Chapter - 5

THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred as the 'Act'), has been enacted to deal with malpractices like blackmarketing, hoarding, profiteering and to control the unjustified rise in prices of essential commodities. It supplements the Essential Commodities Act, 1955 with a specific purpose to prevent blackmarketing. Accordingly, it recognizes preventive detention as a necessary means for controlling blackmarketing and also seeks to provide various safeguards to avoid possible abuse of the powers of detention by concerned authorities. It defines precisely, the grounds on which a person can be detained. The Act provides that an order directing the detention of a person could be made only to prevent him from acting in any manner, which can be prejudicial to the maintenance of supplies of commodities essential to the community. It provides for the constitution of advisory boards for reviewing the cases of the detained persons in accordance with the provisions of article 22 of the Constitution and the maximum period of detention has been limited to six months. The word "prevent", as judicially defined in this respect, does not mean only an obstruction by physical force, but also implies "to stop, keep, or hinder from doing something to frustrate, defeat, bring to nought, render void or nugatory".[1]

The detenue has a right to be informed about the grounds of his detention as well as a right to make representation against any detention order. Detained person may be released by the appropriate government for any specified period at any time, either without conditions or upon such conditions as may be specified in the direction in a bond executed by him with or without sureties. His release can also be cancelled at any time.

I. Power to Make Detention Orders

Section 3 of the Act deals with power to make orders of detention in appropriate cases to attain the objectives of the Act. Accordingly, detention can be ordered by the central government or the state government or any officer of the central government not below the rank of a joint secretary or

1. See *Madhusudan Mistri* v. *Assistant Registrar of Co-operative Societies*, 1978 Cr LJ 570 (Cal) and *Krishanlal* v. *State of Haryana*, 1979 Cr LJ 235 (P & H).

any officer of a state government, not below the rank of a secretary. The officer, either of the central government or the state government must have been specially empowered by the appropriate government to issue the orders of detention for the purposes of preventing blackmarketing. Before issuing such orders, the authority concerned should be satisfied about its necessity with respect to any person acting in the manner prejudicial to the maintenance of supplies of commodities essential to the community.[2] Any person can be said to be acting in such a prejudicial manner if he is committing or instigating any other person to commit any offence punishable under the Act, or under any other law for the time being in force relating to the control of the production, supply or distribution, or trade and commerce, in any essential commodity.[3] A person who is dealing in any commodity, which is an essential commodity as defined in the Essential Commodities Act, 1954 or any other law and tries to make gain in any manner which may directly defeat or tend to defeat the purpose of that Act or any other law, can also be deemed to be acting in a manner prejudicial to the provisions aforesaid.[4]

Adulteration of any essential commodity also amounts to acting in a prejudicial manner. In *Surubha Govubhai Jedeja* v. *State of Gujarat and Others*,[5] the maintenance of an adulterated stock of diesel by a petrol pump owner was, therefore, held to be an activity prejudicial to the objectives of this Act. In *Taiyabji Fidahusen Challawala* v. *State of Gujarat*,[6] there were allegations against the petitioner that he had committed irregularities in the conduct of business of fair price shop being run by a co-operative society. The petitioner was detained, though he was of the age of 65 years and was employed by the society on monthly salary. The court observed that alleged irregularities and malpractices could not have been committed without the connivance of the chairman and other office bearers of the society and there has been non-application of mind by the detaining authority as they have not considered that aspect of the case. The court, accordingly, quashed the order of detention. In *Smt. K. Manjula* v. *Chief Secretary to the Govt. of A.P. and Others*,[7] the husband of the petitioner was doing wholesale business in kerosene and the inspector of police, vigilance cell took him into custody and sent him for detention to central jail alleging that he was responsible for diverting kerosene to blackmarketing. Deciding a petition of habeas corpus confers, the court found that detection was based on certain offences 4 to 5

2. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, sec. 3(1).
3. *Id.*, explanation to sec. 3(1).
4. *Ibid.*
5. 2000 (1) GLH 531.
6. 2001 Cri LJ 4347 (Guj).
7. 1998 Cri LJ 2741 (AP).

years back and they did not consider the fact that the accused had been already bailed out before passing of the detention order. The court, accordingly, held that the detaining authority should duly apply its mind while passing the impugned order of detention and even if one ground out of several grounds, which form the basis of ordering detention, is found to be defective, the order of detention should be set aside and the detnue set at liberty.

In *Khimjibai Nagjibhai Parmar* v. *District Magistrate, Jam Nagar*,[8] the petitioner, running a fair price shop was alleged to be indulging in making profit by charging prices of articles supplied by the government more than the prescribed. He was not supplied with the copies of vital documentation on the basis of which the detention order was passed. The court had considered such an issue earlier in the case of *Koli Sureshbhai Balabhai Parmar* v. *District Magistrate Bhavnagar.*[9] In both these cases, the Gujarat High Court allowed the petition, quashing the order of detention passed by the district magistrate on the ground that the authorities have not followed the accepted standards of detention.

In *Upendrabhai Jasubhai* v. *District Magistrate, Navsari*,[10] the detention order was passed by the detaining authority against the applicant on the ground that the petitioners were indulging in adulteration of HSD by mixing kerosene in large quantity and selling adulterated diesel at higher price. The petitioners were not provided with the legible copies of relevant documents. They made representation to advisory board, the state government and the central government, which was turned down by these authorities without proper consideration of all the relevant materials and facts. The court held the detention of the detnue as illegal and quashed the detention order on the ground that detnue was not supplied with legible copies of documents on the basis of which he could have made effective representation. Also, the order did not mention that the suspension or cancellation of the licence could not be an effective remedy.

Interestingly, in *Pinjari Hussain Sab* v. *District Collector, Anantapur and Others*,[11] the order of detention was quashed by the court on the ground that in the pleadings two provisions of law were stated to have been allegedly breached by the detnue when, in fact, there was breach of only one provision of the law. But if it is shown that detention was for infraction of a particular provision of law and there has been an accidental mention of one more provision, the order is not vitiated on account of non-application of mind.[12]

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8. 2002 Cri LJ 686 (Guj).
9. 2000(2) GLH 540.
10. 1999(1) GLH 145.
11. 1995 Cri LJ 778 (AP).
12. *Ibid.*

An important illustrative case of acting in a prejudicial manner is *Bannalal Vehilda* v. *Union of India*,[13] in which the officers of the food and civil supplies controller's office raided the petitioner's premises and found him in possession of white colour and blue colour kerosene. The officers suspected that the entire quantity of kerosene was a part of the blue coloured kerosene meant for distribution amongst weaker sections of the society at subsidized rates through public distribution system and the whole coloured kerosene found there was also primarily blue but later turned into white kerosene. The forensic science methods confirmed their suspicion. Since the petitioner was found to have unauthorizedly obtained, stored and consumed blue coloured kerosene meant for weaker sections of the society for his business purpose, the controller submitted before the district magistrate that the petitioner be prevented from acting in a manner prejudicial to the maintenance of supply of essential commodity like kerosene. On this the district magistrate ordered the detention of the petitioner. The court set aside the detention order on the ground that there was no evidence to show that the petitioner in fact knew that the blue coloured kerosene was sold at subsidized rates and it was meant for distribution only amongst weaker sections of the society for cooking and illumination purposes. The petitioner was also found to have paid the market price for purchasing the kerosene from the vendors about whom the district magistrate could not show that they were not authorized to sell white kerosene. There was also no material before the detaining authority to show that the petitioner had in the past committed any illegal act as regards possession, storage and use of blue coloured kerosene. The court said that all these relevant aspects were not considered by the district magistrate before the passing of the detention order and, therefore, the satisfaction arrived at by him cannot be said to be reasonable and genuine.

In *Pramodkumar Kanchedilal Jain* v. *State of Gujarat*,[14] the district magistrate passed the detention order against the petitioner because he was engaged in the activity of making illegal use of blue kerosene. The petitioner challenged the order on the ground that the detaining authority had not taken into consideration the pending prosecution of the accused in respect of the same incident and material documents had not been placed before the authorities concerned. The relevant documents had not been supplied to the detnue as well. The court quashed the detention order, rejecting the argument that the detnue was aware of the contents of the documents related to the repugnant activities.[15]

13. (2001) 1 SCJ 395
14. 2000 Cri LJ 3231 (Guj).
15. See also *Mehrunissa* v. *State of Maharashtra*, 1981 Cri LJ 1283 (Bom.).

In *Sangitaben Atul Kumar Patel* v. *District Magistrate Himmatnagar*,[16] the wife of the detnue petitioned for quashing the detention order passed against the detnue and his immediate release. The detention order had been passed on the ground that two wholesale licences in crude kerosene had been issued separately in the name of the father-in-law of the petitioner and the detnue; the detenue was looking after the management of both the businesses. He was involved in transportation of kerosene for direct sale for earning profit by indulging in black-marketing activities which was prejudicial to the maintenance of smooth supply of the essential commodity. The court held the detention order illegal because the detaining authority had not considered the alternative course of cancellation of the licence. It was further held that unexplained delay in the consideration of representation of the accused by the government can vitiate the order of detention. Same will be the consequences where materials regarding previous violations are not communicated to the detnue alongwith the grounds of detention.

Before the Gujarat High Court, in *Ravubha Pratapsingh Jedeja* v. *K.N. Bhatt or his successor-in-office, District Magistrate, and Others*,[17] the detention order was challenged on the ground that the petitioner was already in the judicial custody and this fact was not reflected in the order. In this case, on the surprise check of a petrol pump certain irregularities were found and some solvent was traced being mixed with the petrol. There were also allegations that the petitioner had obstructed the public servants from discharging their duties, for which a separate criminal case had been registered in the competent court. The petitioner was detained under an order of detention which was challenged by him on the ground that the order of detention was illegal in as much as the awareness of the detaining authority about the petitioner's being already in judicial custody had not been reflected in the order. The court, agreeing with the petitioner, allowed the petition and quashed the detention order.

Once a detention order is passed under the Act, it is subject to constitutional guarantees and is supposed to meet the requirements for detention. In *Kundanbhai Dulabhai Shaikh* v. *Distt. Magistrate, Ahmedabad*,[18] an order was passed for illegal transportation of kerosene and serious irregularities in the sale of wheat at a fair price shop. The detnue made a representation for his release, but that was not disposed of by the authorities expeditiously. The court held that the delay in disposal of the representation amounts to the violation of constitutional guarantees as well as the statutory right under the Act and the detention order was accordingly held liable to be quashed.

16. 1999 Cri LJ 3060 (Guj).
17. 1999(1) GLH 594.
18. 1996 Cr LR 425 (SC).

Preventive detention cannot be ordered purely on the basis of subjective satisfaction of the authority empowered to made orders of detention. There should be concrete ground available against the accused. In *K.Manjula (Smt.)* v. *Chief Secretary to the Govt. of A.P.*,[19] the order of detention was passed against the detnue on the ground of pendency of certain cases under the Essential Commodities Act. The detention was held as not valid. There should apparently be a proper application of mind by the authorities passing the order of detention.

Since, under section 8 of the Act, a detnue has a right to make representation to the appropriate government for revocation of detention order, if he is deprived of that opportunity, the detention order will be illegal.[20] Where the grounds of detention are vague and delay in disposal of detenu's representation is unexplained, the detention is vitiated.[21] If a representation is submitted by a detenu to state and central governments and the governments received parawise remarks from the district magistrate concerned, the decision of the state government to reject representation after it has received opinion of advisory board is not justified. If no decision is communicated by the central government, the inaction of central government and delay in decision by the state government concerned amounts to breach of fundamental rights of detenu under article 22(5).[22]

Under section 3, the district magistrates and commissioners of police have been authorized to issue orders of detention,[23] but, when any detention order is made by an authorised officer he is bound to forthwith report the fact to the state government to which he is subordinate together with the grounds on which the order has been made. Such other particulars have also to be furnished as in his opinion have a bearing on the matter. However, such an order cannot remain in force for more than twelve days unless in the meantime it has been approved by the state government.[24]

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19. 1998 Cr LJ 2741 (AP).
20. *Supra* note 1, sec. 8(1). *Girdhari lal* v. *District Magistrate*, 1995 Cr LJ 3496 (All). The appropriate government as defined under section 2(a) of the Act means, as respects a detention order made by the central government or by an officer of the central government or person detained under such order, the central government, and as respects a detention order made by a state government or by an officer of a state government or as respects a person detained under such order, the state government.
21. *Satyanarayana* v. *Inspector of Vigilance Cell & Ors.*, 1996 Cr LJ 1785 (AP). Article 22(5) of the Constitution reads as follows: When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as many be, communicated to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
22. *Kundanbhai Dulabhai Shaikh* v. *District Magistrate*, 1996 Cr LJ 1981 (SC).
23. *Supra* note 2 sec. 3(2).
24. *Id.*, sec. 3(3).

Where the grounds of detention, are communicated by the authority making the order to the affected person after five days but not later than ten days from the date of detention, the order of detention shall remain in force for 15 days instead of 12 days.[25] On the approval of an order of detention by the state government or any officer of that government, specially empowered for that, it should report the matter to the central government within seven days along with the grounds on which the order has been made and such other particulars having a bearing on the necessity for the order.[26]

II. Execution of Detention Orders

A detention order passed under the Act can be executed at any place in India in the same manner as is provided for the execution of warrants of arrest under the Cr PC.[27] The appropriate government has the power to specify the conditions of detention with respect to detenues as to maintenance, discipline and punishment for breaches of discipline. These conditions may be specified by a general or special order. The appropriate government can also order removal of a detenue from one place of detention to another within the same state or a different state. However, the order for the removal of a person from one state to another state can be made only after receiving the consent of the government of that other state.[28]

A detention order cannot be declared invalid or inoperative merely on the ground that the person to be detained is outside the limits of the territorial jurisdiction of the government or officer making the order, or he has been detained at a place outside the said limits.[29]

If the appropriate government or the officer passing the detention orders has reason to believe that the person to be detained has absconded or is concealing himself to prevent detention, the government or officer can report the fact to the metropolitan magistrate or a judicial magistrate first class having jurisdiction in the place where the said person ordinarily resides. Thereupon, the provisions of the Cr. PC dealing with proclamation and attachment of property apply in respect of the said person and his property.[30] They may by order, notified in the official gazette, direct the said person to appear before such officer, specifying the place, and within the period of time for this purpose. If the said person fails to comply with such direction without any cause and that he had, within the period specified in the order, informed the officer concerned about the intervening

25. *Id.*, proviso to section 3(3).
26. *Id.*, sec. 3(4).
27. *Supra* note 2, sec. 4.
28. *Id.*, sec. 5.
29. *Id.*, sec. 6.
30. *Id.*, secs. 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973

reason and his whereabouts, he is liable to be punished with imprisonment for a term which may extend to one year or with fine or with both. The Act has declared the offence of such absconding and concealing as cognizable.[31]

III. Disclosure of Grounds of Detention

Section 8 of the Act makes the disclosure of the grounds of detention to the accused as compulsory. Hence, if a person is detained in pursuance of a detention order, the authority making the order should communicate the grounds to him on which the order has been made and shall provide him the earliest opportunity of making a representation against the order to the appropriate government. The authority may not disclose the facts, which it considers to be against the public interest to disclose.[32] The grounds should be communicated to the detenue as soon as possible, 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.[33]

IV. Constitution of and Reference to Advisory Boards

Section 9 of the Act empowers the central and the state governments to constitute one or more advisory boards for the purpose of considering the desirability of detention of persons involved in prejudicial activities.[34] Every such board should have three members who are, or have been or are qualified to be appointed as, judges of a high court. [35]

One of the members who has been the judge of a high court should be appointed as the chairman of a board. In the case of a union territory, the appointment to the advisory board of any person who is a judge of the high court of a state should be made with the previous approval of the state government concerned.[36]

The appropriate government should place the grounds on which the order has been passed before the advisory board concerned within three weeks from the date of detention of the detnue alongwith the representation, if any, made by him. In case the order has been made by the authorized officer, the report of such officer should also be placed before the advisory board.[37]

The advisory board has to consider the materials placed before it and may call for further information from the appropriate government or from

31. *Id.*, sec. 7.
32. *Id.*, sec. 8 (1).
33. *Id.*, sec. 8(2); see also *supra* note 10 and 14.
34. *Id.*, sec. 9(1).
35. *Id.*, sec. 9(2).
36. *Id.*, sec. 9(3).
37. *Id.*, sec. 10.

any other person to be called through the appropriate government. Such information may be called from the person concerned also. If the person concerned desires to be heard, he should be given an opportunity of being heard. The board should submit its report to the appropriate government within seven weeks from the date of detention of the person concerned.[38] Such a report has to specify in a separate part thereof the opinion of the advisory board as to whether or not there is sufficient cause for the detention of the person concerned.[39] When there is difference of opinion among the members of the advisory board, the opinion of the majority of such members is deemed to be the opinion of the board.[40]

Any person against whom a detention order has been made is not entitled to appear before the board through any legal practitioner. The proceedings of the advisory board and its report is treated as confidential. That part of the report in which the opinion of the advisory board is specified is not treated as confidential.[41]

In a case where the advisory board has reported in its opinion that there is sufficient cause for the detention of a person, the appropriate government may confirm the detention of the person concerned for such period as it thinks fit.[42] Where the advisory board has reported that in its opinion there is no sufficient cause for the detention of the person concerned, the appropriate government has to revoke the detention order and cause the person to be released forthwith.[43] The maximum period for which any person may be detained in pursuance of any confirmed detention order can be six months from the date of detention.[44] However, the appropriate government has the power to revoke or modify the detention order earlier than that.[45]

On representation being made against the preventive detention, if there has been delay in considering such representation by central and state governments, that amount to callousness and disregard to constitutional obligation. In such a situation the detenue can be directed to be released forthwith.[46]

In *B. Satyanarayana* v. *The Inspector of Vigilance Cell and Others*,[47] there was delay of about 8-9 days in considering the representation of the detenue and

38. *Id.*, sec. 11(1).
39. *Id.*, sec. 11(2).
40. *Id.*, sec. 11(3).
41. *Id.*, sec. 11(4).
42. *Id.*, sec. 12(1).
43. *Id.*, sec. 12(2).
44. *Id.*, sec. 13.
45. *Id.*, proviso to sec. 13.
46. *Supra* note 36.
47. 1996 Cri LJ 1785.

most of the grounds mentioned in the detention order related to the past activities of the detenue. Though the state asserted that there was no delay, the court verified the fact of delay from the materials produced before the court and it was found that there was delay. The court further established that the order of detention suffered from vengeances and non-application of mind on the part of the district magistrate. It, therefore, quashed the order of detention and its confirmation by the government and ordered the release of the detenue. In *Navalashankar Ishwarilal Dave* v. *State of Gujarat*,[48] it has been held that keeping the representation of a detnue without being considered and disposed of, and rejecting it only after the receipt of the board's decision, is illegal. In *Dr. Narayan Tukaram Baddi* v. *The District Magistrate, Ahemedabad and Others*,[49] even if the grounds for detention were supplied to the detenu, but for delay, both the state as well as central government were considered to be callous and in disregard to their constitutional obligations. Admittedly, the need to expedite, reasonable dispatch and expected promptitude in considering the representation was absolutely forgotten. The court observed that acceptance of the plea of latitude in such cases would amount to putting premium over lethargy, laxity, inefficiency and remissness of executive/bureaucracy at the cost of scooting and crushing the personal liberty guaranteed by the Constitution.

In *Bharatbhai Ramjibhai Parmar* v. *State of Gujarat and others*,[50] the petitioner was detained for his alleged involvement in malpractices relating to forging of permits, signatures and for securing supply of wheat and rice on the basis of such forged documents. The petitioner challenged the detention, mainly on the ground that there was an uncalled for delay in deciding the representation and, therefore, his continued detention was bad in law. The court accepted his plea and relied on *R. Paulsawy* v. *Union of India*,[51] in which no explanation was coming forward from the central government regarding the delay in considering the representation of the detenue.

V. Revocation of Detention Order or Temporary Release of Detenue

A detention order can be revoked or modified at any time before its expiry.[52] The revocation or expiry of a detention order can, however, not bar the making of a fresh detention order against the same person in any case where fresh facts have arisen after the date of revocation or expiry of

48. AIR 1994 SC 1496.
49. 1996 Cri LJ 3555.
50. 2000(2) GLH 745.
51. 1999 Cri LJ 2897.
52. *Supra* note 2, sec. 14(1).

the detention order.[53] If the detnue is deprived of the right to make representation to central government which is available to the accused for revocation of detention order, the detention order shall be illegal.[54] Where there has been revocation of the detention order, but the central government has not communicated its decision to the detnu, nor has the state government received any intimation as to the decision taken by central government, there being no compliance of mandatory requirement of section 14(1), of the Act, the detention is illegal.[55]

A detnue can also be released by the appropriate government for any specified period at any time, either without conditions or upon stipulated conditions. The release can also be cancelled at any time.[56] In order to effect such release, the appropriate government may require the detnue to enter into a bond, with or without sureties, for the due observance of the conditions specified in the direction.[57] The person released would have to surrender himself, at the specified time and place, to the authority who has directed his release or cancelled his release.[58] If any such person fails without sufficient cause to surrender himself in the specified manner, he would be punishable with imprisonment for a term, which may extend to two years or with fine or with both.[59] If the person released with conditions fails to fulfil any of the conditions imposed upon him under the order of release or in the bond entered into by him, the bond shall be declared to be forfeited and the person bound thereby would be liable to pay the penalty thereof.[60]

The Act has recognised preventive detention as a necessary measures for controlling blackmarketing and also seeks to provide various safeguards to avoid possible abuse of such powers. It provides that an order directing the detention of a person could be made thereunder only with a view to preventing such person from acting in any manner prejudicial to maintenance of supplies of commodities essential to the community.

The Act needs to be made popular among the consumer associations and be used to the best advantage of the consumers.

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53. *Id.*, sec. 14(2).
54. *Supra* note 24.
55. *Supra* note 2, sec. 15(1).
56. *Id.*, sec. 15(1).
57. *Id.*, sec. 15(2).
58. *Id.*, sec. 15(3).
59. *Id.*, sec. 15(4).
60. *Id.*, sec. 15(5).