IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 651 of 2000

in

SPECIAL CIVIL APPLICATIONNo 9253 of 2000

With
Civil Application No.9874 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

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

MITESH GULABRAI SAYANI

Versus

STATE OF GUJARAT

Appearance:

Mr.Y.N.Oza, senior counsel with
MR BP GUPTA for Appellant.
Ms. Harsha Devani, learned AGP for respondents
Nos.1 to 3.
MS PJ DAVAWALA for Respondent No.4

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:31/08/2001

CAV JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Letters Patent Appeal is directed against the judgment and order dated 13.10.2000 passed by the learned single Judge whereby the Special Civil application has been dismissed. Against the present appellant i.e. original petitioner in Special Civil Application a detention order dated 26.7.2000 was recorded by the District Magistrate, Jamnagar in exercise of the powers conferred on him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds. This detention order was served upon the petitioner on 26.7.2000 and the petitioner was detained and kept in Vadodara Central Jail. The petitioner made a representation on 19.8.2000 and father of the petitioner detenu also made a representation on 24.8.2000, copies of these representations are Annexure "B" and Annexure "C" to the petition. Thereafter, Special Civil Application dated 28.8.2000 challenging the detention order dated 26.7.2000 Annexure "A" with the petition was filed on 29.8.2000. In this petition, rule was issued and an affidavit in reply dated 8.10.2000 was filed by the detaining authority i.e. District Magistrate, Jamnagar, affidavit in reply dated 9.10.2000 was filed by the Deputy Secretary to the Government of Gujarat and a counter affidavit dated 20.9.2000 was filed on behalf of Union of India. The learned single Judge, after considering the grounds of challenge i.e. (a), (b), (c) and (d) enumerated under Para 2 of the impugned judgment, found that there was no illegality at any stage and the detention order could not be quashed and set aside and accordingly the petition was dismissed.

2. The order passed by the learned single Judge on 13.10.2000 has been assailed before us on the grounds that:-

(a) The learned single Judge has failed to appreciate that the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 had been applied by the detaining authority without application of mind inasmuch as under Food Adulteration Act according to the provisions of Section 13

whenever a sample is drawn and sent to the Public Analyst and if it is found that the sample does not meet with the parameters or is found to be adulterated, the Local Health Authority is permitted to launch prosecution, but the sample is required to be sent to the Central Food Laboratory for analysis and the report of the Central Food Laboratory has to be treated as final and it supersede the report of the State Public Analyst.

(b) That less drastic remedies were available to prevent the detenu from committing the alleged activities and yet the detention order was passed without considering such less drastic remedies and this aspect has not been appreciated by the learned single Judge in the correct perspective.

(c) The learned single Judge has wrongly held that the detention for a period of six months is a detention for a short period.

(d) That the detaining authority while passing the detention order had taken into consideration the typed copies of the document,which had been compared with the original document by some other person and the detaining authority itself had not compared the typed documents with the original and,therefore, the detention order could not be based on such typed copies of the original.

(e) That there was a delay on the part of the State of Gujarat in considering the petitioner's representations against the detention and the learned single Judge ought to have quashed and set aside the detention order on this ground.

3. Besides the aforesaid grounds of challenge, the appellant sought to raise additional grounds, which were not raised before the learned single Judge. The appellant was permitted to raise such grounds as under:-

(a) That edible oil and edible oil seeds are not considered to be essential commodities. While making reference to the Central Government S.O. No.772(E) dated 10.11.97, it has been submitted that edible oil and edible oil seeds have been deleted from the essential commodity and a corrigendum S.O.No.859(E) had been issued giving necessary instructions to all the State Governments and Union Territories to amend the

control orders accordingly.

(b) That on 12.1.98 the Government of Gujarat had also issued Extraordinary Gazette in which edible oil and edible oil seeds have been omitted from the control order.

(c) That it is incumbent upon the authority to send the sample for analysis to the Central Food Laboratory and if it is found that sample is adulterated, then only steps could have been taken and where the State Laboratory found that the sample of petrol was adulterated and the Laboratory of the Central Government/IOC found that the sample was not adulterated, the Supreme Court has quashed the detention order in Surinder Singh Ishwar Singh Guru Dutta's case.

4. We have gone through the detention order dated 26.7.2000 and the grounds annexed therewith in support of the detention order, pleadings of the parties, as aforesaid, and the impugned order passed by the learned single Judge. The contents of para 4 of the order passed by the learned single Judge show that all the reports of Chemical Analyser had been supplied to the petitioner and the learned senior advocate for the petitioner had agreed that such report had been supplied to the petitioner. So far as the grievance that under Prevention of Food Adulteration Rules, 1954, sub-rule (7) of Rule -4 the Certificates are required to be singed by the Director is concerned, the learned single Judge has found that the Certificate had been signed by the Public Analyst. In fact the reports have been issued by the Public Analyst. Under Section 8 of the Prevention of Food Adulteration Act, 1954, the Government is empowered to appoint Public Analyst for such local area as may be assigned to them and under Section 13 of the Prevention of Food Adulteration Act, 1954 the Public Analyst has to deliver the report, in such form as may be prescribed, to the Local (Health) Authority of the result of the analysis of any article of food. It is, therefore, clear that report of analysis is required to be delivered by Public Analyst and he is competent to sign the report of analysis. In our opinion, the learned single Judge has rightly come to the conclusion that the reports have been supplied to the petitioner and further that the report signed by Public Analyst could be taken into consideration.

5. So far as the next ground that less drastic measures have not been considered is concerned, it may be straightway pointed out that in view of the contents of

Paras 8 and 9 of the detention order itself, it cannot be said that the detaining authority had not applied its mind to the availability of the less drastic measures. The detaining authority has clearly mentioned that the detention was the only remedy to prevent the black marketing activities of the appellant for maintenance of supply of essential commodities and that it was not possible to prevent the appellant from carrying on such black marketing activities by resorting to the process under the ordinary law and, therefore, the detention was immediately warranted. The measure of cancellation of licence in such cases could hardly serve the purpose, rather it would defeat the very purpose of the prevention of black marketing activities because the process of cancellation of licence is a quasi judicial act and it may consume its own time and it could hardly be adequate and effective measure so as to prevent the appellant from carrying on the black marketing activities and we agree with the finding of the learned single Judge that all sorts of less drastic measures are not required to be enumerated in detail. The only requirement is that the detention order should show that the detaining authority had applied its mind to other measures and in the facts of the present case it is clear from the reading of the detention order itself that the detaining authority had applied its mind on this aspect of the matter.

6. The learned single Judge has also considered the cases, which were cited before him and the same have been appropriately dealt with and findings have been arrived at on the basis of the principles laid down in such cases. The mention made by the learned single Judge that the detention was for a period of six months only and that it was for a short period has been made in the context of the argument that there was no detailed discussion and elaborate consideration. Even if it is held that the period of six months is not a short period and that detention,if unlawful, cannot be sustained even for a day, in the facts of the present case we find that the detaining authority had taken into consideration the activities of the petitioner as mentioned in paras 1,2,3 and 5 to 9 of the detention order and after due application of mind thereon the decision was taken to pass the detention order and, therefore, whether six months period is shorter or longer is not at all germane to the question as to whether the detention was warranted or not. The fact of the matter is that there was sufficient material before the detaining authority in the facts of this case so as to justify the detention and the detaining authority had passed the detention order after active application of mind to the material available

before him, as is obvious from the reading of the detention order itself. Learned single Judge has, therefore, committed no illegality in finding that the detention order did not warrant any interference and merely because the observation has been made that the detention for a period of six months was for a short period, it cannot be said that the learned single Judge had taken the order of detention in a light manner.

7. We also find that there is no substance in the argument that the typed copies of the documents, which were compared with the original documents by some other person, could not be taken into consideration by the detaining authority because the detaining authority himself had not compared the typed copies with the original and the mere non mention of the name of the person, who compared the documents, does not and can not vitiate the detention order. The allegation that the person, who has compared the copies with the original, may have some animosity with the detenu is wholly vague and bald allegation without any basis and the detention order could not be quashed on that ground.

8. The grievance was also raised that certain documents supplied to the petitioner were not legible. Having gone through the material available on record and the order passed by the learned single Judge, we find that this grievance is wholly illusory. This aspect has been dealt with in detail in para 16 onwards and we agree with the reasons in detail recorded by the learned single Judge in this behalf.

9. It is clearly born out from the affidavit in reply dated 9.10.2000 filed by one Shri P.R. Shukla, Deputy Secretary to the Government of Gujarat that the detention order, as has been passed on 26.7.2000, was approved on 5.8.2000.The representation dated 19.8.2000 sent by the petitioner through the Jail authorities was received by the Special Branch of the office of Food, Civil Supplies and Consumer Affairs Department on 24.8.2000. 26th and 27th August, 2000 were holidays and the file was, therefore, submitted on 28.8.2000 by the concerned Assistant to the Section Officer and it was then submitted to the Under Secretary and the Deputy Secretary on the same day. The file was further submitted to the Secretary on 29.8.2000 and after his approval, file was submitted to the Hon'ble Minister for Food and Civil Supplies on 30.8.2000, who cleared it on the same day. Thus after proper application of mind to the facts of the case and after considering the representation, it was rejected by the State Government

and the reply was sent accordingly on 31.8.2000 through the Jail authorities. In view of these facts, it cannot be said that it is a case of any supine delay in deciding the representation dated 19.8.2000. This representation dated 19.8.2000 was sent to the Central Government on 21.8.2000 and in the concerned Section on 22.8.2000 through the office of the Superintendent, Vadodara Central Jail. The representation was rejected by the competent authority in the Central Government on 22.8.2000. The decision of the Central Government was conveyed to the Superintendent, Central Jail, Vadodara on 24.8.2000 by telegram with a direction to covey the same to the detenu and the State Government was also informed accordingly simultaneously on the same day. Another representation, which was made by the detenu's father on 24.8.2000 was received in the Central Government on 28.8.2000 and in the concerned Section on 29.8.2000. This representation was considered and rejected by the competent authority on 31.8.2000 and the concerned authority was informed vide telegram dated 31.8.2000. Thus, we find that even by the Central Government, the representations were considered without any unreasonable delay and whatever period was taken stands clearly explained by the affidavit in reply dated 9.10.2000 filed by the Deputy Secretary to the Government of Gujarat Shri P.R.Shukla and the counter affidavit dated 20.9.2000 as has been filed by Union of India by one Shri R.N.Tripathy, Under Secretary in the Department of Ministry of Consumer Affairs and Public Distribution. Thus the grievance about the delay in deciding the representation and denial of opportunity on that aspect of the matter fails.

10. So far as the ground with regard to the edible oil and edible oil seeds not being essential commodities,as has been argued before us, is concerned, it may be observed that the omission of items of edible oil and edible oil seeds from the Control Order does not impinge upon the validity of the detention order as such for the simple reason that notwithstanding such omission, there was sufficient material before the detaining authority, as would be clear from the reading of the order passed by the detaining authority and the detention order has been passed after taking into consideration the entire material and with reference to the relevant provisions of law.

11. The question of detention can't be made to wait till the receipt of report by the Central Food Laboratory.

12. Thus, no interference is warranted on the grounds as have been raised before us in this appeal for the first time, though we have permitted him to raise these points.

13. We have also gone through the order which was passed by the Supreme court in a writ of habeas corpus, the copy of which has been enclosed as Annexure "VI" by the appellant with the additional grounds and we find that this case is of no avail to the appellant. In the case before the Supreme Court, as a question of fact, the Supreme Court had come to the conclusion that the sample of stock of petrol taken out from outlet Pump 2 was found to be within its permissible variation and the detention order was passed on grounds, which were non existent. Such are not the facts of the present case.

14. The order passed in the case of Surinder Singh
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applicable to the facts of the present case.

15. We do not find any merit in this Letters Patent Appeal and the same is hereby dismissed.

Since the main Appeal has been dismissed, there is no question of granting any stay in the Civil Application and the same is disposed of accordingly.

(M.R.Calla,J)

(R.R.Tripathi,J)