
(1991) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8354 of 1991

Nali Balaiah

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 3(2)

Citation : (1991) 2 APLJ 261 : (1992) CriLJ 423

Hon'ble Judges : M.N. Rao, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : E. Manohar, for the Appellant; A.G., for the Respondent

Judgement

M.N. Rao, J.—On 23rd April, 1991, the Collector and District Magistrate, Kurnool passed an order in Rc. Cl. 1178/M/91 in exercise of his powers under sub-sec. (2) (a) of S. 3 read with S. 3(1)(a) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act VII of 1980) directing detention of one Nali Balaiah, a businessman of Veldurthi village, Kurnool District, for a period of six months, after being satisfied that the detention was necessary in order to prevent the said Balaiah from further acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The detention order recites that the detaining authority (second respondent) received credible information that Balaiah taking advantage of the Gulf crisis :

"..... indulged in clandestine trade by hoarding huge stocks of 2,225 quintals of Groundnut pod and 464 quintals of Groundnut seed in authorised and unauthorised godowns of Sri Venkateswara Swamy Shelling and Oils Mills, Veldurthi, without maintaining true and correct accounts and exceeding the storage limit of 500 quintals of groundnut pod and indulging in speculative business in a manner prejudicial to the maintenance and easy availability of supplies of groundnut pods and seeds in the market by causing scarcity of the

said commodity, resulting in price rise of groundnut oil, thereby causing great hardship to the public, with a view to making pecuniary gain"

and thus, contravened conditions 2(b), 3(i) and 7(1) of the licence issued under the A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 and clause 4 of Pulses, Edible Oil Seeds, and Oils (Storage Control) Order 1979.

2. The dealer Balaiah was taken into custody on 10-5-91 and lodged in the District Jail, Secunderabad. On the same day the grounds of detention were served on him. The detenu made a representation to the State Government on 28-5-91 and the same was rejected on 19-6-1991. The Advisory Board constituted under the Act VII of 1980, after considering the material placed before it was of the opinion that there was sufficient cause for the detention.

3. The wife of the detenu filed this writ petition seeking a writ of Habeas Corpus for release of the detenu after setting aside the order of Detention passed by the second respondent - Collector and District Magistrate, Kurnool.

4. In the grounds of detention it was mentioned that the detenu obtained licence No. 934 on 7-7-84 in the name of Annapurna Traders, Veldurthi to deal in edible oils and oil seeds. The licence was renewed up to 31-3-1993; the place of business mentioned in the licence is Door No. 8/103, Veldurthi and the places of storage are : Door No. 8/103 and godown No. 12/105(25) of Sri Venkateswara Swamy Shelling and Oil Mills, Veldurthi. The detenu was managing the business of the said firm. Again he applied for another licence on 3-1-90, in his own name, mentioned the same places of business as shown in the earlier licence and in the application he stated that he was a fresh applicant and on that basis obtained licence No. 2106 on 16-1-90. The place of business in the second licence is shown as D. No. 8/103 and the places of storage are godowns Nos. 11 and 16 of Sri Venkateswara Swamy Shelling and Oil Mills. Two of the sons of detenu are partners of another concern M/s. Supreme Mineral Industries and they also hold a licence to deal in edible oil and oil seeds. The place of business is the same premises No. 8/102, Veldurthi. When the premises of Sri Venkateswara Swamy Shelling and Oils Mills were inspected by the Vigilance staff on 25-1-91 at 16 hours one Tirupathaiah, a partner was present. A total quantity of 2465 quintals of groundnut pods and 464 quintals of groundnut seed was found and out of that 2,225 quintals of groundnut pod and the entire quantity of 464 quintals of groundnut seed were found stored in godowns Nos. 4, 5, 6, 11, 14, 16, 17, 18 and 21 which belonged to the detenu and the balance of the stock belonged to the detenu's co-brother Vaduguru Naganna.

On 27-1-91, the stocks were seized and a case was registered against the detenu under the provisions of the Essential Commodities Act and the relevant Control Orders.

5. On 27-1-91, the detenu's house was searched by the Inspector of Police, Vigilance Cell and they found four licences, a cash book and certain bills. Premises No. 8/102 although was shown as the place of business of M/s.

Supreme Mineral Industries, the licensees of which are the sons of detenu and premises No. 8/103 is shown as the business place of M/s. Annapurna Traders, the business of which was managed by the detenu, a physical verification of both the premises revealed that there were no stocks at all in both the premises and that premises No. 8/102 is extension of premises No. 8/103 where the detenu is residing.

6. The explanation of the detenu that the groundnut pod and the seed belonged to different ryots of surrounding villages who stored the same in godowns Nos. 4, 5, 6, 11, 17 and 21 belonging to him (on rent) was disbelieved by the detaining authority observing :

"The stocks of groundnut pod and seed were kept in one big heap loosely in each of the godown, but not separately and distinctly with any markings."

None of the ryots came forward to claim the stocks and that godowns Nos. 11 and 21 being the licenced godowns were required to be used by the licensees themselves. The detaining authority, therefore, expressed the view that the detenu failed to maintain the true and correct accounts for groundnut seeds and pods and thereby contravened condition 3(1) of the licence issued under the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. By storing 560 quintals of groundnut pod and 293.60 quintals of groundnut seed in godowns Nos. 4 to 6 and 14 and 17 unauthorisedly the detenu and his wife contravened condition No. 2(b) of the licence issued under the above Control Order. The detenu further contravened cl. 4 of Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1979 by storing 2225 quintals of groundnut pod and 464 quintals of groundnut seed in excess of the storage limit of 500 quintals. By entering into transaction involving purchase, sale or storage for sale of edible oil seeds in a speculative manner prejudicial to the maintenance and easy availability of edible oils and oil seeds in the market, it is stated in the grounds of detention that the detenu has contravened condition No. 7(1) of the Licence under the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. The further recitals which need to be noticed in the grounds of detention are that the detenu along with his co-brother Naganna, taking advantage of the Gulf crisis indulged in clandestine trade by hoarding huge stocks of ground pods and seeds beyond permissible limits unauthorisedly and caused artificial scarcity of the said commodity in the market leading to abnormal rise in prices of edible oils and seeds, with a view to make pecuniary gain and thereby caused hardship to the public. The detaining authority felt that :

"Launching prosecution will not have the immediate desired effect of preventing you from further acting in future in a manner prejudicial to the maintenance of supplies of essential commodities to the community, as its culmination takes considerably long time."

7. The last paragraph of the grounds of detention recites :

"You have a right to represent against this order to the Chief Secretary to the Government of Andhra Pradesh, Hyderabad, through the Jail Authorities. You may also have a right to appear in person before the Advisory Board to represent your case."

8. Shri Manohar, learned counsel for the petitioner has urged the following contentions in support of the plea that the order of detention is vitiated :

1) As there is no fixation of price in respect of groundnut seed or pod the allegation that the detenu was indulging in speculative business is totally baseless and this is clearly indicative of the non-application of the mind of the detaining authority;

2) Before passing the order of detention it was incumbent upon the detaining authority to explore the other preventive measures like suspending or cancelling the licence, and without doing so, in a mechanical manner the detaining authority stated in the grounds of detention that launching of prosecution will not have any immediate desired effect :

3) The Gulf war came to an end on 7-3-1991 but the order of detention was passed on 23-4-1991 and if the alleged price rise was due to the Gulf war, immediate action should have been taken. There is no material before the detaining authority to show that the detenu would act in future in a similar fashion; and

4) The detaining authority had not appraised the detenu of his right to make representation to the Central Government and thus the detenu was deprived of his fundamental right under Art. 22(5) of the Constitution of India.

9. Before dealing with the contentions, a few prefatory observations are opposite. It is undeniable that in a democratic society like ours governed by the Rule of Law founded on constitutionalism, right to personal liberty is the most cherished right safeguarded very zealously : it is not only primordial but also is of perennial concern. Equally it is true that any assumed right to personal liberty cannot be allowed to subvert the well being of the society. Our constitution-makers without succumbing to any doctrinaire inclinations adopted a pragmatic approach by not sacrificing societal interests at the alter of unbridled personal liberty. The point of equilibrium between personal liberty and communication interest is represented by the preventive detention laws.

10. Re : (1) In order to secure equitable distribution and availability at fair prices of pulses, Edible Oils, the Central Government made Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 (for short Pulses Order) in exercise of the powers conferred u/s 3 of the Essential Commodities Act, 1955. Clause 3 of the Order lays down that no person shall carry on business in pulses or in edible oilseeds or in edible oil except under and in accordance with the terms and conditions granted under a State order. Clause 4 lays down the maximum quantity of stocks a dealer can possess. A city, the population of which is less

than three lakhs is ranked as Category "C" city and the maximum quantity of edible oilseeds including groundnut a wholesale dealer in such a city can possess is 500 quintals, and a retailer, 50 quintals. The detenu obtained licence to deal in edible oilseeds both as wholesale and retailer. The licence was issued to the detenu under the provisions of the A.P. Scheduled Commodities (Licensing and Distribution) Order, 1982. Edible Oilseeds is a scheduled commodity specified in Schedule I to the said Order. Dealer is defined by Clause 2(d) of the 1982 Order in respect of edible oilseeds and edible oil as one

"who engages himself in the business of purchase, sale or storage for sale of edible oilseeds in quantity of more than 30 quintals of any one or all edible oilseeds including groundnut"

Under Clause 3 many a person who has been issued a licence by the Licensing Authority can carry on business as a Dealer in respect of the Scheduled Commodities. The maximum quantity of edible oilseeds a wholesaler can possess under Clause 2 of the Order in cities other than those specified in the said Clause, is 500 quintals and in the case of a retailer, 50 quintals. Sub-clause (2) of Clause 4 says that every licence issued, re-issued or renewed under the 1982 Order shall be in Form B as prescribed in Schedule. Condition 2(a) of the licence lays down that the licensee shall carry on business at the place mentioned in the licence, and sub-clause (b) forbids storing of Schedule Commodities at any place other than the one mentioned in the licence. Condition No. 3 of the licence imposes a duty on the licensee to maintain :

- (a) A register of daily accounts showing (exactly the opening stock on each day)
- (b) Quantities received on each day showing the place from where and the sources from which received;
- (c) The quantities delivered or otherwise removed on each day showing the places of destination; and
- (d) The closing stock on each day.

Condition No. 7 forbids a licensee from entering into any transaction involving purchase, sale or storage for sale of any of the Schedule Commodities in a speculative manner prejudicial to the maintenance and easy availability of supplies of the Schedule Commodities.

11. Although the two Control Orders referred to above do not impose any price restrictions in respect of edible oilseeds, in respect of possession and storage of the same, and maintenance of accounts, they undoubtedly impose certain restrictions as noticed supra and an obligation is cast on the licensee to maintain correct accounts.

12. 2225 quintals of groundnut pod and 464 quintals of groundnut seed were alleged to have been found in the godowns belonging to the detenu and no accounts were forthcoming as to the sources of the stock. The explanation that

they belonged to several individual ryots was disbelieved by the detaining authority. When stocks in excess of the statutorily prescribed limits are stored, the inference follows that such an action impedes free flow of stocks into the market with the result equitable distribution will become difficult and consequently the stocks will not be available freely to the consumers. The speculative nature of the transaction is clearly apparent. The detaining authority has categorically mentioned in the order of detention the specific violations of the statutory provisions committed by the detenu. There is absolutely no force in the contention advanced that the order of detention was passed in a mechanical manner without application of mind.

13. The reliance on the ruling of this Court in *Madhusudhan v. District Magistrate* 1987 (1) ALT 250 : (1987 Cri LJ 1607) in support of the plea that as there is no price fixation in respect of edible oilseeds there could be no order of detention, is totally misconceived. In the above case the order of detention was grounded on the allegation of illegal transport of edible oilseeds with a view to carrying on speculative business. The order of detention was rightly set aside by a Division Bench of this Court on the ground that there was no statutory restriction on transport of edible oils; when there were no restrictions as to fixation of price and transport of edible oils it could not be said that by transporting edible oils a licensee had indulged in speculative business. That ruling has no relevance to the case on hand.

14. Re : (2) According to the learned counsel for the petitioner, it was obligatory on the part of the detaining authority to explore other preventive measures like suspension or cancellation of the licence before actually coming to the decision to pass the order of detention. In support of this contention reliance was placed upon two unreported decisions of this Court in W.P. Nos. 290 of 85 dated 28-1-1985 and 465 of 85 dated 8-2-1985. Strongly opposing this the learned Advocate General has urged that cancellation or suspension of licence really are not alternatives to preventive detention. Prosecuting the detenu is no doubt an alternative to preventive detention but if it takes a long time it is always open to the detaining authority to pass an order of detention. If the detention order itself recited that launching of prosecution would be futile, it would indicate that the detaining authority had bestowed sufficient care on that aspect before opting for detention. Drawing a distinction between punitive action by launching prosecution and preventive action by passing an order of detention, a constitution Bench of the Supreme Court in *Haradhan Saha Vs. The State of West Bengal and Others*, speaking through Chief Justice Ray observed (at page 1482 of Cri LJ) :

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction

on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove (sic) (on proof of ?) his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent."

Elaborating the concept further, the learned Chief Justice held (at page 1485 of Cri LJ) :

"The power of preventive detention is quantitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in a reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which, prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution."

After reviewing the relevant decisional law the following principles were enunciated by the learned Chief Justice (at page 1485 (of Cri LJ)) :

"..... The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

15. A three member Bench of the Supreme Court in *Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others*, after referring to Saha's case and certain other rulings bearing on the question, deduced certain principles which we shall refer

later.

16. Purporting to follow the Supreme Court ruling in Kanchanlal's case, a Division Bench of the Gujarat High Court in Ramniklal Mohanlal v. C.J. Bose 1983 Cri LJ 193 (Gujarat) as quoted in W.P. No. 290 of 1985 dated 28-1-1985 by this court observed :

"In the instant case, by and large, the case of the petitioner is that he is not in a position to indulge in blackmarketing in future any longer. He has denied the allegation made against him in the grounds of detention, but even if those averments are ultimately established, they would go to show that certain acts which are violations under the Essential Commodities Act have been committed by him. The question whether with a view to preventing him from indulging in similar activities in future it is necessary to detain him does not appear to have been examined by the State Government, the detaining authority. It is the bounden duty of the State Government in each and every case, whenever the question of detention under the provisions of this Act or any other preventive detention arises, to consider whether a less drastic remedy than that of preventive detention would not meet the requirements of the particular case under consideration. The file of the case of each of detenu must show that the other alternative or less drastic remedies were considered and rejected and ultimately the decision for preventive detention was taken. If these alternatives do not appear on the files and the application of mind to these alternatives does not appear on the files, it would be clear case of non-application of mind because preventive detention has to be resorted to only when it is necessary to detain the particular individual concerned so as to prevent him from indulging in obnoxious activities which are sought to be prevented by resorting to preventive detention under the relevant Act providing for such detention. If those alternatives do not appear to have been considered and taken and the reason why the more drastic remedy, namely, preventive detention is resorted rather than a less drastic penalty is not shown on the file it is obvious that the order of detention cannot be justified and it is the duty of the court to set aside the order of detention in view of what has been stated by the Supreme Court in Kanchanlal case (supra)".

17. Following that view, Division Bench of this Court in Narayan Das Chowdasi v. Commissioner of Civil Supplies W.P. No. 290 of 85 dated 28th January, 1985 held that it was incumbent upon the detaining authority to consider the question :

"Whether a less drastic step could be taken to prevent the detenu from his alleged involvement in activities prejudicial to the maintenance of supplies of essential commodities to the community."

The record also must disclose, according to the learned judges that the detaining authority had applied his mind to the question whether the detention is :

"the only expedient and no other course of action could be taken in the facts and circumstances of the case to achieve the desired result of preventing the detenu from acting prejudicial to the maintenance of supplies of commodities essential

to the community.

The same view was followed by the same learned Judge in Anthati Giri v. State of A.P., W.P. No. 465 of 85 dated 7th Feb. 1985.

18. With great respect to the learned Judges, we are unable to agree with the proposition of law as stated by them and that it was grounded in Kanchanlal's case (supra) decided by the Supreme Court. Explaining the decision of the Constitution Bench in Saha's case (supra), a three member Bench of the Supreme Court in Kanchanlal's case speaking through Chinnappa Reddy, J. stated (at page 1307 (of Cri LJ)) :

"..... Clearly, the Court did not lay down that the possibility of a prosecution being launched was an irrelevant consideration not to be borne in mind by the detaining authority. All that was laid down was that the mere circumstance that a detenu was liable to be prosecuted was not by itself a bar to the making of an order of preventive detention. It does not follow therefrom that failure to consider the possibility of a prosecution being launched cannot ever lead to the conclusion that the detaining authority never applied its mind and the order of detention was, therefore, bad.

The possibility of launching criminal prosecution is not an absolute bar to an order of preventive detention and if such possibility is not present, the order is vitiated was the view expressed in Kanchanlal's case (supra). It was only when an allegation was made that the order was issued in a mechanical manner without considering the question whether it was necessary to make the order of detention when an ordinary criminal prosecution could serve the purpose, then it would be incumbent on the detaining authority to satisfy the Court that the question too was borne in mind before the order of detention was made. In no unmistakable terms the learned Judge speaking for the three member Bench stated the legal position thus : (at page 1308 of Cri LJ) :

"The principles emerging from a review of the above case may be summarised in the following way : The ordinary criminal process is not to be circumvented or short-circuted by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad. However, the failure of the detaining authority to consider the possibility of launching a criminal prosecution may, in circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary criminal prosecution could well serve the purpose, the detaining authority must satisfy the Court that that question too was borne in mind before the order of detention was made. If the detaining authority fails to

satisfy the Court that the detaining authority so bore the question in mind the Court would be justified in drawing the inference that there was no application of the mind by the detaining authority to the vital question whether it was necessary to preventively detain the detenu."

19. The obligation on the part of the detaining authority to bear in mind the aspect whether an ordinary criminal prosecution could well serve the purpose instead of an order of detention is entirely different from and cannot be equated with an obligation that it should consider whether it would be expedient to bear in mind the question whether detention is

"the only expedient and no other course of action could be taken."

As was laid down by the Division Bench of this Court in the aforesaid writ petitions.

20. The question of cancellation or suspending the licence with a view to preventing the detenu from further carrying on his activities, in our opinion, would be totally irrelevant. The law does not case such an obligation on the part of the detaining authority. Kanchanlal's case does not lay down such a proposition. From a realistic point of view it would be utterly futile to impose any such obligation on the detaining authority. More than what is required by law, it is not the function of this Court to enunciate as binding rules to be followed rigorously by the detaining authority. Cancellation or suspension or suspension of licence will not prevent a dealer from carrying on his activities. The very assumption that suspension or cancellation of licence would result in preventing a dealer from acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community is wrong. A person disposed to commit breaches of law is not deterred if his licence is cancelled or suspended, and so these are no alternatives at all to be considered by the detaining authority before passing of the order of detention.

21. As the two judgment of the Division Bench of this Court referred to supra are contrary to the law laid down by the Supreme Court, with great respect to the learned judge, we are constrained to hold that they are per incurium.

22. The detaining authority did take into consideration the question whether launching of prosecution will have the immediate desired effect and after referring to this aspect in the order of detention the authority stated that such a course of action will not have the desired effect to preventing the detenu from further acting in future in a manner prejudicial to the maintenance of supplies of commodities essential to the community. As the question was fully borne in mind by the detaining authority we must draw the inference, following the dictum in Kanchanlal's case (supra) that the detaining authority issued the order after applying his mind to the vital question whether it was necessary to preventively detain the husband of the petitioner.

23. We do not find any merit in the contention of Shri Manohar that a solitary act

of the detenu was made the basis for the order of detention and that there is nothing to show that he has a tendency to violate the law and unless it is established by some evidence that the detenu has a tendency to violate the law the order of detention must be set aside. Even a single act may constitute the basis for an order of detention. "An order for preventive detention", observed the Supreme Court in Mohammad Jafar Vs. Union of India (UOI), :

"is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of surrounding circumstances. Such past conduct may consist of one single act or a series of acts. It must be of such nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts as to warrant his detention."

In Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, , the Supreme Court observed at page 156 (of Cri LJ) :

"The rule laid down is that a prosecution or the absence of it is not an absolute bar to an order to preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offence."

24. In the grounds of detention several instances are mentioned as to how several licences are mentioned as to how several licences were obtained by the detenu, his sons and his close relations showing the same premises as the place of business in a manner contrary to law and nothing more is required to draw the inference about this tendency and disposition to violate the law.

25. Re : (3) The third contention that the Gulf war came to an end on 7-3-1991 and, therefore, the order of detention passed on 23-4-91 is vitiated and that if the alleged price rise was due to the Gulf war, immediate action should have been taken is untenable. A subsidiary contention advanced in this context that no details are mentioned in the grounds of detention as to how the price rise was due to the Gulf war and that the material pointing increase in prices because of Gulf war has not been furnished to the detenu, also in our view does not merit acceptance.

26. The reference to Gulf war was only incidental to the narrative aspect. As during the Gulf war the market fluctuations indicated an upward trend, a reference was made to the Gulf war crisis. Even without reference to the Gulf war the acts alleged against the detenu constitute valid ground. An incidental reference to the Gulf war and the increase in market prices does not impose any legal obligation on the part of the detaining authority to furnish to the detenu any material in that regard. There is no obligation on the part of the detaining authority to supply to the detenu all documents to which a reference was made in the grounds irrespective of the fact whether or not those documents were relied upon in making the order of detention. In Mst. L.M.S. Ummu Saleema Vs.

Shri B.B. Gujaral and Anr, , the Supreme Court after reviewing the case law on the subject held (at page 892 (of Cri LJ)) :

"It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Art. 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the Fundamental Rights guaranteed by Article 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention."

27. A Division Bench of this Court in *Rajesh Kumar v. Govt. of A.P.* 1987 (1) APLJ 320 speaking through one of us, M. N. Rao, J. after considering this question in extenso observed (at page 324 (of APLJ)) :

"..... failure to supply any document or material which does not constitute a basic fact influencing the detaining authority in arriving at the requisite satisfaction leading to the order of detention, but only adverted to by way of causal or passing reference in the course of narration of facts and not relied upon by the detaining authority in making the order of detention, will not in any manner vitiate the order of detention."

This decision was affirmed by the Supreme Court in SLP (Crl.) No. 2599 of 1986 dated 25-9-86 observing :

"We fully agree with the reasoning and conclusion of the High Court. Extremely well written and well reasoned judgment with which we fully concur. SLP is dismissed.

28. When specific acts of violations are alleged against the detenu and all the relevant material which has been taken into consideration for forming the requisite satisfaction to pass the order of detention has been supplied to the detenu, the contention that because the Gulf war came to an end on 7-3-91 the order of detention should not have been passed on 23-4-191 is totally misconceived. Equally fallacious is the argument that if the price rise was due to the Gulf war immediate action ought to have been taken by the authorities to curb the increase in prices.

29. There is no vagueness in the order of detention. The reference to the detenu indulging in speculative business by storing huge stocks of groundnut pod and seeds beyond permissible limits without maintenance of true and correct accounts with a view to withholding them from easy availability in the market leading to abnormal rise in prices of groundnut oil, cannot be characterised by any stretch of interpretative reasoning as vitiated by vagueness. The disposition of the detenu to violate law was evidenced from the manner in which he obtained several licences and procured and stocked edible oilseeds far in excess of the

statutorily prescribed limits. All these actions necessarily indicate speculative business and that was done only to earn more profit by withholding the stocks from easy availability in the market with the consequence of prices increasing. No further materials need be supplied to the detenu as to how the prices had increased because of the offences committed by him.

30. Re : (4) The last paragraph of the grounds of detention reads :

"You have a right to represent against this Order to the Chief Secretary to the Government of Andhra Pradesh, Hyderabad through the Jail Authorities. You may also have a right to appear in person before the Advisory Board to represent your case."

The contention advanced on behalf of the detenu by Shri Manohar, learned counsel is that the failure on the part of the detaining authority to appraise the detenu of his right to make representation to the Central Government against the order of detention renders the order of detention invalid. We do not agree. Art. 22(5) of the Constitution lays down that :

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

An obligation is cast on the authority which passed the order of detention to communicate to the detenu the grounds on which the order of detention has been made and shall afford him the earliest opportunity of making a representation against the order. Clause (5) of Art. 22 of the Constitution does not specify the authority to whom the representation should be made; what all it mandates is that the authority making the order of detention :

(i) shall communicate to the detenu the grounds on which the order was made; and

(ii) shall afford the detenu an earliest opportunity to make a representation against the order.

Clause (a) of S. 2 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 1980 Act) defines the expression "appropriate Government". As per the definition, when a detention order is made by the Central Government or by an Officer of the Central Government, the appropriate Government is the Central Government, and when a detention order is made by the State Government or by an Officer of the State Government, the appropriate Government is the State Government. The Central Government or a State Government or any Officer of the Central Government not below the rank of Joint Secretary to that Government specially empowered in that behalf or any Officer of a State Government not below the rank of a Secretary to that Government are empowered to pass orders of detention under

sub-sec. (1) of S. 3. By sub-sec. (2) of S. 3 District Magistrates and Commissioners of Police wherever they have been appointed may also exercise powers of passing detention orders under sub-sec. (1). If an order is passed by a District Magistrate, Commissioner of Police, sub-sec. (3) of S. 3 says that the Officer shall immediately report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and no such order shall remain in force for more than twelve days after it was made unless in the meantime it has been approved by the State Government. When an order is made or approved by the State Government, it is mandated by sub-sec. (4) that the State Government shall report within seven days the fact to the Central Government with the grounds on which the order has been made and such other particulars which in the opinion of the State Government have a bearing on the necessity for the order. S. 8(1) lays down that the authority making the order of detention shall as soon as may be but ordinarily not later than five days in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to the detenu the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. The guarantee contained in cl. (5) of Art. 22(5) is incorporated in S. 8 by clearly specifying that the representation shall be to the appropriate Government and the authority bound to afford opportunity of making representation shall be the detaining authority. S. 14(1) confers power on Central Government to revoke or modify any order of detention. It reads :

"14. Revocation of detention Orders :- (1) Without prejudice to the provisions of S. 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified -

(a) notwithstanding that the order has been made by an Officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government."

31. Although power is conferred on the Central Government to revoke the order of detention passed by an officer of the State Government or the State Government no duty is cast upon the detaining authority to appraise the detenu that he has a right to make a representation to the Central Government seeking revocation of the order u/S. 14. If a representation is made by the detenu to the Central Government, it is needless to mention, the Central Government, is bound to consider that representation. But failure to appraise the detenu that the Central Government has power u/S. 14 to revoke the order and, therefore, it is open to him to make a representation to that Government, in our view, will not render the order of detention invalid if it is otherwise sustainable. The only obligation cast upon the detaining authority u/S. 8 of the Act is to afford an earliest opportunity to the detenu to make a representation to the "appropriate Government" against the order of detention. In this case, as the detention order

was passed by the District Magistrate, the appropriate government is the State Government. To that Government the detenu did make a representation. The grounds of detention also state in categorical terms that the detenu has a right to represent against the order to the Chief Secretary to the Government of Andhra Pradesh through the jail authorities. No specific pro forma is prescribed in this regard. On page eight of the affidavit filed in support of the writ petition it is stated that, in all the detention orders passed under the 1980 Act the detenu is informed as under :-

"You have a right to represent against this order of detention to the Chief Secretary to the Government of Andhra Pradesh, Hyderabad; the Secretary, Government of India, Ministry of Civil Supplies, Sastri Bhavan, New Delhi-110001 and the Advisory Board of the High Court of Andhra Pradesh. If you feel to do so, you may submit your properly addressed representation with sufficient copies to the Jail authorities for onward transmission to the Government of Andhra Pradesh. You have also a right to appear in person before the Advisory Board of the High Court to make a representation against this order of detention."

The plea raised is that by making a departure in the present case from the above practice, the sponsoring authority or the detaining authority has acted with an ulterior motive to authority has acted with an ulterior motive to deprive the detenu of his rights. There is no basis for this plea. When no pro forma was prescribed under the Act, the action of the authorities in appraising the detenu of his right to make a representation to the appropriate Government cannot be faulted. In the counter affidavit, in paragraph 19, it is clearly averred that the 1980 Act does not contemplate that the detenu be informed of his right to make representation to the Central Government and no pro forma is prescribed under the Act nor is there any prescribed manner in which the right to make a representation against the detention order.

A number of decisions including Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, and State of Punjab Vs. Sukhpal Singh, are cited by the learned counsel for the petitioner to show that the detenu in every case is permitted to make a representation to the Central Government. In the narration part of the judgment in Sukhpal Singh case, it is mentioned that :

"It is averred in the grounds of detention that the detenu has a right to make a representation if he wished to the Central Government and also to the State Government."

The question whether right to make representation to the Central Government when it is not the appropriate Government under the provisions of the Act under which the order of detention was made, is part of the guaranteed constitutional right under Art. 22(5) has not arisen either directly or indirectly in any of the rulings cited by Shri Monohar. In our considered opinion, no such right flows from Art. 22(5). At the same time, we make it clear that the detenu's right to make a representation to the Government of India u/S. 14 of the Act for revocation of

the order of detention remains in tact. If he makes such a representation, it is the bounden duty of the Central Government to consider such a representation. But if the order of detention does not mention that aspect specifically it will not become invalid.

For these reasons the writ petition fails and accordingly it is dismissed. No costs.

32. Petition dismissed.