

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.05.2007

CORAM

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Writ Petition Nos.12292, 11308, 11309, 11027, 12091, 14838

12092, 4693, 4962, 5561, 6452 of 2007

and

3406, 24689, 38890, 36946, 36947, 29859,
29860, 22243, 39540, 49008, 38308, 39331,
17255, 22968 to 22970, 12425, 50010, 31780,
47920, 5331 of 2006

and

12708 of 2005

and

35077 of 2004

and

M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 of 2007

and

M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 of
2006

and

W.P.M.P.Nos.3623, 14019, 5722 of 2006

and

W.V.M.P.No.2137 of 2006

and

W.P.M.P.No.13893 of 2005

and

W.P.M.P.No.42314 of 2004

S.Poonkol ..Petitioner in WP 12292/07
S.R.Ganesan ..Petitioner in WP 11308/07,38890/06
M.Tirunavukarasu ..Petitioner in WP 11309/07,24689/07
G.Rajesh ..Petitioner in WP 11027/07
P.Ramachandran ..Petitioner in WP 12091/07

R.Muneeswaran ..Petitioner in WP 12092/07
M.M.Ramapandi ..Petitioner in WP 14838/07
V.Ravi ..Petitioner in WP 4693/07
L.R.Vishveshwara Rao ..Petitioner in WP 4962/07
M.Sivasankar ..Petitioner in WP 5561/07
P.Annadurai ..Petitioner in WP 6452/07
A.Abthahir ..Petitioner in WP 3406/06
S.Ramachandran ..Petitioner in WP 36946/06
S.Suresh ..Petitioner in WP 36947/06
R.Srinivasan ..Petitioner in WP 29859/06
M.Manickam ..Petitioner in WP 29860/06
A.Sivanesan ..Petitioner in WP 22243/06
N.Hari Ramachandran ..Petitioner in WP 39540/06
K.Karthikeyan ..Petitioner in WP 49008/06
A.Farook ..Petitioner in WP 38308/06
M.Mehaboob Basha ..Petitioner in WP 39331/06
K.Nagarajan ..Petitioner in WP 17255/06
S.K.Murugesan ..Petitioner in WP 22968/06
G.Selvaraj .. Petitioner in WP.22969/06
M.Anandha Krishnan @
Anandhan ..Petitioner in WP 22970/06
N.Ahamed Ali ..Petitioner in WP 12425/06
N.Kumar @ Nainar Kumar ..Petitioner in WP 50010/06
M.Thanasekar ..Petitioner in WP 31780/06
H.Peer Mohammed ..Petitioner in WP 47920/06
K.Palani Selvam ..Petitioner in WP 5331/06
K.Rajasekar ..Petitioner in WP 12708/05

K.Palani Selvam

..Petitioner in WP 35077/04

-Vs.-

The State of Tamil Nadu,
rep. by its Secretary to
Government, Co-operation Food
and Consumer Protection Department,
Fort St.George, Chennai - 9.

1st respondent in WP.12292/07,
11308/07, 11309/07, 11027/07,
12091/07, 12092/07, 14838/07,
4693/07, 4962/07, 5561/07, 6452/07,
3406/06, 24689/06, 38890/06,
36946/06, 36947/06, 29859/06,
29860/06, 22243/06, 39540/06,
49008/06, 38308/06, 39331/06,
17255/06, 22968/06, 22969/06,
22970/06, 12425/06, 50010/06,
31780/06, 47920/06, 5331/06,
12708/05, 35077/04.

The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2nd respondent in WP.12292/07,
11308/07, 11309/07.

The Inspector of Police,
CSCID, Vellore,
Vellore District.

3rd respondent in WP.12292/07, 11308/07,
11309/07, 38890/06, 36946/06, 29859/06.

The District Collector,
Villupuram District,
Villupuram.

2nd respondent in WP.11027/07, 6452/07,
22243/06.

The Inspector of Police,
CSCID, Cuddalore,
Cuddalore District.

3rd Respondent in WP.11027/07, 4693/07,
6452/07, 22243/06, 39540/06, 49008/06.

The District Collector,
Coimbatore District,
Coimbatore.

2nd respondent in WP.12091/07, 14838/07,
4962/07, 38308/06, 39331/06, 22970/06,
31780/06.

The Inspector of Police,
CSCID, Pollachi,
Coimbatore District.

3rd Respondent in WP.No.12091/07,
14838/07, 22970/06, 31780/06.

The District Collector,
Theni District, Theni.

2nd Respondent in WP.No.12092/07.

The Inspector of Police,
CSCID, Uthamapalayam.

3rd Respondent in WP.No.12092/07.

The District Collector,
Cuddalore District,
Cuddalore.

2nd respondent in WP.No.4693/07,
39540/06, 49008/07.

The Inspector of Police,
CSCID, Coimbatore,
Coimbatore District.

3rd Respondent in WP.No.4962/07,
38308/06.

The Inspector of Police,
CSCID, Cuddalore,
Cuddalore District.

3rd Respondent in WP.4693/07,
39540/06, 49008/06.

The District Collector,
Krishnagiri District,
Krishnagiri.

2nd Respondent in WP.No.5561/07,
24689/06, 36947/06, 29860/06,
17255/06, 22968/06, 22969/06

The Inspector of Police,
CSCID, Krishnagiri,
Krishnagiri District,

3rd Respondent in WP.Nos.5561/07,
36947/06, 29860/06, 17255/06,
22969/06.

4th Respondent in WP.No.24689/06
22968/06

The Inspector General of Police,
Civil Supplies CID,
Periyar Building, Nandanam,
Chennai.

2nd Respondent in WP.No.3406/06,
50010/06

3rd Respondent in WP.5331/06

The District Collector,
Vellore District, Vellore.

3rd Respondent in WP.24689/06

The Inspector of Police,
Ponnai Police Station,
Ponnai, Vellore District

4th Respondent in WP.No.29859/06

The Inspector of Police,
Kottur Police Station,
Kottur, Pollachi Taluk,
Coimbatore District.

3rd Respondent in WP.no.39331/06

The District Collector,
Dharmapuri District,
Dharmapuri

3rd Respondent in WP.No.22968/06

The District Collector,
Erode District, Erode,

2nd Respondent in WP.no.12425/06

The Inspector of Police
CSCID, Erode.

3rd Respondent in W.P.12425/06

The District Collector,
O/o The Collectorate,
Tirunelveli District,
Tirunelveli

3rd Respondent in WP.No.50010/06

The Inspector of Police,
CSCID, Tirunelveli district,
Tirunelveli

4th Respondent in WP.No.50010/06

The District Collector,
Virudhunagar District,
Virudhunagar.

4th Respondent in WP.31780/06

2nd Respondent in WP.47920/06

12708/05

The Inspector of Police,
CSCID, Virudhunagar,

5th Respondent in WP.31780/06

3rd Respondent in WP.47920/06

The Addl Director General of Police,
Civil Supplies CID,
E.V.R. Periyar Buildings,
Nandanam, Chennai 600 035.

2nd Respondent in WP.5331/06

The Addl Deputy Superintendent of Police,
Civil Supplies, CID, Madurai,

4th Respondent in WP.5331/06

The District Collector,
Tiruvallur District,
Tiruvallur.

5th Respondent in WP.5331/06

The Collector,
Thuthukudi District,
Thuthukudi.

2nd Respondent in WP.35077/04

For the petitioner in WP.Nos. 12292/07, 11308/07, 11309/07, 11027/07, 12091, 12092, 4693, 14838, 4962, 5561, 6452/2007, 3406, 24689, 38890, 36946, 36947, 29859, 29860, 22243, 39540, 49008, 38308, 39331, 17255, 22968, 22969, 22970, 12425, 31780, 47920, of 2006 and 12708 of 2005. Mr. B. Kumar, Senior Counsel for Mr. C. Prakasam.

For the Petitioner's WP.No. 50010/2006
Mr. D. Veerasekaran

For the Petitioner in WP.No. 5331/2006 & WP.No. 35077/2004
Mr. R. Rajarathinam

For Respondents in all the Petitions: Mr. P.S. Raman
Additional Advocate General assisted
by Mr. M. Dhandapani AGP.

Petitions under Article 226 of the Constitution of India to issue Writs of Mandamus forbearing the respondents in each of the petitions from detaining the Petitioner's husband by name N. Srinivasan

2. The Petitioner
3. The Petitioner
4. The petitioner's friend by name Ravi @ Ravichandran
5. The Petitioner's father by name Athipandian @ Pandian
6. The Petitioner
7. Petitioner's husband by name Muthian @ Muthiah
8. the Petitioner
9. the Petitioner
10. the petitioners brother by name M. Amaresh
11. The Petitioner
12. the Petitioner
13. The Petitioner 24689

14. the petitioner
15. the petitioner
16. the petitioner
17. the petitioner
18. the petitioner's brother-in-law by name R. Meganathan
19. the petitioner brother by name A.Amarasan
20. the petitioner
21. the petitioner 's brother-in-law by name K. Muralidharan
22. the petitioner
23. the petitioner 's brother by name Rahim @ Adul Rehman
24. the petitioner
25. the petitioner
26. the petitioner
27. the petitioner
28. the petitioner
29. the petitioner
30. the petitioner
31. the petitioner 's brother by name Ismail
32. the petitioner
33. the petitioner
34. the petitioner

respectively under the provisions of the 3(1) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act 1980 (Act 7/80).

C O M M O N O R D E R

The above writ petitions fall under two categories.

(i) In W.P.Nos.12292 of 2007 etc., batch, the petitioners are seeking issuance of Writ of Mandamus forbearing the Government of Tamilnadu from exercising its power under

Section 3(1) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 to detain the petitioners / their husbands / their close relatives / their friends, etc.,

(ii) In W.P.No.35077 of 2004 the petitioner is seeking for the issuance of a Writ of Mandamus forbearing the respondents from in any manner implementing the detention order by way of arresting or detaining the petitioner in pursuant to the issuance of an order of detention passed by the second respondent under Section 3(1) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act 1980 (Act 7 / 1980).

2. The petitioners in the batch of writ petitions are apprehending that order of detention may be passed by the competent authority under the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter called as the 'Act'). According to the petitioners they have been proceeded against for dealing with paddy/rice issued under Public Distribution System in violation of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order 1982 (hereinafter called as '1982 Order') which violations are punishable under the Essential Commodities Act, 1955 (hereinafter called as 'EC Act').

3. The contention of the petitioners is that in the Government of India (Ministry of Agriculture and Irrigations, Department of Food) No.GSR 800 dated 09.06.1978, the Central Government has delegated the powers to the State Governments to make orders. In exercise of the said power, the Government of Tamil Nadu has made the 1982 Order. While so, the Government of India has passed an order viz., Removal of Licensing Requirements on Specified Food Stuff Order 2002 (hereinafter called as '2002 Order') which totally frees various foods stuff, including paddy and rice from all controls and restrictions etc. Rule 4 of the 2002 Order contains a non-abstante clause stating that this order will have effect notwithstanding anything contrary contained in any other law for the time being in force. Rule 5 of the 2002 Order states that issue of any order by the State Government under powers delegated in GSR 452(E) dated 25.10.1972 and GSR 800 dated 09.06.1978 for regulating by licenses, permit or otherwise, the storage, transport etc., of any of the commodities specified in Clause 3 shall require the prior concurrence of the Central Government. According to the petitioners the State Government has not obtained the prior concurrence of the Central Government and therefore the persons who have been arrested and dealt with on the assumption that they have contravened the 1982 Order cannot be detained under the Act. Further it is the case of the petitioners that none of the persons have been dealt with under the 2002 Order, but have been dealt with only under 1982 order and hence they cannot be detained under the Act.

<https://hcservices.ecourts.gov.in/hcservices/>

4. In W.P.No.35077 of 2004 the detention order has already been passed against the petitioner. According to the petitioner,

as the 1982 order is no longer valid in view of the coming into force of the 2002 Order, the petitioner cannot be said to have contravened any Order and consequently, he could not also be said to have violated the EC Act and therefore the detention order made on the basis that the petitioner has violated the 1982 Order and committed an offence under the EC Act cannot be executed against the petitioner. According to the petitioner, all through the petitioner has alleged to have contravened only the 1982 Order and that was the only material available in October 2004, when the order of detention was made and therefore the detention order passed relying upon the invalid 1982 Order cannot be executed against the petitioner.

5. Whereas, the respondents have taken a preliminary objection on the maintainability of the very writ petitions itself. According to the respondents, the prayers in the writ petitions are in substance for the issue of a writ of Prohibition and such writ petition cannot be issued unless the apprehended action of the respondents totally lacks jurisdiction. In the instance case the Tamil Nadu Black Marketing Act, 1980 is a preventive detention legislation on which the authorities may act is not in dispute and consequently such a writ of mandamus as prayed for cannot be issued. According to the respondents, the question as to whether in the individual facts and circumstances of each case the reasons that may prompt the authorities concerned to entertain any apprehension about the conduct of the writ petitioners and whether such actions are within the purview of the Act can only be adjudicated upon if and when any order of preventive detention is issued and not at this premature stage. According to the respondents, the 2002 Order relates only to free market rice and not to rice meant for Public Distribution System (PDS Rice). Clause 6 of the 2002 order saves the operation of the 2001 Order and 2001 Order provides for certain offence relating to PDS rice and therefore if any individual is found in possession of what is suspected to be PDS rice, it is reasonable to entertain the apprehension that such person has indulged in or attempted to divert PDS rice and therefore will be guilty of violation of 2001 Order and by implication guilty of violating EC Act and consequently the order of preventive detention can be passed under the Act against such persons. If any such preventive detention orders are passed, such orders cannot be said to be lacking total jurisdiction. It is further contended by the respondents that the petitioner in W.P.No.35077 of 2004 cannot avoid execution of Detention Order but must first surrender to the authorities and thereafter when the grounds of detention is served he can challenge the order of detention by filing a writ of Habeas Corpus on the permissible grounds.

6. I have heard Mr.B.Kumar, learned Senior Counsel and Mr.P.S.Raman, learned Additional Advocate General.

<https://hcservices.ecourts.gov.in/hcservices/> 7 Mr.B.Kumar, learned senior counsel while elaborating the above said contentions put forth by the petitioners submitted that in the decision reported in Alka Subhash Gadia case

(Additional Secretary to the Government of India and Others Vs.Smt. Alka Subhash Gadia and another (1992 Supp(1) SCC 496) the Apex Court has laid down the following 5 grounds on which detention orders at the pre-execution stage can be entertained and relief granted viz., :-

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds or
- (v) that the authority which passed it had no authority to do so.

8. According to the learned senior counsel by virtue of coming into force of the 2002 order, the 1982 order has become invalid and therefore the petitioner in W.P.No.35077 of 2004 and other persons in respect of whom relief is sought for in the batch of writ petitions could not be said to have committed violation of the EC Act and according to him the violation of the orders made under the EC Act which is punishable under Section 7 of the EC Act is a condition precedent before the power under the Black Marketing Act can be exercised. According to the learned senior counsel the petitioner in W.P.No.35077 of 2004 and other persons could not be said to have committed any offence under the EC Act as the 1982 Order ceases to have force and in the FIRs filed against the petitioner in W.P.No.35077 of 2004 and other persons the allegations levelled against them are that they have contravened Sections 4(1), 19(1) of the Tamil Nadu Essential Trade Articles (Regulation of Trade) Order 1984 and Rule 2(1), 6A of TNSTC RDCS Order 1982 r/w Section 7(1)(a)(ii) of the EC Act 1955. Therefore, the impugned order of detention cannot be executed against the petitioner in W.P.No.35077 of 2004 and no order of preventive detention can be passed against the other persons.

9. The learned senior counsel further submitted that the impugned order of detention passed against the petitioner in W.P.No.35077 of 2004 amounts to exercise of power for a wrong purpose. Since if the petitioner had not contravened the EC Act no order of preventive detention can be passed against him. It is further submitted that the same reasons will render the satisfaction reached by the Detaining Authority as one being passed on vague, extraneous and irrelevant grounds as the 1982 Order has no legs to stand. According to the learned senior counsel the norms laid down in Alka Subhash Gadia case are satisfied and therefore the W.P.No.35077 of 2004 is liable to be allowed. According to the learned senior counsel it would be a travesty of justice to require the petitioner to surrender and lose his liberty and then to challenge the order of detention.

Officer and Addl. P.A. to Collector, Quilon and Others (AIR 1975 SC 2135 : (1976) 1 SCC 70) and Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others ((2006) 4 SCC 278) submitted that the above writ petitions are premature and are not maintainable. According to the learned Additional Advocate General the Apex Court has entertained writ petitions on preventive detention matters when the detenu surrenders to the authorities and that too only under five (5) exceptional circumstances enumerated in the Alka Subhash Gadia case and the same has been reiterated in a series of decisions. In all the case before the Apex Court the aggrieved persons actually challenged the detention order already issued and in no reported case Detaining Authorities have been prevented by an issue of writ of mandamus from passing detention orders against the citizens. Therefore, according to the learned Additional Advocate General except W.P.No.35077 of 2004 all the other writ petitions are liable to be dismissed on the ground of being premature.

11. According to the learned Additional Advocate General all the contentions put forth by the writ petitioner in W.P.No.35077 of 2004 and on behalf of the other writ petitioners are liable to be rejected. According to the learned Additional Advocate General, provisions of the Black Marketing Act are attracted as the Act clearly contemplates preventive detention of any person under Section 3 of the Act. Section 3 of the Act merely requires the person threatened with detention to have been involved in the trading of essential commodity and Rice / Paddy continue to remain essential commodities as per Notification issued under Section 3 of the EC Act. Whether the action of detenu comes under the detaining legislation can only be examined after the detention order is passed. According to the learned Additional Advocate General, delicensing and liberalization of trading in rice and paddy as introduced in the 2002 Order relates only to free market rice and not to rice meant for Public Distribution System (PDS Rice) and the 2001 Order is saved in view of Clause 6 of the 2002 Order.

12. According to the learned Additional Advocate General, the 2001 Order clearly provides for certain offences relating to PDS rice. In particular, the explanation to Section 3 of the said order defines "diversion" as any action which results in the Essential Commodity not reaching the hands of the intended beneficiary after leaving Central Godown. If any individual person is found in possession of what is suspected to be PDS rice, apprehension that such party has indulged in or attempted diversion of PDS rice is reasonable. Such a person is therefore guilty of violation of PDS Order of 2001 and therefore also by implication guilty of violating EC Act. Therefore, according to the learned Additional Advocate General the impugned order of detention issued under the Black Marketing Act, 1980 cannot be said to be an action lacking total jurisdiction.

13. I have carefully considered the submissions made on either side and the materials available on record.

14. In Isha Beevi on behalf of the minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others (AIR 1975 SC 2135 : (1976) 1 SCC 70) the Apex Court has observed as follows:

" No occasion for the issue of a writ of mandamus can arise unless the applicants show non-compliance with some mandatory provision and seek to get that provision enforced because some obligation towards them is not carried out by the authority alleged to be flouting the law."

It is further observed by the Apex Court as follows:

"In order to substantiate a right to obtain a writ of prohibition from a High Court or from this Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It is not enough if a wrong section or provision of law is cited in a notice or order if the power to proceed is actually there under another provision."

The same proposition of law has been reiterated recently in the decision reported in Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others ((2006) 4 SCC 278).

" It is settled by the decisions of this Court that a writ of prohibition will issue to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional."

15. As rightly contended by the learned Additional Advocate General though in the batch of writ petitions only issuance of writ of mandamus is sought for which in effect amounts to seeking of writ of prohibition only. In these batch of writ petitions, admittedly orders of detention are yet to be passed and the petitioners cannot speculate the grounds on which detention orders may be passed. Without even knowing the grounds of detention and the provisions of law contravened of which is made as a ground of detention are also not known and as such the alleged lack of jurisdiction on the part of the respondents cannot be presumed. It is not the case of the writ petitioners that the respondents 1 & 2 do not have jurisdiction to pass the order of preventive detention under the Black Marketing Act and therefore the authorities vested with statutory powers under the Act cannot be prevented from exercising such powers. Therefore, as laid down in Isha Beevi on behalf of the minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others (AIR 1975 SC 2135 : (1976) 1 SCC 70) if the petitioners

are to succeed they must first demonstrate total absence of jurisdiction to proceed on the part of the respondents. Therefore, in the considered view of this Court the above batch of writ petitions seeking issue of writ of mandamus forbearing the respondents from passing orders of detention under Section 3 (1) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 are not maintainable. The writ petitions are premature and not maintainable and accordingly the above batch of writ petitions stand dismissed.

16. However, W.P.No.35077 of 2004 stands on a different footing since, in this case, as pointed out above, the order of detention has already been passed and its validity is challenged at the pre-execution stage.

17. The question whether the detenu or anyone on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering to it has been examined by the Apex Court on various occasions. One of the leading judgments on the subject is Alka Subhash Gadia case. In paras 30, 31 & 32 of the said judgment, it was observed by the Apex Court as under:

“ 30.The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as

far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

31. Lastly, it is always open for the detenu or anyone on his behalf to challenge the detention order by way of habeas corpus petition on any of the grounds available to him. It is not, therefore, correct to say that no judicial review of the detention order is available. In the view we are taking which applies also to the cases under other laws, the stage at which the judicial review is made by the Court only stands deferred till after the order is executed. A ground on which a detention order is challenged which requires investigation and cannot be adjudicated without hearing the other side and without proper material, has necessarily to await decision till the final hearing. In such cases the operation of the order of detention by its very nature cannot be stayed pending the final outcome. The only proper course in such cases is to hear the petition as expeditiously as possible.

32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid,

the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well settled principles."

18. The Apex Court in Hare Ram Pandey Vs. State of Bihar and others (2004 SCC (Cri) 726) in para 10 has observed as follows:

" Para 10. In Sayed Taher Bawamiya v. Jt. Secy. to the Govt. of India (2000) 8 SCC 630 : 2001 SCC (Cri) 56) it was observed by the Apex Court as follows: (SCC p.632, paras 6-7)

"6 . This Court in Alka Subhash Gadia case was also concerned with a matter where the detention order had not been served but the High Court had entertained the petition under Article 226 of the Constitution. This Court held that equitable jurisdiction under Article 226 and Article 32 which is discretionary in nature would not be exercised in a case where the proposed detenu successfully evades the service of the order. The Court, however, noted that the courts have the necessary power

in appropriate cases to interfere with the detention order at the pre-execution stage but the scope for interference is very limited. It was held that the courts will interfere at the pre-execution stage with the detention orders only after they are prima facie satisfied--

(i) that the impugned order is not passed under the Act under which it is purported to have passed,
(ii) that it is sought to be executed against a wrong person,
(iii) that it is passed for a wrong purpose,
(iv) that it is passed on vague, extraneous and irrelevant grounds, or
(v) that the authority which passed it had no authority to do so.

7. As we see it, the present case does not fall under any of the aforesaid five exceptions for the court to interfere. It was contended that these exceptions are not exhaustive. We are unable to agree with this submission. Alka Subhash Gadia case 1 shows that it is only in these five types of instances that the court may exercise its discretionary jurisdiction under Article 226 or Article 32 at the pre-execution stage. The petitioner had sought to contend that the order which was passed was vague, extraneous and on irrelevant grounds but there is no material for making such an averment for the simple reason that the order of detention and the grounds on which the said order is passed has not been placed on record inasmuch as the order has not yet been executed. The appellant does not have a copy of the same and therefore it is not open to the petitioner to contend that the non-existent order was passed on vague, extraneous or on irrelevant grounds."

19. The Apex Court's decision in Union of India v. Parasmal Rampuria (1998) 8 SCC 402 : 1998 SCC (Cri) 1537) throws considerable light as to what would be the proper course for a person to adopt when he seeks to challenge an order of detention. In para 5 of the judgment it was observed as under:

"5. When the writ petition was filed, the respondent had not surrendered. Under these circumstances, the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India.

It is true as the learned Senior Counsel for the respondents submits that the appeal is partly heard before the Division Bench and the last hearing was over on 4-6-1997 and thereafter, the Bench has not reassembled. It is obvious that for the same neither the respondent nor the appellant is at fault. However, the fact remains that the detention order dated 13-9-1996 has still not been executed and the respondent has not surrendered. Under these circumstances, in our view, it will be appropriate to direct that the ad interim relief which is extended from time to time by the Division Bench of the High Court and which was continued all throughout, shall stand vacated. We also vacate the further orders of extension of interim relief and direct the respondent to surrender in the light of the detention order. After surrendering it will be open to the respondent to amend his writ petition and to take all permissible legal grounds to challenge the detention order and these grounds will have to be considered by the High Court on their own merits after hearing the parties. These appeals have been moved also against various extensions of interim relief orders passed by the Division Bench pending the appeal. All these extension orders are also set aside. We make it clear that we make no observation on the merits of the controversy centering round this detention order. The said controversy will have to be resolved by the High Court in the pending writ petition after hearing the contesting parties."

20. In Alka Subhash Gadia case the Apex Court has observed that :

"In the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it." (emphasis supplied).

21. A careful consideration of the above decisions and in particular the above observation of the Apex Court in Alka Subhash Gadia case makes it crystal clear that even in a case where the detenu learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court is not obliged to interfere with the impugned order at that stage and may still insist that the detenu should first submit to it.

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22. In this case, the contention of the learned senior counsel is that

- (i) the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is passed for a wrong purpose and
- (iii) that it is passed on vague, extraneous and irrelevant grounds.

In the counter affidavit filed in W.P.No.35077 of 2004 in paragraph 12 to 14 it is stated as follows:-

"12. I submit that these Respondent has not acted and ignored the object and purpose of the Black Marketing Act and only in order to restrict the unlawful activities by the petitioner who is smuggling the Public Distribution System Rice, the detention order has been passed against him.

13. I submit that the allegations in para 20,21,22 are denied except those that are specifically admitted. It is further submitted that the detention order has not been passed on irrelevant grounds or for wrong purpose. The detention order has been passed only with a view to prevent the Black Marketing of the Public Distribution System Rice which is meant for distribution to the poor people. The Government pays huge sum for purchase of these Public Distribution System Rice and distribute to the poor people at a subsidised rate.

14. I state that the Detaining Authority after a careful perusal of the Report filed by the Investigating Officer and on the materials placed before the Authority and after going through the Anticipatory Bail Order granted by this Hon'ble Court dated 8th day of October 2004 has passed the Detention Order against the Petitioner. The grant of anticipatory bail to the Petitioner by the Madurai Bench of Madras High Court was shown in the detention order itself."

Therefore, this Court is of the considered view that the correctness and sustainability of the above submissions made by the learned Senior Counsel for the petitioner and the correctness or otherwise of the above said averments contained in the counter affidavit cannot be gone into at this stage for the simple reason that the order of detention and the grounds on which the said order is passed has not been placed on record in as much as the order has not been executed, the petitioner does not have a copy of the same and therefore, it is not open to the petitioner to contend that the non-executed order was made on vague, extraneous and irrelevant grounds or it is not passed under the Act under which it is purported to have been passed or that it is passed for a wrong purpose. These questions are really hypothetical in nature when the order of detention has not been executed at all and challenge is made at pre-execution stage.

23. A reading of the decision of the Apex Court reported in Union of India v. Parasmal Rampuria (1998) 8 SCC 402 : 1998 SCC (Cri) 1537) and Hare Ram Pandey Vs. State of Bihar and others (2004 SCC (Cri) 726) and other similar line of cases shows that the Apex Court has not entertained any writ petition and granted

relief at the pre-execution stage when the grounds of detention are not made available by the petitioners for the perusal of the Apex Court, but in all such cases the Apex Court has invariably directed the detenu to surrender to the authorities first and then to challenge the order of detention by filing Habeas Corpus petitions. Therefore, in the light of the above said decisions of the Apex Court, this Court is not inclined to make any observation on the merits of the controversy centering around the impugned order of detention as the controversy has to be resolved only after perusing the grounds of detention. Accordingly, the writ petitioner is directed to surrender to the authorities pursuant to the impugned order of detention and then it is open to the petitioner to file Habeas Corpus petition if so advised or desirous of challenging the order of detention.

24. In W.P.No.50010 of 2006, Mr.D.Veerasekaran, learned counsel appearing for the petitioner submitted that the order of detention passed against Radhakrishnan a co-accused has been revoked and as such the petitioner in the above writ petition cannot be preventively detained under the Black Marketing Act. In the decision reported in Union of India Vs. Amrit Lal Manchanda (2004 SCC (Cri) 662) , the Apex Court has observed as under:-

" The reliance sought to be placed on the fate of proceedings taken against others is wholly inappropriate. The individual role, behavioural attitude and prognostic propensities have to be considered, personwise, and no advantage can be allowed to be gained by the petitioners in these cases based on considerations said to have been made as to the role of the others and that too as a matter of post-detention exercise undertaken so far as they are concerned.

The High Court does not appear to have considered the case in the background of whether any relief was available to the writ petitioner even before the order of detention was executed. Cases involving challenges to orders of detention before and after execution of the order stand on different footings."

Thus it is clear that the fact that co-accused Radhakrishnan's detention was revoked cannot be taken advantage of by the petitioner and seek the issuance of writ of mandamus as prayed for. The alleged order of revocation is not before this Court and even assuming that the detention order passed against the co-accused Radhakrishnan has been revoked it was the matter of post detention exercise undertaken so far as the said Radhakrishnan is concerned and cases involving challenges to orders of detention before and after execution of the order stand on different footing. Therefore, the contention of the learned counsel for the petitioner is liable to be rejected and accordingly rejected.

25. In W.P.No.12292 of 2007 a counter affidavit has been filed by the third respondent stating that pursuant to order of detention No.20/2007 dated 06.04.2007, passed by the District

Collector, Thiruvannamalai, the petitioner has been detained and has been confined in the Central Prison, Vellore. Since the order of detention has already been passed and the same has also been executed the above writ petition has become infructuous and accordingly the same is dismissed. However, it is open to the detenu to challenge the order of detention passed against him on permissible grounds by filing Habeas Corpus petition.

26. For the reasons stated above, all the writ petitions are dismissed. Consequently, the order of interim injunction granted in all the Miscellaneous Petitions are vacated and all the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kk

To

1. The Secretary to the Government of Tamilnadu,
Co-operation Food and Consumer Protection Department
Fort St. George, Chennai - 9.
2. The District Collector,
Tiruvannamalai District, Tiruvannamalai.
3. The Inspector of Police,
CSCID, Vellore, Vellore District
4. The District Collector,
Villupuram District,
Villupuram.
5. The Inspector of Police,
CSCID, Cuddalore,
Cuddalore District.
6. The District Collector,
Coimbatore District,
Coimbatore.
7. The Inspector of Police,
CSCID, Pollachi,
Coimbatore District.

8.The District Collector,
Theni District, Theni.

9.The Inspector of Police,
CSCID, Uthamapalayam.

10.The District Collector,
Cuddalore District,
Cuddalore.

11.The Inspector of Police,
CSCID, Coimbatore,
Coimbatore District.

12.The District Collector,
Krishnagiri District,
Krishnagiri.

13.The Inspector of Police,
CSCID, Krishnagiri,
Krishnagiri District,

14.The Inspector General of Police,
Civil Supplies CID,
Periyar Building, Nandanam,
Chennai.

15.The District Collector,
Vellore District, Vellore.

16.The Inspector of Police,
Ponnai Police Station,
Ponnai, Vellore District

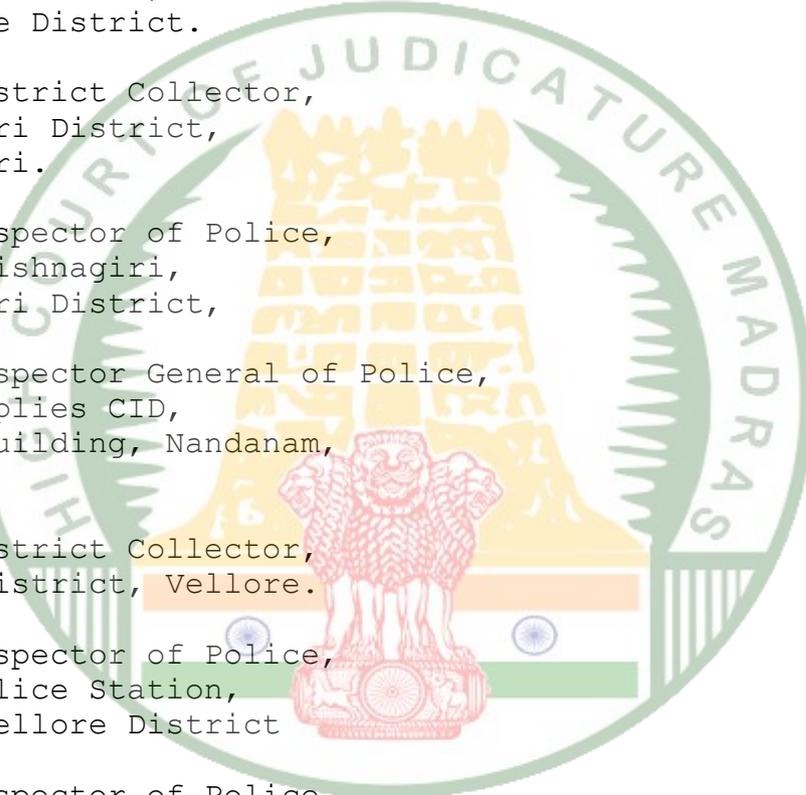
17.The Inspector of Police,
Kottur Police Station,
kottur, Pollachi Taluk,
Coimbatore District.

18.The District Collector,
Dharmapuri District,
Dharmapuri

19.The District Collector,
Erode District, Erode,

20.The District Collector,
O/o The Collectorate,
Tirunelveli District,
Tirunelveli

21.The Inspector of Police,
CSCID, Tirunelveli district,
Tirunelveli



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22.The District Collector,
Virudhunagar District,
Virudhunagar.

23.The Inspector of Police,
CSCID, Virudhunagar,

24.The Addl Director General of Police,
Civil Supplies CID,
E.V.R. Periyar Buildings,
Nandanam, Chennai 600 035.

25.The Addl Deputy Superintendent of Police,
Civil Supplies, CID, Madurai

26.The District Collector,
Tiruvallur District,
Tiruvallur.

27.The Collector,
Thuthukudi District,
Thuthukudi.

28.The Inspector of Police, CSCID,
Erode.

29. The Inspector of Police
CSCID, Cuddalore,
Cuddalore District.

1 cc to Mr.C. Prakasam, Advocate, Sr. 30577
1 cc to mr.R. Rajarathinam, Advocate, Sr. 30587
2 ccs to mr.D. Veerasekaran, Advocate, Sr. 30579
1 cc to the Government Pleader, Sr. 30574

Pre-Delivery Order in

Writ Petition Nos.12292, 11308, 11309, 11027, 12091,
14838, 12092, 4693, 4962, 5561, 6452 of 2007 and
3406, 24689, 38890, 36946, 36947, 29859,
29860, 22243, 39540, 49008, 38308, 39331,
17255, 22968 to 22970, 12425, 50010, 31780,
47920, 5331 of 2006 and 12708 of 2005 and 35077 of 2004
and

M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 of 2007 and
M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 of
2006 and

W.P.M.P.Nos.3623, 14019, 5722 of 2006 and W.V.M.P.No.2137 of 2006
and W.P.M.P.No.13893 of 2005 and W.P.M.P.No.42314 of 2004