

Bannalal Vahilda Chavla

Vs

Union of India

Writ Petition (Crl.) No. 51 of 1999

(G. T. Nanavati, S. N. Phukan JJ)

29.07.1999

JUDGMENT

G.T. Nanavati, J. –

1. The petitioner is challenging in this petition and order of detention passed against him by the District Magistrate, Ahmedabad under Section 3(2) of the Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980.
2. The facts leading to the passing of the detention order, briefly stated, are as follows. On 4.7.1998, the Officers of the Food and Civil Supplies Controller's Office raised the sugar candy factory of the petitioner. He has found in possession of 1140 litres of white colour kerosene and 515 litres of blue colored kerosene. The white colour kerosene was suspected to be blue colored kerosene later on turned into white. The officers suspected that the entire quantity of kerosene was a part of the blue colored kerosene meant for distribution amongst weaker section of the society at subsidised rates through the Public Distribution System. Analysis of samples of that kerosene done by the Forensic Science Laboratory, Ahmedabad confirmed their suspicion. As the petitioner was thus found to have unauthorisedly obtained, stored and consumed blue colored kerosene meant for weaker section of the society for his business purpose and as the entire quantity of kerosene was purchased from M/s. Purvi Petroleum under bills showing sale of white kerosene and as M/s. Purvi Petroleum was earlier also found to be indulging in black marketing of blue kerosene, as proposal was made by the Food and Civil Supplies Controller to the District Magistrate, Ahmedabad for taking necessary action against the petitioner. The District Magistrate, on consideration of the materials placed before him, was satisfied that the petitioner was in collusion with M/r Purvi Petroleum which was indulging in black marketing of blue colored kerosene and that with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of supply of essential commodity like kerosene, it was necessary to preventively detain him, and therefore, passed an order for detention of the petitioner on 9.10.1998. The petitioner was actually detained on 8.1.1999 pursuant to the said order of detention.
3. Mr. Dushyant Dave, the learned senior counsel for the petitioner, submitted that there is no restriction with respect of possession of white colour kerosene and yet in the grounds of detention it is stated that "for storage or consumption of the white colored kerosene, you are not having any permit of licence/parvenu either in your name or in the name of the firm". He submitted that this statement in the grounds of detention shows non-application of mind and a casual approach by the District Magistrate while passing the order of detention. During the hearing of this petition Mr. Dholakia, the learned senior counsel appearing for the learned Magistrate, stated that really there is no restriction regarding possession, storage and use of white kerosene by consumers. But he

submitted that the white colour kerosene which was found from the petitioner's possession was really blue colored kerosene turned into white and it was in that context the District Magistrate stated in the grounds of detention that in respect of the said quantity of white kerosene the petitioner did not have any licence or permit. What is submitted by Mr. Dholakia appears to be correct and, therefore, the contention raised by Mr. Dave in this behalf deserves to be rejected.

4. It was next contended by Mr. Dave that the entire quantity of kerosene found from the possession of the petitioner was purchased under bills from M/s Purvi Petroleum, which firm is an authorised dealer, and the petitioner had paid proper price for purchasing the kerosene. He had purchased the entire quantity of kerosene at Rs. 9/- per litre which was the market price for white kerosene at that time. The petitioner is having a candy factory and is using about 400 to 500 litres of kerosene everyday. He was thus not found in possession of that much quantity of kerosene which can be said to be excessive and more than his requirement and which could lead to any adverse inference. He was always purchasing kerosene from M/s. Purvi Petroleum and that fact is also mentioned in the grounds of detention and utilised by the District Magistrate for inferring collusion with M/s. Purvi Petroleum. Mr. Dave submitted that the petitioner had produced bills when his candy factory was raided and had explained to the officers that he did not know that there was any restriction regarding storage and use of blue colored kerosene. Therefore, though the petitioner could have been prosecuted under the Gujarat Petroleum Products (Licencing Control and Stock Declaration) Order, 1979 or the kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1983, this was not a case justifying passing of an order of detention against the petitioner.

5. As mentioned in the grounds of detention the petitioner is having a sugar candy factory and he has been purchasing kerosene, for use in his factory, from M/s Purvi Petroleum since a long time. From what is stated in the grounds of detention and the reply affidavit filed by the District Magistrate it becomes clear that the satisfaction of the District Magistrate that the petitioner was in collusion with M/s Purvi Petroleum was based upon only two circumstances, namely, (1) the petitioner had been purchasing kerosene from M/s Purvi Petroleum since a long time and (2) the kerosene which was found in petitioner's possession on 4.7.1998 was sold under the bills as free sale white kerosene. There was no material before the District Magistrate to show that sufficient quantity of white kerosene was not available in the market in or about July 1998 and that M/s Purvi Petroleum was not authorised to sell white kerosene. The petitioner had paid the market price for purchasing kerosene. The whole quantity of kerosene was purchased @ Rs. 9/- per litre and not at the subsidised rate at which blue kerosene was sold. It is also nobody's case that the bills issued by M/s Purvi Petroleum did not reflect the correct quantity sold and the correct price charged. In view of these facts and circumstances and in absence of any material to show that the petitioner in fact knew that blue colored kerosene was sold at subsidised rates and that it was meant for distribution only amongst weaker section of the society for cooking and illumination purposes, it is difficult to appreciate how the District Magistrate could have genuinely satisfied himself about any collusion between the petitioner and M/s Purvi Petroleum. It may be that M/s Purvi Petroleum was dishonestly selling blue colored kerosene to those not entitled to it and was thus indulging in black marketing of blue colored kerosene, but, there was hardly any reason for the petitioner to collude with it. There was no necessity for him to do so. There was also no material before the Detaining authority to show that the petitioner had in past committed any illegal act as regards possession, storage and use of blue colored kerosene. All these relevant aspects were not considered by the District Magistrate before passing the detention order. Therefore, the satisfaction arrived at by him cannot be said to be reasonable and genuine. An order of detention passed upon such vitiated satisfaction deserves to be set aside.

6. In the result, we allow this writ petition, quash and set aside the impugned order of detention and direct that the petitioner be set at liberty forthwith, unless his presence is required in jail in connection with some other case.