

(1975) 11 DEL CK 0018

In the Delhi High Court

Case No : Criminal Writ Appeal No. 116 of 1975

Harish Vohra

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 20-11-1975

Acts Referred:

Citation : (1976) ILR Delhi 192

Hon'ble Judges : S.I. Rangarajan, J; R.N. Aggarwal, J

Bench : Division Bench

Advocate : F. Anthony, Harjinder Singh, S. Govindswaminadham, A.B. Saharia, V.B. Saharya and K.B. Soni, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This judgment will dispose of Cr. Writs 133/75 and 134/75 also. The detenu involved in this petition (Dali Chand Vohra) as well as those in the other two petitions (Shyam Bihari Lal Sharma and Shri Kishan Sharma) are partners of a firm known as Delhi Rajkot Enamel Works. The facts being the same it will be sufficient to state them in Cr. Writ 116 of 1975 alone.

(2) An order of detention was passed by the District Magistrate, Delhi u/s 3(I)(c) of the Maintenance of Internal Security Act, 1971 (hereinafter called the MISA) on certain grounds, which he noticed later on 22-10-1974, which was quashed on 11-12-1974 by a Division Bench consisting of M.R.A. Ansari and V. D. Misra, JJ. The detenu was arrested for the second time and detained u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA) on 6-3-1975 on the same facts : the same was quashed by the same Division Bench on 6-6-1975 (in Cr. Writ 13 of 1975).

(3) The President made a proclamation under Article 352(1) of the Constitution on 25-6-1975, which was published on 26-6-1975; an order under Article 359(1) of the Constitution was issued by the President on 27-6-1975.

(4) On 1-7-1975 an Ordinance (No. 6 of 1975) was promulgated amending the COFEPOSA. On the same day the petitioner was re-arrested and detained for the third time under orders of the Finance Minister. This was, however, revoked on 1-9-1975 because of some irregularity concerning the declaration. Section 11(2) to the Cofeposa, as amended, was availed of to re-arrest and detain him on the same day and on the same grounds- This order was passed by the Minister of State for Finance.

(5) M. R. A. Ansari, J., who delivered the judgment on behalf of the Division Bench (in Cr. Wr. 59 of 1974) has stated the facts pertaining to the facts leading to the third arrest and detention at considerable length and it would be needless to set them out once again. It is necessary, however, to set out the following grounds on which the earliest order of detention was passed :

" (I) You have been indulging in the supply and disposal of contraband goods in your capacity as partner in the firm known as M/s. Delhi Rajkot Enamel Works. Your firm has been in the adverse notice of the Customs Department for the past 16 years. On some occasions, it has been possible for the Customs Department to take action against this firm, though on some, action could not be taken for want of sufficient evidence.

(II) You or your firm have been involved in the following specific cases.

(III) Intelligence reports indicate that in your activities related to smuggling you maintain links with other smugglers. Investigations conducted at Ahmedabad have revealed that Daya Bhai Soma Bhai Patel of Anand to "whom you have been dispatching silver from Delhi, in turn, has links with top smugglers on the Western Coast of the country like Lallu Jogi, Ikbāl Bachu and Syed Ahmed Bawa Murtusa Miyan of Bombay and Vincobhai Prabhubhai Paid of Nadiad etc. A list of your known associates is enclosed at Annexure "A".

"ON 19-2-1958 Indian currency amounting to Rs. 49,000 was seized in Sriganganagar from M/s. Maluram Babu Lal, Sagar Mal and Naraung on the reasonable belief that it was being smuggled to Pakistan. During the course of investigations it was learnt that the said currency had been the sale proceeds of the smuggled gold which had been given to one Harbans Lal of M/s. Ishar Das Sant 1.31 of 113.D. Karola Nagar, Delhi. During investigations revealed that M/s. Ishar Das Sant Lal had sold a huge quantity of gold to your firm M/s. Delhi Rajkot Enamel Works on the day of receipt of smuggled gold from M/s. Maturam and others. Thereupon your business premises were searched and your account books were taken into custody. Investigations revealed that your firm M/s. Delhi Rajkot Enamel Works had sent gold "passas" purchased by them from M/s. Ishar Das Sant Lal to Rajkot. Accordingly a message was sent to Rajkot Customs wherein they were requested to detain these gold "passas". As a result 224 gold "passas" were seized. On the basis of evidence on record a show cause memo was issued to your firm and a penalty of Rs. 1,000 was imposed on it."

"ON 3-11-1968 a consignment of 18 bars of silver was dispatched by M/s. Delhi

Rajkot Enamel Works to M/s. Rai Chand & Co. of Rajkot. This consignment reached Rajkot on 5-11-1968 , was thereafter stored in a vacant bungalow situated at 22, Jaganath Plot Rajkot. This consignment of 6 bars of silver which were dispatched by M/s. Manhar Lal & Co., Delhi to M/s. Rai Chand & Co. of Rajkot. These bars were also deposited in the same bungalow at Rajkot. All these 24 bars of silver were seized by police officials of Rajkot on 6-11-1968 under the order of Collector, Central Excise, Baroda. The silver slabs were seized by the Preventive and Intelligence staff of Rajkot on 25-3-1969 turn action under the Customs law. The silver seized was valued at Rs. 3,62,000. Investigations in the matter revealed that the silver had been brought and stored at Rajkot for the purpose of unauthorised export out of India. Evidence collected also revealed that an attempt had been made to remove part of the goods in a rickshaw towards BediNaka, near the coast of India for the purpose of being unauthorisedly exported out of India. On the basis of evidence on record a show cause memo was issued to your firm M/s. Delhi Rajkot Enamel Works. However, for want of sufficient evidence the silver bars were later released"

(6) In its judgment dated 11-12-1974 delivered in Cr. Writs 9, 60 and 61 of 1974 the said Division Bench held that the aboveaid ground (ii) (a) was irrelevant and non-existent vis-a-vis Shri Kishan Sharma and that it was vitiated by mala fides. With regard to ground (ii) (b) the Division Bench took note of an order of the Collector, Central Excise dated 18.5.1968 exonerating the partners of the said firm M/s. Delhi Rajkot Enamel Works of the charges leveled against them and hence ground (ii) (b) was irrelevant for passing the order of detention against the detenu.

(7) On 17-12-1974 that a fresh show cause notice was issued and another detention order was made, on the same facts, u/s 3(1) of the Cofeposa on 24-2-1975. It was this order which was quashed by the same Division Bench in Cr. Writs 13, 14 and 19 of 1975. The present petitioner was the petitioner in Cr. Writ ; 19 of 1975 Mrs. Bhagwati Devi was the petitioner Cr. Writ 13 of 1975 and 14 of 1975 and she was now filed the other two Cr. Writs 133 and 134 of 1975 which are disposed by a common judgment. The order of detention dated 24-2-1975 was quashed by a Division Bench of this Court on 6-6-1975 (a copy of the said judgment in Cr. Writ 13 of 1975 collectively is marked as Annexure H to this petition. The grounds which had been mentioned when the orders of detention dated 24-2-1975 were passed hg.ve been fully set out in the judgment delivered by Ansari, J. in Cr. Writ 13 of 1975; it seems necessary to set them out here in well in order to make this discussion more complete and clearer:

" 1.Intelligence was received on 20-5-1974 and 25-5-1974 by the officer of the Central Excise Collectorate, Delhi that large quantities of foreign marked gold smuggled across the Indian coastline off Surat in Gujarat State was being brought and disposed of in Delhi and that the silver purchased in Delhi with the sale proceeds of the said smuggled gold was to be transported to Surat/Bombay for the purpose of smuggling out of India. Further, that the firm M/s. Delhi Rajkot

Enamel Works, Chandni Chowk, Delhi were concerned in this

(A)Shri Maganbhai s/o Shri Motibhai of village Gamdi, Anand (Gujarat State) Driver.

(B)Shri Blidhabhai s/o Shri Motibhai village Gamdi, Anand (Gujarat State) Cleaner.

(C)Shri Mohd. Ali s/o Shri Mohd. Sidique, r/o 33/35, Astabal Street, Kamatipura, Bombay.

The truck was piloted by a person in a Fiat Car who on seeing the officers of the Customs aforesaid managed to make good his escape. The identity (sic) of these persons was late established as Suresh Chand s/o Shri Nand Kishore residing at 3930, Roshanpura, Nai Sarak, Delhi. Examination of the truck revealed that it had a false bottom and in it were concealed 150 bars of silver wrapped in cotton cloth bags weighing in all 4591.684 kgs. (app.). Enquiries revealed that the seized silver was loaded in the false bottom of this truck from house No. 210, T, Park, Delhi. Enquiries also revealed that these premises were under the control of the partners of M/s. Delhi Rajkul Enamel Works. Chandni Chowk. Delhi you hcng one. The seized silver was stored in the said premises for transport and eventual smuggling out of India. The said silver burs were concealed in the specially designed cavity of the aloresaid truck belonging to Shri Dasbhai Somabhai Patel of Anand to a void detention. The said truck was to have transported the aforesaid silver to Anand and then to Surat which is situated in the specified area declared u/s 11-H(c) of the Customs Ac: 1962, without transport voucher as required u/s 11-K of the said Act. The truck in which the said silver was recovered was to have been piloted by the aforesaid Shri Suresh Chand for the safe conduct of the truck with the silver concealed therein out of Delhi. When the search of the premises 213, Tagore Park, Delhi was in progress, two persons, namely, Snkishan, your partner in the firm M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi, and the aforesaid Suresh Chand visited the said premises. One of the three persons found in the truck, namely, Shri Mohd. Ah, had previously come to the adverse notice of the Customs Department in that he had been previously arrested on 9-10-1973 while transporting silver weighing 293.700 kgs. valued at Rs. 2 lacs (app.) without statutory documents in Car No. MRG-6524 at Kashi-Mira, Dashisara specified area near Bombay. He was on bail in the said case. Enquiries further revealed that the aforesaid silver would have been transported to specified area viz. Surat/ Bombay via Anand without any transport voucher for smuggling out of India but for the seizure of the said silver by the officers of the Central Excise Collectorate, Delhi M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi of which you are a partner-in charge of and responsible for the conduct of its business had made preparation in c ollusion with the aforesaid Shri Dayabhai Somabhai Patel of Anand and Shri Suresh Chand s/o Shri Nand Kishore Verma r/o 3930, Roshanpura, Nai Sarak, Delhi for the smuggling of the aforesaid silver out of India. In this connection, a show cause Memo bearing C. No. Vm (SB) 10/86/74 dated 20-11-1974 has been

issued to you and your associate namely, S/Shri Maganbhai, Budhabhai, Mohd. Ah, Dayabhai Somabhai Patel, Srikishan, Dali Chand, Harish Vohra, Suresh Chand, M. Ganguli, Ram Richpal, Arvind Kumar, Dalip Singh, M/s. Delhi Rajkot Enamel Works. Delhi, M/s. Dinesh Transport Corporation, Baroda, by the Collector, Central Excise, Delhi, asking why the silver seized should not be confiscated and penally imposed on you and your associates mentioned above under the provisions of the Customs Act, 1962 and as to why the truck viz. GTK-2067 which was being used to transport the said silver be also not confiscated under the provisions of the said Act.

2. On the basis of disclosures made by S/Shri Maganbhai and Budhabhai referred to in ground No. 1 above, M/s. Delhi Rajkot Enamel Works, Delhi of which you are one of the partners, in charge of and responsible for the conduct of its business, were responsible for sending silver slabs numbering 95 and valued at Rs. 30 lacs. (app.) to Shri Dayabhai Somabhai Patel. The said slabs were loaded from house No. 213, Tagore Park, Delhi which premises were under the control of the partners of M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi you being one of the partners and were transported to Anand in Gujarat State by concealment in specially designed cavity in the aforesaid truck driver by Shri Maganbhai s/o Motibhai of village Gamdi, Taluka Anand. The said slabs were thereafter transported by truck No. GTB-7077 to Udawada, which is situated in the specified area declared u/s 11-H(c) of the Customs Act, 1962 with a transport voucher obtained from an appropriate officer as required -under rules framed u/s 11-K of the Customs Act, 1962 for eventual smuggling out of India. Investigations could not trace the aforesaid silver which was liable to confiscation under the Customs Act, 1962.

3. On the basis of disclosures made by the aforesaid Maganbhai, Uudhabhai and Mohd. Ali, it has further come to light that on or about 17-5-1974, M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi, of which you are and were one of the partners in charge of and responsible for the conduct of its business, sent silver slabs numbering 72 and valued at Rs. 25 lakhs (app.) to Shri Dayabhai Somabhai Patel of village Gamdi, Taluka Anand in truck No. GTK-2067 belonging to the said Shri Dayabhai Somabhai Patel. The said slabs were loaded from house No. 213, Tagore Park, Delhi which premises were under the control of the partners of M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi you being one of the partners and were transported to Anand in Gujarat State by concealment in specially designed cavity in the aforesaid truck driven by Shri Maganbhai s/o Shri Motibhai of village Gamdi, Taluka, Anand, escorted by Shri Mohd. Ali s/o Shri Mohd. Sidique of Astabal Street, Kamatipura, Bombay. The said slabs were thereafter transported by truck No. GTB-7250 to a place near Surat on the highway leading to Surat which is situated in the specified area declared u/s 11-H(c) of the Customs Act, 1962 without a transport voucher obtained from an appropriate officer as required under rules framed u/s 11-K of the Customs Act, 1962 for eventual smuggling out of India.

Investigations could not trace the aforesaid silver which was liable to you and to your associates viz. S/Shri Srikishan, Dali Chand, Harish bearing C. No. VIII(SB) 10/86/74 dated 17-12-1974 has been issued to you and to your associates viz. S/Shri Srikishan, Dali Chand, Harish Vora, Maganbhai, Roshan Anand Rao Rajput, Ismail Abdul Sheikh, Dayabhai Somabhai Patel, Mohd. Ali, M/s. Delhi Rajkot Enamel Works, Delhi and M/s. Dinesh Transport Corporation. Baroda. by the Assistant Collector of Customs (Preventive), New Delhi asking you and your associates named above to show cause to the Collector, Central Excise, Delhi, why a penalty should not be imposed on you and your associates named above under the provisions of the Customs Act, 1962 for being concerned in the smuggling of the 85 and 72 slabs of silver referred to in this ground and ground No. 2 above which were liable to confiscation under the provisions of the Customs Act, 1962. A show cause Memo in respect of the truck Nos. GTB-7250 and GTB-7077 referred to in this ground and ground No. 2 respectively has also been issued by the Additional Collector of Customs. Ahmedabad vide No. VIII (10)-88/Collr/74 dated 2-12-1974".

(8) It was contended before the said Division Bench that the statements of the three persons referred to in those grounds, namely, Maganbhai. Budhabhai and Mohd. Ali did not implicate the detemis and that in the prosecutions which had been launched by the Customs authorities u/s 135 of the Customs Act, these persons filed bail applications in which they had alleged that their statements u/s 108 of the Customs Act had been obtained by coercion ; it was further contended that the allegations concerning the said retraction had been withheld by the authorities and hence were not considered at the time of the passing of the detention order. It may be noticed that it was stated in reply that the statements of these three persons had not been obtained by coercion and that the same had not been brought to the notice of the detaining authority at the time of the passing of the- detaining order.

(9) Ansari, J. observed that two questions arose for determination, namely :

(1)whether the consideration by the detaining authority of material other than those disclosed in the grounds of detention was. vitiated for that reason, and

"(2)whether the fact that not only the three persons named In the grounds of detention but also the other persons on whose statements the detaining authority is alleged to have relied upon having retracted from such statements whether such retraction should have been considered by the detaining authority at the time of passing the order of detention and whether Ins failure to do so vitiated the detention order ? Ansari, J. noticed the following, among other, facts :

(1)None of those persons had stated that they were acting on behalf of or under the instructions of any other detenu but that they had stated that they were acting on the instructions of one Dayabhai Somabhai Patel (it may be noticed even at this stage) that Dayabhai Somabhai Patel was also detailed but on his filing a Writ Petition (Cr. Writ 149 of 1975) challenging his detention the same

was dismissed as withdrawn. It is stated by the petitioner that the said person is still at large.

(2) Those persons had, however, stated that the silver slabs in all the three instances were loaded from house No. 213, Tagore Park, Delhi, said to be under the control of M/s. Delhi Rajkot Enamel works, Chandni Chowk Delhi, of which the detenus in all the three present petitions were partners. The said firm was admittedly carrying on the business of purchase and sale of silver bullion. (3) That four other persons (1) Arvind Kumar, (2) Dalip Singh,

(3) Roshan Anand Rao Rajput, and (4) Ismail Abdul Sheikh had made statements establishing the connection between the detenu on the one hand and the smuggling of silver out of India by Dayabhai Somabhai Patel on the other, according to the contention of the contesting respondents in that case. With reference to these statements Ismail Abdul Sheikh and Roshan Anand Rao Rajput had made statements dated 5-6-1974 and 15-6-1974: in their first statement they did not mention about the said connection, but they did so only in their latter statement i.e. dated 15-6-1974 (i.e.) they had also referred to Dayabhai Somabhai Patel only at that stage. In the bail applications which had been preferred by Maganbhai. Budhabhai and Mohd. Ali. when they were prosecuted u/s 135 of the Customs Act. they had alleged that those statements had been obtained by coercion, torture and wrongful confinement.

(10) Ground I related to the actual seizure of 150 silver bars wrapped in cotton cloth bags weighing approximately 4591.64 kgs. concealed in the false bottom of truck No. CTK-2067 and the truck having been loaded with the said silver bars from house No. 213, Tagore Park Delhi.

(11) In the case covered by grounds 2 and 3 the silver was not traced. Ansari, J. observed with reference to these grounds in Cr. Writ 13 of 1975 :

"The specific reference in the grounds of detention to the disclosures made by Maganbhai. Budhabhai and Mohd. Ali and no mention in the grounds of the names of the other persons or the statements made by them can only mean that the grounds of detention on the basis of which the order of detention had been passed by them can only mean (sic) that the grounds of detention on the basis of which the order of detention had been passed against the detenus did not include the disclosures made by the other persons who are not named in the grounds. The file that was placed before the Administrator in respect of the detenus proposing the detention under the Act was placed before us also. We found on a perusal of that file that the draft grounds had been prepared and even vetted by the Judicial Department of the Delhi Administration prior to the file being put up to the Administrator. The draft grounds did not contain any mention about the disclosures made by these other persons. There is not even an averment in the reply affidavit filed on behalf of the respondents that the reference in the grounds of detention to the show cause notices implied that the statements of the other persons also formed part of the grounds. We have

perused the records relating to the detention orders passed against the detenues and we do not find any indication that the statements of any persons other than Maganbhai, Budhabhai and Mohd. Ali were considered by the detaining authority. We cannot, Therefore, accept the contention of the learned counsel for the respondents that by implication the statements of these other persons which are now being relied upon as supporting the orders of detention formed part of the grounds of detention which were communicated to the detenues."

Again (on page 100) it was observed :

"... ... in our view. the order of detention is vitiated by reason of the fact that in addition to the material disclosed in the grounds of detention communicated to the detenu, the detaining authority has taken into consideration such other material which was, however, not mentioned in the grounds of detention." The following observations (on page 101) sum up the position :

".....THESE persons (Maganbhai, Budhabhai and Mohd. Ali) had retraced their statements at the earliest opportunity. They had made these retractions before a Magistrate in the proceedings instituted against them by the Customs authorities themselves. The Customs authorities were, Therefore, aware of these retractions made by these persons. These retractions were, Therefore, relevant facts which ought to have been brought to the notice of the detaining authority and considered by him. Admittedly, they were not brought to the notice of the detaining authority nor considered by him at the time of passing the detention order. The statement made by the other persons, namely. Arvind Kumar, Dalip Singh, Roshan Anand Rao Rajput and Ismail Abdul Sheikh, on which also the detaining authority now seeks to rely in support of the detention order were also retracted by them and the Customs authorities were also aware of such retractions. These retractions were relevant facts which ought to have been placed before the detaining authority turn his consideration. Admittedly, they were not placed before him nor were considered by him at the time of passing the detention order."

(12) Ansari, J. also made reference to certain relevant grounds not having been considered by the detaining authority. They related, in particular, to the omission on the part of the detaining authority to take into consideration the facts of Maganbhai, Budhabhai and Mohd. Ali having retraced their statements, made on 26-5-1974 at the earliest opportunity, before a Magistrate in the proceedings instituted against them by the Customs authorities. Ansari, J. pointed out that the Customs authorities were, Therefore, aware of the retractions made by those persons. The statements, from which they retracted related to relevant facts and Ansari, J. observed that they ought to have been brought to the notice of the detaining authority and considered by him. The same observation was made with reference to the statements made by other persons, namely, Arvind Kumar. Dalip Singh and Roshan Anand Rao Rajput; these statements are relied upon by the detaining authority to support the detention order and the fact of such statements having been retracted from ought to have been placed before the

detaining authority. With reference to grounds (ii) and (iii), with which alone we are now immediately concerned, he observed :

"INASMUCH as grounds Nos. 2 and 3 can at best be regarded as having been formulated on the basis of the statements of these persons, the restrictions made by them..... were of great importance as relevant material. These not having been placed before the detaining authority vitiate his satisfaction as having been arrived at by not considering very relevant material."

(13) It is also necessary to notice what Ansari, J., speaking on behalf of the Division Bench, stated about certain legal contentions which were urged once again before us.

(1) The principles of *res judicata*, *estoppel* *autrefois acquit*, were held not to apply in the case of a judgment quashing an order of detention by Court in the view that there was no trial in such a case and hence no acquittal.

(2) Even if "issue estoppel" could apply to such a case the detenu would only be entitled to plead that no fresh order of detention can be passed against him on the basis of the same grounds which had been held to be considered by the Court to be had (Ansari, J. was referring in this context to the findings reached by him speaking for the Division Bench in the earlier case, namely, Cr. Writs 59 and 60 of 1974).

(3) The Court of Appeal in England (per Lord Green, M.R.) had pointed out in *Rex v. Secretary of State for Home Affairs Ex parte Budd*, 1942 2 K. B. 141 that a fresh order of detention was not barred when the earlier detention order by the Home Secretary was one which he was not empowered in law to make. The Federal Court of India followed the above said view in *Basanta Chandra Ghose v. King Emperor* 1945 P.C.R. 812. Spens, C.J., speaking for the Court, also pointed out : "It may be that in cases in which it is open to the Court to examine; the validity of the grounds of detention a decision that certain alleged grounds did not warrant a detention will preclude further detention on the same grounds". The same principle was enunciated by the Supreme Court in *Jagdev Singh Vs. State of Jammu and Kashmir*, . It was observed by the Supreme Court that

".....A fresh order of detention can be passed on the same facts if for any reason the earlier order of detention has to be revoked by the Government ... So normally a fresh order of detention can be passed on the same facts provided it is not mala fide, if for any reason the previous order of detention or its continuance is not legal on account of some technical defect as in the present cases".

(4) Section 14(2) of the Misa, which is in *pari materia* with the corresponding provision of the Preventive Detention Act, 1950, namely, Section 13(2) reads as follows :

"THE revocation or expiry of a detention order shall not bar the making of a 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".

Prima facie, Ansari, J. pointed out, section 14(2) of the Misa did not apply to the quashing of an order of detention by the Court; it could apply only to revocation or expiry of a detention order made under section, 3(1)(c) of the MISA.

(5) After referring to the decisions in *Hadibandhu Das Vs. District Magistrate and Another*, *Masood Alam etc. Vs. Union of India (UOI) and Others*, and *Chotka Hembram Vs. State of West Bengal and Others*, Ansari, J. pointed out that the principles in these cases as well as in *Budd and Basanta Chandra Ghose* would apply to cases of the present description. Those principles, so far as they are relevant now, are :

(I) Section 13(2) of the Preventive Detention Act, before amendment, contained no implication that a fresh order may be necessarily made only if it was founded on fresh grounds (*Hadibandhu Das*).

(II) The amendment, according to *Hadibandhu Das*, was to avoid negligence or ineptitude on the part of the detaining authority; slipshod exercise of power was not contemplated by Parliament.

(III) The maximum period of detention fixed by statute could not be rendered nugatory by resort to the "camouflage of making a fresh order operative soon after the expiry of the period of detention" etc. Repeated orders of detention in respect of the same Act "would run counter to the entire scheme of the Act" (*Masood Alam and Hembram*). Reference to *Budd and Basanta Chandra Ghose* have been made already.

(6) Section 11(2) of the COFEPOSA was also referred to. It reads as follows:

"The revocation of a detention order shall not bar the making of another detention order u/s 3 against the same person".

With reference to this provision Ansari, J. observed, and we respectfully agree with this observation, that the Legislature did not intend to re-enact section 14(2) of the Misa while placing section 11(2) of the COFEPOSA.

(14) The scope of section 6(c) of the General Clauses Act had also been considered by a Division Bench of this court in *Khem Prakash Kumar v. Delhi Administration* and another Cr. W. 21 of 1975 decided on 30-5-1975(7); it was held that the right, if any, which accrued to the person by virtue of section 14 of the Misa is restricted to a fresh order of detention passed u/s 3(1) (c) of the Misa on the same facts on which the earlier orders had been passed and that it did not extend to an order passed u/s 3 (1) (c) of the Act.

(15) Even assuming that u/s 14(2) of the Misa a right accrued to the detenus by reason of courts quashing orders of detention and that the said-right was available to them even in respect of orders of detention passed under the

Cofeposa the said right accrued only to an extent. Ansari, J. pointed out that the said right, If any, could accrue only to this extent, namely, that an order of detention could not be passed under the Act on the grounds which had been held to be bad by the judgment of the earlier decision dated 11-12-1974. It was further pointed out that the impugned order of detention under the Cofeposa in this case was not passed on the basis of grounds which had been held to be bad by the Division Bench. In other words, the judgment of this Court dated 11-12-1974 did not prohibit the passing of the impugned order of detention on the basis of some of the grounds (on the basis of which the earlier order had been passed) not considered by the Court. Explaining the earlier judgment it was stated that "the quashing of the detention order had become necessary only because it was found that two of the grounds were irrelevant and nonexistent and it could not be predicted what the subjective satisfaction of the detaining authority would be if these grounds were excluded from consideration. What is of significance to the present controversy is the further observation of Ansari, J., speaking for the Division Bench, that it is open to the detaining authority to consider the question of detention of the detenus on the basis of the remaining grounds which had not been considered by the Court, on the earlier occasion and the fact that if those grounds were again taken into consideration for another detention that did not amount to mala fide action on the part of the detaining authority or colourable exercise of power by it.

(16) Mr. Frank Anthony vehemently contended as follows :

(1)The declaration made in this case u/s 12-A was a colourable exercise of power since all the grounds had been disclosed previously and there was nothing new to disclose; he also contended that the order of declaration should itself have stated that it was not in the public interest to disclose facts to the detenu or give an opportunity to make a representation [section 12-A(4)].

(2)Successive orders of detentions, which were necessitated ex facie by reason of the concerned official(s) being inept, negligent and slipshod in the exercise of the power to detain which has been frowned upon by the Supreme Court in several decided cases are contrary to the scheme even of the Cofeposa, as it stands amended at present, and Therefore could not be resorted to.

(3)After the Court had quashed an order of detention, as in the present case, there could be no fresh detention at all.

(4)Even if there could be another order of detention it could not be on the same grounds as were considered by the Court on the previous occasion without fresh material justifying the later detention; there has been no pleading in this case that there were fresh facts or material.

(5)The judgment of the Division Bench in Cr. W. 13 of 1975 had held that all the grounds in support of the detention were bad; they could not by themselves support another order of detention.

Contention 1 :

(17) Mr. Frank Anthony contended that the impugned declaration was a colourable exercise of power for the following reasons :

(A) Section 123 of the Evidence Act could be involved by the the State only in respect of un-published official records and it can have obviously no application to a case like the present where the grounds has been disclosed on a former occasion.

(B) While making the order of detention, a declaration u/s 12-A of the Cofeposa could be made only if the same was, according to sub-section (2), necessary for dealing effectively with emergency and while doing so he could under sub-section (4) act on the basis of information and materials in his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned if he considered it to be against the public interest. In respect of grounds already communicated and published there could be no question of any public interest supporting their communication once again. It would be a colourable exercise of power to make such a declaration u/s 12-A to still make a declaration with a view to not communicating such grounds.

(18) It seems to us that this contention is misconceived. Though the twin effects of a declaration u/s 12-A(2) would be that the detenu would not be supplied the grounds on which he is detained and his case would not also go to the Advisory Board as contemplated u/s 8 of the Act, these are not the results which are to be really aimed at while making a declaration; in other words these results would follow a declaration and may not have any direct bearing on the making of the declaration itself. The above argument of Mr. Frank Anthony assumes that the making of declaration is aimed at not communicating grounds; as Mr. Govind Swaminadham rightly pointed out it may be even wicked on the part of the detaining authority to aim at this result while making a declaraiion under the COFEPOSA. It seems to us that the considerations which the detaining authority would take into account while making a declaration u/s 12-A of the Cofeposa would be, in addition to the grounds necessary to detain him, the available information and materials: these would obviously include the "gravity" of smuggling operation, in cases of this description, gravity itself having to be judged in the light of the scale, area, network of the operation, the nature and quality of the goods involved in smuggling activities having an impact on the nation's economy, etc. Facts relating to such information and materials may riot be disclosed to the person concerned if the officer concerned considers it to be in the public intrest not to disclose them.

(19) It would be necessary to read sub-sections (2) and (4) of section 12-A and along side sub-section (3) of section 3 of the COFEPOSA.

"S.3(3) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order on the grounds on which the order has been made shall be made as soon as may be

after the detention, but ordinarily not later than five days. and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date" of detention."

* * * * * "12-A(2)When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance 1975, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamations referred to in subsection (1) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned : Provided that where such declaration is made by an officer. it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days."

* * * * * "12-A(4)In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise. act on the basis of the information and materials in it or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned."

The need to communicate the grounds of detention, as required by Article 22(5) of the Constitution, did not arise in the present case : Article 22 of the Constitution, among some others, has also been suspended during the present emergency. This is not disputed.

"BYreason of the declaration that was made u/s 12-A the communication of grounds became unnecessary, not that this could have been aimed at by itself while making the declaration in this particular case. Surely no purpose would have been served in not communicating grounds which had been already communicated to the detenu when he was detained on the former occasion, which detention itself was quashed by this Court. For this reason the communication of grounds would have become superfluous but from this it does not follow that the declaration itself was colourable for as we understand it the purpose of making a declaration was to deal with the detenu effectively during the emergency and not merely to deprive him of the knowledge of the grounds of detention."

The declaration in such cases must have regard to factors bearing on the gravity

of the smuggling operation in which the detenu was able to indulge in. The following illustration may be helpful. Supposing a person arrives at an Indian airport from another country with some trivial articles which may have to be disclosed but are not infact disclosed a declaration u/s 12-A in such a case may not be warranted. If, on the other hand, "the smuggling operations are on an appreciable scale, spread over a large area, the person concerned and his associates, if any, indulge in smuggling on a scale and over an area having a "deleterious effect" on the national economy and the goods smuggled are also such as to have an adverse impact on the national economy then a declaration could surely be made." If sub-sections (2) and (4) of section 12-A are read in the above light the kind of information and material to which the authority will have regard would become clearer, and the fear expressed by Mr. Frank Anthony that section 12-A(4) would become otiose would not be justified. It is also worth-noticing that

"SECTION 12-A(4) refers to the non-disclosure of "facts"; there is no reference to the grounds here, an aspect referred to in section 12-A(5). The grounds, it may be readily seen, are to be framed on the basis of the facts pertaining to the information and the materials which the said authority has before him while making a declaration u/s 12-A. There is thus a perceptible difference between title grounds referred to in sub-section (5) and the facts on the basis of which such grounds are to be framed, referred to in sub-section (4)"

(20) The nature of the privilege which arises by reason of section 123 of the Evidence Act would not pertain to the facts referred to in section 12-A(4) because u/s 123 the privilege attaches to documents containing such facts which are un-published. "The grounds may have been published by communication on the former occasion. But the facts pertaining to information and materials were not published"; there can be no bar against claiming of privilege u/s 123 in respect of them in proper cases when such questions arise before Courts. This is the legal position; it would not however, be necessary, for the purpose of the present case, to go into the ambit of section 123 in so far as the un-published facts and materials are concerned. Mr. Frank Anthony did take us through the decision of the Supreme Court in *State of U.P. v. Raj Narain and others* AIR 1975 S.C. 365 (8). The judgments of Ray, C. J who spoke for the majority, as well as Mathew, J., who wrote a separate but what appears to be, al concurring judgment, were read fully. But it seemed to us, as it did not Mr. Frank Anthony himself, as we went through not only the above-said decisions but the other decisions bearing on the question of privilege u/s 123, the extent of privilege available and how such privilege could be claimed are questions with which it would not be really necessary to be detained for the purpose of the present case.

(21) The true import of section 12-A(4) may become clearer if the said provision is read independently of sub-sections 2 and 5 to start with; then they may be read together to find out whether by so reading them, as Mr. Frank Anthony suggested, any contrary" or different meaning, may be gathered. Reading sub-

section (4) by itself the idea emerges, somewhat clearly, that when satisfying himself that grounds exist (under section 3 of the Act) for detaining a person he may "act on the basis of the information and materials" in "his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned", if he considers it to be against the public interest to do otherwise"- So paraphrased, as we trust without doing any violence to the language of this provision, it would convey two ideas : (1) when the information and materials before him lead to the view that it would be against the public interest to disclose the same he may make the declaration; (2) in such an event he need not give an opportunity to the person concerned. The requirement of an opportunity being given to the person concerned is based on the principle of natural justice for even if there is no reference to the principle of audi alteram partem in the state, natural justice being a principle of common law it would "supply the omission of the statute" in the language of Byles, J. in *Cooper v. The Wandsworth Board of works*. The above view was referred to with approval by Alagiriswamy, J. 14 CB(NS) 180J(9) speaking for the Supreme Court in *The Government of Mysore and Others Vs. J.V. Bhat and Others*, .

(22) Section 12-A(1) of the Cofeposa, Therefore, provides that "notwithstanding anything contained in the Act or any rule of natural justice, the provisions of this section shall have effect during the Proclamation of the Emergency" etc. Sub-section (4) enables action to be taken where the public interest (which expression has to be understood in the context of the emergency) without disclosing facts (information and materials) or giving an opportunity to the persons concerned. The non-disclosure at this stage is to the detenu, not the court; hence it would not have reference to the public interest contemplated by section 123 of the Evidence Act, The limitation u/s 123 of the Evidence Act that the claim of privilege therein is with reference to unpublished affairs of state, will have no application per se here. In other words,

"THEdetaining authority, who is considering the question whether a declaration has to be made under sub-section (2), would not be deterred by the consideration-as it happened in the present case-that the grounds had been already communicated to the detenu on the occasion of his previous detention which was quashed by this Court; it may be different if all the facts had been published previously. The grounds themselves were extracted or formulated from the facts, in turn based on the information and material which were available; the grounds did not exhaust such information and material".

This would become clearer if reference is made to the grounds which were communicated to the detenu on the former occasion (vide Annexure G to the present Writ Petition, page 57 at page 52 of the paper book). It has been stated :

"THEabove grounds have been given to you as required under Article 22(5) of the Constitution of India. The Administrator considers it to be against public interest to disclose the source of intelligence in-ground No. (1), above and further considers it against public interest to disclose facts in the intelligence

referred to in ground No. (I)"

Much confusion. had crept in to the arguments before us on account of reference to section 123 of the Evidence Act and no claim of privilege being possible to make regarding unpublished documents or material under that. section.

"THE public interest to which sub-section (4) has obvious reference is not the public interest that is germane to disclosure or claim of privilege u/s 123 of the Evidence Act but to the public interest in the context of the present emergency".

The amendment of the Cofeposa made in 1975 was based upon factors bearing on the emergency and it would be best to quote from the statement of objects and reasons which is as follows :

" Smuggling, exchange racketeering and related activities have a deleterious effect on the national economy and thereby a serious adverse effect on the security of the State. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, was enacted to immobilise by detention the persons engaged in these operations and to disrupt the machinery established for furthering smuggling and foreign exchange manipulations, with all their ramifications. The effective administration and realisation of the purposes of the Act have been rendered difficult by reason of the clandestine manner in which the persons engaged in these operations carry "in their activities and the consequent difficulty in securing sufficient evidence to comply with the rigid standards insisted upon by courts. Some persons against whom orders of detention were made under the Act had to be released because the orders of detention were held to be void as some of the grounds of detention were considered by Courts to be vague, irrelevant or. otherwise invalid. In a few cases difficulties were experienced in the administration of the Act by reason of the detenus obtaining release on bail or otherwise.

2. Same of the persons engaged in smuggling and foreign exchange racketeering have been posing a serious threat to the economy and to the security of the nation owing to their large resources and influence. In the present emergency, the disclosure of grounds of detention to such persons and compliance with the usual procedures of references to Advisory Boards would not be in the larger interests of the nation.

3. In view of the urgency of the matter, the President promulgated on the 1st July, 1975, the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1975 to remove the afore-mentioned difficulties and to make special provisions in respect of persons whose detention is necessary for dealing effectively with the emergency."

(23) SUB-SECTION (4), Therefore, has no reference to the claim of privilege which is understood as being put forward before a Court u/s 123 of the Evidence Act. If public interest, in the context of the emergency, requires that the information and. materials may not be disclosed to the detenu resort may be

made to this sub-section (4) and this will by itself provide a further basis for not giving the detenu an opportunity of making a representation. Giving of an opportunity to make a representation would necessarily involve giving a full and adequate opportunity for making a representation. When the authority is of the view that it would be against public interest to disclose the information and material in his possession to the detenu then he can straightaway make the declaration under sub-section (2) regardless of the grounds having been communicated to the detenu on a former occasion and the grounds of the present detention being the same. It would serve no real purpose to furnish to him once again the grounds which were formerly communicated to him; he would not be served, at least adequately, thereby; the mere supply of such grounds, which he already knew, but without other information and material in the possession of the detaining authority would not be a case of giving the detenu a full or a fair opportunity of making a representation. If, however, the detaining authority, is unable to think that the disclosure of information and material would be against public interest, in the sense explained above, he may supply the same to the detenu and give him an opportunity of making a representation and then decide whether in the light of such representation a declaration has to be made or not. The meaning of what is herein stated may become clearer in the light of sub-section (3) of section 3 which enables the detaining authority to supply the grounds (though as soon as may be) within five days, normally, of making the order of detention and in no case later than 15 days-the only safeguard in the latter event being the recording the reasons for making the declaration in that delayed manner; in the event postulated the reason to be recorded would plainly be that such time was taken in order to hear the detenu before making the declaration.

(24) We are unable to think that a meaning different from that we have been able to derive by reading sub-section (4) in isolation would be indicated by reading it along with sub-section (2), (5) or even (6). The question of making a declaration has to be considered, according to sub-section (2), when making an order of detention under this Act. Sub-section (5) merely provides that it shall not be necessary to disclose to any person detained to whom sub-section (2) applies, the grounds on which the order has been made during the period the declaration is in force-this is a more consequence, as we stated earlier, of the declaration. The said period during which the declaration is in force shall also not be taken into account for the purpose of sub-section (3) of section 3; sub-section (6) provides that the said period shall also not be taken into account for the purpose of computing the periods specified in clauses (b) and (c) of section 8 (which relate to the making of a reference to the Advisory Board within five weeks and the Board itself making a report within 11 weeks of the detention, respectively); the period of one year and five weeks specified in sub-section (1) of section 12-A; the period of six months specified in sub-section (3) of section 9.

(25) "THE essence of the matter appears to be that the detaining " authority would be able to act on the basis of information and materials in his possession

without disclosing the facts or giving an opportunity of making a representation to the person concerned only if he considers that course against the public interest; if he does not so consider he has to give an opportunity of making a representation to the person concerned". We believe that the detaining authority could not act in a manner such as to result in loss of opportunity of representation to the person concerned even when disclosure, if he considers that such disclosure is not against the public interest. There is no need, however, to state expressly that if the basis on which information/materials on which he proposes to act in the matter of making a declaration, for instance, are already known to the person concerned he could still come to the conclusion that non-disclosure is against public interest; public interest would clearly not be served by withholding material which had already been published. This would be the case not because the principle underlying section 123 of the Evidence Act would apply but for a simple and plain enough commonsense reason.

(26) There is no inconsistency between sub-sections (4) and (5) either because sub-section (5) only states that it shall not be necessary to disclose to the detenu the grounds on which the order had been made during the period when the declaration made under sub-section (2) is in operation ", this period, during which the declaration is in force, is not even to be taken into account for the purpose of sub-section (3) of section 3. It is worth emphasizing that sub-section (5) only speaks of the grounds and not the facts from which the said grounds have been extracted or on the basis of which they have been formulated.

(27) The above view of ours seems to have the merit of harmonising the concerned provisions of the Cofeposa even as amended; any other view than the interpretation which has commended itself to us illight lead to redundancy or even repugnancy. It would not seem possible in any other view tct give, for instance an adequate or proper meaning to the expression "to do otherwise"" nor would it be possible to give a meaning to the expression "act" in sub-section (4). The latter expression would obviously take in the case of the declaring authority considering whether to make a declaration or not under sub-section (2); after it is satisfied it may so act without disclosure of facts or giving an opportunity for making a representation for, to do otherwise (i.e.) to act otherwise, would be against the public interest.

(28) The true meaning of sub-section (4), even when it is read along with sub-sections (2), (3) and (5), would become clearer if. it is viewed in historical perspective. Rule 30(a)(9) of the defense of India Rules, which provided for every detention order made by the Central Government or the State Government being reviewable at intervals of not more than six months by the Government which made the order and obliged such Government to decide whether the order should be continued or cancelled, came up for consideration before the Supreme Court in two cases to which P. L. Lakhanpal was a party. In the earlier decision (P.L. Lakhanpal Vs. Union of India (UOI) and Others, , Shalat, J. draw a distinction between the expressions "decide" which appeared in the context of a

review and "satisfy" in the context of detention; he pointed out that there was a difference between the two expressions: "decision" indicated that it was an exercise of such power subject to judicial review. In the later case, P.L. Lakhanpal Vs. The Union of India (UOI) and Another, , Shelat, J. printed out that the detention which in its inception was executive in character need not necessarily retain its executive character throughout (as held previously by Shah, J. in Sadhu Singh v. Delhi Administration 1966 (1) S.C.R. 243 (13), but could become a quasi-judicial act. It is significant that the present sub-section (2) of section 12-A uses the expressions "considered" and "satisfied"; sub-section (3) uses the expression "re-consider"; nowhere is the expression "decide" employed.

(29) As pointed out by Alagiriswami. J speaking for the Supreme Court in The Government of Mysore and Others Vs. J.V. Bhat and Others, "it is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily unplied an obligation to hear before deciding that the "audi alteram partem" rule could be imported". It had been held by the Supreme Court in an earlier case. Union of India (UOI) Vs. Col. J.N. Sinha and Another, , that rules of natural justice are not embodied rules and that they could not be elevated to the position of fundamental rights.

(30) SUB-SECTION (1) does not by itself state that the principles of natural justice have no relevance whatever; all that it states is that the provisions of this section would have effect during the concerned period notwithstanding any rule of natural justice. It would be best to read it in this context :

"(1)Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of Article? 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twelve months from the 25th day of June, 1975, whichever period is the shortest."

(31) SUB-SECTION (4) introduces the principle of natural justice only to a limited extent, namely, that it would not have to be observed when the detaining authority considered it to be against the public interest to do otherwise than act on the basis of the information and materials in his possession without disclosing the facts or giving an opportunity of making a representation. Even though the conjunction "or" has been used it seems that "disclosure" and "opportunity" arc really two sides of the same coin; once the declaraing authority considers that "disclosure" is against public interest the opportunity of making a representation is also automatically ruled out because there could not be in the very nature of things an opportunity of making a representation without disclosing the facts; the opportunity will not be an effective or adequate one if all the facts bearing on the question are not disclosed,

(32) "THIS declaration, as the language of sub-section (2) itself indicates, has to be made when making an order of detention. If the declaration is not made the grounds would have to be supplied to the detenu in the manner provided by section 3, sub-section (3)". It is worth emphasizing, even by way of repetition, that the facts are wider than the grounds. The grounds having been previously disclosed would hardly have any relevance in this context, of the declaring authority having to make up its mind as to whether it was against the public interest to disclose the facts even where the grounds had themselves been extracted and supplied to the detenu on a former occasion. It is also of some importance to notice the presence of a comma after "to do otherwise"; in other words, the expression "to do otherwise" is not itself not put in parenthesis. The comma, which is not to be taken as conclusive or even an important aid to statutory construction, is at least helpful here to understand the syntax better. Any attempt to take the expression "to do otherwise" from where it is and to place the same at the end of the sub-section may not in the first place, be permissible; nor would this, even if permissible make turn a different construction.

(33) These considerations reinforce our view that the "public interest" referred to in sub-section (4) is different from and has nothing to do with considerations relevant for considering a claim of privilege u/s 123 of the Evidence Act. As already indicated the latter is confined to a claim of "privilege", as it is usually called, when the same is made in any proceeding before a court. The expression "public interest" appears to have been used in sub-section (4) on lines somewhat similar to Article 22(6) of the Constitution. It is no doubt true that Article 22 is one of the provisions of the Constitution that has been suspended during this emergency, but reference to Article 22(5) and -(6) of the Constitution may help bring out the meaning of the expression "public interest" in sub-section (4) even more clearly.

(34) Article 22(5) and 22(6) of the Constitution may now be read:

" (5)When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6)Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose."

(35) Article 22(5) provides that the constitutional safeguard of supplying the grounds to a person detained, a safeguard which has now been suspended. Article 22(6), however, provided that even when grounds had thus to be supplied, the facts on which the grounds were based, need not be disclosed if the public interest required that they should not be disclosed. When enacting sub-

section (4) the legislature seems to have had in mind a similar approach, namely, the declaring authority could act without such disclosure and giving an opportunity to be heard to the person concerned if "to do (act) otherwise" if that course was not in the public interest, "or" could be read as "and" in this contest. The nature of public interest which the declaring authority would keep in mind is made sufficiently clear by the statement of objects and reasons, set out already. Such consideration, concerning the public interest, by the declaring authority does not appear to be anything more than an executive act and is liable to such challenge as will be possible in respect of any other executive act-to use the language of Prof. H. W-. R. Wade on Administrative Law, page 116, 2nd Edition-on the ground of its being ultra vires; this is, of course, a different matter. All that matters for the present is that this consideration is not a "quasi-judicial" act; the observations of Shelat, J. in the two Lakhanpal cases help make this clear.

(36) Construed in the above manner there seems little support for the contention of Mr Frank Anthony "that the declaration in this case did not comply with the provisions of this Act. His reference to the absence of any pleading vis-a-vis the declaration being supported by public interest has also little force when one of the annexures filed by the petitioner (namely, Annexure "G" referred to already) has expressly referred to this aspect. There is still less force in his submission that while making the order of declaration the detaining authority has to state therein expressly that the declaration had to be made in the public interest. We do not see any such requirement in sub-section (4) or in any other provision; no such requirement could be implied. The mere acting of the declaring authority on the basis of information and materials in his possession without disclosing them and without giving an opportunity to make a representation to the person concerned would attract the twin consequences of not only being required to furnish the grounds and to send the case to an Advisory Board; no further express statement by him in this behalf appears to be called for". Support for this view could be had from the observations of Jagannadha Das, J. in *Lawrence Joachim Joseph D'souza Vs. The State of Bombay*, :

"THERE is no obligation under Art. 22(5) and (6) to communicate to the detenu the decision not to disclose the facts as well as the ambit of the non-disclosure at the time when the grounds are furnished. The necessity for such a communication would arise only if the detenu, feeling the grounds to be vague, asks for particulars. An obligation to communicate the decision not to disclose facts considered prejudicial to public interest may well be implied in such a situation"

(37) It is singular that the above observations were made even in the context where Art. 22 of the Constitution had not been suspended. Sub-Art. (5) lays a constitutional mandate to supply the grounds to the person who is detained without trial; Sub-Art. (6), Therefore, provides that even when grounds have to be supplied the facts which are against the public interest to disclose need not be supplied. The argument in the above case, that it was necessary for the

detaining authority to state that it was against the public interest to disclose the facts and such statement should also be communicated , to the detenu, was repelled. The situation now, under sub-section (4) is plainly even more adverse to the detenu; sub-section (4) has been enacted on lines similar to sub-Article (6). Even when the detenu had a right to the grounds the facts bearing on those grounds need not have been disclosed if public interest was against the said course. While observing that the mere acting in the manner permitted (by not disclosing the facts) the detaining authority was impliedly acting under sub-Article (6). Jagannadha Das, J. explained that if the detenu wanted he could have asked for some more facts and by his not doing so he should be deemed to have not been affected by any non-supply of facts.

"THE manner in which grounds have to be supplied or any other necessary facts disclosed bear on the effectiveness of the opportunity for making a representation. But when once a declaration is made by complying with (or even utilising the power conferred by) sub-section (4) it does not appear possible to stress the denial of an opportunity of the detenu's case being considered by an Advisory Board more than the denial of opportunity of making a representation and non-disclosure of facts, because both these are really consequences of the declaration."

(38) It was pressed before us that the opportunity of being considered by an Advisory Board (consisting of three Hon'ble High Court Judges) is a very valuable opportunity; it is so without doubt. But this is a matter of legislative policy and intendment. Personal liberty can be regulated only by a proper law. Once there is such a law, the constitutionality of which has not been assailed before us in this case, the plain intendment of the statute cannot be sought to be whittled down by any process of construction. We have been conscious of the draconian nature of such a provision and have derived valuable assistance from the Counsel who have appeared not only in this but a few other cases which we heard along-side. in an effort to understand the scheme and purpose of the Gofeposa as amended. But we are unable to find any cogent reason for thinking that such a result was not intended by the statutory amendment of 1975. Section 5-A, which was introduced along side Section 12-A, has carefully listed for inclusion therein various grounds on which courts had quashed certain orders of detention previously. The following expressions occurring in the Statement of Objects and Reasons for the amending Bill appear worth recalling here :

"SOME.. . orders of detention were held to be void as some of the grounds of detention were considered by courts to be vague, irrelevant or otherwise invalid..... In the present emergency, the disclosure grounds of detention to such persons and compliance with the usual procedures of references to Advisory Boards would not be in the larger interests of the nation..... to remove the aforesaid difficulties and to make special provisions in respect of persons whose defrention is necessary for deeling effectively with the emergency".

(39) Our view being that the "public interest" referred to in subsection (4) [as in

the case of sub-Article (6) of the Constitution] is not to be understood in the light of what is contained in section 123 of the Evidence Act, "the view to be formed by the declaring authority (as we have chosen to describe him) of the nature of public interest is an executive act, not a quasi-judicial one, the same could be challenged only on grounds, which can be brought within the compendious expression, of the act being an "ultra vires" one". It may be needless, Therefore, in this case to canvass the question, in the abstract, what exactly such grounds of challenge of an executive act may be; it may be difficult to exhaust them. Such grounds of challenge, of such an executive act, would have to be reviewed in the light of the facts and circumstances of each case.

(40) It does not seem possible to challenge the declaration under sub-section (4) in this case, but before we discuss this it seems necessary to clear the ground by referring to the replies to grounds Xiv to Xvix of the reply affidavit of Shri C.T.A. Pillai," Joint Secretary, Ministry of Finance, Department of Revenue and Insurance, dated 30-9-1975 :

" XIV.Contentions in Ground No. Xiv are mis-conceived and untenable. Declaration under sub-section (2) of section 12-A of the Act was made by the Central Government itself. As such there is no question of review or confirmation of it within the 15 days as sought to be erroneously suggested and stated in the ground under reply. Sub-section (4) of section 12A specifically permits action contemplated therein without disclosing the facts or giving an opportunity of making a representation to the person concerned if appropriate Government considers it to be against the public interest to do otherwise. Contentions in the ground under reply are mis-conceived. They are purely conjectural and not based upon actual facts. Disclosure of information and material is not envisaged by sub-section (4) of section 12A of the Act.

XV.In reply to ground No. Xv, it is submitted that nondisclosure of information and material pre-supposes that to do otherwise will be against the public interest. Subsection (4) of Section 12A of the Act does not envisage or require the recording of a statement in the declaration under sub-section (2) of section 12A of the Act that the disclosure of the material or information is against public interest as sought to be erroneously suggested in the ground under reply. Contentions in the ground under reply are mis-conceived and untenable. It is denied that non-disclosure of the material is mala fide for the reasons suggested in the ground under reply. I also crave reference to reply to Ground No. Xiv above and beg to reply upon it as part thereof.

XVI and XVII. Ground Xvi and Xvii are wrong and are denied. In reply to them I crave reference to submissions made in reply to grounds Xiv and Xv above on which I beg to reply as part thereof."

These allegations have to be read in the light of the allegations in the additional affidavit dated 22-6-1975 filed on behalf of the petitioner, which are as follows :

" XIV.That it is believed that as prescribed by the proviso to 12A(1), there has

been no review by the appropriate Government within 15 days from the date of making of such declaration, and no order of confirmation by the appropriate Government within 15 days. No facts have been disclosed in respect of any such alleged review, nor any opportunity given to make a representation in respect of such proposed review. It is submitted that in the circumstances ex-facie, there has been no review and if there been such a review, it has been exercised malafide and there was nothing against the public interest in the circumstances of the detenu's case as to why information and/or material in the possession of such authority could not be made available as on no less than two occasions, all the alleged facts and materials and files relating to cases were placed before the Court and even shown to the deponent's Counsel.

XV. That ex-facie, the non-disclosure of grounds u/s 12A(4) is only contemplated that information or materials in the possession of the detaining authority that such facts do not have to be disclosed, is when it is against public interest. In the first place there is no averment in the declaration or the grounds that it is against the public interest to disclose the facts to the detenu; further in the circumstances of the detenu's case on not less than two occasions all the facts have been placed before the High Court and files also shown to the deponent's Counsel, there was no question of not disclosing the facts to the detenu in the public interest.

XVI. That the Declaration u/s 12A(2) was bound to contain or be accompanied by an averment that the information and materials on which the satisfaction of the detaining authority was based, could not be disclosed in the public interest.

XVII. That in order to harmonise Section 12(1)(4) and 12(1)(5), an averment was bound to be made that the facts and materials could not be disclosed because it was against the public interest."

(41) It was not the contention of Mr. Govind Swaminadhan before us that the grounds need not be disclosed even when public interest permitted such disclosure. In the entire context we are unable to read these averments in Mr. Pillai's affidavit as stating that the facts and materials need not be disclosed even when public interest did not require them to be withheld. It is important to note that the averments of Mr. Pillai in reply to Ground Xiv were made in the context of the attack made in the additional affidavit on behalf of the petitioner concerning there having been no review by the appropriate Government; this challenge by the petitioner was no doubt occasioned by his not being aware then that the Finance Minister himself had made the order of detention and also the order of declaration (subsequently revoked and made again by the Minister of State for Finance) and, Therefore, there could be no occasion for such review. In any view, even if Mr. Pillai should be taken to have suggested (which we find was not the case) that public interest was irrelevant to the disclosure or non-disclosure of facts while making a declaration under sub-sections (2) and (4) this view could not, without more, be attributed to the declaring authority in this case. Even a wrong legal contention of this declaration, if it is advanced by the

learned counsel for the Central Government (as it was done by Mr. B. V. Subramaniam in another case which we heard along side-Cr. Writ 117 of 1975) would only show that a wrong legal contention was put forward by the learned counsel to justify a declaration made under sub-section (4) and this by itself could not vitiate the order of declaration when it is not possible to attribute to the declaring authority that he misdirected himself on the question or that there was a reasonable probability of his having done so.

(42) We are satisfied in this case that the declaring authority had before him sufficient reason for taking the view that the facts and materials which he had could not be disclosed to the detenu in the public interest. It is worth-recalling that even on the former occasion the detaining authority had said, while communicating the grounds of detention (page 62 of the record) that in respect of ground No. 1 it was against public interest to disclose further facts in the intelligence report referred to therein. A copy of this document is Annexure G to the present Writ Petition; it is significant that no attack had been made in the additional affidavit (which was the only one which according to our direction the respondents had to traverse concerning this aspect). The nature of the operations indicated that silver would have been transported to Surat/Bombay via Anand for being smuggled out of India but for its seizure by the officers of the Central Excise. The scale of the operations was also large having regard to the quantities of silver mentioned in the said grounds; they were also clandestine. Having regard to the guidelines that could be spelt out from the statute itself as amended (which is made even clearer by the Statement of Object and Reasons) we are unable to uphold any attack against the manner in which the declaration was made in this case or its validity.

(43) Before taking leave of this aspect it is necessary to advert to another contention on behalf of the petitioner that a statutory power could not be exercised without complying with the conditions precedent and subject to which alone such power could be exercised. This proposition is no doubt a sound one. What was sought to be urged, on the basis of certain observations of Gajendragadkar, C.J. in *Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others*, does not, however, see to have any relevance here. In that case the Central Government had issued Fruit Products Order, 1955 u/s 3 of the Essential Commodities Act, 1955. The order itself did not say that the necessary opinion had been formed by the Central Government, as required, before issuing the said order. It was contended, for the first time in the appeal before the Supreme Court, that in the absence of expression of satisfaction the power to issue a regulatory order could not be exercised by the Central Government. The argument was repelled in the following terms:

"THIS contention.....cannot be allowed to be raised for the first time in appeal, because if it had been raised before the High Court, the respondents would have had a chance to meet it. It is true, as Mr. Pathak contended, that in the absence of any specific averment made by the Fruit Order that the Central Government had

formed the necessary opinion, no presumption can be drawn that such opinion had been formed at the relevant time. but it would have been open lo the respondent to prove that such an opinion had been formed at the relevant time; and it cannot be suggested that the failure to mention (he fact expressly in the Fruit Order itself would preclude the respondents from proving the said fact independently. That is why we think Mr. Pathak cannot be permitted lo urgr this contention at this stage"

(44) These observations can have no application to a situation, like the present one, where the declaring authority, if satisfied that the disclosure of facts to the detenu would be against the public interest could proceed to make a declaration without such disclosure and without giving an opportunity of making a representation- Our above discussion shows that there was no pointed attack made even in this case on the declaring authority not having applied its mind to the question of public interest; having regard to the public interest against disclosure having been expressly referred to on the previous occasion there is no room to hold either that there was no application of mind in this case or that there were no grounds on which such an opinion could have been formed.

(45) It also seems to us that in the eventuality of a declaring authority forming such an opinion, namely, that it was not in the public interest to disclose facts and materials in his possession he could not be compelled to disclose the same facts to the Court; to do so may be to defeat the very purpose which the Legislature had in mind while placing sub-section (4) of section 12-A on the statute book. This seems something emirely different from the kind of exercise that section 123 of the Evidence Act would call for and closer to the one which arising under Article 22(6) of the Constitution (if it is not suspended). The following observations of Jagannadha Das, J. in Lawrence Joachim Joseph D'Souza would squarely bear on this question:

"IT is however to be observed that under Art. 22(6) the facts which cannot be required to be disclosed are those which such authority considers to be against public interest to disclose. Hence it follows that both the obligation to furnish particulars and the duty to consider whether the disclosure of any facts involved therein is against public interest, are vested in the detaining authority, not in any other-

(page 535). (emphases added)

(46) It has only to be recalled that these observations were made in the context of a constitutional right arising under sub-Art. (5) to have the grounds. Even in such a case the argument that the power not to disclose facts considered against public interest was so exercised as to fulfill the constitutional right of the detenu for being afforded an opportunity of representation was not successful. A fortiori what is involved here is only a statutory right to an opportunity to make a representation which would not arise if the declaring autho- rity was of the view that the public interest would not permit such disclosure as he is enabled under

the statute itself. It would be in the teeth of such a statutory provision to say that public interest, considered to be against such disclosure when the declaration was made would still require such disclosure before the court.

"WHEN there is any such (subsequent) challenge before the Court it does not seem possible to accept the contention that the declaring authority should be asked to disclose those very facts which he did not consider in the public interest to disclose while making the declaration. What will still survive to the petitioner, as open to challenge in this respect, would, however, include those which go to show (1) mala fides in fact on the part of the declaring authority and (2) mala fides in law which would include challenge on the ground of either non-application of mind or the declaring authority mis-directing himself in law, in addition to a challenge that any other mandatory provision of the Act has been violated. More specifically stated, it does not seem possible to judicially review the opinion which the declaring authority formed or even must be deemed to have been formed while making such a declaration concerning public interest not being against disclosure of facts. There seems to be no escape from this conclusion on the express language employed by the statute as well as the legislative intent and purpose which can be gathered not only from subsection (4) itself but the entire purpose, scheme and other relevant provisions of the Act. To require, yet, the declaring authority to disclose facts to the Court would be plainly contrary to not only the above-said express language of subsection (4) but the legislative purpose itself"

(47) Any reference to a "blanket" claim of privilege in respect of public interest, an expression sometimes employed in decided cases including the very detenu on a former occasion, arising out of the Cofeposa prior to section 12-A, seems to be hardly relevant. It is settled law that when the law itself is changed after the decision (s) by courts on any legal question the previous decision of the court would not prevail against any later statutory provision if it is contrary to the prior judicial determination. If any authority for this position were necessary it will be sufficient to cite a decision of the Full Bench of the Madras High Court in Board of Commissioners for Hindu Religious Endowments v. P.V.R. Ratnasami Pillai AIR 1937 Mad 232 (18). The State legislature had grouped certain temples as "excepted" with a view to laying down certain rules in relation thereto in the body of the Hindu Religious Endowments Act (2) of 1927. There was an amendment subsequently in 1930 which introduced a new definition. Varadachariar (as he then was), speaking for the Full Bench, observed that in the circumstances there was no question of any interference with vested rights accrued under the old Act but simply the grouping of temples in one manner at a particular stage of legislation (1927) and in a different manner at a later stage of legislation (1930). The decision of the court rendered before the amendment was, Therefore, inapplicable. The same principle applies here. The Cofeposa, as amended in 1975, introduces a new approach and expressly permits a declaration u/s 12-A when the declaring authority is of the view that disclosure of facts would be against the public interest. Considerations limited to the

disclosure of such facts with a view to giving an effective opportunity to the detenu are hardly relevant to the present situation where the consequence of such a view to be taken by the declaring authority is to deprive the detenu of an opportunity of being heard.

(48) In this connection it is necessary to advert to the contention of the petitioner to the extent to which facts (and also materials) were not against the public interest to be disclosed such materials have in any event to be disclosed. This argument, which appears at first blush to be somewhat attractive, would see, on deeper consideration, to have no force whatever. It does not seem necessary to postulate a declaration being made only when all the facts, based on information and materials in the possession of the detaining authority, are covered by public interest; even if there are relevant some facts, based on such information/materials, which it would not be in the public interest to disclose the declaring authority seems to be clearly enabled by section 12-A to make the declaration, the consequences of which no doubt are that the grounds need not be supplied and his case would not be placed before the Advisory Board for its opinion. In this view also there appears to be no scope for any criticism of a "blanket" claim of public interest being involved—a criticism which was possible in the older situation.

(49) Mr. Frank Anthony finally sought to derive some assistance on this aspect from our judgment in *Mrs. Bharati Nayyar v. Union of India and others* (Cr.Writ 121 of 1975, decided on 15-9-1975) (19). That was a case decided under the Misa prior to Ordinance Xvi of 1975; there was no holding therein that the grounds, which did have to be supplied to the detenu when a declaration was made u/s 16-A thereof, would have to be furnished to the court. Our observations were made in the light of the duty of the respondents to make "a good return" when a rule nisi had been issued by the court and the petitioner had created disquieting doubts about the validity of the detention. We pointed out that challenges on the ground of mala fides and/or the act of detention not being according to law having to be investigated by courts there could be, in such cases, no non-reviewability even at the threshold. We have explained this view further in *Mrs. Satya Sharma v. Union of India & Ors* (20) (Cr. Writ 149 of 1975, decided on 31st October, 1975) in the light of ordinance Xvi of 1975. While pointing out that the respondents had not made a good return in *Mrs. Bharati Nayyar* we made reference to the material before the detaining authority not having been placed before us even subject to any claim of privilege, u/s 123 of the Evidence Act. We also referred to any privilege under Article 22(6) not being available to the respondents because of Art. 22 itself having been suspended; equally, we pointed out that section 8(2) of the Misa also had no application since sections 8 to 12 were not to have operation during the emergency by reason of section 16-A(6)(ii). The declaration made in that case was not under challenges the detention itself having held to be bad the declaration also would fall with it.

(50) Looked at from any point of view, Therefore, no challenge seems to be possible in this case concerning the declaration under sub-section (4) of section 12-A.

(51) Copious extracts have been made earlier from the judgment of Ansari, J. in Cr. W. 13 of 1975 wherein he referred to the decisions of the Supreme Court in Hadibandhu Das, Masood Alam and Chotka Heinbrain in addition to Bu'dd and Basanta Chandra Chose wherein it was pointed out that passing of successive orders of detention rendering a detenu liable to be detained for a period of more than the maximum prescribed under the Act running counter to the scheme of the Act which were then considered. These observations, particularly of H. R. Khanna, J., in Chotka Hembram Vs. State of West Bengal and Others, were concerned with maximum period of detention laid down by the Misa (1971) being not possible to extend by resorting to such a device. On the Scheme of the enactments concerned it was considered that the maximum period of detention should not be allowed to be exceeded merely by reason of what was occasioned by the ineptitude, negligence or slipshod exercise of power by the concerned officials. But what is the present scheme of the Cofeposa ? The maximum period of detention has been stated by section 10 in the following manner:

"10.Maximum period of detention.-The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 do not apply and which has been confirmed under clause (f) of Section 8 shall be one year from the date of detention and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 apply and which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 shall be two years from the date of detention: Provided that nothing contained in this section shall affect the power of the appropriate Government in either case to revoke or modify the detention order at any earlier time".

Section 9 deals with cases in which and the circumstances under which persons may be detained for longer than 3 months without obtaining the opinion of the Advisory Board. Section 8 deals with the constitution of Advisory Boards and their functioning: section 8(f) is important and reads as follows:

"8(F)In every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith"

Section 9(2) also is relevant:

"9(2)In the case of any person detained under a detention order to which the provisions of sub-section (1) apply. section 8 shall have effect subject to the

following modifications, namely-

(I) in clause (b), for the words "shall, time prior to but in no case later than three months before the expiration of one year" shall be substituted;

(II) in clause (c), for the words "from the date of detention of the person concerned", the words "from the date on which the reference is made to it" shall be substituted".

Section 11 provides for orders of detention being revoked not only by the State Government when passed by the State Government but also by the Central Government in cases of order of detention passed not only by it but by the State Government; sub-section (2) provides that revocation of a detention order shall not bar making another order of detention under sub-section (3) against the same person- Section 12-A(6) has already been referred to. Section 5-A, introduced along with section 12-A into the Cofeposa has relevance:

"5A. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(A) such order shall not be deemed to be invalid or imperative merely because one or some of the grounds is or are-

(I) vague,

(II) non-existent.

(III) not relevant,

(IV) not connected or not proximately connected with such person, or

(V) invalid for any other reason whatsoever, and it is not Therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention

(B) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds".

(52) On a reading of the above provisions it is clear that the approach of the Cofeposa, including the latest amendment of it of 1975, are different. As Ansari, J., with respect, rightly pointed out, the provisions of section 14(2) of the Mtsa were not intended to be re-enacted while section 11(2) of the Cofeposa was placed on the statute book. While we do not wish to put a premium upon acts of official ineptitude, negligence or slipshod exercise of power we would very much wish that there should not be such instances even under the present Act-we are unable to agree with Mr. Prank Anthony's contention that there is anything "in

the scheme of the present Act which renders successive orders of detention under the Cofeposa invalid by itself. We wish to guard ourselves by stating that we are only adverting here to the legal contention in its whole sweep; we would also like to indicate that if this has any particular bearing on the merits of any particular case we would consider ourselves free to deal with it as and when such occasion arise. We are only concerned to point out at present that the above argument of Mr. Frank Anthony seems to have no force in the light of the facts of this particular case. It may still be possible to argue, in cases which can be conceived of but may not probably happen of orders of detentions containing several grounds being struck down by a Court each time only on the ground that one ground or any of them is bad and for that reason alone the satisfaction of the detaining authority is vitiated; the grounds not considered would in law be available for being considered again. If this happens on more than one occasion under the same Act it may be a circumstance pointing to the mala fides in passing the order", but that is not the case here. The detenu was originally arrested on 22-10-1974 and was released when the order of detention passed under the Misa was struck down on 11-12-1974. He was again arrested on 6-3-1975 u/s 3(1) of the Cofeposa which order was quashed by this Court in Cr. Writ 13 of 1975 on 6-6-1975. He was again arrested for the third time on 1-7-1975 under the Ordinance of 1975 (amendment of COFEPOSA). Since there was a technical defect about the declaration the order was revoked again on 1-9-1975 and a fresh order of detention was passed on the same date. Successive orders of detention were passed under different Acts but not under the same Act. We are in respectful agreement with Ansari, J. when he pointed out that as in the case of section 14.(2) of the Misa, sub-section (2) of section 11 of the Act is applicable only to an order of detention passed under the Act and not to an order of detention passed under any other law like the MISA.

(53) In the present case an order of detention passed under the Cofeposa as amended by Ordinance 6 of 1975 made for the third time on 1-7-1975 was revoked on 1-9-1975 because of the point, which had been taken in this Writ Petition that the grounds had not been furnished within five days ordinarily or even within fifteen days in exceptional circumstances. The declaration having been made later could not, Therefore, be validly supported. This no doubt showed ineptitude and negligence in the matter of complying with the provisions of the Act, even as amended- "but the later order of detention was passed, taking advantage of the power conferred u/s 11(2). This cannot, Therefore, be said to be one contrary to the scheme of this Act. Contentions 3 to 5:

(54) "THEREseems to be no scope "for the contention that the present order of detention was barred by reason of the previous detention having been quashed by a Division Bench of this Court in Cr. writ 13 of 1975. The findings of the Division Bench have already been referred to. The present detention has not been based on any ground which has been held to be "bad" previously. What vitiated the order of detention, according to the Division Bench. was lack of knowledge on the part of the detaining authority that the statements of certain

persons which had been taken into account had been retracted from. This was not a criticism of the statements themselves; hence they were available for being considered again by the detaining authority under the present COFEPOSA. as amended, with the consciousness of course that the same had been withdrawn. The present case seems to clearly fall within the ambit of the statute, as amended, by reason of the detaining authority being enabled to look into any material which had not been held to be bad. The philosophy behind section 5-A of the Cofeposa appears to be that grounds of detention are severable; when an order of detention is based on a plurality of grounds should not be regarded subject to an infirmity by reason of one or some of the grounds having held to be "vague", "not relevant" etc., in short, "invalid for any reason whatsoever". There is also a deeming provision [section 5-A(b)], that the Government making the order of detention be deemed to have made the said order after being satisfied as provided in sub-section (1) with reference to the remaining ground or grounds"

(55) In this light, as well as the findings of the Division Bench extracted above, the orders of detention and of declaration were not barred; they seem to be subject to no real infirmity. There seems to be no question of "splintering" or "atomising" badness or seeking to "repair" any ground as Mr. Frank Anthony sought to suggest.

(56) In the result this Cr- Writ fails and is dismissed.