
(1989) 07 GUJ CK 0004
In the Gujarat High Court

Girishchandra Bhagubhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-07-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 162

Essential Commodities Act, 1955 — Section 7

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 15, 3(2), 3(2)

Citation : (1990) 1 GLR 543

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

Bench : Division Bench

Judgement

A.P. Ravani, J.—The petitioner has challenged the legality and validity of the order of detention dated December 17, 1988 passed by the District Magistrate, Bharuch under the provisions of Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"). The order was executed on December 19, 1988. The maximum period of preventive detention as provided under the Act is six months. Therefore, had the petitioner remained in detention continuously he would have been released by now. But it is stated at the Bar that on six different occasions the petitioner has been temporarily released by the State Government by issuing order u/s 15 of the Act. Such period of temporary release is of about 100 days. The petitioner has challenged the order of detention and his continued detention as being illegal and void and has therefore prayed the he be released forthwith.

2. The grounds of detention supplied to the petitioner-detenu disclose that the petitioner is the proprietor of fair price shop; that he indulged in activities prejudicial to the maintenance of supplied of essential commodities such as wheat, rice and sugar. The details of such activities mentioned in the grounds are as follows:

(a) That the petitioner was not conducting the fair price shop business in accordance with the rules and regulations and was not maintaining proper accounts, that he was distributing the essential commodities to the people at higher rate and was not maintaining adequate stock of the goods in question, and that his business premises were once raided on November 29, 1988, thereafter on December 2, 1988 and again on December 8, 1988.

(b) On verification of stocks on November 29, 1988 it was found that there was surplus of 69 kgs. of super-fine rice and there was deficit of 125 kgs. of wheat. That in an adjoining house belonging to one Jagjivandas Parsottam Panchal, which the petitioner had rented, 30.5 quintals of wheat was found which was not shown in the record and it was prima facie found to be unlawful hoarding that in the same building there were 425 kgs. of sugar. This was also prima facie found to be unlawful hoarding.

(c) That the petitioner did not explain as to from where he had purchased 30.50 quintals of wheat which was found in the adjoining house belonging to Jagjivandas Parsottam Panchal, which the petitioner had rented. The explanation given by him in this connection has not been found satisfactory.

(d) That on cross-checking of ration cards it was found that wheat of I. T.D.P. scheme were not properly distributed to the extent of 80 kgs. Moreover 20 kgs. of wheat for common distribution was also not distributed to the card holders.

(e) That the stock was verified physically on November 29, 1988 and there was deficit of 125 kgs. of wheat.

(f) That the stock-register and other documents were not properly maintained. Fake bills were issued. Necessary and proper entries in the ration cards of card-holders were not made. Thus it was alleged that the petitioner had committed breach of the provisions of Clauses 23 and 24 of the Gujarat Essential Commodities (Licence Control and Stock Declaration) Order, 1981, and that of Clause 4 of the licence issued to him. It was also alleged that he contravened the provisions of Clauses 3, 8 and 9 of the Gujarat Essential Commodities (Business Regulation) Order, 1977.

(g) Statements of eight card-holders were recorded and it was found that these card-holders were not supplied the commodities mentioned against their names.

On the aforesaid grounds and on the basis of the material placed before him, the District Magistrate, Bharuch came to the conclusion that it was necessary to preventively detain the petitioner so as to restrain him from indulging in any manner prejudicial to the maintenance of supplies of commodities essential to the society. Hence, in exercise of power conferred u/s 3(2) of the Act, the District Magistrate passed an order of detention, which, as required under the provisions of Section 3(3) of the Act is presumed to have been approved by the State Government within a period of twelve days from the date of passing of the same. (There is no dispute on this point).

3. It is contended that the petitioner has surrendered his licence of fair price shop and therefore he will have opportunity to indulge in same or similar type of activities. Therefore his continued detention is not necessary and he should be released forthwith. It is not admitted by the other side that the petitioner has surrendered his licence. In view of this disputed position and in the facts and circumstances of the case, since the petition is capable of being decided on other points, we do not think it necessary to decide this contention.

4. Learned Counsel for the petitioner submitted that the detaining authority has relied upon the statement of one Kalidas Mangalbhai, but no such statement has been recorded. Therefore the ground pertaining to distribution of essential commodities otherwise than in accordance with law could not have been taken into consideration at all. There appears to be inaccuracy or error as regards the details in respect of one of the statements furnished to the detenu. What is the effect of this inaccuracy or error on the subjective satisfaction arrived at by the detaining authority is a question which requires detailed examination of facts and the law points. But the point is not required to be decided because in our opinion the petitioner's continued detention is required to be set aside on other ground. Therefore this point is also not decided.

5. In the grounds of detention supplied to the petitioner it is disclosed that the detaining authority was aware about the criminal prosecution that may be launched against the petitioner for offences u/s 3 read with Section 7 of the Essential Commodities Act, 1955. However, that course is not adopted on the ground that the petitioner may obtain order of bail and he may continue his illegal activity of blackmarketing and profiteering despite launching of prosecution against him. This factor has weighed with the District Magistrate who passed the order and it must have also weighed with the State Government when it approved the order of detention within a period of twelve days from the date of passing of the same. In the facts of the case and particularly in view of the fact that the petitioner detenu has been released for a period of about 100 days it is required to be examined as to whether the satisfaction arrived at by the detaining authority and the State Government on this aspect is genuine or that the same stand vitiated by the orders of temporary release passed by the State Government under the provisions of Section 15 of the Act.

6. The order of detention has been executed on December 19, 1988. The petitioner has been temporarily released on January 5, 1989, that is within a period of twenty days from the date of detention. The order of detention must have been approved by the State Government on any day prior to December 30, 1988. Thus within a period of about one week from the date of approval of the order the petitioner has been ordered to be released. Thus on January 5, 1989 i.e. within a period of about one week from the date of approval of the order, the approving authority, i.e. the State Government passed an order to temporarily release the petitioner. Thereafter every month the petitioner has been released for a period of ten or fifteen days, as per the order passed by the State

Government. The State Government has freely exercised its power to temporarily releasing the petitioner-detenu. The petitioner-detenu has remained out of detention for a period of about 100 days. When he has been released, no condition has been imposed which would make it impossible for him to attend to his business. Thus, in affect, while exercising powers u/s 15 of the Act of passing order of temporary release, the State Government has nullified the order of detention. In this factual background, the question arises: whether the authorities concerned were aware about the alternative of resorting to criminal prosecution? and, if yes, the satisfaction arrived at by the authorities concerned that the criminal prosecution was inadequate for restraining the petitioner from indulging in the same or similar type of activities adversely affecting the maintenance of supplies of commodities essential to the community is genuine?

7. In the grounds of detention, while referring to alternative criminal prosecution it is stated that in case criminal prosecution is launched against the petitioner-detenu, he may obtain order of being released on bail and or stay order and may continue the illegal activities of blackmarketing and profiteering. Thus the only ground on which the criminal prosecution is considered inadequate is that the petitioner may get himself released on bail and continue the prejudicial activities. But that which could have been done and achieved by the petitioner by invoking the provisions of Criminal Procedure Code and by obtaining order of bail has been profusely bestowed upon the petitioner by the State Government itself by invoking the powers u/s 15 of the Act. Had the criminal prosecution been launched, the statement recorded by the Officers of the Civil Supplies Department would not be hit by the provisions of Section 162 of the Criminal Procedure Code, as these statements are not recorded by a Police Officer so as to attract the provisions of Section 162 of the Criminal Procedure Code. The documents which would have become necessary to rely upon in criminal prosecution must have been ready when the raids were carried on. Such documents would be in the shape of the record of the detenu and the panchnama drawn at the relevant time.

Very probably the statement of the detenu himself might have been recorded by the Officers of the Civil Supplies Department. This also may be a good piece of evidence. The application for bail could have been resisted by the prosecuting agencies. At any rate the Court could have been persuaded to impose conditions to see that the petitioner does not carry on same or similar type of business and activities and he is kept at a safe distance from his business place. In view of the nature of the evidence to be led in such type of cases, launching of criminal prosecution should not have taken much time. Despite all these facts it may be assumed that the petitioner detenu may be released on bail by the Criminal Court on liberal conditions and the Court may not restrain him from attending to his business. Then what would have been the position? Would it be in any way other than what has been done by the State Government by passing several orders of temporary release under the provisions of Section 15 of the Act? Naturally the situation would not be in any way different. The State Government

has made it possible for the petitioner-detenu to attend to his office and to indulge in the same or similar type of activity prejudicial to the maintenance of supplies of commodities essential to the community. Therefore, the subsequent actions of the State Government in releasing the petitioner-detenu on several occasions for a total period of about 100 days leads to the only inference that the satisfaction arrived at by the State Government while approving the order of detention that the criminal prosecution was not adequate for restraining the petitioner-detenu from indulging in the same or similar type of activities was not genuine. On this count alone the continued detention of the petitioner cannot be held to be legal and valid.

8. In this connection reference may be made to a decision of the Supreme Court in the case of *Srilal Shaw Vs. The State of West Bengal and Others*, In that case on search of the godown of the petitioner certain pieces of Railway property which were not available in the open market were found. The petitioner claimed to have purchased these scrap material from certain parties. But on behalf of the department it was maintained that the goods recovered from the godown of the petitioner were of a special kind used exclusively by the Railways and were not available in the open market. In that case criminal prosecution was launched against the petitioner, but it was contended that the case could not be proceeded with as according to the District Magistrate "the witnesses did not dare to depose in open Court against the detenu for fear of their lives". In that background, in para 5 of the judgment the Supreme Court has observed as follows:

This strikes us as a typical case in which for no apparent reason a person who could easily be prosecuted under the punitive laws is being preventively detained. The Railway Property (Unlawful Possession) Act, 29 of 1966, confers extensive powers to bring to book persons who are found in unlawful possession of Railway property. The first offence is punishable with a sentence of five years and in the absence of special and adequate reasons to be mentioned in the judgment the imprisonment shall not be less than one year. When a person is arrested for an offence punishable under that Act, Officers of the Railway Protection Force have the power to investigate into the alleged offence and the statements recorded by them during the course of investigation do not attract the provisions of Section 162 of Criminal P.C.

Thereafter the Supreme Court observed that the Sub-Inspector of Police who made the panchnama would have certainly started prosecution and would have disposed against the petitioner. Moreover, the petitioner's statement was recorded during the course of investigation under the Railway Property (Unlawful Possession) Act, 1966 and that also could have been relied upon by the prosecution in order to establish the charge that the petitioner was in unlawful possession of Railway property. The aforesaid observations made by the Supreme Court in the context of that case equally apply to the facts and circumstances of this case. As indicated hereinabove the satisfaction arrived at by the detaining authority as regards the inadequacy of criminal prosecution

cannot be said to be genuine. Their own actions have negated and nullified such satisfaction arrived at by the District Magistrate and the State Government while passing the order of detention and while approving the same by the State Government. Moreover, we feel that in such type of cases criminal prosecution can be easily led to successful termination provided, however, the Officers of the Civil Supplies Department wish to pursue the criminal prosecution sincerely and honestly.

9. In the result the continued detention of the petitioner cannot be said to be legal and valid. Hence the petitioner is required to be released forthwith.

10. In the result the continued detention of the petitioner is declared to be illegal and void. The petitioner is ordered to be released forthwith if not required in any other cases. Rule made absolute accordingly.