

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/01/99

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer is for quashing the detention order dated 19.8.1998 passed by the Detaining Authority under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "The Act") and for immediate release of the petitioner from illegal detention.

2. Brief facts giving rise to this petition are that on 6.6.1998 the Petrol - cum - Diesel Pump of the petitioner was inspected by the Director of Civil Supply Department, Gandhinagar. Certain irregularities were found at the Diesel Pump. These irregularities have been mentioned in detail in the grounds of detention where it is specifically mentioned that there was shortage of density and there was adulteration in the diesel sold at the petrol pump of the petitioner. It was also found that the petitioner committed breach of Conditions 5, 6, 8 & 9 of the Licence issued to him under the Licensing Order. Other breaches were also mentioned in the detention order. Alternative remedies were considered by the Detaining Authority and he found that the detention of the petitioner was the only efficacious remedy. Accordingly the impugned order was passed.

3. This order has been challenged on various grounds by the learned Counsel for the petitioner.

4. The first ground of attack is that the detaining Authority was not made aware of the fact by the Sponsoring Authority that the licence of the petitioner was already suspended for 90 days vide order dated 13.3.1998 whereas the detention order was passed on 19.8.1998. The contention has been that if this fact would have been brought to the notice of the detaining Authority he might not have passed the detention order. It was therefore further argued that material facts were suppressed from the knowledge of the detaining Authority on account of which the detention order has been rendered bad in law. Learned A.G.P. could not give any satisfactory reply to this contention. On the other hand he pointed out that the licence of the petitioner was cancelled on 10.12.1998 which is all together irrelevant information. Cancellation of licence was done much after

the order of detention was passed. No satisfactory reply has been given whether the fact that the licence of the petitioner was suspended on 13.8.1998 was brought to the notice of the detaining Authority or not. There is also no information that between 13.8.1998 to 19.8.1998 any action was taken by the petitioner in getting the suspension of licence stayed from any competent Court. Consequently on this ground the impugned order of detention becomes bad in law inasmuch as it was passed without considering the entire matter relevant for passing the order of detention.

5. The next attack has been that the materials referred to and relied upon by the detaining Authority were not supplied in full to the petitioner. Special reference was made to the forwarding letter through which the sample of diesel collected from the petrol pump of the petitioner was sent to the Forensic Laboratory for examination and report. However, since copy of report from Forensic Laboratory was supplied to the petitioner it cannot be said that complete material was not supplied to the petitioner. It was next argued in the same context that in the grounds of detention there is mention that the petitioner committed breach of conditions 5, 6, 8 & 9 of the Licence. Copy of licence was demanded, but it was not supplied which, according to the learned Counsel for the petitioner, is fatal inasmuch as it infringe Articles 22(5) of the Constitution of India. The learned A.G.P. has admitted that copy of licence was not supplied to the petitioner. He, however, argued that extracts of conditions of licence which were violated by the petitioner were supplied, but this contention was also not fully correct. Subsequently the learned A.G.P. admitted that only copies of condition No.6 & 8 of the licence were supplied and not extracts of conditions No.5 & 9. In this view of the matter it is now clear that all the four conditions which were allegedly violated by the petitioner were not made available and known to the petitioner. It is not necessary for the detaining Authority to supply entire copy of licence inasmuch as original copy of licence may be with the petitioner. However, if specific mention was made about breach of certain conditions in the licence, at least copies of those conditions should have been supplied. Since only copies of two conditions were supplied to the petitioner, the petitioner was deprived of opportunity of making effective representation which in turn has violated the provisions of Article 22(5) of the Constitution and this is another ground for quashing the impugned order.

6. The next contention has been that the

representation sent to the Central Government on 3.10.1998 has not at all been decided so far which has rendered the detention as well as continued detention of the petitioner illegal. In the counter Affidavit of Shri A.L.Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi, there is no mention about receipt or non-receipt of representation dated 3.10.1998. Learned Counsel for the respondent No.4 was given opportunity to clarify whether representation dated 3.10.1998 was received by the Central Government or not, but no information has been given except by stating that no such representation was received by the Central Government. Learned Counsel for the respondent No.4 contended that even if such representation was sent it was sent to the Minister and not to the Authority mentioned in the grounds of detention and as such the Minister was not obliged to file any Counter Affidavit. He also contended that it was the third successive representation from the side of the petitioner and if it was not expeditiously decided the detention order is not rendered invalid. The practice of not replying the affidavit or the ground of challenge in the writ petition completely by the Central Government is a matter of cause and concern. In the main writ petition Para : (H) it is mentioned that the representation dated 3.10.1998 was sent to the Minister of Civil Supplies by a Speed Post. Annexure ; D is copy of this representation. There is also zerox copy of information from the Postal Department at Page No.19 that the said letter sent by Speed Post was delivered to the Minister, Civil Supplies and Consumer Affairs on 8.10.1998. There is absolutely no explanation why this representation was not sent to the Authority who was delegated with powers and functions to deal with the representation. For such a long period between 3.10.1998 till date there is nothing on record from the side of the respondent No.4 as to where this representation is lying. It cannot be said that this was an idle representation. The first representation dated 1.9.1998 and the second representation dated 6.10.1998 were not representations challenging the grounds of detention or the detention itself rather through these representations certain copies were demanded. The third representation (Annexure ; D) on the other hand contained detailed grounds on which detention as well as the grounds of detention were challenged. Thus, this representation cannot be said to be successive representation in the sense that the same matters were contained in the earlier two representations. The third representation in fact was the only effective representation and since it has not been located in the office of the Central Government so

far it can be presumed that it has not been decided. There is no Counter Affidavit from the Central Government that this representation has not been received by the Concerned Minister. Even if the concerned Minister was not expected to deal with such representation after delegating the powers but certainly he or his Secretariate was expected to forward the representation to the concerned officer for disposal. This has also not been done so far. Consequently non-consideration of representation dated 3.10.1998 has also rendered the impugned order of detention illegal and invalid.

7. For the reasons stated above, the petition succeed and is hereby allowed. The impugned order of detention dated 19.8.1998 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in any other case.

sd/-

Date : January 29, 1999 (D. C. Srivastava, J.)

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