

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9885 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
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

SURESHKUMAR PITAMBERBHAI THAKKAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner
MR AS PATEL, AGP for Respondent No.1, 2 & 4
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/10/2000

ORAL JUDGEMENT

By way of this Special Civil Application under
Article 226 of the Constitution of India, the petitioner
has challenged the order of detention dated 2-8-2000

passed by the District Magistrate, Patan in exercise of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. Heard learned advocate for the petitioner, Ms. Banna Datta, learned AGP for the respondent Nos.1, 3 and 4, Mr.A.S.Patel and learned Addl. Central Govt. Standing Counsel for the respondent No.2, Ms.P.J.Davawala.

3. Ms.Banna Datta has mainly argued that order of detention has been passed on 2-8-2000 against which, a written representation has been made by the petitioner on 30-8-2000 to the State Government which has been received by it on 2-9-2000 whereas the same has been forwarded to the Central Government on 7-9-2000 and it appears that same has been received by the Central Government on 14-9-2000. According to her, there is a delay of five days in forwarding the representation to the Central Government by the State Government which is fatal to the order of detention. She has produced the acknowledgement slip which is ordered to be taken on record. Learned counsels for the respondents have fairly admitted the same.

4. It has been held in a case of Urmilaben Navnitlal Gandhi Vs. The Commissioner of Police, Surat City and Others, 1994(2) G.L.H. (U.J.) 10 at head note (A) as under:

"(A) Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985--Delay of five days in considering representation not properly explained--Held, detention invalid."

In the above unreported judgment, a representation of the detenu dated 12th October, 1993, which was received by the detaining authority on 14th October, 1993 was rejected on 15th October, 1993. The said representation was forwarded to the State Government on 16th October, 1993, but the office forwarded it to the State Government on 19th/21st October, 1993. It was received by the State Government on 26th October, 1993 and rejected on 27th October, 1993. The Court, applying the ratio in Harish Pahava Vs. State of Uttar Pradesh, AIR 1981 SC 1126, has observed in the above unreported judgment that the said

delay of five days, i.e. from 16th October, 1993 to 21st October, 1993 in forwarding the representation was unreasonable and not properly explained vitiating the continued detention of the detenu.

5. Whereas in the instant case, it appears that though representation has been received by the State Government on 2-9-2000, same has been forwarded to the Central Government on 7-9-2000. So, there is a delay of 5 days in forwarding the representation. It is to be noted that no affidavit explaining satisfactorily the said delay caused in forwarding the representation has been filed by the respondents. Reliance is placed on a decision of a Division Bench of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 which reads as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

6. Since no affidavit explaining satisfactorily the delay caused in forwarding the representation has been filed by the State Government the rights guaranteed under Article 22(5) of the Constitution of India are violated which makes the order of detention illegal.

7. In view of the above, the petition is allowed. The order of detention dated 2-8-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Sureshkumar Pitamberbhai Thakkar is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

radhan/