

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3479 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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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?

PARVATIBEN GOVINDBHAI SONI

Versus

DISTRICT MAGISTRATE

Appearance:

MR HR PRAJAPATI for MR NM KAPADIA for Petitioner

MR SUNIL C PATEL for Respondent No. 2

MR RM CHAUHAN, AGP for Respondent No. 1, 3 & 4.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/07/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner -wife of the detenu has challenged the order of detention dated 2/4/1997 passed by the respondent no. 1 being the District Magistrate u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 (for short 'PBM Act').

2. The grounds of detention appearing at Annexure-B inter-alia contain the allegations with regard to how the petitioner has been committing breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. It has been asserted that the detenu Govindbhai Chintamani Soni has been dealing in kerosene under the licence issued to him and some of the officers of Sabarmati Zonal Office as well as of Supply Department took personal inspection of the shop of the detenu on 26/2/1997. They seized the bills pertaining to the period between 3/1/1997 to 25/2/1997. The bills were 668 in number. The investigating agency visited the residence of 37 card holders as stated in Patrak-I of the grounds of detention and upon verification it was found that out of 715 litres of kerosene shown in the sale bills, only 140 litres of kerosene was distributed amongst the consumers and balance 575 litres of kerosene came to be illegally used by the detenu for his personal gain. The said kerosene was of the fair price stock released in connection with the public distribution scheme.

3. It has also been alleged that looking to the bills as per the Patrak-II annexed to the grounds of detention, one Parekh Rasiklal Fulabhai was given kerosene at the rate of Rs.22/- per 5 litres instead of specified rate of Rs.12.75 per 5 litres. In the same way, one card holder Mehta Dinesh Mohanlal was charged Rs.22/per 5 litres instead of specified charge of Rs.12.50 per 5 litres. Another card holder Vaghela Bholabai Keshabhai was charged Rs.22/- for the sale of 5 litres of kerosene instead of specified charge of Rs.12.75 for 5 litres. Thus, the detenu charged price higher than the one that has been specified under the public distribution scheme and thereby sold the kerosene in black market for illegal personal gain. He accordingly contravened rules 22, 23 and 24 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and condition nos. 4, 5 and 8 of the licence issued to him. It has been alleged that he has not maintained proper register as provided in rule 23 of the said Order of 1981. It is alleged that he has not maintained the orders of the Licensing Authority as specified in rule 24 of the said Order. It is stated that the detenu has not sold the stock of kerosene at the specified rates as per rule 22 of the said Order. He has also violated condition no. 4 of the licence by not

keeping correct account. It has been alleged that the detenu has contravened orders issued under the Essential Commodities Act as stated in condition no.5 of the licence. It has finally been alleged that the detenu has sold the stock of kerosene at the rate higher than the one specified as per the condition no. 8 of the licence.

4. It is in the aforesaid manner that the detenu has been found to sell stock of kerosene by committing breaches as aforesaid and, therefore, it became necessary to preventively detain him u/S. 3(4) of the PBM Act.

5. The petitioner has challenged the impugned order of detention on number of grounds inter-alia on the ground appearing in clause 23(B) on page 12-C of the petition. The said ground would read as under :-

"The petitioner submits that the detenu had through Advocate's letter dated 17/4/1997 addressed to respondent No.1 demanded certain important particulars and documents as stated in the said representation, copy of which is annexed hereto and marked as ANNEXURE 'F'. However, they are not supplied either by respondent no.1 or by the respondent no.3 which has affected right of the detenu to make an effective representation and, therefore, continued detention of the detenu is rendered illegal."

6. In reply, it has been submitted that the aforesaid representation of the petitioner was dealt with and an appropriate reply was sent to the detenu on 17/5/1997 supplying therewith the documents demanded by the petitioner. It is thus clear that there is a delay of one month in dealing with and answering the representation whereby the demand of documents was made.

7. It will be clear from the aforesaid facts with regard to the ground of delay in consideration of the petitioner's representation as noted above that there is clear violation of provision of Article 22(5) of the Constitution of India. Reference in this connection has been made to a decision of the Apex Court in the case of Aslam Ahmed v. Union of India reported in AIR 1989 SC 1403. There is a great deal of substance in this submission of Mr. Prajapati. The avoidable and unexplained delay as above has clearly resulted in rendering the continued detention of the petitioner illegal and constitutionally impermissible.

8. As the petitioner succeeds on the aforesaid ground of delay in considering the representation by the respondent no.1, it would not be necessary to deal with the other grounds of challenge levelled against the impugned order of detention.

9. In view of what is stated above, the impugned order of detention is quashed and set aside. It is directed that the detenu- Govindbhai Chintamani Soni shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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