(1983) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5702 of 1983

Danimireddy Suryanarayana APPELLANT

Vs

District Collector and District Magistrate, East Godavari District, Kakinada and Others RESPONDENT

Date of Decision : 17-08-1983

Acts Referred:

Citation : (1985) 3 APLJ 81

Hon'ble Judges : Ramaswamy, J;Jayachandra Reddy, J

Bench : Division Bench

Advocate : M.S.K. Sastry, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Jayachandra Reddy, J.—This is an application seeking a writ of Habeas Corpus filed by one Sri Danimireddy Suryanarayana, the detenu, who is detained u/s 3(2) (a) of the Prevential Commodities Act, 1980 (Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980) ?), hereinafter referred to as "the Act".

2. The petitioner is a dealer of Fair Price Shop No. 36 and concurrently authorised from June, 1983 to run the Fair Price Shop No. 39 also at Rajahmundry. The District Magistrate, East Godavari at Kakinada being satisfied that the detenu has been acting in a manner prejudicial to the maintenance of supply of rice, an essential commodity, detained him exercising his powers under the provisions of the Act. The detention order was passed on 4-7-1983. The grounds of detention as well as the Annexures which are in Telugu language, were served on the detenu on 9-7-1983. The Government also has approved his detention. Aggrieved by the said order of detention the detenu has filed this writ petition supported by an affidavit sworn to by a close relation of his.

3. The learned counsel for the petitioner submits that the grounds are vague and non-existent. The second submission is that certain documents have not been supplied and therefore the petitioner was not afforded a reasonable opportunity

to make his representation and consequently the detention is illegal. The next submission is that Telugu copies of the grounds are not supplied; and lastly it is submitted that the detaining authority has not applied his mind inasmuch as he has not considered whether in a case of this nature cancellation of the licence is sufficient to prevent the petitioner from acting in a manner prejudicial to the maintenance of supply of rice.

4. To appreciate these submissions it become necessary at the outset to refer to the grounds and the particulars given therein.

5. The petitioner is a dealer of a fair price shop and by proceedings dated 5-6-1983 he was authorised to run the Fair Price Shop No. 39. On 9-6-1983 the Revenue Divisional Officer directed the Deputy Tahsildar to enquire into the irregularities committed by the petitioner. The Deputy Tahsildar visited the Town Hall area in Rajahmundry on 9-6-1983 and found 28 bags of subsidiary rice in a room belonging to one Sri Podipireddi Ramadasu. Sri Rokkam Apparao and other coolies stated that the subsidiary rice was brought by one Danimireddy Nageswara Rao, the son of the detenu in two bullock carts. Thereupon the Deputy Tahsildar went to Shop No. 39 and demanded the detenu to produce the Stock Register, but the detenu failed to produce the same. The Deputy Tahsildar however verified the Sales Register written from 5-6-1983 and 6-6-1983, at about 10.00 a.m. on 9-6-1983. He noticed several irregularities. On the basis of the material furnished, the detaining authority, after being satisfied, ordered the detention and the details of the irregularities are mentioned in the grounds. The grounds as such are preceded by a preamble of the case in which the above stated particulars (of ?) the grounds would show that the Deputy Tahsildar inspected a Fair Price Shop on 9-6-1983 and verified the Sales Register written from 5-6-1983 and 6-6-1983 and noted several irregularities, the particulars of which are mentioned in the grounds.

6. The learned counsel for the petitioner submits that in the preamble it is mentioned that the Deputy Tahsildar inspected and noted the irregularities and that failure to supply a copy of the report of the Deputy Tahsildar invalidates the detention. We are unable to agree. The preamble contains the introductory para 3 to the grounds of detention. In Dhananjoy Das Vs. District Magistrate, Darrang and Another, their Lordships of the Supreme Court held :

"Whether a particular paragraph in the grounds amounts only to a preamble or introduction is to be determined on the facts and circumstances of each case and it is open to the Court to come to its own conclusion whether that paragraph is only an introductory para or contains the grounds on the basis of which the detaining authority had the subjective satisfaction for passing the order of detention."

Their Lordships also indicated that there can be a preamble of introduction. In the instant case in the grounds supplied, in the first instance it is noted as preamble of the case. It is in this preamble that the detaining authority has referred to the history or rather the incidents that preceded the inspection. But the charges levelled in all the grounds are based only on the basis of the inspection that was made on 9-6-1983 and the irregularities noticed during the inspection in the Sales Register written from 5-6-1983 onwards. Therefore, we see no substance in the submission of the learned counsel that the report of the Deputy Tahsildar should have been supplied, about which there is a reference in the preamble. It may be noted that in the preamble it is mentioned that the Deputy Tahsildar as well as the U.D. Revenue Inspector recorded the Statements and the copies of the statements have been supplied.

7. The learned counsel submits that some of the grounds are non-existent but we see no force in this submission. In each of the grounds there is a reference to certain irregularities and the particulars are given. There-fore, it cannot be said that they are non-existent inasmuch as those particulars are gathered from the registers maintained by the detenu.

8. We shall now examine the particulars mentioned in each ground and see whether the grounds are vague or irrelevant. As already mentioned, the charge in each of the grounds is based on the inspection made on 9-6-1983. In the 1st ground it is mentioned that the detenu dishonestly kept 28 bags of 75 Kgs. each of subsidised rice intended for sale to grain card-holders attached to Fair Price Shop No. 39 in unauthorised premises. In Ground No. 2 it is mentioned that the detenu has shown fictitious sales in the Sales Register and the Bill Book by making false entries therein so as to cover up his clandestine transaction of selling the subsidised rice stocks in black-market in a speculative manner and thus violated condition 7 of the licence granted under the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 and condition No. 8 of the authorisation under Clause 3 of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. The 1st and the 2nd grounds are connected. Then the 3rd Ground is that the detenu has failed to take the signatures or thumb impressions of the alleged purchases either on the bills or in the sales register and also failed to note the names and addresses of the purchasers and the date of sale in the bills in contravention of Clause 7(1) of the A.P. Exhibition of Price Lists of Goods Order, 1966 and condition No. 10 of the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. As regards this ground the contention is that it is non-existent. The learned counsel submits that there is no regulation or control order requiring the Fair Price shop dealers to obtain thumb impressions or the signatures of the persons to whom the essential commodities are sold. In ground No. 3 there is a reference to Clause 7(1) of the A.P. Exhibition of Price Lists of Goods Order, 1966 and condition No. 10 of the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982, Clause 7 of the 1966 order lays down that a dealer shall issue a receipt to a purchaser showing the name and address of the customer, the date of transaction, the goods sold, and other particulars. Condition No. 10 of the 1982 Order again similarly lays down that unless exempted by the State Government, or the licensing authority, the dealer shall

issue every customer a receipt containing his own name and address, the licence No. etc., No doubt these two provisions do not lay down that the dealer has to obtain the signatures or the thumb impressions. But the Collector of the East Godavari issued directions to the dealers to obtain the signatures of the purchasers, obviously with a view to see that proper supply is ensured. The Collector is empowered to give such directions to all the dealers under condition No. 12 of the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 and under condition No. 8 of the authorisation under Clause 3 of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. The learned public prosecutor has produced a copy of the instructions issued by the Collector and it cannot be said that the dealer was not aware of the directions. Therefore, it cannot be said that ground No. 3 is non-existent merely on the ground that there is no reference to the instructions of the Collector. A careful examination of the ground would show that it contains two charges. One is with regard to the failure to obtain the signatures or thumb-impressions as per the directions issued by the Collector under the provisions of the 1982 order and the latter part is in respect of the failure to note the address of the purchaser and the date of sale etc., which is a contravention of Clause 7 of the A.P. Exhibition of Price Lists of Goods Order, 1966 as well as condition No. 10 of the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. As already mentioned the Collector is empowered to give such directions, and the conditions of the licence which are in conformity with such directions form integral part of the Control Order and contravention of the same is punishable. A Full Bench of this Court in Arvapalli Kotiratnam Vs. State, has held that the conditions of licence form integral part of the Control Order and contravention of terms and conditions of the licence amounts to contravention of the Control Order. The Supreme Court has also held in Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, that the Government has power to issue directions consistent with the provisions of the Essential Commodities Act. However, in the instant case, there are specific provisions under which the Collector is empowered to issue directions and all the dealers were aware of the directions so issued by the Collector wherein the dealers have to obtain signatures or thumb-impressions of purchasers. Therefore, failure to obtain signatures or thumb-impressions is a violation of the directions issued by the licensing authority and the same is referred to in Ground No. 3. Hence it cannot be said that Ground No. 3 is non-existent.

9. Then, Ground No. 4(1) refers to the bills mentioning certain card numbers and the accusation is that the same are not mentioned in the Sales Register. In ground No. 4(ii) it is mentioned that the dealer has shown as having sold rice stocks in the cases mentioned therein. The card numbers are given and the accusation is that the bills were not written supporting these sales. In Ground No. 4(iii) the charge is that the dealer has shown that he has issued the stocks of the rice twice on the same day which is not permitted. Ground No. 4(iv) mentions that in page No. 7 of the Sales Register there is an entry that 10 Kgs.

of rice was delivered on 5-6-1983. The comment about grounds Nos. 4(i) to 4(iv) is that all the particulars are not mentioned. We see no force in this submission. The necessary particulars are there. There is a reference to the irregularity and the particulars of the same are given by giving respective card numbers and the pages of the bill book and also the pages in the sales register as the case may be. As regards Ground No. 4(iii) the card No. and the pages of the bill book are mentioned. Similarly in ground No. 4(iv) the necessary particulars are given. Therefore, it cannot be said that the grounds are vague. The accusation in ground No. 4(v) is that as regards the cards the Nos. of which are mentioned, no rice was issued, but yet the dealer has made the entry in the Sales Register to make it appear that 10 Kgs. of rice were delivered to each card holder on 8-6-1983. The No. of each card is given, the house No. is given and the page Nos. and the Line Nos. in the Sales Register are also given. According to the detaining authority, these entries are false and are made without issuing any rice and they are fictitious sales. In the preamble it is mentioned that the statements of some of these persons have been recorded. In the next ground the accusation is that the detenu started sales of rice on 9-6-1983 even without getting the receipt of the stock physically verified by the concerned official, and in the last ground it is mentioned that the detenu failed to keep the stock register in the premises which is again a violation of the conditions of the licence. It can, therefore, be seen that in each of the grounds the necessary particulars are given. Therefore, they cannot be said to be vague.

10. As regards grounds Nos. 4 and 5 the learned counsel in particular submitted that the non-supply of the copies of the bill books and the respective entries in the registers has resulted in the failure to afford a reasonable opportunity of making a representation by the detenu. We see no force in this submission. The detaining authority has given all the particulars as such, and a reference is made to the entries. Mere reference however does not warrant that the detaining authority should supply copies of all the Registers and Bill books. If the detenu wanted additional material, he could have asked for the same. In Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, their Lordships of the Supreme Court observed thus :

"Every failure to furnish copy of a document to which reference is made in the grounds of detention u/s 3(1) of the Act is not an infringement of Article 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of fundamental rights guaranteed by Article 22(5)."

In Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, their Lordships of the Supreme Court observed that the detaining authority is not under any liability to furnish the detenu with regal information available from legal literature and when the detention order and the ground are served along with the particulars on which a ground is based, the detenu may ask for the same. In the instant case many of the allegations in the grounds are based on the inspection of the registers and on the statements recorded. The learned counsel however relied on the decisions of the Supreme Court in Mohd. Zakir Vs. Delhi Administration and Others, and Thakor Mulchandani Vs. Assistant Secretary to the Government of Maharashtra and Others, . wherein it is observed that it is the constitutional mandate which relied on, and that unless the list is supplied, it is not possible for the detenu to make a representation. In the instant case the allegation in each ground is based on the inspection made on 9-6-1983 and the statements recorded from the card holders. The detaining authority has served on the detenu on 9-7-1983 the copy of the grounds and also 28 sheets containing the translation of the grounds in Telugu and various statements. The learned counsel initially submitted that the copy of the grounds was not served in the language known to the detenu but we find from the file that a translated copy of the grounds in Telugu has been served containing the statements of various card holders and the allegations made in these grounds are supported by the statements of the card holders. Inasmuch as the detenu has been supplied with all the statements, he cannot complain that the necessary material has not been supplied.

11. The last submission of the learned counsel for the petitioner is that the detaining authority has not considered whether the cancellation of the licence would be sufficient to prevent the detenu from acting in a manner prejudicial to the maintenance of supply of essential commodities. We see absolutely no force in this submission. The fact remains that the licence is not cancelled. In Atmakuri Venkatratnam Vs. District Magistrate, Prakasam District, Ongole, a Division Bench of this Court held that the cancellation of the licence is not a ground to hold that the detenu is incapacited and has no potentialities to act in a manner prejudicial to the maintenance of supply of essential commodities. The learned counsel placed reliance on a decision of this Court in K. Ramulu v. Govt. of Andh. Pra. (1975) 1 An WR 109 : 1975 Cri LJ 1512. That was a case where the authorisation issued to the detenu to run the shop was suspended at the time of detention. So, it is distinguishable. Kattamuri Venkata Satya Prasad Vs. The Chief Secretary to the Govt. of A.P. and Others, , is a case where the authorisation was cancelled and therefore the Division Bench held that the ground under the detenu''s feet was out. This case is also distinguishable. In Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, their Lordships of the Supreme Court held that the mere facts that the detenu could be prosecuted under the Customs Act cannot be a bar to an order of detention.

12. For all the aforesaid reasons, we are satisfied that the learned District Magistrate has applied his mind and after being satisfied, passed the detention order. The grounds of detention do not suffer from vagueness or irrelevancy. The criticism that one of the grounds is non-existent is without substance. All the necessary documents have been supplied and a reasonable opportunity has been afforded to the detenu. The petition therefore is dismissed. Advocate''s fee Rs. 250/-.

13. Petition dismissed.

