

(1965) 04 PAT CK 0003
In the Patna High Court
Case No : Misc. Judl. Case No. 1339 of 1964

Ghulam Sarwar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 352(1)
Defence of India Act, 1962 — Section 3(2)
Defence of India Rules, 1962 — Rule 35(6), 35(7), 45(1)
Penal Code, 1860 (IPC) — Section 153A

Citation : AIR 1966 Patna 82 : (1966) CriLJ 281

Hon'ble Judges : R.K. Choudhary, J;G.N. Prasad, J

Bench : Division Bench

Advocate : S.A. Asghar Hussain, A.H. Matiur Rahman, Naseem Ahmad and S. Ali Ahmad, for the Appellant; Lal Narayan Sinha and C.B. Belwariar, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—The petitioner is the Editor, Printer and Publisher of a daily newspaper called "Sangam", printed at the Patna Urdu Printing Press and having circulation in the State of Bihar. By an order of the State Government dated the 19th September 1964, passed under Clause (f) of Sub-rule (1) of Rule 45 of the Defence of India Rules, 1962, he has been directed to deposit as security a sum of Rs. 5,000 in money or in Government securities with the District Magistrate of Patna. This order has been made because a number of articles were published in the said newspaper on various dates between the 9th April 1964 and the 9th September 1964 which, in the opinion of the State Government, contained prejudicial reports as defined in Clause (7) of Rule 35 of the Defence of India Rules. A copy of the order is to be found in Annexure "D" to the writ petition and is in the following terms:

"Government of Bihar,

Political (Special) Department.

ORDER

Patna, the 19th September 1964, No. 13001/C. Whereas, it appears to the Governor of Bihar that the Urdu daily "SANGAM" of the dates specified in the Schedule annexed hereto contain prejudicial reports as defined in Clause (7) of Rule 35 of the Defence of India Rules, 1962;

Now, therefore, in exercise of the powers conferred by Clause (f) of Sub-rule (1) of Rule 45 of the said Rules the Governor is pleased to order the editor and publisher of the said Urdu daily, namely, Shri Gulam Sarwar, to deposit as security Rs. 5,000 (five thousand) only in money or in Government securities on or before the 30th September 1964 with the District Magistrate of Patna."

In a schedule appended to the said order, mention has been made of 39 articles which are said to contain prejudicial reports. The order has been signed by Shri J. M. Dutta, Undersecretary to Government, Political (Special) Department, who is respondent No. 3 to the writ application. Respondent No. 1 is the State of Bihar and respondent No. 2 is the Governor of Bihar.

2. The petitioner has challenged the validity of the said order on various grounds and has filed this application praying that the impugned order be called up and quashed by this Court and the respondents be restrained from taking action thereunder, by issue of an appropriate writ under Article 226 of the Constitution.

3. In order to appreciate the contentions put forward before us on behalf of the petitioner, it is necessary to refer to the relevant provisions contained in the Defence of India Act, 1962 (Act 51 of 1962) (hereinafter referred to as the "Act") and to the relevant rules of the Defence of India Rules, 1962 (hereinafter referred to as the "Rules").

4. The Act, as is well known and as its long title indicates, was brought on the Statute book "to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith". It followed the issue of a proclamation by the President under Clause (1) of Article 352 of the Constitution, declaring that a grave emergency existed whereby the security of India was threatened by external aggression. Sub-section (1) of Section 3 of the Act empowers the Central Government, by notification in the Official Gazette, to make "such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community". Sub-section (2) of the same section contained a list of 57 matters in regard to which provision can be made in the Rules "without prejudice to the generality of the powers conferred by Sub-section (1)". Clauses (5) and (7) of Sub-section (2) of Section 3 are relevant to the present purposes, and I propose to quote relevant portions thereof:

"(5) preventing the spreading without lawful authority or excuse of reports or the prosecution of any purpose, likely to cause disaffection or alarm, or to prejudice India's relations with foreign powers or to prejudice maintenance of peaceful conditions in any area or part of India, or to promote feelings of ill-will, enmity or hatred between different classes of the people of India;

.....

7(a) prohibiting the printing or publishing of any newspaper, news-sheet, book or other document containing matters prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community;

(b) demanding security from any press used for the purpose of printing or publishing, and forfeiting the copies of, any newspaper, news-sheet, book or other document containing any of the matters referred to in Sub-clause (a);

(c)

(d)

Sub-section (3) of Section 3 provides that the rules made under Sub-section (1) may further-

.....

"(viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of India and civil defence;

5. I now turn to the Rules. Sub-rule (6) of Rule 35 contains an elaborate definition of "Prejudicial Act". It says that "prejudicial Act" means any act which is intended or is likely-

"(e) to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India;

(f)

(g) to promote feelings of enmity and hatred between different classes of persons in India;

(h) to cause fear or alarm to the public or to any section of the public;"

Then follows Sub-rule (7) which defines "Prejudicial report" as meaning "any report, statement or visible representation, whether true or false, which, or the publishing of which, is, or is an incitement to the commission of, a prejudicial act as defined in this rule". The relevant portions of Rule 45, under which the impugned order has been passed, may now be quoted:

"45(1) Where in the opinion of the Central Government or the State Government

any document made, printed or published, whether before or after the Ordinance came into force, contains any confidential information, any information likely to assist the enemy or any prejudicial report, that Government may, by order.....

(f) direct the keeper of the press used for the purpose of printing or publishing such document to deposit as security, within such period as that Government may in each case specify, such amount (which may at the option of the keeper of the press be deposited either in money or in Government securities) as that Government may think fit to require."

6. The first contention put forward by the learned counsel on behalf of the petitioner is that Rule 45(1)(f) is invalid as it is beyond the scope of Clause (7) of Sub-section (2) of Section 3 of the Act. It is further urged in this connection that if Rule 45(1)(f) cannot be brought within the ambit of any of the clauses of Sub-section (2) of Section 3 of the Act, then it must be struck down as invalid, because the generality of the powers conferred upon the Central Government by Sub-section (1) of Section 3 must be deemed to have been restricted by the provisions of Sub-section (2) of that section. This latter contention does not stand a moment's scrutiny and, indeed, it is in direct conflict with the provisions of Sub-section (2) which says that the rule-making power specified in Sub-section (2) may be exercised without prejudice to the generality of the powers conferred by Sub-section (1). In my opinion, it is crystal clear that the power conferred upon the Central Government by Sub-section (1) is in no way confined to the matters referred to in Sub-section (2). On the contrary, Sub-section (2) indicates certain specific matters in regard to which provision might be made in the Rules without in any way impairing the general rule making power contained in Sub-section (1). Unless this is so, there could be no meaning in employing the expression "without prejudice to the generality of the powers conferred by Sub-section (1)" in the opening sentence of Sub-section (2). If the contention of the learned counsel were to prevail, then Sub-section (1) would be rendered entirely nugatory, and it would have been enough to say that the rule making power might be exercised only in respect of the various matters mentioned in the 57 clauses of Sub-section (2). It is manifest that such an interpretation of Sub-section (2) would be highly unsound and must, therefore, be negatived. All the three sub-sections of Section 3 must be read together, and if they are so read, then it is obvious that the rule-making power of the Central Government contained in Section 3 is of the widest amplitude, and that even apart from Sub-section (2), the Central Government is empowered to make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, maintenance of public order, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community.

The true purpose of the rules contemplated by Section 3(1) is, inter alia, to secure public safety or the maintenance of public order, and to secure this objective, it would be perfectly legitimate to make provision in the rules for

measures designed to prevent the spreading of reports which are likely to cause disaffection or alarm or which are likely to promote feelings of ill-will, enmity or hatred between different classes of the people of India. It is, therefore, within the rule making power of the Central Government to make whatever rules it considers necessary or expedient to serve any of these objectives. It follows that there is no substance in the contention of the learned counsel that Rule 45(1)(f) must be struck down as invalid unless it can be brought within the scope of Clause (7) of sub-section 3(2). I am unable to accept the contention of the learned counsel that the purpose of Rule 45(1)(f) is not relevant to the objectives designed to be served by Section 3(2)(5) or by Section 3(1) of the Act.

The purpose of Rule 45(1)(f) undoubtedly is to prevent the spreading of reports which are likely to cause disaffection or alarm or to prejudice the maintenance of peaceful conditions in any area or part of India, or which are likely to promote feelings of ill-will, enmity or hatred between different classes of the people of India. I am, therefore, of the opinion that Rule 45(1)(f) is a perfectly valid rule envisaged both by Section 3(1) and by Section 3(2)(5) of the Act.

7. I must not, however, be understood as having accepted the contention of the learned counsel that Rule 45(1)(f) is beyond the ambit of Clause (7) of Sub-section (2) of Section 3. The argument really is that demanding security from the keeper of the press has no relation to the purpose indicated in Clause (7). This argument is based upon a complete misconception of the purpose mentioned in Clause (7). Clause (7) contemplates a set of rules designed to prohibit the printing of any newspaper, news-sheet, book or other document containing matters prejudicial to the public safety or the maintenance of public order. Public safety or maintenance of public order is bound to be seriously jeopardised if prejudicial reports as defined in Rule 35(7) are allowed to be printed, published and circulated publicly. Therefore, the provision contained in Rule 45(1)(f) is one of the measures designed to prohibit the printing or publishing of a newspaper, news-sheet, book or other document containing matters prejudicial to the public safety or the maintenance of public order. I, therefore, see no valid ground for saying that Rule 45(1)(f) is beyond the ambit of Clause (7) of Section 3(2) of the Act. It is true, as pointed out by the learned counsel, that Clause 7(b) of Section 3(2) contemplates the demanding of security from the press, while Rule 45(1)(f) contemplates demanding of security from "the keeper of the press used for the purpose of printing or publishing such document". But that cannot have the effect of drawing Rule 45(1)(f) out of the ambit of Clause (7) of Section 3(2). Both the parts of Clause (7) must be read together for properly appreciating the purpose which that clause aims to achieve, namely, to prohibit the printing or publishing of any newspaper etc. containing matters prejudicial to public safety or the maintenance of public order. Therefore, to achieve this purpose, it is within the competence of the Central Government to frame a rule for demanding security from the keeper of the press used for printing or publishing "prejudicial reports". I have, therefore, no hesitation in rejecting the first contention which has been put forward by the learned counsel before us. I ought to add that it is

really not open to the learned counsel to challenge the validity of any of the rules contained in the Defence of India Rules, 1962, in the present case, because the framers of the Rules, namely, the Central Government, or the Union of India, have not been impleaded as a party to this writ application. On this ground also, all argument of the learned counsel against the validity of Rule 45(1)(f) must be rejected.

8. Before passing on to the other contentions of the learned counsel, I must, however, state that the first contention was also placed before us in a modified form. It was urged that the general rule making power contained in Section 3(1) must be deemed to have been given a practical shape for the exercise of that power by enumeration of specific subjects in Section 3(2) and, therefore, on a matter specifically included in Section 3(2), it is not open to the rule-making authority to take recourse to the general rule-making power conferred upon it u/s 3(1) of the Act. Learned counsel, however, conceded that he was not in a position to support this contention with reference to any authority. Besides, I am of the opinion that there is no substance in this contention. I do not, however, propose to enter into an elaborate discussion on this point because, as I have already said, Rule 45(1)(f) falls well within the ambit of Clauses (5) and (7) of Section 3(2) of the Act.

9. I now turn to the second contention of the learned counsel. It is urged that Clauses (g) and (h) of Rule 35(6) are vague since they are couched in wide terms, in consequence of which there is scope for an arbitrary exercise of powers on the part of the executive Government, since no reasonable basis has been laid down for their application to particular cases. I must confess that I have not been able to appreciate this contention. I fail to understand how Clauses (g) and (h) can at all be described as wide or vague. In my opinion, there is absolutely no difficulty in appreciating the time scope of the expressions used in Clauses (g) and (h) of Rule 35(6), namely, "to promote feelings of enmity and hatred between different classes of persons in India" and "to cause fear or alarm to the public or to any section of the public". The first of these expressions occurs also in Section 153A which was incorporated in the Indian Penal Code as far back as 1898 and its meaning has never been in doubt all these years. The words "fear or alarm" which are to be found in Clause (h) are also well known expressions, the meaning of which has never been in doubt. The words used in both the aforesaid clauses of Rule 35(6) are themselves so clear that there is no scope for complaining that they do not afford any reasonable basis for their application to particular cases. It must be remembered that the provisions contained in the Act and the Rules are designed to be emergency measures and, therefore, some discretion has got to be left with the executive Government to apply them to particular cases; but that is far from saying that they confer arbitrary powers upon the executive Government. Every executive action has to be exercised in accordance with the law which, in times of emergency, is bound to be stringent, particularly where a threat is posed to the security of the country, as indicated in the Proclamation issued by the President under Article 352(1) of the Constitution.

I am, therefore, of the opinion that no legitimate grievance can be made on the score of the wordings of Clauses (g) and (h) of Rule 35(6).

10. The third contention of the learned counsel is that the materials mentioned in the impugned order have no relevancy to the object of the order. In other words, the offending articles do not justify the demand of security from the petitioner as they do not fall within the ambit of "prejudicial report" as defined in Rule 35(7). In this connection it was further urged that the impugned order is not bona fide, inasmuch as most of the offending articles were published in the newspaper, of which the petitioner is the Editor, Printer and Publisher, during a period when the petitioner was under detention by virtue of an order of the State Government passed under Rule 30(1) of the Defence of India Rules 1962. It appears from paragraph 23 of the writ application that the petitioner was under detention as aforesaid from 14-5-1964 to 25-8-1964. Therefore, the period during which the offending articles were published in the petitioner's newspaper can be divided into three parts, namely (i) the pre-detention period during which the first four articles mentioned in the schedule appended to the order contained in Annexure "D" were published; (ii) the detention period during which items Nos. 5 to 37 of the said schedule were published; and, (iii) the post-detention period during which two articles were published in the said newspaper, dated the 8th and the 9th September 1964 respectively, namely items Nos. 38 and 39 of the Schedule.

11. In order to determine whether the offending articles do or do not constitute prejudicial reports within the meaning of Rule 35(7), it will be necessary to read them with a view to ascertain whether their publication was intended or likely to bring into hatred or contempt, or to excite disaffection towards the State Government, or to promote feelings of enmity and hatred between different classes of persons in India, or "to cause fear or alarm to the public or to any section of the public". I may, however, mention at this stage that it was sought to be contended by the learned counsel for the petitioner that to justify the order of security, it must be established that the publication of the articles in question were intended to incite the commission of a prejudicial act. In support of his contention, learned counsel relied upon the provision of Section 153A of the Indian Penal Code, as it stood prior to the amendment of this section made by the Indian Penal Code Amendment Act (Act 41 of 1961), and upon certain decisions under the unamended Section 153A, wherein the view taken was that intention is the gist of the offence of promoting enmity between different classes of the citizens of India. It is, however, wholly unnecessary to equate Clauses (6) and (7) of Rule 35 of the Defence of India Rules with the unamended provision of Section 153A of the Indian Penal Code, because the two provisions are, by no means, identical. The unamended Section 153A contained an explanation which made it absolutely clear that malicious intention was an essential ingredient of the offence mentioned therein. That explanation has since been deleted, and in the amended Section 153A, it has been clearly provided that it is an offence to commit any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and

"which disturbs or is likely to disturb the public tranquillity". Therefore, as the law now stands, a prejudicial act, which is likely to disturb the public tranquillity, is as much an offence as a similar act committed with the intention to promote feelings of enmity or hatred between different religious, racial or language groups or castes or communities. That apart, Rule 35(6) itself makes it clear that the acts mentioned in its various clauses, namely Clauses (a) to (s), constitute prejudicial act, not only when they are intended, but also likely, to produce any of the results mentioned therein.

Further, the definition of "prejudicial report" is wide enough to include a publication which in itself is a prejudicial act as well as a publication which offers an incitement to the commission of a prejudicial act, as defined in Rule 35(6). Therefore, we are not concerned merely with the intention of the petitioner. In my opinion, the order of security made against the petitioner would be equally justified even with reference to the likely effect of the publication of the offending articles as well as on the ground that their publication offered incitement to the commission of a prejudicial act.

12. Before I deal with the articles, I must mention that it is an admitted position that the publications in question followed in the wake of widespread Hindu Muslim communal disturbance at Jamshedpur and other parts of the Chotanagpur Division of this State as well as in the neighbouring States of West Bengal and Orissa. A reference to this fact has been made in paragraphs 5 and 6 of the writ application, and it is in the background of these facts that the offending articles have got to be read. I think, I should also indicate that the articles must be read as a whole in order to assess the effect which they are likely to produce in the mind of an average reader. I do not, however, propose to deal with each and every article mentioned in the schedule of the impugned order because while arguing in justification of the order, the learned Government Advocate picked out some of the articles for our special consideration and made it clear that if the articles, particularly relied upon by him, do not justify the order made against the petitioner, then he would not press for the order being upheld by this Court. At the time of the hearing, we were supplied with translated or transliterated versions of the articles in question, and the parties were agreed that we should give our decisions with reference to them. It will be convenient to give a summary of the contents of selected articles and then to decide whether they constituted prejudicial reports or not.

13. The first of these articles was published in the petitioner's newspaper on the 9th April 1964, under the heading "Outspokenness of Jai Prakash Narayan". The article starts with a preface that Jai Prakash Narayan, the Sarvodaya Leader, is a seasoned and respected personality in the country. His words carry weight and he has said certain useful things about the riots in the country. Then four points are sought to be made in the article as follows:

"(i) On the one hand, the Government of India or their leaders and their parties profess to cherish the ideal of nationalism, on the other they seem to share the

two-nation theory which was propounded by the Muslim League and Quaide-Azam Mr. Jinnah. The true nationalist ought to look upon an Indian Muslim as a brother and upon a Hindu of Pakistan, Afganistan, Ceylone or Burma as a foreigner. But some responsible leaders of this country want to demonstrate that the Hindus of Pakistan are nearer to India than people professing other religions who live in this country. Even the Government has to permit the Pakistani leaders like Ayub, Bhutto or Habibullah to talk about the six crores of Muslims of India and to advocate the cause of the protection of the life and property of Indian Muslims "since Bharat itself wanted to talk about Pakistani Hindus".

(ii) Among those who blame the entire Muslims of India to be traitors and spies, there are responsible persons who know that about 95 per cent of the Pakistani agents operating in pur country are Kapoor, Sharma, Chatterjee, Banerjee, and not Kalloo, Juman, Bafati or Shobrati. Knowing this, if a District or Police Officer, Minister or political leader, says or writes that strict eye should be kept on the Muslims of India, because they are Pakistani spies, it is mischievous nonsense and the only purpose is to terrify the Muslims and to create hatred and to inflame provocation against them, in the hearts of non-Muslims.

(iii) To talk about exchange of population-is a sheer stupidity. Those who want the Indian Muslims to leave their home and to go elsewhere are provoking the six crores Muslims living in this country to ask for a second Pakistan. It is strange that such people who call themselves Indians cannot tolerate seven crores of their minority population.

(iv) If the Muslims of Pakistan committed atrocities against the Hindus of that country, what logic is there that the Hindus of this country, who feed the ant with sugar and look upon the cows as mother, should be guilty of such bestiality as cutting the throat, splitting" open the stomach, smashing the bead and killing milk-fed babies, pregnant women, helpless old persons and unarmed youngmen. Such barbarism would not have been perpetrated if the Government officials and the Police administrative machinery and leadership had been vigilant, honest, secular-minded and democrat. The hatred created in the hearts 17 or 20 years ago, has not been removed. If such hatred is not changed into love, the whole country would go to hell and nobody would be able to stop it."

The article ends by congratulating Jai Prakash Narayan on his outspokenness at a time when in the Government of India and the Government of Bihar, only a few persons arc honestly and boldly facing the hard realities and most of the political parties and political leaders are seen evading them.

14. The second article to which I shall refer, was published in the "Sangam" on the 12th April 1964. The heading of the Article is "Kare Mochon Wallah aur Pakra Jai Darhi Wallah", meaning "The Moustached men do it but the bearded ones are caught". This article starts with a reference to the incident of theft of the Holy Hair from the shrine of Hazrat Bal in Kashmir. Then it is said that 85 per cent of the population of Kashmir arc Muslims and they were incensed over the incident.

But the life, property and honour of the minority community in that State remained safe. Yet several weeks later, some foolish Muslims of East Pakistan gave a demonstration of very disgraceful and un-Islamic acts in reaction to that incident. West Bengal which is always in the habit of making a mountain of a mole-hill, could not let this opportunity go. Some political parties of India stirred this spark into a flame. Several leaders of the Government and the Congress gave out foolish statements and one section of the Bengal press poured oil over the fire. The whole atmosphere became red. Calcutta was burnt. Fire spread in Rourkela and then the poisonous wind blew from there to Jamshedpur and thence to Ranchi. Bengal, Bihar and Orissa became veritable hell. Humanity was consumed in the flames, barbarism was crowned, sanctity of honour was in danger and the damned Ravana ruled the roost. The Chief Minister of West Bengal, P. C. Sen, was unable to control the situation and gave practical proof of his inefficiency, worthlessness and foolishness. But the Bharti Home Minister, Shri Gulzarilal Nanda, went there and controlled the situation within 24 hours. The authorities of the Government of Bihar took precautionary measures all over the State, and that was a timely and proper step. Some arrests were made as a precautionary measure. But the arrests of rioters, mischievous goondas and anti-social elements does not mean that a good number of innocent persons must also be included therein--"Where is the justice in hauling up Mianji on a report that he is ready to fight and to make his whole Mohalla and household the victim of wrath?". The very man X who kills gets the reward. A criminal is a criminal, whether he is a Hindu, a Muslim or a Sikh. "But, when you arrest and refuse bail to a respectable person of the panicky community, this shows that there is some malice in the heart". The article ends with a hope that the Chief Minister, the Chief Secretary and the other Officers of the State would coolly deliberate over this and in future act with caution so that confidence might be restored.

15. The third article to which I will refer was published in the "Sangam" on the 1st May 1964, under the heading "Sahebganj ki Masjid mein Id-uz-zoha ke din Police ke Sipahion ne bhajan Gaya" (The Police constables sang Bhajan in the Mosque of Sahebganj on the occasion of Id-Uz-Zoha). It purports to be a report from a correspondent named Ahmed Sayeed and mention is made of certain incidents which are described as "acute atrocities on Muslims of Sahebganj and its suburbs", and in that context it is said that the Police arrested Nayeem Saheb and all those Muslims who had gone to an adjacent mosque for offering prayer. Among the persons arrested were Dr. Abdul Jabbar (a Municipal Commissioner and member of the Congress Mandal), Abdul Kabir (a railway contractor), Abdul Gafoor (a teacher) and Muhammad Ibrahim (a retired Inspector) "the chain of one side arrests continued for April 17 to April 25" and the above named persons were badly treated, though the Officials knew that they could not move even two steps without cars. On account of the attitude of the authorities, no prayer could be offered on the occasion of the Id-uz-zoha in both the mosques. The police constables sang Bhajan in the Bari Masjid on the same day. It was heard that the grave of Abdul Aziz Gulani Rahmatullah was dug open and his body was thrown

in the river by the Police. The Muslims do not dare go to the mosques which are lying vacant. The S.D.O. is not an experienced officer. He cannot control the situation and the local communal leaders took undue advantage of his weakness. These things have been conveyed to Pandit Binodanand Jha, the ex-chief Minister, Shri K. B. Sahay, the Chief Minister, and other leaders. But nobody could listen. There is no Muslim organisation in Sahebganj. No help from Bhagalpur Relief Societies could reach there as yet. Maulana Noorullah Saheb, M.L.C., also has taken no action. If such condition continued, the Muslims of Sahebganj would be ruined.

15A. This article must be read with two other articles; one published on the 4th May 1964 and the other on the 5th May 1964. They are annexures B/1 and B/2 to the writ application. In the former, it was stated that it has been learnt from official reports and reliable sources that the publication in the "Sangam" about the digging of the grave at Sahebganj is false. From the same sources, it is said, that the news about the singing of Bhajan by the Sahebganj mosque is not correct. In the latter articles, it has been said that Shri Jafar Imam, State Law Minister, visited the locality and found the allegations of atrocities towards the Muslims to be false. The State Minister inspected the grave and found that the report that it was dug open was baseless. More than two months, thereafter, another article was published in the "Sangam" on the 28th July 1964 under the heading "Sahebganj ke Masjid men Sipahin ne bhajan nahin Gaya". In that article, it was stated that in accordance with) the policy of the newspaper, if any false news happened to be published, then immediately a contradiction was published, and, accordingly, the news about the singing of Bhajan by the constables in Sahebganj mosque was contradicted in the issue of the newspaper dated the 4th May 1964. In this article reference was also made to the official denial of the news about the digging of the grave and the singing of Bhajan in the Sahebganj mosque.

16. I may now refer to some of the articles which were published in the newspaper during the period of the petitioner's detention. The news about the petitioner's detention was published in the issue of the "Sangam" dated the 16th May 1964, under the heading "jo chup rahegi zaban-e-khanjar. Lahu pukarega Astinka" (If the dagger of tongue keeps mum, blood will cry out from under the sleeves). In this article, it has been said that in the prevailing context, the detention of the petitioner was not surprising, rather his voice represented thousands of the voices of the State Grievance is then made of discriminatory treatment meted out to the petitioner in the matter of free expression of his views, by making reference to certain utterances of Atal Bihari, a Jan Sangh leader, who had publicly said that if any change in the present set up of Kashmir takes place, war for the security of the same would break out on every road and in every lane of India. This has been interpreted as a declaration that if the present set up of Kashmir would change, seven crores of Muslims would be slaughtered, their belongings and valuables looted and their huts burnt to ashes.

The grievance expressed was that the Government did not take any notice of the said inflammatory statement of Atal Bihari. In the same sequence, it was said; "In order to excite the Hindus against the Muslims, what news were not published by "the Indian Nation", "The Aryavarta", and "The Searchlight" etc. of Bihar? What pictures were not presented therein. But the Government did not say anything to these favourites of hers. So their editors feel intoxicated," but when we wanted to heave a sigh, efforts were made to cut our tongue". The article ends thus "It is our belief that the voice of the upholder of truth and righteousness, whom the Government has shut behind the iron bars of the Jail, will percolate from each and every brick of the walls of the jail and sound thereof will be heard far and wide."

17. The fifth article which deserves mention was published in the "Sangam" on the 18th May 1964. The opening sentence of this article is relevant and it read:

"The organised programme for making the lives of Indian Muslims unbearable is the result of the dangerous conspiracy of enmity towards the Muslims existing between the great communalist majority of the ruling party and most of the members of the majority community living in this country. It is such a reality as is clearly evident from five to six hundred communal riots, their backgrounds and happenings. In presence of such evidence, none except an unjust, mischievous and troublesome person can have the courage to deny the above mentioned reality."

The article then seeks to establish that the Muslims not only made this country their homes, but also developed it and made it civilized to the best of their capacity. But today, the same people are being declared as enemies of the country and fit for being driven out. Such declarations are being made by people "whose entire history is full of black records of mischievous and violent deeds and whose faces have always been blackened with murder, loot and ruin and whose clothes are tainted with selfishness, faithlessness, conspiracy and being agents of foreign country and who have always felt it as a matter of pride to bow their heads before the Government established for the time being". This is bound to be, because "a man who rules is at best far better than those stone idols before which they bow their heads" continuing in the same strains, the article:

"The recent brutal and heart-rendering acts of Muslims killing at Calcutta, Jamshedpur and Rourkella have been described as natural reaction of the happening in the East Pakistan although by themselves they are hateful, improper, punishable and comparatively more serious so that they may be covered up and the criminals may be turned into non-criminals, who used this dangerous expression of natural reaction? It was done by the great majority of the ruling party and true followers of the Government established for the time being (not of the country) rather by the Prime Minister also."

The article then predicts the result, which will be that the communalists will indulge in Muslims-killing with greater courage and on a larger scale because

they know that "on their back there is no lack of such strong and powerful leaders as will prove them innocent in this matter". In reality, however, lawlessness will rule and every one will be helpless. The article then enquires "Have the people in the Government and out of it who are talking about the philosophy of natural reaction thought about its consequences?"

18. The sixth article for consideration was published in the "Sangam" dated the 21st May 1964, wherein reference was again made to the arrest of the petitioner. It purported to be a report of an emergent meeting of the Anjuman-e-taraqqi Urdu held at Bakhtiarpur under the presidentship of Janab Krishna Kant Saheb, a communist leader, and in that meeting Janab Manzoorul Hassan Nadvi is reported to have said that the arrest of Ghulam Sarwar Ali (the petitioner) provided sufficient proof of the fact that "all these disturbances and sanguine acts are played under the deliberate connivance of the Government", If the Government really wanted to put a stop to such disturbances and riots, it should arrest the anti-social elements, rioters and gundas who have massacred some ten thousand persons of the minority community. The article then mentions certain resolutions which were passed at the said meeting.

19. The seventh article deserving notice was also published in the "Sangam" on the 21st May 1964 under the heading "Only Nineteen Muslim candidates selected by Public Service Commission" and a sub-heading "This shows on what path India is going, which claims to be a Republic". The article says that the ratio of Muslim candidates who have been selected for personality test comes to half per cent, that is to say, now not one Muslim out of hundred, is called for personality test of higher posts and there is no knowing whether after the personality test, the number remains nine or just one. This is the state of recruitment of Muslims to higher posts in Indian Republic.

20. The eighth article requiring notice was published in the "Sangam" on the 27th May 1964. In that article, it has been sought to be established that an organised campaign has been started for cleaning up Muslims from Bharat. This article purports to be a report from Dacca and it has been stated therein that "the organised efforts of Bharati officials to evict Muslims from that country is not confined only to West Bengal, Assam and Tripura but is also now gaining ground in Bihar". It is said that more than 2000 Muslim employees of the Tata Iron and Steel Company Limited and Tinsplate Company of India Limited have been dismissed and served with notice to leave Bharat. "The communalists of Bharat do not permit Muslims to bring even things of their essential need to Pakistan and snatch them away from them on the way".

21. The ninth article printed in the "Sangam" on the 30th June 1964 is headed: "Dastarhaji ko Sambhale hue to hai" (they have been upholding the turban of leadership)". In this article, it has been said that the ruling party owe their office to the support of the Muslims, but what the Muslims got by way of reward from their co-citizens is not a secret. At some places, the Government suppressed the disturbances sternly but at other places, responsible Government officers

themselves fanned the disturbances. Muslims were robbed and assaulted, but their frail hands cast their votes in favour of the Congress. Comment has then been made of the manner in which Government has given relief to the Muslims in the affected areas and it has been said that the relief is wholly inadequate. An enquiry is made in the following terms:

"Has the party in power and the Government become so callous that they are unable to treat even the wounds which have been inflicted to them on account of their being in existence?."

22. The tenth article was published in the "Sangam" on the 5th July 1964 under the heading "The condition of widowed Muslim ladies of the Government Ashram are pitiable". In course of this article, it has been said that respectable Muslims are not permitted to enter into the Ashram whereas Hindus can go there freely. It is also rumoured and learnt in the town that "Hindu Gundas are often found going to the Ashram in the night where these riot affected widows and girls are kept in miserable condition. The unmarried teen-aged girls and young widows who are the victims of the riot are forcibly enjoyed by the Gundas and a good number of them are abducted by these gundas". Such state of affairs "is causing a serious feeling and may result in new riot".

22A. In the eleventh article which was published in "Sangam" on the 15th July 1964, the Government of India has been accused of suppressing in its letter to the Home Ministry of Pakistan that even after the large scale massacre of the Muslims in Rourkella and Jamshedpur, there have been occurrences of shameful riots in other parts of Bihar and it has been given out that complete peace and harmony is prevailing after the riots of Rourkella and Jamshedpur.

23. The twelfth article was published in "Sangam" on the 17th July 1964, under the heading "Socio-economic boycott of the Muslims of Chakardharpore and its adjoining areas after loot and arson of them on big scale". In course of that article, it has been stated that the Muslims fell a prey to the barbarous happenings on account of the attitude and treatment of the Government authorities because their object was to make the Muslims flee away leaving their home and hearth. In the same article, it has been stated that a visit to Chakardharpur bazar and Muslims Mohallas would clearly indicate that the plans and wishes of the aggressors have not yet been fulfilled. Burnt and looted houses are still weeping over the discriminative policy of the Government officers. Officials and the agents of communal groups and West Bengal are still adding fuel to the burning fire of hate. The minority is fear-stricken and harassed throughout Chakardharpur and those who escape loot and arson are being harassed under the Defence of India Rules and in other ways by the Police authorities and responsible persons of the Government machinery. The ultimate result is that the Muslims are leaving Chakardharpur. Even the Relief Committees have not cared to notice their innumerable miseries.

24. The thirteenth article of the series was published in the Sangam on the 19th

July 1964. The heading of the article is "Hindustan men secular or gair-Hindu hukumat nahin, walki Hindu hukumat hai". The purport of this article is that the profession of the Government that it is a secular Government is hollow because the evidence furnished by events is to the contrary. The non-secular character of the Government does not change by the mere fact that Dr. Zakir Hussain and a few other Muslims are attached to it. The Maharatha army in the third battle of Panipat was a Maharatha army in spite of the fact that it was under the command of a Muslim. The Government of Mohammed Ghaznawi and Aurangzeb was Islamic, although some Hindus held high posts in their army. The States of Dhaulpur and Jaipur were Hindu States, although their Diwans were Muslims. Many Indians held high posts during the time of the British Government, yet the Government was a foreign Government. Likewise, the Government of India does not cease to be a Hindu Government merely because its Vice-President and four out of fiftyone in the Central Ministry, two Governors and a few ambassadors are Muslims. The day-to-day activities of the Government are not at all commensurate with its utterances.

25. The fourteenth article which has been placed before us was published in the "Sangam" on the 21st July 1964. Its purport is to show that the Muslims in Jamshedpur are living under intolerable conditions even after the recent communal disturbances, so much so that they cannot offer their prayer except secretly. The factory authorities have refused them permission to offer prayer. Such prohibition, when the disturbances are over, is baseless.

26. In the fifteenth article, which was published in the "Sangam" on the 25th July 1964, it has been said that reports from Orissa show that in certain places, like Sundargarh and Rajganjpur, the high handedness of the Hindu communalists are still continuing and Muslims are put under trouble without any reason. Kirtans are held till late in the night and Muslims are attacked with slogans of Jai Mahadev etc. But the police does not pay any attention to these things.

27. The sixteenth article published in the "Sangam" on the 1st August 1964 was intended to convey the impression that atrocities on Muslims were still continuing in Seraikella subdivision of Chakardharpur and no attention was being paid to rehabilitate the sufferers. There was extreme discontent among the local people because of the negligence of the B.D.O.

28. In the seventeenth article published in the "Sangam" on the 4th August 1964, it was again mentioned that the thirst of the communal goondas for blood at Jamshedpur had not yet been quenched and three Muslim employees were seriously attacked. The Government have announced that there is complete peace but the situation is quite the reverse.

29. The eighteenth article of the series was published in the "Sangam" on the 5th August 1964. Therein it has been said that the Goondas in Jamshedpur are going out that they would settle their account with the Muslims on the 15th August. Certain Muslims taking a dead body to the grave-yard were loudly abused by the

students of the majority community. Jan Sanghis have started a campaign to drive out the Muslims, and great panic prevails among the Muslims. The Government should take action against the communalists so that no further disturbances might take place.

30. I now come to the post-detention period of the petitioner. In the schedule appended to the impugned order, reference has been made to two articles of this period. But I will refer to only one of them. That article was published on the 8th September 1964, with the caption "Muslamano ke khoon se Holy khelnewale gunde Rourkella men aaj tak loot ka mal farokta karte nazar aten bain (the gundas who celebrated Holy with the blood of Musalmans are still seen selling their booty in Rourkella)". In the opening sentence of this article, it has been said that the looted shops of the Muslims are still under the occupation of the gundas and all these things are happening "Hukkam ke Isharon par", that is to say, at the instigation of the official authorities. In course of the article, it has been said that the Muslims could not re-occupy their shops on account of the support of the officials to the Goondas. The officials are active merely in arresting the Muslims under the Defence of India Rules. On account of the official wickedness, the work of repair of houses of the affected persons is still pending. The attitude of the Government is highly unsatisfactory.

31. Having read the nineteen articles referred to above, I feel no hesitation in rejecting the contention of the learned counsel for the petitioner that they do not fall within the ambit of prejudicial reports as defined in Rule 35(7). These articles clearly tend to convey the impression to an average reader that even after the disturbances, the Muslims were living in the riot affected areas under intolerable conditions, that the Government was wholly unmindful of their miseries, that the Government officers were not only partial towards the members of the majority community, but were even encouraging them in committing atrocities against the Muslims; the Police constables went to the length of singing Bhajan in the Mosque at Sahebganj on the occasion of Id-uz-zoha; under the plea of arresting the bad characters, the authorities were hauling up innocent Muslims; there was an organised programme for making the lives of the Indian Muslims unbearable and the Government composed of members of the majority community was in conspiracy against the Muslims. The rioters had the support of the Government and authorities who were deliberately conniving at their activities. The Government was making a false claim of being secular, even the Public Service Commission was not free from the virus of communalism. On account of the discriminative policy of the Government, the Muslims were leaving their homes at Chakardharpur and other riot-affected areas. They were also being persecuted under the Defence of India Rules.

It is manifest that an average reader of these articles would develop hatred or contempt towards the Government and fear or alarm would be caused in the mind of the members of the Muslim community and they are bound to entertain feelings of enmity and hatred towards the members of the majority community.

I, therefore, think that all the three relevant clauses of Rule 35(6), namely, Clauses (e), (g) and (h) are attracted to the publication of these articles, and as such the impugned order appears to me to be amply justified upon the materials on the record. It is true, as pointed out by learned counsel for the petitioner, that the third article of the series (the article of the 1st May 1964) was followed by three other articles which were in the nature of contradiction of the news printed in the article of the 1st May 1964. But that is wholly immaterial, because it cannot be assumed that all the persons who had read the article of the 1st May 1964 had also read the subsequent articles which are alleged to be in the nature of contradiction. An average reader of these articles is bound to be led away with the impression that the life, honour and property of the Muslims in India are not being safeguarded by the Government, which is out and out a Hindu Government, and that in its turn is bound to bring into hatred or contempt or to excite disaffection towards the Government. Some of these articles are also bound to cause fear or alarm to the members of the Muslim community and to generate feelings of enmity and hatred in them towards, the members of the majority community.

It is no doubt true that several of these articles were published during the period when the petitioner was under detention, but that again is of no consequence because it has not been shown to us that the petitioner had ceased to be the Editor, Printer and publisher of the newspaper in question while he was under detention. The petitioner must, therefore, take full responsibility for these publications. Besides the impugned order is not intended to be by way of punishment to the petitioner. The purpose of the order is only to prevent the repetition of such publications- in the interest of public safety and maintenance of public order which is so essential during the period of emergency proclaimed by the President of India. I find no legitimate ground for saying that the impugned order is mala fide or that the offending articles do not justify the demand of security from the petitioner.

32. It remains to notice one more argument put forward before us by the learned counsel for the petitioner. The argument, in substance, is that the publications in question cannot be complained of unless they can be said to fall within the purview of the offence of sedition laid down in Section 124A of the Indian Penal Code. It is pointed out that the language of that section has a close resemblance to Clauses (e), (f), (g) and (h) of Rule 35(6) of the present Defence of India Rules which, in their turn, are similar to Sub-clauses (e), (ee), (f) and (g) of Rule 34(6) of the Defence of India Rules, 1939. Dealing with the said rules of the old Defence of India Rules, their Lordships of the Federal Court in *Niharendu Dutt Majumdar v. Emperor* AIR 1942 FC 22, took the view that the use of abusive language, even when used about a Government, is not seditious. Sedition is a grave offence, a prosecution for which is a formidable weapon in the hands of a Government, but for the very reason it is all the more necessary to remember that opinions, and even the violent expression of opinions, do not necessarily fall within it. In order to constitute sedition, it must be shown that the acts or words

complained of either excite disorder or are such as to satisfy reasonable men that that is their intention or tendency. The contention of the learned counsel, therefore, is that the publications in question do not justify a conclusion that they constitute prejudicial reports within the meaning of Rule 36(7) of the Defence of India Rules, 1962. In my opinion, it is not possible to accede to the contention of the learned counsel. It must be pointed out that the view taken by the Federal Court in Niharendu Dutt Majmundar's case AIR 1942 FC 22 was disapproved by the Privy Council in AIR 1947 82 (Privy Council) . Delivering the opinion of the Privy Council in that case, Lord Thankerton pointed out that the word "sedition" did not occur either in the body of Section 124A or the relevant rule of the Defence of India Rules, the language of either of which did not justify the view taken by the Federal Court that the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency. The Privy Council approved of the view expressed by Strachey, J. in Queen Empress v. Bal Gangadhar Tilak ILR 22 Bom 112, wherein it was held that Section 124A of the Indian Penal Code would be attracted not only where the accused intended by the articles to excite rebellion or disturbances, but also if he tried to excite feelings of enmity to the Government. Lord Thankerton pointed out that the expression "disaffection" occurring in Section 124A includes disloyalty and all feelings of enmity, and that is quite inconsistent with any suggestion that they are confined to exciting disorder. The conflicting views of the Federal Court and the Privy Council were noticed by the Supreme Court in Kedar Nath Singh Vs. State of Bihar, , wherein the validity of Section 124A of the Penal Code was challenged on the ground that it encroached upon the fundamental right of freedom of speech and expression guaranteed to every citizen of India under Article 19(1) of the Constitution. Their Lordships referred to Clause (2) of Article 19 which was added in the Constitution by the First Amendment Act of 1951 with retrospective effect, and the view taken by their Lordships was that Section 124A of the Penal Code imposed reasonable restrictions on the exercise of the right of freedom of speech and expression in the interests of the security of the State and of public order. In that context their Lordships made the following observations which are relevant to our present purposes:

"The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency to, create disorder or disturbance of public peace by resort to violence."

Their Lordships recognised that criticism of public measures or comment on Government action, however, strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. At the same time, their Lordships made it clear that:

"It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order

that the law steps in to prevent such activities in the interest of public order".

33. In the instant case, I have no hesitation in holding that the publications in question are not within reasonable bounds of criticism of Governmental measures. They have in my opinion, the pernicious tendency envisaged by their Lordships of the Supreme Court. Of course, it is not necessary to show that there was actual disturbance of public order or bringing into hatred of contempt, or excitement of disaffection towards the Government. It is enough that the publications in question were likely to lead to such results as are mentioned in the relevant clauses of Rule 35(6).

34. All the contentions put forward by the learned counsel for the petitioner accordingly fail. It follows that no ground has been made out for interference with the impugned order. The application is, therefore, dismissed with costs. Hearing fee Rs. 200.

Choudhary, J.

35. I agree.