

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8318 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BACHULAL MUNNALAL JAIN

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/11/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 12/09/1996.

2. The District Magistrate, Ahmedabad, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supply of commodities essential to the commodity, found it necessary to detain

him and consequently, the authority passed the impugned order in exercise of his powers as conferred by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the P.B.M. Act, 1980).

3. This Court, by an order dated October 30, 1996, while making the rule returnable within two weeks, asked the respondent to file reply meanwhile. No counter has been filed. However, this Special Civil Application has been opposed by Mr U.A. Trivedi, ld. AGP.

4. It is contended by the learned counsel that the detaining authority has placed reliance on sale bills issued by the petitioner for arriving at the subjective satisfaction that the petitioner has acted prejudicial to the maintenance of supplies of essential articles i.e. kerosene. However, the petitioner has not been supplied with the sale bills nos. 210, 212, 213, 229, 231, 233, 236, 237, 238 and 241 and other sale bills. It is submitted that the said bills were asked for in the representation dated 22/10/1996, however the request of the petitioner has not been acceded to and thus, there is non-compliance of the grounds, as required by Article 22(5) of the Constitution of India.

5. Learned AGP submits that the petitioner was given a chart alongwith the order of detention, in which the details of the bills has been reflected and in view of this, it was not necessary to supply the copies of each and every bill.

6. I have considered the rival contentions of the parties. It is evident from the grounds of detention that the detaining authority has placed reliance on various bills issued on 03/07/1996, 04/07/1996 and 08/07/1996. The bills regarding which the complaint has been made are of 08/07/1996. In absence of the copies of the bills, it was not possible for the petitioner to verify the correctness of the statements made in the chart. Since the petitioner has not been supplied with the copies of the bills which have been relied upon in the grounds of detention, the mandate of Article 22(5) of the Constitution is not complied with and this has deprived of the petitioner of his right to make effective and adequate representation against the order of detention. This ground alone is sufficient to vitiate the impugned order of detention. I am fortified in my view by the decision of this Court in case of Budhabhai Somabhai Parmar v. District Magistrate, Kheda reported in 31 (1) GLR 325. Thus, in my view, the continuous

detention of the petitioner detenue is illegal and void and hence, his further detention is required to be quashed and set aside.

7. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention is quashed and set aside. It is directed that the detenue shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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