
(1949) 07 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No's. 327, 330, 331, 340, 341, 344, 355, 359, 365, 368, 369, 371, 372, 373, 374, 406 to 410, 414 to 416, 418, 419, 421, 422 to 424, 425, 426, 427, 430 to 432, 434, 435, 439 to 443, 444 to 449, 452, 453, 458, 460, 462, 464, 465, 466

Bhutnath Ghosh and Others

APPELLANT

Vs

Province of Bihar and Others

RESPONDENT

Date of Decision : 12-07-1949

Acts Referred:

Bihar Maintenance of Public Order (No. 2) Ordinance, 1949 — Section 23, 24, 4
Government of India Act, 1935 — Section 107, 88

Citation : AIR 1950 Patna 35

Hon'ble Judges : Ramaswami, J; Narayan, J

Bench : Division Bench

Advocate : B.C. Ghosh and D.K. Sinha, in Nos. 418, 419, 460 and 462, B.C. Ghosh, in No. 415, B.C. Ghosh and A.K. Chaudhury, in Nos. 434, 435 and 458; G.N. Pd., in Nos. 406 to 410 and 465, N.K. Prasad II and A.K. Verma, in Nos. 330 and 331, S.R. Goshal, in No. 472, Thakur Pd., in No. 425, Ramji Sinha in No. 359 and S.A. Ahmad in No. 471, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—These applications are u/s 491, Criminal P.C., by Bhutnath Ghosh and 59 others who allege that they are illegally and improperly detained u/s 2 (1), Bihar Maintenance of Public Order Ordinance (ordinance IV [4] of 1949).

2. The material facts are not controverted. The applicants had at first been arrested under the Bihar Maintenance of Public Order Act, 1947. Section 1 (3) of the Act provided that it shall remain in force for a period of one year from the date of its commencement. The proviso contained a power to extend the operation of the Act for a further period of one year by the resolution of the two Houses of Legislature of the Province, and further gave the Provincial Government the power of modification, if any, of the Act, The Federal Court

decided by their judgment dated 28th May 1949, AIR 1949 175 (Federal Court) , that the proviso was ultra vires of the Provincial Legislature and the extension of the Act beyond one year was invalid. The Federal Court also held that Bihar Act, V [5] of 1949 was infructuous, as the Bihar Maintenance of Public Order Act of 1947, which it sought to amend, had come to an end when the first year expired on 3rd June 1949. The Governor of Bihar promulgated ordinance II [2] of 1949. On 21st June 1949, this Ordinance was declared ultra vires and invalid by a judgment of this Court. On the next date, that is on 22nd June 1949 the Governor of Bihar promulgated ordinance IV [4] of 1949 which re-enacted in substance, the provisions of ordinance II [2] of 1949 which it purported to repeal. It is not disputed that the applicants have been served with fresh orders by the Provincial Government u/s 2 (1) of the new Ordinance.

3. The validity of the detention is challenged in these proceedings on the ground that the Governor of Bihar in promulgating the Ordinance has exceeded his legislative competence. It is, therefore, necessary to examine the terms of the Ordinance and compare them with the sections of the Constitution Act. At the outset, the Ordinance recites that the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for preventive detention and certain cognate matters in connection with the public safety and maintenance of order. Section 2 empowers the Provincial Government to make orders for detention or otherwise of persons with a view to preventing them from acting in a prejudicial manner, Section 3 enacts that the order u/s 2, Sub-section (1), shall be in force for a period not exceeding six months from the date from which it is confirmed or modified under Sub-section (5) of Section 4. Section 4 requires that the grounds of the order of detention and such particulars as may be deemed sufficient by the Provincial Government should be disclosed to the persons affected as soon as may be after the order is made. Section 4 (2) provides that, after the receipt of the representation, the Provincial Government shall place before Advisory Council the grounds on which the order had been made and the representation made by the person affected. Sub-section (3) requires the Provincial Government to constitute an Advisory Council. The Advisory Council is required to submit a report to the Provincial Government who may confirm, modify or cancel the order made u/s 2 (1). Section 5 provides for imposition of collective fines on the inhabitants of any area in certain circumstances. Section 6 relates to control of public processions, meetings and assemblies. Sections 7 and 8 empower the Provincial Government to impose censorship and to prohibit sale or distribution of prejudicial documents. Section 9 refers to requisition of property, Section 10 to unlawful drilling, Section 11 to wearing of unofficial uniforms. Section 13 enables the Provincial Government to notify a "protected place". Section 14 makes it an offence for any person to force entry into a protected place. Section 21 enables any police officer to arrest without warrant any person who is reasonably suspected of having committed an offence punishable under the Ordinance. Section 22 empowers the Provincial Government, by notification, to declare that

the offence under the Ordinance should be tried summarily u/s 260, Criminal P. C. Section 23 purports to repeal the Bihar Maintenance of Public Order Act, 1947 as amended by the Bihar Maintenance of Public Order (Amendment) Act, 1948 and the Bihar Maintenance of Public Order Ordinance (ordinance II [2] of 1949).

4. In these proceedings the main question to be determined is the constitutional validity of this Ordinance.

5. The answer depends on the interpretation and application of Sections 88, 100 and 107, Constitution Act.

6. Section 88(1) is in the following terms:

"If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinance as the circumstances appear to him to require;

Provided that the Governor shall not, without instructions from the Governor-General promulgate any such ordinance if an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General, it had received assent of the Governor-General."

7. Section 100 deals with the subject-matter of Dominion and Provincial laws. Section 100 enacts:

"(1) Notwithstanding anything in the two next succeeding sub-sections, the Dominion Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in Schedule VII to this Act (hereinafter called the "Federal Legislative List").

(2) Notwithstanding anything in the next succeeding sub-section, the Dominion Legislature and, subject to the preceding sub-section a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Dominion Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Dominion Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a province or any part thereof."

8. Section 107 makes provision for resolving inconsistency between Dominion laws and Provincial or State laws :

"107. (1) If any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature is competent to enact or to any

provision of an existing law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Dominion law, whether passed before or after the Provincial law, or as the case may be, the existing law, shall prevail and the Provincial law shall, to the extent of repugnancy be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Dominion law or an existing law with respect to that matter then, if the Provincial law, having been reserved for the consideration of the Governor General, has received the assent of the Governor General, the Provincial law shall in that Province prevail, but nevertheless the Dominion Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General, shall be introduced Or moved in the Dominion Legislature without the previous sanction of the Governor-General.

(3) If any provision of law of an Acceding State is repugnant to a Dominion law which extends to that State, the Dominion law whether passed before or alter the law of the State shall prevail and the law of the State shall to the extent of the repugnancy be void."

9. In Federal scheme of Government where there are co-ordinate jurisdictions it is not possible to make a clean cut between the powers of the different Legislatures. It is inevitable that the powers should overlap from time to time; Such overlapping is as much an incident of the constitution as the operation of the law of gravitation is an incident of aeronautics. Should in such cases a strict verbal interpretation be adopted, much legislation would be stifled at birth and many of the subjects exclusively entrusted to Provincial Legislatures cannot be effectively dealt with. Hence the Judicial Committee has evolved the rule that the impugned statute must be examined to ascertain its "pith and substance:" *Union Colliery Co. of British Columbia v. Bryden* 1899 A. C. 580 : 68 L. J. P. C. 118 or its "true nature and character", *Citizens Insurance Co. of Canada v. Parsons* (1881) 7 A. C. 96 : 51 L. J. P. C. 11 . The rule has been restated by Lord Atkin in *Gallagher v. Lynn* 1937 A. C. 863 : 106 L. J. P. C. 116 :

"It is well established that you are to look at the "true nature and character of the Legislation the pith and substance of the legislation". If on the view of the statute as a whole you find that the substance of the legislation is within the express powers then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not tinder the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object e. g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., a direct prohibition of any trade with a foreign

country. In other words, you may certainly consider the clauses of an Act to see whether they are passed "in respect of" the forbidden subject."

10. Applying these principles, I hold that the impugned Ordinance deals in "pith and substance" with item 1 of the Provincial List, namely, public order and preventive detention for reasons connected with maintenance of public order.

11. Mr. B.C. Ghosh, however, stressed the argument that the Ordinance created new criminal offences, and amended important provisions of the Code of Criminal Procedure, that previous instructions of the Governor-General ought, therefore, to have been obtained before the Ordinance was promulgated. Learned advocate maintained that the Ordinance invaded matters in the Federal field, and was "ultra vires" for absence of such instructions.

12. But the rule is well established that, if a Provincial Act deals in pith and substance with a subject in the Provincial List, it would be valid, though it incidentally trenches on matters reserved for the Federal Legislature. Nor is it a material consideration to what extent the Federal field is invaded by the impugned statute. In *Prafulla Kumar v. Bank of Commerce Ltd.* 74 I. A. 23: AIR 1947 P. C. 60, the Judicial Committee had to consider the Bengal Money lenders Act, 1940. The Act undoubtedly restricted the rights of the holders of promissory note to recover interest beyond a certain rate, and to that extent the legislation could be regarded as legislation in respect of item 23 in the Federal Legislative List. But the Judicial Committee held that the Act was in pith and substance an Act dealing with money lending which is item 27 in the Provincial Legislative List, and that the Act was intra vires and valid. At page 44 Lord Porter observed :

"No doubt where they come in conflict List I has priority over Lists III and II and List III has priority over List II, but the question still remains, priority in what respect ? Does the priority of the Federal Legislature prevent the Provincial Legislature from dealing with any matter which may incidentally affect any item in its list, or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character ? In their Lordships' opinion the latter is the true view."

13. The question of conflict between Lists II and III arose directly in another case, namely, *Megh Raj v. Allah Rakhia* 74 I. A. 12 : AIR 1947 P. C. 72 in which it was held that Section 107, Government of India Act, had no application in a case where the province could show, as it did in that case, that it was acting wholly within its powers under the Provincial List, and was not reviving on any power conferred on it by List III of the Concurrent List. In that case it was argued that the Punjab Restitution of Mortgaged Lands Act, 1938, was invalid in that a number of its provisions were in fact legislation on matters falling within List III, namely items 7, 8 and 10 of that List. The Judicial Committee, however, held that the impugned Act which dealt with mortgages on agricultural lands was legislation falling entirely within item 21 of the Provincial Legislative List, that is, land or any interest in land, and therefore, no question of repugnancy could arise

by reason of the fact that the Act might trench to a certain extent upon the items in the Concurrent Legislative List. The whole argument in the case turned upon the effect of Sections 100 and 107, Government of India Act. At p. 22, Lord Wright observed :

"It follows that in their Lordships judgment there is not sufficient ground for holding that the impugned Act, or any part of it was invalid. As a whole it fell within the powers given to the province by items 2 and 21 of List II, without any necessity to invoke any powers from the Concurrent List, List III. Accordingly, questions of repugnancy u/s 107, Constitution Act do not arise and need not be considered here."

14. It is manifest from these two decisions that if the subject-matter of a piece of provincial legislation falls as a whole within an item in the Provincial Legislative List then the legislation is valid and no question of repugnancy can arise u/s 107(1), Government of India Act even if the legislation trenches incidentally upon items in the Concurrent List.

15. In my opinion, the subject-matter of the impugned Ordinance in this case falls clearly within Items I and II of the Provincial Legislative List. There was no necessity for the Governor to invoke any powers from the Concurrent Legislative List. It follows that the Ordinance cannot be held to be ultra vires for absence of instructions from the Governor-General.

16. The argument was next addressed that no circumstances existed which entitled the Governor to promulgate the Ordinance u/s 88, Constitution Act.

17. During the hearing Mr. Basanta Chandra Ghosh filed an affidavit by Sri Sheelbhadra Yajee "ex-General Secretary, All India Forward Bloc", stating that, after he had toured round the important centres of Bihar, he had formed the opinion that there was no immediate danger or apprehension of the public order in the province. In the affidavit it is alleged that by the Ordinance the Provincial Government have assumed arbitrary powers to suppress all other political parties, and the Ordinance was being used for that purpose and to that effect.

18. But in my opinion, the Court cannot investigate the question whether circumstances in fact existed which rendered it necessary for the Governor to promulgate the Ordinance. It is manifest that the satisfaction must be the satisfaction of the Governor, and his discretion cannot be questioned in any Court. The position is very similar to that of an emergency which entitles the Governor-General to make Ordinance. In AIR 1945 48 (Privy Council) , the Judicial Committee had to construe Section 72, Government of India Act, which was to this effect:

"The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of British India or any part thereof, and any Ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the

Indian Legislature : but the power of making Ordinance under this section is subject to the like restrictions, as the power of the Indian Legislature to make laws ; and any Ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by any such Act."

Viscount Simon expressly held that whether an emergency existed at the time an Ordinance was made and promulgated was a matter of which the Governor-General was the sole judge. His view that there was an emergency justified and authorised the Ordinance. The Judicial Committee followed an earlier decision AIR 1931 111 (Privy Council) in which Lord Dunedin observed:

"A state of emergency is something that does not permit of any exact definition. It connotes a state of matters calling for drastic action, which is to be judged as such by some one. It is more than obvious that that some one must be the Governor-General, and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action, and that action is prescribed to be taken by the Governor-General. It is he alone who can promulgate the Ordinance."

19. In my opinion, it is too clear for argument that the Governor and Governor alone must determine for himself whether the circumstances exist which entitle him to promulgate the Ordinance. There is nothing to suggest that the Courts are entitled to question the grounds upon which the Governor is satisfied.

20. The principles applicable have been fully discussed in two decisions of the House of the Lords, *Liversidge v. Anderson* (1941) 3 A.E. R. 338: 110 L. J. K. B. 724 and *Greens v. Home Secretary* (1941) 3 ALL E. R. 388 : 58 T. L. R. 53 . The former case arose for decision upon the application of the plaintiff for particulars of the defence in an action claiming damages for false imprisonment, the latter on an application for a writ of habeas corpus. In each case the decision was based upon the view of the House as to the substantial issue involved, namely; whether it was open, to any Court to enquire into the reasonableness of belief of the Secretary of State in matters in which the regulation required him to have reasonable cause to believe, before a detention order could be made. The opinion of the majority of the House upon the substantial issue was that the administrative plenary decision was vested in the Home Secretary and it was for him to decide whether he had reasonable grounds. No outsiders' decision was involved and the issue was not within the competence of any Court.

21. In the same case, Lord Atkin drew a vital distinction between "satisfied" and "reasonable cause." He stated that in the former phrase it was plain that unlimited discretion was given to Secretary of State, but in the latter the discretion was subject to an objective condition to the minister's power to detain, the existence of which would be cognizable in a Court of law. The correct position would appear to be that when the minister is merely "to be satisfied," his bare certificate is enough. When he has "reasonable cause to believe," the

majority decision of the House of Lords indicates that the test is subjective and not objective. The administrative discretion is fully vested in Home Secretary and it is for him to decide whether he has reasonable ground. When the Secretary of State has what appears to him reasonable cause, the Court cannot enquire into the truth of the matters in which he believes or reasonableness of his belief in them. A fortiori in any matter where the Secretary of State is merely to be satisfied no enquiry by a Court is possible.

22. In this context, a passage from the judgment of Lord Viscount Maugham is also important. Dealing with the question, he stated:

"The order on its face purports to be made under the regulation and it states that the Secretary of State had reasonable cause to believe the facts in question. In my opinion, the well-known presumption *omnia esse rita acta* applies to this order, and, accordingly, assuming the order to be proved or admitted. It must be taken *prima facie*, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State was complied with. It will be noted that on the view I have expressed as to the construction of the regulation it is the personal belief of the Secretary of State that is in question, and that, if the appellant's contention on this point were correct, the same question would arise in the numerous cases where an executive order depends on the Secretary of State or some other public officer being "satisfied" of some fact or circumstances: It has never, I think, been suggested in such cases that the Secretary of State or public officer must prove that he was so "satisfied" when he made the order."

23. A specific attack was then made on Sections 23 and 24 and the new proviso to Section 4 of the Ordinance. It was urged that Section 23 was in any case *ultra vires* as it purported to repeal Bihar Act, V [5] of 1947, which had received the Governor-General's assent. It was argued that Section 24 was dependent on Section 23 and was necessarily invalid. Stress was also laid upon the new proviso to Section 4 which is to the following effect:

"Provided that where the Provincial Government is of opinion that it would be against the public interest to disclose all the grounds of the order, neither the said order nor the detention of the said person thereunder shall be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made to such person under this section."

It was urged that the new proviso empowered the Provincial Government to arbitrarily detain any person without disclosing any ground that its enactment was, therefore, beyond the competence of the Provincial Legislature. Learned Advocate made reference to the following remarks made by the learned Judges, in *Murat Patwa Vs. Province of Bihar*, :

"What distinguishes preventive from arbitrary detention, an entirely different subject matter of legislation, is the existence of the reasonable anticipation that some illegal act or acts may otherwise be committed. It is obvious, therefore,

that anything that weakens the fair and proper determination of the existence of such reasonable anticipation automatically tends to convert what would otherwise be preventive detention into a purely arbitrary detention, and at some point in that weakening process the question will arise whether an Act which purports to deal with preventive detention does in pith and in substance in fact so deal, or whether it has not overstepped the bounds and become ultra vires the Provincial Legislature in that it constitutes in effect an Act conferring upon the Executive a power of arbitrary detention."

Learned Advocate maintained that in this case the weakening process has reached this critical point and the Ordinance was ultra vires on this account. I consider there is great force in these arguments, but I do not propose to express any final opinion whether Section 23 and 24 or the proviso to Section 4 are ultra vires and invalid. In the present proceedings we are mainly concerned with the question whether Section 2 of the Ordinance (by virtue of which the applicants have been ordered to be detained) is within the legislative competence of the Governor of Bihar. If we decide that Section 2 is intra vires, the detention of the applicants cannot be held to be illegal or improper, and the applications u/s 491 must necessarily fail.

24. But the argument was nevertheless stressed that Section 2 (1) of the Ordinance was ultra vires. It was maintained that Section 23 and Section 4 were so interwoven with the scheme that they are not severable, that the whole Ordinance was ultra vires on account of these offending provisions.

26. In my opinion, this argument is not correct. It is well established rule of construction that where the valid provisions are not severable from the ultra vires provisions, the whole Statute must be held to be bad. In re, Initiative and Referendum Act 1919 A.C. 935: AIR 1919 P. C. 45 and in Attorney-General for Commonwealth v. Colonial Sugar Refining Co., Ltd. 1914 A.C. 237; 83 L.J.P.C. 154 , the Judicial Committee held that the offending provisions were so interwoven into the scheme of legislation that they were not severable, and that in each instance the whole Act was invalid--an Act of the Province of Manitoba purporting to establish the initiative and referendum and an Act of the Commonwealth Parliament purporting to empower Royal Commissions to conduct enquiries of an unlimited scope. On the other hand, severable portions may be good. In the case of Brooks Bidlake v. Attorney General for British Columbia 1923 A. C. 450 : 92 L. J. P. C. 124 , the appellants claimed the right to employ Chinese and Japanese labour, in spite of a statute to the contrary. It was argued that the statute was ultra vires of a Dominion statute ratifying the treaty of 1911 between Great Britain and Japan. This argument failed on the ground that the provisions were separable and that at any rate as regards the Chinese the statute could not be questioned.

26. But the test of severability may not be adequate. In the Australian case, R. v. Commonwealth Court of Conciliation, 11 common, wealth Rep. 1, Griffith C. J. suggested a different test;

"I venture to doubt the accuracy of this test. What a man would have done in a state of facts which never existed is a matter of mere speculation, which a man cannot certainly answer for himself, much less for another. I venture to think that a safer test is whether the statute with the invalid portions omitted would be substantially a different law as to the subject-matter dealt with by what remains from what it would be with the omitted portions forming part of it."

In other words, the Court may uphold the valid portion if it is severable from invalid portion and if thereby a different law is not created. To adopt a metaphor (from the Navigation Act case, 29 commonwealth Rep. 357) the test enables the Court to uphold provisions, however enterwoven, but it cannot separate the woof from the warp and manufacture a new web.

27. Applying these principles, it is manifest in the present case that even if Section 23 and Section 24 and the new proviso to Section 4 are invalid, they are separable from the rest of the Ordinance which would still retain its original character. In my opinion, Section 2 of the Ordinance would be *intra vires* and valid.

28. It was then argued that, in promulgating the Ordinance, the Governor, of Bihar had not acted *bona fide*. Learned advocate pointed out that, as soon as the Bihar Act V [5] of 1947 was declared invalid by the Federal Court, the Governor of Bihar promulgated ordinance II of 1949 and when the latter was declared invalid by this Court, the Governor of Bihar enacted the present Ordinance with the same provisions. But it is impossible to infer from this circumstance that the Governor of Bihar had acted in bad faith. On the contrary, the ordinary rule must apply *omnia praesumuntur rite et sollemniter esse acta donec protetur in contrarium*--everything is presumed to be rightly and duly performed until the contrary is shown. In illustration of this maxim, there is a general presumption of law that in the absence of proof to the contrary credit should be given to public officers who have acted *prima facie* within the limits of their authority for having done so with honesty and discretion: *Derby v. Burg Imp. Commissioners* 1879 4 Ex. 222. It is obvious that in the present case there is no material to suggest that the Governor of Bihar acted *mala fide* and the argument of Mr. B.C. Ghosh in this respect must fail.

29. Lastly Mr. B.C. Ghosh contended that the activities of the Communists and Forward Bloc were legitimate, that the Government of Bihar had assumed arbitrary powers to suppress all opposition. Learned advocate made reference to the affidavit of Sri Sheelbhadra Yajee filed in this case. But it is not the function of the Court to enquire whether the activities of Communists and Forward Bloc are politically desirable. It cannot be too clearly understood that this Court is not concerned with policies or politics. The Court is only concerned with the question whether the Ordinance is within the constitutional power of the Governor of Bihar, and, if so whether the Ordinance is in whole or part a valid exercise of that power. In *United States v. Butler* 297 U. S. 1 62 Roberts J. has emphatically stated the rule:

"When an act of Congress is appropriately challenged in the Courts as not conforming to the constitutional mandate, the Judicial branch of the Government has only one duty to lay the article of the constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the Court does, or can do, is to announce its considered judgment upon the question. The only power it has if such it may be called, is the power of judgment. This Court neither approves or condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of the provisions of the Constitution; and having done that, its duty ends."

30. Upon these grounds, I am of opinion that the main argument fails. I hold that, in promulgating ordinance IV [4] of 1949, the Governor of Bihar has not acted beyond his legislative competence.

31. It is necessary to add that we have not dealt with the individual cases of the detenus, as learned advocate on their behalf stated that he had no instructions whether the grounds had been communicated or not. Learned Government Advocate also was not certain on this point. He submitted that Government had issued the grounds, but he was unable to produce copy of grounds in Court. We should, therefore, make it clear that it will be open to the detenus to file fresh applications u/s 491 after the grounds have been served.

32. With these remarks, I should dismiss all the applications. Let a certificate be granted u/s 205(1), Government of India Act.

Narayan, J.

33. I agree, and cannot usefully add anything to the exhaustive judgment delivered by my learned brother. There is certainly no substance in the contention that the entire Ordinance is invalid. The provisions, to which exception can be taken, have been referred to in the judgment of my learned brother, and they are not inseparable from the rest of the Ordinance. Howsoever regrettable it may be that the Governor had to promulgate one Ordinance after another after the Bihar Maintenance of Public Order Act, 1947, had been declared ultra-vires by the Federal Court, there is absolutely no lack of good faith, and the question of mala fide detention of these detenus does not arise. These are the two main contentions urged by Mr. B.C. Ghosh, and they appear to me to be without any substance.