Smt. K. Aruna Kumari

Vs

Government of Andhra Pradesh and Others

Writ Petition (Criminal) No. 529 of 1987

(A. P. Sen, L. M. Sharma JJ)

11.11.1987

JUDGMENT

SHARMA, J. –

1. K. Madhava Rao, husband of the petitioner, has been detained under Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. The petitioner filed an application under Article 226 of the Constitution before the Andhra Pradesh High Court for a writ of habeas corpus which was dismissed on July 18, 1987. The special leave petition is directed against the said order. The petitioner has also challenged the detention order by the application under Article 32 of the Constitution before this Court in Writ Petition (Criminal) No. 529 of 1987.

2. The grounds served on the detenu for making the detention order dated March 15, 1987 allege that he (the detenu Madhava Rao) undertakes contract works of various types under South Central Railway (SCR) and indulged in clandestine business of diversion of levy cement meant for use in the Masonry Ballast Wall along the railway track on the suburban section between Kachiguda and Falaknuma Railway Stations, and thus acted in a manner prejudicial to the maintenance of supplies of cement, an essential commodity. The facts mentioned are, that on receipt of an information on December 18, 1987 that levy cement was being transferred into non-levy cement bags for its diversion to works not intended, the Inspector of Police, Vigilance Cell with his staff made a surprise visit in presence of witnesses at about 1 p.m. the same day, to the site of a private building under construction, and found the information passed on to him to be correct. On inquiry it was discovered that a house belonging to one Smt. Mahati Singh, daughter of Y. Krishna Murthy, Divisional Railway Manager, was under construction under the supervision of the detenu, and the levy cement transferred into non-levy cement bags, was being stored in a nearby shed for use in the named Varala Yollaiah, was kept there as guard. The detenu was supervising the construction of the house through his employee James George. The workmen engaged in the work were also examined by the police. The facts which came to light indicated that two days earlier, that is, on December 16, 1986, 200 bags of levy cement reached the site and were unloaded in the shed. James George instructed the labourers to transfer the cement into non-levy cement bags, and his instruction was carried out on the following day, December 17, 1986 and non-levy cement bags were restitched. Yollaiah, the watchmen, further stated that the cement was sent by the detenu through James George who had informed the witness that cement on two other lorries had also been unloaded in the nearby Kakatiyanagar and stored in a room belonging to one Nageshwar Rao for similar misuse. On receiving this information the Police Inspector raided the plot in Kakatiyanagar mentioned by the witness and recovered 400 bags of levy cement. A criminal case under Clauses 12 and 13 of the A. P. Levy Cement Distribution (Licensing and Regulation) Order, 1982, read with Sections 7 and 8 of

the Essential Commodities Act 1955 was commenced, and further investigation proceeded.

3. The investigation continued for three months till March 18, 1987. Smt. Mahati Singh and her father Y. Krishna Murthy were also examined by the police and they confirmed that the detenu Madhava Rao was looking after the construction of Smt. Mahati Singh's house. The evidence collected by the police indicated that 1000 bags of levy cement was handed over to the detenu through his employee Babu on December 16, 1986 and out of this stock 600 bags on three lorries were despatched to Habshiguda, which were discovered by the Inspector on December 18, 1986. Both Madhava Rao and his servant James absconded and were ultimately arrested on March 18, 1987, when the detenu is alleged to have confessed before the Inspector of Police. The detenu was released on bail the following day, that is, March 19, 1987. All these facts were mentioned in the grounds and it was stated that on a consideration of the entire circumstances the District Magistrate was of the opinion that mere launching of the criminal case against the detenu would not effectively prevent him form acting in a manner prejudicial to the maintenance of supplies of cement. The order was later confirmed by the Advisory Board.

4. The detenu filed his first representation on May 20, 1987 which was rejected by the State Government as also the Advisory Board later. In the meantime a writ application being W.P. No. 6636 of 1987 was filed before the High Court on June 1, 1987 challenging the detention order. The writ petition in this Court was filed on July 13, 1987.

5. A second representation on behalf of the detenu was filed by his cousin P. Lakshmana Rao on June 5, 1987, in which a prayer was made for revocation of the detention order. It has been contended on behalf of the petitioner that it was the duty of the Central Government to consider and dispose of this representation promptly which was not done. It is said that the representation remained unattended, until the State Government reminded the Central Government in this regard after filing of the present writ petition and it was only then that the Central Government rejected the same on September 2, 1987. The reply is that by this representation the detenu's cousin merely reiterated the points already taken in the first representation of the detenu which had been after consideration dismissed, and it was, therefore, not necessary to deal with the same points over and over again. Besides, this representation also was considered and rejected by the Central Government later.

6. Mr. Tarkunde, learned counsel for the petitioner, challenged the order of detention on the grounds of : (i) delay of about five months in passing the order, (ii) the allegation against the detenu of diverting levy cement for private use being incorrect, (iii) the second representation filed by the detenu's cousin having remained undisposed of by the Central Government for about three months, (iv) the sponsoring officer's default in not placing all the relevant facts before the detaining authority before the impugned order was passed, and (v) the order having been passed on the basis of a solitary incident. During his argument the learned counsel did not press the last point and it is, therefore, not necessary to deal with it except pointing out that having regard to the statement made by the detaining authority, the District Magistrate, that in view of the circumstances of the case including the fact that the detenu was engaged in executing many contract woks for Railways, it was essential for preventing him from indulging in subversive acts similar to the one stated in the grounds, to detain him, there is no merit in the point which was rightly not pressed.

7. Mr. Tarkunde strenuously urged that in view of the long delay of about five months from the alleged incident on December 18, 1986, in passing of the impugned order, the same is fit to be quashed. Learned Advocate General, appearing for the State of Andhra Pradesh, pointed out that the

detenu was absconding for three months until he was arrested on March 18, 1987. In reply to the argument that the detenu could not have been absconding, as this fact does not appear to have been mentioned in the orders of the criminal court dealing with the bail applications, the learned Advocate General placed before us the case diary of the criminal case in which the accused Madhava Rao was stated to be absconding on several dates from December 1986 to March 1987. By way of illustration, the letter of the Inspector of Police dated December 26, 1986 addressed to the Public Prosecutor, High Court, Hyderabad may be seen wherein it was stated in paragraph 6 that Madhava Rao and James were absconding since the date of commission of the offence. In the next letter dated January 1, 1987 they were again described as absconding. The copy of the diary Part I dated January 12, 1987 states that nobody was supplying the whereabouts of Madhava Rao. Similarly the diary dated January 15, 1987 mentions that Madhava Rao contractor was absconding and his employees were also not available. The search for the absconding persons was being continued throughout February and March 1987 till the detenu was arrested as is fully supported by the case diary of later dates. In the meantime two applications for anticipatory bail were filed one after the other on behalf of Madhava Rao before the criminal court and it is true that the orders passed thereon did not state that the accused was absconding, but for that reason the diary of various dates mentioning the fact cannot be ignored an it is not legitimate to claim that Madhava Rao was not absconding. We repeatedly asked learned counsel for the petitioner to show any material indicating that the detenu as present on any date before the criminal court or was available to the police but it was conceded that there was no such document. In the second application for anticipatory bail reliance was placed on a medical certificate issued by a doctor. The diary indicates that the police inquired from the doctor on March 3, 1987 about the same pointing out that the accused was an absconder. There was, therefore, no doubt at all that in the police records the detenu was considered to be an absconder throughout till his arrest on March 18, 1987. The affidavit of the District Magistrate filed before the High Court indicates that the further investigation in the case continued even after the arrest of Madhava Rao and the details of the ownership of the house in construction and the neighbouring shed and other similar relevant information could be collected only later and thus the investigation was complete on May 13, 1987. The matter was placed before the District Magistrate on May 14, 1987 and he passed the impugned order on the following day, that is, May 15, 1987. Having regard to the circumstances, there is not doubt that the respondents have satisfactorily explained the delay in passing the order. The delay cannot by itself vitiate the decision to detain a person and this is fully demonstrated by the cases of Rajendra Prashad v. State of U. P. ((1981) 4 SCC 558 : 1981 SCC (Cri) 870) wherein the order was passed after seven months, Smt. Hemlata Kantilal Shah v. State of Maharashtra ((1981) 4 SCC 647 : 1982 SCC (Cri) 16) and Malwa Shaw v. State of W. B. (AIR 1974 SC 957 : (1974) 4 SCC 127 : 1974 SCC (Cri) 265) wherein the orders of detention were passed five months later. The first point urged on behalf of the petitioner, therefore, is rejected.

8. In support of his second point Mr. Tarkunde contended that it is open to the petitioner to show that the levy cement which was being transferred into non-levy cement bags did not belong to Madhava Rao, and the impugned order having been passed on that assumption is, therefore, fit to be quashed. In other words, the learned counsel said, that the ground mentioned for the detention being non-existent the application must succeed. Reliance was placed on a certificate dated June 23, 1987 of the office of the Divisional Railway Manager (Works), Hyderabad in reply to a letter by one K. Eswara Rao that 1000 bags of cement issued to him on December 16, 1986 was Puzzolon Portland Cement, Pyramid Brand of Pariyan Company and it was urged that as the 5 empty bags having the marks of "Ajanta Brand Kesoram, Basant Nagar (A.P.) Portland Pozzolana Cement" as stated in the panchnama (page 82 of the paper-book of the writ petition) was found by the police, it must be

assumed that the levy cement which was being transferred to empty bags was not the same which was issued to the detenu. Learned Advocate General, appearing for the respondent State, replied that there was sufficient material on the records of the case on the basis of which the detaining authority could have legitimately assumed that the cement in question was part of the cement issued to Madhava Rao. Before examining the point urged on behalf of the petitioner on merits, it must be pointed out that this Court while considering petitioner's writ application is not sitting in appeal over the detention order, and it is not for us to go into and assess the probative value of the evidence available to the detaining authority. Of course, a detention order not supported by any evidence may have to be quashed, but that is not the position here. There was clearly sufficient material before the District Magistrate to justify the forming of his opinion as stated earlier. The question was not raised in the writ petition filed before the High Court, and the plea based upon the brand of cement was belatedly taken in the case and has been dealt with at some length in the judgment of the High Court which is under challenge in the special leave petition. We do not consider it necessary to repeat them but we would mention briefly the argument of the learned Advocate General which appears to be well founded. Our attention was drawn to the gatepass (page 154 of the paper-book of the writ petition) showing the issuance of the levy cement "to the contractor", that is, Madhava Rao, which was signed by Mohammad Chand on behalf of the Railways and Babu, Madhava Rao's employee. This does not mention the name of Eswara Rao, the other employee of the contractor. It is not denied on behalf of the detenu that he has been executing many contract works for the Railways, and therefore it cannot be presumed that the same consignment was the subject matter of the gatepass as well as the certificate relied upon on behalf of the petitioner. The point now urged on the basis of the brand of cement was taken on behalf of the petitioner belatedly as mentioned earlier. Besides, the detenu accepted the allegations against himself in his statement recorded under Section 161 of the Code of Criminal Procedure. It is true that it may not be a legally recorded confession which can be used a substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention. The records further show that the oral evidence of the watchman and the labourer engaged in the house construction proved that it was the levy cement issued to the detenu which was being diverted at this instance. Before closing this chapter it may be re-stated that the sufficiency of the materials available to the detaining authority is not to be examined by the court.

9. So far as the second representation filed by Madhava Rao's cousin Lakshmana Rao is concerned, it has in fact, been disposed of by the Central Government but about 3 months later after its filing. It war argued that Section 14 of the Act clothes the authority with the power of revoking the detention order and such a power carries with it the duty to exercise it wherever and as soon as changed or new factors call for the exercise of that power. Reliance was placed on the observations of this Court at page 786 (SCC p. 207) in Haradhan Saha v. State of West Bengal ((1975) 1 SCR 778 : (1975) 3 SCC 198 : 1974 SCC (Cri) 816 : AIR 1974 SC 2154) and those in paragraph 9 of the judgment in Sat Pal v. State of Punjab ((1982) 1 SCC 12, 17 : 1982 SCC (Cri) 46). It is true that such a power coupled with the duty exists but the duty to exercise it arises only where new and relevant facts and circumstances come to light. This was not so here, and as observed in para 13 of the judgment in State of U. P. v. Zavad Zama Khan ((1984) 3 SCC 505 : 1984 SCC (Cri) 425), there is no right in favour of the detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. In any event no period of limitation is fixed for disposal of an application under Section 14 and as we have seen earlier the second representation filed by Lakshmana Rao indeed, was considered and rejected.

10. On behalf of the petitioner it was next contended that the fact that both Krishna Murthy and Smt. Mahati Singh had retracted their alleged statements before the police implicating Madhava Rao

and the order in the criminal case granting bail to the detenu conditionally, were not placed before the detaining authority which has vitiated the detention order. It is claimed that as a matter of fact the aforesaid two persons never made any statement before the police or anybody else connecting Madhava Rao with the construction of Smt. Mahati Singh's house and it is incorrect to say that they were ever questioned by the police as alleged. Reference was made to the order passed in the criminal case on the anticipatory bail application of the detenu in which there is no such statement. The learned counsel argued that the absence of such a reference in the order leads to the conclusion that the police never examined them.

11. The High Court has rightly repelled a similar argument, pointing out that in the application for anticipatory bail of Smt. Mahati Singh it was categorically stated that the vigilance police had gone to the residence of her father and thoroughly interrogated her and her father. Krishna Murthy also made a similar statement in his application for anticipatory bail. It will, therefore, be idle to suggest otherwise merely for the reason that the criminal court did not choose in its order to mention these facts. Besides, it has long been established that he subjective satisfaction of the detaining authority as regards the factual existence of the condition on which the order of detention can be made, namely, the grounds of detention constitute the foundation for the exercise of the power of detention and the court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the court, on a review of the grounds, substitute its own opinion for that of the authority. In the instant case the ground of detention is only one, viz. the detenu was acting prejudicial to the maintenance of supplies of commodity, that is, levy cement, essential to the community by diverting it to the open market. The grounds of detention served along with the order are nothing but a narration of facts. The question whether the detenu was acting in a manner prejudicial to the maintenance of supplies essential to the life of the community is a matter of inference to be drawn from facts. The learned Advocate General was fair enough to accept before us that the applications for grant of anticipatory bail moved before the criminal court were not placed before the detaining authority. Even so, it could not be said that there was no material upon which the subjective satisfaction of the detaining authority could be based. It appears from the grounds, i.e., the facts set out that the detenu had made a statement admitting that he had diverted 600 bags of levy cement issued to him for use in the masonry ballast wall along the railway track and therefore the District Magistrate was justified in coming to the conclusion that he (the detenu) was acting in a manner prejudicial to the maintenance of supplies of the commodity essential to the community. The three decisions in Ashadevi v. K. Shiveraj, Addl. Chief Secretary to the Government of Gujarat ((1979) 2 SCR 215 : (1979) 1 SCC 222 : 1979 SCC (Cri) 262 : AIR 1979 SC 447), Mohd. Shakeel Wahid Ahmed v. State of Maharashtra ((1983) 2 SCR 614 : (1983) 2 SCC 392 : 1983 SCC (Cri) 509 : AIR 1983 SC 541) and Kurjibhai Dhanjibhai Patel v. State of Gujarat ((1985) 1 Scale 964) were cases where there was failure on the part of the sponsoring authority in not furnishing the relevant material to the detaining authority which was a vitiating factor. This Court had occasion to deal with them in Pushpadevi M. Jatia v. M. L. Wadhawan, Addl. Secretary, Government of India ((1987) 3 SCC 367 : 1987 SCC (Cri) 526) in para 12 of its judgment. These decisions proceed on the well settled principle that if 'material and vital facts' which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed, it would vitiate the subjective satisfaction rendering the detention order illegal. That is not so in the present case. There was ample material before the District Magistrate for him to base his subjective satisfaction as to the necessity for passing impugned order, as stated by him in his affidavit.

12. We do not find any merit in the case for quashing the impugned detention order and accordingly both the writ petition and the special leave application are dismissed.

</html