



3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO. 838 OF 2001

PETITIONER

: Ramesh Chandra Dubey
s/o Ram Dulare Dubey
aged 45 years,
r/o Pandritarai,
Raipur (C.G)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
through Secretary,
Department of Home Affairs,
Mantralaya,
Raipur
2. Collector,
Raipur (C.G)

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI MANDAMUS
PROHIBITION AND OTHER SUITABLE WRIT, WRITS, DIRECTION OR
DIRECTIONS, ORDER OR ORDERS.

PARTICULARS OF THE PETITIONER : As shown in the

(86)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 838/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p><u>28/6/2001</u></p> <p>Shri Manindra Shrivastava, learned counsel for the petitioner.</p> <p>Shri Ranvir Singh, learned G.A. for respondent/State.</p> <p>Heard.</p> <p><u>ORDER</u></p> <p>The order of detention has been issued against the writ petitioner under certain provisions of Prevention of Black- Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said order is yet to take effect as the writ petitioner has not been detained till date. The impugned order was issued on 4/4/2001. The writ petitioner has been avoiding arrest by filing this writ petition to prevent the Competent Authority to act on the basis of the order of detention aforesaid.</p> <p>Mr. Manindra Shrivastava, learned counsel for the petitioner submits that there are no sufficient materials for issuance of impugned order of detention against the writ petitioner. It is also further submitted that necessarily there ought to be an Advisory Board inasmuch as soon after detention is made and the</p>	<p>detaining Authority is taking Petitioner is taken</p>

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	<p>... 2 ...</p> <p>into custody, the matter is required to be referred to Advisory Board which will examine in turn, and give its finding to the Detaining Authority. Once the Advisory Board comes to the conclusion that there are no sufficient materials for detention and such findings ^{are} will duly be forwarded to the Detaining Authority and in such a situation the order of detention would be revoked and the detainee would be set at liberty. According to Mr. Shrivastava, there is no such Advisory Board in existence in the State of Chhattisgarh, therefore, once the writ petitioner is detained, there is no forum to which his order of detention can be referred to for examination. Hence, the writ petitioner has approached this Court directly for exercise of powers under Article 226 of the Constitution of India.</p> <p>Mr. Ranvir Singh, learned G.A. for the State submits that though as on this day, no Advisory Board as such has been constituted, such matter can be referred to the Principal Secretary of Home Department and this fact has been clearly mentioned in the order of detention itself, making it clear that the writ petitioner is entitled ^{to seek} for this remedy. Mr. Shrivastava, learned counsel for petitioner</p>	

87

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	<p>... .. 3 ..</p> <p>submits that such Authority is not contemplated under relevant provisions of law.</p> <p>On perusal of order of detention and after hearing learned counsel representing the parties, it is clear that by approaching this Court, the writ petitioner is seeking relief to the effect that the order of detention should be prevented from taking its effect. In my view, the writ petitioner is entitled to challenge the order of detention once he has been detained as a result of the order of detention. As stated above, as soon as the order of detention is served upon the writ petitioner and as a result he is detained, the entire matter shall again be referred to the Advisory Board which in turn will examine and give its finding to the Competent Authority. If aggrieved by the final order ^{to be passed} by the Competent Authority, on receipt of report from the Advisory Board, the petitioner may approach this Court.</p> <p>Shri Manindra Shrivastava, learned counsel for the petitioner submits that till date, there is ^{has been} no Advisory Board ^{is} constituted in this regard. I shall make it clear that if Advisory Board which is required under provisions of</p>	

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	<p>... .. 4 ..</p> <p>law is not ⁱⁿ existence, the State Government shall constitute such Advisory Board immediately. I shall also make it clear that because of non-existence of Advisory Board, the writ petitioner shall not be made to suffer. In the reply filed on behalf of the State Government, various averments have been taken. It is not necessary for me to enter into all these averments and give findings thereon, as in my view the merits of the case can be examined only when this Court comes to the conclusion that the matter should be entertained for hearing under Article 226 of the Constitution of India. In the present facts and circumstances, I am of the opinion that the matter is pre-mature for this Court to examine the merits of the detention ^{case as} detention.</p> <p>In the facts and circumstances aforesaid, this writ petition is dismissed. Should the writ petitioner be detained consequent to the order of detention issued on 4/4/2001, the writ petitioner shall have remedy of this matter, ^{being} referred to the duly constituted Advisory Board, at the earliest as is contemplated under ^{relevant} variable provisions of law. I do not express any opinion as to whether the contention of the State Government that the matter can be referred to Principal</p>	

88

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	.. 5 .. Secretary, Home Department. A copy of this order be sent to the Chief Secretary, Government of Chhattisgarh, Raipur, for immediate action.	<div>Sd/- Chief Justice</div> 28.06.01

5-10

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