

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7667 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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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?
Nos. 1 to 5 No

PRADIPKUMAR ROSHANLAL JAIN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR.BHALJA ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1
MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/01/99

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner praying for quashing the detention order dated 21.8.1998 passed by the Detaining Authority under section 3(2) of the Prevention of Black Marketing and Maintenance of

Supplies of Essential Commodities Act, 1980 and for immediate release of the petitioner from illegal detention.

The brief facts are that the petrol pump of the petitioner was inspected by the Office of the Director of Civil Supplies on 16.7.1998 and various irregularities disclosed in the grounds of detention were found. It was found that the diesel sold through petrol pump of the petitioner was adulterated. Blue kerosene was found adulterated in the sample of the diesel. The sample was sent for analysis to forensic laboratory and after receipt of the report of the forensic laboratory and considering the entire material on record the Detaining Authority passed the impugned order. The impugned order has been challenged on various grounds.

The first contention has been that in the grounds of detention it is specifically mentioned that the petitioner has violated conditions no.5, 6 and 9 of the licence but inspite of demand copy of licence as also the other documents were not supplied. However, it was admitted in the course of arguments that extracts of conditions no. 5, 6 and 9 were supplied to the petitioner. In the additional counter affidavit of the Detaining Authority, it is mentioned that licence of the petitioner was not seized. Consequently, one of the materials referred and relied upon in the grounds of detention is three conditions of licence which were allegedly violated and copies of these conditions of licence were supplied to the petitioner. Hence, it cannot be said that the impugned order has been rendered illegal because incomplete copy of licence was supplied. All the conditions in the licence were not relied upon by the Detaining Authority, hence, he was not obliged to furnish complete copy of the licence, more particularly, when the original licence was not seized by him.

Another contention has been that through representation dated 31.8.1998 copies of documents were demanded but those copies were supplied only on 15.9.1998. The additional counter affidavit of the Detaining Authority shows that those documents were supplied on 16.9.1998. The delay between 1.9.1998 to 15.9.1998 has not at all been explained in the counter affidavit or additional counter affidavit of the Detaining Authority. The detention order was passed on 21.8.1998. If this is the material date then delay between 21.8.1998 to 15.9.1998 is also not explained.

Article 22(5) of the Constitution of India

provides that when any person is detained in pursuance of an order made under any law providing for preventive detention the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Constitutional mandate therefore is that in the first instance the Detaining Authority shall as soon as may be communicate such person the grounds on which the order has been made and the second is to afford the detenu earliest opportunity of making representation. The words 'earliest opportunity' and 'as soon as' contained in Article 22(5) of the Constitution are not discretionary but its strict compliance is required.

If the detention order was passed on 21.8.1998 then all the relevant documents upon which the grounds of detention were formulated should have been supplied as soon as possible. That was not done. It is only when the representation dated 31.8.1998 demanding these documents was made then the Detaining Authority forwarded to the Mamlatdar for furnishing copies as appears from para 2.1 of the Additional Counter Affidavit of the Detaining Authority but again there is no explanation why delay between 1.9.1998 to 15.9.1998 occurred in supplying the documents. The learned Assistant Government Pleader was unable to explain the delay. He tried to argue that the Detaining Authority was under the impression that the letter dated 31.8.1998 was only correspondence and not representation but this argument cannot be accepted in view of deposition made in para 2.2 of the Additional Counter Affidavit, wherein the Detaining Authority himself has mentioned that the request to furnish copies was made so as to enable the petitioner to make further submissions regarding detention. Thus, this was not actually correspondence but representation demanding copies so that the petitioner may make effective representation. Since the delay between 21.8.1998 to 15.9.1998 in supplying the material documents has not been explained nor is there any explanation of delay between 1.9.98 to 15.9.98 in supplying the documents, the detention as well as continued detention has to be held illegal inasmuch as mandatory compliance under Article 22(5) of the Constitution of India was not made by the Detaining Authority.

The last ground was that the representation made to the Central Government on 9.9.1998 was not disposed of expeditiously. The counter affidavit of Shri Alice Chacko, Under Secretary in the Department of Food and

Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi shows that the representation dated 9.9.1998 made by the wife of the detenu was received in the concerned section on 5.10.1998. However, for this delay the Central Government alone is not responsible. In the grounds of detention, it was specifically mentioned that if the petitioner wishes to make representation to the Central Government it should be addressed to Secretary, Civil Supply and Public Distribution Secretariat, Krishi Bhavan, New Delhi. This was done with a view to enable the detenu to make representation to the authority having delegated powers to deal with such representation and further with a view to ensure expeditious disposal of such representation. It is not the case of the detenu that he did not receive the grounds of detention. If he was aware that representation to the Central Government was to be made to the Secretary, Civil Supplies and Public Distribution Secretariat, Krishi Bhavan, New Delhi, he had hardly option to send representation addressed to the Minister, Civil Supplies and Consumer Affairs vide Annexure "D". If the representation was addressed to the Minister naturally it should have taken some time to travel from one table to another. Thus, the delay between 9.9.98 to 5.10.98 stands automatically explained. In the affidavit of the Under Secretary, Department of Consumer Affairs, there is clear deposition that the representation was received in the concerned section on 5.10.1998. Parawise comments were called for from the Central Government through telegram dated 5.10.98. Another representation dated 26.9.98 made by the detenu was received through the State Government on 8.10.1998. On the same date, parawise comments were called from the State Government through telegram. Parawise comments on representation dated 9.9.98 were received on 20.10.98. Certain further information was required and it was felt that more details regarding density of diesel may be sought. The information was asked for through letter dated 22.10.1998 from Oil and Co-ordination Committee. The comments of the Oil Co-ordination Committee were received on 27.10.1998 and thereafter both the representations were rejected on 29.10.1998. Thus, it cannot be said that the representations were not dealt with expeditiously. This ground has therefore no merit.

In view of the above discussions on the ground except the last ground the detention order has to be held to be illegal and as such it has to be quashed. The writ petition therefore succeeds and is hereby allowed. The impugned order dated 21.8.98 is hereby quashed. The petitioner shall be released forthwith unless wanted in

some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt