

(1992) 12 GUJ CK 0024

In the Gujarat High Court

Case No : Special Criminal Application No. 1714 of 1992

Maheshbhai H. Parekh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

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

Citation : (1994) CriLJ 365

Hon'ble Judges : Sharad D. Dave, J;K.J. Vaidya, J

Bench : Division Bench

Advocate : P.M. Thakkar, for the Appellant; Y.F. Mehta, APP, for the Respondent

Final Decision : Allowed

Judgement

K.J. Vaidya, J.—The petitioner who happens to be a cousin brother of the detenu-Rajnikant Shantilal Parekh, has by this writ of Habeas Corpus, challenged the impugned order of detention dated 26-8-1992 made by the District Magistrate, Bhavnagar u/s 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, inter alia praying for quashing and setting aside the same and releasing the detenu setting him at liberty forthwith on the following two grounds; namely --

(1) That despite the fact that though the Detaining Authority himself by his own duly signed committal order, dated 26-8-1992, had directed the detenu to be detained at the District Jail, Bhuj at Kachchh, still however, surprisingly enough in the first three lines of even dated Grounds of Detention, he informed the detenu to make representation through the Superintendent, Sub-Jail, Bharuch? This patent infirmity on face of it clearly demonstrates the casual and mechanical exercise of powers by just blindly signing the grounds of detention, the detention order and the committal order, which indeed in turn adversely reflects upon the genuineness of the subjective satisfaction of the Detaining Authority so arrived at

while passing the detention order, which incidentally and sufficiently enough vitiates the subjective satisfaction rendering the detention of the detenu illegal and unconstitutional.

(2) That further despite the specific information and directions imparted to the detenu in first three lines of the grounds of detention that he can make a representation through Superintendent, District Jail, Bharuch, the said authorities returned the representation dated 31-10-1992 addressed to the Advisory Board, Ahmedabad, on the ground that the detenu was not in his jail, whereby denying the detenu his most precious right of representation being considered, and that too as expeditiously as possible, as guaranteed under Article 22(5) of the Constitution of India, which in turn also renders further continued detention of the detenu illegal and unconstitutional.

2. While driving home the two points raised above and giving necessary details in support of the same, Mr. P.M. Thakkar, the learned advocate for the petitioner, first of all has invited our attention to the relevant para 6 of the grounds of detention wherein, in opening three lines of the same, it has been stated that -- "Against your detention order, you have got a Constitutional right to make the representation. This can be made at the following addresses through the Superintendent, District Jail, Bharuch." Thereafter, Mr. Thakkar invited our attention to the committal order dated 26-8-1992, wherein the Detaining Authority himself has directed the detenu to be detained in District Jail, Bhuj at Kachchh. Mr. Thakkar further submitted that two apparent inconsistencies appearing firstly in the first three lines of the Grounds of Detention informing the detenu to submit his representation through Bharuch Jail on the one hand, and on the other hand subsequently directing the detenu to be kept in District Jail, Bhuj at Kachchh by the committal order --both of which orders are signed by the Detaining Authority himself, clearly demonstrates the non-application of mind and mechanical exercise of power. Mr. Thakkar further submitted that when the detenu is given Constitutional and Statutory right of making, and that too of making expeditious representation, it is common sense that the said right cannot be so exercised at the earliest unless and until the detenu makes representation from the Jail where he has been directed to be detained. On the basis of this said inconsistency, Mr. Thakkar vehemently contended that what indeed is the guarantee that the Detaining Authority has personally perused the relevant papers before reaching the so-called subjective satisfaction of immediate need to preventively detain the detenu by passing necessary orders of his detention. Mr. Thakkar further submitted that apart this, as directed by the Detaining Authority in para 6 of the Grounds of Detention, the detenu had submitted a representation dated 31-10-1992 addressed to the Advisory Board, Gandhinagar, through the Superintendent, District Jail, Bharuch. This was returned by the said authority vide its urgent letter o/w. No. 1570/92, dated 4-11-1992 addressed to the learned Advocate Mr. P.M. Thakkar at his Ahmedabad Office address, stating therein that there was no detenu in the name of Rajnikant S. Parikh in Bharuch Jail. Taking a strong exception against the return of the said representation by

Bharuch Jail Authorities, Mr. Thakkar once again invited our attention to the specific direction in para 6 of the grounds of detention and submitted that when the detenu was expressly informed and manifestly given to understand that he can make representation to the concerned authorities through the Agency of the District Jail, Bharuch, the said jail authorities had no business to return the same. Mr. Thakkar, on the basis of above, further submitted that in fact, the Jail authorities at Bharuch were expected to expeditiously despatch the same to the Advisory Board which as could be seen, has not been done. Mr. Thakkar on the basis of the above, finally urged that taking into consideration on the one hand the first contention raised above, the same clearly vitiates the subjective satisfaction of the Detaining Authority as the Order *ex facie* is passed mechanically without seeing any papers, and on the other hand, since the representation was returned and has remained unattended till today, the invaluable right of the detenu under Article 22(5) of the Constitution of his representation being considered having been violated, the same renders his further continued detention illegal and unconstitutional. Mr. Thakkar under the circumstances submitted that from the above whatever view the Court ultimately may take, the fact remains that the impugned order of detention deserves to be quashed and set aside, warranting the detenu to be released and set at liberty forthwith.

3. Mr. Y.F. Mehta, the learned APP appearing for the respondents, before dealing with the aforesaid two contentions raised by Mr. Thakkar, first of all submitted that the subsequent representation dated 9-11-1992 addressed to the Advisory Board has been immediately considered and disposed of and the result thereof was also communicated to the detenu. Therefore, to the said extent, the procedural safeguards guaranteed under Article 22(5) of the Constitution has been duly complied with by the authorities. Mr. Mehta thereafter dealing with the first contention submitted that the first representation dated 31-10-1992 addressed to the Advisory Board at Ahmedabad was submitted to the Superintendent, Sub-Jail, Bharuch who on the very day of receipt of the same, quite justifiably returned at the office address of the learned advocate Mr. P.M. Thakkar at Ahmedabad on the ground that the detenu -- Rajnikant was not detained in Bharuch Jail. Under the circumstances, no grievance can legitimately be permitted to be made for not despatching the said representation to the Advisory Board. Mr. Mehta in view of the peculiar facts of the present case further submitted that it was possibly because of some slip of pen or some inadvertent, honest, bona fide error that the detenu was misinformed in para 6 of the grounds of detention that he can submit his representation through the Superintendent, District Jail, Bharuch instead of through District Jail, Bhuj. Mr. Mehta further submitted that such an honest, minor mistake need not be viewed or equated with non-application of mind or mechanical exercise of power, as asserted by the learned advocate for the petitioner, which in fact is nothing more than much ado about nothing. Similarly, while dealing with the second contention, Mr. Mehta submitted that though it would have been indeed quite

desirable for the jail authorities at Bharuch to forward the representation dated 31-10-1992 to the Advisory Board immediately, however, taking into consideration the expeditious despatch back of the said representation on quite justifiable ground, as stated above, to the learned advocate for the detenu at Ahmedabad, no importance worth the name can ever be attached to it. On the basis of these submissions, Mr. Mehta finally urged that the legality and validity of the impugned order of detention cannot be questioned and has to be sustained.

4. Now indeed, it is too difficult, nay rather impossible for us to accept this explanation of the learned APP at its face value explaining away the situation which cannot be taken as an explanation at all as coming forth from the Detaining Authority, who for whatever reasons has not chosen to file affidavit-in-reply though the Rule came to be issued by this Court on 4-11-1992 making it returnable on 1-12-1992. In fact, apparently looking to the unexplainable patent infirmity regarding the information given to the detenu in para 6 of the grounds of detention to make representation through District Jail, Bharuch instead of District Jail, Bhuj, and ultimately realizing the same, the Detaining Authority in his second thought and wisdom has perhaps chosen better to observe silence on the point than to reply. Anyway, be the case as it may, it is hardly required to be told that the inferences and arguments of the learned APP appearing on behalf of the Detaining Authority or the State on such vital aspects can ever be permitted to bridge the apparent obvious gap, or plug the lacuna, or salvage the patent infirmity as to how, in what manner and under what circumstances, the infirmity in question came to be committed, which in fact lies entirely within the mental compass of the Detaining Authority to which neither the learned APP nor the Court has any access to get it divulged. Rather the infirmity pointed out on behalf of the detenu is so manifestly patent that no amount of explanation can bring back the run-away waters to salvage the situation! Further even apart this, having regard to the facts and circumstances of this case, even if the jail authorities at Bharuch instead of returning the representation dated 31-10-1992 to the learned Advocate Mr. P.M. Thakkar at Ahmedabad, had it even immediately despatched the same to the Advisory Board at Ahmedabad, and the said Board in its turn had expeditiously considered and disposed of the same, then even it could not have improved the situation any further as far as the ultimate fate of the detention order is concerned, as the very basis of the impugned order of detention suffers from vice of non-application of mind and mechanical exercise of the power. The very fact that the Detaining Authority though had placed three separate signatures below three documents viz., the Grounds of Detention; the Order of Detention, and the Committal Order, the same prima facie appears to have been placed blindly in mechanical exercise of powers which ultimately goes to the root of the very credibility of the genuineness of the subjective satisfaction of the Detaining Authority.

5. The fact remains that while signing the grounds of detention, detention order and the committal order, the Detaining Authority apparently has not exhibited his

personal awareness taking unavoidable, absolute and much needed requisite care to see as to what has been stated in first three lines of para 6 of the grounds of detention and committal order. This inference is manifestly unavoidable because had indeed the papers been personally and carefully perused, the above patent inconsistencies would not have crept in, as the same could have been immediately detected and avoided, Rather to be more exact, the said inconsistencies would not have crept in at all. This situation in a way clearly demonstrates the total remissness on the part of the Detaining Authority in mechanically and casually exercising the extraordinary powers of the preventive detention, sadly reflecting upon the very genuineness and credibility of the subjective satisfaction and the orders passed pursuant to the same. It is too wellknown to be said that the order of the preventive detention of any citizen are of extreme and extra-ordinary type and quite harsh type, which are permitted to be made only under some emergent, extraordinary circumstances only, in the larger public interests of "maintenance of the public-order" or for the purposes of immediately preventing the "black marketing" activities prejudicial to the maintenance of the supplies of essential commodities to the community, where the liberty of the citizen is exceptionally permitted to be taken away by keeping him in jail without any trial. Further, equally too well-known to be said is the fact that over and above the basic needs and necessities of the human being; namely the air, food and water, the liberty, equality and justice are also important and equally necessary for any citizen to live with head high and aloft, dignity and honour, as a free citizen in the society. It is for this reason only that "liberty, equality and Justice" of the citizen have been put on the highest pedestal in the Constitution, taking enough care about the fundamental rights of the citizen and power of judicial review over an illegal, arbitrary and unconstitutional exercise of power by the executives. Further, it is for this reason only that entertaining deep anxiety and concern that the Parliament in its wisdom placing all trust and faith has invested such an important, extra ordinary power of curtailing the liberty of the citizen by putting them under preventive detention in the hands of quite responsible high officers like the District Magistrates, Commissioners of Police, etc., hoping that the said powers will be personally, honestly, sincerely and carefully exercised by them with full sense of responsibility and accountability, bearing in mind on the one hand, the priceless liberty and dignity of the citizen, and on the other hand, the overall anxiety of saving the society from the scourge of often being frequented with breaches of public order and disturbance of supply of essential commodities to the community. Under the circumstances, it is indeed quite expected of the said authorities that while exercising the said powers under the preventive detention and thereby, on the one hand, playing with the liberty of the citizen, and on the other hand, the public interest involved, no orders are passed casually and mechanically, exhibiting patent lack of personal awareness on their part regarding each and every word, line and the content of the Orders they sign and ultimately pass. Some grammatical or clerical mistakes are quite understandable, but not the material one which vitiates the subjective satisfaction of the Detaining Authority, like the one committed in the instant

case. This indeed is with a view to see that on the one hand, innocent citizen are not victimised by blindly and mechanically taking them under the preventive detention, without personally verifying/perusing the relevant papers, and on the other hand, the Society at large does not suffer at the hands of the anti-socials, disturbing the public order, etc., any further because of such patent and/ or casual remiss-ness on the part of the Detaining Authority in not taking appropriate care of the procedural safe-guards applying fully, and because of which, the Courts are constrained to release the detenu. When the Parliament in its wisdom quite advisably and guardedly has invested such extra-ordinary powers of preventive detention of citizen under the Detention Laws, in some selected high-class officers only, those powers indeed are got to be personally exercised by the said officers only; after carefully scanning the entire material placed before them, in total awareness, before reaching the subjective satisfaction of the preventive detention of the concerned individual. Not only this but even after exercising the above pre-detention care of reaching the subjective satisfaction, the said officers are also further required to take care of the statutory and constitutional procedural safeguards, in absence of which even a good detention order on the material is ultimately liable to be struck down on the sole ground of violation of the Article 22(5) of the Constitution. Mere placing of signature below an Order, without knowing the contents of the document and the material referred to therein, is neither sufficient nor indicative enough that the Detaining Authority has applied his mind to reach the subjective satisfaction. Unless the material on the basis of which Order is passed reflects the total application of mind and awareness of the Detaining Authority, indicative enough of personally and carefully considered the entire material placed before him, coupled with further imperative care to be taken regarding the statutory and constitutional procedural safe-guards, the same is liable to be quashed and set-aside. Not to take aforesaid desire care, firstly in the matter, which is a matter of condition precedent while passing the Order, and secondly, equally important post-detention care of complying with the Statutory and Constitutional safeguards under Article 22(5) of the Constitution, manifestly demonstrates the total betrayal of the Legislative intent, trust and faith put into the Detaining Authority by the Legislature, rendering the Orders null and void.

6. In view of the aforesaid discussion, since we are of the opinion that the impugned order of detention apparently has been passed blindly in mechanical exercise of power, the same vitiates the subjective satisfaction of the Detaining Authority, calling upon us to declare the impugned order of detention illegal and unconstitutional. The reply letter No. O/w. 1570/92 dated 4-11-1992 filed by N.B. Shaikh, Jail Superintendent, Sub-Jail, Bharuch addressed to Mr. P.M. Thakkar, is ordered to be kept on the record of this case.

7. In the result, this Spl. Criminal Application is allowed. The impugned order of detention is hereby ordered to be quashed and set-aside. Petitioner -- Rajnikant Shantilal Parekh is ordered to be released forthwith unless his presence in jail in required in any other matter. Rule is made absolute accordingly.