

(1999) 12 GUJ CK 0078

In the Gujarat High Court

Case No : Special Civil Application No. 8093 of 1999

Navnitbhai Ishwarbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-12-1999

Acts Referred:

Citation : (1999) 12 GUJ CK 0078

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Suman Pahwa, for the Appellant; D.P. Joshi, A.G.P. for Respondent Nos. 1 and 2 and P.J. Davawala, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The petitioner is a Partner in Nav Bharat LPG Bottling Company situated at Gadhadra, Taluka Himmatnagar, Dist. Sabarkantha. He came to be detained by an order dated 7th September 1999 passed by the Joint Secretary to the Government of Gujarat in exercise of powers u/s 3[1] of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as 'the PBM Act', for short]. The grounds of detention of even date furnished to the detenu indicate that the detaining authority took into consideration the facts that were revealed during the inspection raid indicating commission of breach of the Control Order of 1977 and several other irregularities and illegalities in the stock of LPG.

2. The petitioner challenges the order of detention on numerous grounds. The main grounds are that there is a delay in passing the order that there is delay on part of the Central Government in deciding the representations sent by the detenu himself and his lawyer, and that the detaining authority has not recorded any subjective satisfaction regarding the activities being carried out by the petitioner for personal gain. It has been contended that the Central Government had called for parawise comments from the State Government which was not required to be done as the Central Government already had the

report of the State Government submitted u/s 3[4] of the PBM Act and lastly, it is stated that the parawise remarks have been mechanically called for without any application of mind by the authority concerned. The last contention is that legible documents were not supplied to the detainee at the time of detention. The detainee had, by a representation, requested for supply of legible copies of these documents and the same has not been supplied.

3. Mr. Thakkar, learned advocate appearing for the petitioner, while elaborating the points and contentions raised in the petition, submitted that the inspection raid was carried out on 25th May 1999, whereas the order of detention came to be passed on 7th September 1999. Therefore, there is a delay of nearly 3 months and 2 weeks. He submitted that, therefore, the subjective satisfaction about immediate necessity of detaining the petitioner, cannot be said to be genuine. Mr. Thakkar submitted further that the Government machinery has not acted quickly and without delay. He submitted that the representation dated 30th September 1999 was received by the Government on 1st October 1999 and the same has been decided by the Central Government on 14th October 1999. Another representation of the same date made by the petitioner himself was received by the Central Government on 5th October 1999 and the same came to be decided on 22nd October 1999. Therefore, there is a delay in deciding both the representations. Mr. Thakkar submitted that, so far as the second representation made by the petitioner himself is concerned, it was made in Gujarati language. The Central Government called for a translated version and parawise remarks on 5th October 1999 and the same was received by the Central Government on 18th October 1999. The State Government has, therefore, consumed unusually long time for furnishing translated version and parawise remarks to the Central Government. The delay has remained unexplained and therefore, prejudice is caused to the detainee.

3.1 Mr. Thakkar submitted that the detaining authority does not state any where in the grounds of detention that the activity that was carried out allegedly by the petitioner, was for personal gain or that the petitioner was making gain through these activities. This is a condition precedent which is not complied with by the detaining authority and which has not been considered by the detaining authority and according to Mr. Thakkar, this reflects non-application of mind.

3.2 Mr. Thakkar submitted that the Central Government machinery has acted in a mechanical manner while calling for the parawise comments from the State Government on the representation made on behalf of the detainee. He submitted that, admittedly, the report of the State Government was with the Central Government since 13th September 1999. The representation is made on 30th September 1999 by the detainee and his advocate. The representation made by the advocate is received by the Central Government on 1st October 1999. Therefore, on that day, the Central Government already had the report of the State Government and there was no need for calling for the parawise comments. Mr. Thakkar submitted further that it is also not made clear from the affidavit filed

by the Central Government as to whether the parawise comments were called for from the State Government at the behest of the officer, authorised to decide the representation and therefore, mechanically calling of the report would cause prejudice to the detainee and ultimately, vitiate the detention. Mr.Thakkar has pressed into service the decision of the apex Court in support of his arguments delivered in the case of P. Paulsamy Vs. Union of India and Another, , wherein this aspect has been elaborately dealt with by the apex Court.

4. Mr.Thakkar submitted that the cumulative effect of the above fact situation would render the order of detention and the continued detention, bad in law and therefore, the petition may be allowed and the petitioner may be directed to be set at liberty forthwith.

5. Mr. D.P. Joshi, learned AGP appearing for the respondents No.1 and 2 has opposed this petition. He submitted that the affidavit in reply filed on behalf of the State Government indicates that there was no delay caused on part of the State Government in passing the order. While drawing attention of this Court to para 10 of the affidavit in reply, he submitted that the time consumed has been explained by the State Government. Mr. Joshi submitted further that the representation requesting for supply of legible copies of the documents was received by the State Government on 7th October 1999 and the copies have been supplied to the detainee on 8th October 1999 through the jail authorities and therefore, the contention in this regard, is not well founded.

6. Mr. Joshi submitted that, as regards the time consumed in supplying the translated version of the representation made by the detainee himself and parawise comments thereon, it may be stated that the direction of the Central Government was received by the State Government on 8th October 1999. The 9th and 10th days of October 1999 were holidays and therefore, the file could be processed only on 11th October 1999. The translation and preparation of parawise remarks took three days. The same were ready on 14th October 1999 and have been sent to the Central Government on 15th October 1999, and therefore, there is no delay on part of the State Government in furnishing the translated version of the documents required by the representation. Mr. Joshi submitted that the petitioner is involved in the activities which are detrimental to the economy of the country and may disturb the supply of essential commodities like LPG gas. Excess stock was found in the bottling plant which is claimed to have been purchased on basis of certain bills from open market, but in fact, it is not found to be so. Mr. Joshi, therefore, submitted that, after considering all these aspects, the order of detention has been passed.

7. Ms. Davawala, learned advocate appearing for the respondent No.3 - Union of India submitted that there is no delay in deciding the representation by the Central Government. The representation of the advocate of the petitioner was received on 1st October 1999. Parawise remarks were sought for telegraphically on 4th October 1999. The same were received on 11th October 1999 and the representation was decided on 14th October 1999. The authority has to take into

consideration the points raised by the detainee/his advocate in the representation and the parawise remarks and thereafter, take a decision on the representation and therefore, it cannot be said that the delay is caused in taking decision of the representation. She submitted that, as regards the second representation also, the remarks were received on 18th October 1999 and the decision was taken on 22nd October 1999. She submitted that in the affidavit in reply filed by Under Secretary in the Department of Consumers Affairs, New Delhi, these aspects have been explained. She submitted that parawise remarks is required to be called for from the State government as sometimes, the representation raises certain points that may not have been dealt with by the State Government while making a report, as required u/s 3[4] of the PBM Act. This, therefore, may not be taken as unwarranted and mechanical exercise of powers by the authority and the petition may be dismissed.

8. Considering the rival side contentions, the picture that emerges is that the order of detention was passed on 7th September 1999. Two representations, both dated 30th September 1999 were made by the detainee, one was made by himself and the other was through his advocate. The representation made through the advocate was received by the Central Government admittedly on 1st October 1999. Before that day, the Central Government had already received report from the State Government vide letter dated 9/9/1999 received by the Department on 13/9/99 and as such, there was no need for the Central Government to call for the parawise comments on the representation made by the advocate of the detainee. If the case was, as suggested by Ms. Davawala, that the representation raised certain contentions which were not dealt with by the State Government in the report, this could have been clarified and ascertained in the affidavit in reply by the Central Government. The affidavit in reply is silent on this point. The parawise remarks, therefore, called for from the State Government appears to have been called for in a mechanical manner.

8.1 The question, whether parawise comments were called for at the behest or under the direction of the officer authorised to decide the representation remains unanswered in the affidavit in reply filed by the Central Government. Assuming for sake of argument that it was at the instance of the officer authorised to decide the representation, then also it reflects non-application of mind as the report of the State Government was already with the Central Government on that date. This being so, there was no need to call for the parawise comments, excepting the circumstance argued by Ms. Davawala, which do not find place in the affidavit in reply. So far as the second representation is concerned, the same exercise is undertaken with the same identical shortcomings as discussed above. It is not certain as to whether the parawise remarks were called for at the instance of the officer authorised to decide the representation and no explanation is coming forward as to why parawise remarks were called for, when there already was, the report of the State Government, as required u/s 3[4] of the PBM Act.

9. A very similar situation was before the apex court and the apex court expressed an opinion that if a representation is received by the Central Government and parawise remarks are called for from the State Government in a routine manner, without application of mind of the competent officer on the question whether it was necessary to call for the comments of the sponsoring authority, it would be fatal to the order of detention. In case of *R. Polsamy* [supra], the apex court held that unexplained delay in disposing of the representation would be fatal to the detention. In that case, the representation was received on 28th October 1998 and comments of the sponsoring authority were called for on 29th October 1998. There, the order calling for the comments was not passed by any of the officers empowered in this behalf by the Government. The comments were received on 10th November 1998 and a decision was taken on 12th November 1998. The detainee was informed about the decision on 13th November 1998 which was received by him on 18th February 1999. It was held that the delay between 20th October 1998 and 11th November 1998 was uncalled for and unexplained and was held as unreasonable and therefore, fatal to the detention. It was held further that the representation was dealt with in a routine manner and that, there was no application of mind by the competent officer as to whether it was necessary to call for the comments of the sponsoring authority. In the instant case also, the representation is received on 1st October 1999. Parawise remarks are called for on 4th October 1999. It is not certain as to whether they were called for on application of mind by the competent officer as the affidavit in reply filed on behalf of Union of India is silent on this question. It is also to be noted that the report of the State Government was already with the Central Government since 13/9/1999 and therefore, the calling for parawise comments by the Central Government can be said to be a mechanical exercise undertaken by the Department without application of mind of the competent officer and without addressing itself to the question whether it was in fact necessary to call for the parawise remarks. In this view of the matter, the detention is rendered bad in law on account of non-application of mind by competent authority of the Central Government. So also, the delay caused in deciding the representation made on behalf of the detainee. The petition deserves to be allowed for the above reasons.

10. At this stage, Mr. Thakkar, learned counsel for the petitioner states that he does not press for a verdict on the other grounds raised by him during the course of arguments.

11. The petition therefore deserves to be allowed, as discussed above and the same is hereby allowed. The impugned order of detention, dated 7th September 1999 passed by Joint Secretary, Government of Gujarat, is hereby quashed and set aside. The detainee - Navnit Ishwarbhai Patel, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly, with no orders as to costs.