

Krishna Murari Aggarwala

Vs

Union of India and Others

Writ Petition No. 84 of 1975

(N. L. Untawalia, Syed Fazal Ali JJ)

15.07.1975

JUDGMENT

FAZAL ALI, J. -

1. By an order dated November 8, 1974 passed by the District Magistrate, Badaun, the petitioner was detained under Section 3(1) (a) (iii) of the Maintenance of Internal Security Act, 1971 - hereinafter referred to as 'the Act' - because the allegations made in the grounds of detention disclosed that he had committed acts prejudicial to the maintenance of supplies and services essential to the community. The grounds of the order of detention were served on the petitioner by the District Magistrate, Badaun, on November 13, 1974. The State Government approved the order of detention on November 19, 1974 and made a report to the Government of India on November 22, 1974. According to the respondents, the Government of U. P. had made a reference to the Advisory Board constituted under the Act on November 22, 1974 but as it had not received the representation from the petitioner, the same was forwarded later. The representation according to the respondents, was received on November 28, 1974 which was rejected on December 6, 1974. The representation was sent to the Advisory Board on December 18, 1974 which gave its report holding that the grounds were sufficient for detention of the petitioner and after receipt of the opinion of the Advisory Board on January 7, 1975 the order of detention was finally confirmed by the Government on January 17, 1975.

2. We might mention at the very outset that there was some controversy on two points before us. In the first place the petitioner did not accept the stand of the Government that the reference to the Advisory Board was made on November 22, 1974, but relied on a counter-affidavit filed by Mr. S. K. D. Mathur, the then District Magistrate of Badaun, in this Court to support his plea that the reference to the Advisory Board was made on December 20, 1974, vide paragraph 2(vi) of the counter-affidavit appearing at p. 118 of the Paper Book. It was therefore contended by the learned Counsel for the petitioner that as the reference was made to the Advisory Board beyond the period mentioned in Section 10 of the Act, there being a violation of the mandatory provision of the statute, the order of detention fell on this ground alone. We gave an opportunity to the Government to produce before us materials to show the exact position and from the original file produced before us we find that the counter-affidavit filed by Mr. S. K. D. Mathur in this Court to the effect that the reference was made to the Advisory Board on December 20, 1974 was factually incorrect and that the reference was really made November 22, 1974 by the Government by virtue of letter No. 107/2/48/74. The file also contains a letter of the Registrar dated January 7, 1975 forwarding the opinion of the Advisory Board wherein also it was mentioned that the reference was made on November 22, 1974. In view of these cogent materials Mr. Sen learned Counsel for the petitioner did not choose to press this point. We cannot, however, leave this matter without expressing our

strong disapprobation on the careless and irresponsible manner in which the counter-affidavit has been filed by the respondents, particularly by Mr. S. K. D. Mathur who happened to be the then District Magistrate, Badaun. We hope the Government will be careful in future and see that such incorrect affidavits are not filed before this Court, which may create unnecessary confusion and controversy and make a simple issue so very much involved.

3. The petitioner was admittedly a partner of the firm called Bharat Oil Company which was dealing in the storage and sale of high speed diesel oil since 1965. According to the petitioner the business was started at Badaun and Ujhani but later a branch was opened at Bareilly and the firm transferred its headquarters to Bareilly in 1971. We are not, however, concerned with the business at Bareilly on this case. Under the Petroleum Act, 1934, the petitioner could have carried on his business only after obtaining a licence from the prescribed authority. The district authorities could grant licence only to the extent of 22,000 litres but if the dealer wanted to store high speed diesel oil to the extent of more than 22,000 litres he had to get a licence from the Chief Controller of Explosives, Nagpur. The petitioner's further case is that as high speed diesel oil ran in short supply, the Indian Oil Corporation and the district authorities impressed on the dealers the necessity of keeping light diesel oil which was available in sufficient quantities and was necessary for running crushers and pumps in the rural areas. The petitioner had undoubtedly secured a licence for storage of light diesel oil which was valid upto March 31, 1975 and had applied for renewal of the licence thereafter and had also complied with all the necessary formalities about no objection and the safety certificate to be given by the district authorities. But on the date in question the licence of the petitioner had not been renewed so far. We might mention in this connection that the stand taken by the respondents is that although the petitioner had a licence to store light diesel oil to the extent of 22,000 litres he did not possess any licence for storing it at Ujhani. It appears that the godown of the petitioner was searched by the excise authorities on October 17, 1974 and November 5, 1974 and on inspection of the godown about 1.64 lakh litres of light diesel oil was found stored at Ujhani. The stock register was produced by the petitioner before the authorities which appeared to be in order and there is no allegation that there was any manipulation or interpolation in the stock register. Thus the simple allegation against the petitioner is that he had stocked huge quantity of light diesel oil without waiting for the licence to be cleared by the Chief Controller of Explosives at Nagpur. This forms the subject-matter of the allegations mentioned in grounds Nos. (1) (a) and (b) of the grounds of detention served on the petitioner. The sheet-anchor of the argument of Mr. Sen learned Counsel for the petitioner was that in so far as ground No. (1) was concerned it was wholly irrelevant and totally unconnected with the nexus of the Act, because even if the grounds be taken at their face value they did not disrupt or disturb the essential supplies to the community. Before dealing with this contention it may be necessary to quote in extenso the grounds mentioned in (1) (a) and (b) of the detention order :

(1) That you a partner in the firm named Bharat Oil Company, Mohalla Ayodhya Nagar, Ujhani District Budaun, on Bareilly-Mathura Road, authorised only to deal in High Speed Diesel and Motor Spirit were found hoarding Light Diesel Oil, without having obtained a licence for the same from the Chief Controller of Explosives, Nagpur as is evident from the following :

(a) On October 17, 1974 at about 4 p.m. the premises of your aforesaid firm was inspected by Sri S. N. Pandey, District Excise Officer, Badaun and it was found that in the underground tanks within the premises mentioned aforesaid 96000 litres of Light Diesel Oil was stored, for which no licence could be produced on demand by the District Excise Court of the Chief Judicial Magistrate, Badaun, by the District Excise Officer on November 8,

1974.

(b) On November 5, 1974 the premises of your aforesaid firm Bharat Oil Company, Ujhapi, was again inspected at about 4.15 p.m. by Sri N. N. Verma, S. D. M., Badaun accompanied by District Excise Officer Badaun and Sri Fateh Singh, Dy. S. P. Badaun and it was found that 68,000 litres of Light Diesel Oil had during October 17, 1974 to the time of this inspection been added to the store kept by you of the said Light Diesel Oil of 96,000 litres, in three underground tanks within the premises mentioned aforesaid and no licence could be produced on demand by the S. D. M. Badaun. For this also, a complaint has been lodged by the S. D. M. Badaun in the Court of Judicial Magistrate II, Badaun on November, 8, 1974.

Analysing these grounds it would appear that there is no allegation by the detaining authority that by storing the huge quantity of light diesel oil the petitioner had in any way affected the distribution or sale of that commodity, nor is there any allegation to show that the petitioner had refused to sell light diesel oil to anybody who required it. The High Court who was moved in the first instance for a writ of habeas corpus appears to have drawn an inference based purely on speculation that the petitioner had transferred huge quantities of light diesel oil from his depot at Badaun to his godown at Ujhani. There is, however, no material on the basis of which the High Court could have drawn such an inference. There is, however, no suggestion, far less any allegation, in these grounds that the petitioner had tried to divert his stocks of light diesel oil from Badaun to Ujhani and thereby deprived the people of Badaun of their share of the light diesel oil. In these circumstances, therefore, we are satisfied that there is absolutely no co-relation between the act of the petitioner and the disruption or distribution of the essential supplies to the community. The learned Counsel appearing for the respondents submitted that by storing such huge quantities of light diesel oil in Ujhani the petitioner has committed a clear violation of the mandatory provisions of the Petroleum Act and the Rules made thereunder and must be presumed to have disrupted the essential supplies because light diesel oil had been declared by the order of the Government of U. P. to be an essential commodity. We are, however, unable to agree with this argument. Mr. Sen appearing for the petitioner does not dispute that the light diesel oil was an essential commodity, but his argument was that he has in no way tried to disrupt the essential supplies of this commodity and he merely committed a technical offence in storing the quantities of light diesel oil in anticipation of the licence which had been cleared by the district authorities and which awaited the sanction of the Chief Controller of Explosives, Nagpur and which would have in normal routine been granted. It is also admitted in the ground itself that a complaint had been lodged in the Court of the Chief Judicial Magistrate against the petitioner for the storage. We have already held in several cases that the commission of an offence at a private place or a violation of a provision of law by itself does not attract the Act unless by the act committed by the petitioner the essential supplies to the community are disrupted or even flow of the life on the community is disrupted. Reading grounds Nos. (1) (a) and (b) we are unable to hold that they are in any way germane or relevant to the disruption of maintenance of essential supplies to the community. In *Manu Bhusan Roy Prodhan v. State of W. B.* ((1973) 3 SCC 663 : 1973 SCC (Cri) 469) this Court observed as follows : [SCC p. 667 : SCC (CRI) p. 473, para 13]

This kind of a solitary assault on one individual, which may well be equated with an ordinary murder which is not an uncommon occurrence, can hardly be said to disturb public peace or place or public order in jeopardy, so as to bring the case within the purview of the Act. It can only raise a law and order problem and no more; its impact on the society as a whole cannot be considered to be so extensive, widespread and forceful as to disturb the normal life of the community thereby rudely shaking the balance tempo of the orderly life of the general public. This ground is, therefore, not at

all relevant for sustaining the order of detention for preventing the petitioner from acting in a manner prejudicial to the maintenance of public order.

The ratio of this case fully tallies with the facts of the present case where also grounds Nos. (1) (a) and (b) taken at their face value appear to be irrelevant and do not disclose any causal connection with the disruption of the essential supplies to the community.

4. We now take up the other ground, namely, ground No. (2), which is as follows :

(2) That you as partner of the firm M/s. Bharat Oil Company located at Badaun licensed at Badaun to deal with Light Diesel Oil and required by Rule 9(1) of the U. P. Essential Commodities (Price Display and Control of Supply and Distribution) Order, 1971, as amended by Second Amendment dated June 13, 1973 framed under Rule 114(2) of the Defence of India Rules, 1971 to issue every purchaser a correct receipt showing, inter alia, the name and address of the customer were found to have sold Light Diesel Oil repeatedly without complying with the said requirement and with the object make fictitious sale of the Light Diesel Oil a scheduled commodity within the meaning of the said order, as is evident from the following :

(i) Cash memo no. 62 dated 8-8-74) (II) Cash memo no. 63 dated 14-8-74) (iii) Cash memo no. 134 dated 7-10-74) Name and address of the (iv) Cash memo no. 135 dated 7-10-74) customer not given. (V) Cash memo no. 145 dated 7-11-74) (vi) Cash memo no. 146 dated 7-11-74)

This ground no doubt disclosed a clear overt act on the part of the petitioner from which an inference can be drawn that the petitioner had made a number of fictitious sales. The details of the cash memos do not disclose the names and addresses of the customers, as required by the rules. The petitioner has himself admitted in paragraph 13 of his petition filed in this Court that there had been a violation of the U. P. Sale of Motor Spirit Taxation Act and the Rules made thereunder but he sought to explain the omission on the ground that it was due to the mistake of the munim and the quantities alleged to have been sold were actually purchased by the petitioner himself for the use of the pumps in his own agricultural farm. This explanation does not appear to be convincing at all. From the file produced before us by the respondents it appears that the total amount of sale of light diesel oil under these cash memos mentioned in the ground comes to 21,500 litres. We find it impossible to believe that the petitioner would consume such a huge quantity of light diesel oil for his personal agricultural farms particularly when the petitioner had given no details of the number of farms and other machines for which this oil was said to be used. In these circumstances there can be no doubt that these were fictitious sales made by the petitioner with a view to hoard light diesel oil and by his conduct the persons who were in genuine need of light diesel oil were deprived of the same. Ground No. (2, therefore, is quite specific, but the difficulty is that in view of our finding that ground No. (1) is irrelevant it is not possible to determine as to what extent the subjective satisfaction of the detaining authority was influenced or affected by ground No. (1) which has been found by us to be extraneous and irrelevant. It has been held by us in several cases that where out of two grounds one ground is vague or irrelevant, then the entire order of detention falls to the ground. In this view of the matter the order of detention suffers from this serious infirmity and must be quashed.

5. Secondly it was argued by the learned Counsel for the petitioner that on the materials produced before us the subjective satisfaction of the detaining authority has also not been established. To

begin with it is not clear at all as to who passed the order of detention and who was satisfied regarding the sufficiency of the grounds. In the second place the grounds appear to have been served by Mr. R. C. Arora the permanent District Magistrate of Badaun who has also signed the same which shows that he was the detaining authority also. On a consideration of those two points we are of the opinion that the contention of the learned Counsel for the petitioner is well founded and must prevail. Coming to the first point we find that Mr. S. K. D. Mathur has clearly alleged in his counter-affidavit that Mr. R. C. Arora the permanent District Magistrate of Badaun had proceed on leave from October 21, 1974 to November 11, 1974 and during his absence the deponent S. K. D. Mathur was acting as the district Magistrate of Badaun. It is further stated in the affidavit that Mr. R. C. Arora rejoined his duty on November 12, 1974 and took charge of his office. The order of detention, however, appears to have been passed while Mr. S. K. D. Mathur was officiating as District Magistrate of Badaun and Mr. Mathur makes no secret of the fact that the order of detention was passed by him after being satisfied of the grounds of detention. In the counter-affidavit submitted by Mr. S. K. D. Mathur before the High Court, which is Annexure D at p. 66 of the Paper Book Mr. Mathur categorically stated that he himself had passed the detention order after recording his satisfaction. In this connection paragraph 1 of the counter-affidavit before the High Court is as follows :

That the deponent was District Magistrate, Badaun on November 8, 1974, and he has passed the detention order against the petitioner after being fully satisfied that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and as such he is well acquainted with the facts deposed to below.

This allegation is reiterated and over-emphasised in paragraph 34 of the same affidavit wherein Mr. Mathur makes a categorical averment which is as follows :

. . . the deponent submits that in his capacity as the District Magistrate he was fully competent to make the impugned order of detention. The deponent further submits that on the basis of the evidence and the material placed before him, to which he has referred above he was personally and fully satisfied as to the existence of sufficient basis to make the impugned order with a view to prevent the petitioner from indulging in activities prejudicial to the maintenance of essential services and supplies.

In this very affidavit Mr. Mathur goes on to state that he had also framed draft of the grounds on November 8, 1974 and that Shri R. C. Arora who took over on November 12, 1974, served theses grounds on the petitioner which were drawn by the deponent Mr. S. K. D. Mathur. In this connection the averment runs as follows :

Sri R. C. Arora took over the charge on November 12, 1974 and under his signature Sri Arora served this same grounds which the deponent had earlier drawn upon the petitioner.

According to the clear and categorical averments made by Mr. S. K. D Mathur in his affidavit before the High Court the only role which was assigned to Mr. R. C. Arora the permanent District Magistrate was that he signed the grounds served them on the detenu. In other words, according to Mr. S. K. D. Mathur, Mr. R. C. Arora was merely the serving officer and did not perform any other function so far as the order of detention passed against the petitioners was concerned and yet this officer is imprudent enough to allege in paragraph 25 of the counter affidavit filed in this Court that

the order of detention was passed not only by him but by the two detaining authorities, namely, Mr. R. C. Arora and Mr. S. K. D. Mathur. In this connection Mr. Averted as follows :

That the order of detention was passed by the detaining authorities after they had fully satisfied themselves about the existence of the grounds.

It would thus appear from this averment that the order of detention was not passed by a single person but by more than one person and taking the fact mentioned by the dependent it would appear that the order of detention appears to have been passed in two stages - in the first instance by Mr. S. K. D. Mathur who was full-fledged District Magistrate on number 8, 1974 when the order of detention was passed, but who according to his own statement had first prepared a draft on grounds. The order of the detention was signed by Mr. R. C. Arora on November 13, 1974 and served on the detenu. While Mr. S. K. D. Mathur took the clearest possible stand before High Court that he alone had made the order of detention and he alone was satisfied about the sufficiency of the grounds, but in his affidavit before this Court he seems to suggest that there were two detaining authorities both of whom were satisfied. This shows the casual and the cavalier manner in which the order of the detention against the petitioner appears to have been passed in this case. Even if the order had been made by Mr. S. K. D. Mathur and signed by him, there could have been no objection in Mr. R. C. Arora serving the grounds on the petitioner, because the law does not require that the person who actually signs the order of the grounds must also serve the same on the detenu. But in this case it is not possible to determine as to who in fact made the order of detention.

6. It is trough that the Court cannot go behind the subjective satisfaction of the detaining authority, but such satisfaction does not confer a blanket power which may authorise the detaining authority to act in a ruthless or arbitrary fashion and the judicial decisions have undoubtedly carved out an area, though limited. Within which subjective satisfaction of the detaining authority can be tested on the touchstone of objectivity. It is obvious that the subjective satisfaction of the detaining authority is a sine qua non for the exercise of power of detention and it has got to be exercised properly and discreetly. In *Khudiram Das v. State of W. B.* ((1975) 2 SCC 81 :1975 SCC (Cri) 435) this Court made following observations : [SCC p. 91 : SCC (Cri) p. 445, 9]

The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

In the instant case, in view of the contradictory stand taken by the detaining authorities, we are satisfied that the exercise of jurisdiction to detain the petitioner has not been made with due care and caution or in a proper and fair manner. On this ground also the order of the detention stands vitiated.

7. Section 3(1) of the Act runs thus :

3. (1) The Central Government or State Government may, -

(a) if satisfied with respect to any other person (including a foreigner) that with a view to preventing him from acting from any manner prejudicial to -

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India;

it is necessary so to do, make an order directing that such person be detained.

This power can also be exercised by the officers mentioned in sub-section (2), and in the instant case we are concerned with the District Magistrate. The words "make an order directing that such person be detained" clearly postulate three conditions-(i) that the order must be made by the authority mentioned in Section 3; (ii) the order must be duly signed by the said authority; and (iii) that only one authority and one authority alone can pass such order of detention. The statute does not contemplate a sort of composite or a joint order passed by several authorities. In the instant case the original order of detention passed by Mr. S. K. D. Mathur bears his signature and even the grounds mentioned bear his signature. In these circumstances we are unable to except the affidavit of Mr. S. K. D. Mathur that the ground framed by him were merely draft grounds prepared by him which were signed by the permanent District Magistrate later. It is obvious that unless the order made and the grounds prepared are signed by the authority concerned, the order is not made as contemplated by Section 3 of the Act. Furthermore, since the order is based on grounds to be served on the detenu, the order of detention could be passed only if the grounds are in existence and are prepared contemporaneously, otherwise the order of detention becomes purely illusory. In view, however, of the contradictory affidavits given by Mr. S. K. D. Mathur, it is difficult to determine whether Mr. S. K. D. Mathur or Mr. R. C. Arora passed the order of detention and as to who among them was satisfied regarding the grounds of detention. This is also a very serious infirmity from which the order of detention suffers and as a result of which the order has to be set aside. There appears to us to be a clear violation of the provisions of Section 3 of the Act in this case.

8. Lastly we may mention that although the petitioners has pleaded the question of mala fides in the instant case, it is not necessary for us to decide the same in the view we take in this case, and that is why it was not seriously pressed by Mr. Asoke Sen in the course of his arguments before us.

9. For the reasons given above, we allow the petition and quash the order of detention passed against the petitioner on November 8, 1974 and direct the petitioner to be released forthwith.

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