
(1986) 10 GUJ CK 0008
In the Gujarat High Court

Kishore Amrutlal Patel

APPELLANT

Vs

Rajiv Takru and Others

RESPONDENT

Date of Decision : 08-10-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 5A
Essential Commodities Act, 1955 — Section 3, 5, 7
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (1988) CriLJ 826 : (1987) 2 GLR 1031

Hon'ble Judges : S.B. Majmudar, J;R.J. Shah, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—The petitioner who is son of the detenu Amratlal Mohanlal Patel, has challenged the order of his father's detention which is at Annexure "A" to the petition. The impugned order of detention dated 21-7-1986 recites that the District Magistrate, Rajkot is satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community, it is necessary to detain the detenu and consequently, the authority has passed the impugned order in exercise of his power as conferred by Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short). The detenu was supplied with grounds of detention of even date a copy whereof is at Annexure "B" to the petition. The grounds against the detenu inter alia allege that the detenu as the proprietor of Patel Amrutlal Mohanlal Oil Mill, Rajkot, was carrying on manufacture of groundnut oil in his mill and had allegedly committed breaches of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 ("the Order" for short) promulgated by the State of Gujarat in exercise of its power u/s 3(1) read with Section 5 of the Essential Commodities Act, 1955.

2. x x x x.

3. Mr. K. G. Vakharia, learned Advocate for the petitioner raised various contentions in support of the petition. However, in our view, one of the contentions canvassed by him goes to the root of the matter and consequently, it does not become necessary for us to deal with other contentions. The contention which has appealed to us and on the basis of which this petition is required to be allowed is as under:

4. The detaining authority has relied upon various grounds in support of the detention order and they are listed at items Nos. 1 to 13 in the grounds of detention. At item No. 12 is found the ground to the effect that on 16-2-1986 when two samples were taken by the Food Inspector, Rajkot from the stock of Kitchen Queen brand groundnut oil manufactured in the detenu's mill, it was found that the groundnut oil manufactured by the detenu was not up to the standard required by the Prevention of Food Adulteration Rules and that showed that the detenu was indulging in manufacturing adulterated groundnut oil in his mill. It is vehemently contended by the learned Advocate for the petitioner that the aforesaid ground is totally extraneous to the scope and ambit of Section 3 of the Act under which the detention order can be passed against the concerned detenu and as such extraneous ground has entered the subjective satisfaction of the detaining authority and as there is no provision analogous to Section 5A of the COFEPOSA in the present Act, even though there might be other relevant grounds supporting the detention order, the entire subjective satisfaction would fail on account of consideration of one extraneous ground and only on this short point, the detention order is liable to be quashed.

5-6. x x x x.

Mr. D. K. Trivedi, learned Advocate for the respondents vehemently submitted before us that what is stated in ground No. 12 of the grounds of detention is in the first place not at all irrelevant or dehors the provisions of Section 3(1) of the Act. He alternatively contended that even assuming that ground No. 12 is extraneous, in para 2 of the grounds of detention, the detaining authority himself has stated that separate order of detention can be passed against the detenu on each and every ground mentioned in the grounds of detention and on that basis, only one order has been passed against the detenu. It was, therefore, submitted that even if ground No. 12 is extraneous, the detaining authority was satisfied independently of other grounds and, therefore, the detention order can be sustained on that separate satisfaction permeating rest of the grounds. In this connection, Mr. Trivedi submitted that in the preventive detention legislations like COFEPOSA where Section 5A has been enacted by the legislature, the Court is required to invoke deeming fiction that the detention order though based on composite satisfaction on diverse grounds, can be sustained on relevant grounds even if some of the grounds are found to be irrelevant, illegal or extraneous. That the said exercise will be open to the Court in cases where grounds of detention do not clearly indicate application of mind of the detaining authority independently of separate grounds and the detention order exhibits composite

satisfaction arrived at on diverse grounds. However, in the present case, once the detaining authority which is the author of the subjective satisfaction himself states in para 2 of the grounds that he is satisfied on each of the grounds and supports separate detention order against the detenu, what the legislature enjoins the Courts to do under the provisions like Section 5A of the COFEPOSA has actually been done by the detaining authority himself in the present case and, therefore, absence of *pari materia* provision like Section 5A of the COFEPOSA in the present case would make no difference on the facts of this case and the detention order can be sustained on the remaining relevant grounds. So far as the aforesaid twin defences put forward by the respondents to the contention raised by the learned Advocate for the petitioner go, we shall first deal with the moot question as to whether ground No. 12 as mentioned in the grounds of detention in support of the detention order is extraneous to the scope and ambit of Section 3(1) of the Act. It is obvious that if it is not found extraneous, no further question will survive. We have already mentioned earlier what is stated in ground No. 12 of the grounds of detention. It becomes obvious that the detaining authority has pressed in service for issuing the impugned order alleged adulteration made by the detenu in the manufacturing process undertaken at his mills where Kitchen Queen brand groundnut oil was manufactured. The question whether such ground can be validly pressed in service for basing the order of detention under the Act or not will have to be decided in the light of Section 3(1) of the Act. It becomes, therefore, necessary to reproduce Section 3(1) of the Act. The same reads as under:

3.(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation : - For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means -

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955, or under any other law for the time being in force relating to the central of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community, or

(b) dealing in any commodity-

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955, or

(ii) with respect to which provisions have been made in any such other law as is referred to in Clause (a), with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

A mere look at the aforesaid provision shows that only in given contingencies, power is given to the appropriate authority to detain person under the Act. The detaining authority has to be satisfied of course subjectively with respect to the detenu that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community, it is necessary so to do. Therefore, the emphasis is on the need to removing the detenu from harm's way as that maintenance of supplies of commodities essential to the community goes on unimpaired, meaning thereby, that the detenu must be indulging in such nefarious activities which would, if not insulated against, would result in disruption of supply of essential commodities to the community. Thus, the legislature envisages preventive detention of the detenus who were, if not detained, likely to continue with their nefarious activities which would have pernicious effect of diversion through unauthorised channel, supplies of essential commodities which are meant to serve the needs of the community. Even apart from that, explanation to Section 3(1) in terms lays down that the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" would mean - any of the activities listed in clauses (a) and/or (b) of the Explanation. As the explanation seeks to define the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" and is not an inclusive explanation, only these nefarious activities of the detenu which fall in either Clause (a) or (b) or both can be validly pressed in service by the detaining authority for basing the order of detention against the detenu u/s 3(1) of the Act. So far as Clause (a) is concerned, the material before the detaining authority must show that the detenu was committing or instigating to commit any offence punishable under the Essential Commodities Act, 1955 or in the alternative, the material must show that the detenu was committing or instigating any person to commit any offence under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community. So far as the aforesaid provisions in Clause (a) of the Explanation go, Mr. Trivedi for the respondents sought to place reliance on the first part of Clause (a), and submitted that ground No. 12 furnished data to indicate that the detenu had committed an offence punishable under the Essential Commodities Act, 1955 and, therefore, ground No. 12 would become relevant under the first part of Clause (a) of the Explanation. Mr. Trivedi did not press in service the second part of the Clause (a) of the Explanation and in our view, rightly so, because the second part would apply only in cases where the material indicates that the detenu had committed or instigated any person to commit any offence under any other law for the time being in force relating to the control of the production,

supply or distribution of, or trade and commerce in, any commodity essential to the community or which sought to regulate commerce or trade. It cannot be gainsaid that the Food Adulteration Act is any other law for the time being in force. However, it is not a law which relates to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community. It is a law which deals with control of the quality of production rather than mere control of the production. Therefore, any alleged breach of the provisions of the Food Adulteration Act would not be covered by the second part of Clause (a) of the Explanation. However, Mr. Trivedi pitched his case on the first part of Clause (a) of the Explanation for making ground No. 12 relevant. He submitted that by manufacturing adulterated essential commodity, the detenu has committed a breach of the provisions of the Essential Commodities Act, 1955 and it will become an offence u/s 7 thereof. In order to highlight this contention, he invited our attention in the Essential Commodities Act. Section 3(1) thereof provides that "if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein". u/s 5 of the said Act, the Central Government is authorised to delegate its powers u/s 3 by a notified order in favour of any State Government or such officer or authority subordinate to a State Government or such officer or authority subordinate to the Central Government, as may be specified in the direction. In exercise of the powers delegated to the State of Gujarat by Section 5 of the Essential Commodities Act, read with Section 3(1) thereof, the State of Gujarat has promulgated the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order 1981. Mr. Trivedi submitted that any breach of the said Order would attract Section 7 of Essential Commodities Act which deals with penalties. It provides that if any person contravenes, whether knowingly, intentionally or otherwise, any order made u/s 3, he shall be liable to be punished as directed by the said section. It cannot be disputed that any breach of any of the clauses of the Order in question, would clearly attract Section 7 of the Essential Commodities Act, 1955 and once that is demonstrated, the first part of Clause (a) of the Explanation would get attracted. The short question is whether breach of the Prevention of Food Adulteration Act can be said to be covered by any of the clauses of the Order. If it is found that it is as covered, then ground No. 12 would become relevant under the first part of Clause (a) of the Explanation to Section 3(1) of the Act. With that end in view, we have to scan through relevant provisions of the Order. The preamble of the Order recites that whereas the Government of Gujarat is of the opinion that it is necessary and expedient so to do for maintaining supplies of certain essential commodities and for securing their equitable distribution and availability at fair prices, therefore, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with the order of the Government of India,

the Order in question is promulgated. It, therefore, becomes at once clear that the scope and ambit of the Order is to ensure maintenance of supplies of essential commodities and for securing their equitable distribution and availability at fair prices, Thus, the provisions underlying the Order have provided maintenance of supply channel of essential commodities as that they can be made available at fair prices to the persons for whom they are meant. There is no indication therein about maintenance of quality of such essential commodities. But even that apart, when we asked Mr. Trivedi for the respondents to point out any relevant clause of the Order which can be said to have been committed breach of by the detenu by allegedly indulging in adulterating the groundnut oil during the process of his manufacture at his Mills as alleged in ground No. 12, he submitted that clause 1 read with clause 2 of the Order would be relevant for that purpose. When we turn to clause 3 of the Order, we find that it deals with licensing of the dealers and producers. It lays down that on and after the 20th day of April 1961, no person shall carry on business as dealer in (a) edible oilseeds including groundnut in shell, edible oils including hydrogenated vegetable oils, foodgrains, pulses, khandsari and sugar, if the stock of such essential article in his possession at any time exceeds the quantities specified, against it in the table below; and (b) cement or petroleum products, except under and in accordance with the terms and conditions of a licence granted under this Order. Under Sub-clause (2) of clause 3, it is laid down that on and after the 20th day of April, 1981, no person shall carry on business as a producer in essential article except under and in accordance with the terms and conditions of a licence granted under the Order. Mr. Trivedi then took us to the pro forma of licence which can be granted to a manufacturer or producer of essential commodities, i.e. groundnut oil in the present case. That is found at form "B" annexed to the Order. In this statutory pro forma licence, various terms and conditions are provided which the licence-holder as a producer of essential commodities has to comply with. When we turn to those relevant statutory terms and conditions of the licence as found in the pro forma, we find that nowhere it is indicated that manufacturer of essential commodities shall maintain particular standard or quality of the essential commodities manufactured by him. In fact, any quality control seems to be totally foreign to the scope of any of the terms and conditions of form "B" of the licence and it is understandably so because the Order deals with control of quantity and not quality of essential commodity and ensures its proper distribution and supply amongst the consumers the members of the community for whom essential supply is required to be regulated. That is the reason why in none of the conditions laid down in the pro forma licence - Form B, of the licence is be given to the manufacturer of essential commodity, maintenance of quality of essential commodity is insisted upon. When we turn to clause 8 of the Order, we find an injunction therein that no holder of a licence issued under this Order or his agent or servant or any other person acting on his behalf shall contravene any of the terms or conditions of a licence issued to him. It is, therefore, obvious that if any of the terms and conditions of the licence is committed breach of, by the holder of the licence, he would be held to have

committed an offence as contemplated by Section 7 of the Essential Commodities Act and could make him liable to be prosecuted for the same. As maintenance of quality and standard of manufacture of essential commodity is not even provided for in the terms and conditions of the pro forma licence as indicated by form "B", it cannot be said that if manufacturer of essential commodity commits adulteration during the manufacturing process of the essential commodity or even thereafter, he becomes liable to be prosecuted u/s 7 of the Essential Commodities Act. May be the act of adulteration may expose him to the music under the provisions of the Food Adulteration Act which is entirely a different enactment. But so far as breach of the provisions of the Essential Commodities Act is concerned, the said ground would not be covered by Section 7 of the Essential Commodities Act and cannot be pressed in service as indicating an offence under the Essential Commodities Act. Consequently, the alleged breach of the provisions of the Essential Commodities Act as indicated in ground No. 12 is not shown to have been covered by Section 7 of the Essential Commodities Act and, therefore, that ground would clearly be extraneous to the scope and ambit of the first part of Clause (a) of the Explanation to Section 3(1) of the Act.

7. However, Mr. Trivedi for the respondents made a frantic attempt to fit in ground No. 12 in the scheme of the Order by inviting our attention to condition No. 3 of the licence for manufacturing essential commodity as found in form "B". The said condition reads as under:

Every licence holder shall take adequate measures to ensure that essential articles stored by him are maintained in proper condition and that damage to essential articles due to ground moisture, rain, fire, insects, red ants, birds and such other causes are avoided. The licence holder shall also ensure that fertilisers insecticides and poisonous chemicals likely to contaminate essential articles are not stored along with essential articles in the same godown or in an immediate juxtaposition of stocks of essential articles.

Mr. Trivedi submitted that if a manufacturer of essential commodity who is a licence holder to whom licence is granted in form "B" adulterates essential commodity during the process of his manufacture, it can be said that he does not maintain the essential commodity in proper condition and to that extent, he can be said to have committed a breach of condition No. 3 of the licence. It is not possible to agree with the aforesaid contention for obvious reason that all that condition No. 3 of the licence in form B contemplates is that the licence holder, may be a manufacturer or may be a person who is a retailer or wholesaler or commission agent, even apart from being producer of essential commodity, has to see is it that stock of essential commodity in his control is properly stored so that it is not pilfered or damaged during the time it remains with him in stock so that essential commodity properly stored is made available in good condition to the ultimate consumers and the supply line does not get dried up disrupted pro tanto. The emphasis of condition No. 3 is on proper storage of essential commodity and has nothing to do with proper manufacture thereof. Condition No.

3 would start operating after the essential commodity in question is manufactured and a stage is reached when it is to be stored for the purpose of its ultimate journey to the consumers through the channel of supply of essential commodity and while it enters the stream of such supply. The second part of condition No. 3 highlights the purpose underlying condition No. 3. It clearly indicate that essential commodity is to be properly stored as that damage is avoided. That also underscores the scope and ambit of condition No. 3 viz. that manufactured essential article, after it is manufactured, has to be properly stored so that its existing condition does not deteriorate after it is manufactured but condition No. 3 does not travel any further and does not indicate how quality of the essential commodity is to be maintained during its manufacture. Consequently, ground No. 12 cannot be fitted even in the scheme of condition No. 3 of the licence form "B" as tried to be submitted by Mr. Trivedi.

8. As a result of the aforesaid discussion, it becomes obvious that the alleged breach of the provisions of the Food Adulteration Act as mentioned in ground No. 12 is totally extraneous to the scope and ambit of Section 3(1) of the Act and such ground can never furnish any valid material for supporting detention order and the subjective satisfaction underlying the same, as contemplated by Section 3(1) of the Act. Once that conclusion is reached, the alternative question would survive for consideration viz, that even if ground No. 12 is found to be irrelevant and extraneous will the subjective satisfaction underlying the detention order fail wholesale or not? The legal position on this aspect is well settled. We may only refer to a Full Bench judgment of this Court which has placed reliance on series of Supreme Court judgments on the point. In the case of Vasanlal v. G.M. Dike 17 GLR 122, the Full Bench of this Court consisting of B. J. Divan, C J. (as he then was) and J. B. Mehta and B. K. Mehta, JJ. (as they then were), had to examine the scheme of COFEPOSA for deciding whether when one of the grounds supporting the detention order was found to be bad on any ground, the entire detention order based on the subjective satisfaction considering even such bad ground, would fail as a whole or not. It has to be kept in view that the Full Bench was considering the statutory scheme of the Act as existing on 19-2-1973, the date of the judgment. It is true that Section 5A of the COFEPOSA has made a departure in this connection after it was brought into force and envisages a separate legislative scheme. In cases where the provisions of Section 5A or analogous provisions do not apply, the ratio of the decision of the Full Bench in the aforesaid case would squarely get attracted. As we have already seen earlier, in the present Act, there is no provision like Section 5A of the COFEPOSA. Under these circumstances, the ratio decidendi of the Full Bench decision of this Court would squarely get attracted. B. J. Divan, C. J., speaking for the Full Bench in this connection, held as under:

(1) If one ground for the order of detention was bad, it might be bad because it was irrelevant or non-existent or unreasonable or not relevant for the purpose of the Act which authorised detention or because it was vague and did not afford the constitutional safeguard to detenu concerned on whatever footing the Court

found that one of the grounds was bad, the whole order must be held to have been vitiated and the whole order of detention must be struck down.

(2) It is not open to a Court of law to sever the good ground from the bad ground and to exclude the bad ground if it is found to be inconsequential or unessential because it is not possible for the Court to predicate as to which out of the several grounds, good and bad, weighed with the detaining authority when it arrived at the subjective satisfaction that it was necessary to detain a particular" detenu.

(3) Whatever the position may be in other branches of jurisprudence, so far as this particular branch of jurisprudence related preventive detention is concerned, this is the legal position.

It was thereafter held as under:

When the Court comes to the conclusion that out of several grounds given for the detention some are not according to law and some are valid, the Court should set aside the entire detention order passed u/s 3 of the COFEPOSA Act. It is not open to the Court to attempt to probe further into the question whether the detaining authority would have passed the detention order even though some of the grounds are proved.

9. In view of the aforesaid settled legal position, it has to be held that when ground No. 12 amongst other grounds has been pressed in service by the detaining authority for basing the impugned order, his subjective satisfaction being a comprehensive one, would get still vitiated and the entire order will be liable to be struck down, as there is no provision like Section 5A of the COFEPOSA in the present Act.

10. However, Mr. Trivedi for the respondents vehemently contended, placing reliance on clause 2 of the grounds, that the detaining authority himself was conscious of the fact that he can pass separate detention order on each of the grounds and once he was so conscious, it must be treated to have held that even if ground No. 12 is irrelevant or extraneous, rest of the grounds can be said to have been pressed in service by the detaining authority for basing his independent orders on that ground. Mr. Trivedi vehemently contended that if the legislature by enacting provision like Section 5A of the COFEPOSA can permit the Court to undertake exercise of severing bad ground from the good grounds and to sustain order of detention on the remaining good grounds by invoking deeming fiction of satisfaction of the detaining authority based on relevant grounds as independent of irrelevant and bad ground, and if such selection of ground is permitted by the legislature to be done by the Court, if the detaining authority itself does that exercise, it cannot be said that such exercise is not open to the detaining authority.

11. On the other hand, Mr. Vakharia for the petitioner vehemently submitted that under the scheme of Section 3(1) of the Act, only one comprehensive and

composite satisfaction by the detaining authority underlying the detention order is contemplated and only one detention order is contemplated at a given point of time to be passed by the detaining authority against the concerned detenu. Mr. Vakharia submitted that in the present case, 13 grounds have been pressed in service. Could the detaining authority have passed on that very day, viz. 21-7-1986, 13 separate detention orders against the present detenu? He submitted that if such 13 orders were passed on the very same day, then separate 13 orders would have resulted in clear breach of Section 3(1) of the Act and such orders would have become stillborn. It was vehemently submitted by Mr. Vakharia that if number of grounds are available to the detaining authority at a given point of time against the detenu, he may decide to press in service any number of available grounds. He may choose to select them for basing his subjective satisfaction for passing one and single detention order against the detenu. If he discards other grounds, it means that he does not want to base his subjective satisfaction on the discarded grounds. But if he relies upon given number of grounds mentioned in the grounds of detention, they all simultaneously and together enter into a single comprehensive mental subjective satisfaction process of the detaining authority and the result is one single integrated order of detention and that there cannot be separate detention orders based on available separate grounds at a given point of time against the detenu. It was submitted by Mr. Vakharia that assumption underlying the impression of the detaining authority as expressed in clause 2 of the grounds, is not legally borne out and, therefore, it cannot be of any avail to the detaining authority.

12. We would have been required to closely examine this contention centering round clause 2 of the grounds, but for the fact that when we turn to the summary of the grounds as made by the detaining authority at pages 27 and 28 of the grounds of detention, we find that while coming to his conclusion and his subjective satisfaction for the need to preventively detain the detenu on the concerned grounds, he himself has resorted to a comprehensive process of satisfaction and has not based his subjective satisfaction independently on separate grounds. Consequently, on the facts of this case it would become academic for us to resolve the controversy which has been placed for our consideration in the light of the recitals of clause 2 of the grounds, by the learned advocates of the respective parties. When we turn to the conclusion to which the detaining authority has reached after reciting 13 grounds of detention, we find that he has in terms held that the detenu had committed breaches of the Order and has also committed breach of Prevention of Food Adulteration Act and that he is habituated in committing such breaches and consequently, because of his such activities, maintenance of supply of essential commodity viz. groundnut oil is adversely affected and with a view to preventing the detenu from indulging in such activities in future, it was necessary to detain him. The aforesaid conclusion reached by the detaining authority himself in the grounds of detention leaves no room for doubt that despite what is stated in clause 2 of the grounds viz. that he is entitled to pass separate detention orders on different grounds, in fact and in

reality, he did not do so, but passed the impugned order of detention in a comprehensive manner by arriving at his subjective satisfaction in a combined manner basing the same not only on the breach of the provisions of the Essential Commodities Act and the Order of 1981 but also on the breach of the Prevention of Food Adulteration Act, 1954. When the latter breach reflected in ground No. 12 has entered the composite process of subjective satisfaction of the detaining authority, it must be held that the detaining authority has relied on a totally extraneous ground dehors the scope and ambit of Section 3 of the Act, Once this conclusion is reached, the result is obvious. The comprehensive subjective satisfaction is found to be partly based on an irrelevant ground which would vitiate the entire subjective satisfaction and knock out the basis of the detention order wholesale x x x x.

13. x x x x x x x.