

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 107 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

NARBHERAM DAHYABHAI DOSHI

Versus

D JAGDISHPANDIAN

Appearance:

MR DN PANDYA for Petitioner

MR BY MANKAD AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2000

ORAL JUDGEMENT

The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India read with Sections 3 and 7 of the Essential Commodities Act (to be hereinafter referred to as "the Act"), as well as under the provisions of the Gujarat Guest Control Order, 1987 challenging the orders passed by the first

respondent on 30th December, 1987 confiscating amount of Rs.13,500/passed under the said Act.

2. It appears that the petitioner had arranged a marriage ceremony of his daughter on 2nd December, 1987. Invitation Card shows that marriage was to be taken place on that day and on that day, the petitioner had also arranged Yagna at 2-00 p.m. and as a part of the said Yagna, some sort of lunch was arranged. There was some complaint to the Revenue Department, and therefore, the revenue officers went to the spot and found that food for about 900 persons was there. The details are there in panchnama and the said food was required to be seized by the Seizing Officer. However the petitioner, it appears, had agreed that in case of any orders, he would pay the amount equivalent to the price of food.

3. Ultimately, an order was passed by the first respondent directing that an amount of Rs.13,500/- be recovered from the petitioner on the strength of calculation of Rs.15/- per head and since it was a food prepared for 900 persons, the amount was arrived at Rs.13,500/-. The said amount was ordered to be recovered from the petitioner.

4. I have heard Mr. D.N.Pandya, learned advocate for the petitioner and Mr. B.Y.Mankad, learned Assistant Government Pleader for the respondents.

5. It has been mainly contended by Mr. Pandya that the first respondent has passed the order as aforesaid without giving an opportunity of being heard.

6. On behalf of respondent, affidavit in reply has been filed by Collector opposing the petition.

7. Before hearing the petition, the petitioner has submitted an affidavit of Pravinchandra Ambalal Purohit who happens to be the priest for the aforesaid marriage ceremony. Therein, he has stated that really speaking, food prepared was a food for Prasad to be distributed as a part and parcel of the Yagna ceremony, amounting thereby that it was not wedding lunch.

8. Even during the course of hearing, it is not show that some sort of inquiry was conducted by the respondent before passing the aforesaid order. The order dt. 30th December, 1987 shows that a particular quantity of food in the shape of ready made food was found on the spot. Some estimate was made to show as to number of persons for whom the food is said to have been prepared by the

petitioner in order to show the number exceeded 100.

9. At the relevant point of time, the Gujarat Guest Control Act was in force. Said order was passed in exercise of powers conferred by Section 3 of the said Act. That order positively made the position clear that even for wedding ceremony, lunch was not permitted to be kept more than 100 persons at a time. Therefore, according to the case of the respondents, food was prepared for 900 persons and therefore, there was clear violation of the said order under Section 3 of the said Act.

10. However in order to arrive at a decision that the food for more than 100 persons was prepared and that it was not in connection with any Yagya ceremony, some inquiry was required to be undertaken by the respondents for coming to the aforesaid decision.

11. It is very clear that the action taken by the first respondent is punitive in nature. The petitioner has been required to part with huge amount of Rs.13,500/-, and therefore, before passing an order of penalty of that much amount, it was necessary for the first respondent to conduct atleast summary inquiry and to hear the petitioner and that has not been done, and therefore, there is clear case of violation of principles of natural justice.

12. It, therefore, has to be held that the order in question has been passed by the first respondent in violation of principles of natural justice, and therefore, the order cannot be upheld in this petition.

13. In the aforesaid view of the matter, I am of the view that since the order in question has been passed by the first respondent is in violation of principles of natural justice and without holding any inquiry and without affording any opportunity of being heard to the petitioner, the order is liable to be quashed and set aside.

14. It has been contended by Mr. D.N.Pandya, learned advocate appearing for the petitioner that though there is a provision for prosecution, the petitioner has not been prosecuted. It is his argument that there cannot be any confiscation of food without prosecution. However he has not been able to show any provision of the law under which the confiscation of food can be ordered only in case of conviction and not otherwise. Therefore, it cannot be said that the confiscation without conviction

is unwarranted and illegal.

15. Therefore, this petition is ordered to be allowed. The order passed by the first respondent on 30th December, 1987 annexed at Annexure H on Page 16 of the petition is ordered to be quashed and set aside. However the first respondent will be at liberty to hold inquiry and pass appropriate order, if he so desires. The petition is, therefore, disposed of accordingly. Rule is made absolute to the extend indicated above. Considering facts and circumstances of the case, there shall be no order as to costs.

Date: 28/4/2000. (D.P.BUCH, J.)

ccshah