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Criminal Appeals Reporter
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Dated : 18 9-1981

State of Gujarat ...Appellant

v.

Adam Kasam Bhaya ...Respondent

Criminal Appeal No. 92 of 1981

(From the Judgment and Order dated the 16th January, 1980 of the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 186 of 1979)

COFEPOSA ACT, 1974—Sec. 3 and 10—Detention for one or two years mentioned in Sec. 10—To run from date of actual detention and not from date of order of detention.

(See Para 5)

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(See Para 6)

JUDGMENT

BAHARUL ISLAM, J.

This appeal by special leave is by the State of Gujarat and is directed against the Judgment and Order of the Gujarat High Court quashing the order of detention passed by the appellant against the respondent.

2. The facts material for the purpose of disposal of this appeal and not disputed before us may be stated in a narrow compass. In exercise of powers conferred on it by sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called 'the Act'), the appellant passed the order of detention dated 7th May, 1979 against the respondent on the grounds that the respondent and three others, namely, Hasan Haji Ismail Subhania, Gulam Hussein Hasan Subhania and Salemamad Allarakha Jasraya were found in a trawler containing eight packages with 4,645 contraband wrist watches valued at Rs. 10,48,7000.00. The petitioner and Salemamad were members of the crew. Hasan Haji was the owner of the trawler and his son, Gulam Hussein, was the tindal of the vessel. They were intercepted by the Customs Authorities who seized the contraband goods and the trawler. The petitioner made a statement on 21st January, 1979 before the Customs Officer, admitting that he was a member of the crew but denied any khowledge of the contraband goods. He stated that he was engaged as a member of the crew by the owner on the daily-wage basis at the rate of Rs. 10.00 per day. It was also stated in the grounds that in the statement dated 21st January, 1979, the respondent admitted that he was the tindal of the vessel 'Shahe-Nagina' which had been seized by the Customs Officer in 1977 for smuggling wrist watches and that a penalty of Rs. 5000.00 was levied against him.

3. The respondent moved the High Court of Gujarat. A Division Bench of the High Court by the impugned order quashed the order of detention on the ground that the respondent at the time of joining the vessel as a member of the crew had no "full knowledge that the vessel was to be used for

smuggling activity". The High Court held, "the above material on the record, therefore, was **not sufficient** for reaching a genuine satisfaction that the petitioner was engaged in smuggling activity and it was necessary to detain him with a view to preventing him from indulging in that activity in future" (emphasis added). According to the High Court, "the satisfaction reached by the detaining authority cannot be said to be genuine on the material which was placed before the detaining authority".

4. At the outset Mr. Rana, appearing for the respondent as **amicus curaie**, raises a preliminary objection. The objection is that in view of the fact that the maximum period of detention mentioned in Section 10 of the Act has expired, and as such the appeal has become infructuous. It may be mentioned, to appreciate the preliminary objection, that the order of detention against the respondent was made on 7th May, 1979 and this appeal was being heard on 15th September, 1981, which was beyond two years. Section 10 of the Act is in the following terms :—

> "The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 do not apply and which has been confirmed under clause (f) of section 8 shall be a period of one year from the date of detention or the specified period, whichever period expires later, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 apply and which has been confirmed under clause (f) of section 8 read with sub-section (2) of section 9 shall be a period of two years from the date of detention or the specified period, whichever period expires later."

5. We have not been told by Mr. Rana whether the first part or the second part of Section 10 applies to the facts of the case. He has made the submission on the assumption that the second part of Section 10 applies and the period of two years prescribed by the second part already expired. In our opinion, the submission has no force. In Section 10, both in the first and the second part of the section, it has been expressly mentioned that the detention will be for a period of one year or two years, as the case may be, **from the date of detention,** and **not from the date of the order of detention.** If the submission of learned counsel be accepted, two unintended results follow: (1) if a person against whom an order of detention is made under Section 3 of the Act, he can successfully abscond till the expiry of the period and altogether **avoid detention;** and (2) even if the period of detention is interrupted by the wrong judgment of a High Court, he gets the benefit of the invalid order which he should not. The period of one or two years, as the case may be, as mentioned in Section 10 will run from the date of his actual detention, and not from the date of the order of detention. If he has served a part of the period of detention, he will have to serve out the balance. The preliminary objection is overruled.

6. Now to turn to the merit. The order of High Court is clearly erroneous. The High Court has misdirected itself to its jurisdiction to inquire into order of detention by an authority. The High Court, accepting the contention of the counsel of the detenu, before it has held that there was no material on record to prove knowledge of the detenu with the contraband goods in the vehicle. By implication, the High Court has erroneously imported the rule of criminal jurisprudence that the guilt of an accused must be proved beyond a reasonable doubt to the law of detention. The High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 of the Act is the satisfaction of the detaining authority and not of the Court. The Judgment of the High Court, therefore, is liable to be set aside. We set aside the order of the High Court and allow the appeal.

Appeal allowed.

1982 CAR 3 (SC)
In The Supreme Court Of India
Original Jurisdiction
Hon'ble Mr. Chief Justice Y. V. Chandrachud
Hon'ble Mr. Justice A. P. Sen
Hon'ble Mr. Justice Baharul Islam

Dated : 7-11-1981

Smt. Prabha Dutt ...Petitioner
v.
Union of India & Ors. ...Respondents

Writ Petition No. 8193 of 1981

(Under article 32 of the Constitution of India)

Constitution of India—Art. 19 (1) (a)—Freedom of speech and expression includes freedom of press — Held, such right not absolute—Article does not confer any right to press of any unrestricted access to means of information.

Before considering the merits of the application, we would like to observe that the constitutional right to freedom of speech and expression conferred by article 19(1)(a) of the Constitution, which includes the freedom of the Press, is not an absolute right, nor indeed does it confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. (Para 2)

Constitution of India—Art. 19 (1)(a) r/w. Rules 549 (4) and 552A of Jail Manual (Delhi)—Pressmen asking permission to interview prisoners right in jail—Newspapermen supposed to be friends of society—Prisoners are under death sentence—Petitioner allowed interview with prisoners subject to restrictions under Rule 549(4) and 552A of Jail Manual (Delhi).

(See Paras 2, 3, 5 and 6)

Jail Manual (Delhi) — Superintendence and Management of Jails—Pressmen asking permission to allow them present at time of execution of death sentence to prisoners—Held, not a matter to be decided by Court—Supdt. Jail free to consider the matter on merits under Rules.

Mr. Lekhi who appears on behalf of the magazine India Today as also Mr. Jain who appears on behalf of the Hindustan Times has requested us to direct the Superintendent of Jail to allow the aforesaid representatives to be present at the time of the execution of the death sentence. That is not a matter for us to decide. If such an application is made to the Superintendent of Jail, he will be free to consider the same on merits and in accordance with the jail regulations. (Para 10)

ORDER

This is a petition under article 32 of the Constitution by the Chief Reporter of the Hindustan Times, Smt. Prabha Dutt, asking for a writ of mandamus or any other appropriate writ or direction directing the respondents, particularly the Delhi Administration and the Superintendent of Jail, Tihar, to allow her to interview two convicts Billa and Ranga who are under a sentence of death. We may mention that the aforesaid two prisoners have been sentenced to death for an offence under section 302, Indian Penal Code and the petitions filed by them to the President of India for commutation of the sentence are reported to have been rejected by the President recently.

2. Before considering the merits of the application, we would like to observe that the constitutional right to freedom of speech and expression conferred by article 19(1)(a) of the Constitution, which includes the freedom of the Press, is not an absolute right, nor indeed does it confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. But in the instant case, the right claimed by the petitioner is not the right to express any particular view or opinion but the right to means of information through the medium of an interview of the two prisoners who are sentenced to death. No such right can be

claimed by the Press unless in the first instance, the person sought to be interviewed is willing to be interviewed. The existence of a free Press does not imply or spell out any legal obligation on the citizens to supply information to the Press, such for example, as there is under section 161 (2) of the Criminal Procedure Code. No data has been made available to us on the basis of which it would be possible for us to say that the two prisoners are ready and willing to be interviewed. We have, however, no data either that they are not willing to be interviewed and, indeed, if it were to appear that the prisoners themselves do not desire to be interviewed, it would have been impossible for us to pass an order directing that the petitioner should be allowed to interview them. While we are on this aspect of the matter, we cannot overlook that the petitioner has been asking for permission to interview the prisoners right since the President of India rejected the petitions filed by the prisoners for commutation of their sentence to imprisonment for life. We are proceeding on the basis that the prisoners are willing to be interviewed.

3. Rule 549(4) of the Manual for the Superintendence and Management of Jails, which is applicable to Delhi, provides that every prisoner under a sentence of death shall be allowed such interviews and other communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. Journalists or newspapermen are not expressly referred to in clause (4) but that does not mean that they can always and without good reasons be denied the opportunity to interview a condemned prisoner. If in any given case, there are weighty reasons for doing so, which we expect will always be recorded in writing, the interview may appropriately be refused. But no such consideration has been pressed upon us and therefore we do not see any reason why newspapermen who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under clause (4) of rule 549.

4. Rule 559A also provides that all reasonable indulgence should be allowed to a condemned prisoner in the matter of interviews with relatives, friends, legal advisers and approved religious ministers. Surprisingly, but we do not propose to dwell on that issue, this rule provides that no newspapers should be allowed. But it does not provide that no newspapermen will be allowed.

5 Mr. Talukdar who appears on behalf of the Delhi Administration contends that if we are disposed to allow the petitioner to interview the prisoners, the interviews can be permitted only subject to the rules and regulations contained in the Jail Manual. There can be no doubt about this position because, for example, rule 552A provides for a search of the person who wants to interview a prisoner. If it is thought necessary that such a search should be taken, a person who desires to interview a prisoner may have to subject himself or herself to the search in accordance with the rules and regulations governing the interviews. There is a provision in the rules that if a person who desires to interview a prisoner is a female, she can be searched only by a matron or a female warden.

6. Taking an overall view of the matter, we do not see any reason why the petitioner should not be allowed to interview the two convicts Billa and Ranga.

7. During the course of the hearing of this petition, representatives of the Times of India, India Today, PTI and UNI also presented their applications asking for a similar permission. What we have said must hold good in their cases also and they, in our opinion, should be given the same facility of interviewing the prisoners as we are disposed to give to the petitioner in the main writ petition.

8. We therefore direct that the Superintendent of the Tihar Jail shall allow the aforesaid persons, namely the representatives of the Hindustan Times, the Times of India, India Today, the Press Trust of India and the United News of India to interview the aforesaid two prisoners, namely, Billa and Ranga, today. The interviews may be allowed at 4 O'Clock in the evening. The representatives agree before us that all of them will interview the prisoners jointly and for not more than one hour on the whole.

9. There will be no order as to costs.

10. Mr. Lekhi who appears on behalf of the magazine India Today as also Mr. Jain who appears on behalf of the Hindustan Times has requested us to direct the Superintendent of Jail to allow the aforesaid representatives to be present at the time of the execution of the death sentence. That is not a matter for us to decide. If such an application is made to the Superintendent of Jail, he will be free to consider the same on merits and in accordance with the jail regulations.

Interview allowed.

1982 CAR 5 (SC)
In The Supreme Court Of India
Criminal Appellate Jurisdiction
Hon'ble Mr. Justice S. Murtaza Fazal Ali
Hon'ble Mr. Justice A. Varadarajan

Dated : 8-1-1981

Aitha Chander Rao ...Appellant

v.

State of Andhra Pradesh ...Respondent

Criminal Appeal No. 337 of 1975

Penal Code, 1860—Sec. 304-A—Question of sentence—Contributory negligence on the part of appellant—Peculiar circumstances—Probation for one year allowed.

The Sessions Judge had found that there was some amount of contributory negligence on the part of the appellant and having regard to the peculiar circumstances of this case we think it is eminently a fit case in which the appellant may be released on probation. (Para 1)

Probation of Offenders Act, 1958—Section 12—Offence under Sec. 304-A, Penal Code—Probation allowed for one year—Probation not to affect the appellant's service career.

As the appellant has been released on probation this may not affect his service career in view of the section 12 of the Probation of Offenders Act. The appeal is disposed of with the aforesaid observations. (Para 2)

ORDER

This appeal by special leave is directed against the Judgment of the High Court of Andhra Pradesh affirming the conviction of the appellant under section 304-A, I. P. C. for 2 years R. I. and a fine of Rs. 500/-. After having gone through the Judgment of the Courts below, we do not find any reason to interfere with the merits of the appeal. The only question that may be considered is if it is a proper case in which the appellant may be released on probation. The Sessions Judge had found that there was some amount of contributory negligence on the part of the appellant and having regard to the peculiar circumstances of this case we think it is eminently a fit case in which the appellant may be released on probation. We therefore suspend the sentence of imprisonment only maintaining the fine imposed on the appellant and instead release him on probation of good conduct under section 4 of the Probation of Offenders Act and section 361, Cr. P. C. The appellant shall execute a bond of Rs. 1,000/- for maintaining peace and good behaviour for a period of one year and if he violates any condition of the bond, he may be called upon to surrender and serve the remaining part of the sentence. Out of the fine of Rs. 500/-, the entire amount shall be paid as compensation to the widow and legal heirs of the deceased.

2. As the appellant has been released on probation this may not affect his service career in view of the section 12 of the Probation of Offenders Act. The appeal is disposed of with the aforesaid observations.

Order accordingly.

1982 CAR 6 (SC)
In The Supreme Court Of India
Criminal Appellate Jurisdiction
Hon'ble Mr. Justice A. P. Sen
Hon'ble Mr. Justice Baharul Islam

Dated : 6-11-1981

The State of Gujarat & Ors. ...Appellants
v.
Jat Harun Dada ...Respondent

Criminal Appeal No. 438 of 1981

COFEPOSA ACT, 1974, Sec. 3(1)—Finding of fact of High Court that documents upon which grounds of detention were founded not served upon detenu—Pure finding of fact—Cannot be interfered with by Supreme Court—Appeal by State dismissed.

The purport of the finding of the High Court is that although the grounds as such, of detention, were supplied to the detenu, the documents enumerated in the document containing the "grounds" and which were purported to be enclosed were not supplied to the detenu. This being a pure finding of fact, cannot be interfered with in an appeal by special leave under Article 136 of the Constitution of India. (Para 4)

JUDGMENT

BAHARUL ISLAM, J.

This appeal by Special leave by the State of Gujarat (hereinafter 'the appellant') is directed against the Judgment of the High Court of Gujarat dated 18th of June, 1980, quashing the order of detention passed by appellant under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Only one point urged before us on behalf of the appellant is that the finding of the High Court that the respondent was not furnished with the documents and statements is not correct. Learned counsel draws our attention to the following portion of the document containing the grounds of detention :

"The statements and documents which form the basis for the allegations made hereinabove, copies of which are enclosed, are as under :—

1. Report dated 8th October, 1979 from the Sector Commander, BSF Camp, Khavda.

2. Panchnama dated 8th October, 1979 drawn by the Customs Officers of Khavda.

3. Your statement dated 9th October, 1979 recorded by the Customs Officers.

4. Statement dated 9th October, 1979 of Yakub Sumar Jat.

On going through the all relevant materials and documents produced by the Sponsoring Authority, the State Government has decided to detain you."

The submission is that the documents enumerated above being part of the 'grounds' were furnished to the detenu, who acknowledged the receipt of the grounds.

3. Whether the statements and documents were furnished to the detenu or not is a question of fact. It appears from what has been quoted above that the copies of the statements and documents which formed the basis of the allegations purported to have been made enclosures.

4. The High Court has examined this very contention raised before it. It has examined the affidavit filed by Mr. P. M. Shah, Deputy Secretary to the Government of Gujarat on the point, the endorsement made by the detenu by way of acknowledgment of the grounds of detention, and finds as follows :—

"Therefore, what has been stated in paragraph 8 of the affidavit of Mr. P. M. Shah, solemnly affirmed on 30th April, 1980 when it is read in light of what the Circle Police Inspector has stated in his endorsement militates against the acceptance of the general statement made by Mr. P. M. Shah in the other part of that affidavit that the documents upon which the grounds of detention were founded

were served upon the detenu were (1) the grounds of detention, (2) the detention order and (3) the committal order and nothing more. Since, in our opinion, the documents upon which the grounds of detention were founded were not served upon the detenu, he did not have an effective opportunity to make a representation to the State Government against his detention."

Although the first sentence of the quotation is not clear, the second sentence is clear. The purport of the finding of the High Court is that although the grounds as such of detention, were supplied to the detenu, the documents enumerated in the document containing the "grounds" and which were purported to be enclosed were not supplied to the detenu. This being a pure finding of fact, cannot be interfered with in an appeal by special leave under Article 136 of the Constitution of India.

5. This appeal has no force and is dismissed.

Appeal dismissed.

1982 CAR 7 (SC)
In The Supreme Court of India
Original Jurisdiction
Hon'ble Mr. Justice R. S. Pathak
Hon'ble Mr. Justice E. S. Venkataramiah

Dated : 10 12-1981

Ashok Kumar Binny ...Petitioner
v.
State of Jammu & Kashmir & Ors. ...Respondents

Writ Petition No. 8333 of 1981

A N D

Hans Raj ...Petitioner
v.
State of Jammu & Kashmir & Ors. ...Respondents

Writ Petition No. 8365 of 1981

Jammu & Kashmir Public Safety Act, 1978—Secs. 8 and 16(1)—Advisory Board did not submit its report to Govt within eight weeks of the detention—Further detention held to be invalid.

(See Paras 3 and 4)

JUDGMENT

PATHAK, J.

The petitioners Ashok Kumar Binny and Hans Raj have been detained by the Government of Jammu & Kashmir under s. 8 of the Jammu & Kashmir Public Safety Act, 1978. They have filed these petitions for a writ in the nature of habeas corpus directing their release.

2. The petitioner Hans Raj was detained on 17th August, 1981 while the petitioner Ashok Kumar Binny was detained on 1st October, 1981. It is pointed out that although their cases have been referred to the Advisory Board, the Advisory Board has not submitted its report yet to the Government, and as eight weeks from the date of detention have expired there has been a violation of sub-s. (1) of s. 16 of the Public Safety Act. In the circumstances, it is urged, the further detention of the petitioners is invalid. When these petitions were called on for hearing, Mr. Altaf Ahmed, appearing for the respondents, placed before us a wireless communication received by him from the State Government stating that the Advisory Board was programmed to sit today and instructing him to seek adjournment in these cases. We are unable to grant the adjourment because it seems to us that any proceeding now taken by the Advisory Board can be of no consequence in supporting the further detention of the petitioners.

3. The petitioners enjoy a fundamental right under Article 21 not to be deprived of their personal liberty except according to procedure established by law. In cases where the Government resorts to preventive detention, clauses (4) to (7) of Article 22 prescribe the conditions relating to preventive detention. A perusal of these clauses will make it immediately apparent that the Constitution places the greatest emphasis on severely limiting the period of preventive detention and envisages time-bound stages

for the processing of a case as it reaches its determination. The Jammu and Kashmir Public Safety Act contains provisions which specify the successive stages and also prescribe the period within which each stage must be completed. Section 15 declares that after a detention order has been made the Government must, within four weeks from the date of the detention order, place before the Advisory Board the grounds on which the order has been made, the representation made by the person affected by the order, and, where the order has been made by an officer, also the report by such officer. Thereafter, sub-s. (1) of s. 16 provides that the Advisory Board, after considering the material before it and such further material as it may deem necessary and after hearing the person concerned, shall "submit its report to the Government within eight weeks from the date of detention". The obligation placed on the Advisory Board to submit its report within the prescribed period must be construed strictly inasmuch as the personal liberty of a person is involved and having regard to the emphasis which the Constitution has placed, and which emphasis is reflected in the Act, on the necessity of expeditiously determining whether the detention of the person concerned should be continued.

4. In the cases before us, it is clear that the period prescribed by sub-s (1) of s. 16 of the Act for the submission of its report by the Advisory Board has already expired. On that ground alone, it must be held that the further detention of the two petitioners is invalid. We are supported in this view by **Shri Mritunjoy Pramanik v. The State of West Bengal.** (1).

5. We allow these writ petitions and direct the State of Jammu and Kashmir and other respondents to release the petitioners Ashok Kumar Binny and Hans Raj forthwith. Immediately on their release, the Chief Secretary, State of Jammu and Kashmir, will intimate to this Court that their release has been effected.

Petitions allowed.

1. (1972) 2 SCC 586

1982 CAR 8 (SC)

In The Supreme Court of India

Original Jurisdiction

Hon'ble Mr. Chief Justice Y. V. Chandrachud

Hon'ble Mr. Justice A. P. Sen

Hon'ble Mr. Justice Bharul Islam

Dated : 7-11-1981

Kuljeet Singh alias Ranga ...Petitioner

v.

Lt. Governor, Delhi & Anr. ...Respondents

Writ Petition No. 8193 (A) Of 1981

Constitution of India—Article 72(1) clause (c) —President's Power to dispose of such mercy appeals is coupled with a duty to be exercised fairly and reasonably—This question must be examined with care—Execution of all such death sentences stayed,

We do not know whether the Government of India has formulated any uniform standard or guidenlines by which the exercise of the constitutional power under Article 72 is intended to be or is in fact governed. Since the question raised by Shri Garg is of far-reaching importance, particularly from the point of view of persons sentenced to death in respect of whom the President is specially empowered to exercise his power by clause (c) of Article 72(1), it is necessary that the question must be examined with care. (Para 3)

ORDER

Rule Nisi. We direct that the Writ Petition be placed for final hearing in the second week of January 1982. The petitioner and the respondents will file their written submissions on or before the 4th January, 1982. We stay the execution of the death sentence imposed upon the petitioner Kuljeet Singh @ Ranga as also on the co-accused Billa. We appoint Shri R.K. Jain as amicus curiae on behalf of Billa.

2. Since the Special Leave Petition filed by the petitioner and a Writ Petition filed by him thereafter against the order of conviction and sentence have already been dismissed by us, it would be necessary to state briefly the reasons why we are issuing a Rule on the present Writ Petition.

3. Shri R. K. Garg, who appears on behalf of the petitioner, contends that the power conferred by Article 72 of the Constitution on the President of India to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence especially in a case where the sentence is one of death, is a power coupled with a duty which must be exercised fairly and reasonably. We do not know whether the Government of India has formulated any uniform standard or guidelines by which the excercise of the constitutional power under Article 72 is intended to be or is in fact governed. Since the question raised by Shri Garg is of far-reaching importance, particularly from the point of view of persons sentenced to death in respect of whom the President is specially empowered to exercise his power by clause (c) of Article 72(1), it is necessary that the question must be examined with care.

4 As a result of our staying execution of the death sentence imposed upon the aforesaid two accused, it is likely that similar petitions will be filed by others who are sentenced to death and whose petitions to the President or the Governor, as the case may be, for commutation of the sentence have been rejected. In order to obviate the necessity for such persons to approach this Court, it is necessary to direct that the death sentence imposed upon any person whatsoever whose petition under article 72 or article 161 of the Constitution has been rejected by the President or the Governor, shall not be executed until the disposal of this Writ Petition.

5. Notice of this Rule will go to the Attorney General and the Union of India.

Order accordingly.

1982 CAR 9 (SC)

In The Supreme Court of India

Original Jurisdiction

Hon'ble Mr. Justice A. P. Sen

Hon'ble Mr. Justice Baharul Islam

Dated : 5-11-1981

Bishambbar Dayal Chandra Mohan &Others etc. etc. ...Petitioners.

v.

State of Uttar Pradesh & Ors. ...Respondents.

Writ Petitions Nos. : 2907-2908, 3234, 3238-39, 3164, 3254, 3630-31, 3686, 3783, 3816, 4816, 4829-31, 4836-38, 4996-5001, 5051-54, 5089-93, 5136 46, 5247, 3160, 3634, 4494, 4616, 4967, 5362-71, 5416 20, 5447-50, 5716-17, 5840, 6015, 6587-89, 6609-14, 5062, 5094, 5157-58, 5451, 5615-17, 5097, 5042, 5098 5017, 5214, 6135-36, 7003, 3421, 3407, 3408-13, 3422, 3536, 3561-64, 5238, 3824, 5466, 5544, 6009, 6130-31, 6562-74, 6582, 6583, 4904-4905, 5080, 5094, 5239 45, 5358-59, 5395, 5483, 5484-88, 5489-92, 6584-86, 5734-39, 6817-21, 4960-62, 4958-59, 5129 33, 5219-20, 5331-33, 5518-19. 5526, 5428-31, 5527, 4526, 4926, 4995, 5046, 5048-50, 5100-5101, 5136-46, 5402 5411, 5436-38, 5560, 5520-21, 5562, 5558, 5556, 5559, 5550, 5546-47, 5552, 5555, 5553 54, 5511, 5551, 5482, 5618-19, 5809 20, 6132-33, 6244, 6273-75. 6267-72, 5512-14, 5515, 6570, 5562, 7027-29, 7032-34, 5568-69, 5221, 5380-83, 5129-33, 5421-22, 5440, 5507-5510, 5662, 5806-5807, 6245, 6246, 6265, 6398, 6684, 3592, 3353, 5396, 6016, 6247-48, 6616, 6660, 6798, 5003, 4453, 4455-56, 5346-48, 4955, 5082-89, 5577-80, 5581, 5724, 3489, 4263, 4818, 2916, 2932, 3242, 3297-3302, 3334-43, 3475, 4098-4100, 4136, 4304, 4187, 4777, 5007-17, 5027-34, 5352-55, 5473 79, 5604 5608, 5740-42, 5743-44, 5821, 6012 13, 5583-92, 5391, 5525, 5443, 5444, 5663, 6266, 5464, 5451, 5564-66, 5808, 5571-75, 6622-29, 6014, 5568-69, 5718-19 & 6943 of 1981

AND

M/s. Ashvani Kumar Mahesh Kumar Malani etc. etc. ...Petitioners.

v.

Union of India & Anr. ...Respondents.

Writ Petitions Nos. : 2932, 3776-80, 4140-45, 4326-28, 4876-4902, 4670-78, 5473-79, 5480, 4955-56, 5330, 5392, 3823, 6278, 5529 30, 5531-32, 5841-50, 5656 58 of 1981.

Constitution of India—Arts. 301 and 19(1)(g) r/w. Sec. 5 of Essential Commodities Act, 1955 and clause 4 of U. P. Foodgrains (Procurement and Regulation of Trade) Order, 1978—Question of fundamental rights to carry on trade or businsess—U. P. Govt. instructions on teleprinter to Regional Food Controllers were to secure compliance with U. P. Foodgrains Order, 1973—Held, teleprinter message was in nature of executive instructions—Has force of law.

(See Paras 16, 17, 21, 25 and 46)

Constitution of India—Art. 301 and Art. 19 (1) (g) and cls. 5 and 6—Freedom of Inter-State trade and commerce—Such right has its own limitation—Right not absolute and must yield to common good and for national interest — Reasonable restrictions can be imposed—Test of reasonableness.

(See Paras 29, 30 and 45)

U. P. Foodgrains (Procurement and Regulation of Trade) Order, 1978—Re-fixing the maximum food stock limits by Govt.—Object of—To curb speculative tendencies of traders in foodgrains and to maximise procurement of wheat as buffer stock for public distribution—Such restrictions not arbitrary or excessive in nature.

In view of the worsening situation in the national buffer stock and in the light of the experience gained during the past few years, the State Government was of the opinion that it was necessary and expedient to re-fix the stock limits of such dealer. This was expected to maximise procurement of wheat to meet the requirement of public distribution, as well as, the buffer stock. (Para 43)

It cannot be asserted that the restriction imposed by the State Government on wholesale dealers of wheat is either arbitrary or is of an excessive nature. The fixation of the stock limit of wheat to be possessed by wholesale dealers, at any time, at 250 quintals is an important step taken by the State Government to obviate hoarding and blackmarketing in wheat which is in short supply. (Para 44)

Constitution of India—Art. 300-A r/w. Sec. 6-A of Essential Commodities Act — Trucks laden with wheat seized at check-post in Agra—A. D. M. (Civil Supplies) under Sec. 6-A of Act seized of the matter as to the legality of seizure and search—Petitioners dealers in wheat rushed to Supreme Court to get this matter decided there—Held, for their rights the petitioners must establish necessary facts before A D.M. u/sec. 6 A of the Act—Even if they fail their remedy lies in civil suit for damages for wrongful seizure.

On the report of the Chief Marketing Inspector, the Additional District Magistrate (Civil Supplies), Agra drew up proceedings under s. 6A of the Act and directed the police to complete the investigation whithin 15 days. (Para 6)

On May 23, 1981, the Additional District Magistrate (Civil Supplies), Agra, under sub-s. (2)(i) of s. 6A of the Act passed interim orders for the sale of the seized wheat as it was subject to speedy and natural decay, at the request of the Senior Marketing Inspector. (Para 7)

The State contests the right of the Court to investigate into the facts, particularly when the matter is a fact in issue in the aforesaid proceedings before the Additional District Magistrate (Civil Supplies)., Agra. Normally, it is not the function of this Court to investigate into facts in proceedings under Art. 32 of the Constitution when they are controverted with a view to discerning the truth. The matter must, in a situation like this, be left to the fact-finding body. For the establishment of their right to relief under Art. 32, the petitioners must, in our opinion, establish the necessary facts before the said Additional District Magistrate in the proceedings under s. 6A of the Act. It they fail to get relief in such proceedings, their obvious remedy lies in a suit for damages for wrongful seizure. (Para 39)

The question that the seizures were in reality for procurement of wheat in furtherance of the directive of the Central Government and not for breach of the two Conrtol Orders and, therefore, were nothing but a 'colourable exercise of power', is dependent on facts to be found on investigation; Further, the question that there being no control price for wheat,