

(2000) 03 GUJ CK 0110
In the Gujarat High Court

Case No : Special Civil Application No. 10284 of 1999

Jinendrakumar Setulal Jain

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Citation : (2000) 03 GUJ CK 0110

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Yatin Oza and R.J. Oza, for the Appellant; A.D. Oza, Govt. Pleader and K.T. Dave, Asst. Govt. Pleader for Respondent Nos. 1, 2 and 3 and P.J. Davawala, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.

1 This Special Civil Application filed by the petitioner Shri Jinendrakumar Setulal Jain (detenu) is directed against the order dated 24th November 1999 issued under the signatures of the Jt. Secretary to the Govt., Food and Civil Supplies and Consumer Affairs Department of Govt. of Gujarat, whereby the petitioner has been ordered to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, which will be hereinafter referred to as the "PBM Act", in pursuance of Conditions nos.3 and 5 of the Gujarat Condition of Detention (Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities) Order, 1980, which will be hereinafter referred to as the "Order of 1980". The order dated 24th November 1999 shows that the Govt. of Gujarat in Food and Civil Supplies and Consumer Affairs Department was satisfied with respect to the petitioner that he was operator of Maruti Adhesive and Chemicals, 14, Jaymangal Estate, Rakhial, Ahmedabad, residing at 78, Dhanlaxmi Society, Opp.C.M.C., Odhav, Ahmedabad and with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of essential commodities like Petroleum products

essential to the community, it was necessary to so to do forthwith and therefore, in exercise of powers conferred under sub-section (1) of Section 3 of the PBM Act, 1980, the petitioner was directed to be detained. The order shows that it has been issued by and in the name of the Governor of Gujarat, signed by one Shri Arvind Agarwal, Jt.Secretary to Government. In pursuance of the said order, the Jt.Secretary in the Food and Civil Supplies Department passed yet another order committing the petitioner to the Sabarmati Central Jail, Ahmedabad. The grounds of detention were also enclosed with the detention order as Annexure.B and on the basis of the said detention order, the petitioner was arrested by the police on 17th December 1999 and detained at Sabarmati Jail since that date.

2. The petitioner's case is that he is Proprietor of Namokar Roadlines and is dealing in the business of transport. He is maintaining about 25 heavy motor vehicles to run his business and he has engaged himself solely in the said business; that he is not directly or indirectly doing any business or attending the affairs of any business of any other party either in personal capacity or in any other capacity and his only business is of transport. The petitioner has come with a case that on receiving the ground of detention along with the compilation of the documents on 17th December 1999, he made a representation dated 24th December 1999 through his Advocate. This representation was addressed to respondent no.3, namely, Shri Arvind Agarwal as also to Shri Kamal Kishore, Economic Advisor, Govt. of India, Consumer Affair Department, New Delhi. These representations had been separately made. It has been submitted that the representation addressed to the respondent no.3 was served by Regd. Post A.D. which was received by the office of the respondent no.3 on 27th December 1999. According to the petitioner, this representation dated 24th December 1999, although received by the respondent no.3 on 27th December 1999, was not considered either by the respondent no.3 or by any other functionaries of the State Govt. and no reply with regard to the decision taken thereon was given to the petitioner till the date of filing of the petition i.e. 22.12.1999 and even thereafter. Similarly with regard to the representation dated 24th December 1999 which was sent to the Economic Advisor, Govt. of India, it has been submitted that it was sent to him by Speed Post and the same was received by the said authority on 27th December 1999 as per the acknowledgment card of the said Speed Post. Even this representation was not considered and no reply thereto was sent to the petitioner till the pleadings in this regard were made available by way of amendment dated 16th February 2000. It has been further stated that yet no reply was received for a period of more than one month by the petitioner on his representations dated 24th December 1999 and 27th December 1999 and that he had also submitted a representation through a special messenger on 1st February 2000. This representation dated 1st February 2000 was received by one Shri O.P.Sharma, authorised person on behalf of Economic Advisor, Consumer Affairs Department, New Delhi. Even this representation has not been decided by the Central Govt. and the decision thereof had not been communicated to the petitioner till the date on which the pleadings were

amended on 16th February 2000.

6th March 2000

It may be pointed out that in fact the Special Civil Application dated 18th December 1999 was filed in this Court on 22nd December 1999 and thereafter an amendment was sought which was allowed by the Court on 24th December 1999 and on the said date, the Rule returnable for 30th December 1999 along with notice as to interim relief returnable on the same date, i.e. 30th December 1999 was issued. While issuing Rule on 24th December 1999, the Court had made it returnable with the use of the word "peremptorily". Thereafter on 30th December 1999, time was granted to the respondents on their request and the matter was fixed for 10th January 2000. The matter was not notified on 10th January 2000 and it was notified on 11th January 2000. On 11th January 2000 when the matter came up before the Court, certain lawyers appearing in other detention matters objected to giving priority to this matter and on behalf of the petitioner an application dated 12th January 2000 addressed to the Registrar was moved. On 12th January 2000, it was again adjourned to 13th January 2000 and on 13th January 2000, the matter came up before the Court with Civil Application No. 70 of 2000 moved by the petitioner seeking amendment. The amendment was allowed in this Civil Application after hearing the other side and the Rule in this Civil Application was made absolute and in yet another Civil Application No.71 of 2000, an order was passed on 13th January 2000 granting time to file reply by 18th January 2000 and it was further recorded as under:

"Rule. Heard Id. senior counsel Mr.Y.N.Oza for the applicant. Learned Government Pleader Mr.P.G.Desai, waives service of Rule on behalf of Respondents No.1, 2, & 3. Ms.Parinda Davawala appears and waives service of Rule on behalf of Respondent no.4.

On request of learned Govt.Pleader Shri P.G.Desai, time granted till 18th January 2000 to file affidavit-in-reply.

As per the discussions in the open Court between the counsels of both the sides before the Court, Id. Govt. Pleader is directed to convey to the appropriate authority to consider the petition as well as the rejoinder filed by the petitioner of S.C.A.No. 10284/99 by way of a representation and outcome of the same may be disclosed on 18.1.2000.

It is clarified that hearing of C.A.No.71/2000 is peremptorily fixed on 18.1.2000 at 2.45 p.m.

Sd/- (A.K.Trivedi,J.)"

On 18th January 2000, the matter was yet made to stand over to 19th January 2000. On 18th January 2000, the order dated 17th January 2000 was produced rejecting the petitioner's request and the matter was posted for 19th January 2000 as recorded in Civil Application No.71 of 2000 and thereafter the matter was directed to be listed for final hearing on 27th January 2000 and the Rule to

that extent was made absolute in Civil Application No.71 of 2000. Thereafter on 28th January 2000, a detailed order was passed to take up the matter as agreed between the parties and on 10th February 2000, the matter was directed to be sent back to the office for listing in the Board of final hearing to be distributed on 11th February 2000, irrespective of the order dated 28th January 2000. On 11th February 2000, the matter was adjourned to 18th February 2000 to be listed before the Court taking up such matters. In the meanwhile, Civil Application No.670 of 2000 had been moved again seeking amendment to include the additional grounds vide para 3(n) to 3(q) and this application was allowed on 16th February 2000. Thereafter, the matter came up before the Court on 25th February 2000 on which date, the matter could not be taken up because the witnesses who were present in an Election Petition listed before the Court were to be examined and the Court permitted the learned Counsel for the petitioner to move the Honourable Chief Justice for placing the matter before any other Court which could take up the matter for expeditious hearing. The matter was then assigned to this Bench by the Honourable Chief Justice on 26th February 2000 itself and it was fixed for 29th February 2000. The matter was argued on 29th February 2000 and again on 1st March 2000. The arguments went on, on 1st March 2000 and 2nd March 2000. The arguments were concluded on 2nd March 2000 and the dictation of the order was commenced on 3rd March 2000.

3. So far as the pleadings of the parties are concerned, besides the Special Civil Application with amendments in different Civil Applications, there is an affidavit-in-reply filed by the respondents nos.1 and 3 under the signature of Shri Arvind Agarwal on 7th January 2000 and an affidavit-in-rejoinder dated 11th January 2000, a counter by the Union of India on 6th January 2000 and an affidavit-in-reply filed by the respondent no.1 on 25th February 2000. During the course of arguments, Ms.P.J.Davawala, appearing on behalf of the Union of India has produced a Fax copy of the order dated 3rd March 2000 about the rejection of the petitioner's representation by the Govt. of India on 2nd March 2000, Mr.A.D.Oza, learned Govt. Pleader has produced a xerox copy of the Govt. of Gujarat Gazette Extraordinary Notification dated 2nd July 1987 with regard to the insertion of Section 4(3) in the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 along with a list of resume of the dates from 21st August 1999 to 22nd November 1999 and the learned Counsel for the petitioner produced a script of the audio cassette the copy of which was supplied to the learned Govt. Pleader. All these documents which have been produced during the course of hearing have also been taken on record.

4. The grounds of detention dated 24th November 1999 as have been enclosed with the detention order show that in the City of Ahmedabad, at 14, Jaymangal Estate, Rakhial, there is a working "Pedhi" of Maruti Adhesives and Chemicals dealing with Petroleum Hydrocarbon Solvent, which will be hereinafter referred to as "Solvent" and M.T.O. The said "Pedhi" will be hereinafter referred to as "Maruti Adhesives". It is a wholesaler and its licence holder is one Shri Sureshbhai Chhotalal Varma. It also appears that in the name of the said "Pedhi"

for wholesale business of solvent and M.T.O., a licence has been issued under the Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981, which will be hereinafter referred to as the "Order of 1981). The period of licence is upto 31st December 2001. The investigation officers while patrolling in the night of 4th August 1999, found that at Hathijan Octroi Outpost, Ahmedabad, Tankers Nos.GRQ 6319 and GJ-6-V-7211 were standing and found to be suspicious and on investigation, it was found that 12,000 ltrs. of Industrial Solvent-90 was there in Tanker No.GRQ 6319. Its driver was one Shri Omprakash Yadav. He had a Bill No. 227191 dated 4th August 1999 issued by the Indian Oil Corporation, Vadodara, in the name of Kubadiya Chemical Industries Pvt.Ltd., N-171, Tarapur, M.I.D.C., Boiser, Maharashtra and yet this stock which was to be taken to Boiser was brought down to Ahmedabad. The driver also produced a Bill No.69 dated 3rd August 1999 of Kubadiya Chemical Industries in the name of Maruti Adhesives and Chemicals, Rakhial, Ahmedabad for the stock of 12000 ltrs. of Industrial Solvent and the driver also produced a paper from his diary on which Telephone No.2762494 was written. The driver, instead of taking the stock contained in the Tanker to the site of Maruti Adhesives and Chemicals, stopped at Hathijan Octroi Outpost and when he was asked as to why he had stopped at this Outpost, he gave out that he was to contact Manishbhai/Jinendra Sheth on Telephone No.2762494 and the Tanker was to be taken to the place as may be given out by Manishbhai/Jinendra Sheth. This Tanker remained at Hathijan Octroi Outpost from 00.30 hrs. to 10 O'Clock in the morning and as disclosed by the driver, he was waiting for the office of Manishbhai/Jinendra Sheth to open in the morning so as to contact them.

Similar are the facts with regard to the other Tanker No.GJ-6-V-7211 containing 12000 ltrs. of Industrial Solvent-90. Its driver Ramakant Bharatlal Yadav has disclosed that against Bill No.227221 dated 4th August 1999 issued by the Indian Oil Corporation, Vadodara, in the name of Jay Industries (Mahad), Dist. Rajgad (Maharashtra), he had brought down the stock to Ahmedabad and he also produced a proforma Bill dated 4th August 1999 in the name of Jay Industries (Mahad) in the name of Maruti Adhesives and Chemicals, Jaymangal Estate, Rakhial, Ahmedabad in respect of the 12000 ltrs. of Industrial Solvent. The said driver of Tanker No.GJ-6-V-7211 also produced a cover on which the following Telephone Numbers were written:

2745776 2762494 2743096 98250-10601

This stock was also brought down to Ahmedabad instead of being taken to Maharashtra and the Tanker was stopped at Hathijan Octroi Outpost and the driver disclosed that on 4th August 1999 at 10 O'Clock at night, when he contacted Manishbhai, he told that he would come to take the vehicle and after depositing the Octroi, the vehicle is to be started.

It was also disclosed that said Manishbhai is running the "Maruti Adhesives". On the basis of the facts as aforesaid, it was considered by the authorities that the present petitioner was associated with "Maruti Adhesives". The statement of

Sureshbhai Chhotalal Varma, licence holder of "Maruti Adhesives" was also recorded and it was found that the petitioner is an associate of "Maruti Adhesives", the petitioner had violated Clause 2, 3 and Condition 4 of the Order of 1981.

Besides the incident of 3rd/4th August 1999, the reference has also been made to an incident of 22nd September 1998 wherein a Tanker No.GJ-1-B-7058 was intercepted by the investigation officers of the Civil Supplies Department. This Tanker also had the stock of Solvent. Its driver Mohyuddin Abdul Satar had no papers with regard to the stock. The driver ran away after giving the statement in part, but in that statement, the driver had disclosed that the Tanker was of Jinendra Jain of Wardhaman Roadlines. It is also recorded that the petitioner refused to give statement and thereafter the owner of Maruti Adhesives Shri Sureshbhai Varma gave out that the stock of solvent had been sold to A.R.Brothers International, Ludhiana and a Bill was produced, the stock was forfeited by order dated 20th May 1999 and the Deputy Director, Civil Supplies, Gandhinagar, by his order dated 23rd June 1999 confiscated 12000 ltrs. of Solvent and the deposit amount of Rs.3,500/-. Yet another incident to which a reference has been made in the detention order is of 2nd May 1998 and about which it is stated that for every 5 ltrs. of petrol, the customers were given 40 ml. less while the full amount for 5 ltrs. was charged. This was in relation to Petrol Pump owned by Shri Sureshbhai Himatbhai Solanki and it is alleged that the petitioner was a partner for 25% in the business of the said Petrol Pump and this Petrol Pump was allotted to a member of Scheduled Tribe, which was taken over by the petitioner and in this manner the allegation is for adulteration of the stock and short supply to the customers. Yet another incident is of June 1996 relating to Sanand for which on 13th June 1996, at Sanand Police Station, a case No.185 of 1996 was registered under the Essential Commodities Act, 1955 for violation of Sections 3, 7, and 9. The case was filed before the Second Extra Assistant Judge, Mirzapur, at Ahmedabad, and it is said that the case is pending before the said Court. The allegation against the petitioner in this case is that Kerosene was being adulterated by the petitioner and the same was being sold out in an unauthorised manner through bogus bills.

5. So far as the first three grounds are concerned, learned Govt. Pleader has candidly submitted that no complaint in these three cases has been filed by the concerned investigating officers and no case is pending in the Court. It is only one case relating to June 1996 in which the matter was taken to the Court and the said case is pending in the Court as such.

6. Learned Counsel for the petitioner has pointed out that the petitioner has nothing to do with "Maruti Adhesives" and he is neither a partner nor a licence holder and it has been categorically stated that he is not connected with "Maruti Adhesives" in any manner whatsoever. Learned Counsel for the petitioner has frankly submitted that so far as the Telephone Numbers 2745776, 2762494 and 2743096 are concerned, they are the Telephone Numbers of the petitioner, but

such Numbers must have been given by Manishbhai of "Maruti Adhesives" to the respective parties and in turn, to the respective drivers only because "Maruti Adhesives" have established their office recently near the petitioner's office, Maruti Adhesives have no Telephone Number of its own and therefore, the Numbers had been given only to contact on these Numbers. These Numbers were in fact, according to the petitioner, P.P. Numbers and it was open for the petitioner to extend the facility by calling the persons in the neighbourhood as a consumer of Telephone Department, having Telephone with him. Merely because his Telephone Numbers have been found written on the paper of the diary of the driver or the cover produced by another driver, it could not be concluded or even alleged that that the petitioner was associated with "Maruti Adhesives" in any manner whatsoever. He is neither a licence holder nor the premises are rented in his name nor he is partner of "Maruti Adhesives" nor he is an employee of "Maruti Adhesives" and he has never been working for "Maruti Adhesives" for any purpose. Mere notings of his Telephone Numbers with the drivers carrying the stock is hardly sufficient to connect the petitioner with the incident dated 3rd/4th August 1999 with regard to the stock of Solvent contained in the two Tankers as were found at Hathijan Octroi Outpost. Similar is the say of the petitioner with regard to the Minutes Book relating to the incident of June 1998. It has also been submitted that had there been any substance in the allegations against the petitioner, the investigating agency would have certainly filed a case against the petitioner, but no case whatsoever has been filed either about the incident of 3rd/4th August 1999 or about the incident of September 1998. Even with regard to the incident of June 1998, it has been submitted that the allegations of short supply or adulteration, are absolutely false and vague. It has also been submitted that the petitioner has nothing to do with Rama Automobiles and he has no share of 25% as has been alleged in the grounds of detention and the statements which were recorded in this regard had also been detracted by the concerned persons. It has also been submitted with emphasis that for this incident of June 1998 also, no complaint whatsoever has been filed so far against the petitioner by the investigating agency of the Department. All the three cases of August 1999, September 1998 and May/June 1998 are totally fabricated and absolutely wrong inference has been drawn against the petitioner with regard to all these incidents. Regarding the fourth incident of June 1996, it has been submitted that the samples were sent to the Government Laboratory and the Chemical Analyser has recorded that there was no adulteration whatsoever and all the samples were found to be of required specifications and a letter in this regard had been sent to the Collector. It has been submitted that the case which was filed in this regard before the Extra Assistant Judge, Mirzapur, Ahmedabad (Rural), in 1996 is still pending and no effective proceedings whatsoever have been held after the case was filed in the Court.

7. The detention order has been assailed on behalf of the petitioner on more than one ground. In the first instance, it was submitted that the petitioner does not know Gujarati language and he had asked for the translation of the

documents in English language or in Hindi language, but the same was not supplied to the petitioner and therefore his right of effective representation has been prejudiced. In this regard, it has been pointed out by Mr.A.D.Oza, learned Govt. Pleader that the petitioner himself had made representations in Gujarati, of course, the same have been signed in English, but according to the learned Govt. Pleader, this would not make any difference and in the facts of the present case, it cannot be said that the right of representation has suffered any prejudice in any manner. It is of course true that the representations dated 25th November 1999 and 17th December 1999 were signed by the petitioner in English but the same were in Gujarati script. It was also pointed out that the endorsement on the execution order dated 17th December 1999 was also made in Gujarati in which it was mentioned that the petitioner understands Gujarati but the same was also signed by the petitioner in English. Mr.A.D.Oza also cited the case of Ramji Sunaji Marwari v. State of Gujarat and ors., reported in 1989 (2) GLH 105 in support of his argument that the facts of the present case are identical to the facts which were there in the case of Ramji Sunaji Marwari (supra) and this Court has already taken a view that in such a fact-situation, the right of representation cannot be said to have been adversely affected.

8. It was next argued with reference to the compilation of the documents on behalf of the petitioner as were supplied to him and as have been placed on record that certain documents were not at all legible and the detention order requires to be quashed and set aside on this ground alone. A pointed reference in this regard was made by learned Counsel for the petitioner to page nos. 16, 17, 19, 43, 88 and 112 in support of the submission that the right guaranteed under Article 22(5) of the Constitution of making an effective representation has been violated. I have perused the aforesaid pages. The page nos. 16, 17, and 19 form part of the licence and the same are not found to be clearly readable and legible and the same cannot be read without effort and strain. Page no.43 is a slip on which the Telephone Numbers were mentioned and the same is also not clearly legible, but the contents thereof can be made out with little effort. Page no.88 is a copy of Bill dated 22nd September 1998 issued by the "Maruti Adhesives" in the name of A.R.Brothers and it cannot be said that it is not clearly legible. Page 112 is a copy of an order dated 28th December 1998 passed by the Director of Civil Supplies, with regard to Rama Automobiles and it cannot be said that this document is not at all legible.

9. Besides this, Mr.A.D.Oza, learned Govt. Pleader has cited a Supreme Court decision in the case of Union of India and ors. v. Mohammed Ahmed Ibrahim and ors., reported in 1993 SCC 269 and has submitted that even if the said documents are unreadable, no prejudice can be said to have been caused to the petitioner's right of making an effective representation.

In the facts of this case, I do not find it necessary to adjudicate these grounds (as mentioned in para 7 and 8 above) in detail so as to examine the validity and legality of the detention order as I do not find that these grounds in the facts of

the present case are sufficient so as to render the detention order to be illegal. I do not take up the exercise of adjudicating these grounds also for the reason that there are other grounds on the basis of which the case can be effectively adjudicated.

10. Learned Counsel for the petitioner has submitted that the order has been passed without application of mind and that there was no material on the basis of which the detaining authority could arrive at the subjective satisfaction warranting the petitioner's detention and further that in the instant case, the last statement of the witness was recorded on 19th August 1999, the matter remained pending for long without any cogent reason and the detention order was passed as late as on 24th November 1999. Learned Counsel for the petitioner has vehemently argued that it is a case of total non-application of mind, it is a case of wholly arbitrary exercise of the power in a capricious manner and it has also been assailed on the grounds of malice in fact and has also been submitted that even otherwise the detention order suffers from malice in law as it has been passed for purposes neither authorised nor permissible under law. Thus, the detention order has been assailed on the grounds of malice in fact as well as malice in law. I will deal with the grounds of malice in fact a little later. So far as the representations of the petitioner are concerned, the representations have already been rejected and even during the pendency of this petition, the representation was rejected after taking the whole petition as a representation as was observed by the Court in its order dated 13th January 2000 and the representation has also been rejected by the Central Government. It was also given out by the learned Govt. Pleader that the Board had already confirmed the decision taken by the detaining authority and in this view of the matter, nothing turns out on the grievance of the petitioner that his representations have not been considered and decided.

11. In this regard, from the resume of the dates as supplied by Mr.A.D.Oza during the course of arguments, it is found that the matter was investigated during 5th August 1999 to 19th August 1999 and the result of the investigation was placed for consideration on 24th August 1999. The Deputy Director, H.Qrs. gave his report on 31st August 1999 and the Director passed the order on 9th August 1999 to take steps for the petitioner's detention under the PBM Act. The Additional Chief Secretary also gave his decision on 9th September 1999 and the same was also approved by the concerned Minister on 9th September 1999. Learned Govt. Pleader has submitted that the decision was taken to detain the petitioner on 9th September 1999. However, the resume of the dates further shows that after 9th September 1999, the Department entered into correspondence with the Indian Oil Corporation on 18th October 1999 and 21st October 1999, meaning thereby that nothing was done between 9th September 1999 to 18th September 1999. This resume further shows that a letter was written on 22nd October 1999 to the FSL which was followed by another letter to FSL on 29th October 1999. On 30th October 1999, the Special Investigation Officer had gone for investigation but the petitioner was not found and the

panchnama was made that the petitioner was not found. On 30th October 1999, 1st November 1999 and 3rd November 1999, the panchnamas were prepared with regard to the absence of Suresh Varma in the course of special investigation of the Tankers. On 3rd November 1999, a notice was issued to Suresh Varma and on 5th November 1999, a notice was issued again to Suresh Varma and the panchnama was prepared. The important fact which emerges from this resume of the dates is that the grounds of detention were submitted on 22nd November 1999 and the same were approved on 22nd November 1999 itself. If the grounds were prepared and submitted on 22nd November 1999 and the same were approved by the concerned Minister on 22nd November 1999, it becomes clear that the decision to detain the petitioner had already been taken in advance on 9th September 1999 as was given out by the learned Govt. Pleader earlier. In any case, if it is accepted that the decision to detain the petitioner had been taken on 9th September 1999 itself, there appears to be no explanation as to why the detention order was not passed immediately after 9th September 1999 and what for the concerned authorities were waiting. Obviously, the grounds of detention were prepared on 22nd November 1999 and therefore, there was no basis for taking a decision to detain the petitioner on 9th September 1999 in absence of grounds for detention. It is also clear that exercise with FSL, preparation of panchnamas and investigation etc. were made even after 18th September 1999 to 22nd November 1999 and hence I find that apart from the fact that the delay from 9th September 1999 to 22nd November remains unexplained, it further goes to show that the decision to detain the petitioner had been taken even prior to the grounds of detention were prepared on 22nd November 1999. In such circumstances, it cannot be said that there was an active application of mind on the part of the authority to detain the petitioner and factually it could not be possible to have the active application of mind to the grounds of detention on 9th September 1999 when the grounds of detention were prepared on 22nd November 1999. Therefore, it appears that the decision for the purpose of detention is anterior in point of time than the date of preparation of grounds. In reply to the petition as has been filed on behalf of the respondents nos.1 and 3 under the signatures of Shri Arvind Agarwal, on page no.227 at internal page 5, it has been categorically stated that,

"I further say that the decision to detain the petitioner under the "PBM Act" has been taken by the competent authority in the State Government much before 14.11.1999, i.e. the date of the telephonic conversation alleged by the petitioner and, hence, the allegation of the petitioner is totally false and is denied".

This part of the statement on oath made in the reply filed by Shri Arvind Agarwal, Joint Secretary to the Govt. of Gujarat also shows that the decision to detain the petitioner had been taken much before 14th November 1999. It is obvious that Mr.Arvind Agarwal has made this statement to controvert the allegation of malafides levelled against him that during this period, the petitioner was pressurised to part with the illegal gratification of Rs.15 lakhs and for that purpose, the Assistant Commissioner, namely, Shri P.R.Shah had contacted the

petitioner's son on 14th November 1999. By making this averment, he wants to say that once the decision to detain the petitioner had already been taken much prior to 14th November 1999, there was no question of demanding illegal gratification by him or on his behalf by the Assistant Commissioner on the date in question. It has also been stated that a letter had also been sent to Shri P.R.Shah, Assistant Commissioner by the Director, Civil Supplies Department along with copies of the contents of para 3(j) to answer and explain and to give his remarks on 3rd January 2000 and this letter was replied by Shri P.R.Shah, Assistant Commissioner, Civil Supplies on 4th January 2000 in which it was stated that he did not know anything about the allegations made in para 3(j) and that the facts stated therein are wrong. The allegations as were levelled in para 3(j) of the petition at page nos.17, 18 and 19 are reproduced as under:

"(j) The petitioner begs to point out that the delay shown in the above referred incidents and more particularly delay from the date of last incident which took place on 5.8.99 till the date of impugned order which came to be passed on 24.11.99 is tainted with colourable exercise of power by the respondent no.3 who has passed the impugned order of detention.

The petitioner submits that since from the 2nd week of August 1999 the persons representing the respondent no.3 himself have made contact with the petitioner-detenu and demanded illegal gratification in the name of the respondent no.3. It is submitted that the petitioner was specifically told that if he will fail to make payment of Rs.15 lakhs he will have to face the order of detention and if the said amount is paid, the name of the petitioner will be excluded from the list of those persons who are supposed to be placed under detention in pursuance to the incident of 5.8.99.

The petitioner submits that it can be seen from the copies of the documents which have been supplied to him that with regard to the incident of 5.8.99 the last statement of Shri Jayeshbhai of Jay Industries, Mahad is recorded on 19.8.99 and thereafter the file for taking action in exercise of power under the said Act was resting on the table of respondent no.3 for more than 2 months. The petitioner submits that lastly his son has received a phone from one Shri Pankajbhai Shah who is Assistant Commissioner working under the respondent no.3 who has specifically told son of the petitioner that since the amount of Rs.15 lakhs has not been paid to the respondent no.3 herein, he has decided to include name of the petitioner in the list of persons sought to be detained for the alleged incident of transportation of solvent. It is submitted that the said phone was received by son of the petitioner on 14.11.99 and since frequently demand of money was made by several persons representing respondent no.3 himself, the telephonic communication dated 14.11.99 is recorded and the said recorded cassette will be produced before the Hon'ble Court at the time of hearing.

The petitioner, therefore, respectfully submits that delay in passing the impugned order is nothing but tainted with unlawful expectation of illegal gratification by the respondent no.3 who is an officer empowered to pass order of detention and,

therefore, the impugned order which has been passed in colourable exercise of power suffers from the vices of malafide and it requires to be quashed and set aside."

These allegations have been denied in the reply by the respondents nos.1 and 3, dated 7th January 2000. Para 13 of the said reply is reproduced as under:

"13. In respect of paragraph 3(j) of the memo of petition, I deny all the contentions and averments made by the petitioner. I say that there is no delay in passing the order of detention, as contented by the petitioner. I say that the decision to detain the petitioner under the "PBM Act" has been taken by the State Government, and not the Respondent no.3, as contented by the petitioner. I say that conducting a detailed enquiry in the irregularities and offences detected, examining the material facts and submitting the papers at various levels in Government for decision requires time.

I say that the allegation by the petitioner against Respondent no.3 is totally false and fabricated, and is a figment of his imagination. I further say that the decision to detain the petitioner under the "PBM Act" has been taken after considering all the material facts, and not merely an incident on 5.8.99, as contented by him.

The contention of the petitioner that the relevant file was resting on the table of the Respondent no.3 for more than two months after 19.8.99 is not true and is denied. I say that the time subsequent to 19.8.99 was required to conduct an enquiry in the irregularities and offences detected, to examine the material facts and submitting the file and papers at various levels in Government for decision in the matter. I say that during this period, the Respondent no.3 was away in Hooghly district, West Bengal for performing duty as Election Observer in the General Elections to the Lok Sabha for a considerable period in two spells. Hence, the allegation of the petitioner is totally false and fabricated, is a figment of his imagination and is factually incorrect. I further say that during this period, the file and papers for taking a decision in the matter have also been submitted to the superior authorities of Respondent no.3.

I say that the allegation of the petitioner regarding Shri Pankajbhai Shah, Assistant Commissioner in the Directorate of Civil Supplies is a figment of his imagination, is not true and is denied. I say that the said Pankajbhai Shah has been asked by Government to submit his remarks with respect to the allegation made by the petitioner, and he has informed Government that he does not know anything about the matter. The copy of the letter written to Shri Pankajbhai Shah by the Government and the reply of Shri Pankajbhai Shah are annexed herewith and marked as "Annexure-A" and "Annexure-B" respectively. I further say that the decision to detain the petitioner under the "PBM Act" has been taken by the competent authority in the State Government much before 14.11.1999, i.e. the date of the telephonic conversation alleged by the petitioner and, hence, the allegation of the petitioner is totally false and is denied.

I again say that the order of detention against the petitioner has been passed by

the State Government, and not by Respondent no.3, as contended by the petitioner and, hence, the allegation made by the petitioner against the Respondent no.3 is baseless and false, and deserves to be dismissed."

12. It has been contended by the petitioner that the last statement was recorded on 19th August 1999, but the detention order was passed as late as on 24th November 1999. The averment was made in para 13 of the reply as aforesaid that during this period, i.e. 19th August 1999 onwards the respondent no.3 was away in Hooghly district, West Bengal for performing duty as Election Observer to the Lok Sabha for considerable period of two spells. The actual period was not stated in the reply and the Court called upon the Govt. Pleader to point out as to what was the actual period the deponent of this reply, i.e. Shri Arvind Agarwal was out to West Bengal for two spells and he has stated that Shri Arvind Agarwal had gone there for two spells from 10th September 1999 to 18th September 1999 and again from 25th September 1999 to 11th October 1999. Even if this explanation of two spells is taken into consideration, one fails to understand that if the decision to detain the petitioner had been taken on 9th September 1999, the issuance of the order of detention could not be made to wait till the return of Shri Arvind Agarwal as an Election Observer. The obligation with regard to prevention of black marketing and the detention for that purpose is much more important than the question of going as Election Observer and even if Shri Arvind Agarwal had gone as Election Observer to West Bengal and was there from 10th September 1999 to 18th September 1999 and again from 25th September 1999 to 11th October 1999 and thereafter on his return on 11th October 1999, the issue of the detention could not be still made to wait further as late as 24th November 1999. Even otherwise, the absence of a particular officer could not be a ground for the purpose of holding the detention order. If the decision to detain the petitioner had already been taken on 9th September 1999 and had also been accepted by the concerned Minister, the detention order could be issued by any other authorised officer. As against the ground which was taken on behalf of the petitioner that the detention order had not been issued by the competent authority inasmuch as respondent no.3 Shri Arvind Agarwal was not the competent authority to decide the question of detention, it has been specifically urged by learned Govt. Pleader that it also emanates from the body of the detention order itself that the decision to detain the petitioner had been taken by the Government itself and Shri Arvind Agarwal has only signed the detention order the detention order has only been issued under his signatures. Thus the actual authority to decide the question of petitioner's detention is the Government and therefore, under the Rules of business, it could be issued by any other competent authority working in the Department in absence of Shri Arvind Agarwal. Thus, absence of Shri Arvind Agarwal from office out to West Bengal as Election Observer is of no consequence in this regard and in such matters of detention of persons so as to preventing from black marketing cannot be made to wait for such long time if it is considered by the detaining authority that it was necessary to detain the petitioner so as to deter him from activities of

black marketing. In the facts and circumstances of this case, this Court is not at all satisfied with the explanation which has been sought to be given for the period from 9th September 1999 till the date on which the detention order was issued. If we consider in alternative that on 9th September 1999 in fact no decision had been taken to detain the petitioner and on that date it was only decided to take steps for the detention of the petitioner as was subsequently sought to be argued by the learned Govt. Pleader, it remains to be explained as to how even such a decision could be taken on 9th September 1999 when the grounds of detention themselves were ready on 22nd November 1999. Besides it, this alternative submission is factually incorrect and runs counter to the statement on oath made by Shri Arvind Agarwal that the decision to detain the petitioner had been taken much before 14th Nov.1999. I find that the stand taken by the respondents in this regard is wholly inconsistent. If the preparation of the grounds is considered on 22.11.1999, there is no question of taking any decision to detain the petitioner on 9th September 1999 itself and it is an admitted fact that the grounds of detention were submitted on 22nd November 1999. In such cases if the detention orders are made to wait for a long time, it defeats the very purpose of passing the detention order and the facts of the present case also show that the decision had been taken without proper and active application of mind in as much as even the grounds of detention were not available on 9th September 1999 and the same were available on 22nd November 1999. The statement made by Shri Arvind Agarwal in his reply that the decision to detain the petitioner had been taken much before 14th November 1999 by itself is sufficient to vitiate the detention order because admittedly the grounds were ready only on 22.11.1999 and if the decision had already been taken much before 14.11.1999 where is the question of application of mind to the grounds which were not available and could not be available before 22.11.1999? These facts apart from showing the unexplained delay also indicate the non-application of mind to the facts which are mentioned in the grounds which have been considered to be germane for the purpose of the detention order by the detaining authority itself inasmuch as on those grounds dated 22nd November 1999, the decision had been taken on 22nd November 1999 and these grounds could not be available for consideration by the detaining authority itself, i.e. Government itself on any date prior to 22nd November 1999.

13. Apart from it, it was also contended that ground no.10 in the grounds of detention show that the petitioner had violated Clauses 2, 3, 4(2), 22 of the Order of 1981 and had also violated Condition Nos.4, 5 and 8 of the Licence under the Essential Commodities Act, 1955 and Section 7 thereof. Learned Counsel Mr.Y.N.Oza has submitted that in the papers which were supplied to the petitioner by the detaining authority, page 169 of the compilation (page 194 of the paper book) does not show any Clause such as 4(3) and this also shows that there was a total non-application of mind. It has been further submitted that even if we assume that such Clause 4(3) exists, the same was not supplied to the petitioner and therefore, his right of effective representation has been

seriously prejudiced. So far as the factual aspect of this allegation that Clause 4(3) as was mentioned in the grounds of detention does not find place at page no.169 of the compilation of the papers which were supplied to the petitioner, learned Govt. Pleader Mr.A.D.Oza has submitted that Clause 4(3) in Order of 1981 does exist and during the course of arguments, he supplied a Gazette Notification dated 2nd July 1987 in which by way of amendment in the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, Clause 4(3) has been inserted so as to read that, "Every Licence issued under this Order shall be non-transferable". The relevant part of this Gazette Notification dated 2nd July is reproduced as under:

"In the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981:-

(3) Every Licence issued under this Order shall be non-transferable."

However, Mr.A.D.Oza, learned Govt. Pleader has submitted that it was only by mistake that the unamended order was supplied to the petitioner. The Gazette Notification enclosed at page no.164 of the compilation (page 189 of the paper book) is a Notification dated 31st July 1981 and the Notification incorporating Clause 4(3) was issued on 2nd July 1987 and therefore, the amendment as per the Notification dated 2nd July 1999 stood incorporated in the Order in July 1987 itself. Yet a copy of the unamended order was made available to the petitioner which did not contain Clause 4(3) as was inserted on 2nd July 1987. This clearly shows the total non-application of mind on the one hand and in such matters, it cannot be said that the right of making an effective representation has not been affected. The violation of Clause 4(3) in the instant case on the question of allegation of licence which was not transferable was a very material allegation and if the relevant provision had not been made available to the petitioner, he could not defend himself effectively and represent against such a violation, in absence of the knowledge of any such provision existing on the Statute book. Mr.A.D.Oza, learned Govt. Pleader submitted that ignorance of law is no excuse and since it is a law, petitioner should have known it and he is supposed to know it. The phrase "ignorance of law is no excuse" may be available against the defence in an actual trial if at all a person is subjected to trial, but in matters of preventive detention, when a person is detained on grounds more than one including that he had violated Clause 4(3) of the Order and he does not know what is Clause 4(3) as per the material supplied to him in which Clause 4(3) is missing, in the context of right of making effective representation guaranteed by the Constitution of India, it cannot be said that he was supposed to know the particular provision not contained in the document supplied to him. If he violated such a law, ignorance will not be a defence when he goes to trial but on the question of prejudice to the effective right of representation under Article 22(5) of the Constitution of India, the plea as has been advanced by the Govt. Pleader cannot be accepted and therefore, on this issue, I find that not only that the order has been passed without application of mind, I further hold that the right

of effective representation has been certainly affected adversely and the petitioner has been subjected to a prejudice which cannot be said to be of no consequence in the facts of the present case.

14. Coming to the allegations of malafide apart from the allegations which are levelled in ground 3(j) which have remained uncontroverted, it may be pointed out that the allegations as have been levelled in para 3(JJ) have remained absolutely uncontroverted. The contents of para 3(JJ) are reproduced as under:

"(JJ) The petitioner submits that Shri Agarwal, who has passed the order has made preventive detention of his source of income. It has become a business for him. There are numerous instances wherein complaints being made to the Hon"ble Chief Minister that Shri Agarwal demands huge amount for either passing order or cancelling the order. In other words, he will first give a phone call through his associates and if his demand is not satisfied, he will pass the orders and if any he will pass the orders on the most flimsy grounds as he has done in the instant case. That as per law the difference of density, which is required is 0.0030%. Shri Agarwal has passed orders and has instrument in getting the orders passed whereby the density has been found to be 0.0031%, while in cases where density has been found to be 0.0031% much higher than specified percentage he has not passed orders of detention. The following are the three cases where density has been found at large variance of required percentage:

1) Raksha Agro Consumers, Pilwai. 0.0151, 2) Gheewasa Petroleum, Bareja. 0.0201.

Wherein above cases, Shri Agarwal has proposed detention. However, subsequently for dubes reasons the said proposal was dropped and the detention orders are not passed. Not only that but the said petrel pumps are permitted to run without any qualms. In the case of Gheewala Petroleum, after dropping proposal of detention and as an eye wash for knowledge of people at large, a suspension of licence for period of only 90 days was issued. At the cost of repetition the petitioner submits that in the last one year only Mr.Agarwal has passed orders of detention against owners/partners of the petrel pumps where density difference is found to be negligible and has let off big parties where density difference is found to be even 0.0201% and that difference shows how corrupt the officer is. In the instant case also though the last statement was recorded on 19/8/99, deliberately orders were not passed for more than 3 months because Shri Agarwal had expectation from the petitioners and since when he was fully convinced that the petitioner is not going to pay a penny he resorted to such dishonest order."

Thus, while the allegations of malafides as levelled in para 3(JJ) have remained totally uncontroverted, the allegations levelled in para 3(j) are that his son had received phone from one Shri Pankajbhai Shah who is working under the respondent no.3, who has specifically told the petitioner's son that since the

amount of Rs.15 lakhs has not been paid to the respondent no.3 herein, he has decided to include the name of the petitioner in the list of persons sought to be detained for the alleged incident of transportation of solvent; that the said phone was received by son of the petitioner on 14th November 1999 and since frequent demand of money was given by several persons representing respondent no.3 himself, the telephonic communication dated 14th November 1999 was recorded and the cassette would be produced before the Court at the time of hearing. Such recorded cassette was in fact produced before the Court and played and was heard in the open Court and the script of the telephonic conversation which runs into 12 pages was also produced and a copy thereof has also been given to the Govt. Pleader. It may not be possible for this Court to enter into any exercise so as to record any finding on the question of facts for which there is no oral evidence recorded before the Court itself, but these allegations along with the recorded conversation script of which has been gone through by me after hearing the conversation itself on the cassette which was played before the Court and after sifting this conversation against the reply given by Shri Arvind Agarwal in the reply dated 7th January 2000 that the decision to detain the petitioner under the PBM Act had been taken by the competent authority in the State much before 14th November 1999 and also taking note of a bald reply dated 4th January 2000 given by Shri P.R.Shah, Assistant Commissioner against whom it has been alleged that he had talked on phone and whose conversation had been recorded in which the names of respondent no.3 Shri Arvind Agarwal has also appeared along with the name of "Maruti Adhesives" etc., I find that there is no specific denial of these allegations of malafides and the material as has been placed on record, i.e. the allegations as levelled in the petition for which there is no specific denial and the conversation as has been recorded coupled with the fact that in fact the grounds of detention were considered only on 22nd November 1999 and to that extent, the statement of Shri Agarwal that the decision to detain the petitioner had been taken much prior to 14th September 1999, i.e. the date of telephonic conversation, I find that there is a strong prima facie case for holding an inquiry into these allegations against Shri Arvind Agarwal. In the facts of the present case, the conduct of Shri Arvind Agarwal is certainly under clouds, it lacks bonafides to the extent of being malafide. Allegations against him are of very serious nature of demanding bribe and that if the same is not paid the concerned party may be subjected to preventive detention. He is a party to this petition has failed replies, was represented through a lawyer - but has failed to restore the deflected needle of suspicion against him to the original position. Such allegations eloquently demand a deep probe against him. For that purpose, it will be appropriate if the Chief Vigilance Commissioner of Central Vigilance Commission of India, New Delhi is directed to hold an inquiry into the allegations against Shri Arvind Agarwal. For the purpose of embarking upon such an inquiry against the respondent no.3 Shri Arvind Agarwal even the State Government should not have any legitimate objection. I hereby order that the relevant material in this regard, i.e. complete set of all the pleadings with documents forming the part of the record of this case along with

the copy of this order, the script of the audio cassette along with the cassette which may be supplied by the petitioner be sent to the Chief Vigilance Commissioner of Central Vigilance Commission of India, New Delhi for such inquiry as he may deem fit against Shri Arvind Agarwal, Jt. Secretary to the Govt., Food, Civil Supplies and Consumer Affairs Deptt., 14, Sardar Bhavan, 5th floor, Sachivalaya, Gandhinagar (Gujarat) who may send his report to the concerned functionaries of the Central Govt. as well as Govt. of Gujarat for appropriate action in accordance with law.

15. In the result and in the facts and circumstances of this case, even if it is found that the detention order is not vitiated on account of non-supply of translation of the documents in English or Hindi from Gujarati or that the impugned order does not suffer from any other vices as alleged, I find that the order suffers from the vice of non-application of mind as has been held hereinabove and further that the issue of the detention order appears to have been withheld for considerable period for reasons which cannot be said to be germane or authorised or permissible under the law and also that in the facts of this case, the right of the detenu to make an effective representation has been subjected to a prejudice which cannot be said to be of no consequence. The impugned order of detention therefore cannot be sustained in the eye of law.

16. For the reasons as aforesaid, the detention order dated 24th November 1999 passed against the petitioner and impugned in this petition cannot be sustained in the eye of law. The same is hereby quashed and set aside. The total period under the detention order is six months. The detention order was passed on 24th November 1999 and the petitioner was detained on 17th December 1999. It is given out that the petitioner remained out on parole on and from 27th December 1999 to 10th January 2000 and obviously he has suffered detention for 66 days. It is directed that the petitioner Jinendrakumar Setulal Jain under detention at Sabarmati Central Jail, Ahmedabad, shall be released forthwith, if not required to be detained under any other order of detention or any other criminal case. This Special Civil Application is hereby allowed. The Rule is hereby made absolute. No order as to costs. Direct service today is permitted.

Mr. K.T. Dave, learned Asstt. Govt. Pleader has prayed that the operation of this order be stayed. I do not find any ground to stay this order. The unusual request is hereby declined.

Learned Counsel for the petitioner has also orally prayed that the petitioner may be granted compensation for the unlawful detention. I do not find that any order in the facts of this case is required to be passed granting compensation to the petitioner. However, it would be open for the petitioner to file such a claim by way of separate proceedings if it is found by the the Central Vigilance Commission of India in the enquiry as ordered hereinabove that any demand for illegal gratification was made by and on behalf of the respondent no.3 and he was detained only for the reason that he did not pay the said amount to the respondent no.3.