

(1986) 09 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9388 of 1986

R. Sampat kumar

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

Citation : AIR 1987 AP 44 : (1987) 1 APLJ 40 : (1987) 1 RCR(Criminal) 458

Hon'ble Judges : Sreeramulu, J;B.P. Jeevan Reddy, J;Anjaneyulu, J

Bench : Full Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Advocate General, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—The order of detention passed by the District Magistrate, Warangal, detaining Sri Yathamsetty Srinivas Rao, (hereinafter referred to as "the detenu") under S. 3(2)(a) read with Section 3(1) of the Prevention of Black-marketing and Maintenance of Suppliers of Essential Commodities Act, 1980. (for short "the Act") is assailed in this Writ Petition. When the matter came up for hearing before a Division Bench consisting of My Lord. The Chief Justice and Lakshmana Rao, J., counsel for the petitioner Sri C. Padmanabha Reddy, submitted that the decision of a Division Bench of this court in W.P. No. 13884 of 1985 dated 27-12-1985 requires re-consideration. In the aforesaid judgment the Division Bench held that Clause 13 of the A.P. Levy Cement Distribution (Licensing and Regulation) Order 1982 (hereinafter referred to as "the Levy Cement Distribution Order") would be contravened, if any person aids and abets the illegal disposal of levy cement. According to the learned Counsel for the petitioner the contravention is referable only to a "permit-holder" of the cement and not to a person other than the permit-holder. The Division Bench felt that the question raised by the learned counsel for the petitioner is important, and as it frequently arises for consideration the matter should be considered by a Full Bench. That is how the matter is placed before us.

2. The relevant facts resulting in the passing of the aforementioned order of

detention by the District Magistrate, Warangal may be referred to.

3. The work relating to the construction of double lane road-bridge at K.M. 11.212 of IR of D.M.B. 31 of Kakitiya Canal was given on contract to one Seelam Komuraiah on 15-2-1984. The amount of contract is Rs. 1,01,152/- and the Irrigation Department has to supply the required cement for the purpose of construction of the bridge. The detenu was managing the aforesaid work on behalf of the contractor with the assistance of one Sangala Mallaiah. On receipt of information that the detenu was diverting levy cement supplied by the Department for use by a private party, the Inspector of Police, Vigilance Cell (Civil Supplies) Department, kept vigil. At about 4.00 a.m. on 29-1-1986, a lorry bearing No. APH 914 of which the detenu was the owner, loaded with 170 bags of ACC levy cement reached the site of construction of a building in Baba Nagar Colony Subedari Post Officer, Hanamkonda and stopped. The Inspector checked the lorry. One Immadi Koti was driving the lorry. Sangala Mallaiah, who was said to be assisting the detenu in the construction, and K. Rajasekhar, Works Inspector of the Irrigation Department, a public servant, were sitting in the front cabin of the lorry along with the driver. Another person by name A. Shekaraiah was also in the lorry. He is reported (related ?) to Mallaiah and Rajasekhar stated that on instructions from the detenu 300 bags of ACC levy cement was lifted from the Irrigation Department, Civil Stores, Chintagattu Camp, Hanamkonda to be transported to the official canal site godown situate near the "Gude-Pahad" Cross-roads for the use in the construction of the bridge. The 300 bags of levy cement so lifted were, in the first instance, unloaded at the premises of Bhagyalakshmi Timber Depot, Warangal. Out of the 300 bags, 130 bags were transported and kept in the Municipal Park and the remaining 170 bags of levy cement were transported to the site of the construction of a building situate at Baba Nagar Colony, Subedari Post Officer, Hanamkonda. They further stated that the 170 bags of levy cement were transported under instructions from the detenu in his above referred lorry. Immediately the driver Mallaiah and Rajasekhar were arrested and a case was registered in Cr. No. 4 and investigation was taken up by the Inspector, Vigilance Cell, Civil Supplies Department, Warangal. The lorry was seized on 29-1-1986 in the presence of two Panchas. The Inspector also seized the 130 bags of levy cement unloaded earlier at Municipal Park. Thereafter the Inspector, Vigilance Cell, inspected the official site godown at Gude-Pahad Cross-Roads and found stock of 62 bags of levy cement. This was also seized.

4. The investigation conducted thereafter revealed that on 28-1-1986 Sri. Komuralli, Assistant Engineer, Canal Construction, Sub-Division No. 2, who was incharge of the construction of the bridge took delivery 300 bags of levy cement from the Irrigation Department, Civil Stores, Chinta Gattu Camp. The said stock of 300 bags was handed over to the Works Inspector, K. Rajasekhar, under instructions to deliver the same to the detenu and to unload as per the instructions of the detenu. When the stock of levy cement of 300 bags was placed at the disposal of the detenu on 28-1-1986 for being taken to the official

godown at Gude-Pahad Cross-Roads, the detenu instructed the Works Inspector, Rajasekhar, to deliver the 300 bags in his lorry at the premises of Bhagyalakshmi Timber Depot. The Works Inspector complied with the Instructions of the detenu and unloaded the 300 bags of levy cement at the Timber Depot. The cement was transported in the above lorry of the detenu. Along with the Works Inspector Rajasekhar, Sangala Mallaiah also accompanied the lorry. At about 11.30 a.m. on 28-1-1986, 130 bags of cement were diverted to the Municipal Park and the remaining 170 bags to the construction site of a private building in Baba Nagar Colony, as already referred to above. On enquiries made the Executive Engineer, Irrigation Department, informed the Inspector, Vigilance Cell, through his letter dated 13-2-1986 that detenu was managing the construction work of the bridge with the assistance of his agent Mallaiah.

5. On the aforesaid facts, the District Magistrate, Warangal came to the conclusion that the detenu indulged in clandestine diversion and transportation of levy cement in his lorry from the Government Civil Stores, to private parties for pecuniary gain and thus acted in a manner prejudicial to the maintenance of supplies of cement, an essential commodity. The District Magistrate was also of the opinion that the launching of prosecution against the detenu would not have the desired effect of preventing the detenu from acting in a manner prejudicial to the maintenance of supplies of commodities in view of the likely delay in the conclusion of the prosecution proceedings. On these grounds, the District Magistrate, Warangal, passed the impugned order of detention detaining the detenu in the Central Prison, Warangal in exercise of the powers conferred by S. 3(2)(a) read with S. 3(1) of the Act. In the order of detention it was mentioned that the detenu contravened the provisions of Cls. 9, 12 and 13 of the Levy Cement Distribution Order read with S. 7 of the Essential Commodities Act.

6. The order of detention was passed on 20-6-1986 and it was served on the detenu on 1-7-1986 along with the grounds of detention. The order of detention was approved by the Government on 30-6-1986. The matter was referred to the Advisory Board on 14-7-1986. On 17-7-1986, the detenu made a representation to the Government which was duly considered and rejected by Government on 30-7-1986. The Advisory Board met on 30-7-1986 and considered the detenu's representation and was of the opinion that there was sufficient cause for the detention of the detenu. The Government, therefore, confirmed the detention in G.O. Rt. No. 3142 General Administration (Gen-A) Department, dated 2-8-1986 and directed that the detenu be detained for the whole period of six months from the date of detention.

7. Sri C. Padamanabha Reddy, learned counsel for the petitioner principally contended that there was no contravention by the detenu of the provisions of Cls. 9, 12 and 13 of the Levy Cement Distribution Order and the order of detention should, therefore, fail on the basic ground. It is in particular claimed that the detenu could not be held to have contravened the provision of Clause 13 as he is not permit-holder of the levy cement. The expression "person" contained

in Clause 13, contends the learned counsel, refers, in the context, only to the person who can make an application for prior permission of the permit issuing authority for the disposal of cement covered by a permit in any manner other than that specified in the permit. In that the context, only the "permit-holder" of the levy cement can make an application to the permit issuing authority and permission can be accorded by the authority only to the permit-holder to dispose of the cement covered by a permit in any manner other than that specified in the permit. Learned counsel submits that the detenu in the present case is not a permit-holder and consequently no violation of Clause 13 of the Levy Cement Distribution Order can be alleged against the detenu. It is pointed out that the order of detention the violation, inter alia, alleged was that Cls. 9, 12 and 13 of the aforementioned Levy Cement Distribution Order read with S. 7 of the Essential Commodities Act. It is pointed out that S. 7 of the Essential Commodities Act refers to a person committing violation of the provisions of Clause 13 alone as liable for action and not any other person. It is further claimed that it is not permissible to allege violation of Clause 13 on the ground that a person instigated or abetted the violation of the provisions contained in Clause 13 of the Levy Cement Distribution Order, as Clause 13, as contended above, refers to the contravention or violation only by the permit-holder and consequently the principle of instigation or abatement cannot be pressed for consideration. It is also pointed out that there is no reference in the order of detention of S. 8 of the Essential Commodities Act which deals with abatement. The order of the detention, as already pointed out, refers specifically only to S. 7 of the Essential Commodities Act. Consequently, the order of detention as well as the grounds of detention supplied to the detenu did not enable the detenu to make an effective representation against his detention as the ground of abatement or instigation is not referred to either in the order of detention or in the grounds of detention. Consequently the contraventions alleged in the order of detention as well in the grounds of detention, learned counsel submits, cannot be sustained and the order should be quashed on that ground.

8. Learned counsel also raised other pleas. It is contended that the grounds of detention are irrelevant and vague and were based on inadmissible material. It is also submitted that the incident had taken place on 29-1-1986 whereas the order of detention was passed on 20-6-1986. There was inordinate delay of five months between the date of incident and the order of detention. It is, therefore, submitted that the ground of detention is too remote and not proximate. It is further submitted that the grounds of detention referred to non-existing facts, such as, the detenu being a municipal contractor and the detenu is managing the construction work of the contract awarded to Seelam Komuraiah. These allegations are denied. It is, therefore, urged that the order of the detention is based on non-existing grounds. It is also claimed that the detenu has nothing to do with the levy cement, as the Assistant Engineer and the Works Inspector of the Irrigation Department have custody of the levy cement. It is also stated that the detenu was in no way connected with the levy cement issued by the

Assistant Engineer and the Works Inspector and consequently the order of detention is based on irrelevant and non-existing grounds. Finally, it is contended that the detenu was involved in the matter on the basis of alleged statements made by the Works Inspector Rajasekhar and driver Immadi Koti to the effect that the levy cement was transported to Bhagyalakshmi Timber Depot, Municipal park and the private construction site under instructions from the detenu. These confessional statements, it is claimed, have since been retracted by the abovementioned two persons. The two persons were also co-accused and inasmuch as the detention is based on confessions since retracted. The detention is illegal.

9. Sri. D. Seetharama Murthy, appearing for the learned Advocate General, supported the order of detention on the grounds stated in the grounds of detention. Learned Counsel claimed in particular that the provisions of Clause 13 of the Levy Cement Distribution Order are wide enough to take any person and there is no warrant to restriction the application of Clause 13 only to permit holders. It is contended that every person, whether he is permit holder or otherwise will be contravening the provision of Clause 13 if he dispose of the cement covered by the permit issued by the permit-issuing authority in any manner other than that specified in the permit. It is urged that person abetting or instigating the violation of the provision contained in Clause 13 of the Levy Cement Distribution Order are liable to be proceeded against and the omission to refer to S. 8 of the Essential Commodities act in the order of detention and also in the grounds of detention is inconsequential as according to the learned counsel, the facts copiously stated in the grounds of detention can leave the detenu in no doubt that the allegation of instigation and abatement of the disposal of the levy cement for unauthorized purposes was clearly discernible from the grounds of detention. Learned Counsel stated that the detenu suffered no prejudice as he correctly understood the allegation against him and effectively represented his case denying allegation made. It is, therefore, urged that the omission to refer to S. 8 of the Essential Commodities Act dealing with abatement is not fatal.

10. Learned counsel also resisted the other pleas raised by the learned counsel for the petitioner. It is urged that the detention was made on relevant and specific grounds and they are not vague. It is pointed out that the delay between the date of incident and the date of passing of order of detention was properly explained and, consequently, the order of detention is not vitiated by reason of delay. It is asserted that the detenu was managing the construction works taken on contact by Seelam Komuraiah and this was evident from the letter addressed by the Executive Engineer dated 13-2-1986. It is therefore, claimed that the order of detention was passed on existing grounds. Finally it is submitted that the alleged retraction of the Statements by the Works Inspector Rajasekhar and the lorry driver cannot be taken note of the as these retractions are contained in the affidavits filed by the detenu. In any event, the retractions are inconsequential as they are subsequent to the detention order. Learned counsel,

therefore, submitted that the order of detention was based on proper and relevant grounds and should be sustained.

11. We shall first deal with the contention raised by Sri Padmanabha Reddy regarding the alleged contravention of the provision contained in the levy Cement Distribution Order. The order of detention refers to the construction by the detenu of the provisions of Cls. 9, 12 and 13 of the above Order, read with S. 7 of the Essential Commodities Act. Learned counsel is right in contending that so far as Cls. 9 and 12 of the Levy Cement Distribution Order are concerned no allegation of contravention can be made against the detenu. Clause 9 merely sets out categories of consumers and works eligible for the issue of levy cement. There can be no question of contravention of this clause by any one. Clause 12 of the Order provides that the levy cement shall not be sold by a licensee to any one other than a permit-holder and at a rate higher than the prescribed rate. Since it is not alleged that the detenu is a licensee, Clause 12 is not attracted. Evidently, these two clauses are referred to as compendious with Clause 13 which is really the clause applicable. The focus thus shifts (to) the contravention of Clause 13, which may be extracted below :

"13. Disposal of Cement :

Except with the prior permission of the permit issuing the authority, no person shall dispose of the cement covered by a permit in any manner other than that the specified in the permit."

As already mentioned, learned Counsel contends that the expression "person" occurring in the above clause refers, in the context, to the "permit holder" of levy cement. The permit issuing authority can accord permission to dispose of the levy cement covered by the permit in any manner other than that specified in the permit only to a person holding the permit. To that extent learned counsel is right in contending that the Clause 13 refers to the permit holder. Can it be said on the ground that a person other than a permit holder can, with impunity, dispose of the levy cement covered by a permit in any manner other than that specified in the permit ? In our opinion, the answer should be in the negative. The main question that arises for the consideration is whether the person concerned can dispose of levy cement in any manner other than that specified in the permit with the knowledge that the levy cement cannot be so disposed of without the permission of the permit issuing authority. Thus, the expression "person" occurring in the Clause 13 of the Levy Cement Distribution Order takes in its sweep, in our opinion, all persons, whether permit holders or others, who knowingly dispose of the levy cement for unauthorised purposes. It is precisely for this reason that S. 8 of the Essential Commodities Act provides that any person who attempts to contravene or abets the contravention of any order made under S. 3 of the said Act shall be deemed to have contravened that order. The Levy Cement Distribution Order is one made under S. 3 of the Essential Commodities Act and consequently any person who attempts to contravene or abets the contravention of the provisions contained in the Levy Cement

Distribution Order will be punishable accordingly. In that view, we hold that the expression "person" occurring in Clause 13 of the above Order refers not only to the permit holder but also to every person who attempts to contravene or abets the contravention of the provisions contained in Clause 13 of the Levy Cement Distribution Order.

12. Referring to the judgment of the Division Bench in W.P. No. 13884/85 dt. 27-12-1985 we find that the Division Bench after scrutinizing Clause 13 had expressed the same view. Jeevan Reddy J., speaking for the Division Bench, observed that "the person who abets and aids the illegal disposal is also covered by Clause 13" of the Levy Cement Distribution Order. In our opinion, this view represents the correct, interpretation of the provisions contained in Clause 13 of the said Order.

13. We may also point out that the detention order is passed under S. 3(2)(a) read with S. 3(1) of the Prevention of Black-marketing and Maintenance of Supplies of the Essential Commodities Act of 1980. The power to detain a person is conferred by S. 3(1) of the Act in order to prevent such person from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential of the community" means, according to Explanation to S. 3(1), "committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1965 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 the community." This explanation sets out, beyond any doubt, that the power of detention can be exercised, not only in respect of the person who himself commits the offence punishable under the Essential Commodities Act, but also the person WHO INSTIGATES any person to commit any offence under the Essential Commodities Act. We have already pointed out that under S. 8 of the Essential Commodities Act, any attempt to contravene or abetting the contravention of an order made under S. 3 of the Essential Commodities Act is an offence punishable. It would, therefore, be proper to read the provisions of the Clause 13 of the Levy Cement Distribution Order and S. 3(1) of the Act harmoniously so that not only the persons who commit the contravention but also persons instigating contravention can be detained in exercise of the power contained in S. 3(1) of the Act.

14. We are unable to accept the contention of the learned Advocate General that the expression "person" occurring in Clause 13 of the Levy Cement Distribution Order covers every person who disposes of the cement in a manner other than that specified in the permit whether knowing that it is levy cement or without knowing. The contention so urged is, in our opinion, wide and we cannot accept the contention of the learned Advocate General that apart from a permit holder himself contravention the provision contained in the Levy Order and persons instigating the contravention, other categories of consumers also can be held to

be contravening the provisions of Clause 13 of the Levy Cement Distribution Order and can therefore be detained under S. 3(2)(a) read with S. 3(1) of the Act. In our opinion, the power to detain can be exercised only in respect of the person who hold the permits themselves and commit contravention of the provisions of Clause 13 of the Order, and also persons who abet and instigate the commission of offence with the knowledge that the levy cement cannot disposed of in any manner other than that specified in the permit, but cannot be extended to other consumers, who may be technically guilty of the disposing of the levy cement without the necessary knowledge that it is levy cement. Having regard to the above facts we are of the opinion that a permit holder disposing of levy cement in any manner other than that the specified in the permit and also persons who instigate the contravention of the provision contained therein and thereby committing an offence under S. 8 of the Essential Commodities Act, can be detained under S. 3(1) of the Act.

15. Sri Padmanabha Reddy then contends that in the order of detention passed in the present case reference is made only to S. 7 of the Essential Commodities Act and there is no reference at all S. 8 of the Act dealing with abatement. It is also claimed that in the grounds of detention supplied to the detenu there is not a whisper regarding the detenu instigating the commission of offence and consequently there is total non-application of the mind on the part of the detaining authority in regard to the application of S. 8 of the Essential Commodities Act. It is also urged that the detenu has no opportunity to make an effective representation against his detention by the application of the provision contained in S. 8 of the Essential Commodities Act read with Clause 13 of the Levy Cement Distribution Order and, consequently, his detention orders must fail on that ground. Learned counsel invited our attention to the decision of the Supreme Court in *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, in support of his contention that the detenu being a layman could not be expected to know the implications of the grounds of detention. The following observation of the Supreme Court occurring in para 4 are relied upon :

"..... the petitioner, who is a layman not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the ground in the sense explained by the Attorney-General. Surely, it is up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting the grounds."

Learned Counsel also invited our attention to the decisions of the Supreme Court in *Narendra Purshotam Umrao Vs. B.B. Gujral and Others*, ; *Narendrakumar Pranalal Gandhi and etc. Vs. State of Gujarat and Another*, and *Himatlal Amratlal Kotecha Vs. State of Gujarat and Others*,

16. We are unable to accept the contention of the learned counsel. The facts copiously stated in the grounds of detention leave no doubt that throughout the allegation is that the detenu was instigating the transportation of the levy cement in a manner other than that specified in the permit. He was managing

the contract works. He was incharge of the levy cement issued for the purpose of construction works. He was fully conscious that there was no sanction by the permit issuing authority for disposal of the levy cement in any manner other than that specified in the permit. He issued instructions to the Works Inspector Rajasekhar and the driver to deliver the cement bags to private parties. All these Acts unmistakably indicate the aiding and instigation by the detenu of the contravention of the provisions contained in Clause 13 of the Levy Cement Distribution Order. We may point out that the detenu is not a layman or a gullible person. He is a Commerce Graduate and is sufficiently knowledgeable. We have looked into the representation made by him and we have not the slightest doubt in our mind that the detenu could not have entertained any impression other than that he was instigating the contravention of the provisions contained in Clause 13 of the above Order. It is true that the order of detention referred only to S. 7 of the Essential Commodities Act and there is no reference to S. 8 of the said Act. In our opinion, it is inconsequential. The omission to refer to S. 8 of the Essential Commodities Act is, in our opinion, not fatal to the detention order.

17. We have perused the decisions relied on by the learned Counsel for the petitioner referred to above. We find that the application of the principles set out in these decisions does not, in any way, invalidate the impugned order of detention.

18. We have carefully gone through the grounds of detention supplied to the detenu. We are unable to find any support for the contention of the learned counsel for the detenu that the grounds of detention are vague and (detention order) is passed on inadmissible material. Specific allegations were made in the grounds of detention and all the relevant material in support of the allegation was referred to. As far as we could see, no part of the evidence relied upon by the detaining authority can be held to be inadmissible.

19. As regard the delay in passing the order of detention, an explanation was furnished in the counter regarding the delay. Having considered the explanation we are satisfied that the time lag between the date of the incident and the date when the order of detention was passed was fully explained. We may point out that there is no specific profession that the order of detention should be passed within a particular period from the date of incident involving the illegal act. While it is true that the illegal act resulting in the detention should not be remote and it must have some proximate connection, Looking into the facts of the present case we are not persuaded to accept the connection that there is no proximate connection between the order of detention passed and the date of alleged contravention by the detenu of the provisions contained in Clause 13 of the Levy Cement Distribution Order.

20. We are also not satisfied with the contention that the order of detention was passed on non-existing facts. It may be that the detenu himself is not a municipal contractor. It is, however, pointed out that the detenu's father was a registered contractor and the detenu was assisting his father. We cannot also

take note of the dispute raised that the detenu was not managing the contract works of Seelam Komuraiah. There is clear evidence to that effect in the letter dated 13-2-86 addressed by the Executive Engineer. We are also unable to accept the further contention of the detenu that the detenu has nothing to do with the levy cement, as the aforementioned letter of the Executive Engineer clearly contains information that 300 bags of levy cement were instructed to be delivered to the detenu. Works Inspector Rajasekhar and the driver of the lorry categorically stated that 300 bags of cement were diverted to the Bhagyalakshmi Timber Depot and to the private construction site in the Baba Nagar Colony, under instructions from the detenu.

21. As regards the contention that the order of the detention is solely based on the confessional statements of Rajasekhar, Works Inspector, and the driver of the detenu's lorry which have since been retracted, we may point out that the so-called retractions are by way of affidavits filed before the Government along with the representation made on 17-7-86. At the time when the order of detention was passed on 20-6-86 there were no retractions and it cannot be said that the detaining authority was in error in relying upon the confessional statements made by the aforementioned two persons.

22. Learned Counsel relied on a decision of the Supreme Court in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, to support his submission that subsequently retracted confession cannot be made the basis of the detention. In the first place we have already pointed out above that at the time when the order of detention was passed the confessions were not retracted and it was much later. We may also point out that confessional statements were not the only facts upon which the order of detention was passed. The letter dated 13-2-86 of the Executive Engineer addressed to the Vigilance Inspector during the course of enquiry clearly revealed that the levy cement of 300 bags was directed to be delivered to the detenu and the same quantity of levy cement was found unloaded partly in the municipal park and partly transported to a private construction site in Baba Nagar Colony. It is not denied that the 170 bags of levy cement were transported to the private construction site in the detenu's own lorry and the detenu's employee was driving the lorry. These facts by themselves are adequate to justify the order of detention. The confessional statements which remained unretracted on 20-6-86 when the order of detention was passed added more weight to the conclusion of the detaining authority that the detenu should be detained under S. 3(1) of the Act in order to prevent the detenu from acting in any manner prejudicial to the maintenance of supplies of cement essential to the community. The fact that it is only an isolated transaction is also of no consequence.

23. In the facts and circumstances, we are satisfied that the order of detention passed by the District Magistrate, Warangal, respondent No. 2 herein, is valid. The writ petition is accordingly dismissed.

Petition dismissed.