

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 117 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : YES
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO
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? No. : NO
5. Whether it is to be circulated to the Civil Judge? No :

RAMANBHAI BHIKHABHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

M/s. HL PATEL ADVOCATES for Petitioner

MR. Premal Joshi AGP for the State.

Mr. BS Brahmhatt with Mr. BT Rao, Advocate, for Respondent No. 3.

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/05/1999

ORAL JUDGEMENT

1. Genuine hurry is expressed by the petitioner as he is under detention since 23rd November, 1998 and his matter was not heard on merits before the closure of the Courts for Civil Vacation. So, the L.A. is granted permission and the matter is ordered to be taken up on board during vacation considering the exigency of the

relief prayed by the petitioner, otherwise the entire purpose of the petition would frustrate. The Special Civil Application is also on board and same is tried with Civil Application.

2. I have heard learned AGP Mr. Premal Joshi for the State of Gujarat and Mr. B.S. Brahmhatt learned advocate with learned advocate Mr. B.T. Rao for Union of India.

3. According to the petitioner he is a detenu and has been detained by an order dated 22nd November, 1998, passed by the District Magistrate, Kheda at Nadiad, while exercising the powers under Sub Section 2 of Sec. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

4. Considering the settled legal position learned counsel appearing for the petitioner has mainly relied on one ground that the State as well as the Central Govt. has taken unreasonable time in deciding the representation made by the detenu which was sent through the Jail Authorities. After careful perusal of the record and affidavits filed by the Officers of both the Governments, learned counsel appearing for the petitioner, Mr. Vijay Patel has fairly conceded that the Govt. of Gujarat has not taken much time which can be termed as unreasonable in considering the representation which was sent through Jail Authorities, but the Central Govt. has taken unreasonable time for considering the representation.

5. It is not a matter of dispute that the representation sent by the detenu is dated 29th November, and the same was sent to both the Governments simultaneously on or about 5th of December, 1998. 6th of December, 1998, being a Sunday, the State Govt. received the representation on 7th December, 1998. After careful perusal of the file, the State Govt. conveyed the detenu about the outcome of his representation on 10th of December, 1998. But the affidavit filed by Mr. L.K. Makhijani, Under Secretary of the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, says that the concerned department of the Central Govt. received the representation of the detenu for the first time on 21st of December, 1998. The date of representation is referred in the affidavit. The representation is dated 4th of December, 1998, which was received by the Central Govt. whether the same was sent to the Central Govt. on that very day or on 5th or on 7th, that is Monday, the day on which the State Govt. had received the representation by a special messenger,

it can be reasonably inferred in absence of rebuttal cogent evidence that the same must have been received by the Central Govt. within reasonable time and not later than 10th of December, 1998. The time consumed by the Central Govt. in sending a telegram asking the State Govt. to send the English version of the representation or the relevant papers, with parawise remarks, can be said to be very late in time. Looking to the scheme of the Act, the State Govt. had taken all expeditious steps in deciding the representation and the Central Govt. had not cared even to ask for English version of the representation, as the same was in vernacular Gujarati and for more than one week, it was open to the Central Govt. to ask for the remarks immediately and the Central Govt. ought to have requested the State Govt. to send special messenger with such remarks. It is argued that because of the postal delay, the concerned Section may have received the representation very late but in absence of the envelope in which the representation was received by the Central Govt., the said argument cannot be accepted. Except the vague averments in the affidavit not properly explaining the delay for the late receipt of the representation by a concerned Section, the aforesaid argument cannot be accepted. I feel that there is a substance in the submission of the learned counsel appearing for the petitioner. It is time and again said that the Court should protect the personal liberty of a person jealously. In similar type of cases the Courts have considered the delay factor.

6. Learned AGP appearing for the State Govt. has drawn the attention of this Court to the decision of this Court reported in 1989 (2) GLH page 312 - *Bharatkumar Savjibhai Patel Vs. District Magistrate, Bharuch* (Coram : Mr. A.P. Ravani and Mr. B.S. Kapadiya, JJ.) A para which was read before me under Head Note - B (relevant para 14 of the judgement) says that every day's delay is not required to be explained but the ratio propounded in the very para goes against the respondents, looking to the set of facts available on records of the case on hand. It is observed by the learned Bench in the said para as under ;

"while examining the question with regard to delay in considering the representation by the appropriate authority one has to be pragmatic and one must have an eye on the realities of life. When it is stated that every day's delay should be explained this is required to be understood in pragmatic manner. Otherwise one may ask why not

explain the delay of every hour and why not explain the delay minute by minute. All that is required to be seen is as to whether the authority concerned had shown due promptness. Even while judging due promptness on the part of the authorities concerned, the fact that the authority concerned is working in the system where to work in tardy and prolonged fashion has become the rule of life. Unfortunately many a times promptness and quick despatch of work are considered to be undue haste. In this consideration the observations made by the Supreme Court in the case of Mrs. L.M.S. UMMU Saleema Vs. B.S. Gujaral and another, reported in AIR 1991 SC 1191, may be profitably referred to. After referring to the observations made by the Supreme Court in the case of Francis Coralie Mullin Vs. W.C. Khambra repeated in AIR 1980 SC 849, to the effect that "Time imperative can never be absolute or obsessive" the Supreme Court observed as follows ;

"The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither the life nor law can be reduced to more but despotic formula."

The above observation does not say that the authorities should not act with due promptness and the file of such a nature should move as the normal files are moving related to Government business. While judging a due promptness on the part of the authority concerned, the Court can easily compel the promptness adopted by one Govt. while appreciating the delay on the very count by the other Govt. in the factual structure that the State Govt. was competent enough to deal with the file within a week and the Central Govt. had not even cared to put a telegram asking to send the English version of the papers for more than ten days. Solely on this ground the detention order could have been quashed and set aside without going into the merits of the case and I am inclined to quash and set aside the order of detention,

as the Central Govt. had failed in deciding the representation of the detenu which must have reached not later than 10th, 11th, or latest by 14th of December, 1998. I agree that no specific period is fixed but if we look to the scheme, the legislature thought it fit, at one place where it is made obligatory on the part of the State Govt. to inform to Central Govt. about the detention within a period of seven days. So, delay for more than seven days at one stage, can be inferred and should be viewed seriously, and therefore only, I am inclined to accept the submission of Mr. Patel, learned advocate for the petitioner and pass the following order;

Special Civil Application is allowed and the order of detention passed against the detenu by the respondent No. 1 - District Magistrate, Kheda at Nadiad dated 22nd November, 1998, is hereby quashed and set aside. The respondents are directed to set the detenu petitioner at liberty forthwith if not required to be detained in any other case. The detenu at present is at Sabarmati Central Prison. So, Writ should be sent to the both Jails, namely, Sabarmati Central Jail and Porbandar Central Jail.

Rule is made absolute accordingly. Direct Service is permitted.

Rafik*