

(1995) 09 GUJ CK 0014
In the Gujarat High Court

Narayan Tukaram Baddi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

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

Citation : (1996) 1 GLR 31

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—Petitioner-one Naranbhai Tukaram Baddi has by this petition challenged the legality and validity of the order of detention, dated 16th May, 1995 passed by the District Magistrate, Ahmedabad u/s 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the said Act"). The grounds of detention duly formulated u/s 8(1) are supplied to the detenu wherein the satisfaction is recorded that for maintenance of supplies and distribution of essential commodity like petrol, with a view to preventing the detenu from acting, in any manner, prejudicial to the said avowed object the order of detention is required to be passed.

2. In the grounds of detention supplied to the detenu it is stated that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies of commodity essential to the community such as petrol and with a view to maintaining its easy availability and distribution, the order of detention is required to be passed, and it is further stated that each ground of detention stated in the order itself is sufficient to detain such person. It is also alleged against him that at Plot No. 99 of Vatva Vinzol GIDC Industrial Estate, the detenu is carrying on the business of manufacturing "Industrial Solvent" which is a Petroleum product. It is further alleged that on 7th May, 1995 when the Deputy Collector inspected the Petroleum pump being run in the name

and style of Gujarat Auto Centre Petroleum Pump near Narol on Ahmedabad-Bombay National Highway it was found that just opposite the Petroleum Pump one tanker bearing No. GJ/ 1A7754 and another tanker bearing No. GJ/I/V/3873 were standing. On discreet enquiry being made from the driver of the second tanker-Avadheshkumar Dubey and on recording his statement in the presence of panchas he disclosed that from V.G. Chemicals at Vatva GIDC on 6th May, 1995, 4,000 Ltrs. of Industrial Solvent was filled in the middle portion of the tanker and the same was emptied in the petrol tank of M/s. Ambica Agencies Petroleum Pump at village Sanand at 12-30 at night. He further disclosed that prior thereto on 29-4-1995, 8,000 Ltrs. of Industrial Solvent was carried by him and emptied in the petrol tank of said petrol pump. On further enquiry being made from the owner of the said tanker he disclosed that the said tankers were filled with Industrial Solvent from Atlas Petroleum Chemicals of the ownership of the detenu and the same was emptied in the Ambica Agencies Petroleum Pump at Sanand. He further disclosed that the industrial solvent is being sold by the detenu at the rate of Rs. 6/- per litre as per the bills prepared but since the Industrial Solvent was being used for the purpose of mixing the same with petrol the detenu was charging Rs. 12/- to Rs. 14/- per litre and the balance amount was recovered in cash. The detaining authority has thereafter referred to three underground tanks of Ambica Agencies Petrol Pump at Sanand and has noted the exact quantity of Petrol found, that being 4,154 Ltrs. while Diesel was found to be 13,681 Ltrs. As against the aforesaid quantity which was actually found in the three underground tanks the meter reading of petrol at the time of inspection and the sale of petrol as per the meter reading are stated in the tabular form. The same was thereafter tallied with the quantity of petrol as reflected in the stock book and it was found that after deduction of sale of petrol as per the meter reading, namely, 3,945 Ltrs. the remaining stock should have been 653 Ltrs. while in fact what was found in the underground tank was 4,153 Ltrs. and thus there was excess of 3,501 Ltrs. of petrol. This excess was because of adulteration of Industrial Solvent in the petrol tank by the owner of the petrol pump and that was the only reason why such a huge quantity of petrol in excess was found in the underground petrol tank. On making further discreet enquiries about V.G. Chemicals of Phase I, GIDC Industrial Estate, Vatva, since the bill of the said company was found from the driver of the tank, it was found that at the address there was no firm or business agency carrying on business in the name of V.G. Chemicals. It was found that one Babu Govind was running business of Printing and that he stated that he has never carried on business in the name and style of V.G. Chemicals and that he has never done business of petroleum products or industrial solvents. The detenu disclosed that V.G. Chemicals was owned by V.G. Purohit while the owner of the tanker disclosed that one Bharatbhai Shah was the owner of V.G. Chemicals. He also disclosed that V.G. Chemicals was a fictitious concern and was existing on paper only. The detaining authority has thereafter referred to supply of Industrial Solvent by the detenu to number of other petrol pumps such as M/s. Deep Oil and Chemicals, M/s. S.B. Petroleum, Nadiad, M/s. Deep Oil and Chemicals at Kuha. The investigation

further revealed that the owners of such petrol pump have been purchasing industrial solvent at a low price as per bill while they were paying between Rs. 12/- to Rs. 14/- per litre to the detenu and that such industrial solvent was being unauthorisedly mixed or adulterated in petrol. The adulteration of industrial solvent in petroleum product is not permissible in law and it is, therefore, alleged against the detenu that he was by manufacturing such petroleum product of low quality and supplying the same to the owners of petrol pump encouraging adulteration in petrol and was abetting the activity of black-marketing and profiteering. It was on such grounds that the order of detention is passed.

3. In the grounds of detention the detenu is further informed that he has a constitutional right of making representation to following authorities:

(i) District Magistrate, Ahmedabad (detaining authority),

(ii) Additional Chief Secretary, Food and Civil Supplies, Block No. 14, 6th floor, New Sachivalaya, Gandhinagar,

(iii) Secretary, Civil Supplies and Public Distribution Ministry, Krishi Bhuvan, New Delhi and (iv) Members of Advisory Board.

4. Various documents and material on which the detaining authority has placed reliance are supplied to the detenu in vernacular.

5. Mr. M.C. Kapadia, Learned Counsel for detenu has, on the first day, when the hearing of the petition commenced, i.e., on 28-8-1995 made number of submissions, but since one of the submissions goes to the root of the matter, the rest of the submissions are not set out in detail nor are they specifically dealt with in this petition. The main submission advanced by the Learned Counsel relate to the gross unexplained delay in considering representation of the detenu and the same can be divided into two submissions as stated herein:

(i) the continued detention of the detenu is vitiated in view of gross unexplained delay in considering the representation of the detenu by the State Government; and

(ii) the continued detention of the detenu is also vitiated in view of grossest delay in considering the representation of the detenu by the Central Government because till the petition was heard and arguments of other side were finally concluded, the representation of the detenu was not decided by the Central Government and this fact must assume importance in view of the fact that under the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the maximum period of detention provided by Section 15 of the said Act is six months from the date of detention. Section 13 further enacts a proviso that nothing contained in the section can affect the power or authority to revoke or modify the detention order at any earlier time.

6. In view of the aforesaid statutory provision, namely, that the order of detention is only for a period of six months under the statute, the time

imperative to be observed by the authority empowered to consider the representation shall have to be strictly applied and eternal or maximum vigilance is to be insisted upon and expected from such authorities so that constitutional protection guaranteed to the detenu of earliest expeditious consideration and disposal of his representation is not rendered nugatory and otiose or rendered to the position of mere teasing illusion by bureaucrats.

7. Before this Court proceeds to consider the aforesaid two submissions, it would be necessary to set out various details as to when the representation was made to each authority and as to how the time was consumed in dealing with such representation.

Representation to State Govt.:

5-6-1995: The date on which the representation made by the detenu to Dist. Magistrate, Ahmedabad (detaining authority), to duly constituted Advisory Board, to Additional Chief Secretary, Food and Civil Supplies at Sachivalaya Gandhinagar and to Secretary, Civil Supplies and Public Distribution Ministry, Krishi Bhuvan, New Delhi. It may be mentioned that this representation is made by the detenu in Gujarati.

This representation is stated to be running into 18 pages.

The representation was given to 4th respondent, namely, Superintendent of Jail, Porbandar for being forwarded to the aforesaid authorities.

12-6-1995: As per affidavit-in-reply filed by K.S. Waghela, Under-Secretary to the Govt, of Gujarat, Food and Civil Supplies Dept. the said representation was received by the Special Branch of Food and Civil Supplies Department on 12-6-1995. It was placed on the very day, and the Special Branch put up the file to the Under-Secretary, i.e. dependant of the Affidavit-in-reply.

13-6-1995: File was thereafter put up to the Deputy Secretary and Secretary and same was cleared on the very same day. File was received back by the Special Branch as there was endorsement that it was necessary to call for the remarks of the detaining authority.

14-6-1995: Para-wise remarks of the detaining authority were called for from the Dist. Magistrate, Ahmedabad by Telex message, dated 14-6-1995. and subsequently even reminder was sent to him on 29-6-95 requesting him to send para-wise remarks on the said representation.

15-7-1995: Dist. Magistrate sent para-wise remarks vide letter, dated 15-7-1995 which was received by the Special Branch on that very day. It may be stated at this stage that a period of approximately one month was consumed by the detaining authority in sending para-wise remarks on the representation.

17-7-1995: File alongwith para-wise remarks received from the detaining authority was placed by the Special Branch before the Deputy Secretary.

18-7-1995: Deputy Secretary cleared the file.

Deputy Secretary submitted file to the Secretary, Civil Supplies on the very day and the said Secretary found that some further clarification was required on the representation and the same was called for from the Dist. Magistrate (detaining authority) vide letter dated 20-7-1995.

28-7-1995: The Dist. Magistrate thereafter sent his further clarification and detailed para-wise remarks vide letter dated 28-7-1995 which were received by the Special Branch on 29-7-1995.

29, 30 and 31-7-1995: The file, once again, travelled from Special Branch to the Deputy Secretary, Secretary, Civil Supplies by and ultimately it was placed before the Minister, Civil Supplies who cleared the same on 1-8-1995 by rejecting the representation.

3-8-1995: The detenu was communicated about the outcome of his representation.

8. It is, thus, clear that the representation made as back as 5-6-1995 by the detenu came to be considered and rejected by the State Government only on 1-8-1995, i.e. 57 days after receipt of the same, a period which could not be said to be a very short reasonable period for consideration of representation of the detenu whose detention is to last only for six months. Period consumed by the State Government is virtually a period of two months in considering the representation and this Court shall have to decide the explanation tendered by the State Government through the affidavit-in-reply filed by Mr. K.S. Waghela, Under-Secretary, as well as the affidavit-in-reply filed by the detaining authority, i.e. the Dist. Magistrate, explaining the reason why he could not send para-wise remarks on the representation to the State Government promptly and expeditiously. Reference to these two counter-affidavit-in-reply will be made hereinafter in detail because if such explanation is found to be acceptable and reasonable it could be said that the delay in considering the representation is reasonably explained.

Representation to Central Govt.:

5-6-1995: Representation was given to Jailor for being forwarded to Secretary, Civil Supplies and Public Distribution Ministry, Krishi Bhuvan, New Delhi in Gujarati language.

14-6-1995: The detenu also presented four copies of English translation of his representation to Jailor for being sent to aforementioned four authorities and it is not disputed that the Secretary, Civil Supplies and Public Distribution Ministry, Krishi Bhuvan, New Delhi also received the English translation.

22-6-1995: Telex message was sent by the Central Government requiring the State Government to furnish (i) translation of Gujarati representation in English, (ii) para-wise remarks on the representation made by the detenu.

23-6-1995: Telex message of the Central Government was received by the Special Branch of Food and Civil Supplies department. Since English version of Gujarati representation was already sent by the jail authority to the Central Government on 14-6-1995 the State Government did not think it fit to send the translation of the representation to the Central Government.

Para-wise remarks which were received by the State Government from the Dist. Magistrate, on 28-6-1995 were lying in the State Government and only on 3-8-1995 when the rejection of the representation by the State Government was communicated to the detenu, the very para-wise remarks were sent for translation to the office of Director of Languages.

7-8-1995: In the affidavit-in-reply filed by K.S. Waghela, Under-Secretary, Government of Gujarat dated 16-8-1995 he has categorically admitted that the said parawise remarks sent by the Dist. Magistrate were pending for translation in the office of the Director of Languages and para-wise remarks were received only on 7-8-1995. His explanation is that since representation was a lengthy one, translation of para-wise remarks required much time and much time was consumed in preparing translation. He has further tried to contend that in the month of May, 1995 to July, 1995, 102 orders of detention were passed and since all such representations were to be considered by the Government chronologically there was paucity of staff and paucity of time and there was tremendous work load.

11-8-1995: Mr. B.B. Naik, learned Addl. Central Government Stdg. Counsel has in his reply submitted on 6-9-1995 stated that para-wise remarks were received by the Ministry of Food and Civil Supplies at New Delhi on 1-8-1995.

12 and 13-8-1995: These two were holidays.

14-8-1995: Process of consideration of representation was started by the Central Government. He orally stated that it was felt by the authority that some more clarification was needed and therefore more information was called for from the State Government. The exact date on which the need was felt and by whom the need was felt is not stated to the Court.

5-9-1995: Representation is rejected by the Central Government. It is thus clear that the representation, dated 5-6-1995 came to be rejected by the Central Government as back as 5-9-1995, i.e. approximately 90 days after the representation was made.

9. From the aforesaid factual analysis this Court is called upon to decide as to whether there was any delay in considering the representation of the detenu by the State Government, and secondly, it is required to be decided as to whether explanation tendered by the detaining authority for the delay in submitting the para-wise remarks is reasonable and acceptable.

10. Before this Court proceeds to decide the question of delay in considering the representation by the appropriate authority, it would be just and proper to make

reference to position of law on the subject as summarized by the Division Bench of this Court after reference to about 31 decisions of the Supreme Court in the case of B.B. Pitaliya v. Dist. Magistrate, Sural reported in 1994(1) GLR 843. The Division Bench of this Court stated the position of law in the following words:

In this connection, it will be necessary to reproduce Article 22(5) of the Constitution of India herein:

22(5). 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 representation against the order.

The first part of Article 22(5) gives a right to the detenu to be furnished with "the grounds on which" the order has been made" and that has to be done "as soon as may be". The second right given to such person is of being offered "the earliest opportunity of making a representation against the order". It is obvious that the grounds for making the order as mentioned above, are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order is made. The conferment of the right to make a representation necessarily carries with the obligation on the part of the detaining authority to furnish the grounds of detention and also obligation on the detaining authority to consider such representation with reasonable despatch (vide *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . From the various decisions of the Supreme Court dealing with Article 22(5) of the Constitution of India and the right of the detenu to make representation against his detention and obligation of the second concerned authority to consider such representation following principles emerge:

(A) The use of the words "as soon as may be" in Article 22(5) is important. It reflects the anxiety on the part of the framers of the constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The words "earliest opportunity" contemplate the opportunity to make a representation against a detention order to the Government. The ultimate objective of this provision can only be the most speedy consideration of the representation by the authority concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording the earliest opportunity of making the representation is likely to be defeated. The representation must, therefore, be considered with due promptitude or expedition and without avoidable delay, in other words, with reasonable despatch. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty-the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion (vide *Rashid Sk. Vs. State of West Bengal*, and *Durga Pada Ghosh Vs. State of West Bengal*, .

(B) The law does not prescribe within what time after the grounds are furnished, the representation could be made. It is equally not provided as to within what time the representation should be considered. The time in each case appears deliberately unprovided for expressly because circumstances vary in each case and make it impossible to fix a particular time for the exercise of each of these two rights (vide *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, .

(C) The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but would also be unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities (vide *Jayanarayan Sukul Vs. State of West Bengal*, .

(D) Where delay in consideration of the representation is alleged, it is for the authority to explain the reasons which caused the delay preferably by filing a counter-affidavit, stating, as far as possible, the facts and circumstances, which caused delay. In appropriate cases, the Court may also permit resort to files or record which caused delay.

(E) Whether or not the concerned authority has in a given case considered the representation made by the detenu with reasonable despatch, must necessarily depend on the facts and circumstances of each case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the concerned authority is so unreasonably long and the explanation for the delay offered by the concerned authority so unsatisfactory as to render the detention order thereafter illegal (vide *Rasid S.K. v. W.B.* (supra)).

Very recently in the case of *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others*, Justice S. Ratnavel Pandian speaking for the Court laid down the law on the subject in the following words:

It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of a detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and circumstances of each case. Since a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay caused by slackness on the part of any authority will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution of India.

(F) The delay caused in transmitting the representation to the appropriate authority may also assume importance inasmuch as such delay also deprives the detenu of his right of his representation being considered expeditiously by the appropriate authority. The position of law on this aspect of delay is summarized in the following words by the Supreme Court in the case of *Vijay Kumar Vs. State of Jammu and Kashmir and Others*, and the said quotation is further approved by the Supreme Court in the case of *Aslam Ahmed (supra)*. The following observations of the Court provide necessary guidance:

The jail authority is merely a communicating channel because the representation has to reach the Government which enjoys power of revoking the detention order. The intermediary authorities who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earlier opportunity of making representation and the same reaching the Government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the Government enacts a law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the Statute and would result in invalidation of the order.

(G) The question whether the representation submitted by a detenu has been dealt with all reasonable promptness and diligence is to be decided not by the application of any rigid or inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of the facts and circumstances of each case. If on such examination, it is found that there was any remissness, indifference or avoidable delay on the part of the concerned authority in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu. On the other hand, if the Court is satisfied that the delay was occasioned due to unavoidable circumstances or reasons entirely beyond his control, such delay will not be treated as furnishing a ground for the grant of relief to the detenu against his continued detention (*vide Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another*, .

(H) However, the time imperative can never be absolute or obsessive and there has to be a lee-way depending upon the necessities of the case (not the circumstances of the case). But, no allowance can be made for lethargic indifference or needless procrastination, though allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are

involved. The burden of explaining the necessity for the slightest departure from the time imperative is on the detaining authority (vide *Frances Coralie Mullin Vs. W.C. Khambra and Others*, . In the aforesaid case, the representation was made to the detaining authority on 22-12-1979 and the same was received by the authority on 26-12-1979. Without any loss of time the representation was sent to the Customs Authorities for their remarks as they had led the information leading to the order of detention. The comments of the Customs Authorities were received on 4-1-1980. Thereafter, legal opinion of the Secretary (Law and Justice) was also obtained as the representation posed many a legal and constitutional questions. It is in this context that the Court made aforesaid observations. The Supreme Court also relied upon its earlier decision in the case of *Nagendra Nath Mondal Vs. The State of West Bengal*, . The Court upheld the time consumed by the Government by observing that the Government may not be able to reach a proper conclusion within a short time, especially in a case where another authority (like D. M.) has passed the questioned order. The Court held that the Government might have to make enquiries as to the circumstances under which the detention was found necessary, previous history of the person detained etc. The consultations, therefore, with the Sponsoring Authority and calling for the comments from the Sponsoring Authority is an exercise which is held to be not unnecessary and the time consumed in calling for such comments is excluded.

Similarly, in the case of *Harish Pahwa Vs. State of U. P. and Others*, the Court ruled that the representation must be taken for consideration by the concerned authority as soon as it is received and unless it is absolutely necessary to wait for some assistance, it must be dealt with continuously until final decision is taken and communicated to the detenu.

(I) When the representation is in vernacular and is to be considered by authority like Central Government or its authorised officer who is not conversant with the language of the representation he is justified in calling for translation of the representation either in English or in Hindi. It is a matter of absolute necessity. Such a decision should be taken by the concerned authority itself or some responsible officer on his behalf, but if under general instructions requiring calling of translations in cases where representations are in languages other than Hindi and English, i.e., local or regional languages, translation is called for by subordinate officer, it would still fall in the area of "absolute necessity" for proper consideration of representation and time consumed in such process must be excused.

(J) Similarly, necessary consultation is held permissible where legal intricacies and factual ramifications are involved. Calling for comments of sponsoring authority is a step towards necessary consultation. The authority can wait for reasonable period for necessary assistance. It is in conformity of this principle that the Supreme Court of India has in the case of *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, observed that time imperative can never be

absolute or obsessive. The occasional observations made by the Supreme Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasize the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Accepting this principle the Supreme Court did not find period of four to five days consumed by Custom Authorities in furnishing their para-wise comments on the representations to be unreasonable so as to invalidate continued detention in the case of Smt. Masuma Vs. State of Maharashtra and Another,

(K) "However, it is sought to be explained by Mr. Rao on the ground that there was considerable backlog of work following the employees' strike and shortage of staff. We have stated time and again that shortage of staff is no explanation for delay. If the staff is not adequate to deal with the pressure of work occasioned on account of large scale detentions ordered during a certain period, it is for the department to arrange for additional staff to the extent necessary to cope up with such pressure. As regards the delay on account of backlog of work, we may state that it is begging the question, in that, if there is accumulation of work, additional staff must be drafted to clear the same and those taken in preventive detention cannot be denied the right to prompt consideration of their representation on that ground.

During this sitting we have been constrained to quash several orders of detention because the sense of urgency required to be shown "at all stages" while dealing with a representation made by a detenu against this detention has not been exhibited resulting in avoidable delay in the disposal of such representations. We have noticed that the grounds of detention invariably require that the detenu should forward his representation through the jail authorities. It is our experience that generally the jail authorities promptly forward the representation to the State Government but thereafter considerable time is lost in dealing with the same. This is presumably because after the representation is received in the Home Department the registry of the department takes its own time in inwarding the same in the register before forwarding it to the concerned branch. In several cases, we have found that it takes more than 10 to 15 days for the representation to reach the concerned branch. Once it reaches the concerned branch, it is dealt with expeditiously except in a few cases. It is, therefore, necessary for the Government to evolve some system whereby representations received from the detenus are not held up in the registry and are despatched to the concerned branch on the very same day at the most the next day. It is also necessary to see to it that after the representation is received by the concerned branch, it is disposed of expeditiously and with utmost despatch so that Court may not be constrained, as in the present case, to strike down the detention order on the technical ground of delay in the disposal of the representation" [vide A.M. Ahmadi, J. in (Kanti Maneklal Rana v. Commi. of Police, Vadodara) 1986(2) GLR 1157]

(This additional proposition (K) flows from the reason which are disclosed hereinafter in paras 13, 14)

11. From the aforesaid summary of law on the subject it is clear that there is right guaranteed to every detenu of earliest opportunity of making representation against the order of detention and as a necessary corollary by use of words "as soon as may be" used in Article 22(5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenu of the grounds of detention is reflected. Once the earliest opportunity is provided to make a representation against the order of detention there is corresponding constitutional obligation to speedy, expeditious consideration of such representation by the authority. Though no time limit is prescribed within which the representation should be considered, the utmost promptitude, expedition and diligence is expected from the authority obliged to consider such representation. Any remissness, indifference or avoidable delay on the part of the authority obliged to consider representation would vitiate the continued detention of the detenu. Mr. B.P. Tanna, Learned Counsel appearing for the State Government has while heavily relying upon the proposition propounded by the Division Bench of this Court in the aforesaid case strenuously urged before this Court that atleast on the part of the State Government there was no delay in considering the representation because when the remarks on the representation were called for by the concerned authority of the State Government, the necessary time consumed in preparing and sending parawise remarks on the representation shall have to be excluded. He further submitted that though some part of the delay caused in preparing and submitting parawise remarks to the representation could have been avoided, the Court should not be too strict in applying the principle so as to invalidate the detention of a rank black-marketeer. In his submission, the parawise remarks were called for from the detaining authority by the State Government by telex message on 14-6-1995 and further reminder was also sent on 29-6-1995. The parawise remarks were sent by the Dist. Magistrate on 15th July, 1995, i.e., exactly one month after the same were called for by the State Government. He has in this connection invited the attention of the Court to the explanation tendered by the detaining authority as to why there was delay in submitting para-wise remarks and in the opinion of this Court it would be necessary to refer to the exact explanation tendered by the detaining authority in this behalf. Mr. Vipul Mitra, Dist. Magistrate, Ahmedabad District who is the detaining authority has given following explanation or reasons for delay caused in sending para-wise remarks:

As stated earlier, the detention order was passed on 16th May, 1995. The representation of the petitioner was dated 5th June, 1995. This representation was received on 8th June, 1995 and the same was disposed of on 18th June, 1995. It is pertinent to note at this stage that during these days elections of Ahmedabad Municipal Corporation and Ahmedabad District Panchayat and Ahmedabad Panchayat Elections were held at an interval of two days each. The Dist. Magistrate was Election Officer in all the three elections and was also

looking after the law and order situation arising out of the elections, and tense situation was prevailing at the time of elections. This Honourable Court would appreciate that with the mammoth task of holding three elections at an interval of two days coupled with the task of maintenance of law and order situation, it was difficult for the District Magistrate to attend to any other work during this period. In past the responsibility of holding the Municipal elections was not cast upon the District Magistrate but by Constitutional Amendment this responsibility has been added to the work load of the District Magistrate and therefore the entire process of holding the elections of Corporations and identifying various areas and arranging the infrastructure was a new experience by itself to the entire office of the District Magistrate. As soon as the process of elections and counting was over, at the earliest possible opportunity the representation was disposed of and the same was sent back to the detenu by communication dated 18th June, 1995. My office had in the meanwhile received a telex from the Government of Gujarat dated 14th June, 1995 asking for the parawise remarks. By the time this representation was received by my office, the counting was going on of various elections and we were looking after the entire controlling responsibility and the law and order situation arising out of the same and this went on 13, 14, 15 and 16th June, 1995.

12. In brief, the burden of the song is that since additional work of holding election of local authorities such as Municipal Corporations and Panchayats was assigned to him and since he was the Election Officer in all such elections, he did not find time to attend to another work except the work of holding elections. In his words, it was the "mammoth task". In the aforesaid paragraph itself he has admitted that the work of holding election, counting of votes and declaration of results went on upto 13th to 16th June, 1995. As soon as he was relieved from such work, he has considered and disposed of the representation of the detenu on 18th June, 1995 but, however, from 16th June, 1995 or 18th June, 1995 till 15th July, 1995 he could not prepare and did not in fact send the para-wise remarks on the representation to the State Government. The period of as long as 28 days is taken by the Dist. Magistrate in preparing parawise remarks and in sending the same though according to him, he could find time to consider and reject the representation on 18th June, 1995. This period of 28 days consumed by the Dist. Magistrate in preparing the parawise remarks on the representation is in the opinion of this Court not at all explained and expected promptitude, efficiency and expedition in earliest consideration of the representation is clearly found to be lacking. In fact, the Dist. Magistrate was not vigilant and agile enough to respond to the constitutional obligation as he gave over-importance to the work of election for which other staff also must have been provided to him and treated the personal liberty of an individual as of lowest significance which could wait till he was free from completion of other works or responsibilities cast on him. In fact, personal liberty of an individual ought to have received maximum priority or to say the least equal priority and the approach of the Dist. Magistrate in this regard deserves denunciation and condemnation. He was also

conscious of the fact that even reminder was sent by the State Government on 28th June, 1995 to send parawise remarks immediately. As usual in the bureaucracy the file did not travel and explanation tendered by him in the affidavit-in-reply is required to be quoted in his own words so that the approach of bureaucracy towards personal liberty of an individual is brought to the forefront.

On 29th June, 1995 the reminder was sent by the State Government for parawise remarks. The same could not reach the Dist. Magistrate's table or DSO's table till 6th July, 1995 and as soon as the same was received, the steps were taken for answering the same. It is necessary to point out at this stage that it was bona fide believed that the disposal of the representation by the Dist. Magistrate's office was adequate for the purpose of communication to the detenu. However, when reminder was sent by the State Government and due to heavy work-load as referred to above, at the earliest possible opportunity the prompt action was taken and ultimately the answer was sent on 15th July, 1995. It is necessary to point out that the representation of the petitioner ran into 18 pages and was a detailed one. It took little longer time to prepare the answer because of collection of all the material. Moreover, 8th and 9th July, 1995 were public holidays. DSO was required to go to Delhi for the period from 11th to 13th July, 1995 in connection with a detention matter filed before the Honourable Supreme Court being Writ Petition No. 365 of 1995. He submitted the answer on 14th July, 1995 and the same was forwarded to the State Government on 15th July, 1995 in view of the fact that certain facts were required to be explained by me. This would go to show that there was no delay on the part of the Dist. Magistrate as he was burdened with many responsibilities. The DSO was also required to take steps in many directions in prevention of black-marketing during this period. Some of the detention orders were required to be passed immediately having regard to the abuse of law.

13. From the aforesaid explanation given by the detaining authority it becomes clear that according to him he was burdened with many responsibilities and he was discharging duties and functions under various statutes and there was paucity of staff and it was humanly impossible for him to deal with all works at a time. The unfortunate ignorance of law on the part of the detaining authority is also clearly admitted when he has stated that he bona fide believed that disposal of representation by him was sufficient and that no promptness or expedition was required to be shown by the State Government. Since the officer is frank enough to admit the misbelief under which he was harbouring this Court would not be so unkind to adversely comment upon him. The lack of eternal vigilance on the part of the executive or bureaucracy in dealing with the case of human liberty is the price which it pays by invalidation of continued detention of the detenu. In my opinion, the delay caused by the Dist. Magistrate in sending parawise remarks on a representation even after 16th June, 1995 is unexplainable and is clearly avoidable which he could have avoided and therefore, it shall have to be held that the delay in considering the representation

at the end of State Government was fatal and the continued detention of the detenu is required to be voided on this ground alone.

14. Even otherwise, the fact that the officer was over-busy with other work and that there was paucity of staff and that large number of detention orders were passed during the relevant time cannot provide sustainable ground to the detaining authority to explain the delay in considering the representation. In the case of *Kanti Maneklal Rana v. Commissioner of Police, Vadodara* reported in 1986(2) GLR 1157 the Division Bench of this Court speaking through A.M. Ahmadi, J. (as his Lordship then was) made pertinent observations while dealing with the defence of the State Government as to why there was delay in considering the representation. Said observations are quoted at ground (K) stated hereinabove in para 10.

From the aforesaid observations made by the Division Bench of this Court there is no manner of doubt that paucity of staff, non-availability of employees, pendency of large number of detention cases or backlog of work or increase of work cannot provide a justifiable ground for dealing with the consideration of representation. It is for the detaining authority to call for additional staff or for the State Government to provide additional staff especially when as many as 102 persons were incarcerated in prison cell during this period without trial by order of preventive detention. Number of detentions of persons in such a short span is appalling and if bureaucracy still gives lowest priority to the constitutional guarantee of the individual who is deprived of his personal liberty, it deserves deprecation and condemnation.

Consideration of Representation by Central Govt.:

15. Even if liberal and charitable view is taken and the delay caused in considering the representation by the State Government the continued detention of the detenu is required to be voided on the ground that there was unreasonably long delay in disposing of the representation of the detenu by the Central Government. The representation which was received by the Central Government as back as 14th June, 1995 came to be rejected only on 15-9-1995, i.e., after commencing of hearing of this petition on 28-8-1995. The submission of Mr. B.B. Naik, learned Additional Central Government Stdg. Counsel and Mr. B.P. Tanna to the effect that the Court is required to ask a question as to whether the authority obliged to consider representation could have done it within the time despite full desire on its part to act with promptitude. Their submission that it was humanly impossible for the authority to give any priority to such work of consideration of representation, but latitude must be shown by the Court towards the authority and personal liberty should not get unnecessary priority especially when the Court is dealing with the black-marketeers deserves to be rejected outright as constitutionally untenable.

16. Scrupulous compliance with the procedural safeguards read into Article 22(5) of the Constitution of India by the Apex Court over a period of last 44 years and

the desire to uphold individual liberty of persons incarcerated in prison cells without any trial based on suspicion jurisdiction of executive or bureaucrats being the only protection against arbitrary and draconian preventive detention laws, the executive bureaucrat must pay the price of not exhibiting eternal vigilance expected of them. It is true that some latitude might have been shown by the Courts of law on explanation or justification tendered by the authority for delay caused in consideration of representation. However, as a matter of principle to accept the plea of latitude or laxity on the part of the competent authority obliged to consider representation would cripple, confine and cabin the most cherished freedom of people of India. It is unfortunate to regard the function of consideration of representation by the competent authority under preventive detention laws as purely executive or administrative function. It is a constitutional obligation emanating from Article 22(5) of the Constitution of India and the Apex Court has time and again looked upon the remissness, laxity, indifference or inaction on the part of the authority as fatal to the continued detention of the detenu. The plea of laxity or latitude on the part of the competent authority in considering the representation of detenu in the context of COFEPOSA detenu is at times accepted by the Apex Court looking to the concealed, systematic activity of smuggling which corrodes and erodes the economy of the nation, and more particularly, because the period of detention in such cases is one or two years in cases where Section 9(1) declaration is made under COFEPOSA. The very principle cannot be extended and applied in the case of detenu under Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 because the maximum period of detention itself is six months u/s 13 of the said Act and if representation of the detenu is not considered by the competent authority constitutionally obliged to consider the same under one or the other pretext or excuse for a long period of about 4 months, the procedural safeguard guaranteed by Article 22(5) of the Constitution of India is rendered ineffective and meaningless so as to permit the executive to scuttle the liberty of individual without any trial. From the chronology of events and the way in which the representation has travelled from various stages, it becomes clear that the representation made by the detenu received by the Central Government on or about 15th June, 1995 came to be considered and rejected only on 5-9-1995, i.e., 82 days after the receipt of the representation. Having called for parawise remarks on the representation from the State Government by telex message by 22nd June, 1995 the Central Government went into deep slumber, perhaps, under the plea that it has done what it could and that it was not constitutionally obliged to pursue the matter further as it could pass on the blame over the State executive for not sending the parawise remarks immediately. In the affidavit-in-reply which is filed by Dr. K.V. Jacob, Under-Secretary in the Ministry of Civil Supplies, Public Distribution, New Delhi which is filed as back as 13th July, 1995 no reason is stated as to what action he took on the representation of the detenu. Subsequent details are simply orally stated by Mr. B.B. Naik, Learned Addl. Central Government Stdg. Counsel after receiving telephonic instructions from the Central Government. From the details thereof it

becomes clear that parawise remarks on the representation were received by the Central Government on 11-8-1995 while the representation came to be rejected only on 5-9-1995. The need to get parawise remarks expeditiously from the State Government was not felt by the Central Government as it thought that sending for the parawise remarks by telex message would exonerate it from discharging its constitutional obligation of expeditious consideration of representation. To say the least the delay caused at the level of Central Government also in considering the representation was avoidable, and it reflects only remissness, callousness, inefficiency and inaction on bureaucracy at that level. Mr. B.B. Naik, learned Addl. Central Government Stdg. Counsel places reliance upon the decision of the Supreme Court in the case of Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, wherein on the facts of the case the Court found that if there is an explanation by the executive or delay caused in considering the representation, the delay itself should not be fatal. The Court also observed that short delay cannot be given undue importance. Delay of over 80 days in considering the representation where the total period of detention is 150 days cannot be said to be short delay at all. Though the Division Bench of the Apex Court has observed that the action of considering representation is an administrative action, in large number of judgments of the Apex Court as considered by the Division Bench of this Court in the case of Pitaliya (supra) it shall have to be stated that such action of considering the representation of the detenu as soon as possible or expeditiously is regarded by the Apex Court consistently as constitutional obligation and not a mere administrative action. Following catena of decisions of the Supreme Court on that point, while agreeing with the view that short delay in considering the representation may be not fatal, it shall have to be accepted that every case is to be decided on the facts and circumstances of each case and no inflexible formula could be laid down. The aforesaid decision, therefore, does not help the respondents. In fact, both at the level of State Government as well as Central Government there is callousness, disregard of constitutional obligation and admittedly the need of expedition, reasonable despatch and promptitude expected in considering the representation is absolutely forgotten. Acceptance of plea of latitude in such cases would amount to putting premium over lethargy, laxity, inefficiency and remissness of executive/bureaucracy at the cost of scuttling and crushing the personal liberty guaranteed by Chapter 3 of the Constitution of India. This Court cannot, at any cost, uphold such plea of latitude and therefore, the same is rejected.

17. It is, thus, clear that both at the level of State Government as well as Central Government there was undue, unreasonable and unexplained delay in considering the representation of the detenu, dated 5th June, 1995 which has infringed the right of the detenu of expeditious consideration of his representation and therefore continued detention of the detenu is required to be voided and is hereby voided. The 4th respondent is directed to release the detenu forthwith unless his presence is required in connection with any other offence. Rule is made absolute accordingly.