

(1968) 03 OHC CK 0007
In the Orissa High Court
Case No : O J C No. 454 of 1967

Hadibandhu Das

APPELLANT

Vs

The District Magistrate and Another

RESPONDENT

Date of Decision : 11-03-1968

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Preventive Detention Act, 1950 — Section 13, 13(2), 3, 7(1)

Citation : AIR 1968 Ori 148(1) : (1968) 34 CLT 420 : (1968) CriLJ 1096

Hon'ble Judges : S. Barman, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : B.M. Patnaik, G.B. Patnaik and S.S. Basu, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Barman, C.J.—The petitioner -- an Excise vendor of Cuttack town, paying about Rs. 16000/- as license fee to Government was detained in pursuance of a detention order dated December 15, 1967 passed u/s 3(1) (a) (ii) of the Preventive Detention Act, 1950 (Act 4 of 1950 hereinafter referred to as the Act) purporting to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. It is said that the petitioner was served with a document signed by the District Magistrate, Cuttack purporting to incorporate the order of detention and the grounds all written in English which the petitioner, it is said, did not at all understand. The petitioner's case is that he had only a smattering knowledge of Oriya and no knowledge at all of English.

2. On December 19, 1967 the petitioner filed a writ petition in this Court challenging the validity of the said detention order and for the issue of a writ of habeas corpus setting the petitioner at liberty and of a writ of mandamus quashing the impugned order of detention on the various grounds incorporated therein, but mainly on the ground that the petitioner was not communicated the grounds in the language which he understands. The following day on 20-12-1967

the writ petition was admitted by this Court before midday recess. On the same day. when the Court sat after midday recess, the learned Government Advocate filed a document purporting to be a detention order u/s 3 of the Act. The petitioner's case is that no copy of the document was served on him until then: the document is challenged as not genuine. On December 24, 1967 the petitioner under his signature filed two applications in Oriya from Cuttack Jail requesting to be supplied with the copy of the grounds of his detention in Oriya because as he did not understand English at all he did not know what the grounds were. The petitioner also asked for cpy of various papers which the prosecution relied upon, including the Station Diary entries relied on and referred to in the grounds

3. On December 29, 1967 the District Magistrate. Cuttack. passed an order on the said applications to the effect that it is not necessary to furnish the detenu with Oriya copies of the grounds of detention as the petitioner was represented by a lawyer in the Court

4. On January 18, 1968 the District Magistrate on a reconsideration of his earlier order dated December 29, 1967 on the application of the petitioner for supply of the copy of the grounds of his detention in Oriya, issued orders for supply of Oriya translation of the grounds of detention (including the appendices thereto) to the petitioner and they were served on the petitioner on the same day in Cuttack Jail.

5. The writ petition was taken up for hearing on January 22, 1968 and the hearing continued from day to day. On January 29, 1968 after midday recess the learned Government Advocate filed a memo to the effect that the detention order dated December 15, 1967 had been revoked and that the petitioner was set at liberty that morning (January 29, 1968) and that thereafter a fresh detention order dated January 28, 1968 been issued against the petitioner; the learned Government Advocate further stated that the writ petition had, therefore, become infructuous. Learned counsel for the petitioner submitted that he would consider the position and take instructions from the petitioner accordingly. The case was directed to be put up on February 5, 1968. The said fresh order of detention dated January 28, 1968 purported to have been issued u/s 13(2) of the Act is also challenged by the petitioner as illegal.

6. The main question is. was there any infringement of the constitutional and statutory right of the petitioner by the State Government by reason of their non-communication to him, within five days, of the grounds of his detention in the language which the petitioner understands? Sec. 7 of the Act, which in substance is the same as Article 22 (5) and (6) of the Constitution, is this:

"7(1) When a person is detained in pursuance of a detention order, the authority making the order shall as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation

against the order to the appropriate Government.

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

It is significant that the phrase in Sec. 7(1)

"but not later than five days from the date of detention"

does not occur in the corresponding Article 22(5) of the Constitution.

7. In this context, the points urged on behalf of the petitioner, in substance, are these; The constitutional right of the petitioner under Article 22(5) and his statutory right u/s 7(1) of the Act have been infringed inasmuch as the grounds of detention were not communicated to him in the language which he understands since he was not furnished with those grounds in Oriya which he can understand. The mere physical handing over to him on December 15, 1967 at the time of his detention of the document with the caption at the top

"Grounds for detention order made under Sub-section (2) of Section 3 of the Preventive Detention Act. 1950(Act IV of 1950)",

with the contents all in English cannot, in law, amount to "communication" of the grounds As obviously the petitioner did not understand English he demanded to know as to on what authority and on whose order he was being taken into custody; thereafter, the substance of the order of detention was explained to the petitioner in Oriya. In support of his contention, the petitioner relied on the decision of the Supreme Court in *Harikisan v. State of Maharashtra*. ATR 1962 S.C 911.

8. Apparently on a reconsideration of the legal position as to the language in which the grounds should have been communicated, the District Magistrate, purporting to cure the formal defect, served a copy of the grounds on the petitioner in Oriya on January 18 1968 It was contended on behalf of the petitioner that the grounds in Oriya subsequently communicated on January 18. 1968 were served much later than five days from the date of detention as laid down in Section 7(1) of the Act: that u/s 9 of the Act the Government was bound to place, within 30 days from the date of detention, before the Advisory Board the grounds of detention and the representation, if any, of petitioner and also the report of the District Magistrate who made the detention order. The petitioner's point is that the time-limit of five days within which the grounds are to be communicated to the petitioner as required u/s 7(1). and the time-limit of 30 days within which a reference has to be made by the Advisory Board as required u/s 9, are mandatory, that these limits are constitutional safeguards which have been infringed, that the question was not whether the petitioner was in fact prejudicially affected, but whether his constitutional right had been infringed, that preventive detention is a serious invasion of the personal liberty and such meagre safeguards as the Constitution provided against improper exercise of power must be zealously watched and enforced by the Court. It was accordingly

submitted on behalf of the petitioner that the requirement about communication, by the detaining authority of the grounds, not later than five days from the date of detention, is an absolute independent "must", and further that he must be afforded the earliest opportunity of making a representation against the detention order that the infringement of these rights would make the detention illegal in that, according to the petitioner, in terms of the Constitution, the Act, and the Supreme Court decision mentioned above the subsequent communication of the grounds in Oriya on January 18. 1968 in violation of Article 22 of the Constitution and Sections 7 and 9 of the Act. was no "communication" at all and that the time-limit of five days from the date of detention within which the grounds should be communicated is a constitutional safeguard the violation of which would render the detention illegal.

9. The question is: Did the petitioner understand the grounds which were communicated to him on December 15, 1967 at the time of his detention? The grounds of detention in English are contained in 4 paragraphs including 13 sub-paragraphs (i) to (xiii) under paragraph 2 of the document which sets out the grounds in details. Paragraph 2 is this:

"2, That you have been acting in a manner prejudicial to the maintenance of public order by commission or breaches of public peace indulging in illicit business in opium, ganja. bhang country liquor, riotous conduct criminal intimidation and assault, either by yourself or through your relations/agents/associates as mentioned below:

x x x x x"x x x x x"

Then follow the thirteen sub-paragraphs setting out the details of the said grounds with reference to all necessary particulars of the charges against the petitioner. Particulars of raids conducted by the police, Excise staff and others on the premises of the petitioner and his associates on receipt of complaints from the public, as stated in sub-paragraph (iii) of paragraph 2 are given in Annexure A to the grounds. Besides, some instances of disorderly and drunken behaviour of the petitioner's associates as well as by his customers at or near the place of the petitioner's illicit sale centres at Cuttack as stated in sub-paragraph (xiii) of paragraph 2 are given in Annexure B to the grounds.

10. It was not until January 18, 1968 that the grounds in Oriya were communicated to the petitioner by the District Magistrate, apparently on a reconsideration of the legal position. But it is not understandable how if the petitioner had not understood the grounds communicated to him in English on December 15, 1967 at the time of his detention he could in his writ petition dated December 19, 1967. filed four days after his detention, deal with the various items constituting the grounds of detention set out in paragraph 2 of the grounds. At any rate, by that date (December 19, 1967) the petitioner had evidently understood the grounds of detention which he purported to deny or refute in paragraphs 9 and 10 of the writ petition. Indeed, the petitioner's cousin

brother, who swore the affidavit in support of the writ petition, stated in paragraph 4 of the affidavit:

"That the facts stated in the application are true to my information received from the petitioner and I believe them to be true and the rest are submission."

It is quite clear from the aforesaid affidavit of the petitioner's cousin that it was on instructions or information received from the petitioner himself that the grounds in English were fully dealt with in the petition. This would not have been possible unless the petitioner understood what the grounds of detention were, because all that were stated by way of dealing with or meeting the grounds of detention were within the specific knowledge of the petitioner himself who evidently understood the grounds. Moreover, the Inspector of Police, Vigilance, who served a copy of the grounds on the petitioner on December 15, 1967 explained to the petitioner in Oriya language the contents of the order of the District Magistrate which contained the grounds for detention (Annexure A to the petition).

11. The decision of the Supreme Court in *Harikisan Vs. The State of Maharashtra and Others*, relied on behalf of the petitioner, is, on facts, distinguishable from the present case. In that decision, the Supreme Court did not agree with the High Court in its conclusion that in every case the communication of the grounds of detention in English so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution; the Supreme Court held that if the detenu is conversant with the English language he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based, but a person who is not conversant with the English language -- in order to satisfy the requirements of the Constitution must be given the grounds in a language which he can understand and in a script which he can read if he is a literate person. In the Supreme Court case, the grounds were not at all communicated in Hindi which was the language of the detenu petitioner in that case. In the present case, however, it is not that the grounds in Oriya which the petitioner understands, were not communicated to him as required by law; the present case is one of delayed communication of the grounds in the language which he understands and not a case of non-communication of the grounds in that language. That apart, in the Supreme Court case their Lordships laid special emphasis on the principle that the detained person should be given the earliest opportunity to have effective knowledge of the grounds imparted to him; the ratio decidendi of that case is in paragraph 9, the relevant portion of which is quoted below:

"It has also by way of limitation upon the freedom of personal liberty recognised the right of the State to legislate for preventive detention, subject to certain safeguards in favour of the detained person, as laid down in Clauses (4) and (5) of Article 22. One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made

against him, in order that he may be able to make his representation against the order of detention. In our opinion in the circumstances of this case it has not been shown that the appellant had the (opportunity) which the law contemplates in his favour, of (making an effective representation) against his detention." (bracketing is ours).

12. It is thus clear that all the Supreme Court purported to lay down in the decision was that the detained person should be afforded an opportunity of making an effective representation against his detention, and the reference to the communication of the grounds in the language which he understands should be understood in that context. In our view, the Supreme Court decision does not so far as to say that in every such case the detention order should be struck down as illegal and unconstitutional as violating the Act or Article 22(5); it must be shown that he was unable to make any effective representation at the earliest opportunity against the order. Here, the very fact that as early as 19-12-1967 within four days of the communication of the grounds the petitioner filed the writ petition before this Court clearly refuting or denying the allegations made against him in the grounds of detention, shows that he could understand or was fully aware of the nature of the charges made against him. The constitutional right granted under Article 22(5) and the statutory right guaranteed by Section 7(1) of the Act should be judged from the consideration of the position whether the detenu was afforded the earliest opportunity of making a representation against the order of detention; the Court is to see that the language of the grounds as communicated to the detenu had not prevented him from making an effective representation.

13. It was also contended on behalf of the petitioner that the grounds of detention communicated to the petitioner were vague. What is meant by vague? "Vague" can be considered as the antonym of "definite" If the ground which is supplied is incapable of being understood or defined with sufficient certainty, it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail to be examined in the light of the circumstances of each case. If, on reading the ground furnished, it is capable of being intelligently understood and sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention, it cannot be called vague. The State of Bombay Vs. Atma Ram Sridhar Vaidya, (para 14V

14. In the present case, it cannot be said that the grounds of detention, as communicated to the petitioner, were vague. In our opinion, the grounds were capable of being intelligently understood and were sufficiently definite to furnish materials to enable the petitioner to make his representation against the order of detention; in fact, within four days after his detention the petitioner filed the writ petition on December 19, 1967 in which he dealt with the grounds item by item

which the petitioner could not have done if the grounds were not sufficiently definite and capable of being intelligently understood by him. In our opinion, none of the grounds is either vague or irrelevant; we have no doubt that there is no justification for the contention that any of the matters taken into consideration by the authorities concerned in the matter of detention of the petitioner was vague or irrelevant.

15. Then, as regards the sufficiency of the grounds, the question arises: Is the satisfaction of the State Government with respect to the petitioner -- that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary that he should be directed to be detained -- justiciable? In our opinion, the answer is No. This view is amply supported by decisions of the Supreme Court. The powers of preventive detention under the Act are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by inquiry or trial. By its very nature, preventive detention is aimed at preventing commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession (sic) of full detailed information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section 3, therefore, requires that the State Government must be satisfied with respect to any person that, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order (as in the present case), it is necessary to make an order directing that such person be detained. According to the wording of Section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or the other of the three objects mentioned in that section and that the detaining authority was satisfied that it was necessary to prevent him from acting in such manner; it is the satisfaction of the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned. The satisfaction, however, must be based on some grounds: there can be no satisfaction if there are no grounds for the same. There may be divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by that Section. One person may think one way another person the other way. If therefore the grounds on which it is stated that the State Government was satisfied, are such as rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a Court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government, or the State Government, or the State Government is ruled out by the wording of the section. It is not for the Court to sit in place of the Central Government or the State Government and try to

determine if it would have come to the same conclusion as the Central or the State Government. This is a matter for the subjective decision of the Government and that cannot be substituted by an objective that in a Court of law. Such detention orders are based on opinion and on materials which cannot be strictly admissible as evidence under the Evidence Act in a Court, but which the law taking into consideration the needs and exigencies of administration has allowed to be considered sufficient for the subjective decision of the Government. It is now well settled that the satisfaction of the authority making the order of detention as to the matters specified in the Act is only condition for the exercise of his powers and that the Court cannot substitute its own satisfaction for that of the authority. It is, however, open to the detenu to establish, if he can, that the order was made mala fide and in abuse of his powers *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, and *Ashutosh Lahiry Vs. The State of Delhi and Another*, (Para 4).

16. This leads us to the consideration of the question. Was the detention order mala fide? On the question of mala fide, the only relevant consideration is if the order was made for ulterior purpose or a purpose other than that mentioned in the detention order. The petitioner's allegations of mala fides in substance were, inter alia, to the effect that the impugned detention, order was based on considerations extraneous to the Act and the Constitution; that the parties in power and the Chief Minister who is the Minister in charge of the Home Department issued the order of detention, bore animus against the petitioner as he had actively supported the candidature of the Congress party in the last elections. The petitioner says that:

"the order of detention is based on extraneous political motive at the instance of the politicians with the object of victimisation"

as stated in paragraph 9 of the petition.

17. Allegations of mala fide conduct are easy to make but not always as easy to prove. The District Magistrate, in his counter-affidavits, has stated that in view of the report of the Superintendent of Police Vigilance, regarding the activities of the petitioner, the history sheet, and the allegations made against the petitioner that he was smuggling and carrying on trade in illicit liquor and opium business, it was apprehended that the petitioner would utilise his money, influence and resources in carrying on his illegal activities so as to further impair the maintenance of public order in the town of Cuttack. The District Magistrate denied the allegation that the impugned order of detention has been passed on extraneous considerations or that he had been influenced by extraneous political motives in ordering the detention of the petitioner. Thus we have allegations on one side and denial on the other and the petitioner failed to discharge the burden, which undoubtedly lay upon him, to prove that the District Magistrate acted mala fide in issuing the detention order. On the materials placed before us, therefore we must hold that no mala fide has been established.

18. Lastly, it was contended, on behalf of the petitioner, that the fresh order of detention dated January 28, 1968, after revocation, purported to have been passed u/s 13(2), was illegal. The petitioner had filed an independent writ petition O. J. C. 96 of 1968 challenging the validity of the fresh detention order; subsequently the petitioner withdrew the said writ petition O. J. C. 96 of 1968. The revocation order referred to herein is quoted below:

"Government of Orissa." Home Department Special Section, ORDER

Bhubaneswar, the 28th January, 1968

No. 396/C. Whereas Shri Hadibandhu Das, son of late Ramachandra Das of Manglabag, Cuttack town, has been detained u/s 13(1)(a)(ii) read with Section 3(2) of the Preventive Detention Act, 1950, by an order dated the 15th December 1967 of the District Magistrate, Cuttack. which has been approved by the State Government.

And whereas the validity of the said detention has been questioned for non service of the grounds of detention in Oriya language and for other defects of formal nature.

Now therefore the State Government are pleased to direct that the said order of detention dated 15th December 1967 be hereby revoked and the said Shri Hadt-bandhu Das be released forthwith.

By order of the Governor

Sd.28-1-68

Deputy Secretary to Government"

The fresh detention order stated to have been served on the petitioner on January 29. 1968 was in these terms:

"Government of Orissa Home Department special Section ORDER

Bhubaneswar, the 28th January, 1968.

No 397/C. Whereas the order of detention dated 15th December 1967. made by the District Magistrate Cuttack. against Shri Hadibandhu Das, son of late Ramachandra Das of Manglabagh, Town Cuttack. has been revoked by the State Government on account of defects of formal nature by their order No. 396/C dated the 28th January 1968.

And whereas the State Government are satisfied with respect to the said Hadibandhu Das that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to detail him.

Now therefore in exercise of the powers conferred by Section 3(1)(a)(ii) read with Section 4(a) of the Preventive Detention Act 1950 the State Government do hereby direct that the said Hadibandhu Das be detained in the District Jail at

Cuttack until further orders

BY order of the Governor

Sd.

Deputy Secretary to Government"".

19. It appears from the report of the Inspector of Vigilance that on January 29, 1968 at 10.20 a.m. while the petitioner was proceeding towards Buxi Bazar side on the main road in front of Kadam Rasul the fresh detention order was executed by him, and the contents of the order were explained to the petitioner by the Inspector and that a copy of that order was also handed over to the petitioner. Thereafter, the Inspector took the petitioner into custody and proceeded with him to deliver him in jail.

20. Section 13 of the Act which gives the power to the State Government to revoke or modify the detention order is this:

"13. (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may at any time be revoked or modified.--

(a) notwithstanding that the order has been made by an officer mentioned in Subsection (2) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of fresh detention order u/s 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made".

On this point the argument on behalf of the petitioner was, in substance, this. No fresh facts have arisen after the revocation which could justify the issue of a fresh order of detention in fact both the order of revocation and the fresh order of detention were passed on the same date namely January 28, 1968 and no fresh facts had arisen between the intervening time to justify the passing of a fresh detention order u/s 13(2). The petitioner's point, as stated by him in his supplementary petition dated February 8 1968 is this :

"That the order of detention and the grounds of detention do not disclose any fact which had arisen after the date of revocation. In the circumstances of the case, the question of any fact arising after the date of order of revocation is an impossibility. There were no fresh facts which arose after the date of revocation. In this view of the matter the fresh detention order is mala fide and contrary to law and is liable to be quashed."

21. It was contended that the revocation order as well as the fresh detention

order, both dated January 28, 1968 show that the fresh detention order was not based on fresh fact but merely on the apprehension that the High Court may release the petitioner on account of formal defects in the earlier order and the passing of such a fresh order of detention is illegal. In support of this argument, the petitioner relied on the report of the Joint Committee on the Bill to further amend the Preventive Detention Act 1950 presented to the House of the People on July 30 1952 In Clause 11 of paragraph 3 of that report it was recorded:

"The Joint Committee have completely recast Sub-section (2) of Section 13 so as to make it clear that a fresh detention order can be passed against a person only on the basis of fresh facts arising after the date of the revocation or expiry of the last detention order "

(See Gazette of India 1952, Part II. August 9 1952 Section 2 Page 360). The petitioner's point is that the report or the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief that the legislation aimed at. But in this context the well settled proposition must be kept in mind that in interpretation, of statutes, the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used are clear enough We shall deal with this aspect presently while interpreting Section 13(2) of the Act as amended by the Amendment Act of 1952 (Act 61 of 1952).

22. In support of his contention the petitioner also relied on a certain observation in a decision of the Patna High Court *Karamvir Singh v. State of Bihar* AIR 1953 Pat 334 para 6 But the petitioner appears to rely on this sentence occurring in the judgment detached from the context and the hypothesis of the case on which the aforesaid observation was made in that judgment. In my opinion, this Patna decision does not support the petitioner's contention for reasons hereinafter discussed

23. It was also contended that the mere fact of revocation of the order of December 15 1967 by the subsequent order of January 28 1968 and the passing of a fresh detention order on January 23 1968 shows mala fides as stated by the petitioner in his supplementary petition quoted above In-deed, different views have been expressed" by different High Courts as to the necessity of formalities of a valid order of detention If in view of possible defects of this kind in connection with the order served on the petitioner on December 15 1967, a fresh detention order was passed on January 28 1968 with a view to remove any lacuna" on account of such defects such a course will not justify an inference of mala fides or abuse of power I am unable to draw any such inference from the sequence of the orders. Once it is conceded that in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the date of institution of the proceeding, it is difficult to hold, in the absence of proof of bad faith, that the detaining authority cannot supersede the earlier order of detention challenged as

illegal, and make a fresh order wherever possible which is free from effects and duly complying with the rerequisites of the law in that behalf. The were Fact that the fresh order of detention was passed during the pendency of the ha-beas corpus petition cannot by itself lead to the conclusion that the order is vitiated by malice in law. that will depend on the circumstances of the case. The detenu would have to prove not only that the detention order was passed during the pendency of the habeas corpus proceeding, but that there are also other materials showing malice. In my opinion, in the present case, the petitioner has not been able to point to any such facts in support of his contention.

24. This view was expressed by the Federal Court and later on reiterated by the Supreme Court in successive decisions. The latest decision is Godawari S. Parulekar and Others Vs. State of Maharashtra., para 8 where their Lordships observed as follow :

"It the Government considers an order of detention which is the subject matter of challenge to be invalid, there is no reason whv it should not pass a valid order Mr. Gare (Advocate for the appellant detenu) says that there was no fresh consideration of the fact? and the Ministers acted on preconceived notions and passed the new orderwithout any fresh consideration. We are unable to accept this argument because it is quite clear from the affidavit filed by the Under Secretar to the Government of Maharashtra. Home Department and the General Administration Department that before the order was passed the Minister of Home and the Chief Minister werp satisfied"

25. On the facts and circumstances of the present case, the fresh detention order dated January 28 1968 is valid. Assuming that the fresh detention order was passed on the basis of the pre-existing facts not on fresh facts having arisen even so such an order will be valid in law. as clearly expressed by the Supreme Court. Indeed where the defects in the earlier order are of a formal nature as in the present case it would be valid for the Government to issue a fresh order and such a detention order will not be mala fide whether the detenu is outside or inside the Jail Moreover, it is now well settled that if while a detenu is in Jail under a prior order of detention under a provincial Act a subsequent order of detention under the Preventive Detention Act is passed against him after several months mentioning the same ground as in the prior order, it cannot be said that the subsequent order is mala fide or passed, mechanically without proper satisfaction the past conduct or antecedent history of a person can be taken into account when making the detention order and, as a matter of fact, it is largely from prior events show-ins the tendencies or inclinations of the man that an inference can be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order, if the authority satisfied himself that the original ground was still available and there was need for detention on its basis no mala fides can be attributed to the authority from this fact alone. Ira such circumstances, where the State Government bv reason of formal defects revokes an earlier order and on the same date passes a fresh order of detention

on the pre-existing facts it would be an empty formality to allow such a detenu to go out of Jail on the revocation of the order and to serve him with the fresh detention order as soon as he is out of jail where the duration of detenu's detention is dependent upon the will of the State Government, one cannot see any reason for holding that if the State Government decides to revoke an earlier order of detention, it cannot pass a fresh order of detention the same day and serve it on the detenu in jail. For the two orders are really of the same nature and are directed towards the same purpose: *Ujagar Singh Vs. The State of The Punjab*, , and *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, .

26. In the present case, the circumstances in which the State Government passed the fresh order of detention are explained in an affidavit filed by the Chief Minister of the State and also in another affidavit filed by the Deputy Secretary to the Government of Orissa in the Home Department. While denying, as not true, the allegations made by the petitioner that the order of detention had been issued by the State Government male fide, on account of personal animosity or political bias against the petitioner the Chief Minister's explanation as stated in his affidavit is this:

"The order of detention passed by the District Magistrate on 15th December 1967 has been superseded by the State Government as the validity of the said order has been questioned before the Honourable High Court for the non-service of the grounds of detention in Oriya language and other defects. For the reasons stated in the ground? filed as Annexure A to the supplementary petition the State Government were satisfied that further detention of the petitioner was necessary with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order: and accordingly a fresh order of detention was issued against the petitioner on 28th January, 1968. The decision was taken bona fide and not on account of any personal or political bias against the petitioner. The revocation order and the fresh order of detention dated 28th January, 1963 have been passed bona fide in public interest as it was apprehended that unless detainee the petitioner would indulge in activities which are prejudicial to the maintenance of public order"

The Deputy Secretary Home Department also filed an affidavit substantially to the same effect.

27. A petition was made on behalf of the petitioner for summoning the Chief Minister and the Deputy Secretary, Home Department to appear for examination as witnesses. Similar application was also made by the petitioner to enable him to summon the District Magistrate to appear for examination as a witness. The said applications were rejected by us. The reasoning which weighed with us -- which we record here--for rejecting the applications is, in substance, this: We felt that this was not a case where the Court should exercise its discretion, as the cross-examination of the three deponents -- who filed affidavits, namely the Chief Minister the Deputy Secretary. Home and the District Magistrate, Cuttack -- would not serve any useful purpose. We took the view that even if the three

deponents were called they could in the circumstances of the case, only repeat their denial? in the affidavits in answer to the allegation made in the petition, the several affidavits and the rejoinders including the supplementary petition dated February 8 1968. and therefore such cross-examination would not take the Court any further than the affidavits. In view of the fact that the petitioner was not in a position to give particulars of the allegations made by him and the generality of those allegations and particular¹ of the allegation that the impugned order of detention was mala fide, the only course left to the said deponents would have been to repeat in equally general terms what they had already-stated in their affidavits. In this view of the matter we rejected the petitions filed on behalf of the petitioner to summon the deponents for examination in Court.

28. In the ultimate of the entire position therefore we hold that the fresh order of detention made by the State Government in the facts and circumstances as discussed above was not mala fide

29. Now we come to deal with the observation in the decision of the Patna High Court in Karamvir Singh Vs. State of Bihar and Others, on which the petitioner relied on support of his contention that without fresh facts having arisen, to fresh detention order can be made, the particular sentence in the Patna decision is this:--

"Under the present law, therefore, there can be no fresh order of detention without fresh facts having come into existence after the expiry or revocation of the previous order".

30. As Lord Halsbury observed in *Quinn v. Leathern*, 1901 AC 495 every judgment must be read as applicable to the particular facts proved, or assumed to have been proved, since the generality of the expressions which may be found there, are not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found, a case is only an authority for what it actually decides.

31. It is in the light of these principles that the observation in Patna case has to be understood, In the Patna case the hypotheses of facts on which the Court made the observation at about the end of para 6 of the Judgment on which the petitioner relied in support of his contention were these. The Patna High Court had made a declaration that the earlier order of detention of the Petitioner was illegal: the only question there was whether the said order of the Court would have the effect of expiry of the first order of detention. The High Court also held that the declaration by the Court that the first order of detention of the petitioner was illegal did not amount to expiry of that order, it was merely held illegal and invalid and of no effect. The intention of the Legislature was held to be that in cases where the order of detention would run itself out by efflux of time or the authorities had revoked the order, a fresh order could only be passed after fresh facts had arisen after expiry of the earlier order by efflux of time and not by reason of its having been declared illegal or invalid or revocation of the previous

order. It was contended on behalf of the detenu appellant in the Patna case that the effect of the order of the Court would, in law, amount to expiry of the previous order of detention and therefore, fresh facts were needed to enable the State Government to issue a fresh order of detention; it was conceded on behalf of the State that no fresh facts had arisen since the previous order of detention was held illegal by the Court. It was in this context that, after the first order of detention was held illegal, the Patna High Court held that there could be no further order of detention without fresh facts. The last two succeeding sentences in the same Paragraph 6 of the judgment are significant. They are as follows :--

"The- present case was being one of the expiry or revocation of the order, the fresh order of detention did not require fresh facts. The contention of Mr. Ghosh (learned Counsel for the detenu must, therefore be rejected and Section 13(2) of the Act must be held to have no application"

32. The Patna High Court's reasoning is further clarified by what the learned Judges held in paragraph 9 of the judgment the relevant portion of which is quoted below :--

" There case no reason to hold that the subsequent order of detention is mala fide merely because based on the same facts which were declared invalid on some formal grounds. Where the earlier order of detention is held invalid on more or less formal grounds, there is nothing in law to prevent a proper order of detention being passed on the same grounds and the mere fact that the subsequent detention order has been passed on the grounds as were mentioned in the previous order, cannot lead the Court to hold that the detaining authorities acted mala fide".

Therefore, the Patna decision does not hold the petitioner herein.

33. In the present case, the grounds have not been adjudged by the Court or by the Advisory Board to be insufficient or irrelevant. So there is no reason why a fresh order cannot be passed on the same grounds when the earlier order had been revoked with a view to cure some formal defects,

34. We are now left with the interpretation the amended Section 13(2) of the Act regarding fresh detention order after revocation. Before the amendment of 1952. Section 13(2) read as follows: --

" Revocation of a detention order shall not bar the making of a fresh order of detention u/s 3 against the same person."

By Section 11 of the second Amendment Act of 1952 (Act 61 of 1952), for Section 13(2) the following sub-section was substituted:

"The revocation or expiry of detention shall not bar the making of a fresh order of detention u/s 3 against the same person, (in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or the State Government or an officer, as the case may be, is satisfied that such

order should be made)". (braketing is ours)

35. In the course of arguments learned counsel for the petitioner laid particular stress on paragraph 3 of the Report of the Joint Committee on the Bill further to amend the Preventive Detention Act, as quoted above in support of his contention that the fresh detention order could be passed against the petitioner only on the basis of fresh facts arising after the date of revocation or expiry of the last detention order. The petitioner's point is that the intention of the Legislature in enacting the Second Amendment Act was to completely recast Section 13 (2) so as to make it clear that a fresh detention order could be passed against a person only (and not otherwise) on the basis of fresh facts arising after the revocation or expiry of the last detention order. We are unable to agree that the Report or the Statement of Objects and Reasons is conclusive as to the ultimate intention of the Legislature in enacting a statute. This our view is supported by several decisions of the Supreme Court.

36. As regards the propriety of reference to the Report of Joint Committee or the Statement of Objects and Reasons, it seeks to explain what reasons induced the mover to introduce the Bill in the House and what objects it sought to achieve; but those objects and reasons may or may not correspond to the objects which the majority of the members had in view when they passed it into law. The Bill may have undergone several changes during its passage through the House or houses and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of Legislature, nor do they form part of the Bill and are not voted upon by the members, The Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to construction of the statute.

37. While amending Section 13 (2) of the Act, if the Legislature had made no provision in the Bill itself -- at the time of second Amendment -- that it is only on the basis of fresh facts arising after the revocation or expiry of the previous order of detention that a fresh order can be passed, to effectuate that intention a mere proposal to that effect made by the Government and incorporated either in the Statement of Objects and Reasons or in the Report of the Joint Committee will not be sufficient for the Court to assume that the proposal was actually carried out by the Legislature. Statements of Objects and Reasons may and do furnish valuable and even historical material in ascertaining the reasons which induced the Legislature to enact the statute but while interpreting the statute they must be ignored. It is the duty of the Court to give full effect to the Language used by the Legislature; it has no power either to give that language a wider or narrower meaning than the literal one unless the other provisions of the Act compel such other meaning

38. This leads us to the construction of the language of Section 13 (2) as it stands after the amendment. While interpreting this section we must keep in view the parent Section 3 of the Act which gives power to the Central

Government and the State Government to make orders detaining certain persons and also the provisions of sections 14 and 21 of the General Clauses Act 1897. Sections 14(1) and 21 of the General Clauses Act are these:

"14, Powers conferred to be exercisable from time to time.

(1) Where, by any Central Act or regulation made after the commencement of this Act, any power is conferred then, unless a different intention appears, that power may be exercised from time to time as occasion requires

21. Power to make to include power to add to, amend, vary or rescind, orders, rules or bye-laws:

Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

39. The effect of Section 3 of the Act read with Section 14 of the General Clauses Act is that the power to make detention orders is not exhausted after that power is once exercised but that power can be exercised from time to time as and when necessary. Keeping the scheme of the Act in view, it is clear that Section 13(2), which provides for the making of fresh order of detention after revocation or expiry of the first detention order does not contain any restriction on the exercise of the power conferred by Section 3 of the Act, on the Central Government or the State Government to make a fresh detention order where fresh facts have arisen after the date of revocation or expiry of the earlier order: it cannot. by implication mean that where no fresh facts have arisen after revocation or expiry of the first detention order, the Central Government or the State Government have no power to make a fresh detention order. In other words, where the negative is not specifically provided it cannot be inferred by implication, that is to say the power of the Central Government or the State Government to make fresh detention order conferred on them by Section 3 cannot be taken away by implication. This view is amply supported by authority in that repeal by implication is not favoured: a sufficient Act ought not be held to be repealed by implication without some strong reason; when the later Act is worded in affirmative terms only without any negative, express or implied it does not repeal an earlier law. The general rule of construction by implication as to what may or may not be implied if the meaning is not plain, is not to import into statutes words which are not to be found there: words plainly should not be added by implication into the language of a statute unless it is necessary to do so to give the Paragraph sense and meaning in its context.

40. In this view of the construction of Section 13(2) of the Act. after the amendment, the question posed is what was the necessity of such an amendment by addition of the words as quoted above? Indeed, in view of the principles discussed above, the words introduced into the amended Section 13(2) may seem redundant. It may be that the amendment was enacted ex-abundanti

cautela or it may be to cover any case where fresh facts have arisen after the date of revocation or expiry of previous detention order. It would not be correct to say that every change in the phraseology introduced by way of amendment necessarily implies a change in the content of the provision or in its meaning for it entirely depends upon whether the words "in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order is made" are really meant to clarify or alter the then existing meaning; it is obvious that it cannot be the latter. Therefore, the additional words merely clarify and cover a particular case, namely a case where fresh facts have arisen, and the amendment was not intended to alter the provision before the amendment so as to involve any inconsistency with the earlier provision.

41. In opinion, none of the contentions urged on behalf of the petitioner are tenable, as discussed above. In the result, therefore, the writ petition must fail and it is accordingly dismissed, but there will be no order for costs.

Ray, J.

42. I agree that this application shall be dismissed. I would, however, record my opinion that the first detention of the detenu became illegal due to non communication of the detention order in the language which the detenu understood or in the script which he could read. This amounted to violation of the constitutional and statutory safeguards. This illegality became rectified by subsequent revocation and passing of the second detention order.