

(1998) 11 GUJ CK 0005

In the Gujarat High Court

Case No : Spl. Civil Application No's. 6418 and 6419 of 1998

Mahendrasinh Anopsinh Mahida

APPELLANT

Vs

District Magistrate, Anand and Others

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 12AA, 3(2), 8

Citation : (1999) CriLJ 1514 : (1999) 3 GLR 244

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : H.L. Patel, for the Appellant; Govt. Pleader for Respondents 1, 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—These two writ petitions under Article 226 of the Constitution of India arising out of the same incident and the two petitioners of the same petrol pump having been detained by detention order of the same date, viz. 13-7-1998 involving common question of law and facts are proposed to be disposed of by common judgment.

2. The prayer in these two writ petitions is for quashing the detention order dated 13-7-1998 passed by the Detaining Authority against the petitioners u/s 3(2) of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "PBM Act") and for immediate release of the two petitioners who are alleged to be kept under illegal detention.

3. Brief facts are that the petitioner of Writ Petition No. 6419 of 1998 is proprietor and Administrator of M/s. Lalidhar Petroleum Company of Indian Oil Corporation, in District Anand. The petitioner of other writ petition is the brother and Manager/employee of the said petrol pump of the petitioner of Writ Petition No. 6419/98.

4. A raid of the said petrol pump was conducted by the supply officers on 9-7-1998 who found serious irregularities and also adulteration in diesel as well as in petrol. The density of the diesel was found to be deficient. There was also discrepancy in the stock of petrol. Excess quantity of 1813 ltrs. of petrol was found at the time of raid. The other petitioner Mahendrasinh could not offer any satisfactory reply of this excess stock of petrol. The density of petrol was also measured and difference in density was also noticed. The petrol was sent for analysis by the Expert and in the report of the Expert it was found that low price cheap liquid was adulterated in the stock of petrol. It was further found that correct account as well as daily stock books were not maintained. In the diesel blue colour kerosene meant for public distribution was found mixed and adulterated with diesel. The diesel and petrol were considered to be essential commodities under the provision of Clause 2(8) of the Gujarat Essential Articles (Licence, Control and Stock Declaration) Order, 1981. Inferring that the two petitioners in collusion with each other mixed and adulterated blue colour low price kerosene meant for public distribution in the stock of diesel and further mixed cheap liquid in petrol and thus by adulterating diesel and petrol the two petitioners for personal gain committed criminal activity and indulged in black-marketing. The detaining authority consequently passed the detention order and supplied the grounds of detention to the two petitioners. In the grounds of detention efficacy of alternative remedy was also considered by the detaining authority which found that the detention of the petitioner on the facts and circumstances of the case was the only efficacious remedy. These two detention orders have been challenged by the two writ petitioners in their petitions.

5. Shri V.H. Patel, learned counsel for the petitioners and the learned A.G.P. were heard.

6. Learned counsel for the petitioner has challenged the two detention orders on the following grounds :

7. The first contention of the learned counsel for the petitioner has been that the representation dated 22-7-1998 sent to the Chief Minister of Gujarat was not considered expeditiously. The representation of the detenu to the Chief Minister was sent on 22-7-1998. It may be mentioned that in the grounds of detention the detenus were informed that they can make representation to Additional Chief Secretary, Food and Civil Supplies Department, Special Branch, Block No. 14, Sardar Patel Bhavan, Gandhinagar. This was the State Authority who is dealing with such representation of the detenu. The representation was not addressed to the Additional Chief Secretary as aforesaid, but it was addressed to the Chief Minister. The Chief Minister was not to consider the representation. The Chief Minister is also not the State Government. Still by virtue of courtesy the office of the Chief Minister sent the aforesaid representation to the concerned section which was dealt with promptly. For this, the affidavit of Shri P. R. Shukla, Deputy Secretary to the Government, Food and Civil Supplies and Consumer Affairs Department, Gandhinagar, can be referred to. In para 5 of this affidavit it is

mentioned that the representation dated 22-7-1998 addressed to the Chief Minister was received in his office on 27-7-1998. If the representation was not addressed to proper authority this delay between 22-7-1998 to 27-7-1998 is not to be explained either by the Chief Minister or by the State Government. The representation was sent by the Chief Minister's office on 27-7-1998 which was received in Special Branch of Food and Civil Supplies Department on 28-7-1998. With office note dated 29-7-1998 it was cleared by the Section Officer on 30-7-1998. The representation was submitted to under Secretary, who cleared it on 30-7-1998 itself. It was put up before the Additional Chief Secretary and ultimately the representation was rejected on 31-7-1998. Thus, the representation was promptly dealt with between 27-7-1998 to 31-7-1998 and the order of rejection was communicated through letter dated 31-7-1998. Consequently this ground cannot invalidate the two detention orders.

8. The next contention has been that the representation dated 29-7-1998 sent to the State Government likewise was not dealt with promptly. This contention has also no force. As a matter of fact under this representation demand for Gujarati translation of document, viz. report of Analysis was prayed for. In the affidavit of Shri P. R. Shukla, aforesaid, it has been verified that the representation dated 29-7-1998 was forwarded by Special Jail, Porbandar, through covering letter dated 1-8-1998 to the Deputy Secretary, Food and Civil Supplies Department. From 6-8-1998 to 9-8-1998 there were public holidays. The file was put up before the Special Branch on 10-8-1998. The representation was rejected on 12-8-1998 and the letter intimating the order of rejection was sent to the petitioner through proper authorities. There was thus no delay in dealing with this representation.

9. The third attack has been that the representation sent to the Central Government was also not expeditiously considered. This contention has no force in view of disclosure made in the counter-affidavit by Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi. In para 4 of his affidavit he deposed that the representation dated 22-7-1998 was received in the concerned section on 3-8-1998. Thus, delay between 22-7-1998 to 3-8-1998 is not to be explained by the Central Government. The affidavit of Shri P. R. Shukla shows that this representation was forwarded to the Central Government with promptness. The representation was considered and it was found necessary to obtain parawise comments of the State Government. A telegram was sent on 3-8-1998 requiring parawise comments of the State Government. Parawise comments were received on 3-8-1998 and after considering the parawke comments the representation was rejected on the same day and the decision of the Central Government was conveyed to the petitioner through Superintendent, Central Jail, Porbandar on 7-8-1998. In this way the representation was dealt with within 4 to 5 days and it cannot be said that it was not expeditiously dealt with by the Central Government. This ground also, therefore, fails.

10. The next ground has been that the petitioners do not know English whereas the report of the Analysis was supplied in English and its translation in Gujarati was not supplied to the petitioners which has deprived the petitioners of their right to make effective representation against the order of detention. It is undisputed that the analysis report of Gujarat Refinery, Vadodara was in English and its copy was supplied to the petitioner along with the detention order. There was, however, delay in furnishing Gujarati translation. The Gujarati version of this report was furnished to these petitioners on 22-9-1998. This fact is established from the counter-affidavit of Shri K. N. Bhatt, District Magistrate, Anand. Vide para 15. It was also admitted during argument that subsequently Gujarati translation was supplied to the petitioner, but it was contended that there was delay which has seriously affected the right of the petitioners to make effective representation against the impugned order of detention. As a matter of fact it is now established that all other documents were supplied in Gujarati. The report of the Analyst was supplied in English and Gujarati version was supplied subsequently on 22-9-1998. Thus, two facts are to be considered in this regard. The first is what is the effect of non-supply of Gujarati version of one of the documents and what is the effect of delay in supplying Gujarati version of such documents.

11. Learned counsel for the petitioner has referred few cases on the point that the petitioners should have been supplied the documents in the language which is known to them and that since they do not know English, non-supply of Gujarati version of the report of the Analyst certainly violated their fundamental right under Article 22(5) of the Constitution of India. It may be mentioned in this regard that in the writ petition it is not categorically mentioned that the two petitioners do not know English at all. It is difficult to accept that they do not know English at all. They have to enter in correspondence with Gujarat Refinery, Indian Oil Corporation and others and such correspondence is generally in English. What is mentioned in para 16 of the writ petition is that document at page No. 73 is not given in the language known to the petitioner. But from this assertion it cannot be accepted that the petitioners do not know English at all. In the absence of specific allegation on the point no counter-affidavit could be expected on this point from the respondents. Assuming for a moment that the petitioners do not know English it is to be considered what is the effect of late supply of Gujarati version of the report of the refinery.

12. In *Brijlal Ambaram Rana v. Commissioner of Police* reported in 1988 (2) GLH 457 : 1989 Cri LJ 119, the detenu was supplied the documents in English whereas the detenu was not knowing English. It was held that in the absence of furnishing of translation detenu could not make effective representation. It was further held that merely explaining the detenu the contents of the documents in Gujarati will not be sufficient. In this case two documents in English were supplied to the detenu and since its translation in Gujarati was not supplied the order of detention was held to have been vitiated.

13. In Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, the Apex Court held that the documents should be provided to the detenu under Article 22(5) of the Constitution of India. It was observed by the Apex Court that "all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22(5) of the Constitution."

14. In Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , the Supreme Court held that "Grounds in Article 22(5) do not mean were factual interference but mean factual interferences plus factual material which led to such factual interferences. It further observed that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The learned counsel for the petitioner contended that this observation of the Apex Court means that all the documents should have been supplied to the petitioners which were relied upon by the detaining authority and the documents should have been in a language which is known to the petitioner.

15. In Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court observed that "Article 22(5) of the Constitution of India requires that the grounds of detention must be, communicated to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the ground to the detenu is to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands then that purpose is not served and the constitutional mandate in Article 22(5) is infringed.

Thus from these cases it is clear that the grounds of detention as well as material on which such grounds have been formulated must be supplied to the detenu in the language which he knows and understands.

16. As observed above in the cases before me there is no definite material that the petitioners do not know English at all. Secondly they were supplied Gujarati version of report of analysis by the Gujarat Refinery though this action was. delayed. Thus non-supply of Gujarati version of the report of the Refinery, to my mind, on the facts and circumstances of the case, does not vitiate either the grounds of detention or the detention order for the obvious reason that in the grounds of detention details regarding density, nature of kerosene oil mixed with diesel, density of diesel, density of petrol, deficiency in the density, etc. were mentioned and this was done with reference to the extracts from the report of analysis conducted by the Refinery. In para 4(2) of the grounds of detention it is clearly mentioned as under :

However, looking to the detailed analysis report of the sample Octane number was found to be 82 against the minimum required as 87 and final boiling point requirement is 160 against the maximum requirement of 215.

The grounds of detention were furnished in Gujarati. If the extracts from analysis report were carried forward and incorporated in the grounds of detention it cannot be said that the petitioners were prejudiced in case initially they were not supplied with gujarati version of report of analysis. The report of analysis is nothing but the report on the basis of scientific analysis and the conclusions arrived at on the basis of prescribed data and the date found after analysis and examination of samples. A comparative study of these two datas gave impression in the mind of the detaining authority about the factum of adulteration and this factum of adulteration was patent as per the report of the Refinery. In this way I do not find force in the contention that non-supply of Gujarati version of analysis report of Refinery at the initial stage has vitiated the impugned order.

17. On the delayed supply of Gujarati version of the analysis report the learned Counsel for the petitioner contended that in view of Section 8 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, an obligation is cast on the detaining authority to communicate the grounds of detention on which the order has been passed as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for the reasons to be recorded in writing not later than ten days from the date of detention. Accordingly, it was urged that delayed supply of Gujarati version of analysis report has prejudiced the petitioners in making effective representation. No doubt delay is there in supplying the Gujarati version of the analysis report. It seems that since the extracts of the analysis report were incorporated in the grounds of detention in Gujarati, the petitioners cannot be said to have been deprived of opportunity of making effective representation against the order of detention. Thus, this ground has also no merit.

18. The next ground has been that there is difference in the grounds of detention and the detention order as a result of which the detention is rendered invalid inasmuch as subjective satisfaction of the detaining Authority is rendered meaningless. The learned Counsel for the petitioner contended that in the detention order (Annexure : A) only this much is mentioned that because the petitioner has acted in an objection-able manner in supply of essential commodities like petrol and diesel and to immediately prevent such act it is necessary to detain such persons and for that complete reasons are there whereas in the grounds of detention other reasons have been given, for instance, adulteration in diesel and petrol indulging in black marketing for personal gain and improperly maintaining the stock register and the stock of diesel and petrol. This variation in the detention order and the grounds of detention, according to the learned Counsel for the petitioners, vitiates the subjective satisfaction arrived at by the Detaining Authority and the subjective satisfaction was the result of non-application of mind on the part of detaining Authority.

19. In support of his contention he has referred to two cases. In Gulabbhai Budhabhai Patel Vs. District Magistrate and Others, , it was held by a Division Bench of this Court that where the order is based on one ground whereas the grounds supplied refer to a different manner, non-application of mind on the part of the detaining authority is disclosed which renders detention order bad." To my mind this case is distinguishable on facts. Here the detention order was passed only on one ground that the detenu was to be detained preventively with a view to preventing him from acting in any manner which would prejudice the Maintenance of stock of kerosene which is essential commodity, whereas in the grounds of detention in that case certain other facts were recorded. Inter alia in the grounds of detention it was mentioned that information was received from a person, who refused to disclose his identity, that one Tanker was to proceed from Indian Oil Corporation, Surat Depot and the said tanker was to go to Kosamba and was to proceed to Jiva Fuel Centre Petrol and Diesel Pump at Kosamba with the purpose of adulterating diesel with kerosene and on the basis of the said information, watch was kept on the said petrol pump and it was found that the kerosene contained in the said tanker was unloaded in the diesel tank of the said petrol pump and the culprits were caught red-handed. The grounds further provided that there was collusion between the petitioner and tanker owners in facilitating the blackmarketing by adulterating diesel with kerosene. However, since these grounds were not mentioned in the detention order it was held to be invalid.

20. On the facts of the case before me Annexure : C cannot be considered only to be the grounds of detention. It also amounts to order of detention which is clear from the following lines in Para: 1 of Annexure : C :-

I, District Magistrate, on my authority issue this order for your preventive detention.... You are therefore informed about the grounds of the same.

These lines therefore mean that it was also an order of detention as well as the grounds of detention. The detention order was passed on the basis of grounds of detention and the grounds of detention included all the activities of the petitioners mentioned above. Annexure A is a separate order in which it was mentioned that the petitioners have acted in an objectionable manner in supplying essential commodities like petrol, diesel and to immediately prevent such act it was necessary to detain such persons and for that complete reasons are there. It was argued that vague idea is conveyed in the detention order Annexure : A that the petitioners acted in an objectionable manner. In my view, detention order as found in Annexure A can be considered to be superfluous document especially when order to detain is specifically contained in the grounds. In any case the expression "that the petitioners have acted in an objectionable manner in supplying essential commodities like petrol, diesel and to immediately prevent such act it was necessary to detain such persons and for that complete reasons are there". Conveys the idea in the mind of the detaining Authority that the words "Objectionable manner" have reference to reasons given

in the grounds of detention and it was actually so conveyed to the petitioners. However, since criminal activities like blackmarketing, adulteration in essential commodities like diesel and petrol, etc. are mentioned in the grounds of detention and if these activities were considered in Annexure A to be objectionable activities it can hardly be said that there is variance in the grounds of detention and the order of detention. Consequently the order of detention cannot be said to be invalid.

21. The case of Thakorbhai Zaverbhai Thakor v. District Magistrate in Special Civil Application No. 4224 of 1998, decided by learned single Judge of this Court on 16-4-1998 was also cited. This case is also distinguishable on facts for the reasons stated above; Thus, on the so called difference between the detention order and the grounds of detention which is actually imaginary the impugned orders cannot be said to be invalid.

22. It was next contended that it is nowhere mentioned in the grounds of detention that the petitioners were acting in any manner prejudicial to the supply of essential commodity. This contention also cannot be accepted. In Para 8 of the grounds of detention it is clearly mentioned that the petitioners by adulterating low price kerosene meant for public distribution in the stock of diesel with a view to obtain personal gain and by frustrating directly or indirectly the statutory provisions of the Essential Commodities Act had committed activities prejudicial to the distribution system set up by the Government to provide unadulterated and pure essential commodities viz. diesel and petrol to the people at large. Sufficient disclosure of the activities of the petitioners obstructing maintenance and distribution of essential commodity like diesel and petrol has thus been made in the grounds of detention. If blue kerosene is adulterated in diesel it has two consequences. The first is that it obstructs supply of blue kerosene for the purpose it is meant and the public at large is deprived of supply of blue kerosene. The second consequence is that by adulterating diesel with blue kerosene supply of pure diesel to the consumer is also affected and disrupted. Pure diesel is essential commodity and not adulterated diesel. If adulterated diesel is supplied to the consumer it certainly affects maintenance and supply of essential commodity. Likewise if pure petrol is not supplied it affects supply of pure petrol which also affects maintenance and supply of essential commodity. Irregularity in stock, excess stock of petrol, improper maintenance of account of stock and account books prima facie reveal black marketing activity of the petitioners. Blackmarketing is prima facie for the personal gain of the person who indulges in such activity. Therefore sufficient disclosure is found in the grounds of detention that the activity of the petitioner in adulterating diesel and petrol with blue kerosene and cheap liquid in the stock of petrol respectively prevents and prejudices the maintenance and supply of essential commodity. Consequently on this also the impugned order cannot be struck down.

23. It was next contended that it is a case of non-application of mind by the detaining Authority, hence subjective satisfaction is vitiated. Reference was made

to Para 11 of the writ petition. In the grounds of detention while considering the efficacy of alternative remedy of prosecution, etc. the detaining Authority inter alia observed in Para 10. of the grounds of detention regarding Section 12-AA of the rules framed under the Essential Commodities Act. Learned Counsel for the petitioners contended that Section 12-AA has no relevance because it deals with imposing stringent condition for bail, etc. However, the detaining Authority has considered efficacy of alternative remedy and found that alternative remedies are not adequate and hence the preventive detention was the only appropriate remedy. If efficacy of alternative remedy was considered by the detaining Authority then this Court cannot see and hold that the detaining Authority on the material on record could have taken another view. The two Division Bench pronouncement of this Court in *Purshottam v. State of Gujarat* reported in 1985 GLR 620 and *Ganeshbhai Gangabhai Harijan Vs. District Magistrate Banaskantha and Others*, make it clear that existence of alternative efficacious remedy like suspension or cancellation of licence is no bar for taking preventive detention, but the detaining Authority must indicate that while reaching subjective satisfaction he entered this exercise and took into consideration that such action like suspension or cancellation of licence will not be sufficient on given facts of the case. If such exercise is undertaken by the detaining Authority the Court cannot sit in judgment to hold that on the material available the detaining Authority could not have taken such view for his subjective satisfaction. If this exercise is not done by the detaining Authority the detention, order becomes bad in law and suffers from the vice of non-application of mind.

24. Thus, from the above decisions it is clear that if the detaining Authority has not considered efficacy of alternative remedies the order of detention becomes invalid for non-application of mind, but once he has entered this exercise the Courts cannot interfere with subjective satisfaction arrived at by the detaining Authority by holding that such satisfaction could not be arrived at on the material on record. The detaining Authority in the instant case has observed that proceedings for cancellation of licence can be taken departmentally, but it is possible that if the licence is cancelled the petitioner can obtain stay order from competent Court and repeat his activity and this will be time consuming process. It was also observed that if the prosecution is launched the petitioners can obtain bail from the Court and continue with their activity. The reasons given by the authority, under these circumstances, cannot be challenged in these writ petitions.

25. There is no merit in the contention that the grounds of detention are vague. The grounds are detailed and specific.

26. No other point was raised.

27. For the reasons given above, I do not find any illegality in the grounds of detention as well as in the order of detention. Consequently the detention order as well as the grounds of detention cannot be quashed. The two writ petitions are thus liable to be dismissed and are hereby dismissed.