

(1986) 02 GUJ CK 0007
In the Gujarat High Court

Harijan Govind Jadav

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-02-1986

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2), 3(2)

Citation : (1987) 1 GLR 216

Hon'ble Judges : R.J. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

G.T. Nanavati, J.—Little concern for the liberty of a citizen together with lack of awareness of its obligation arising out of the provisions of Article 22(5) of the Constitution resulting in a mechanical rejection of the detenu's representation by the Government compels us to quash the order of his detention and bring his detention to an end.

2. The petitioner is detained pursuant to the order dated 8-8-1985 passed by the District Magistrate, Junagadh u/s 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the Act"). The order was passed against him on the ground that he is a notorious bootlegger and that because of his activities of manufacturing and selling illicit liquor, public order in the locality of Vankarvas of Vanthali town is adversely affected. The District Magistrate was also satisfied that inspite of so many cases registered against him under the Bombay Prohibition Act, he was still continuing his said prejudicial activities; and, therefore, with a view to preventing him from continuing the same, it was necessary to detain him.

3. The order of detention is challenged on various grounds. But it is not necessary to refer to all of them as this petition deserves to be allowed on the ground that the representation which was made by the petitioner was not considered by the State Government the way it is expected to consider the same. It is the case of the petitioner that he had sent one representation to the State Government from the jail and that has not been considered by the State

Government. It is also his case that his wife had made another representation dated 13-8-1985 on his behalf to the State Government. That representation is also not considered by the State Government. Failure to consider these representations has rendered his continued detention illegal.

4. In reply to these averments and allegations contained in paragraph 12 of the petition, what the Under Secretary to the Government of Gujarat in Home Department has stated in his affidavit is as under:

With reference to the averments and allegations made in para 12 of the petition, I say that the representation dated 13-8-1985 from detenu's wife was received by the Home Department on 7-10-1985. On receipt of the representation, notes were prepared. I say that after preparing the notes, the same were placed before the Government and after carefully considering the representation of the detenu the same has been rejected on 8-10-1985. His wife submitted another representation dated nil. The said representation received in Home Department on 6-12-1985, was also rejected on 10-12-1985. The reply was sent to the detenu and his wife.

Nothing is stated as regards the representation sent by the detenu from the jail. He does not say whether it was received by the Government or not. The State Government ought to have explained what happened to that representation, in view of its obligation arising out of Article 22(5) of the Constitution read with Section 9(1) of the Act, to consider a representation made by a detenu. Except total silence, we do not find anything in the reply in this behalf.

5. As regards the representation dated 13-8-1985 it is stated that it was received by the Home Department on 7-10-1985. It is further stated that the said representation was considered by the State Government carefully and was rejected on 19-10-1985. In the petition it is specifically stated and it is also borne out by the copy of the representation which has been produced before us and the original representation which we find in the file of the State Government, that in the representation addressed to the Government, the petitioner has pointed out that the statements on the basis of which he is detained are really not made by those persons. Copies of the affidavits made by those persons stating that they had not given those statements were also sent to the Government along with the representation. Even though this point has been taken in the petition, nothing is stated in the reply with respect to these averments and allegations. However, in order to enable the State Government to show that it had applied its mind to this aspect also we had given an opportunity to the learned Public Prosecutor to show to us the file" containing the notes. Having seen the file, we find that an incorrect statement is made on oath by M.T. Parmar, Under Secretary to the Government in Home Department when he stated that the representation was received by the Home Department on 7-10-1985. The representation was addressed to the Home Minister and it was received by him on 16-8-1985. Thus, the representation made on behalf of the detenu was received by the Government on 16-8-1985; and not on 7-10-1985.

As it is stated in the affidavit-in-reply that the representation was rejected after considering the notes which were prepared in that behalf, we also looked at the notes in order to find out if the Government had applied its mind to this important allegation contained in the representation. That it is an important aspect and was required to be considered by the State Government cannot be gainsaid, because if that allegation was found to be true, the State Government as a reasonable detaining authority could not have continued the detention of the detenu thereafter. Only an authority which has no concern for the liberty of a citizen could have continued the detention after noticing that the grounds on which the order of detention is passed are really non-existent, inasmuch as the persons who are supposed to have made those statements had not really made those statements at all. When we turn to the notes, we find that there is no reference to this allegation at all. No attempt whatsoever was made by the State Government to find out whether there was any substance in the said allegation contained, in that representation.

6. On the contrary, it is stated in the notes that the order of detention is justified because of the grounds of detention; and, therefore, the representation deserved to be rejected. Making of a representation and its consideration by the appropriate Government are not mere empty formalities. It being a matter of liberty of a citizen and it being a matter of an obligation under Article 22(5) of the Constitution, it becomes the duty of the appropriate Government to apply its mind to the representation before rejecting the same. Mere rejection of a representation is not consideration of it. As it was pointed out in the representation that the grounds really did not exist in the sense indicated above, it was the duty of the State Government to enquire into that aspect and find out if there was any substance in the said allegation. No attempt in that behalf was made by the State Government and that clearly shows lack of awareness of its constitutional obligation. That powers conferred under detention laws are coupled with duties also appears to have been forgotten. The State Government is required to be reminded that discharging those duties is equally necessary as exercising the power conferred upon it. Having carefully gone through the reply and the file produced by the learned Public Prosecutor, we find that the State Government had mechanically rejected the representation of the petitioner and thereby failed to discharge its obligation under Article 22(5) of the Constitution read with Section 9(1) of the Act. We must, therefore, hold that the continued detention of the petitioner is illegal.

7. In the result this petition is allowed; the impugned order of detention is quashed and set aside; and the petitioner-detenu is ordered to be set at liberty forthwith unless he is required to be detained in connection with some other case. Rule is made absolute with costs.