

(1988) 01 AHC CK 0023

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 7531 of 1987

Sudhir Kumar

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

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

Citation : (1988) 01 AHC CK 0023

Hon'ble Judges : K.Nath, J and Rajeshwar Singh, J

Final Decision : Allowed

Judgement

Rajeshwar Singh, J.—District Magistrate, Pilibhit on 1381987 passed an order under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 detaining Sudhir Kumar as he was satisfied that it was necessary to do so to prevent Sudhir Kumar from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. Feeling aggrieved Sudhir Kumar has filed the present habeas corpus petition praying that he should be set at liberty and the orders passed against him by the District Magistrate be quashed.

2. It appears from the record that at the Police Station Pooranpur the Station Officer received an information on 771987 at about 9 or 10 a.m. that Cooking Gas is in shortage and taking advantage of it Sudhir Kumar petitioner and his brother Pradip Kumar bring Cooking Gas Cylinders from Bareilly and sell them at Pooranpur at an excessive price, even though, there is no agency of Cooking Gas in Pooranpur. It was further informed that these two persons had brought a truck full of Cooking Gas Cylinders and the Gas Cylinders were being sold. So the SubInspector with necessary staff made a raid. They reached near the house of Pradip Kumar and saw the truck No. 6211. They hid themselves behind the truck and heard that one person was asking for a cylinder full of gas and Pradip Kumar demanded Rs. 120 for it. That person paid Rs. 120 and Pradip Kumar was going to handover cylinder to him. Being convinced about the information received

they tried to arrest the persons. Pradip Kumar was arrested at the spot along with truck owner and truck driver but petitioner Sudhir Kumar was able to escape and the person who had come to purchase a cylinder, also could not be caught. On search Rs. 120 were recovered from Pradip Kumar. Besides this 21 cylinders filled up with gas and 7 empty cylinders were also recovered. These persons could not show any licence or other documents regarding cylinders, so they were arrested and a case was registered against them under Essential Commodities Act as well as Explosives Act. The matter was, thereafter reported to the District Magistrate. The District Magistrate after considering the matter said that the petitioner who was in jail under the Essential Commodities Act and Explosives Act, he had applied for bail and there was every likelihood that he would be released on bail. He further expressed his satisfaction that the petitioner would persist in this act and if he was released he would act in a manner prejudicial to the maintenance of supplies of essential commodities to the public. So he passed the detention order which is being impugned in this petition. The grounds on which it is being impugned are several and it is said that the entire story is concocted. He has been implicated on account of malice and the orders passed by District Magistrate is invalid. It has also been said that petitioner made a representation and it was disposed of with undue delay.

3. Against the affidavit of petitioner in support of this petition, one affidavit has been filed by one Sri Israr Hussain Rizvi, an Upper Division Assistant of the Civil Secretariat and another affidavit has been filed by the District Magistrate. There they have shown as to how matter was dealt with. According to them the order is valid and malice has been denied.

4. At the time of arguments the first point that was pressed by learned Counsel for the petitioner, was that Cooking is not a scheduled commodity ; but later on it was conceded that it has been included in the schedule before the present occurrence ; so action in respect of it under Essential Commodities Act and the orders issued thereunder could be taken. Thus, this ground of attack goes away.

5. It was argued that entire action is based on malice and this is because the petitioner made complaints against police and the police SubInspector was also transferred on his report. In support of his allegation he filed copies of some resolutions by some organisations such as Bar Association, Vyapar Mandal, Congress Committee (I) etc. Some letters of one Member of Parliament were also filed wherein it was said that petitioner was Congress (I) worker and police wanted to implicate him. There is no affidavit of these persons, who passed the resolution or wrote the letter. Further, there is the fact that 21 filled gas cylinders and 7 empty cylinders were seized by the police. So many cylinders could not be planted and this is a pointer towards the fact that it could not be said that the entire matter has been concocted out of malice. So malice is not proved.

6. Then, it was pressed half heartedly that there was delay in disposal of representation made by the petitioner. In the affidavit filed by the opposite parties this matter has been dealt with. In the affidavit of Upper Division Assistant of the

Secretariaty. It has been shown in paragraph 4 as to how the matter was dealt with and specific dates have been given. Having seen them we are satisfied that there was no such delay that may invalidate the order of detention but we do not consider it necessary to dialate on this question further because the petition is going to succeed on the ground that will be taken up in the next paragraph.

7. The last ground that has been pressed on, behalf of the petitioner is that the District Magistrate has passed the order on two grounds, one of which is irrelevant and could not be taken into consideration ; so the order of detention cannot stand,

8. Before dealing with the aforesaid objection we may have a look at the provision of Section 3 of the Act. According to Section 3(1) when the competent authority is satisfied that with a view to prevent a person from acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary to do so it may pass an order detaining a person. Then, there is an explanation as regards the phrase "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community." It means committing of an offence under Essential Commodities Act. It also means dealing in any commodity which is essential commodity under the Essential Commodities Act with a view to making gain which may directly or indirectly defeat or tend to defeat the provisions of the Essential Commodities Act. In the present case cooking gas was a scheduled commodity and selling it on higher price was an offence under Essential Commodities Act and the accused tended to defeat the provisions or orders passed under the Essential Commodities Act.

9. The matter does not end here. The explanation further says that committing an offence under any other law relating to the control of the production, supply or distribution of, or trade in any commodity essential to the community also amounts to acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community. If there is any such enactment and a person deals in a commodity with a view to make gain in a manner, which tends to defeat the provisions of such an enactment, it will also come within the purview of aforesaid phrase.

10. It is in the aforesaid background that the matter has to be seen and the grounds of detention have to be examined. The grounds of detention are contained in Annexure R3. In the second paragraph at Page 2 the District Magistrate says that cooking gas is an essential commodity under Essential Commodities Act. Then he continues that it is highly inflammable article which can be stored only after taking permission from a competent officer. The conduct of the petitioner was prejudicial to the supply of cooking gas and storing of cylinders at an unsafe place was creating possibility of danger to the public. Then he sums up by saying that by selling the cylinders at excessive price was on one hand and offence under Essential Commodities Act and on the other hand this tended to defeat the provisions of other enactments in order to make gain for the

petitioner.

11. The language used regarding other enactments is virtually the same which is contained in explanation to Section 3 regarding other enactments. Besides this District Magistrate also referred to Essential Commodities Act. Thus, he was relying on the violation of provision of Essential Commodities Act and also on the fact that the petitioner in order to make gain was acting in such manner so as to defeat the provisions of other law. This other law that he had in mind related to the fact that storing of cylinders at an unsafe place was creating danger to the public.

12. In the next paragraph District Magistrate said that the petitioner was in jail under Essential Commodities Act and Explosives Act and was likely to be released. This gives an impression that the other law, the violation of which the District Magistrate had in mind, was Indian Explosives Act and that is why he was using the same language which has been used in respect of other law in explanation to subsection (1) of Section 3. Thereafter, he came to the conclusion that it was necessary to detain the person to prevent him from acting in the manner prejudicial to the maintenance of supplies and so he was passing the detention order.

13. At the cost of repetition we would say that when District Magistrate used the same language as has been used in the explanation regarding Essential Commodities Act and other law, it is clear that the District Magistrate was relying on violation of Essential Commodities Act as well as of Indian Explosives Act and it was not just to recite facts that he has referred to the danger to public by storing of cooking gas cylinders at a wrong place. In the case of Subhash Chandra Gael v. State of U. P. and others, 1984 EFR Page 166, a Division Bench of this Court said that 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 trade or commerce in any explosive and much less than an explosive like L. P. G. which can be regarded as a commodity essential to the community. It proceeded to say that it is, thus clear that neither Gas Cylinder 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. So, it is obvious that Indian Explosives Act is not a law relating to control of production, supply or distribution of, or trade or commerce in any commodity essential to the community. So its violation could not be relied upon by the District Magistrate. But, the District Magistrate has relied upon the violation of the Indian Explosives Act and also of the Essential Commodities Act. We do not know as to how far he was influenced by these grounds separately and whether he would have passed the order of detention, had there been no violation of India Explosives Act. This makes the detention order invalid. Of course, in the National Security Act, Section 5A has been added. It provides that when detention has been made on two or more grounds it will not become invalid merely because one of the grounds is not relevant. But it has been conceded on

behalf of the State that no such provision have been made in the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The result is that the writ petition will have to be allowed.

ORDER

14. The habeas corpus petition is allowed. The impugned order of detention passed by District Magistrate is quashed and it is directed that the petitioner be set at liberty unless required in some other connection.

15. Shortly after we have delivered the judgment, the learned Additional Government Advocate requests for issue of a certificate of nines to appeal to the Supreme Court. We do not and any substantial question of law either of general importance or of the interpretation of the Constitution of India which calls for a decision of the Supreme Court. In the circumstances of the present case, the prayer sought for is refused.