

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 petitioner has prayed for quashing the order dated 13.8.1998 passed by the detaining Authority - District Magistrate, Anand, 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 his immediate release from illegal detention.

2. Brief facts giving rise to this petition are that the petitioner is a carrier and was driver of Truck No.GQV 5471. On a surprise raid conducted on 28.7.1998 it was found that the petitioner was loading inflammable liquid other than diesel from one place and carried in his tanker to unload on the petrol pump of the co-detenu. He was caught red-handed loading as well as unloading the aforesaid inflammable liquid other than diesel. A criminal case was also registered against him for his activity and also for other activities of causing obstruction in due discharge of duties by the Inspecting Staff. The detaining Authority was subjectively satisfied that the petitioner was directly or indirectly helping in adulteration of diesel and was also helping in causing obstruction to the due discharge of duties by public servant, viz. Inspecting Staff. Accordingly the impugned detention order was passed.

3. This order has been challenged only on two grounds. The first is that in the grounds of detention it is nowhere indicated or disclosed that the petitioner was in judicial custody. It was pointed out that the petitioner was arrested on 30.7.1998 after criminal complaint was lodged against him whereas the detention order was passed on 13.8.1998, and since it was not disclosed in the grounds of detention that the petitioner was in judicial custody the subjective satisfaction stands vitiated and consequently the detention order becomes illegal.

4. Another ground has been that the petitioner was only driver of the tanker and the co-detenus, who are owners of the petrol pump and licence holders have been already detained under the said Act, hence there was no necessity to detain the petitioner under the prevention of Black Marketing Act.

5. Coming to the first ground it can be said that the subjective satisfaction of the detaining Authority stands vitiated on two grounds. The grounds of detention indicate that the detaining Authority was not sure whether the petitioner was directly or indirectly helping or abetting in commission of offences referred in the grounds of detention or was helping the owners and licence holders who are co-detenus. The words "directly/indirectly" have been used at more than one places in the grounds of detention. The detaining Authority should have satisfied itself from the material on record in what manner the driver of the tanker was either directly or indirectly committing the aforesaid offence. Merely getting the tanker loaded from one place and getting in unloaded at another place could not give subjective satisfaction or necessary inference that the carrier or driver knew that the liquid which he was carrying in his tanker was other than diesel. The words in the grounds of detention that the petitioner was caught red-handed in indulging in such activity also do not indicate that the petitioner knew that he was loading or unloading liquid other than diesel. Consequently on this ground the subjective satisfaction of the detaining Authority stands vitiated.

6. Other reason for vitiating the subjective satisfaction of the detaining Authority is non-disclosure in the grounds of detention that the petitioner was in judicial custody when the detention order was passed. It could not be controverted by the learned A.G.P. that after criminal complaint was lodged against the petitioner he was arrested on 30.7.1998 whereas the detention order was passed on 13.8.1998. In these facts and circumstances it was obligatory for the detaining Authority to disclose in the grounds of detention that he was aware that the petitioner was in judicial custody when he was passing the detention order. The Apex Court in the case of Abdul Sathar Ibrahim Manik v/s. Union of India, reported in AIR 1991 SC 2261, after considering catena of decision rendered by the Apex Court, laid down six guidelines in this regard and the first guideline is that the detention order can validly be passed even in the case of a person who is already in custody, but it must appear from the grounds that the authority was aware that the detenu was already in custody.

7. From this first guideline it is obvious that there is no bar for passing detention order against a person who was already in judicial custody on the date when the detention order was passed, but further

requirement is that the awareness of the detaining authority that the detenu was in judicial custody must be disclosed in the grounds of detention. The learned A.G.P. has unsuccessfully tried to convince the Court from last three lines of Page : 29 of translated copy of grounds of detention that the detaining Authority was aware that the petitioner was in judicial custody. This attempt of the learned A.G.P. has been totally unsuccessful because these three lines read as under :

"That a criminal complaint in this behalf has been filed against you and other associates at the Tarapur Police station being I.C.R. No.51/98"

From these lines no reasonable man can draw inference that the detaining Authority was aware or had disclosed his awareness in these three lines that the petitioner was in judicial custody. What is disclosed in these three line is that a complaint was filed against the petitioner. Beyond this no further inference can be drawn that the petitioner was arrested after this complaint was lodged or he was put behind the bars and was in custody when the detention order is passed. The learned A.G.P. further tried to convince the Court from Para : 4 of the grounds of detention that this awareness is indicated, but a perusal of Para : 4 of the grounds of detention would reveal discussion of alternative efficacious remedy by the detaining Authority and not disclosure of awareness of the detaining Authority that the petitioner was actually in judicial custody when the impugned order was passed.

8. Another unsuccessful attempt has been made by the learned A.G.P. to point out from the counter affidavit of the detaining Authority that he was aware that the petitioner was in judicial custody. I have gone through the entire counter affidavit of Shri K.N.Bhatt, District Magistrate and I am unable to find out any specific mention in any of the paras of this counter affidavit that the detaining Authority was aware that the petitioner was in judicial custody on the date when the impugned order was passed. Moreover in view of the verdict of the Apex Court referred to above such disclosure is to be made in the grounds of detention and it cannot be supplemented by filing a counter affidavit. Thus, in the first place the counter affidavit is vague and in the second place the vague counter affidavit cannot supplement the grounds of detention.

9. For the above two reasons the subjective satisfaction of the detaining authority stands vitiated,

as a result of which the detention order cannot be sustained.

10. The second ground has been that the petitioner was only a driver of the tanker and since the owner and licence holders are already in custody and are co-detenus there was hardly any necessity for detaining the petitioner under the Prevention of Black Marketing Act. This contention is general in nature, but from what has been discussed above and also from the counter Affidavit of the detaining Authority it follows that the petitioner was merely a carrier or driver. It is also indicated in the counter affidavit of the detaining Authority that the petitioner was an out-sider. Under the circumstances the subjective satisfaction of the detaining Authority that the petitioner, either directly or indirectly, committed aforeseaid nefarious activity stands vitiated. Unless it was prima facie established that the petitioner was either directly or indirectly committing offences complained of he could not be detained. It appears that the detention order against the petitioner is punitive in nature and not preventive in character.

11. In the result I find that the impugned detention order cannot be sustained. The writ petition, therefore, succeeds and is allowed. The impugned order dated 13.8.1998 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other case.

sd/-

Date : January 29, 1998 (D. C. Srivastava, J.)

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