

(1988) 09 GUJ CK 0018
In the Gujarat High Court

Rajibhai T. Choitani

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Essential Commodities Act, 1955 — Section 7, 7 , 8, 8
General Clauses Act, 1897 — Section 9

Citation : (1989) 1 GLR 309

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

Bench : Division Bench

Judgement

B.S. Kapadia, J.—The petitioner-detenu has filed the present petition against the impugned order of detention passed against him by the District Magistrate, Bhavnagar, on 2-6-1988 under the provisions of the Prevention of Blackmarketing and Maintenance of Supply of Essential Commodities Act, 1980. The petitioner was served with the order as also ground of detention on the same day i.e. 2-6-1988.

2. On persual of the grounds it appears that the present petitioner was managing the fair price shop in Bhavnagar locality of Bhavnagar City which was standing in the name of Jikarbhai Ahmedbhai Saiyed. On 5-5-1988 the Supply Inspector made a surprise visit to the said shop and inspected the same. During the inspection it was found that the opening stock of pamolene oil in the stock register was shown as six barrels i.e. 1140 kgs. while in the presence of Panchas when it was ascertained it was found that the stock was of 760 kgs. i.e. only four barrels and therefore, there was a deficit of 380 kgs. i.e. two barrels of pamolene. Before the Supply Inspector the petitioner had stated that he had taken the stock of six barrels from the godown of the Corporation, but the remaining two barrels were not delivered by the labourer Noarubhai Sindhi till late in the evening. He had also stated in his statement of 5-5-1988 that he was managing the said shop. Jikarbhai, who is the licensee of the said fair price shop has supported the version of the petitioner to the effect that the petitioner was managing the said shop, in his statement dated 8-5-1988.

3. The statement of Narubhai Lalchand was also recorded on 5-5-1988 wherein he has clearly stated that on 4-5-1988 he has delivered all the six barrels of pamolene oil to the petitioner. According to him, he had taken six barrels from the godown of the Corporation in two instalments inasmuch as it was not possible for him to take six barrels at a time in a three wheeler tempo. According to him, first he delivered four barrels and thereafter he delivered two barrels at the said shop. Even search was made at the residence of said Narubhai in the presence of the Panchas but neither any tin nor any barrel containing pamolene was found. It is also pointed out in the grounds that the petitioner was not in a position to explain as to why there was deficit of two barrels of pamolene in the actual stock when he had already credited six barrels in the stock register. It is also pointed out in the grounds that he was a "dealer" within the definition given under the Gujarat Essential Articles (Licence, Control and Stock Declaration) Order, 1981.

4. On the basis of the aforesaid material the detaining authority came to the conclusion that the petitioner has abetted, on the manager of the said shop, in committing offence under Sections 7 and 8 of the Essential Commodities Act.

5. In the grounds of detention it is also pointed out that the petitioner's activities are prejudicial to the maintenance of supply of commodities essential to the community. With a view preventing the petitioner the detaining authority has also considered departmental action as well as prosecution against the petitioner, but ultimately the detaining authority has come to the conclusion that such actions cannot stop the petitioner's illegal activities and hence the order of detention came to be passed against the petitioner.

6. In this petition various grounds have been raised challenging the validity and legality of the impugned detention order. However, Mr. Chinoy, the learned Advocate appearing for the petitioner has pressed before us the following points:

(1) That there was delay in reporting to the Central Government about the detention as required u/s 3(4) of the Act;

(2) That there is non-application of mind on the part of the detaining authority to the less drastic remedies;

(3) That there is no material to arrive at the subjective satisfaction for detaining the petitioner-detenu;

(4) That though the petitioner-detenu has made a representation to the Advisory Board on 29-6-1988 so far it is not decided and he is not informed about the same.

7. So far as the first point is concerned, it may be stated that what is required under the Act is that when the State Government has approved the order of detention passed by the officer of the State Government, it has to report within seven days the fact of detention to the Central Government together with the grounds on which the order has been passed and such other particulars as in the

opinion of the State Government have a bearing on the necessity of the order.

In the present case affidavit-in-reply has been filed by the respondents wherein it is pointed out that the order of detention was dt. 2-6-1988, it was approved by the State Government on 10-6-1988, the State Government has despatched to the Central Govt, the report of the approval as required u/s 3(4) of the Act on the same day i.e. 10-6-1988 and that it is clear from the affidavit filed on behalf of the Central Govt, that the said report was received by it on 17-6-1988.

In view of this Mr. Chinoy submits that there is delay of one day in reaching the report in the Central Govt.

8. It may be stated that when the report is to be made by the State Govt., to the Central Govt., it is the duty of the State Govt, to see that the said report is despatched to the Central Govt, within a period of seven days. However, on this point there is a judgment of this Court wherein it is observed that the term "shall report" means the report should reach the Central Govt, within seven days from the date of approval and since we felt that it was required to be reconsidered we have referred one matter to the Full Bench on this very point. However, in this case it is not necessary to refer this matter to the Full Bench on this point in view of the facts of this case. Section 9 of the General Clauses Act speaks about the commencement and termination of time. It inter alia provides that it shall be sufficient for the purpose of excluding first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time to use the word "to". It is therefore, clear that Section 9 of the General Clauses Act statutorily recognises the well established principle applicable to construction of states that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Hence apart from Section 9 of General Clauses Act the above principle will apply. So, when the period of seven days is prescribed it is to be counted from the date of approval of the order by the State Government and therefore, the date on which approval is accorded to the order is to be excluded i.e. period of seven days to be counted from 11th June, 1988 and 17th June, 1988 would be the 7th day. Therefore, the report of the State Government has reached the Central Government within seven days and therefore, the provisions of Section 3(4) of the Act are complied with. In that view of the matter we do not find any merit in this contention raised on behalf of the petitioner.

9. The second point raised by Mr. Chinoy on behalf of the petitioner is about non-application of mind by the detaining authority on the point of less drastic remedies.

It may be mentioned that in the grounds of detention itself the detaining authority has clearly mentioned about his application of mind on the point of departmental action as well as prosecution in the Court against the petitioner and ultimately he came to the conclusion that such actions would not be sufficient to stop the petitioner's illegal activities. Further, the detaining authority

has also filed affidavit-in reply and in para 24 thereof it is mentioned that the question of considering cancellation of licence or suspension of the same was not at all relevant, since technically the petitioner was only working as an Accountant. In that view of the matter it cannot be said that the detaining authority has not applied its mind on the point of less drastic remedies before passing the detention order. Hence the second contention raised by Mr. Chinoy also, fails.

10. The next contention raised by Mr. Chinoy on behalf of the Petitioner is that there is no material to arrive at the subjective satisfaction. Mr. Chinoy wanted to submit that there is no material for coming to the conclusion that the alleged deficit was with a view to making gain in any manner by the present petitioner-detenu.

It may be stated that so far as the present detention order is concerned it is based on the factual aspect that the present petitioner as a Manager is coming within the definition of "dealer" and that he has also abetted in committing the offence under Sections 7 and 8 of the Essential Commodities Act, by not explaining as to why there was deficit of two barrels of pamolene. When that is so that aspect is not to be considered because the petitioner is coming within the Clause (a) of explanation to Sub-section (1) of Section 3 of the Act. The aspect of making gain would arise only in case of dealing with any commodity which comes within the Clause (b) of explanation to Sub-section (1) of Section 3 of the Act. In that view of the matter we do not find any merit on this point particularly when there is material on the point namely, statements of the petitioner, Jikarbhai Ahmedhbhai Saiyed, Narubhai Sindhi and other evidence in the form of stock register, etc. In that view of the matter there is no substance in this contention. Hence it is rejected.

11. The last point raised by Mr. Chinoy is that the petitioner has made representation to the Advisory Board on 29-6-1988, but so far it has not been decided and he has not been informed about it and therefore, the continued detention is bad and illegal.

It may be mentioned that Section 10 of the Act provides that the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order. Section 11 of the Act provides that the Advisory Board shall finally submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

12. Mr. R.R. Tripathi, learned A.G.P. for the respondents has on Implication of the file stated before us that the order of detention is dated 2-6-1988, the petitioner was detained on the same day, reference was made as required u/s 10 of the Act to the Advisory Board on 16-6-1988 i.e. within three weeks from the date of the detention of the petitioner, the petitioner was also informed, apart from him

being informed in the grounds of detention about his right of making representation to the Advisory Board, by the letter dt. 18-6-1988 for making representation, if he so desires, the meeting of the Advisory Board was held on 29-6-1988 and the petitioner has accordingly made representation before the Advisory Board on that day and the report of the Advisory Board was submitted to the Government on 18-7-1988 i.e. within seven weeks as required u/s 11 of the Act. In view of the aforesaid facts there is no merit in this contention also. Hence it is also rejected.

As all the points raised by Mr. Chinoy on behalf of the petitioner-detenu fail the petition deserves to be dismissed and is hereby dismissed. Rule is accordingly discharged.