

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 22nd OF MARCH, 2022

WRITE PETITION NO.4592 OF 2022

Between:-

RAJNISH KUMAR TIWARI,

PETITIONER

(BY SHRI JAYANT PRAKASH PATE, ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY HOME DEPARTMENT,
VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

**2. THE COLLECTOR CUM DISTRICT MAGISTRATE
ANUPPUR, DISTRICT-ANUPPUR (MADHYA PRADESH)**

**3. THE SUB-DIVISIONAL OFFICER (REVENUE)
KOTMA, DISTRICT-ANUPPUR (MADHYA PRADESH)**

RESPONDENTS

(BY SHRI PRADEEP SINGH, GOVERNMENT ADVOCATE)

This petition coming on for admission this day, Hon'ble Shri

Justice Maninder S. Bhatti passed the following:

ORDER

The petitioner has filed this present petition while praying for quashment of the impugned order of detention dated 14.02.2022 which is contained in Annexure P/5.

2. The facts of the case reveal that the petitioner is working as salesman in Government Fair Price Shop, Khodri No.1 under Anusuchit Jaati seva Sahakari Samiti Nigwani, Tahsil-Kotma, District-Anuppur. On account of some complaint, a show cause notice was issued to the present petitioner being salesman of the Government Fair Price Shop in question as well as one Dinesh Kumar Bhatt who was Manager of the aforesaid Fair Price Shop.

3. The show cause notice was to the effect that there were irregularities in distribution of the food grains amongst the beneficiaries and the allegations of misappropriation of food grain as well and not maintaining the stock properly. This show cause notice was issued on 02.02.2022. Here it is relevant to mention that the notice in question was not against the petitioner in person, on the contrary, the same was addressed to the society i.e. Anusuchit Jaati Seva Sahakari Samiti Nigwani and to the shop. Yet, it appears that the petitioner being salesman of the shop submitted his reply to the said show cause notice on 04.02.2022. However, all of a sudden, another show cause notice was issued to the petitioner and the Manager dated 04.02.2022 on the same allegations which were leveled in the show cause notice dated 02.02.2022. The petitioner submitted his reply to the said show cause notice dated 04.02.2022., however, the reply was submitted by the petitioner on 14.02.2022 and on 14.02.2022 itself, the Collector-cum-District Magistrate, District-Anuppur, in purported exercise of powers conferred under Section 3 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 passed an order of detention against the present petitioner as well as one Dinesh Prasad Rao (Bhatt) who is Manager of the aforesaid Fair Price Shop.

4. The order dated 14.02.2022 was also followed by another document containing reasons for detention. The reasons for detention vide

document dated 14.02.2022 were communicated to the petitioner on the same day i.e. 14.02.2022, however, the petitioner was afforded an opportunity to submit a representation before the State Government. The said order of detention was eventually confirmed by the State Government vide order dated 17.02.2022 and the same has been brought on record by the respondents alongwith their return.

5. Learned counsel for petitioner though assailed the order of detention on various grounds but ultimately during the course of argument, the counsel confined his challenge to the impugned order on the ground that the petitioner was not granted opportunity to submit the representation before the *Detaining Authority*. The submission of the counsel for the petitioner is that the document dated 14.02.2022 by which, the reasons for detention were communicated, granted an opportunity to the petitioner to submit a representation before the State Government. According to the petitioner, this communication by the Collector-cum-District Magistrate was bad in the eye of law particularly in view of the law laid down by the Full Bench of this Court in the case of *Kamal Khare vs. State of M.P. and others passed in W.P.No.22290/2019*.

6. Learned counsel for the petitioner further submitted that Article 22(5) of the Constitution of India specifically provides that in a case of detention, the Authority passing order of detention is obliged to afford an opportunity to the person concerned to make a representation to the authority which has passed the order of detention. Thus, counsel for the petitioner submitted that the issue involved in the petition stands fully covered by the Full Bench decision in the case of **Kamal Khare (supra)**.

7. Per-contra, learned counsel for respondent while supporting the order of the detention submitted that the petitioner was granted opportunity to submit representation before the State Government and therefore, there was no violation of any statutory provisions and moreover according to the respondents, the order of detention was confirmed within a period of 3 days by the State Government and thus, looking to the severity of the allegations which reflect in the show cause notice, the order of detention was proper.

8. We have heard learned counsel for the parties at length.

9. The question in the present case pertaining to affording of an opportunity to make representation before the Authority in accordance with Article 22(5) of Constitution of India is settled by the decision of the Full Bench in the case of **Kamal Khare (supra)**. The Full Bench has held as follows:-

“30. Now coming to the question as to what would be the effect of not informing the detenu that he has a right of making representation, apart from the State Government and the Central Government, also to the detaining authority itself, the Constitution Bench of the Supreme Court in Kamlesh Kumar Ishwardas Patel (supra) even examined this aspect in paragraph No.14 of the report and categorically held as under :-

“14. 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.”

10. The aforesaid directives of the Full Bench makes it unequivocally clear that the authority passing an order of detention is obliged/duty bound to

afford opportunity of hearing to the detainee to make a representation against the order of detention. Apparently in the present case, no such opportunity was granted to the petitioner to submit a representation before the Detaining Authority. However, on the contrary, an opportunity was given to submit a representation before the State Government, however, this was not proper particularly in view of the law laid down by the Full Bench in the case of **Kamal Khare (supra)**. Therefore, without touching the other aspects of the matter, we find that the order impugned pertaining to detention of the petitioner contained in Annexure P/5, deserves to and accordingly quashed. However, liberty is granted to respondent No.2 to proceed against the petitioner under the Essential Commodities Act and the orders framed thereunder.

11. Thus, the writ petition is **allowed**.

**(SHEEL NAGU)
JUDGE**

**(MANINDER S. BHATTI)
JUDGE**

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