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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2309 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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KUNDANBHAI DULEBHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2309 of 2005  
MS SAHIN QUARESH FOR MR MT SAIYAD for Petitioner No. 1  
MR IM PANDYA, AGP for Respondent No. 1-3  
M IA SHAIKH for Respondent No.4

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 31/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Ahmedabad on 27th January, 2005 in exercise of powers conferred upon him vide Sub-Section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (PBM Act for short). The petitioner is under detention in pursuance of the said order from 31st January, 2005.

2. The grounds of detention as placed on record reveal the factual background that two separate teams of Supply Department raided two premises on 9th August, 2004, first premises was situated at Alif Complex, Near Hajibava Dargah at Sarkhej, where some quota of blue kerosene was found in the said premises. For the present petition, this fact is not relevant, but the second premises was raided by the department on the same day, situated at the compound of S.K. Tiles, Godown No.12, on Sarkhej - Sanand Highway Road. During this raid also, some quantity of suspicious LDO and kerosene was found. Both the premises raided belonged to one Mohammed Faruk Dulebhai Shaikh @ Munnabhai, according to the grounds of detention order. However, further the grounds of detention indicate that one statement of Sureshbhai Bhagvatiprasad Jani was recorded by the authority and accordingly second premises i.e. Godown No.12 was owned by one Mukhtarbhai Sulemanbhai Shaikh and was rented to the petitioner for the rent of Rs.4200-00 per month. The present petitioner Kundanbhai Delebhai Shaikh happens to be brother of Mohammed Faruk Dulebhai Shaikh @ Munnabhai, as stated by the learned AGP, because this fact is nowhere stated in the detention order. Any how, in pursuance of the above said two raids, the authority also inspected fair price shop owned by the present petitioner, situated at City Taluka, Shahwadi. The present petitioner was licenced to run a fair price shop. The authorities raided and inspected the said shop and record maintained by the petitioner on 9th August, 2004, 11th August, 2004, 18th August, 2004, 22nd September, 2004, and it was found that quantity of 3000 liters of kerosene received by the petitioner was not distributed. The bill books were not maintained, according to law, sale register was seized and it was found that in the month of May, 2004, 84 liters of blue kerosene, in the month of July, 2004, 77 liters of blue kerosene and in the month of June, 2004, 68 liters of blue kerosene was disposed of illegally by the petitioner instead of distributing this quota of kerosene to the ration card holders.

3. From the grounds of detention, it is not clear, whether materials found from the Godown No.12 also formed

subject matter of subjective satisfaction of the detaining authority. However, the detaining authority mentioned the fact of raid at godown No.12. The detaining authority stated irregularities found at the fair price shop of the petitioner and arrived at subjective satisfaction.

4. The detaining authority came to the conclusion that though a criminal case under Sections 3 and 7 of the Essential Commodities Act, 1955 was launched against the petitioner, but he was absconded in the said case. The detaining authority also considered that for 90 days, the licence of the fair price shop of the petitioner was suspended, but in view of the detaining authority these steps were not sufficient to prevent the black marketing activities of the petitioner, which were prejudicial to the maintenance of the supplies of commodities essential to community. The blue kerosene is subsidized by the Government and according to law, a system is set up by the Government to distribute the said blue kerosene among the lower and middle income commune citizens for house hold use. While white kerosene for the industrial purpose is available at very higher price in open market. In substance allegations against the petitioner were that, he obtained blue kerosene at subsidized rates and sold some quota in the open market with higher prices and committed black marketing. The detaining authority also took into consideration that in 1995 also, the petitioner was detained for similar activities, but the said order was quashed by the Supreme Court on technical grounds. The detaining authority, therefore, reached to the subjective satisfaction that there was no other alternative, except to pass the order of detention against the petitioner under the PBM Act. The detaining authority, therefore, passed the order of detention of the petitioner, which is under challenge in this Special Civil Application.

5. Learned advocate Ms.Sahin Quareshi for learned advocate Mr.M.T.Saiyed for the petitioner and learned AGP Mr.I.M.Pandya for respondents No.1, 2 and 3 and learned Standing Counsel Mr.M.T.A. Shaikh for respondent No.4 were heard at length. The affidavit-in-reply as filed by Mr.A.K.Ganguli under Secretary in the department of Consumer Affairs Food and Public Distribution, New Delhi were also taken into consideration.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP and Standing Counsel for the Central Government, it appears that this

application can be examined and disposed of, on the sole issue as to whether the order of detention is vitiated on account of improper application of mind by the detaining authority in taking into consideration extraneous or irrelevant material, in reaching to the subjective satisfaction.

7. Unambiguously, the detaining authority has taken into consideration earlier detention order passed against the petitioner by the detaining authority on 16th August, 2005. To be more specific, it would be necessary to refer to free translation of paragraph No.8 of the grounds of detention, which is as under:-

"Earlier also you have acted in a manner prejudicial to the maintenance of supplies of commodities essential to community, like kerosene and committed black marketing. To prevent such illegal activities vide order No. ASB/Inquiry/PB/Detention/Registered No.28/95 dated 16.08.1995 an order of detention was passed against you and you were detained. You were released by the Supreme Court on technical grounds. Thus, you are habitual of committing illegal activities."

8. Now the question is whether the previous order of detention passed against the detenu, and quashed by the Court, can be taken into consideration by the detaining authority, subsequently, and whether taking such previous order into consideration would amount to take extraneous material in consideration and whether subjective satisfaction of the detaining authority would be vitiated on this count.

9. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of CHHAGAN BHAGWAN KAHAR Vs. N.L.KALNA AND OTHERS, as reported in AIR 1989 S.C. 1234. In almost similar circumstances, the Apex Court observed as under in paragraph No.15.

"15. Mr.Poti has sought to explain the statement of the detaining authority made in his counter saying that the earlier proceeding was considered only to a limited purpose of taking note of the detenu's continued involvement of bootlegging activities; but the entire grounds of earlier detention as they were, were not considered. We are unable to accept his explanation because the detaining authority, in the counter, in clear

terms had expressed that he considered the earlier grounds of detention also. Incidentally, it was brought to our notice that a copy of the earlier grounds of detention was also one of the documents furnished to the detenu in the present case which confirms the fact that the detaining authority has considered the earlier grounds of detention along with other documents for drawing his requisite subjective satisfaction for passing this impugned order. In other words, the earlier grounds of detention dated 2-1-1987, quashed by the High Court was one of the material documents considered by the detaining authority in drawing his subjective satisfaction. Therefore, we hold that this order of detention is vitiated, on the ground that the detaining authority has taken into consideration the grounds of earlier detention order along with other materials for passing this impugned order. Hence, the order is liable to be set aside. Accordingly, we quash the detention order on this ground and direct that the detenu be set at liberty forthwith if his detention is not required for any other case."

10. In the present case also, to infer future repetitive conduct of the petitioner-detenu, the detaining authority has taken into consideration the earlier order of detention passed against the petitioner and quashed by the Supreme Court, as past conduct, which is not permissible as aforesaid by the Apex Court. The order in question, therefore, is required to be quashed and set aside on this ground alone, because the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Ahmedabad on 27th January, 2005, against the petitioner in exercise of powers under Sub Section (2)(a) of Section 3 of the PBM Act is hereby quashed and set aside. The detenu KUNDANBHAI DULEBHAI SHAIKH is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA J.]

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