

(1999) 12 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 8084 of 1999

Pramodkumar Kanchedilal Jain

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

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

Citation : (2000) CriLJ 3231 : (2000) 3 GLR 360

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

Bench : Single Bench

Advocate : D.M. Ahuja, for the Appellant; D.P. Joshi, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The District Magistrate, Ahmedabad passed order dated August 8, 1999 detaining the petitioner under the provision of section 3[2] of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as 'the PBM Act' for short].

2. In the grounds of detention, the detaining authority recorded that the petitioner in association with others had engaged in activities which were capable of disrupting supply of essential commodities like kerosene. The allegation made against the petitioner is that he has made illegal use of the controlled blue kerosene. The license is issued to the Ahmedabad Kerosene & Oil Supply cooperative Society Ltd., the petitioner is the Manager thereof and he has continued these illegalities for personal gain. After considering the possibility of resorting to less drastic remedy, the authority came to a conclusion that, in order to immediately prevent the petitioner from pursuing his illegal activities, detention under the PBM Act has been resorted to.

3. The main grounds of challenge in this petition are that the detaining authority has not considered the fact of pending prosecution in respect of the same

incident. It is contended that material documents have not been placed by the sponsoring before the detaining authority and therefore, the decision taken by the detaining authority is affected and would, therefore, stand vitiated. Another ground that has been taken, is regarding delay in considering the representation dated September 8, 1999 and last ground is that certain documents which are supplied to the detainee, are not legible.

4. Mr. Ahuja, learned advocate appearing for the petitioner has reiterated the above grounds and restricted his arguments only to these grounds. He pressed into service the decision in the case of Mehrunissa Vs. State of Maharashtra, and submitted that non supply of relevant documents would infringe the right of the detainee of making an effective representation. He has drawn attention of the Court to the affidavit in reply wherein the detaining authority has also accepted the fact that certain documents are not legible. He submitted further that the authority has stated in the affidavit that it could not have known about any criminal complaint filed in the matter in respect of 8,000 ltrs. of kerosene in question. He submitted that the sponsoring authority had placed before the detaining authority affidavit of the driver and cleaner of the tanker who have stated that, after they were intercepted, police recorded their statements, took them in custody, ill-treated them and ultimately, they were bailed out. They say that initially they had stated before the police that, under the direction of one Shaileshbhai, they were taking the kerosene and subsequent in the affidavit, they have implicated the present petitioner. The affidavit, if it was considered by the detaining authority in proper perspective, the authority would have definitely known that some criminal proceedings are initiated in respect of this very incident. Mr. Ahuja, therefore, submitted that there is non-application of mind in this regard. He submitted that the petition may, therefore, be allowed and the detainee may be directed to be set at liberty.

5. Mr.D.P.Joshi, learned AGP appearing for the respondents authorities has opposed this petition. He submitted that the documents which are said to be illegible are illegible in original and therefore, the authority could not have helped the detainee with a legible copy. These documents were seized from the detainee himself and therefore, there was no question of supplying a copy of the documents as the contents would be known to the detainee. Mr. Joshi submitted further that the criminal complaint is not the foundation for detention of the detainee and therefore, there was no need for the detaining authority to furnish material relating to the criminal case. He submitted that the petition may, therefore, be dismissed.

6. It is now a settled proposition of law that the detaining authority is expected to supply all the relevant documents relating to the order of detention. For this purpose, it is not material whether the detainee is aware about these documents or contents thereof. The stand taken therefore by the detaining authority that the documents were seized from the petitioner and he was, therefore, expected to know the contents, cannot be accepted. Reliance can be placed in this regard on

the facts of the decision in the case of Mehrunissa [supra] wherein it has been held that the detainee was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in relation to the contents of the documents. The failure on part of the detaining authority to supply copies of such documents vitiates the detention. In that case, the apex Court relied upon the decisions in the case of Ichhudevi v/s Union of India [1984 SCC 531] and in the case of Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , in which this view was taken by the apex Court. In this view of the matter, the authority was expected to supply legible copies of the documents relied upon by it.

7. In fact, if the affidavit in reply is seen, the authority says in para 16 that the right of representation of the detainee cannot be said to be vitiated on account of non-supply of copies as the documents were taken from the custody of the detainee as well as other witnesses. The original documents were themselves illegible in certain conditions and therefore, the copies. It was contended further that the copies which are given to the detainee are not made by the detaining authority, but they are the copies of the originals and therefore, no prejudice is caused to the detainee by supplying of certain documents which are alleged to be illegible. The authority says that, on the contrary, certain documents had created problems for the detaining authority in reading the said documents which were seized either from the custody of the detainee or from the witnesses and hence, the same had been explained by the detainee and other detainees to the detaining authority and therefore, the detainees themselves are knowing about the grounds of detention and the contents of the documents which are supplied to them.

The present case, therefore, is quite similar to the case of Mehrunissa [supra] wherein reliance was placed on the fact that the detainee was aware about the contents of the documents. Here also, the detaining authority has relied upon this aspect of the case. The non-supply of legible documents has, therefore, deprived the petitioner of his right of making an effective representation. The detention, therefore, would be vitiated.

8. As regards the other point that the fact of pending prosecution in respect of this very incident, has not been considered by the detaining authority and therefore, there is non-application of mind, also needs consideration. If para 13 of the affidavit in reply is seen, the authority says,

"I hereby say and submit that the filing of the criminal complaint before the Kalol police station or at any other police station is a job done by the District Supply Officer, Mehsana. That as I have stated earlier that in the grounds of detention, I have not mentioned the reference to any criminal complaint being filed that is because I was absolutely unaware about the fact and the papers which were placed before me do not disclose the same. In a quixotic dreams, I cannot gather the facts without having any material on record that any criminal complaint is filed by the officer, who had intercepted the tanker containing 8,000 ltrs. of

kerosene."

The above averment indicates that the sponsoring authority has not placed the papers relating to criminal complaint before the detaining authority which were very material and relevant as they relate to the very incident. They become more important for another reason that, during the course of investigation, the driver and conductor of the tanker concerned had implicated Shaileshbhai and on a subsequent affidavit [which forms part of papers supplied to detainee and by necessary implication of the detaining authority], has implicated the present detainee. Therefore, the detaining authority, if it had considered the affidavit placed before it, it would have known that some criminal proceedings are initiated in respect of this incident, because, the driver in the affidavit states about the interception of the truck by the police, being taken in custody, being ill-treated by the police and being bailed out. It indicates that some case was prepared by the police implicating Shaileshbhai Jain in this regard and then, the driver says that he has not implicated Shaileshbhai Jain, but he signed certain papers under pressure. Had the detaining authority read this affidavit in proper perspective, it would have definitely known that some criminal proceedings are initiated in respect of the same incident and which in turn implicate one Shaileshbhai Jain and not the detainee and it is the changed version of the driver of the tanker that implicates the present detainee and the authority therefore, it appears, has not considered those documents which are the basis of proceedings against the detainee and which is also supplied to the detainee, while detaining him.

9. Non-placement of material documents before the detaining authority by the sponsoring authority, namely, the documents relating to criminal proceedings in respect of the same incident, can be said could have affected the subjective satisfaction of the detaining authority. The possibility of the detaining authority taking another view after considering these papers relating to criminal proceedings against Shaileshbhai Jain cannot be ruled out and therefore, the order of detention passed in absence of consideration to the papers relating to criminal proceedings would stand vitiated.

10. On all above grounds, the petition deserves to be allowed and the same is allowed. The impugned order of detention is quashed and set aside. The detainee Pramodkumar Kanchadilal Jain is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.