

(2003) 06 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 4651 of 2003

Kanthubhai Khanji Vaghela

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities
Act, 1980 — Section 3(1)

Citation : (2004) 1 GLR 801

Hon'ble Judges : J.N. Bhatt, Acting C.J.

Bench : Single Bench

Advocate : Subhadra G. Patel, for the Appellant; Government Pleader for
Respondent Nos. 1-2 and 4 and P.J. Davawala, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, Acting C.J.

1. By this petition under Article 226 of the Constitution, the petitioner-detenu has assailed the detention order recorded by the respondent no.2, the then District Magistrate, Patna on 04.3.2003, in purported exercise of powers under Sub Section [1] of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ["the P.B.M. Act" for short] whereby the petitioner-detenu came to be detained for indulging in black marketing and illegally disposal of huge quantity of essential commodities, meant for the distribution of persons, covered under the Below Poverty Line Scheme in village Gochand, Taluka Sami, District Patna, wherein the petitioner was licensed to run fair price shop and was running a government authorized fair price shop in the name of "Shri Pandit Dindayal Grahak Bhandar", contending that the order of detention is illegal, invalid, null and void, arbitrary and unconstitutional.

2. The learned advocate appearing for the detenu has raised the following

contentions at the time of hearing, which are seriously countered by the learned A.G.P.

[1] Out of the documents supplied, three documents being the copies of the ration card at page 41,52 and 83 are illegible

[2] that the representation made by the detenu is considered by the authority without explaining the delay

3. After having heard the learned advocates appearing for the petitioner-detenu and the learned A.G.P. on behalf of the respondents and considering the order of detention, the grounds of detention and the entire documentary evidence placed on record, and upon its analysis and evaluation, this Court is of the opinion that the challenge against the questioned detention order is merit less, requiring no interference in exercise of extraordinary, equitable, prerogative, discretionary constitutional writ jurisdiction enshrined in Article 226 of the Constitution of India for the following reasons.:-

In so far as the first ground of challenge is concerned, upon examination of the documents relied on by the Detaining Authority, while passing the order of detention, they could not be said to be in any way even remotely illegible. The documents which are challenged to be illegible are threadbare examined and dispassionately considered. They are in Gujarati language and they are quite legible causing no problem to understand them. Therefore, apart from the submission on behalf of the respondent authority that those are the copies of the documents forming ration card recovered from the detenu, after the process was initiated by the respondent authority, in substance, the plea that the alleged documents all illegible is not well founded and on facts, cannot be acceded to. It leaves no any manner of doubt, that they are legible and therefore, the first contention challenging the detention order at the time of hearing must go upon due consideration and accordingly it is rejected.

4. The second ground of attack against the questioned detention order that there is an unexplained delay in consideration of the representation made by the detenu is also unsustainable, upon true analysis and evaluation of the facts on record. Following three authorities have filed their affidavits in reply controvert the relevant allegations made in the petition.

[1] Deputy Secretary to the Government of Gujarat Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar;

[2] Under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi, and

[3] District Magistrate, Patna

5. Apropos, the second ground of challenge that the questioned detention order is vitiated, as right to make effective representation is seriously prejudiced and also that the continued detention is illegal for delayed consideration of the

representation is also spelt out to be unsupportable and unacceptable. In this connection, it may be noted that on behalf of the respondent No.1, State of Gujarat, the authority which processed and considered the representation of the detenu, affidavit in reply is filed by Food Civil Supplies and Consumer Affairs Department, wherein the second ground of attack against the detention order is controverted and countered.

6. It is found from the record and the affidavits in reply that the representation of the detenu, which was received by the respondent no.1, State of Gujarat, was considered and duly rejected and it was communicated to the detenu. The representation dated 20.3.2003 made by the detenu, addressed to the respondent no.2, the District Magistrate, Patna, came to be rejected by the Detaining Authority on 27.3.2003 and the same was forwarded by the Detaining Authority to the State Government with a letter dated 27.3.2003 like that on the same day. It was received by the respondent no.1, in the Special Branch of Food, Civil Supplies and Consumer Affairs Department, on the next date like that on 28.3.2003. It is clearly and evidently borne out from the affidavit in reply, filed on behalf of the respondent no.1 that the representation was immediately processed and attended and the file was prepared along with the representation by the Special Branch on the very next date like that on 29.3.2003. It was attended by the concerned Section officer of the Branch on the same date, it was also considered by the Under Secretary and the Deputy Secretary of the department. All the three concerned officers examined and applied mind and cleared the file on the same date and forwarded to the Secretary concerned on 31.3.2003, as there was Government holiday on 30.3.2003. It was placed before the Hon'ble Minister concerned in charge of the Department of Food, Civil Supplies and Consumer Affairs Department for consideration and appropriate direction and order on 31.3.2003 and upon consideration, it came to be rejected on the same date like that on 31.3.2003 and on receipt of the file back from the Ministry to the Department, and the concerned Branch immediately communicated and intimated to the detenu on 02.4.2003, through Jail Authority. In the aforesaid factual profile and panorama, how it could be said to be, for a moment that the consideration of the representation was delayed? The second ground of challenge is without any substance and merits and only deserves rejection. Therefore, it is rejected.

7. It may be mentioned that the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 is designed to provide for detention in certain case for the purpose of prevention of black marketing and maintenance of supply of essential commodities to the community. Although, the essential commodities Act, 1955 is made comprehensive provisions for the regulation of production, supply, distribution prices trade and commerce in commodities declared essential thereunder with the penal provisions in the Act. It was felt by the Parliament in its wisdom that more stringent and more effective measures are required in accordance with the recommendation of the Law Commission of India in its 47th Report and upon, consideration of the recommendations, it was

found expedient to legislate and to provide more efficient and effective measures for the malady of black marketing and abuse and misuse of essential commodities. The Prevention of Black Marketing Act 1980 came to be enacted.

8. In a country, like ours, where due to following aspects, the regulation and Maintenance of Supply of Essential Commodities declared under the Act indubitably required effective compliance and efficient implementation of the provisions of the P.B.M.Act so that a common man, in a democratic country like our, who is wedded to the doctrine of philosophy of welfare State could receive the supply of essential commodities at a reasonable and fair price. Those who are indulging in making inroad on the provisions of P.B.M.Act by indulging in undesirable, illegal and unwarranted indulgence in the activities of black marketing and distribution of essential commodities must be dealt with stringent and strict measures bearing in mind the constitutional and statutory safeguards provided for resorting the preventive detention. In the opinion of this Court, the detaining Authority, District Magistrate, Patna in the case on hand, and respondent no.1, State of Gujarat have justified the questioned detention under the P.B.M.Act apart from the fact that the petitioner-detenu has failed to establish any material or any provisions to show it invalid illegal, arbitrary, without application of mind and unconstitutional.

9. Consequently, the unsuccessful challenge against the justified and successful detention order, leaves this Court with no alternative but to raise its hands in helplessness and to reject the petition. Accordingly, the petition is rejected. Rule is discharged.