when the order of detention passed under the Act was sought to be challenged at the pre-arrest stage, this Court called upon the respondent first to surrender pursuant to the detention order and then to have all his grounds examined on merit.

14. In *Sayed Taher Bawamiya Vs. Joint Secretary to the Govt. of India and Others*, , an argument was advanced before this Court that the exceptions enumerated in *Alka Subhash Gadia* (supra) were not exhaustive. The submission was repelled and this Court observed :-

As we see it, the present case does not fall under any of the aforesaid five exceptions for the court to interfere. It was contended that these exceptions are not exhaustive. We are unable to agree with this submission. *Alka Subhash Gadia* case shows that it is only in these five types of instances that the court may exercise its discretionary jurisdiction under Article 226 or Article 32 at the pre-execution stage.

15. In *Union of India and Others, v. Muneesh Suneja* : (2001) 3 SCC 92, the challenge was to the order of the High Court quashing the order of detention at the pre-arrest stage on two grounds, first that there had been delay in making the order of detention and second that after making the order of detention no effective steps had been taken to execute the same except to make a vague allegation that the respondent was absconding. This Court noticed the

exceptional circumstances justifying interference by the High Court at pre-arrest stage enumerated in Alka Subhash Gadia (supra). This Court, thereafter, set aside the order made by the High Court observing :-

This Court has been categorical that in matters of pre-detention cases interference of court is not called for except in the circumstances set forth by us earlier. If this aspect is borne in mind, the High Court of Punjab and Haryana could not have quashed the order of detention either on the ground of delay in passing the impugned order or delay in executing the said order, for mere delay either in passing the order or execution thereof is not fatal except where the same stands unexplained. In the given circumstances of the case and if there are good reasons for delay in passing the order or in not giving effect to it, the same could be explained and those are not such grounds which could be made the basis for quashing the order of detention at a pre-detention stage. Therefore, following the decisions of this Court in Addl. Secy, to the Govt. of India v. Alka Subhash Gadia and Sayed Taker Bawamiya v. Jt. Secy. to the Govt. of India, we hold that the order by the High Court is bad in law and deserves to be set aside.

16. From the aforesaid judgments of the Hon''ble Supreme Court, it is clear that the purpose of detention, is to afford protection to the society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. The Hon''ble Supreme Court further observed that the authority must be very vigilant to execute the order of detention because if there would be delay, a very purpose of preventive action would be defeated and the detention order be turned as a dead letter. The same principle can be applied in regard to right of a person against a detention order at pre-execution stage to approach the law court because if a casual approach be adopted then the purpose of order of detention of the statute would be frustrated.

17. Now, we shall scrutinize the order of detention on the basis of five parameters enumerated by the Hon''ble Supreme Court in the judgment of Additional Secretary to the Government of India and others (supra)-

Firstly, the impugned order is not passed under the Act under which it is purported to have been passed.

Learned Counsel for the petitioner argued that as per Section 3(2) of the National Security Act, 1980. the District Magistrate has no power and authority to pass an order of detention of the petitioners in view of the provisions contained in the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

18. Section 3(2) of the National Security Act, 1980 and its Explanation is as under;-

3. Power to make orders detaining certain persons.-

(1) xxxxxxxx

(2). The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation - For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980(7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention shall be made under that Act.

19. Section 3(1) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 is as under :-

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.

Explanation- For the purpose of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means :-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955, or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce, in any commodity essential to the community; or

(b) dealing in any commodity :-

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955; or

(ii) with respect to which provisions have been made in any such other law as is referred to in Clause (a), with a view to making grain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act, or other

law aforesaid.

20. It is clear from both the Sections that in Section 3 of the Act No.7 of 1980 (i.e. Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980) the words have been used as "prejudicial to the maintenance of supplies of commodities essential to the community" and in the National Security Act, 1980, the words have been used as "maintenance of supplies and services essential to the community it is necessary to do so. However, the Act of Essential Commodities Act, 1955, the word has been used as "maintenance of supplies of commodities essential to the community and the explanation explained further which means commodity or instigating any person to commit any offence punishable under the Essential Commodities Act or in regard to control the production, supply and distribution or trade and commerce in any commodities essential to the community.

21. The allegation against the petitioners is that they had been in the business of manufacturing synthetic Ghee. The Central Government promulgated the Milk and Milk Product Order, 1992 u/s 3 of the Essential Commodities Act, 1955. The object of the order is for maintaining and increasing the supply of liquid milk and for regulating supply and distribution of milk and milk product. Definitions 2 (g) of the Milk and Milk Product Order, 1992, defines the milk product which means Ghee or butter oil. The ingredients of the Ghee have been mentioned in the Prevention of Food Adulteration Act, 1955. As per the aforesaid rules. Ghee means a fine substance containing the following ingredients:-

(a)

Butyrorrefractometer reading at 40°C

40.0

to 44.0

(b)

Minimum Reichert Value

26

(c)

Percentage of F.F.A. as Oleic Acid (Max.)

03

(d)

Percentage of Moisture (Max.)

0.5

So the provisions of supply of Essential Commodities Act would be applicable in

regard to Ghee which fulfills the clarifications and it has clearly been stated in the rule that Ghee means pure clarified fat derived solely from milk or curd or from deshi (cooking) butter or from cream to which no colouring matter or preservative has been added. However, the case of petitioners is that they had been in the manufacturing of synthetic Ghee and the Ghee which was recovered from the possession of the factory premises of the petitioners was not a natural Ghee. In this view of the matter, in our opinion, the provisions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 would not be applicable because these provisions are applicable in regard to supply of natural Ghee.

22. The Hon'ble Supreme Court in the case of State of Orissa and Others Vs. Joginder Patjoshi and Another, has considered the earlier judgments of the Hon'ble Supreme Court in regard to interpretation of a statute and held as under :-

12. Learned counsel appearing on behalf of the respondents' submission that subsequently another Department of the State of Orissa intended to grant a higher benefit is of no consequence. In this case, this Court is required to interpret Rule 8 of the Rules as it stood prior to the amendment and not the amended Rules. It is now well settled principle of law that where the language used in a Statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. In Padma Sundara Rao's case (supra), this Court held : (see P. 542, para 542, para 14)

14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., . The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (1) and /or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent."

13. Similarly in Hansoli Devi's case (supra), this Court held:

"9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C. J. in Sussex Peerage case (1844) II CI and Fin 85: 8 ER 1034 still holds the field. The aforesaid rule is to the effect (ERP. 1057):

"If the words of the statute are in themselves precise and unambiguous, then no

more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson and Co. Ltd.* (1955) 2 All ER 345 : 1955 AC 696 : (1955) 2 WLR 1135 Lord Reid pointed out as to what is the meaning of "ambiguous" and held that (AIIERP.366C-D):

"A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C. J. in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat and Power Co. Ltd. v. Vandry*, AIR 1920 PC 181, it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28A of the Act was to confer a right of making a reference, (sic on one) who might have not made a reference earlier u/s 18 and, therefore, ordinarily when a person makes a reference u/s 18 but that was dismissed on the ground of delay, he would not

get the right of Section 28A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector u/s 18" in Section 28A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference u/s 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari's case the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application u/s 28A can be moved, had categorically stated (SCC p. 743, para 10), "the person moving the application did not make an application to the Collector u/s 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application u/s 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to the effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application u/s 28-A cannot be denied. We, accordingly, answer Question I (a) by holding that the dismissal of an application seeking reference u/s 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.

14. In Dayal Singh's case (supra), a three Judge Bench of this Court, in which both of us were members, observed as under:

37. If is a well settled principle of law that the Court cannot read anything into the statutory provision which is plain and unambiguous. The Court has to find out legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be restricted to for interpretation of statutes. (See Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, .

38. This Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, has observed (SCC p. 121, para 25)

"25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning an no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

From the aforesaid judgment of the Hon''ble Supreme Court, where the Hon''ble Supreme Court, as quoted earlier, the judgment of the Court in the case of Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , Patanjali

Sastri, C.J., where it has been stated that "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

23. After applying the principle of law laid down by the Hon"ble Supreme Court, in our opinion, the words used in Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 that "maintenance of supplies of commodities of essential to the community" means the natural commodity. As stated earlier the petitioners were in the business of manufacturing synthetic Ghee, which is not a natural commodity (Ghee), hence, in "our opinion, the power of District Magistrate for passing of the order of detention against the petitioners cannot be said contrary to the explanation of Section 3(2) of the National Security Act, 1980 and we hold that the detention order passed by the District Magistrate in the present case is within the power and authority of the District Magistrate.

24. Coming to the second ground, which has been stated by the Hon"ble Supreme Court as to whether the order sought is to be executed against a wrong person- that ground is also not available to the petitioner because the orders have not been passed or executed against the wrong persons.

25. Thirdly, whether the order is passed for a wrong purpose. In the grounds of detention the District Magistrate has clearly mentioned that the petitioners had been in the business of manufacturing of synthetic Ghee due to the aforesaid action of the petitioners, there was a danger to the health and hygiene of the large number of societies. It is also a fact that at the time of inspection of the factory premises of the petitioner, more than 8000 litres of synthetic Ghee was found. Looking to the quantity of the synthetic Ghee, certainly there was a danger to the health and hygiene to the society and consumers. It has specifically been mentioned in the order of detention that earlier also the factory premises of the petitioners was inspected and it was found that the petitioners had been in the business of manufacturing synthetic Ghee, that was found proved from the report of the State Food Analysis Laboratory. In spite of that, the petitioners did not stop the manufacturing of synthetic Ghee.

In our opinion, the detention of the petitioners could not be said to be wrong purpose.

26. So far as the fourth ground is concerned, as per the judgment of the Hon"ble Supreme Court, judicial scrutiny is as to whether the order of detention is based on vague, extraneous and irrelevant grounds - in this regard, there are concrete proof against the petitioners that they had been in the business of manufacturing of synthetic Ghee. The Chief Medical and Health Officer in his letter dated 12-10-2009 reported to the District Magistrate that the petitioners were in the business of manufacturing synthetic Ghee and the cost of the aforesaid Ghee was quite less in comparison to natural Ghee and it was dangerous to the health and

hygiene of the public. The samples were taken from the premises of the petitioners and it was found that there were adulterated. A case under Sections 420 & 188 of IPC was also registered against the petitioners at the police station. It has further been stated that the petitioners had been in the aforesaid business for a quite long time.

In such circumstances, it cannot be said that the orders of detention of the petitioners are passed on vague, extraneous and irrelevant grounds.

27. Last point fixed by the Hon''ble Supreme Court for scrutiny is as to whether the authority who passed the orders of detention, had no authority to do so.

As held earlier by us in the present case, the District Magistrate has power and authority to pass the order.

28. Except these grounds, no other grounds are available for judicial scrutiny of order of detention challenged at pre-execution stage. Hence, various arguments advanced by the learned counsel for the petitioners in support of the petition, could not be entertained because those grounds are available to the petitioners after execution of the order of detention. Learned counsel also relied an order of the Division Bench of this Court passed in W.P.No.12015/2009 (Banshilal Agrawal Vs. State of M.P. & Another) and other connected writ petitions, decided on 14-12-2009. In the aforesaid order one person had challenged the order of detention at pre-execution stage and other persons had challenged the detention orders after execution of the orders of detention. In the aforesaid case, this Court has not considered the criteria of judicial scrutiny of a detention order at pre-execution stage. In our opinion, it is vital and important as per the judgments of the Hon''ble Supreme quoted above. Hence, the order passed by this Court in W.P.No.12015/2009 is not binding before this Court in deciding the present petition.

29. Hon''ble the Supreme Court in the case of Sushil Suri Vs. C.B.I. and Another, has held, as under about precedents -ratio decidendi:-

32. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . In this regard, the following words of Lord Denning, quoted in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , are also quite apt: (SCC p 509, para 22)

"22.... "Each case depends on its own facts and a close similarity significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line

a case falls, the broad resemblance to another case is not at all decisive.

30. Consequently, we do not find any merit in this petition. It is hereby dismissed. No order as to costs.