

PETITIONER:
MISHRILAL JAIN

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, KAMRUP & ORS.

DATE OF JUDGMENT 14/10/1971

BENCH:

ACT:
Maintenance of Internal Security Act, 1971, s. 3(2)(a)-At least one of the grounds of detention vague-Effect on detention.order.

HEADNOTE:

The petitioner was a dealer in salt in the State of Assam. On account of unprecedented floods there was an acute scarcity of salt in the State. Although there was no law in the State regulating its distribution and sale, the Deputy Commissioner, in consultation with the representatives of the local Chamber of Commerce, fixed the ceiling price of salt. The District Magistrate passed an order for detaining the petitioner under s. 3(2)(a) of the Maintenance of Internal Security Act, 1971, on the grounds : that he availed himself of the opportunity for profiteering in the commodity, (1) by resorting to hoarding, and (2) by secretly selling this essential commodity at exorbitant rates, and was therefore acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

In a petition under Art. 32 of the Constitution challenging the validity of the detention order, the petitioner contended that the grounds were vague and hence he had no opportunity to make a representation.

Allowing the petition,

HELD : (1) The first ground was vague as no effective representation could have been made on its basis in the absence of particulars of the profiteering or hoarding activity. [1103 G-H]

(2) Even assuming that this ground was not vague the second ground was vague, because, the idea of exorbitant rate is a relative one, and the ground did not convey any definite idea as to the price at which he was selling salt, nor the time or place of the sales or the persons to whom the sales were effected. Since at least one of the grounds was vague the order of detention was vitiated. [1103 H; 1104 A-B, F-G] State of Bombay v. Atma Ram Sridhar Vaidya, [1915] 11 S. C. R. 167, 184, Rameshwar Lal Patwari v. State of Bihar, [1968] 2 S.C.R. 505, Pushkar Mukherjee v. State of W. Bengal, [1969] 3 S.C.R. 635 and Motilal fain v. State of Bihar, [1968] 3 S.C.R. 587, followed.

Kashav Talpade v. King Emperor, [1943] F.C.R. 88, applied.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 375 of 1971.
Petition under Art. 32 of the Constitution of India for a writ in the nature of habeas corpus.

A. K. Sen J. P. Bhattacharjee, D. N. Mukherjee, D. K. Hazarika and the petitioner in person, for the petitioner.

S. V. Gupte and Naunit Lal, for the respondent.

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The Judgment of the Court was delivered by, Mathew, J. This application filed under Article 32 of the Constitution challenges the validity of an order for detaining the petitioner,' passed by the District Magistrate of Kamrup, under Section 3 (2) (a) of the Maintenance of Internal Security Act, 1971 on August 30, 1971 and prays for the issue of a writ in the nature of habeas corpus.

On the conclusion of the hearing of the case on October 7, 1971, we passed the following order :-

"We are satisfied that the order of the District Magistrate, Kamrup, dated August 30, 1971, detaining the petitioner under s. 3(2)(a) of the Maintenance of Internal Security Act, 1971. cannot be sustained and as such the order of detention is set aside and the detenu is directed to be set at liberty forthwith. The grounds for the decision will be given in due course."

Now we proceed to state the facts and give the grounds of our decision.

The petitioner was a dealer in salt and other commodities at Gauhati in the State of Assam. On account of unprecedented flood the State was practically cut off from the rest of the country in the month of July and August, 1971 and there was acute scarcity of salt in the State. Although there was no law in the State regulating the distribution, sale or price of salt. the Deputy Commissioner of Kamrup in consultation with the representatives of the Kamrup Chamber of Commerce fixed the ceiling price of salt at Rs. 19/- per bag of 75 kg. by his order dated August 14, 1971. It was on the allegation that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community that the District Magistrate passed the order for detaining the petitioner.

The grounds of detention communicated to the petitioner read as follows :-

"1. That you are the proprietor of M/s. Mishrilal Nirmal Kumar of Fancy Bazar, P.S.Gauhati, District-Kamrup which mainly deals in salt-an essential commodity for human consumption. Prices of essential commodities including salt have recorded unprecedented rise in the middle of July, 1971 and salt became so scarce that this essential commodity was selling in and around Gauhati at exceptionally high prices immediately after the breaches of road and tram commun

ications

between Assam and the rest of the

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country. You, being one of the leading dealers of salt at Gauhati, availed yourself of the opportunity of profiteering in this commodity by resorting to hoarding.

The sudden disappearance of this most essential commodity from Gauhati Market and resultant acute scarcity and high prices resorted to by you and other unscrupulous dealers became a subject matter of criticism both in the local press and the platform and the situation ultimately posed a serious threat to the maintenance of law and order at

Gauhati in August, 1971.

In order to ease the supply position of this commodity, the Deputy Commissioner, Kamrup fixed on 14-8-71 a ceiling on the prices of salt at Rs. 19.00 per bag and you wilfully organized profiteering by secretly selling this essential commodity at exorbitant rates at Gauhati by creating an artificial scarcity yourself even after fixation of its price by Deputy Commissioner, Kamrup on 14-8-71 and thereby acted in a manner prejudicial to the maintenance of supplies and services essential to the community and your being at large has, therefore, constituted a risk to the maintenance of supplies and services essential to the Community.

Sd/- Illegible
District Magistrate,
Kamrup, Gauhati."

The petitioner filed a representation against the grounds. it he contended among other things that the grounds were vague. The representation was rejected and the Governor of Assam approved the order of detention under Section 3(3) of the Maintenance of Internal Security Act, 1971.

The argument put forward by counsel on behalf of the petitioner was that the grounds were vague and. therefore. the petitioner had no effective opportunity of making a representation.

The first ground only stated that the petitioner availed himself of the opportunity of the acute scarcity of salt in Gauhati for profiteering in this commodity by resorting to hoarding. We think that this ground was vague as no effective representation could have been made on its basis in the absence of any Particulars of the profiteering or hoarding activity. Even assuming that this ground was not vague, we are satisfied that the other ground suffers from this vice. That ground was that the Deputy Commissioner, Kamrup fixed on 14-8-71 a ceiling on the prices of salt at Rs. 19.00 per bag of 75 Kg. and the petitioner wilfully

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organised profiteering by secretly selling this essential commodity at exorbitant rates at Gauhati by creating an artificial scarcity even after the fixation of its price by the Deputy Commissioner, Kamrup. The case that the petitioner has been selling salt at "exorbitant rate does not convey any definite idea as to the price at which he sold the article. The idea of exorbitant rate is relative one. It has no absolute connotation. What may appear exorbitant rate to one may not be exorbitant to another. In the counter affidavit on behalf of the Government of Assam it is stated that the petitioner was selling salt at Rs. 35/- per bag of 75 Kg. But that would not cure the defect of vagueness in the ground. Nor was there any mention in the ground of the time or place of the sales or the persons to whom the sales were effected. In the State of Bombay v. Atma Ram Sridhar Vaidya(1), the court said

"The contention that the grounds are vague requires some clarification..... If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case..... If no reading the ground

furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague."

Tested by this standard we think the second ground at any rate was definitely vague.

If the grounds are vague, it is settled by a series of rulings of this Court that the order of detention would be bad (see Rameshwar Lal Patwari v. State of Bihar (2) and Pushkar Mukherjee and others v. The State of West Bengal(")). Even if the second ground alone was vague, that would be sufficient to vitiate the order of detention.

In Kashav Talpade v. The King Emperor(4) it was observed:

"..The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess

in what

manner and to what extent each of these grounds operated on the mind of the

(1) [1951] S.C.R. 167,184. (2) [1968] (2) S.C.R. 505.

(3) [1969] (2) S.C.R. 635. (4) [1943] F.C.R. 88.

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appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

The passage was quoted with approval by this Court in Rameshwar Lal v.State of Bihar(1). In Pushkar Mukherjee and others v. The State' of West Bengal(2), Ramaswami J. speaking for the court said that if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making the representation that would make the order of detention invalid. The same view was expressed by Hegde J. in Motilal Jain v. State of Bihar and others(3).

We think that the order of detention was illegal and it is accordingly quashed.

V.P.S.

Petition allowed.

(1) [1968](2) S.C.R. 505.

(2)[1969] (2)S.C.R.635. (3)(1968)(3)S.C.R.587, 119SupC.I./72-2500-27-11-1972-GIPF.