

**(1988) 12 OHC CK 0011**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 3423 of 1988

Dandapani Patro

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

**Date of Decision :** 08-12-1988

**Acts Referred:**

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 14, 3(2), 3(3), 3(4)

**Citation :** (1989) 67 CLT 507

**Hon'ble Judges :** H.L. Agrawal, C.J.; L. Rath, J

**Bench :** Division Bench

**Advocate :** A. Pasayat, for the Appellant; D.P. Sahoo for Opp. Parties Nos. 1, 2 and 4 and A.B. Misra, Standing Counsel (Central Government) for Opp. Party No. 3, for the Respondent

**Final Decision :** Dismissed

## Judgement

H.L. Agrawal, C.J.—By this writ application in the nature of Habeas Corpus, the Petitioner challenges the order of his detention passed by the District Magistrate, Ganjam on 15-9-1988 (Annexure 1) u/s 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act") for maintenance of the supply of kerosene. The Petitioner was taken into custody on the same day.

2. The order of detention along with the grounds was served on the Petitioner on 17-9-1988 (Annexure 2) while he was in Berhampur Jail. In the grounds it is alleged that the Petitioner was not maintaining proper account of the transactions and had misappropriated 41.400 litres of kerosene by maintaining false account and had forged signatures of retailers on different dates during the period April to July, 1988 and that he was likely to indulge further in black marketing of kerosene by conniving with unscrupulous elements and instigate or encourage others and would thus disrupt the public distribution system in the area.

3. On 20-9-1988, the order of detention was approved by the State Government u/s 3(3). On 28-8-1988 the Petitioner filed his representations, to the State Government and the Central Government. The representation was rejected by the State Government on 10-10-1988 after calling for the comments from the District Magistrate. The order of rejection was communicated to the Petitioner on 15-10-1988 (Annexure 4).

4. No grievance was made before us regarding the time taken for disposal of the Petitioner's representation, but a forceful argument was made regarding the disposal of the representation by the Central Government. Let us see how this representation was processed. The State Government forwarded the representation of the Petitioner (Annexure 3) to the Central Government on 11-10-1988 immediately after passing the order on 10-10-1988. The Central Government, however, passed orders on the representation on 25-10-1988 and communicated the said order of rejection (Annexure A/2) on the very next day i.e., 26-10-1988. Mr. Pasayat, learned Counsel for the Petitioner, submitted that there was no justification for the State Government to withhold this representation until 11-10-1988 and, therefore, on this ground itself the order of detention should be revoked.

5. It may be mentioned here that Section 14 of the Act authorises the Central Government to revoke or modify an order of detention, and as was observed by the Supreme Court in the case of *Shyam Ambalal Siroya Vs. Union of India (UOI) and Others*, since it has got the power to revoke an order of detention, it must dispose of the petition for revocation with reasonable expedition.

In the counter affidavit filed on behalf of the State Government (opp. party No. 2) as well as in that of the Collector and District Magistrate (opp. party No. 1), the allegation of undue delay in forwarding the representation of the Petitioner has been denied. It is evident on the facts stated above that the Petitioner's representation was received by the State Secretariat on 29-9-1988 and forwarded to the Central Government on 11-10-1988, i.e., about 10 days thereafter. It has to be seen whether this delay can be said to be unreasonable or, for that matter, whether the representation remained unattended altogether.

Mr. Pasayat relied upon the case of *Virendra Kumar Nayak v. The Superintendent of Naini Central Jail, Allahabad and Ors.* 1982 Cr.L.J. 1, a decision of the Allahabad High Court, where it was observed that the representation made by the detenu must without any delay be forwarded by the person receiving the same to the concerned authority and that it should be dealt with by the authority receiving the same as expeditiously as possible." The Court took an exception to the mode of transmission of the representation to the Central Government through the State Government in the absence of any particular reason to adopt that procedure.

I, however, find myself unable to apply the ratio of this decision in view of the following observations made by the Supreme-Court in *Rattan Singh and Anr. v.*

State of Punjab and Ors. AIR 1982 S.C. 1, in paragraph 48;

.... The Superintendent should either have forwarded the representation separately to the Governments concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the other representation to the Central government....

In view of this observation, it is obvious that if the Superintendent of Jail does not himself forward the representation to the Central Government, no irregularity is committed. There may be various reasons and rules of business for addressing the Central Government for a junior officer of the State Government or the like.

6. In the representation the Petitioner had challenged all the allegations made against him in the grounds of detention. I wonder whether in the absence of any comments by the local authorities which are invariably invited by the State Government to enable it to appreciate the merits of the points raised by a detenu in his revocation petition and dispose of the same properly the concerned authority of the Central Government at a much distant place could have effectively dealt with the representation of the detenu. In my considered opinion, if the State Government detained the transmission of the representation to the Central Government on this account and, itself finding the representation to be without any merit, forwarded the same to the Central Government on the very next day, the time consumed in the process cannot be said to be unreasonable. I, therefore, do not find any merit in the first point raised by Mr. Pasayat.

Mr. Pasayat, however, did not raise any grievance regarding the time taken by the Central Government in disposing of the Petitioner's representation after it had reached New Delhi. But I may point out that the order on the representation were passed on 25th October as 18th to 23rd October were holidays. Otherwise also it could not be said that the Central Government also committed any unreasonable delay in disposal of the Petitioner's representation and the observation made by the Supreme Court in *Harish Pahwa Vs. State of U. P. and Others*, , on a consideration of the facts and circumstances of that case where there was unexplained inaction cannot be applied to the present case.

7. The next submission of Mr. Pasayat was that the very purpose of passing the order of detention did not exist in view of the fact that there- was abundant supply of kerosene in the market and therefore there could hardly be any apprehension that the public distribution system could be adversely affected and in that view of the matter even the allegation of diversion of the supply of kerosene as mentioned above could not be accepted. This submission is founded on a letter dated 28-4-1988 (Annexure-5) issued from the office of the Collector to the wholesalers informing them as follows:

In view of the comfortable position in kerosene prevailing all over the district, the quantitative restriction on lifting of kerosene by the sub-wholesaler from the wholesaler and by the retailers from the sub-wholesalers is relaxed to avoid any scope for lapse of S.K. oil allocation of the district. The wholesalers and sub-

wholesalers of kerosene oil are instructed to issue kerosene oil stocks to the sub-wholesalers and retailers respectively without any quantitative restrictions until further orders. Stock may also be released to the consumers/card holders without quantitative restriction subject to maximum not exceeding 10 litres at a time.

It was accordingly submitted that in view of this letter and the alleged irregularities and diversion of the stock by the Petitioner mostly after the issuance of this letter, in the absence of any further material to show that the supply position had deteriorated, there was no scope for any black marketing and therefore, the very sub-stratum of the order of detention of the Petitioner was necessary for preventing him to properly maintain the supply" of kerosene to the community. The learned Standing Counsel submitted that it may well be that the position might have eased In the month of April with respect to the supply of kerosene. But it is well known that only when any essential commodity is available in abundance, unscrupulous traders divert the supply from the regular market in clandestine manner to the "underground" and hoard it to make wrongful gains by creating an artificial scarcity.

8. We find substance in the above submission of the learned Standing Counsel, and, in any view of" the matter the inference which Mr. Pasayat wants us to draw is based upon the facts and circumstances which were best known to the executive authorities at the helm of the administration and on the bare submission it is not possible for me to take a different view of the supply position,

9. Mr. Pasayat also submitted that no material was shown in support of the allegations mentioned in the grounds of detention that the Petitioner was influencing others to indulge in black marketing. In support of this contention he wanted to take support from the decision of this Court in *Ram Bhagat Agarwala v. State of Orissa* and Ors. 1984 (1) Cri 972. I do not find any substance in this argument of Mr. Pasayat as well inasmuch as the Petitioner diverted the stock apparently shown to have been supplied to authorised retailers which was bound to be pushed in the blackmarket through the Petitioner"s agents dealing in the clandestine trade. In order to achieve his end, the Petitioner was certainly to bring into confidence all those agencies for the outlet of the hoarded/diverted stock and that is said to be the basis of the allegation.

10. After giving my anxious consideration to all the points raised by Mr. Pasayat and examining the facts and circumstances appearing from the record, I do not find any merit in this writ application which must fail. It is accordingly dismissed.

11. While concurring with my Lord the Chief Justice I would like to add a few words on the first submission made by Mr. Pasayat that the delay occasioned in despatch of the "representation "of the detenu to the Central Government by the State Government should be held as fatal to the detention. It is to be noticed that the Act itself does not make any provision for making of a representation by

the detenu to the Central Government. Section 14 of the Act vests a power in the Central Government to revoke an order of detention. The power undoubtedly can be exercised without any representation by the detenu and for the purpose the Central Government has to take into consideration the papers despatched to it under the provisions of Section 3(4). But since the power of revocation lies with the Central Government, it cannot be denied that the detenu would have also a right to make representation to the Central Government invoking its power of revocation. When such a representation is made the Central Government would necessarily be called upon to consider the submissions and the statements made in the representation. It would indeed be difficult for the Central Government to decide upon the same and find out whether the revocation is justified or not unless it has before it the say of the detaining authority with respect to the statements made in the representation. The grounds and the particulars sent by the State Government may or may not be sufficient to bear upon the submissions made in the representation. If it is taken that the State Government on receipt of the representation of the detenu must forthwith transmit it to the Central Government, then it can be well conceived that on receipt of the same, the Central Government would be obliged to call for the comments of the State Government before deciding the matter in which process delay is bound to occur. Such delay can be avoided to quite an extent if the State Government invites comments of the local authorities and despatch the representation together with its own comments after obtaining the views of the local authorities. In that view of the matter, I do not think that the submission of Mr. Pasayat is well-founded, that the State Government must play no other role than merely to post the representation to the Central Government. It is of course true that if in collecting the comments of the local authorities or despatching its own comments on the representation of the detenu to the Central Government unreasonable delay occurs or if the local authorities themselves do not furnish comments with promptitude, such action may be called in question in aid of challenging the detention, but it cannot be said as an uniform rule that unless the representation is forwarded post haste, the detention must be set aside.

Writ application dismissed.