

**In the High Court of Judicature at Hyderabad
For the State of Telangana and
the State of Andhra Pradesh**

W.P.No.35163 of 2018

Between:

Ch.Praveen Kumar,
S/o.Kistaiah,
Aged about 31 years,
Occ: Business,
R/o. Ayyagaripalli village,
Kuravi mandal,
Mahabubabad district.

...

Petitioner

and

The State of Telangana,
rep. by its Principal Secretary,
General Administration Department,
Secretariat Buildings,
Hyderabad
and three others.

...

Respondents

JUDGMENT PRONOUNCED ON 15.11.2018

The Honourable Sri Justice C.V.Nagarjuna Reddy

and

The Honourable Sri Justice T.Amarnath Goud

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

***The Honourable Sri Justice C.V.Nagarjuna Reddy**
and
The Honourable Sri Justice T.Amarnath Goud

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! Counsel for the Petitioner : Mr.B.Sandeep Kumar for
Mr.P.Vishnuvardhana Reddy

Counsel for the Respondents : G.P. for Home (TS)

<Gist :

>Head Note:

?Cases referred:

1. 2016 (3) ALT (CrI.) 199 (DB)

The Honourable Sri Justice C.V.Nagarjuna Reddy

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**Counsel for the Petitioner : Mr. B.Sandeep Kumar for
Mr. P.Vishnuvardhana Reddy**

Counsel for the Respondents : G.P. for Home (TS)

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for issue of Habeas Corpus, declaring the Detention Order in Proceeding No.C1/916/2018, dated 18.06.2018, of respondent No.2 as confirmed *vide* G.O.Rt.No.1851 General Administration (Special Law & Order) Department, dated 15.09.2018, by respondent No.1, as illegal and unconstitutional and consequently, to direct the respondents to release the petitioner's brother by name Cherivirala Naveen (for short 'the *detenu*') from detention.

2. We have heard Mr.P.Vishnu Vardhan Reddy, learned Counsel for the petitioner, on 09.11.2018 and Mr.B.Sandeep Kumar, learned Counsel representing Mr.P.Vishnu Vardhan Reddy and Mr.T.Srikanth Reddy, learned Government Pleader for Home (TS) today.

3. The *detenu* has been detained by Order, dated 18.06.2018, of respondent No.2 under Section 3 (1) and (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act'). The said order was approved by respondent No.1 on 27.06.2018 and on the advice rendered by the Advisory Board, the same was confirmed by it *vide* G.O.R.t.No.1851 dated 15.09.2018.

4. The learned counsel for the petitioner have advanced the following submissions:

1. The detenu was not informed about the right to make representation against the detention by the detaining authority – the Principal Secretary to the Government and the Advisory Board, as envisaged under Article 22 (5) of the Constitution of India and also under Section 8 of the Act.
2. That the detaining authority passed the detention order on the assumption that the seized commodities are essential commodities, whereas under relevant statute, they come under provisions of scheduled commodity and not as essential commodity. Therefore, the counsel submitted that the detention order was passed on non-existing ground and hence, the same is liable to be set-aside.
3. Under Section 3 (4) of the Act, the fact of detention shall be communicated to the Central Government, together with the grounds on which the order has been made, within seven days of making the order of detention and that, as the communication of detention order dated 18.06.2018 was allegedly sent to the Central Government on 29.06.2018, which is beyond seven days, the detention order is liable to be set aside and
4. The sample analysis by the FSL only found the seized rice as suspected PDS rice and that, therefore, without there being conclusive proof that it was PDS rice, the detention order is illegal.

5. The learned Government Pleader opposed the above submissions. As regards the first submission of the learned Counsel for the petitioner, he has relied upon the last paragraph of the

grounds of detention and submitted that the *detenu* was informed about his right to make representation. With respect to the second submission, the learned Government Pleader submitted that rice being an 'Essential Commodity' under the Schedule of the Essential Commodities Act, 1955, and a 'Schedule Commodity' under the 'Telangana State Public Distribution System (Control) Order, 2016 (for short 'the Control Order'), the *detenu* was detained for commission of offences relating to the purchasing, holding and selling of the Essential/Schedule Commodity by invoking the provisions of Section 3 of the Act and that therefore, the Detention Order does not suffer from any illegality. With regard to the third submission, he submitted that the period of seven days under Section 3(4) of the Act shall be reckoned from the date of approval of the Detention Order by the State Government and that having sent the communication to the Central Government within two days of such approval, the condition under Section 3(4) of the Act stood complied with. Apropos the fourth submission, the learned Government Pleader argued that subjective satisfaction of the detaining authority that the activities of the *detenu* are likely to disturb the public order, is sufficient to pass detention order and that conclusive proof of commission of offence is not a *sine qua non* for exercising the power of preventive detention.

6. We have carefully considered the respective submissions of the learned Counsel for the parties with reference to the record.

7. Apropos the first submission, the last paragraph of the grounds of detention reads as under:

“You have a right to represent against this order of detention to i) The Detaining Authority i.e. District Collector, Mahabubabad ii) The Prl.Secretary to Government (Poll), General Administration Department, Secretariat, Hyderabad and iii) The Advisory Board. If you chose to make any representation, you may submit your properly addressed representation with sufficient number of copies to the Jail Superintendent for onward transmission. You also have a right to appear before the Advisory Board and also to avail the assistance of a person other than a lawyer to represent your case.”

8. No doubt, the order of detention bearing the same proceeding number and date as that of the grounds of detention does not contain the above-reproduced paragraph. It is not in dispute that the *detenu* was supplied with both the proceedings. While the grounds of detention contains elaborate reasons including the details of the criminal cases relied upon by the detaining authority for arriving at the subjective satisfaction, the Detention Order only contains gist of the former order.

9. Section 8 of the Act envisages communication and affording of the earliest opportunity of making a representation against the

Detention Order to the appropriate Government. For proper appreciation, this provision is reproduced hereunder:

“8. Grounds of order of detention to be disclosed to person affected by the order:-

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

10. A reading of the above provision would reveal that it creates an obligation on the detaining authority to communicate the grounds, on which detention order is passed, to the *detenu*. Section 8 of the Act is nothing but reproduction of Clause (5) of Article 22 of the Constitution of India. Though neither of these provisions imposes an obligation on the detaining authority to apprise the *detenu* of his right to make a representation, they are interpreted by the Constitutional Courts as laying down the obligation on the detaining authority to inform the *detenu* about his right to make representation. In **Kamleshkumar Ishwardas Patel vs. Union**

of India¹, while interpreting Article 22 (5) of the Constitution, a Constitution Bench of the Supreme Court held as under:

“Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, who is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.”

11. In our opinion, once availability of such a right is informed in the grounds of detention, based on which the Detention Order is passed, the same need not be separately informed in the order of detention. We, therefore, reject this submission as wholly without any basis.

12. With respect to the second submission, Section 3(1) of the Act, to the extent it is relevant, reads as under:

“3.Power to make orders detaining certain persons:-

(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for

¹ 1995(4) SCC 51

the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of the commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation:- For the purposes of this sub-section, the expression “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” means,-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community : or

(b) dealing in any commodity, -

(i) which is an essential commodity as defined in the Essential Commodities Act 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in Clause (a),

With a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.”

13. As could be seen from the above-excerpted statutory provision, if the detaining authority is satisfied that it is necessary to prevent any person from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the

community, it is empowered to make an order of detention. In the explanation, the words 'acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community' have been elaborated. It is explained therein as committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955, or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community or which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or with respect to which provisions have been made in any such other law as is referred to in Clause (a) of the Explanation. Therefore, in order to exercise the power of preventive detention under the Act, the detaining authority must be *inter alia* satisfied that an offence, in relation to production, supply or distribution of any commodity essential to the community or in respect of a commodity, which is an essential commodity, as defined in the Essential Commodities Act, 1955 or any other law made in that regard, has been committed. Section 2-A (1) of the Essential Commodities Act, 1955, described 'Essential Commodity' as a commodity specified in the Schedule. Item No.3 of the Schedule included all food stuffs including edible oilseeds and oils.

Therefore, there is no gainsaying that rice being food stuff is included within the definition of the 'Essential Commodities'.

14. The Control Order was made in exercise of the powers conferred by Section 3 r/w Section 5 of the Essential Commodities Act, 1955. As per Sub-Clause (p) of Clause 2 thereof, 'Essential Commodities' means essential commodities as defined under the Essential Commodities Act, 1955. As per Sub-Clause (s) thereof, the phrase 'Scheduled Commodities' means any commodity specified in the Schedule to the Control Order, which is supplied by the State Government to any authorised fair price shop or establishment for issue to the cardholder under the Public Distribution System/beneficiaries under any Government Scheme. The Control Order was made with a view to regulate the distribution of the scheduled commodities to the household supply cardholders through authorised fair price shops or establishment. 'Rice' in various forms including PDS rice is included in item No.1 in the Schedule. Section 3 of the Act emphasises that the Commodity/Commodities, in respect of which the offence punishable under the Essential Commodities Act, 1955, is committed, must be an Essential Commodity. This section reads as follows:

**“3. Powers to control production, supply, distribution,
etc. of essential commodities:-**

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any **essential commodity** or for securing their equitable distribution and availability at fair prices, [or for securing any essential commodity for the defence of India or the efficient conduct of military operations] it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.”

15. As discussed herein before, ‘Rice’ falling under the broad description of food stuff under the Schedule to the Essential Commodities Act, 1955, is undoubtedly an ‘Essential Commodity’, to regulate the supply and distribution of which, the rule making authority, namely; Telangana State Government has issued the Control Order. As the Control Order has aimed at regulating the supply and distribution of only certain essential commodities including rice and not all the essential commodities as included in the Schedule of the Essential Commodities Act, 1955, they were included in the ‘Schedule’ of the Control Order and, accordingly, they are termed as ‘Scheduled Commodities’. In other words, all the commodities, which are included in the Control Order, are first ‘Essential Commodities’ and for the purpose of the Control Order, they are called ‘Scheduled Commodities’. Clause 17(e) of the Control Order prescribed penalties for possessing cards and making false entries by diverting stock. Sub-Clause (e) of Clause 17 reads as under:

“If any person is found to have purchased the rice supplied through PDS either from the card holder or the F.P.Shop dealer or any other source, he shall be liable for criminal action and imposition of penalty as may be fixed by the Competent authority.”

16. In the grounds of detention, it is *inter alia* stated as under:

“The cases registered have not shown any deterrent effect on you so far and you have been indulging in clandestine business of purchasing PDS commodities pertains public distribution system hoarding, diverting and selling the same without having any valid license under TSPDS Control (Order) 2016 r/w under Sec.7 of Essential Commodities Act, 1955 and also obstructing the process of supply of essential commodities to the poor and needy people in contravention of clause 17(e) of TSPDS (Control) Order, 2016.”

17. Thus, the accusation against the *detenu* is that he has been obstructing the process of supply of essential commodities to the poor and needy in contravention of Clause 17(e) of the Control Order. As explained herein before, rice being an essential commodity, the activity of obstructing the process of its supply in contravention of Section 17(e) of the Control Order attracts Section 3 of the Act. The grounds of detention apart from using the words ‘essential commodities’ specifically referred to the Control Order, which deals with the Scheduled Commodities. Therefore, no specific reference to the “Scheduled Commodities” need be made as in the context of the Control Order, the words

‘Essential Commodity’ and ‘Scheduled Commodities’ to the extent they relate to the commodities covered by the Control Order are synonymous to each other. Hence, it is idle to contend that the Scheduled Commodity under Clause 17 of the Control Order is not an Essential Commodity.

18. As regards the third submission of the learned Counsel for the petitioner, it is relevant to go through Section 3(4) of the Act, which reads as follows:

“When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.”

19. It is clear from the above-reproduced provision that when any order is made or approved by the State Government or when an order of detention is made by an Officer of the State Government not below the rank of Secretary to that Government, the State Government shall within seven days report the fact to the Central Government together with the grounds on which the order of detention has been made and such other particulars, which, in

the opinion of the State Government, have a bearing on the necessity for the order.

20. In the instant case, the initial order of detention was made on 18.06.2018 by respondent No.2 *i.e.*, the Collector and District Magistrate, who does not fall under the expression either 'State Government' or 'an Officer of the State Government not below the rank of Secretary to the Government'. Therefore, the period of seven days would not commence from the date of detention order passed by the Officer below the rank of Secretary to the Government. As the Detention Order passed by respondent No.2 was approved by the State Government on 27-06-2018, the period of seven days starts running from that date. Undisputedly, on 29.06.2018. *i.e.*, within two days of approval of the Detention Order by respondent No.1/State Government, the same was communicated to the Central Government. Thus, the requirement of Sub-Section 4 of Section 3 of the Act has been duly complied with.

21. With respect to submission No.4, the same could be referred only to be rejected. As rightly submitted by the learned Government Pleader, for exercising the power of preventive detention, it is not necessary that the offences allegedly committed by the *detenu* need be conclusively proved.

22. In **Girish Kumar Makhija vs. State of Telangana rep. by its Secretary, Home Department, Secretariat, Hyderabad and Another²**, it was held as under:

“In THE STATE OF BOMBAY VS. ATMA RAM SRIDHAR VAIDYA (12) AIR 1951 SC 157, the Supreme Court while dealing with Section 3(1) of the Prevention Detention Act, 1950, held that the satisfaction referred to therein is subjective satisfaction and so is not justiciable and that therefore it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests.

In Rameshwar Shaw (3 supra) the Constitution Bench while reiterating the afore-mentioned view, however, pointed out an exception to this principle by holding that in cases where the detenu challenges the validity of his detention on the ground of mala fides and in support of the said plea urged that along with other facts which show mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority, such question can be considered only in incidental manner and in support of the plea of mala fides, and that in such cases the subjective satisfaction can become justiciable and that otherwise the reasonableness or propriety of the said satisfaction contemplated by the Act cannot be questioned before the Courts.

In Dr. Ram Monohar Lohia (8 supra) a Constitution Bench of the Supreme Court held that it may be taken as settled that the satisfaction of the detaining authority cannot be subjected to objective tests that the courts are not to exercise appellate powers, over such authorities and that an order proper on its face, passed by a competent authority in good faith is a complete answer.

[In Union of India v. Paul Manickam](#) [(2003) 8 SCC 742] the Supreme Court while dealing with the aspect of the discretion of the detaining authority and its subjective satisfaction, observed that preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the person detained from acting in a matter prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention.

[In Pebam Ningol Mikoi Devi v. State of Manipur](#) [2010 (9) SCC 618] a two-Judge Bench of the Supreme Court held that to decide the correctness or otherwise of the detention order, two issues of importance arise, i.e., the first is regarding the documents and material on which reliance was placed by the

² 2016 (3) ALT (CrI.) 199 (DB)

detaining authority in passing the detention order, and the second is that whether with those materials, the detaining authority was justified in arriving at a finding that the detenu should be detained under the extant Act without any trial. That the Court normally will not go into the correctness of the decision as such but will only look into the decision-making process and that judicial review is not an appeal from a decision but review of the manner in which the decision was made and the purpose of review is to ensure that the individual receives a fair treatment. The Court further added that there must be a reasonable basis for the detention order, and there must be material to support the same and that the Court is entitled to scrutinize the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. It was further held that the subjective satisfaction must be twofold; one, that the detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or act in any manner prejudicial to the maintenance of the public order and two, the authority must be further satisfied that it is necessary to detain the said person in order to prevent him from so acting. That whether the grounds stated in the order of detention are sufficient or not to order prevention (sic: preventive) detention, is not within the ambit of the discretion of the court and it is the subjective satisfaction of the detaining authority which is implied. That however, if one of the grounds or reasons which lead to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid.

In M.R. Subramanian v. State of Tamil Nadu [2012 (4) SCC 699], the Supreme Court has held that the subjective satisfaction reached by the detaining authority, except in exceptional and extremely limited grounds, cannot be interfered with and that the Court cannot substitute its own opinion to that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant.

23. The opinion of the Forensic Science Laboratory rendered on sample analysis, which revealed that the rice, in which the *detenu* was allegedly carrying on his business, was suspected to be meant for Public Distribution System, constituted the basis for respondent No.2 to arrive at the subjective satisfaction that the *detenu* was carrying on the unlawful activity of purchase and sale of rice meant for Public Distribution System. Such subjective satisfaction based on the *prima facie* opinion of the expert is, therefore, not justiciable and the petitioner cannot insist on proof beyond reasonable doubt, which is the fundamental requirement

for conviction of an accused and not for invoking the power of preventive detention. As preventive detention relates to a special law different from the criminal jurisprudence, the *detenu* cannot insist that unless his guilt is proved, he cannot be detained.

24. For the aforementioned reasons, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

25. As a sequel to dismissal of the Writ Petition, IA.No.1 of 2018, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 15th November, 2018

Note:
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