

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6423 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANABHAI GEMABHAI NAYAKADA

Versus

STATE OF GUJARAT

Appearance:

Mr N M Shaikh for MS RATNA VORA for Petitioner
Mr S K Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 31/08/2000

ORAL JUDGEMENT

By way of filing this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 31.3.2000 passed by the District Magistrate, Dahod in

exercise of powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980, with a view to prevent the petitioner from black marketing essential commodities. The petitioner states that the detention order is illegal inasmuch as the legible copies of documents relied upon were not supplied to the petitioner. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention dated 31.3.2000 be quashed and set aside.

2. At the admission stage, rule was issued in this matter. Mr S K Patel, learned AGP appears for respondents No.1, 2 and 3. He has also filed affidavit of District Magistrate, Dahod and of Mr P R Shukla, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar which are taken on record.

3. I have heard Mr N M Shaikh, Learned Advocate appearing for Ms.Ratna Vora for the petitioner and Mr S K Patel, learned AGP for the respondents. I have also perused the papers. It has been mainly contended that the documents relied upon by the detaining authority were not legible and, therefore, the petitioner could not make effective representation against his detention.

4. On this aspect of the case, reference has been made to page no.339 to the petition. A scrutiny of the said document at page no.339 makes it clear that there is some entry made in the column of month of October but that entry is not at all legible. Then the name of the consumer has been mentioned but the same is also not legible. His father's name is legible but name of the consumer is not at all legible. This shows that the document relied upon by the detaining authority for detaining the petitioner is not found to be legible. There is no dispute that this document is material and relevant for the purpose of deciding the question of detention of the petitioner. It is undisputed that the detaining authority has considered this document as material document. This shows that the document which was relevant and material and was considered by the detaining authority was not legible. In other words, copy of the document supplied to the petitioner was not legible. It has been contended that the copies of the documents relied upon by the competent authority for passing detention order against the petitioner were not fully legible and hence the petitioner could not make effective representation against the order of his detention. That, his valuable right of making effective

representation was taken away in violation of principles of natural justice. That, the detention order, therefore, cannot be sustained in the eye of law. The petitioner therefore, prays that the detention order impugned in this petition be quashed and set aside.

6. In this behalf, it will be worthwhile to refer to a decision in the case of Ranjibhai Atubhai Koli v. State of Gujarat, dated 03.03.2000 in Special Civil Application no.6181 of 1999 (Coram: B C Patel, J.). There also, the same point was considered and it was found and held that if the legible copies are not supplied, the detention cannot be sustained.

7. The facts of the aforesaid matter appear to be similar to the facts of the case before me. Therefore, there is no reason to differ from the principles laid down in the said decision of this High Court.

8. It is, therefore, very clear that the petitioner possessed a valuable right of making effective representation against his detention. This right can be exercised only when the petitioner knows the materials on which the detaining authority relies. Supply of copies of such materials/documents which are not legible, would amount to non-supply of such documents which would deprive the petitioner of his valuable right - statutory as well as constitutional right under Article 22(5) of the Constitution of India.

9. Even the Supreme Court has also considered this aspect in the case of Madan Lal Anand v. Union of India reported in AIR 1990 SC 176 and has held that if a document has been relied upon for the purpose of detention and if the same is not legible then the detention order cannot be sustained.

10. In the facts and circumstances of the case, the impugned detention order cannot be upheld and sustained when legible copy of the document relied upon by the detaining authority for the purpose of passing detention order was not supplied. The said order is, therefore, required to be quashed by allowing this petition.

11. This petition is accordingly allowed. The impugned order of detention of the petitioner passed by the District Magistrate, Dahod dated 31.3.2000 is quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith if no longer required in any other case.

Rule made absolute to the aforesaid extent. No order as
to costs. Direct Service permitted.

31.8.2000 [D P Buch, J.]
msp.