
(1988) 08 GUJ CK 0007
In the Gujarat High Court

Nareshkumar Ambalal Modi	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:

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

Citation : (1989) 1 GLR 288

Hon'ble Judges : B.S. Kapadia, J;A.P. Ravani, J

Bench : Division Bench

Judgement

B.S. Kapadia, J.—The petitioners in the above two petitions have filed these petitions challenging the legality and validity of the detention orders passed against them with a prayer that writ of Habeas Corpus be issued by setting aside the orders of detention and they be set at liberty forthwith.

2. The petitioners are detained pursuant to the detention orders dated 23-2-1988 passed by the Govt., of Gujarat on its being satisfied with respect to the petitioners, with a view to preventing them from acting in any manner prejudicial to the maintenance of supplies of commodity (edible oil) essential to the community, in exercise of the powers under Sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No. 7 of 1980). Both the petitioners were detained in execution of the said orders on 25-2-1988. The petitioners were also supplied with the grounds of detention.

3. So far as Nareshkumar Ambalal, the petitioner in Special Criminal Application No. 264 of 1988 is concerned, it appears from the grounds of detention supplied to him that he is residing at Pethapur and was doing whole-sale business of edible oil by obtaining necessary licence. As per the statement dated 11-9-1987 of said Nareshkumar the said licence was cancelled on 27-3-1987 and at the place where he was doing the business his brother Rajnikant Ambalal Modi was doing the business after obtaining necessary licence in the name of R. Ambalal &

Company. In the grounds of detention supplied to the petitioner-Nareshkumar it is specifically mentioned that he was not holding any licence.

4. It further appears from the grounds supplied to the petitioners that the Civil Supply Inspector raided the shop of said Rajnikant Ambalal Modi of R. Ambalal & Co. from 11-9-1987 to 17-9-1987 and during the said raid 18 bills in respect of selling edible oil (groundnut oil) as detailed in the grounds were found. It is also mentioned in the grounds that petitioner-Nareshkumar has admitted in his statement that he had purchased the said 262 tins of ground-nut oil, but he could not produce the purchase bill as he had destroyed it. Further he has admitted that he sold out the same on cash basis in the bazar and he has not produced any bills in respect of the sale made by him. Similarly, he has also not kept any account or any literature in respect of the sale made by him. Similarly, he has also not kept any account or any literature in respect of the sale of said 262 tins of ground-nut oil nor has he prepared any sale memos.

5. It is also pointed out in the grounds of detention supplied to petitioner-Nareshkumar that similarly there were nearly 15 bills in respect of selling of edible oil (ground-nut oil) to the other members of the family namely, Jaswant Ambalal, Bharatkumar Ambalal, Chandrakant Nareshkumar, Dahiben Ambalal and the stock of the said bills was given to Nareshkumar. He (Nareshkumar) has also admitted in his statement that he had purchased the said oil in the names of other members of the family and that he had sold out the same and that he had not kept any account thereof.

6. It is also pointed out in the grounds of detention supplied to petitioner-Nareshkumar that without licence for doing business of edible oil he had done business of edible oil and therefore, he has committed breach of the provisions of the Rules and Regulations framed under the Essential Commodities Act and that he has committed offence punishable u/s 7 of the said Act. It is also mentioned in the grounds that alternative step of taking Court proceedings against said Nareshkumar cannot stop his said activities as such proceedings are time consuming and that he is also likely to obtain stay order and continue his such unauthorised activities. It is also mentioned in the grounds that there is no question of taking any departmental action against said Nareshkumar as he is not possessing any licence under the Act and hence it is decided to take action under the provisions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

7. In the grounds of detention supplied to Rajnikant Ambalal Modi, the petitioner in Special Criminal Application No. 265 of 1988 it is mentioned that at the time of raid three bills namely, Bill Nos. 4, 25 and 45 dated 10-3-1987, 8-3-1987 and 13-3-1987 were found in the names of Hemtuji Bhojani, Keshavlal Somchand Sukhadia and Keshavlal Pitamberdas Sukhadia respectively and they have in their statements stated they have not purchased any edible oil from the said petitioner and that the said bills were bogus bills. It is further mentioned in the grounds that he has therefore, not kept correct account in respect of the article

and has committed breach of the provisions of the Rules and Regulations framed under the Essential Commodities Act. It is also mentioned in the grounds supplied to him that 15 bills as detailed in the grounds of detention were prepared in the names of different members of the family and it was found that he has not kept any account for the said stock of edible oil and that the said stock was given to Nareshkumar Ambalal (his brother) and he has sold out the same. It is also mentioned in the grounds of detention that he has prepared about 18 bills in the name of Nareshkumar Ambalal Modi as detailed in the grounds and he (Nareshkumar) sold out the stock of said edible oil and accordingly, petitioner Rajnikant has actively aided and abetted in selling out the stock of edible oil and committed breach of the Rules and Regulations framed under the Essential Commodities Act. It is also mentioned in the grounds that alternative step of taking Court proceedings against said Rajnikant cannot stop his said activities as such proceedings are time consuming and that he is likely to obtain stay order and continue his such unauthorised activities.

8. Mr. M. M. Desai, learned Advocate appearing for the petitioner in both the petitions has raised the following grounds before us:

(1) So far as the petitioner in Special Criminal Application No. 264 of 1988 is concerned, he submits that the provisions of the Act do not apply in his case as he is not a licence holder and therefore, the detention order is bad.

(2) That petitioner's brother's licence could have been cancelled as that would have effectively prevented blackmarketing of essential commodities and that was the alternative remedy which the Government could have adopted instead of taking drastic measure of detaining the petitioner.

(3) That the raid was carried out during the period from 11-9-1987 to 17-9-1987 while the order is passed on 23-2-1988 and therefore, there is delay in passing the order of detention and therefore, on the ground of delay the order of detention should be quashed.

(4) That there is delay in executing the order though the petitioners were not absconding and therefore, on that count also the subsequent detention becomes illegal.

(5) That there is alternative remedy of prosecution available to the Govt., which has not been considered by the detaining authority and therefore, the impugned order of detention is the result of non-application of mind on that point and therefore, order of detention is bad and illegal.

(6) That there is no subjective satisfaction of the detaining authority and therefore, the orders of detention passed against the petitioners are bad and illegal.

(7) So far as the petitioner in Special Criminal Application No. 265 of 1988 is concerned, it is additionally submitted that his authorisation and licence should have been cancelled and that was the alternative remedy which could have been

adopted by the detaining authority. Therefore, the detaining authority has not applied its mind on that aspect and therefore, the detention order passed against him is bad and illegal.

9. Dealing with the first ground raised by Mr. Desai, it may be stated that he contends that the petitioner-Nareshkumar is not the dealer as his licence has already been cancelled on 27-3-1987 and therefore, no order can be passed against him under the provisions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. In this connection he has sought reliance on the judgment of the Allahabad High Court in the case of Sreenivas Agarwal and Anr. v. State of U.P. reported in 1987 Cri.L.J. 21 (Allahabad). From the facts of the said case it appears that the petitioner No. 1 in the said case was appointed as a salesman for a period of three months and that his services were terminated after 26-9-1981 though the said fact was controverted in the affidavit-in-reply and it was contended that he continued to work on the post. However, it is observed in the said judgment that it is not necessary to go into the question as to whether the petitioner continue to be employed on the date in question or not. It is further observed in the said judgment as under:

Perusal of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, indicate that it applies to a "dealer". If the petitioner continued to be a salesman the provisions of the Act will have no application. A salesman is obviously not a dealer and therefore does not come within the clutches of the Act unless the allegation is that he instigates a dealer.

In the said case there was nothing to show that the petitioner No. 1, who was a salesman instigated the dealer. Reference was also made to another judgment of the same High Court in the case of Prem Singh v. State, 1981 (1) All. LR 448 wherein it was held that the Act applies to a dealer and does not apply to salesman and accordingly it was held that the Act would not apply to the petitioner in the said case and he was ordered to be set at liberty forthwith.

10. However, it is necessary to refer to Sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 which reads as under:

3. Power to make orders detaining certain Persons: (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary to do, make an order directing that such person be detained.

Explanation: for the purpose of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to community; or

(b) dealing in any commodity,-

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955, or

(ii) with respect to which provisions have been made in any such other law as is referred to in Clause (a)

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of the Act or other law aforesaid.

(2)

On perusal of the said sub-section it is clear that the authorities mentioned therein can exercise the power of detention against any person in respect of whom the said authority is satisfied with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do and pass the order for detaining such person. The words "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" have been explained in the explanation which includes any person who is committing the offence punishable under the Essential Commodities Act, 1955 or any person who is instigating the commission of any such offence or any other law for the time being in force relating to control, production, supply or distribution of, or trade and commerce in, any such commodity essential to the community. It brings within its compass other persons, who are dealing in any commodity which is essential to the community as defined in the Essential Commodities Act, 1955, or with respect to which provisions have been made in any such other law as referred to earlier, but so far as dealing aspect is concerned, that has been confined to a person who is dealing in such commodity with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or any other law for the time being in force. Thus, it is clear from the bare perusal of the said subsection that it not only includes a dealer but any person who is coming within the compass of the meaning assigned to the words "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community".

11. It is also important to note that Sub-section (1) of Section 3 of the said Act has accepted the meaning of "Essential Commodities" as defined in the Essential Commodities Act, 1955. Section 7 also makes it an offence against any person,

who contravenes whether knowingly or intentionally or otherwise any order passed u/s 3 of the Act and different punishments have been provided for. It is not confined to dealers only. Under the provisions of the Essential Commodities Act, 1955 the Government of Gujarat has issued the Gujarat Essential Article (Licencing, Control and Stock Declaration) Order, 1981. Clause 3 of the said Order clearly prohibits that on and after 20-4-1981 no person shall carry on business as a dealer inter alia for edible oil for more than five quintals of edible oil except under and in accordance with the terms and conditions of the licence granted, under the said order.

12. It may be stated that it is always not necessary that only a dealer can commit and/or instigates an offence under the provisions of the Essential Commodities Act and therefore, it is clear that Sub-section (1) of Section 3 of the said Act is not confined to dealers only. In view of what is stated above, with respect we are unable to agree with the aforesaid decisions of the Allahabad High Court.

13. Reverting to the facts of the present case it is clearly mentioned in the grounds that nearly 15 bills were prepared in the name of different persons of his family and 18 bills were prepared in the name of petitioner-Nareshkumar and said Nareshkumar in his statement has admitted that all the stock mentioned in the said bills have been purchased by him in his name as also in the names of other members of his family and that he has sold out the same without keeping any accounts thereof. It is therefore, clear that there is material on record for being satisfied by the detaining authority that the present petitioner has committed the offence punishable under the provisions of the Essential Commodities Act. The present petitioner has also by purchasing the goods in his own name as also in the names of other members of his family instigated his brother in committing the offence. He has also dealt with edible oil (ground-nut oil) which is essential commodity under the Essential Commodities Act with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of the said Act. Under the circumstances in view of the aforesaid provisions of law as also facts of the case, it cannot be said that the Act does not apply to the petitioner-Nareshkumar, as he is not a licence holder. Accordingly, this contention raised by Mr. Desai is rejected.

14. The second contention raised by Mr. Desai is that the petitioner's brother's licence could have been cancelled and that would have effectively prevented blackmarketing of essential commodities. He has also contended that the Government could have adopted that remedy instead of taking drastic measure of detaining the petitioner.

15. It may be mentioned that similar contention in respect of the petitioner in Special Criminal Application No. 265 of 1988 is also raised that his licence could have been cancelled and that was the alternative remedy which could have been adopted by the detaining authority and that as the detaining authority has not applied its mind on that aspect the detention order is illegal.

16. It may be mentioned that so far as the petitioner-Nareshkumar is concerned, his licence was cancelled and thereafter he has done the business without licence as admitted by him in his statement. Therefore whether his brother's licence is cancelled or not would be immaterial for him. He can do business through some other persons, who is holding a licence. In that view of the matter there is no substance in this contention raised by Mr. Desai and is therefore, rejected.

17. Now so far as the petitioner Rajnikant is concerned, it is stated in the grounds of detention supplied to him that by his aforesaid activity he has committed an offence u/s 7 of the Essential Commodities Act. It is specifically pointed out in the grounds that steps to be taken against him through the Department would not be sufficient or adequate inasmuch as the said proceedings would be time consuming and that he is likely to obtain stay against such action. In the case of P.N. Khemani v. State reported in 1985 (2) GLR 620 it has been observed as under by this Court (at page 629 of GLR):

...We may deal with one ancillary submission of Mr. Patel in support of his present main submission. Mr. Patel submitted that one licence of a dealer is cancelled or surrendered or can be surrendered or cancelled, the preventive detention of the petitioner cannot be ordered by the detaining authority as in such a case, cancellation would by itself be an effective remedy to keep the concerned detenu out of harm's way. Such a universal proposition cannot be accepted for the simple reason that if that is so, then in no case, where licensed fair price shop owner or dealer who is permitted to deal in essential commodity commits any misconduct armed with such a licence, such a person can ever be detained u/s 3(1) of the Act as in every such case, licence can always be cancelled on the ground of such misconduct. This would amount to patting a total embargo on the power of the detaining authority to detain such dealers. Power of preventive detention would become totally non-existent in all such cases of misconducting licensed fair price shop owners. We do not find any such general exception supposedly made by the legislature while enacting Section 3(1). To accept Mr. Patel's submission would amount to engrafting an exception or a proviso to Section 3(1) of the Act to the effect that power of preventive detention would not be available in case of misconducting licensed fair price shop holders. Such an extreme contention put forward by Mr. Patel cannot be countenanced as that would amount to an act of legislation on the part of the Court.

It is further observed by this Court in the said case as under (at page 633 of GLR):

18. In this view of the matter, it is obvious that the question whether cancellation of the petitioner's licence would be sufficient safeguard to prevent him from indulging in alleged illegal activities was an aspect which was very much pressed in service for consideration of the detaining authority in various written submissions made by the lower authorities. Matter seems to have been considered and reconsidered stage by stage as seen above. It is only ultimately on 22-5-1984 that the detaining authority decided to detain the petitioners and

gave green signal for the same. On the facts of this case therefore, it must be held that the detaining authority had considered the vital question as to whether cancellation of licence of the petitioner would be sufficient on the facts of the case to remove him from harms way and secondly whether criminal prosecution would be sufficient in his case. Therefore thus vital considerations have entered the exercise of subjective satisfaction premeating the impugned detention order. On the facts of this case, it cannot be said that these vital considerations were not considered or kept in view by the detaining authority while it passed the orders against the petitioner.

We fully agree with the aforesaid observation of this Court and therefore, it cannot be accepted as a universel proposition that cancellation of licence would by itself be an effective remedy to keep the concerned datenu from harm''s way.

18. Similar observations were made by the Supreme Court when similar argument was advanced in the case of Bhim Sen For R.S. Malik Mathra Das and Others Vs. The State of Punjab, . In the said case the Supreme Court has observed as under:

...The second argument was that as the licences of the appellants are now cancelled they cannot deal in textile cloth at all and therefore, there can be no apprehension of their indulging in blackmarket activities.... We are unable to accept this argument also because it is common knowledge that licence can be obtained in the name of nominees.

After referring to the fact of the said case it is further observed by the Supreme Court as under:

...We are unable to hold that it is impossible on that ground for the appellants to indulge in blackmarket activity....

Now let us see whether this vital aspect was kept in mind by the detaining authority so far as the petitioner in Special Criminal Application No. 265 of 1988 is concerned. In the present case as mentioned in the grounds, the detaining authority has applied its mind on the aspect of departmental action to be taken against him for cancelling the licence. Therefore, it cannot be said that there is non-application of mind on the part of the detaining authority on this aspect. As quoted earlier it is clear that the facts mentioned in the grounds of detention supplied to him make it obvious that the question whether cancellation of the petitioner''s licence as alternative less-drastic remedy was considered by the detaining authority. Hence this contention raised on behalf of the petitioners also cannot be accepted.

19. The next contention raised by Mr. Desai is that there was delay in passing the orders of detention and therefore, the detention orders should be quashed. He has submitted that the raid was conducted during the period from 11-9-1987 to 17-9-1987 while the orders mere passed on 23-2-1988 and therefore, there is unreasonable delay.

20. It may be stated that this point is raised by the petitioners by amending the petitions in para 11 of the petitions. In reply to the said contention Shri H.I. Maghrajani, Assistant Director of Civil Supplies, Gandhinagar, has stated that on 11-9-1987 he along with the Inspecting Staff had entered and searched the premises of the detenu Rajnikant at village Pethapur under the provisions of Clause 26(1) of the Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981 as they had received information that malpractices and prejudicial activities were carried on by the said detenu at his place and that the said search continued from 11-9-1987 to 17-9-1987. He has further pointed out that on 18-9-1987 and 19-9-1987 he had remained busy with investigation relating to other parties at Dohad in respect of prejudicial activities and irregularities committed by them. He has further pointed out that 20-9-1987 was a holiday being Sunday and that on 21-9-1987 papers were submitted to the office of the Director by him for taking suitable action against the said detenu.

21. In this connection Shri D.G. Khachar, Assistant Director in his affidavit-in-reply has stated that on 22-9-1987 the Deputy Director, Civil Supplies (Enforcement) had scrutinised the papers submitted by the Assistant Director of Civil Supplies and thereafter draft proposal for detention of the detenu along with necessary notes were prepared and were submitted by the Deputy Director to the Director of Civil Supplies on 22-9-1987 and 23-9-1987. He has further pointed out that on 24-9-1987 the Director of Civil Supplies had gone through the file of relevant papers and had approved the draft proposal mentioned earlier on 25-9-1987, and the proposal for detention was prepared and submitted before the State Govt. He has further pointed out that 26-9-1987 and 27-9-1987 were holidays being fourth Saturday and Sunday respectively and that the aforesaid proposal was received by the Deputy Secretary, Food and Civil Supplies Department on 29-9-1987.

22. It may be stated that on this point Shri K.B. Makwana, Dy. Secretary has stated that the Director of Civil Supplies had no authority to take action against a detenu though it was a fit case for doing so and he therefore, proposed detention of the detenu by letter dated 25-9-1987 which was received in the Special Branch of the Food and Civil Supplies Department, Gandhinagar, on 29-9-1987. He has further pointed out that the Government in Food and Civil Supplies Department had 21 proposals for detention under the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, and 41 proposals were received before the orders of detention of the petitioners were passed, and that in some matters detention orders were passed by the State Government under the Act, in some other matters detention orders were passed by the District Magistrate concerned and they were to be approved and that the said detention orders between the month of September 1987 and February 1988 totalled 85 in number. He has also given the details of the proposals for detention, detention orders, etc. and pointed out that the case in which detention orders were passed by the State Government the number of pages of detention orders, committal orders grounds of detention and supporting

documents run upto 200 on an average and the copies thereof were to be prepared. It is also pointed out that number of detention matters under the aforesaid Act are required to be attended to in this Court and that on an average they were receiving about 25 to 28 representations which were also to be attended to. He has further pointed out that in addition to that there was also work relating to parole matters and that the detenus were required to be presented before the Advisory Board and meetings of the Advisory Board also were to be attended to and every such meeting takes the whole day. He has further pointed out that after receiving the report of the Advisory Board the State Government has to take action on the report. After explaining the aforesaid work load it was pointed out by him that the aforesaid matters/procedures take considerable time and therefore, time is consumed in dealing with various matters of detention.

23. In view of the aforesaid explanation it cannot be said that time taken is unreasonable and/or that it has not been explained. There is no reason to disbelieve the explanation given by the Deputy Secretary Shri Makwana. Hence we do not find any substance in the aforesaid contention and it is therefore, rejected.

24. It is next contended by Mr. Desai on behalf of the petitioners that there was delay in executing the orders though the petitioners were not absconding and therefore, on that count also subsequent detention becomes illegal.

25. It may be stated that the detention orders are dated 23-2-1988 while it is stated in the amended petitions that they were actually detained on 26-2-1988. On perusal of the affidavit-in-reply on this point it is clear that the statement that the petitioners were actually detained on 26-2-1988 has been specifically said to be incorrect. It is pointed out in the affidavit-in-reply that the petitioners were actually detained on 25-2-1988. Further, it is clear from the affidavit of P.S.I. Shri V.K. Rana that he had received the direction on 24-2-1988 and thereafter he tried to contact the detenu-Nareshkumar at his residence, but he made himself scared and was not available and ultimately the detenu could be contacted on 25-2-1988 and 20-15 hrs. he was served with the order of detention and committal order. In that view of the matter there is no substance in this contention also, and therefore, it is rejected.

26. It is next contended by Mr. Desai on behalf of the petitioners that alternative remedy of prosecution available to the Government has not been considered by the detaining authority and therefore, the impugned orders are the result of non-application of mind on that point.

27. This contention is also raised by the petitioners by amending the petitions. In the affidavit-in-reply filed by Shri Makwana, Deputy Secretary, Food and Civil Supplies Department, he has dealt with this point and stated that the detaining authority has considered the aspect of prosecuting the detenu and therefore, the orders of detention were passed after considering all the material placed before

him.

28. Mr. Desai has placed reliance on the judgments of this Court in the cases of Dalpatbhai Bhikhabhai Patel v. District Magistrate Sural and Ors. reported in 1983 (2) GLR 849 and Ganeshbhai Gangabhai Harijan v. District Magistrate, Banaskantha and Ors. reported in the same volume 1983 (2) GLR 1016. In the case of Dalpatbhai Bhikhabhai Patel the petitioner along with another were detained on the allegation that they were disposing of cement received by them for irrigation project. The petitioner in the said case was detained by the order dated 10-9-1982 and the said petitioner was placed under suspension with effect from July 1982 i.e. one month and three weeks prior to the passing of the order of detention. In the said case it is observed by this Court that it is clearly manifest that the detaining authority's mind was not at all applied to the vital aspect relating to the impact of the suspension of the petitioner on the need of the exercise of the power of detention on the facts and in the circumstances of the case. And on that ground alone the petition was allowed. On the point of possibility of launching prosecution against the detenu on the facts of that case it is observed that there is no escape from the conclusion that the assertion made in para 9 of the petition that the detaining authority had considered the possibility of criminal prosecution as an effective measure to check objectionable activity of the petitioner-detenu is not correct. In that view of the matter the order of detention was set aside.

29. In the case of Ganeshbhai it is observed by this Court that it is not necessary that where alternative remedies or possibilities of preventing the petitioner were present, no detention order could have been passed. Instead of launching a prosecution it might become necessary in certain cases to detain the detenu and that might be an efficacious way of preventing him from going with objectionable activities. However, the Court must be satisfied that this possibility was very much present before the detaining authority and after taking into consideration and after knowing the pros and cons, the prognosis was arrived at. If this is not done, then clearly detention would be bad because it would be suffering from the vice of non-application of mind.

So far as the proposition of law is concerned, there cannot be any dispute. The question is on the factual aspect of the matter, whether in fact the authority had applied its mind. It may be mentioned that in the grounds which are served on the petitioner it is clearly mentioned that alternative steps like prosecution in the Court of law cannot stop the aforesaid illegal activities of the petitioner because that alternative remedy of prosecution is time consuming and the petitioners are likely to obtain stay thereof and are likely to continue their such activities. Apart from any affidavit on this point the grounds of detention themselves indicate that the detaining authority has applied its mind on the point of prosecution against the petitioners and considered the pros and cons and the prognosis was arrived at and therefore, it cannot be said that there is non-application of mind on this aspect by the detaining authority. In that view of the matter this contention also

fails and hence it is rejected.

30. The next contention raised by Mr. Desai is that the detaining authority has not satisfied itself regarding the material available which would call for drastic action against the petitioners and therefore, there is no subjective satisfaction of the detaining authority.

This point is also raised by amending the petitions. In the affidavit-in-reply of Shri K.B. Makwana, Deputy Secretary, Food and Civil Supplies Department, it is clearly stated that the detaining authority has passed the detention orders after considering the entire material on record and after considering the illegal activities of the petitioners and as there was no other alternative but to pass the detention orders under the Act.

31. Apart from any affidavit-in-reply on this point, on perusal of the grounds of detention supplied to the petitioner-Nareshkumar Ambalal it is clear that the detaining authority has taken into consideration the material namely, 18 bills prepared in his name and other 15 bills prepared in the names of different members of his family as also the petitioner's own statement to the effect that he had sold out the entire stock of edible oil in respect of the said bills. These incidents are repetitive inasmuch as 18 bills were prepared during the period from April 1987 to September 1987. Similarly, 15 bills were prepared in different names during the same period. These clearly indicate that he was indulging in illegal activity of committing offence u/s 7 of the Essential Commodities Act and he was also instigating his brother Rajnikant Ambalal. Thus, the entire material has been considered by the detaining authority for its subjective satisfaction and thereafter the detaining authority was satisfied on the point that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it was necessary to detain him in the wider sense as mentioned in the explanation to Sub-section (1) of Section 3 of the said Act. The detaining authority has also considered the alternative steps by way of prosecution or departmental action against the petitioner-Rajnikant Ambalal and found it to be inadequate. Thus, it cannot be said that detaining authority has not considered the material on record for passing the detention order and that there was no subjective satisfaction arrived at by the detaining authority. In that view of the matter we do not find any substance in this contention also.

32. Before parting with the discussion on the point it is necessary to refer to one submission made by Mr. Desai, the learned Advocate for the petitioners. According to his submission prejudicial activities of the petitioners to the maintenance of supplies of commodities essential to the community should result in some scarcity of the said commodity or price rise of the said commodity and in absence of that it cannot be said that the relevant aspect was considered by the detaining authority before arriving at the subjective satisfaction. In support of his submission he has relied on the observation made by the Patna High Court in the case of Ganeshbhai Gangabhai Harijan Vs. District Magistrate Banaskantha and

Others, . In para 19 of the said judgment it is observed as under:

19. Now remains for consideration a subsidiary argument advanced by Mr. Sen and that was that where an ordinary criminal prosecution could well serve the purpose, the detaining authority must, satisfy the Court that the order of detention was not passed in a mechanical manner without keeping present to its mind the question whether it was necessary to make such an order. He contended that inasmuch admittedly the so called clandestine business in salt was going on to the knowledge of all the authorities for the last 10-15 years and the grounds of detention were also the same which were the grounds for prosecution of the petitioner in the criminal proceeding, the authority should have been satisfied that ordinary criminal prosecution could well serve the purpose and should not have taken recourse to this extraordinary measure.

Further, relying on the judgment in the case of Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others, it is observed as under:

On the fact and in the circumstances of the case discussed above, particularly that the offending act of the petitioner did not create any scarcity or price rise of salt in the State, much less in the area, where the admitted case of the respondents being that the import itself was surplus, in my view the anxiety of the law could be well satisfied by taking recourse to the ordinary procedure, proceeding against the petitioner under the existing machinery, namely, the provisions of the Essential Commodities Act, 1955, if a case was made out against him....

33. It is therefore, necessary to refer to the relevant observations made by the Supreme Court in the case of Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others, . In para 8 of the said judgment the Supreme Court has summarised the case law on the point as under (at page 894 of GLR):

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-circuited by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility of launching a criminal prosecution may, in the circumstances of the 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 the 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 should 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.

34. Before reverting to the facts of the present case it is necessary to mention that under Sub-section (1) of Section 3 of the said Act the detaining authority is to be satisfied with regard to the necessity of detaining a person with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The phrase "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" has been defined by way of explanation to the said sub-section which has been quoted earlier in this judgment. Referring to the said sub-section nowhere it is found that such illegal activities of the petitioners should result either in scarcity or price rise. The petitioners would come within the provisions of said subsection when they do such activity with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of the said Act. When a person is doing business without licence he is clearly committing breach of the provisions the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 and therefore, he is committing the offence under the provisions of the Essential Commodities Act. Similarly, when the petitioner in the second petition who is holding a licence is also doing clandestine business by making bogus bills in the names of other customers and selling goods by preparing bills in the name of Nareshkumar Ambalal and other members of his family, he is also dealing with that commodity i.e. edible oil with a view to making gain by directly defeating the provisions of the Act inter alia by not keeping accounts thereof as required under Clause 9 of the Gujarat Essential Articles Dealers (Regulation) Order, 1977. In view of the wider meaning given to the aforesaid clause it is not essential that it should result in either scarcity or price rise. We are, therefore, not in agreement with the observations made in the judgment of the Patna High Court in the case of Hema Raj v. State Bihar.

35. On the point of necessity for passing the order of detention it may stated that the detaining authority should also consider alternative action namely, of prosecution. In absence of that Court may come to the conclusion in the facts and circumstances of a particular case that the authority has not applied its mind on that relevant aspect, but as stated earlier in the present cases the detaining authority has applied its mind to the alternative action namely, of prosecution, to be taken against the petitioner in Special Criminal Application No. 264 of 1988 and prosecution as also the departmental action so far as the petitioner in Special Criminal Application No. 265 of 1988 is concerned. The detaining authority has also considered pros and cons thereof and thereafter the detention orders were passed. In that view of the matter it cannot be said that the orders are bad on account of non-application of mind on the relevant and vital aspect of the matter. Hence we do not find any merit in this submission of Mr. Desai.

In result all the contentions raised on behalf of the petitioners fail and therefore, they are rejected. Accordingly the petitions are rejected. Rule discharged in both the petitions.