

(2014) 02 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 18142 of 2013

Laxminarayan Mangilal Bansal

APPELLANT

Vs

State of Gujarat and 3 Ors.

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention Of Anti-social Activities Act, 1985 — Section 3(1)

Citation : (2014) 02 GUJ CK 0063

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Zubin F. Bharda, Advocate for the Appellant; Mihir Bhatt, AGP for Respondent(s) No. 1 and Mr. M. Iqbal A. Shaikh, Advocate for Respondent(s) No. 3, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.H. Vora, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner seeks to issue writ of mandamus or any other writ, direction and order to quash and set aside the order dated 21.11.2013 passed by the respondent No. 2 under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the PBM Act") being arbitrary, illegal, malafide and suffering from non-application of mind and void ab initio. The District Magistrate, Navsari passed an order on 21.11.2013 in exercise of powers u/s 3(1) of the PASA Act detaining the petitioner under the provisions of the Prevention of the PBM Act.

2. In the grounds of detention, the detaining authority has observed that the petitioner has indulged himself in malpractice. The stock of 1400 kg wheat in 28 plastic bags weighing 50 kg, 195 ltr blue coloured kerosene in five plastic containers, 150 jute bags having marking of FCI and 377 plastic bags were recovered. It is further observed by the detaining authority that blue kerosene recovered from the godown was purchased by the petitioner from local people at

the rate of Rs. 20/- per litre and he was found selling the same at the rate of Rs. 21/- per litre with an intention to get economic gain and therefore, the said act of the petitioner is illegal. Accordingly, the respondent authority, after satisfying itself that the petitioner was found indulging in the activity of black marketing or essential commodities, the petitioner was required to be detained under the PASA Act in order to prevent him from pursuing his activities. The authority also observed that other less-drastic remedies are not possible to be resorted and detention under the PBM Act is the only efficacious remedy for the purpose of preventing the petitioner from indulging into activity of black marketing.

3. The petitioner has challenged the order of detention on various grounds. Learned advocate Mr. Bharda for the petitioner, however, restricted his arguments on the ground of delay in forwarding the representation by the detaining authority. The learned advocate has drawn my attention to the Affidavit-in-reply, which is filed by the Under Secretary, Department of Consumer Affairs, New Delhi, which is silent as to when representation dated 3rd December, 2013 forwarded to the competent authority. However, one Under Secretary Mr. R.A. Chandra on behalf of the respondent No. 1 filed further Affidavit-in-reply and in para 4 thereof, it is stated that the State Government has not received the representation of the detenu, whereas the competent authority i.e. District Magistrate, Navsari in his Affidavit-in-reply, more particularly in para Nos. 12 and 13 stated that the petitioner has submitted representation before the Secretary, PBM Advisory Board on 21.12.2013. The petitioner in his Affidavit-in-rejoinder in reply to the averments made in the application and Affidavit-in-reply filed by different authorities categorically stated that the representation dated 3.12.2013 was sent by RPAD through his advocate to the Superintendent, Sabarmati Central Jail, Ahmedabad, which was dispatched by way of RPAD on 4.12.2013 and it was delivered by the postal department on 5.12.2013. In support thereof, the petitioner has placed on record track result of R.G. 21168855IN obtained from the site of India Post, Ministry of Communication and Information Technology. The relevant postal records showing dispatch and delivery of the representation dated 3.12.2013, the petitioner has annexed the proof thereof at page Nos. 6 to 8 of the Affidavit-in-rejoinder.

4. Per contra, learned AGP Mr. Mihir Bhatt opposed the petition on behalf of the respondent and submitted that no delay has been caused in forwarding the representation as alleged by the petitioner and therefore, submitted to dismiss the petition.

5. Considering the contentions raised before this Court what is required to be considered is whether there is delay in forwarding the representation. Admittedly, the representation dated 3.12.2013 was received by the Superintendent, Sabarmati Central Jail, Ahmedabad on 5.12.2013 and as per reply filed by the District Magistrate, Navsari, the same was placed before the Secretary, PBM Advisory Board on 21.12.2013. Thus, the representation did not reach to the State Government for about 15 days. The only authority that could

have considered the representation is the competent authority of the State Government and therefore, the representation ought to have reached to the competent authority and the State Government immediately. So in view of this fact situation, the petition deserves to be allowed on account of delay in forwarding the representation. In view of above position, the present petition is allowed and the detention order dated 21.11.2013 passed by the respondent No. 2 is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.