

(1984) 02 AHC CK 0010

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No's. 23, 37 and 38 of 1984

Subhash Chandra Goel

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-02-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 2, 3, 3(1), 3(2)
Explosives Act, 1884 — Section 4, 5, 6, 9
Gas Cylinders Rules, 2004 — Rule 51, 52

Citation : (1982) 8 ACR 211

Hon'ble Judges : R.A. Misra, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.P. Goel, for the Appellant;

Judgement

H.N. Seth, J.—These three petitions under Article 226 of the Constitution for writ of habeas corpus can be disposed of by a common judgment. Whereas H.C. Writ Petition No. 23 of 1984 is by Subhash Chandra Goel, H.C. Writ Petition No. 37 of 1984 is by Suresh Chandra Goel. Petitioner in H.C. Writ Petition No. 38 of 1984 is Bhagwan Das Goel.

2. Briefly stated, the facts giving rise to these petitions are that there is a partnership firm in the name and style of M/s. Goel Gas Service which carries on the business of purchasing and selling gas cylinders filled with liquid petroleum gas (LPG) at 6/1 Mahatma Gandhi Road, Agra. Suresh Chadra Goel (Petitioner in writ petition No. 37 of 1984), Bhagwan Das Goel (Petitioner in writ petition No. 38 of 1984) along with Gulab Chandra Agarwal and Smt. Mamta Rani Goel are the partners of firm M/s. Goel Gas Service. Subhash Chandra Goel (Petitioner in writ petition No. 23 of 1984) is the son of Bhagwan Das Goel (Petitioner in writ petition No. 38 of 1984).

3. It is said that on 29th of October, 1983 the business premises of the said firm were raided by Sri Chakrapani, Addl. City Magistrate, Agra. At that time Petitioner Subhash Chandra Goel was. present at the business premises. Search

of the show room, godown etc. in premises No. 6/1, Mahatma Gandhi Road, Agra revealed that no stock or weight board had been displayed. The stock and oil registers were not produced even though sufficient time for the purpose was allowed. Permission from the Explosives Department to stock LPG and to sell the same was not produced. 25 Jai Jyoti LPG cylinders (16 full and 9 empty) were also found in the shop but the proprietors did not produce any evidence to show that they had been appointed as dealer by Jai Jyoti company. The cylinders found were not marked with "ISI" marking. 99 full and 58 empty cylinders were recovered from the spot. The show room and store were located inside the premises but no licence in that regard from the Explosives Department was produced. Sri Chakrapani, Additional City Magistrate felt that as the show room and godown were located within the residential building area, there was a possibility of an accident and injury being caused to various persons. The firm as well as its associates had accordingly committed offences punishable u/s 3/7 of the Essential Commodities Act and Section 4/5 of the Indian Explosives Act. He accordingly lodged an FIR at the police station, Line Mandi, Agra on 29th of October, 1983.

4. Petitioner Subhash Chandra Goel, was arrested and taken to the police station. He moved an application for being released on bail and was by order dated 31st of October, 1983 passed by the Special Judge, released on bail. Subsequently on 7th of December, 1983, District Magistrate, Agra, in exercise of his powers u/s 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the Act) made an order u/s 3(1) of the Act authorising Petitioners' detention in the District Jail, Agra. The Petitioners were accordingly arrested on the night between 7th and 8th of December, 1983 and were lodged in the District Jail, Agra on 8th of December 1983. A perusal of grounds for their detention served upon the Petitioners reveals that after referring to the facts which are said to have been discovered and the irregularities noticed by the Addl. City Magistrate when he raided premises No. 6/1, Mahatma Gandhi Road, Agra on 29th of October, 1983, the District Magistrate concluded that the Petitioner had contravened the provisions of Gas Cylinders Rules 1981 which contravention was punishable u/s 5/9 of the Indian Explosives Act. He also was of opinion that as LPG fell within the definition of petroleum products as defined in Petroleum Products (Supply and Distribution) Order 1972 and petroleum products is included in the schedule attached to Essential Commodities Act, the LPG was an essential commodity, and as the three Petitioners were responsible for serious irregularities in connection with the distribution of LPG, they were guilty of offences punishable u/s 3/7 of the Essential Commodities Act. In the case of Subhash Chandra Goel it was also mentioned that he was a person who was looking after the business of the firm and that he was present at the time of inspection.

5. It is thus evident that the satisfaction of the District Magistrate that it was necessary to detain the Petitioner from acting in any manner prejudicial to maintenance of supplies of commodities essential to the community was based

on the grounds that the Petitioners had committed offences that were punishable under Sections 3/7 of the Essential Commodities Act and 5/9 of the Indian Explosives Act.

6. Learned Counsel for the Petitioners impugned the validity of the order for their detention passed by the District Magistrate on 7th of October 1983 on a number of grounds and we will now proceed to consider them one after the other.

7. Learned Counsel for the Petitioners submitted that admittedly Subhash Chandra Goel was not a partner in the firm M/s. Goel Gas Service which was carrying on the business in premises No. 6/1, Mahatma Gandhi Road, Agra. According to him Subhash Chandra Goel happened to be present at the spot with a view to help his family members in cleaning up the premises for Diwali festival which was to be celebrated on 4th of November, 1983 when no business was being transacted. He had thus no connection with the business of firm M/s. Goel Gas Service and could not be made liable for any irregularity that might have been committed by partners of the firm. The case of the Respondents on the other hand, is that at the time of the raid Subhash Chandra Goel was present at the spot and on being interrogated he had clearly admitted that he was looking after the work of the firm and as such he was a person who was connected with the business of the firm. The case of the Petitioners in this regard however, is that the said statement was obtained by the Addl. City Magistrate from Subhash Chandra Goel under duress and cannot be taken into account. Apart from the assertion made by the Petitioners that Subhash Chandra made the aforesaid statement under duress, there is no other material before us on the basis of which we can record a definite finding that the said statement had been, as alleged by the Petitioners, obtained under duress, specially when this fact is controverted by the Respondents. Moreover, it is not necessary for us to go into this controversy in these proceedings. Only thing which we have to see in this connection is whether there was material before the District Magistrate to think that Petitioner Subhash Chandra was connected with the business of the firm such material undoubtedly was provided by the own statement of Subhash Chandra made before the Addl. City Magistrate when he raided premises No. 6/1, Mahatma Gandhi Road, Agra on 29th of October, 1983. There is nothing on the record to show that at any time the fact that the said statement of Subhash Chandra had been obtained under duress was brought to the notice of the District Magistrate. Accordingly on the material before him, the District Magistrate could conclude that Petitioner Subhash Chandra was looking after the work of M/s. Goel Gas Service and to proceed on that basis. In this connection learned Counsel also invited our attention to the order of the Special Judge, dated 31st of October, 1983 directing that Subhash Chandra Goel be released on bail (Annexure "4" to writ petition No. 23 of 1984) which shows that Subhash Chandra Goel had been directed to be released on bail for the reason that the prosecution till then was not clear as to whether Petitioner Subhash Chandra was the owner or employee of the firm. Be that as it may, the order granting bail to Petitioner Subhash Chandra on aforementioned ground is, in our opinion, not

very relevant. Whereas the order granting bail was passed by the Special Judge on the material available to him, that directing Petitioner's detention was passed by the District Magistrate on the material available to him. There is nothing on record to show that the statement made by Subhash Chandra before the Addl. City Magistrate according to which he was looking after the business of the firm M/s. Goel Gas Service, was brought by the concerned investigating agency to the notice of the Special Judge. We are accordingly not satisfied that the conclusion of the District Magistrate that Petitioner Subhash Chandra was not connected with the business of M/s. Goel Gas Service was not based on any relevant material.

8. Learned Counsel for the Petitioners next contended that even if it be taken that Subhash Chandra Goel was looking after the work of M/s. Goel Gas Service, he could not be considered to be dealer in LPG cylinders filled or empty. He relied upon the case of Prem Singh v. State 1981 AWC 524 wherein a Division Bench of this Court expressed the view that under the Act it is only a dealer in essential commodities who commits or a person who instigates a dealer in essential commodities to commit an offence punishable under the Essential Commodities Act, 1955 or under any other law for the time being in force relating to the control of production, supply or distribution of, or trade and commerce in any commodity essential to the community, who can be directed to be detained. He urged that as Petitioner Subhash Chandra cannot be considered to be a dealer, the order directing his detention u/s 3 of the Act is absolutely without jurisdiction. In this connection he also invited our attention to the case of Sri Niwas Agrawal v. The State 1983 EFR 13 wherein another Division Bench of this Court has followed the dictum laid down in Prem Singh's case (supra). We are unable to accept this submission made by the learned Counsel for the Petitioners. While it is true that under Clause (a) to the Explanation to Section 3(1) of the Act it is only a person who commits or instigates any other person to commit any offence punishable under the Essential Commodities Act 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, can be said to have carried on an activity prejudicial to maintenance of supply of the commodity essential to the public, and generally speaking it is the dealer who alone can be said to commit or can be instigated to commit such offences ; but then it does not mean that a person other than a dealer can in no circumstance be held guilty of committing an offence punishable under such law. Relevant portion of Section 10 of the Essential Commodities Act reads thus:-

If the person contravening an order made u/s 3 is a Company, every person who, at the time of the contravention was committed, was incharge of, and was responsible to, the Company for the conduct of the business of the Company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.....

Explanation--For the purposes of this Section--

(a) "Company" means any body corporate, and includes a firm or other association of individuals ; and

9. It is thus clear that under the Essential Commodities Act where an offence has been committed by a Company, or any body corporate or a firm, every person who at the time of contravention was incharge of and responsible to the Company, corporate body or the firm as the case may be, can be held responsible for commission of the offence punishable under the provisions of the Act. In the instant case, the case of the Respondents is that Subhash Chandra Goel was incharge of the business of the firm M/s. Goel Gas Service and as such he can be said to be responsible for any offence u/s 3/7 of the Essential Commodities Act which might have been committed by the firm. It appears that neither in the case of Prem Singh v. State 1981 AWC 524 nor in the case of Sri Niwas Agarwal v. The State 1983 EFR 13 was the notice of the Bench invited to the provisions contained in Section 10 of the Essential Commodities Act. Further in those cases there is nothing to show that the salesman concerned were incharge of the business of the dealer firm. The two judgments have proceeded on the basis as if those salesman were not responsible for the conduct of the business of the concerned firm. We are accordingly unable to read the two decisions relied upon by the learned Counsel for the Petitioners as laying down that even in cases that fall u/s 10 of the Essential Commodities Act, a person other than a dealer cannot be held to be liable for an offence punishable under the Essential Commodities Act.

10. Learned Counsel for the Petitioners next urged that the commodity in which the firm M/s. Goel Gas Service was dealing was not an essential commodity and as such it fell outside the ambit of Essential Commodities Act and no question of committing any offence in respect thereof which is punishable u/s 3/7 of the Essential Commodities Act can possibly arise. We are unable to accept this submission. It is not controverted that the firm M/s. Goel Gas Service was dealing in business in LPG filled in gas cylinders. On the face of it, LPG is a product of petroleum. The Petitioners have not been able to place any material before us to justify their submission that LPG is not a petroleum product. Section 2(a)(iv) of the Essential Commodities Act lays down that petroleum products are to be considered as essential commodity within the meaning of Essential Commodities

Act. The LPG, therefore, falls within the ambit of the expression "essential commodity" and the argument that no question of contravention of the provisions of the Essential Commodities Act in respect thereof can possibly arise, cannot be countenanced.

11. Learned Counsel for the Petitioners next contended that even if it be taken that LPG is an essential commodity, there was absolutely no material before the Magistrate on the basis of which he could come to the conclusion that the

Petitioners had indulged into a prejudicial activity of the nature contemplated by Section 3 of the Act by committing an offence under the Essential Commodities Act. A perusal of the grounds for Petitioners' detention does indicate that the satisfaction of the District Magistrate that the Petitioners were likely to indulge in prejudicial activity was also based on the ground that the Petitioners had committed irregularity in the distribution of LPG and had thereby committed offences u/s 3/7 of the Essential Commodities Act. Before, however, a person can be said to have committed an offence punishable u/s 3/7 of the Essential Commodities Act, it has necessarily to be shown that a Control Order as contemplated by Section 3 of the Essential Commodities Act has been passed and that there has been a contravention of such an order. The grounds, however, do not identify the Control Order passed u/s 3 of the Essential Commodities Act and the provisions whereof are said to have been contravened. We accordingly, asked the learned Government Advocate to identify the Control Order made u/s 3 of the Essential Commodities Act provisions whereof are said to have been contravened by the Petitioners. Learned Government Advocate could in this regard bring to our notice only the Petroleum Products (Supply and Distribution) Order, 1972 issued u/s 3 of the Essential Commodities Act. But he could not tell us as to how any of the provisions contained in the said order had been contravened by the Petitioners. No other Control Order, u/s 3 of the Essential Commodities Act concerning the supply and distribution of LPG, provisions whereof are said to have been contravened could be brought to our notice. In the circumstances, there appears to be substance in the argument raised on behalf of the Petitioners that satisfaction of the District Magistrate based on the ground that the Petitioners had committed offences punishable u/s 3/7 of the Essential Commodities Act stands vitiated.

12. Learned Government Advocate next contended that he would like to support the conclusion of the District Magistrate that the Petitioners were likely to indulge in prejudicial activity on the ground that Petitioners had committed offences punishable under the Indian Explosives Act read along with Gas Cylinders Rules, 1981 punishable u/s 5/9 of the Indian Explosives Act which is a law as contemplated by second part of Explanation (a) to Section 3(1) of the Act. Apart from the fact that once it is held that one of the grounds on which the subjective satisfaction of the District Magistrate that the Petitioners were likely to act in a manner prejudicial to maintenance of supplies of commodity essential to the community was based is vitiated, the entire order of detention falls, we are of opinion that there is little merit in the submission made by the learned Government Advocate that in the instant case, the Petitioners were guilty of committing offences which were punishable under a law contemplated by second part of Explanation (a) to Section 3(1) of the Act. Second part of Explanation (a) to Section 3(1) merely concerns itself with an activity which has the effect of contravening any law other than the Essential Commodities Act which relates to the control of the production, supply or distribution or trade and commerce in any commodity essential to the commodity. Although learned Counsel for the

Petitioners urged that there was no material before the District Magistrate on the basis of which he could think that LPG in which the firm M/s. Goel Gas Service was dealing, was a commodity essential to the community as distinguished from an essential commodity, we would proceed to discuss the question on the footing that LPG is a commodity essential to the community. Before an activity can be said to be prejudicial to maintenance of supplies essential to the community under the second part of Explanation (a) to Section 3(1), it has to be shown that the activity has resulted in contravention of a law relating to the control of (1) production, (2) supply or distribution, or (3) trade and commerce of any commodity essential to the community. The contravention under the Explosives Act read along with Gas Cylinders Rules, 1981 would qualify as a law under second part of Explanation (a) only if it can be said that the Indian Explosives Act and Gas Cylinders Rules are laws pertaining to control of production, supply or distribution or trade and commerce in LPG. For the purposes of this submission, we may take it that LPG is covered by the definition of the word "Explosive" under the Indian Explosives Act and would fall within its purview. Nonetheless the question that still remains to be considered is whether Indian Explosives Act is a law relating to control of any of the matters mentioned in second part of Explanation (a) to Section 3(1) of the Act. Indian Explosives Act contains as many as 18 Sections. None of those sections directly deal with the question of controlling production, supply or distribution of, or trade and commerce in any explosive much less an explosive like LPG which can be regarded as a commodity essential to the community. Section 5 empowers the Central Government to make rules for regulating and prohibiting, except under and in accordance with the conditions of a licence granted, the manufacture, possession, use, sale, transport and importation of explosives or any specified class of explosive. Section 6 of the Explosives Act enables the Central Government to from time to time, by notification in the Official Gazette, prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous character that, in the opinion of the Central Government, it is expedient for the public safety to issue the notification. A perusal of Section 6 of the Indian Explosives Act clearly indicates that powers has been given to the Central Government to prohibit either absolutely or subject to certain conditions the manufacture, possession or importation of any explosive which is dangerous in character has been given not with a view to control trade and commerce therein but with a view to achieving public safety. It may be that the Central Government can control trade and commerce in explosives including LPG by making rules in connection with sale etc., of such explosives as contemplated by Section 5, and Indian Explosives Act may be considered to be a law relating to control of trade and commerce in LPG if any rule with regard to control, sale thereof is made u/s 5 of the Indian Explosives Act. According to the learned Government Advocate, Rule 52 of the Gas Cylinders Rules is such a rule which is directed towards controlling, trade and commerce in LPG. We have carefully looked into the Gas Cylinders Rules and it does not appear to us that the provisions contained in the Gas Cylinders Rules are directed towards controlling

trade and commerce in LPG. The Gas Cylinders Rules is divided into as many as 10 Chapters. Chapter I contains only two rules, namely, 1 and 2. Whereas Rule 1 describes the title of the Rule and provides for the date on which the Rules will come into force, Rule 2 contains definition of certain words. Chapter II contains certain rules making general provisions for filling, possession, import and transport of cylinders whether filled with gas or otherwise, the nature of the valves to be fitted to such cylinders and provision for safety, relief and devices (Rules 3 to 5). The remaining rules also make provision in respect of markings, repairing and safety precautions to be observed in respect of gas cylinders. All these rules will apply irrespective of the fact whether the cylinders filled with gas are meant for purposes of trade and commerce in LPG or otherwise. Chapter III makes certain provision with regard to import of cylinders by sea, land or air. Chapter IV contains certain rules regarding transport of cylinders by vehicles and imposes certain restrictions on transport, loading and unloading delivery for transportation, protection of valves and leaky cylinders. All these rules in Chapter IV have for their objective the public safety and would equally apply whether cylinders are being transported in connection with trade and commerce or otherwise. Chapter V. deals with testing of cylinders. Chapter VI makes special provision for dissolved acetylene gas cylinders. Chapter VII, which contains Rules 51 and 52 on which reliance is placed, deals with filling and possession of gas cylinders. Whereas Rule 51 provides that no person shall fill any cylinder with compressed gas and no cylinders filled with compressed gas shall be possessed by any one except under and in accordance with the conditions of a licence granted under the rule, Rule 52 makes an exception and provides for cases in which the licence contemplated by Rule 51 shall not be required. Rule 51 is again a rule of universal application and does not depend for its applicability on the carrying of trade and commerce in gas cylinders. It applies to all cases irrespective of whether the concerned person is carrying on trade and commerce in gas cylinders who wants to fill any cylinder with compressed gas and to possess such a cylinder with compressed gas. After providing for the necessity of taking out a licence in Rule 51 and laying down the exceptions in Rule 52, the other rules provide for the manner in which the cylinders are to be filled and stored. These rules are again directed towards securing safety in connection with explosives and it does not appear that their object is to control trade and commerce in LPG. The remaining rules of Chapter VII and other Chapters on the face of it have nothing to do with trade and commerce in LPG. It is thus clear that neither the Gas Cylinders Rules, 1981 nor the provisions contained in the Indian Explosives. Act can be considered to contain any law relating to control of trade and commerce in any commodity. It is not the case of the Respondents that any provision contained in the Indian Explosives Act or the Gas Cylinders Rules pertaining to production, supply or distribution of LPG has been contravened by the Petitioners. In the circumstances, even if it be assumed that the Petitioner have contravened Rules 51 and 52 of the Gas Cylinders Rules, 1981, it cannot be said that they have committed any offence punishable under a law relating to control of trade and commerce in LPG and the activity of the

Petitioners cannot be said to be prejudicial activity of the nature contemplated by second part of Clause (a) of Section 3(1) of the Act for which an order for detention under the Act can be passed. It is thus evident that while passing the impugned detention orders, the District Magistrate was labouring under a misapprehension that the Petitioners had committed offences punishable u/s 3/7 of the Essential Commodities Act and that the contravention of Rules 51 and 52 of the Gas Cylinders Rules, 1981 constituted offence under a law relating to control of trade and commerce in an essential commodity. We are accordingly of opinion that the subjective satisfaction of the District Magistrate that the Petitioners were likely to indulge in activities prejudicial to maintenance of supplies of commodities essential to the community and that it was necessary to detain them with a view to prevent them from so acting stands vitiated and Petitioners' detention is rendered illegal.

13. In support of his submission that the provisions contained in Gas Cylinders Rules, 1981 contain statutory provisions regulating control of trade and commerce in LPG, learned Counsel for the Respondents relied upon the decisions in the cases of--

(1) P.S. Abdul Kadir v. The Mahlarathul Kadiria Sabha Kayalpatnam AIR 1953 Mad. 143 (2) Allahnoor v. District Magistrate, AIR 1956 Raj 153 (3) Dr. Pradeep Kumar Vs. The Chief Controller of Explosives, Nagpur and Others, (4) Goverdhan Lal Vs. The Commissioner of Police and Another, and (5) Bikash Chandra Saha Vs. The State of West Bengal, .

However, after going through these decisions, we are not satisfied "that there is any thing in them to support the submission of the Respondents that the provisions contained in Gas Cylinders Rules can be treated as a law relating to control of trade and commerce in LPG and we do not consider it necessary to comment upon ratio decidendi of each individual case.

14. In the result, all these three petitions succeed and are allowed. Respondents are directed not to keep the three Petitioners in custody in pursuance of the orders for their detention passed by the District Magistrate, Agra in exercise of powers u/s 3 of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act and to release them from custody forthwith unless their detention is otherwise required in connection with some other case.