
(1990) 11 GUJ CK 0040
In the Gujarat High Court

Pokhrajbhai Sohanbhai Chandel

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Constitution of India, 1950 — Article 22(5), 22(5)

Citation : (1991) 2 GLR 753 : (1991) 3 RCR(Criminal) 335

Hon'ble Judges : S.M. Soni, J;J.U. Mehta, J

Bench : Division Bench

Judgement

J.U. Mehta, J.—The petitioner-detenu has challenged the legality and validity of the order of detention, dated 7-9-1990 passed by the District Magistrate, Surat, under the provisions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. The petitioner is a licence-holder of a Fair Price Shop and is detained on 9-9-1990 in pursuance of the order of detention dated 7-9-1990, passed by the District Magistrate, Surat, as aforesaid. The allegations are that the activities of the petitioner are prejudicial to the maintenance of supply of essential commodities. It is alleged in the grounds of detention that the petitioner sold the quota of Wheat of Fair Price Shop in the open market and the same is sold to a Flour Mills, viz. Dilip Enterprise, Navsari on higher rates.

3. Learned Advocate for the petitioner submitted that it is imperative that the detaining authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention. He submitted that the detenu was given the list of authority relied upon for making the impugned order as stated in the grounds of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority failed to supply legible copy of the relevant document to the detenu which is given at page 195 of the compilation, which affected the detenu's important right of making an effective representation under Article

22(5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. He showed a xerox copy of the document supplied at page 195 of the compilation. On perusing the document, it appears that the document at page 195 is the receipt issued by "Gujarat Rajya Nagrik Purvatha Nigam Ltd.", which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the payer on which the rubber stamp is applied and the contents of the said rubber stamp are not legible. Mr. Tripathi appearing on behalf of the detaining authority drew our attention to the affidavit filed on the aforesaid point, which is set out at para 12 of the affidavit-in-reply, the relevant part of which reads as under:

I submit that the petitioner has been supplied with the entire material relied upon by the detaining authority for the purpose of passing the detention order. In fact, the entire material has been given in order to enable the detenu to make effective representation. It is also absolutely wrong to say that some of the pages are not legible at all, viz. pages Nos. 145, 147, 155, 157, 185 and all the receipts of Weigh Bridge, etc. since mere look at the copies supplied to the petitioner-detenu makes it clear that they are absolutely legible....

The document at page 195 was shown to Mr. Tripathi and he fairly admitted that the said document is not legible.

4. In view of the above position, we are of the opinion that the detaining authority failed to supply legible copy of the said relevant document to the detenu for making an effective representation which has infringed the detenu's right under Article 22(5) of the Constitution. We are supported by the judgment of the Supreme Court in the case of Smt. Dharmista Bhagat Vs. State of Karnataka and Another, .

In light of the above position, we are constrained to hold that the failure on the part of the detaining authority to supply legible copy of the said relevant document to the detenu for making an effective representation infringed the detenu's right under Article 22(5) of the Constitution.

5. In the result, this petition is allowed. The impugned order of detention dated 7-9-1990 is quashed and set aside and the detenu is ordered to be set at liberty forthwith unless required for any other case. Rule is made absolute. Direct service permitted.