

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 90 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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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

VIDYARAM SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR KT DAVE Ld. AGP for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 31/03/2000

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order dated 6.1.2000 passed by the District Magistrate, Ahmedabad, respondent no. 2 herein, under sub-section 2 of section 3 of the Prevention of

Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act').

In the grounds of detention supplied to the petitioner, the detaining authority, after considering the material on record, recorded a satisfaction that with a view to preventing the petitioner from dealing with unauthorised petroleum solvent, it is necessary to detain the petitioner. Since the petition is capable of being disposed of on the first contention advanced on behalf of the petitioner by the learned counsel Mr CL Soni for the petitioner regarding non-consideration of the representation, it is not necessary for me to refer any details about the grounds of detention.

Mr CL Soni, learned advocate for the petitioner submitted that the petitioner as well as his advocate submitted representations dated 10.1.2000 to the authorities as mentioned in the grounds of detention through respondent no. 4-Jail Authority vide Annexure-B collectively. According to the submission of learned advocate Mr Soni, the authorities have failed to consider and decide the same. According to learned advocate Mr Soni, the representation submitted by the petitioner even though received by the respondent no. 2 on 13.1.2000, no decision was taken by him before the State of Gujarat approved the order of detention on 15.1.2000. The learned advocate, therefore, submitted that the order of detention is required to be quashed and set aside on the ground that his representation was not considered by respondent no. 2. The second limb of argument of Mr Soni for the petitioner is that the representation made by the learned advocate for the petitioner on 10.1.2000 was also presented to the Jail Authority on the same day, but Jail Authority did not send the same to any of the authorities for its consideration. The petitioner has produced both the representations vide Annexure-B collectively to this petition.

On behalf of the State of Gujarat, Mr GK Rathod, Under Secretary, Food & Civil Supplied and Consumers' Affairs Department, Gandhinagar has filed affidavit in reply. The District Magistrate Mr VS Gadhavi has also filed affidavit in reply in the present petition. Similarly, Mr RC Dhankar, Under Secretary, Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi has filed affidavit in reply on behalf of the Union of India. Mr Gadhavi in his affidavit in para-13 has stated that the representation made by the petitioner on 10.1.2000 through Jail Authorities was received by

office on 13.1.2000. The very same representation was also sent to the State Government, Central Government and the Advisory Board. After preparing para-wise remarks, the representation dated 10.1.2000 of the petitioner was sent to the State Government on 18.1.2000 and, there is no delay on my part in forwarding the same. Reading the said affidavit, it is clear that no decision was taken by him and he merely sent the representation after preparing para-wise remarks to the State Government on 18.1.2000. Since the representation was specifically addressed to him being the detaining authority, he is required to consider the same before his order is approved by the State Government. It is not in dispute that the State Government approved the order of detention on 15.1.2000. The representation dated 10.1.2000 have not been considered by the respondent no. 2-detaining authority, the order of detention is required to be quashed and set aside on this ground itself. Apart from that, it is not in dispute that the Jail Superintendent, Mehsana, who has received two representations, one addressed by the petitioner and second by his advocate Mr Soni on 10.1.2000. He only sent the representation of the petitioner for consideration to various authorities and for the reasons best known to him, did not forward the representation addressed by advocate Mr Soni for consideration by the authorities. The petitioner has made specific averments in para-13 of the petition regarding presentation of two representations to the Jail Authority and produced the copy of the same vide Annexure-B collectively. The petitioner could have produced the original copy having the endorsement of the Jail Authority acknowledging the receipt of the same alongwith the petition, instead of producing the typed copy of the same. Mr Soni invited my attention to the copy of the representation having rubber stamp and the signature of the Jail Authority made on the representation acknowledging the receipt of the representation dated 10.1.2000. In view of this, it is clear that the Jail Authority not only received one representation, but in fact, received two representations, one by petitioner and another by his advocate. Mr GK Rathod, in his affidavit in reply, in para-5 has stated that the State Government has not received the representation dated 10.1.2000 made by the advocate as contended by the petitioner. In view of this, it is clear that the Jail Authority, for the reasons best known to it, retained the representation of the advocate with it and, therefore, there was no occasion for the authority to consider the same. Consequently, the said representation of the advocate was not considered by any of the authorities, which amounts to

violation of Article 22(5) of the Constitution of India. Considering the matter from this angle, I am of the view that the detention of the petitioner is illegal and in violation of Article 22(5) of the Constitution of India and, therefore, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 6.1.2000 passed against the petitioner is quashed and set aside. The detenu is ordered to be released forthwith, if not required for any other purpose. Rule made absolute.

It is stated by the petitioner by filing Civil Application No. 1893/2000 that the petitioner is shifted in Baroda Central Jail, therefore, office shall send the writ to Superintendent, Central Jail, Baroda.

mandora/