

## PATNA HIGH COURT

Misrilal

Vs

State (Patna)

Cr. Misc. Nos. 581, 614 and 619 of 1950

(Shearer, Imam and Jamuar, JJ.)

09.04.1951

### JUDGMENT

#### **Imam, J.**

1. These three cases have been referred to us under Clause 28, Letters Patent of this Ct. on a difference of opinion between my brethren Das and Narayan, JJ. The point referred to us for our consideration has been stated by them as follows :

"The point is if on the grounds of detention stated by the State Govt. to pass (sic) the orders of detention against the three petitioners under Clause (iii) of sub-sections 1 (a) of Section 3, Preventive Detention Act, (Act IV [4] of 1950). One of us held that on his interpretation of the expression 'maintenance of supplies and services essential to the community', occurring in the said clause, the orders of detention were legal; another of us held that on his interpretation of the said expression, the orders of detention were not legal. This is the point on which we differed. The reasons for the different views on the point formulated above were fully stated by us previously. To those views we still adhere."

2. The three persons concerned in these appellants are Raghunandan Prasad in Cr. Misc. No. 614 of 1950, Biswanath Prasad in Cr. Misc. No. 619 of 1950, and Misri Lal, Tailor, in Cr. Misc. No. 581 of 1950. The grounds of detention served upon Raghunandan Prasad state the following facts. Raghunandan Prasad of Shankar Flour Mills and Biswanath Prasad, cycle-repairer, have their shops adjacent to each other. Misri Lal, Tailor, lives at the back of this block of shops. A back door of the shop of Bishwanath Prasad opens in the house of Misri Lal. The Sub-divisional Officer of Patna Sadar on receiving information that stone powder was being mixed with Ata (flour), made a surprise raid on 22.9.1950, in the aforesaid three buildings. Thirty-five bags of stone powder were found in the premises occupied by Bishwanath Prasad. A trail of stone powder was noticed going in the direction of the house of Misri Lal, and in that house one bag of stone powder was recovered. Some adulterated Ata was also recovered, and the sample on examination by public analyst was found to be highly adulterated. The aforementioned three

persons were apparently in conspiracy of profiteering in sale of flour at the expense of the health of the community. Raghunandan Prasad manufactured the flour, Bishwanath Prasad stored the powder, and the mixing was done in the house of Misri Lal. The grounds of detention of Bishwanath Prasad and Misri Lal state the same facts. In the opinion of the detaining authority, the above mentioned circumstances satisfied the State Govt. that if these persons were allowed to remain at large, they would indulge in activities to the prejudice of the maintenance of supplies and services essential to the community. For prevention of such activities, the State Govt. considered their detention necessary. The grounds of detention at the commencement refer to the deficit of food grains in the State of Bihar owing to various causes, such as the failure of the autumn crop caused by drought and excessive rain and floods, subsequent drought in October causing enormous damage to the winter crop. It then refers to the way the price of rice has shot up between the periods 7.6.1960 to 18.10.1950, and that blackmarketing and hoarding by anti-social elements contributed to a great extent in this acute and sudden rise in the prices of food grains which, if unchecked, might even bring about famine conditions. Taking advantage of the food shortage, unscrupulous dealers have started adulterating food stuffs which would bring them ill-gotten gains at the risk of even causing epidemic among the consumers. Unwholesome food "thrown into the rationing system is likely to cause serious difficulties in the distribution of food stuff," is also stated at the commencement of the grounds of detention. Although the paper book placed before us does not disclose specifically this passage in the grounds of detention of Bishwanath Prasad and Misri Lal, yet I think we may keep in mind that has been stated in the grounds of detention of Raghunandan Prasad when considering the case of all the three persons, particularly when they are accused of having entered into a conspiracy to profiteer by the sale of flour at the expense of the health of the community.

3. In the case of Misri Lal, the learned Advocate appearing for him wished to show that from the search list it was not apparent that a bag of stone powder was recovered from the house of Misri Lal. On behalf of Bishwanath Prasad it was argued, in addition to the general arguments which were made by Mr. Baldeva Sahay on behalf of Raghunandan Prasad, that para. 7 of the grounds merely stated that these three persons were apparently in conspiracy of profiteering in sale of flour at the expense of the health of the community, which could not be said to be any ground for detention having regard to the provisions of the Preventive Detention Act (Act IV (4) of 1950) hereinafter referred to as the Act.

4. I do not think that it is possible to accede to the argument on behalf of Misri Lal that in fact a bag of stone powder was not recovered from his house, for the reference made to us is on the grounds of detention stated by the State Govt. It is not open to this Ct. to question the facts stated in the grounds of detention, or whether those facts were sufficient to satisfy the detaining authority to order the detention of the detenu. We must, therefore, proceed on the facts stated in the grounds of detention against Misri Lal and the other two persons and decide whether on the grounds stated, the detention of these persons was legal under Clause (iii) of Sub-Section 1 (a) of Section 3 of the Act.

5. Before I deal with the contention of Mr. Baldeva Sahay, it is necessary to set out the relevant portions of Section 3 of the Act with which we are concerned in this reference. sub-Clause (1) of Section 3 of the Act states :

"The Central Govt. or the State Govt. may : (a) if satisfied with respect to any person that

with a view to preventing him from acting in any manner prejudicial to - (iii) the maintenance of supplies and services essential to the community, it is necessary so to do, make an order directing that such person be detained."

6. The Act in its original form was declared *intra vires* except for Section 14 by the Supreme Ct. in *Gopalan v. State of Madras*<sup>1</sup>, In my opinion, it is these words of the section which have to be construed and not items 3 and 18 in the Concurrent List of Schedule VII, Constitution Ind.

7. Mr. Baldeva Sahay referred to items 3 and 18 in the Concurrent List of Schedule VII, of the Constitution and pointed out that adulteration of foodstuffs and other goods was a distinct item from the maintenance of supplies and services essential to the community as stated in item 3 of the said List. He also referred to Rule 81, Defence of India Rules, where in sub clause (2) the expression "for maintaining supplies and services essential to the life of the community" is stated, and yet throughout Rule 81, sub-Clause (2) there was no mention of adulteration of foodstuffs and other goods. He argued from this that the various legislative authorities never contemplated that adulteration of foodstuffs and other goods would come under the expression "maintenance of supplies and services essential to the community" as to be found in Section 3 (1) (a) (iii) of the Act. It seems to me, however, that the plain duty of the Ct. is to consider the words in the Act as they stand and give to them their ordinary meaning. The words themselves have to be construed independently of what is stated in items 3 and 18 in the Concurrent List of Schedule VII of the Constitution and what is contained in Rule 81, Defence of India Rules.

8. The facts stated in the orders of detention may be summed up as follows. The detenu Raghunandan Prasad manufactured flour at Shankar Flour Mills, the detenu Bishwanath Prasad stored stone powder and mixing was done at the house of the detenu Misri Lal, and that these persons entered into a conspiracy to profiteer by sale of flour at the expense of the health of the community. In a raid upon the premises of these detenus, thirty-five bags of stone powder were found in the premises of Bishwanath Prasad and one bag of stone powder was found in the house of Misri Lal, and some adulterated *ata* was also recovered, a sample of which on examination by the public analyst was found to be highly adulterated. Do these facts stated in the grounds of detention come within the purview of Section 3 (1) (a) (iii) of the Act is what I have to consider. There can be no question that the conduct of the detenus stated in the grounds of detention was highly reprehensible particularly in these days of food shortage and economic difficulties which the State is facing. I have, however, to consider the case of the detenus not on moral grounds but on legal grounds, and if their conduct comes within the meaning of the words in Section 3 (1) (a) (iii) of the Act, then the detention must be held to be valid. On the other hand, if on a fair and

reasonable reading of the words in Section 3 (1) (a) (iii) of the Act, the act of the detenus as stated in the grounds of detention cannot be included within the meaning of those words, then the detention must be held to be illegal, no matter how gross and anti-social the act of the detenus may be.

9. According to Webster's Dictionary, the word "maintain" has various meanings including "to support, to sustain, to keep up; not to suffer to fail or decline." The word "maintain," and (sic) according to Webster it means "support and up-keep of property, machinery, equipment etc." According to Webster, the word "supply" has amongst various meaning the meaning "to fill the

needs of or to furnish with supplies, provisions, equipment or the like, as well as filling a want, a need." The word "supplies" therefore, carries with it, to my mind, the meaning to fill the needs of or to supply provisions to a community. The meaning of the words "the maintenance of supplies and services essential to the community," therefore, must be up-keep of the needs and the provisions essential to the community. These may be of various kinds impossible to define, but so long as they are essential to the community, their up-keep would be essential for the purpose of the Act. As I read these words, I think the true meaning to be given to them is to prevent any person from doing an act in any manner prejudicial to the up-keep of the needs, the provisions and the services essential to the community, that is to say, the flow of supplies and services essential to the community must be continued to be maintained in the interest of the community and any one who did any act to prejudice it was liable to be detained by the detaining authority under the Act. I do not think that the words "maintenance of supplies and services essential to the community" could reasonably carry the meaning that any one who adulterated foodstuffs would be acting in a manner prejudicial to the maintenance of supplies or the continuity of supplies. It is true that adulterated foodstuff supplied to the community may be harmful to its health, but supplying such adulterated foodstuff would not be prejudicing the maintenance of supplies. The Act does not speak of profiteering, much less profiteering at the expense of the health of the community. I think it would be straining the language of Section 3 (1) (a) (iii) of the Act to apply it to acts such as are stated in the grounds of detention served on the petitioners in these cases. I can quite conceive of the position where hoarding done on a large scale affects the flow, continuity and the up-keep of supplies essential to the community, attracting the provisions of the Act. I can also conceive of the position where by acts of sabotage production of supplies essential to the community is disturbed and enough supplies are not manufactured or produced to meet the needs of the community coming within the purview of the Act. Conceivably where certain persons persuade the cultivators not to grow any food or that if they grow any food they should conceal their produce, the act may also come within the purview of the Act because if such instigation was successful, then the produce of the land would not be available for distribution to the community, and thus the upkeep, the continuity, the flow, or the maintenance of supplies essential to the community would be affected. The facts alleged against the detenus in these cases, however, do not disclose any such thing. They merely disclose that these individuals are guilty of a very grave anti-social conduct and that by selling spurious foodstuff they are making a profit and also endangering the health of the community. Such conduct, in my opinion, is not covered by the words of the Act "maintenance of supplies and services essential to the community."

10. In my opinion, therefore, the detention of the detenus was illegal on the grounds stated in the grounds of detention, and I would answer the point stated by my brethren Das and Narayan, JJ., in the negative. The appellants therefore, should be allowed and it must be held that the detention of the detenus is illegal. In my opinion the petitioners should be released forthwith.

**Shearer, J.**

11. I entirely agree. The language used in Section 3 (1) (a) (ii) and (iii), Preventive Detention Act, 1950, reproduces the language used in Item 3 of the Concurrent List. In view of this too narrow or forced a construction is not to be put on the words "acting in any manner prejudicial to.....the maintenance of supplies and services essential to the community." The expression "maintenance of supplies.....essential to the community" are, in my opinion, to be construed on

the ejusdem generis principle along with the expressions "the security of the State" and "the maintenance of public order." In order to justify the making of an order of detention under section 3 (1) (a) (iii) it must, in my opinion, be shown that a reasonable apprehension exists that, if the person against whom the order is made, is permitted to remain at large, he will do something which is calculated to reduce the quantity of supplies available to the public residing in some particular locality and go cause harm to the community. It appears to me quite impossible to say that the owner of a mill, such as the mill belonging to one of the petitioners who undertakes, on payment, to convert ata into flour and misappropriates part of the ata entrusted to him, and, in order to cover up the misappropriation, supplies his customers with adulterated flour, is guilty of conduct of that kind. It is, I think, a pity that, instead of raiding the premises of the petitioners immediately, the Sub-divisional Mag. did not attempt to lay a trap for them. It ought to have been possible to prove that an agent had handed over a quantity of ata and received back a quantity of adulterated flour, and if immediately after the agent had received back the flour, the premises had been raided and a quantity of soap stone had been discovered on them, could not the owner of the mill at least have been prosecuted to conviction ? The maxim respondent superior would, I think have applied. A short period of preventive detention is not suitable in a case of this kind. Owners of mills, who do this sort of thing, ought to be kept in prison for a longer period, and when in prison, ought to be put to hard labour.

#### **Jamuar, J.**

12. I have had the advantage of perusing the judgments prepared by my brethren Shearer and Imam, JJ. I have also come to the same conclusion as they have.

13. The three petitioners are said to have been in conspiracy to adulterate flour. But, in my opinion, their activities cannot be said to come within the purview of acts prejudicial to the "maintenance of supplies and services" essential to the community within the meaning of Section 3, sub-sections (1) (a), Clause (iii), Preventive Detention Act (Act IV (4) of 1950). In these circumstances, the answer to the reference, in my opinion, should be in the negative; and I would allow the appellants holding that the detention of the petitioners is illegal.

Answer in the negative.

Cases Referred.

<sup>1</sup> AIR 1950 SC 27