
(2015) 07 MP CK 0082
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9788 of 2015

Lalman Singh Patel

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 110
Prevention Of Blackmarketing And Maintenance Of Supplies Of Essential Commodities Act, 1980 — Section 3(1), 3(2), 3(3)

Citation : (2015) 07 MP CK 0082

Hon'ble Judges : Rajendra Menon, J; S.K. Gupta, J

Bench : Division Bench

Advocate : Anil Lala, for the Appellant; Swapnil Ganguly, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner who was working as a Salesman in the Seva Sahkari Samiti, Hardua, Tahsil Sirmour, District Rewa, is aggrieved by the order of preventive detention passed under Section 3(1) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "Act of 1980") and therefore, this writ petition, challenging the order of detention. It may be mentioned as an admitted position that even though the detention order has been passed on 26.5.2015, the petitioner has still not been detained and according to the State Government, he is absconding.

2. Shri Anil Lala, learned counsel appearing for the petitioner argued that the petitioner is challenging the detention order at the pre- detention stage mainly on two grounds. The first contention is that the satisfaction with regard to issuing the order of preventive detention has not been recorded properly in accordance to law is based on extraneous considerations, without any justification. He submits that until and unless the subjective satisfaction is not recorded in accordance with the requirement of law, the detention is unsustainable.

Thereafter, Shri Anil Lala referred to certain principles of law applicable in the matter of challenge to an order at the pre-detention stage and argued that the principles of law laid down in these judgments are not complied with and as there is violation of these principles even on a challenge made on these grounds at the pre-detention stage itself the impugned order is liable to be quashed. Shri Lala submits that the State Government has relied on a judgment of the Supreme Court in the case of Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, (1991) 72 CompCas 336 : (1991) 53 ELT 481 : (1991) 1 JT 549 : (1990) 2 SCALE 1352 : (1992) 1 SCC 496 Supp : (1990) 3 SCR 583 Supp to justify their action, however, he invites our attention to the five conditions enumerated by the Supreme Court in the aforesaid judgment in Para 30, on the basis of which the Courts have granted power to interfere with an order of detention even at the pre-execution stage. He submits that this judgment in the case of Smt. Alka Subhash Gadia (supra) has been reconsidered and further diluted to certain extent subsequently by the Supreme Court in the case of Subhash Popatlal Dave Vs. Union of India (UOI) and Another, AIR 2012 SC 3370 : (2012) CriLJ 3848 : (2012) 281 ELT 641 : (2012) 6 JT 314 : (2012) 6 SCALE 367 : (2012) 7 SCC 533 : (2012) AIRSCW 4267 and by basing his submissions on the aforesaid judgment, particularly Para 44 and 47 thereof, made a submission that this Court exercising powers under Article 226 of the Constitution of India is empowered to review the executive decisions and the said power cannot be subjected to any restriction. He tried to place reliance on certain observations made by the Supreme Court in the case of Subhash Popatlal Dave (supra) and argued that apart from the five principles laid down therein, this Court is entitled to interfere and protect the right of a citizen or even a non-citizen under the Constitution and may examine the order to find out whether it is in accordance with law or whether it suffers from any infirmity amounting to preventing the constitutional right of a person. The portion of the judgment relied upon by Shri Anil Lala in the case of Smt. Alka Subhash Gadia (supra) reads as under:-

"...As submitted by Mr. Rohtagi, to accept that it was the intention of the Hon'ble Judges in Alka Subhash Gadia case to confine the challenge to a detention at the pre-execution stage, only on the five exceptions mentioned therein, would amount to imposing restrictions on the powers of judicial review vested in the High Courts and the Supreme Court under Article 226 and 32 of the Constitution. The exercise of powers vested in the superior Courts in judicially reviewing executive decisions and orders cannot be subjected to any restrictions by an order of the court of law. Such powers are untrammelled and vested in the superior courts to protect all citizens and even non-citizens, under the Constitution, and may require further examination."

Thereafter, he took us through a unreported judgment of a Coordinate Bench of this Court passed on 15.4.2015 in Writ Petition No. 1603/2015- Rinku @ Kuldeep Shukla Vs. State of M.P. & others and argued that after examining the law laid down in the case of Subhash Popatlal Dave (supra), the Division Bench has laid

down the principles that challenge to a detention order even at pre- execution stage can be made on the ground touching the jurisdictional issues akin to the five exceptions carved out in the case of Smt. Alka Subhash Gadia (supra). Accordingly, based on aforesaid contentions, Shri Anil Lala argued that the detention order is unsustainable and on the grounds as is canvassed by him and indicated hereinabove, even at the pre-execution stage, this Court can exercise the jurisdiction under Article 226 of the Constitution.

3. Shri Swapnil Ganguly, learned counsel appearing for the respondents refuted the aforesaid contentions. He took us through the provisions of Section 3(1) of the Act of 1980, produced the entire proceedings held under Section 3(1) at the pre-execution stage by the District Magistrate concerned and argued by referring to various proceedings held that the petitioner was given ample opportunity to give his defence in the matter, he participated on certain hearing and thereafter all of a sudden during the proceedings that was held from 26.5.2015, he left the proceeding, absconded and did not cooperate by leading his defence nor produced any document or material in support of his contentions. Shri Ganguly referred to subjective satisfaction recorded by the District Magistrate in the order passed based on the enquiry report dated 17.10.2014 submitted by the District Supply Officer and argued that the subjective satisfaction arrived at for the reasons indicated therein are based on the enquiry report and is substantially enough to uphold the order passed. He has placed heavy reliance on the case of Smt. Alka Subhash Gadia (supra), the five exceptions carved out therein and argued that none of the five exceptions for interference even at the pre-execution stage is available in the present case. That apart Shri Ganguly also argued that even if the law laid down in the cases of Subhash Popatlal Dave (supra) and Rinku @ Kuldeep Shukla (supra) are applied in the present case, the principles of jurisdictional error or the challenge based on jurisdictional issue akin to the five exceptions as indicated in the case of Smt. Alka Subhash Gadia (supra) are not available to the petitioner in the facts and circumstances of the present case. It is argued by Shri Swamnil Ganguly that the conduct of the petitioner in the present case needs to be considered by this Court before exercising its equitable jurisdiction in a proceeding under Article 226 of the Constitution. Shri Ganguly pointed out that the proceedings under section 3(1) of the Act of 1980 before the District Magistrate commenced from 25.11.2014, notice was issued to the petitioner and he appeared before the District Magistrate on 24.2.2015, participated in the proceedings on 4.3.2015 and 10.3.2015. Thereafter, he replied to the show cause notice. On 8.4.2015, witnesses were examined when the petitioner Lalman Singh Patel was present. Thereafter, again witnesses were examined on 6.5.2015 in the presence of the petitioner and ultimately when the proceedings were held on 26.5.2015, he left the proceedings and since then is absconding. Shri Ganguly submits that the petitioner appeared in the proceedings from 24.2.2015 upto 26.5.2015, he was aware of all the grounds on which the action is proposed to be taken against him and when his chance to defend himself came, finding that he has no defence, he has

absconded and now the ground that no subjective satisfaction is recorded, he is trying to take the advantage of provision of law. It is argued by Shri Swamnil Ganguly that the substantive satisfaction as recorded by the Collector is based on evidence available on record including the enquiry report of the Supply Officer and when the statement of the witness namely Shri Kunjan Singh Rajput, Junior Supply Officer, the Enquiry Officer was recorded during the proceeding before the District Magistrate on 6.5.2015, not only the petitioner but his counsel Shri Laxmi Shanker Tiwari was also present. He therefore emphasises that in this case even before issuing pre- detention order when the proceedings were held before the District Magistrate, the petitioner was present on various dates and on one or two dates even his counsel was also present when recording of evidence of the Supply Officer took place. Shri Ganguly argued that it is not a fit case where the discretionary jurisdiction of this Court, which is equitable in the nature should be exercised and he has prayed that the petition is liable to be dismissed.

4. We have heard the learned counsel for the parties and we have also considered the rival contentions. As we are required to interfere in the matter at the pre-execution stage of detention passed under Section 3(1) read with 3(3) of the Act of 1980, we propose to deal with the principle of law which lays down the parameters, for exercise of our jurisdiction at this stage. As already indicated hereinabove in the case of Smt. Alka Subhash Gadia (supra), the five requirements to be satisfied for interference are laid down and the same reads as under:-

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds or
- (v) that the authority which passed it had no authority to do so.

This judgment and the principles laid down therein were reconsidered by the Supreme Court in the case of Subhash Popatlal Dave (supra) and as already indicated hereinabove and as per Para 47 reproduced above, as pointed out by Shri Lala, we may accept his submission or proposition that the five principles detailed hereinabove as laid down in the case of Smt. Alka Subhash Gadia (supra) cannot be said to be restrictive in nature nor it will curtail the power available for judicial review in a proceeding under Article 226 of the Constitution. We are required to exercise this power by not only taking note of aforesaid five principles and also in the light of the observations made by the Supreme Court and detailed hereinabove, also considered by a Coordinate Bench of this Court in the case of Rinku @ Kuldeep Shukla, we are required to see as to whether jurisdictional issue akin to the five exceptions laid down in this case is available. That being so, we will refer to the facts of the case to see as to whether any

ground exists which warrants reconsideration. During the course of hearing and as already indicated hereinabove Shri Anil Lala emphasised that subjective satisfaction has not been recorded and proper subjective satisfaction in accordance with law is not available on record. He further indicated that the order passed in the matter is vague in nature based on extraneous and irrelevant grounds and therefore one of the exceptions as laid down in Rinku @ Kuldeep Shukla's case is available. He also indicated that the order impugned is passed for a wrong purpose and therefore two of the exceptions are available. That apart, he tried to emphasize that the order has been passed only to harass the petitioner and there is no material available.

5. Available before us is the complete record pertaining to the action taken by the Collector (District Magistrate) including the proceedings held after issuance of the show cause notice to the petitioner for proceeding under Section 3(1) read with 3(2) of the Act. As we have already perused the original record based on the submission made by Shri Ganguly who had produced the original record, we find that when the inspection of the shop in question, which was under the jurisdiction of the petitioner was undertaken on 22.9.2014 and on certain other dates, it was found that seeing the inspection team headed by the SDM coming in a jeep, the petitioner Lalman Singh alongwith his associates ran away from the fair price shop. The inspecting team therefore inspected the shop and they found various irregularities in the matter which is detailed in the enquiry report submitted by the Junior Supply Officer Shri Kunjan Singh Rajput who has also testified before the District Magistrate in the proceeding to the show-cause notice, during the inspection, it was seen that the petitioner ran away and did not cooperate in the process of inspection. It was also found that he did not produce the relevant documents and other material pertaining to the fair price shop to conduct a proper enquiry into the matter. However, from the inspection done on 18.9.2014, and based on the material available in the shop it was found that in 43 gunny bags weighing 70 Kgs wheat in each of them, which had the Government seal and endorsement on them, were transferred to unauthorised white bags private in nature without any Government endorsement or seal on them. It was found that the foodstuff was transferred and kept separately for being sold in the open by blackmarketing. 54 gunny bags were available filled with wheat to be transported and sold in the open market. It was found on inspection that 152 ration cards were found which were illegally issued and the persons indicated in the ration cards were not entitled for obtaining supply from the shop in question. It was also found that on the previous occasions also similar irregularities were committed by the petitioner in his capacity as Salesman and 8 cases against him under the Essential Commodities Act have been registered. In the proceedings, various irregularities were found in the matter not only with regard to wheat but also with regard to 27 bags of salt, 13 bags of rice, so also kerosene oil as is indicated in the enquiry report. Taking note of these factors, the impugned action has been taken.

6. On going the material available on record, we find that subjective satisfaction

was arrived at by the competent authority by exercising statutory power after conducting the detailed proceedings by issuing show cause notice to the petitioner granting him opportunity to appear and justify his action reflected by examining witness and taking note of all the circumstances. The principles laid down in the judgment referred to hereinabove cannot be applied in the facts and circumstances of the present case. Present is a case where lot of irregularities in maintenance of the supply were found and therefore, primarily the action taken against the petitioner seems to be in accordance with law and we find in the facts and circumstances, particularly taking note of conduct of the petitioner that it is not a case where discretionary relief available can be extended to the petitioner and we should exercise our discretion in favour of the petitioner. That apart, in the matter of recording subjective satisfaction, the procedure followed by the District Magistrate is seen to be an elaborate procedure followed after issuing show cause notice to the petitioner by conducting a detailed enquiry, in which not only the petitioner but his counsel was also permitted to appear and based on the material that came into such enquiry, the subjective satisfaction has been recorded, instead of participating in the proceeding and giving his defence, the petitioner absconded and did not participate in the proceeding. It is not a case where the material collected for arriving at subjective satisfaction was used by the authority behind the back of the petitioner. On the contrary, after a detailed procedure followed, where opportunity of hearing was granted to the petitioner, all the material was made available to the petitioner for inspection and even the assistance of a counsel was given to him. But inspite of the same when the petitioner did not submit any explanation for the material collected against him, the subjective satisfaction was recorded and the impugned action was taken. In doing so, we are of the considered view that the authority has not committed any error warranting interference. The principle of law put-forth by Shri Anil Lala cannot be applied in the peculiar facts of the present case. As far as case of Rinku @ Kuldeep Shukla (supra) decided by this Court is concerned, we find that the same was a case under the National Security Act and this Court after laying down the principles as indicated hereinabove came to the conclusion that he has been arrested for petty offence related to making obscene acts and songs with simple hurt and various offences trivial in nature, for example, section 110 of Cr.P.C. It was after taking note of all the circumstances, it was held that, it was a case which does not come within the category of an act affecting the public order and therefore, in the peculiar facts and circumstances of that case, the interference was made by the Division Bench. In the present case, such situation is not available. This is a case where in the matter of distribution of essential commodities through fair price shop, the petitioner was found to have committed serious irregularities and the action taken is not only based on the irregularities which were found in the inspection conducted on 18.9.2014 but the decision has been taken on finding that on 8 previous occasions, similar irregularities were committed by the petitioner and as all 8 cases are pending against him under the Criminal Law Act, therefore impugned action has been taken.

7. Considering all facts and circumstances, we see no reasons to interfere in the petition. Accordingly, the petition is dismissed.