

(1951) 12 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No's. 353 and 355 of 1951

Jagarnath Prasad and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-12-1951

Acts Referred:

Constitution of India, 1950 — Article 372, 395
Essential Supplies (Temporary Powers) Act, 1946 — Section 1(3)
India (Central Government and Legislature) Act, 1946 — Section 2, 3
Preventive Detention Act, 1950 — Section 3, 3(1), 4

Citation : AIR 1952 Patna 185

Hon'ble Judges : Reuben, J;Imam, J;Das, J

Bench : Full Bench

Advocate : B.C. Ghose, A.K. Choudhary, Padmanand Jha, Dilip Kumar Sinha and Ras Bihari Singh, for the Appellant; Govt. Advocate and S.C. Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—These two petitions under Article 226 of the Constitution of India, and Section 491 of the Code of Criminal Procedure, have been heard together as they raise common questions of law. This judgment will govern both the applications. The facts out of which the two applications arise are similar but not the same, and it will be necessary to state separately the facts of two cases.

2. One of the applications is on behalf of Jagerpath Prasad thereafter called the first petitioner), who is stated to be a shop-keeper at Chapra dealing in cloth. On or about the 4th of October, 1950, his shop was searched, and certain books, such as the stock register, cash book etc.. were taken away by the Magistrate who searched the shop. It was stated that the first petitioner was then absent from Chapra. When he returned, he came to know that a report had been made against him for his prosecution u/s 7 of the Essential Supplies (Temporary Powers) Act, 1946. On the 13th or 14th of November, 1950, the first petitioner made a representation. On the 28th of November, 1950, when the first petitioner

was ill at Banaras, a second representation was made on his behalf to the District Magistrate of Saran. On this representation, it is stated, the District Magistrate asked for a report from the Sub-divisional Magistrate, who, in his turn, called for a report from Mr. Ekka, the Magistrate who searched the shop of the petitioner.

On the 4th of November, 1950, however, an order of detention had been made by the State Government against the first petitioner in exercise of the powers conferred on it by Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 of the Preventive Detention Act, 1950 (Act IV of 1950). This order of detention stated that "the State Government was satisfied that with a view to preventing Shri Jagarnath Prasad from acting in any manner prejudicial to the maintenance of supplies and services essential to the community", it was necessary to arrest and detain him in the jail at Chapra. It is to be noted that when the order of detention was passed, the first petitioner was not in custody. It is stated on his behalf that on being informed of the order of detention, he surrendered on the 30th May, 1951. The order of detention, was served on the first petitioner on that date in Chapra Jail, and on the 8th of June, 1951, the grounds of detention dated the 5th of June, 1951, were communicated to the first petitioner. It is stated that on the 10th June, 1951, the first petitioner made a representation to the Secretary, Supply and Price Control Department. From an affidavit filed on behalf of the State of Bihar, it appears that the first petitioner made a representation against the order of detention which was considered by the Advisory Board, and on the 21st July, 1951, the Board reported that in its opinion there was sufficient cause for the detention of the first petitioner.

3. The grounds of detention communicated to the first petitioner, gave a statement of certain facts in the first four paragraphs namely, (a) that Sri Jagarnath Prasad held a licence for a wholesale dealer in cloth under paragraph 3 of the Bihar Cotton Cloth and Yarn (Control) Order, 1948; (b) that in his capacity as a licensee, he received for sale to the public a supply of cloth from one of the cloth importers in Bihar; (c) that one of the conditions of the licence was that he should maintain a register of daily transactions showing correctly the opening balance, receipt, sale, and closing balance of all cloth received by him; and (d) that during the months of September and October 1950 (before the approaching festivals of Dasahara and Muharram), an artificial scarcity in cloth was caused in Bihar by the cloth dealers indulging in certain activities such as hoarding, withholding from sale popular variety of cloth or selling them at exorbitant prices), to check which the State Government directed simultaneous raids of cloth shops in all districts. After stating these facts, the grounds of detention proceeded to give particular facts relating to the first petitioner. These read as follows:

"5. 102 1/2 pairs of saris and dhotis were sold by his firm between 31-8-50 to 3-10-50, but these were not accounted for in the stock register.

6. 20 1/2 pieces of dhotis and saris were found short out of a balance of 402 pieces of dhotis and saris.

7. There was no entry regarding sale shown in the stock register after 28-8-50.
8. No sale of cloth from 24-8-50 to 3-10-50 had been shown in the cash memo.
9. One original cash memo was found unserved to the customer."

4. I now proceed to give the relevant facts of the second case in which the petitioner is Zullu Khalifa thereafter called the second petitioner.) The second petitioner was also a dealer in cloth of Hilsa Bazar within the district of Patna. His shop was searched by a Magistrate on the 21st February, 1951. It is stated that on the 22nd February, 1951, a report was submitted to the Sub-divisional Magistrate of Bihar, and a complaint was made for his prosecution on charges u/s 7 of the Essential Supplies (Temporary Powers) Act, 1943. The second petitioner was arrested and removed to jail. An application for bail was made on behalf of the second petitioner, and he was released on bail. But before that, a second complaint was made against the second petitioner alleging that he had tried to pass off as yarn a bale of cloth which a cartman was bringing to the shop of the second petitioner. On the 31st May 1951, an order of detention was passed against the second petitioner in which it was stated that

"the State Government was satisfied that with a view to preventing the second petitioner from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it was necessary to arrest the second petitioner and detain him in the district jail at Patna."

On the 5th of June 1951, the second petitioner was arrested and detained in pursuance of the said order of detention. The grounds of detention dated the 13th June 1951, were communicated to the second petitioner on the 15th of June 1951. In this case also, the grounds of detention recited the same general facts in the first four paragraphs, to which I have already made a reference. The particular facts relating to the second petitioner, as disclosed in the grounds of detention, were these:

"5. The shop-keeper had kept 11 pieces of mill-made new dhotis and saris concealed in his room up-stairs, apparently with the object of selling them in black-market.

6. There was excess of 15 pieces of dhotis and shortage of 2 pieces of saris as compared to his total stock of 36 pieces of dhotis and 6.8 pieces of saris.

7. He procured 60 pieces of dhotis and 10 thans of "markin" from the Patna market and he would not disclose that source of supply. Apparently he procured all these cloth for sale from the black-market in Patna.

8. When he handed over the bale containing the above to the cart-man, he said that the bale contained yarn."

5. On the facts stated above, the principal question for decision in these two cases is if the detention of the two petitioners is legal. Mr. Basanta Chandra Ghose, appearing for the two petitioners, has contended that the detention is not

legal, and has urged several grounds in support of his contention. His grounds may be thus formulated:

1. Taking the grounds of detention as alleged by the State Government to be correct, the activities to which they refer do not and cannot prejudice the maintenance of supplies and services essential to the community, inasmuch as the expression "maintenance of supplies and services essential to the community", as used in Clause (iii) of Section 3 (1) (a) of the Preventive Detention Act, as a special, and well-understood technical meaning referable only to such supplies and services as are of the nature of public utilities; e.g., supply of electric energy, supply of water, supply of transport services, etc. It is contended that the expression has no reference to mere supplies of commodities, such as cloth, even if such supplies be essential to the community.

2. The Essential Supplies (Temporary Powers) Act, 1946, has ceased to be in force before the dates of the orders of detention, and the Bihar Cotton Cloth and Yarn Control Order, 1948, had also fallen with it; in the absence of such a control order, violation of the conditions of a licence, etc., could not, in any way, jeopardise the maintenance of supplies of cloth.

3. The orders of detention are mala fide in the sense that the grounds alleged by the State Government do not exist in fact; they are absurd and self-contradictory.

4. In any view, the grounds are vague, and there has been a failure to comply with the mandatory provisions of Clause (5) of Article 22 of the Constitution of India.

6. In the case of the second petitioner, two further grounds have been urged: one is that when a prosecution has been launched u/s 7 of the Essential Supplies (Temporary Powers) Act, 1946, no order of detention can be made; the second is that the shop of the petitioner was closed, locked and sealed, and its stock seized on the 21st or 22nd of February, 1951, i.e., about two months before the order of detention. By reason of the closure of the shop, the second petitioner was not in a position to indulge in any anti-social activities: therefore, the order of detention was "mala fide."

7. For convenience and facility of understanding, I have summarised above, under six main heads, the argument of Mr. Basanta Chandra Ghose. Under each head, the argument has gone into ramifications, which it has not been always easy to follow. I shall refer to some of these ramifications when dealing with each of the points mentioned above.

8. The first contention of Mr. Basanta Chandra Ghose as to the meaning of the expression "maintenance of supplies and services essential to the community" was dealt with by a Division Bench of this Court in a batch of cases, the decisions being reported in "DAYANAND MODI v. STATE OF BIHAR" 30 Pat 630, and "MADAN LAL v. THE STATE OF BIHAR" 30 Pat 653. In Special Bench decision of "MISRI LAL v. STATE" 30 Pat 716, the real point for decision was somewhat

different; but the meaning of the expression "prejudicial to the maintenance of supplies and services essential to the community" was considered, and it was stated that the true meaning of the expression was:

"to prevent any person from doing an act in any manner prejudicial to the upkeep of the needs, the provisions and the services essential to the community."

The view expressed in the two earlier decisions referred to above was doubted by one of the Judges who decided Criminal Misc. No. 258 of 1951, on the 20th August, 1951. In that decision Shearer, J., stated as follows:

"What amounts to "acting in a manner prejudicial to.... the maintenance of supplies and services" to the community"? Certain acts can be said, with reasonable certainty, to come within the scope of the language used by Parliament as, for instance an attempt to precipitate a strike on a railway, or among dock labourers engaged in unloading certain ships at a port, or the employees of a power house supplying electricity to a town. Strikes of this kind must inevitably cause inconvenience to so many persons that the well-being of the community can fairly be said to be threatened. On the same ground an attempt on the part of a financier or group of financiers to corner supplies of a controlled commodity and hold them for a rise in price would, I imagine, be such an act. But is an attempt on the part of an ordinary shop-keeper dealing in a controlled commodity to dispose of part of his stock-in-trade in the black-market? Speaking for myself, I must say that I very much doubt It."

He, however, observed that: "more than one Division Bench of this Court took the view that orders of detention passed in similar circumstances were valid, and the question must be regarded as concluded by authority." It is primarily because of the doubt expressed by Shearer, J., that these cases have now come before this larger Bench.

9. On the arguments of Mr. Basanta Chandra Ghose, the real question that falls for consideration is if the expression "maintenance of supplies and services essential to the community" used in Section 3 of the Preventive Detention Act, 1950, has a technical meaning which restricts it to public utilities like the supply of electrical energy, water etc., (which has, undoubtedly, a service applet), or it embraces supplies and services of all commodities essential to the community. There has been much argument before us as to whether the word "and" in the expression means "or" in the context of Section 3 of the Preventive Detention Act.

That argument was considered in "DAYANAND MODI'S CASE" 30 Pat 630. I do not propose to consider that argument afresh, because, assuming that the word "and" is used in a cumulative sense in Clause (iii) of Section 3 (1) (a) of the Preventive Detention Act, the supply of an essential commodity necessarily involves a service to the community. The expression "maintenance of supplies and services essential to the community" has to be considered as a whole, each word being given its true meaning and import. As was pointed out by Imam, J., in "MISRI LAL'S CASE 30 Pat 718, the word "maintenance", according to

Webster's Dictionary, means "support and up-keep of property etc."; the word "supply" has, amongst various meanings, the meaning "to fill the needs of, to furnish with supplies, provisions, etc., as well as filling a want, a need." It was observed that the word "supplies" carried with it the meaning "to fill the needs of or to supply provisions to the community"; in other words, the meaning of the words "maintenance of supplies and services essential to the community" must be "the up-keep of the needs and the provisions essential to the community." If I may say so with respect, that seems to me to be the only proper meaning, which follows not only from grammatical construction, but also from the context in which the words have been used. There cannot be any doubt that the supply of cloth fills an essential need of the community and is a service to it. Any interference with such supply and service will be prejudicial to the maintenance of supplies and services essential to the community. Where with regard to an essential commodity there is a system of controls, on which the maintenance of supplies and services depends, evasion of the control orders will prejudicially affect the maintenance or up-keep of the supplies and services essential to the community. The view point that the action of a petty shop-keeper will not prejudicially affect the maintenance of supplies and services, fails to take note of the control system; and further, if a number of petty shop-keepers indulge in similar activities, there will, undoubtedly, be an artificial scarcity in cloth, as was stated to have happened before these detention orders were passed.

10. Mr. Ghose contended very seriously that in the Defence of India Act, 1939, and the Rules made thereunder, the expression "maintaining supplies and services essential to the life of the community" had a narrow meaning restricted only to public utilities, and it must be presumed that the legislature knew this meaning when it used the same or similar expression in the Preventive Detention Act. He further submitted that this was made quite clear by Ordinance XVIII and Ordinance XX of 1946. He referred particularly to the latter Ordinance, which contained certain provisions of the Defence of India Act, 1939, and of the Defence of India Rules. He pointed out that Rule 81 of the Defence of India Rules, which previously empowered the appropriate authority to make orders for securing the Defence of British India, the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community in respect of articles or things of any description whatsoever, was by Ordinance XX of 1943, modified, and the competent authority was empowered to make orders only for maintaining supplies and services essential to the life of the community, and Clause (a) of Sub-rule (2) of Rule 81 was modified to relate to the production, distribution, use or consumption of electrical energy; similarly, other clauses were also modified so as to relate to such matters as letting and sub-letting of house accommodation, etc. Mr. Ghose also referred to Rule 81-A and many other Defence of India Rules, and his contention was that the changes made in the Defence of India Rules by Ordinance XX of 1946, indicated clearly that the expression "maintaining supplies and services essential to the life of the community" was understood to refer to public utilities or supplies and services of

a like nature.

In my opinion, this contention is not borne out by a close scrutiny of the Defence of India Act and the Rules made thereunder. In "DAYANAND MODI'S CASE" 30 pat 630, I had pointed out that there were rules made under the Defence of India Act, 1939, which showed that the expression "maintaining supplies and services essential to the life of the community" was not understood in the narrow sense contended for by Mr. Ghose. Rule 81, as it originally stood, is itself illustrative of the meaning in which the expression was understood. It empowered the competent authority to provide by order for regulating disposal, use, consumption etc., of articles or things of any description whatsoever for", amongst other purposes, maintaining supplies and services essential to the life of the community. The fact that by Ordinance XX of 1946, the rule was so modified as to relate to supply of electrical energy etc. is no ground for holding that the expression was understood in a narrow sense. Take for example Rule 88 which related to the handling and conveyance of ammunition etc. The expression "for maintaining supplies essential to the life of the community" occurred in the Rule both before and after 1946. In the Defence of India Act, 1939, the expression used was "for maintaining supplies "and" services essential to the life of the community". If Mr. Ghose's contention is correct, then Rule 88 will be "ultra vires" the Act, because the rule will not come within the meaning of the expression used in the parent Act. Sub-rule (2) of Rule 81D empowered the District Magistrate to pass certain orders in respect of shops dealing in essential articles for the purpose of maintaining supplies essential to the life of the community. This sub-rule again shows that the expression "for maintaining supplies and services essential to the life of the community" was not understood in the sense contended for by Mr. Ghose. It is, I think unnecessary to multiply details. It is sufficient to state that, in my opinion, there was no such accepted, technical meaning of the expression as is suggested by Mr. Ghose. The expression has to be understood in its ordinary grammatical sense; and as I have explained above, in its ordinary grammatical sense, the expression covers the kind of activities which are referred to in the grounds of detention communicated to the two petitioners.

11. There has been some argument before us as to whether a difference in degree can be treated as a difference in class, and Mr. Ghose has referred to certain observations made in *Romesh Thappar Vs. The State of Madras*, . This argument has been advanced by Mr. Ghose in support of the view point that such activities as are referred to in the grounds of detention, on the part of a petty shop-keeper, are so slight in degree that they must be treated as being in a class different from the class contemplated by the expression "maintenance of supplies and services essential to the life of the community". The observations made in "*ROMESH THAPPAR*'s Case" have, in my opinion, no application in the present case; because in *Romesh Thappar*'s case their Lordships were referring to the distinction drawn by the statute itself between "public order" and "security of the State". Moreover, whether it is necessary to detain a particular person on

account, of his prejudicial activities is really a matter for the detaining authority which will, no doubt, consider the nature and degree of seriousness of the prejudicial activities. I am unable to accept the view that it is open to the Court to consider the difference in degree, and treat some prejudicial activities as coming within the expression and some as not coming within it, though in the ordinary grammatical sense they all come within the expression.

12. I now proceed to the second contention, namely, if the Essential Supplies (Temporary Powers) Act, 1946, and ceased to be in force before the dates of the orders of detention passed in these cases. The contention of Mr. Ghose is that, in any view of the matter, the Essential Supplies (Temporary Powers) Act, 1946, ceased to be operative after mid-night on the 25-1-1950. Alternatively, he argued that the Essential Supplies (Temporary Powers) Act, 1946, was bad on the ground of delegated legislation so far as Sub-section (3) of Section 1 (duration clause) was concerned. This contention again, though in a slightly different form, was considered by a Division Bench of this Court, of which I was a member, in Criminal Misc. No. 671 of 1950, "SRILAL KOWALA v. THE STATE", decided on the 13th February, 1951. Some of the arguments in support of the contention were noticed by me in the said decision. I shall confine myself now to the additional grounds which have been urged by Mr. Ghose.

13. It will, I think, be convenient to give first a statement of facts out of which the contention arises. I start with the India (Central Government and Legislature) Act, 1943 (9 & 10 Geo. VI C. 39), which amended the Government of India Act, 1935, in respect of certain matters. For our purpose, the relevant sections are Sections 2 and 4. By Section 2, the Indian Legislature was given power to make laws with respect to, "inter alia" trade and commerce in, and the production, supply and distribution of cotton and woollen textiles etc. The section also stated that any law made by the Indian Legislature which that Legislature would not, but for the provisions of the section, have been competent to make shall, to the extent of the in-competency, cease to have effect on the expiration of a particular period except as respects things done or omitted to be done before the expiration thereof. Section 4 referred to the particular period, and read as follows:

"The period mentioned in the two last preceding sections is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceased to operate or, if the Governor-General by public notification so directs, the period of two years beginning with that date:

Provided that if and so often as a resolution approving the extension of the said period is passed by both Houses of Parliament, the said period shall be extended for a further period of twelve months from the date on which it would otherwise expire so, however, that it does not in any case continue for more than five years from the date on which the Proclamation of Emergency ceases to operate."

The main purpose of India (Central Government and Legislature) Act, 1948, appears to have been to keep alive or give certain emergency powers to the

Indian Legislature. By Section 5, provision was also made for the duration of laws passed by the Indian Legislature by virtue of the Proclamation of Emergency u/s 102 of the Government of India Act, 1935. The Essential Supplies (Temporary Powers) Act, 1946, was passed by the Indian Legislature in exercise of the power conferred by Section 2 of the India (Central Government and Legislature) Act, 1946. The Act received the assent of the Governor-General on the 19th November, 1943. Sub-section (3) of Section 1 of the Act was in these terms:

"It shall cease to have effect on the expiration of the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946, except as respects things done or omitted to be done before the expiration thereof, and Section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act."

It is not in dispute that the Proclamation of Emergency referred to in Section 4 of the India (Central Government and Legislature) Act, 1946, ceased to operate after the 31-3-1946. It is also not in dispute that the Governor-General of India made a public notification on the 3rd March, 1947, in which he directed that the period mentioned in Sections 2 and 3 of the India (Central Government and Legislature) Act, 1946, shall be a period of two years beginning with the 1st day of April, 1946, being the date on which the Proclamation of Emergency referred to in Section 4 ceased to operate. On the 25th February, 1948, the Constituent Assembly passed a resolution to the following effect:

"In pursuance of the proviso to Section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, this Assembly hereby approves the extension of the period mentioned in Sections 2 and 3 of the said Act for a further period of twelve months commencing on the first day of April, 1948."

It may be stated here that the constitutional position of India changed after the passing of the Indian Independence Act, 1947. The British Parliament lost all legislative authority over India, so that the Houses of Parliament referred to in the Proviso to Section 4 of the India (Central Government and Legislature) Act, 1946, could not pass the resolution referred to therein. On the 14th of August 1947, the Governor-General of India made an order in exercise of the powers conferred by Section 9 read with Section 19(4), Indian Independence Act, by which for "both Houses of Parliament" the words "the Dominion Legislature" were substituted. A new section, Section 4A, was inserted which said that the powers of the Dominion Legislature shall, until other provision is made by or in accordance with a law made by the Constituent Assembly, be exercisable by that Assembly. Therefore, the Constituent Assembly passed the resolution referred to above on the 25th of February, 1948, and this was published for general information on the 3rd March, 1948. On the 23rd of March, 1949, the Constituent Assembly passed yet another resolution which stated that the period mentioned in Sections 2 and 3 of the India (Central Government and Legislature) Act, 1946, shall extend for a further period of twelve months commencing on the 1st day of

April, 1949. This resolution was published for general information on the 25th March, 1949. I now come to the last resolution, namely, the resolution of the 20th December, 1949, published in the Gazette of India, Extraordinary, dated the 24th December, 1949. The resolution was to the effect that the Constituent Assembly approved the extension of the period mentioned in Sections 2 and 3 of the India (Central Government and Legislature) Act, 1946, for a further period of twelve months commencing on the 1st day of April 1950. It is to be noted that this last resolution of December, 1949, was passed, after the Constituent Assembly had passed the Indian Constitution on the 36th day of November, 1949. Article 394 of the Constitution stated that that Article and certain other Articles with which we are not concerned, would come into force on the day the Constitution was made, and

"the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this constitution as the commencement of this Constitution."

The point which I wish to emphasise here is that the last resolution of December, 1949, was passed before the commencement of the Constitution. Article 395 of the Constitution repealed, "inter alia", the Government of India Act, 1935, together with all enactments amending or supplementing it. Article 372 of the Constitution stated (I am quoting only such portions of Article 372 as are relevant for our purpose):

"372(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any Court of law."

14. There are several Explanations appended to Article 372 of which Explanation III is relevant for our purpose. This Explanation is in these terms:

"Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force."

On the 26th of January, 1950, the President made the Adaptation of Laws Order, 1950. Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, was modified, and for the words "on the expiration of the period

mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946" the words "on the 1st day of April, 1951" were substituted. On the 16th of August, 1950, the Essential Supplies (Temporary Powers) Amendment Act, 1950, was passed (Act LII of 1950). By this, the words the figures "31st day of December 1952" were substituted for the words and figures ""1st day of April 1951". It is to be noted that under Article 369 of the Constitution, Parliament had power to make laws In respect of ("inter alia") trade and commerce within a State in, and the production supply and distribution of, cotton and woollen textiles etc., for a period of five years from the commencement of the Constitution. There was, therefore, no lack of legislative authority for Act LII of 1950.

15. I have given above a brief "resume" of legislative history by which the duration of the Essential Supplies (Temporary Powers) Act, 1946, was extended till the 31st December, 1952.

16. Let me now examine the contention of Mr. Ghose that the Essential Supplies (Temporary Powers) Act, 1946, ceased to be operative after midnight on the 25th January, 1950; there are two alternative arguments also -- one to the effect that in any view it came to an end on the 31st of March, 1950, because the resolution of December, 1949, was invalid and inoperative; the second alternative argument is that Sub-section (3) of Section 1 of the Essential Supplies (Temporary towers) Act, 1946, is bad on the ground of delegated legislation. I do not think that there is any difficulty up to the 31st March, 1949, provided Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, is not "ab initio" bad on the ground of delegated legislation -- an argument which I shall deal with in subsequent paragraphs. The principal argument of Mr. Ghose is based on Article 335 of the Constitution which repealed the Government of India Act, 1935, together with all enactments amending it. He contends that the India (Central Government and Legislature) Act, 1946, which was an Act to amend the Government of India Act, 1935, stood repealed on midnight of the 25th of January, 1950. If the Act itself stood repealed on that day, the period mentioned in Sections 2, 3 and 4 of the Act could not remain alive after the death of the Act itself; in other words, those sections went with the Act. He points out that Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, as it stood then, referred to the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946, and if the period mentioned in Section 4 disappeared with the Act, the Essential Supplies (Temporary Powers) Act, 1946, also came to an end at midnight on the 25th January, 1950, notwithstanding the resolution of the 23rd March 1949. As to the resolution of the 20th December, 1949. which extended the period for one year more commencing from the 1st April, 1950, the contention was that it was invalid and totally ineffective to keep alive the Essential Supplies (Temporary Powers) Act, 1946, after the 31st March, 1950, even assuming, without in any way conceding, that the earlier resolution kept it alive till the 31st March, 1950. Mr. Ghose says that the Adaptation of Laws Order made by the President on the 26th of January,

1950, could not give life to something which was already dead, nor could the Amending Act of 1950 amend a piece of legislation which had already come to an end. Thus, in substance, is the argument of Mr. Ghose.

17. It seems to me that the whole argument of Mr. Ghose hinges on his contentions -- (1) that the repeal of the India (Central Government and Legislature) Act, 1946, by Article 395 of the Constitution brought the Essential Supplies (Temporary Powers) Act, 1946, to an end, in spite of the resolution of the 23rd March, 1949; and (2) that the resolution of the 20th December, 1949, was, in any case, invalid & ineffective. Both these contentions are, in my opinion, incorrect.

18. Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, fixed the period of duration of the Act, as the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946. That period was uncertain in the sense that it stated a maximum period in certain instalments: first, one year from the date on which the Proclamation of Emergency ceased to operate; then two years from that date; if the Governor General made a notification, then twelve months more, as often as a resolution was passed, subject to a maximum of five years. It is clear that the Indian Legislature intended the Essential Supplies (Temporary Powers) Act, 1946, to be in force for the entire period in instalments mentioned above, provided the necessary notification and resolutions were validly passed by a competent authority; therefore, Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, took the convenient form of stating that the period of duration shall be the expiration of the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946. There was no delegation whatsoever by the Indian Legislature to an outside body. The Indian Legislature applied its mind and fixed the duration as being the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946. In its true nature and scope, Sub-section (3) of Section 1 is not delegated legislation. It is worthy of note, that even if the duration were not fixed by Sub-section (3) of Section 1, the Essential Supplies (Temporary Powers) Act, 1946, would have continued to be of effect as long as the Indian Legislature was competent to make such a law under the parliamentary statute; see the provisions of Section 2 of the India (Central Government and Legislature) Act, 1943. The period referred to in Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, was extended for one year commencing from the 1st day of April, 1949. It was again extended for a period of twelve months commencing on the 1st day of April, 1950. Both these resolutions were passed by the Constituent Assembly at a time when that authority was competent to pass the resolutions. I am unable to accept the contention of Mr. Ghose that the resolution of the 20th December, 1949, was invalid or ineffective. Mr. Ghose contended that the Constituent Assembly knew then that the India (Central Government and Legislature) Act, 1946, would come to an end on the 25th January, 1950; therefore, they could not pass a resolution which would keep the period alive

beyond a date on which the Act, in which the period is mentioned, would itself fall. This argument, I think, fails to give effect to the provisions of Article 372 of the Constitution. On the 25th of January, 1950, the Essential Supplies (Temporary Powers) Act, 1946, was a "law in force in the territory of India immediately before the commencement of the Constitution." Article 372 says that this law shall continue in force notwithstanding the repeal of the enactments referred to in Article 395. By the resolution of the 23rd March, 1949, the Essential Supplies (Temporary Powers), Act, 1946, had already been extended for twelve months commencing on the 1st day of April, 1949, Therefore, by reason of the aforesaid resolution read with Article 372 of the Constitution, the Essential Supplies (Temporary Powers) Act, 1946, would remain in force till the 31st March, 1950. By the December resolution, it would remain in force till the 31st March, 1951. It is true that the reference in the two resolutions was to the period mentioned in Sections 2 and 3 of the India (Central Government and Legislature) Act, 1946, which was to stand repealed on the Commencement of the Constitution. But in effect the resolutions extended the period of the Essential Supplies (Temporary Powers) Act, 1946, and the resolutions were passed at a time by an authority which was competent to pass them. I think that the provisions of Article 372 of the Constitution would save the Essential Supplies (Temporary Powers) Act, 1946, in spite of the repeal of the India (Central Government and Legislature) Act, 1946, on the commencement of the Constitution. I do not accept the contention of Mr. Ghose that the resolution of the 20th December, 1949, was invalid and ineffective, nor do I accept his contention that the Adaptation of Laws Order, 1950, made by the President on the 26th of January, 1950, was seeking to revive something which was already dead. On the 26th of January, 1950, the President was confronted with this position: by reason of the two resolutions referred to above, the Essential Supplies (Temporary Powers) Act, 1946, was to remain in force till the 1st day of April, 1951, because the period mentioned in Section 4 of the India (Central Government and Legislature) Act, 1946, had been extended till that date, however, the India (Central Government and Legislature) Act, 1946, itself came to an end on the midnight of the 25th January, 1950; but that did not put an end to a law in force in the territory of India immediately before the commencement of the constitution. There was, thus, an apparent anomaly, and it was necessary to bring the provisions or Sub-section (2) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, into accord with the provisions of the Constitution, i.e. into accord with the provisions of Articles 395 and 372 of the Constitution. It was for this purpose that a modification was necessary by way or an amendment of Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, and the President gave effect to the resolutions by substitution " the 1st day of April 1951" for the period originally mentioned in Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946. This adaptation or modification was neither illegal nor beyond the competency of the President within the meaning of Clause (2) of Article 372 of the Constitution. Explanation III to the Article does not, in any way, affect the

position. The provisions of the Article are not being construed as continuing any temporary law beyond the date fixed for its expiration. All that the President did was to resolve an apparent anomaly and give effect to the resolutions of the Constituent Assembly so as to avoid any apparent conflict between the provisions of Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946, and the provisions of the Constitution of India.

19. I have already dealt with the argument of delegated legislation. There is, in my opinion, no (delegation by Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946. The delegation, if any, with regard to the period mentioned in Sections 2 and 3 of India (Central Government and Legislature) Act, 1946, was by the British Parliament, and Mr. Ghose has conceded that it was open to the British Parliament to pass delegated legislation. I do not think that the Indian Legislature delegated its legislative function to any outside body by the provisions of Sub-section (3) of Section 1 of the Essential Supplies (Temporary Powers) Act, 1946. It was faced with the difficulty of fixing a period which might be extended in a certain contingency, and it stated in effect that the period shall be as long as the power to legislate exists. It merely adopted a convenient form of fixing the period. In this view of the matter, I do not think that it is necessary to consider the case law on this subject of delegated legislation, which case law has been exhaustively referred to and discussed in the recent decision of the Supreme Court in *Re Article 143, "Constitution Of India"* and *Delhi Laws Act (1912) etc.* AIR 1951 SC 332.

20. For these reasons, I hold that the Essential Supplies (Temporary Powers) Act, 1946, did not come to an end before the dates of the orders of detention passed against the two petitioners. Mr. Ghose has not referred us to any decision in which his contention has been accepted. There are decisions in which a similar contention, though not exactly in the same form, was negatived. I had referred to some of those decisions in *Srilal Khawala's case* (Criminal Miscellaneous No. 671 of 1950, decided on the 13th February, 1951). A still more recent decision is the Special Bench decision of the Calcutta High Court in *"RAMA-NANDA v. The STATE"* 55 Cal W N 572, and also the decision of the Bombay High Court in *Kaikhushru Jehangir Vs. Bai Bachubai Jehangir and Others*, . I do not wish to burden this judgment by an unnecessary repetition of the reasons given in those decisions. Since I had prepared this judgment, I have seen a decision of the Supreme Court in *Joylal Agarwala Vs. The State*, , where the contention that Section 1(3) of the Essential Supplies (Temporary Powers) Act, 1946, is bad on the ground of delegated legislation has been negatived on the same grounds.

21. As to the remaining two contentions of Mr. Ghose in respect of the first petitioner, I have examined the grounds of detention with reference to the affidavits which have been filed on behalf of the petitioner. I am unable to accept the contention that the grounds do not exist in fact or that the orders of detention are "mala fide". Mr. Ghose has made much of a letter, letter No. 4948 P.C./Text-BI/1948 dated the 8th March, 1950, which stated that in respect of

cloth "for November, 1949 and onward packing" the Government of Bihar had decided to eliminate whole salers from the cloth trade. A copy of this letter is an enclosure to one of the affidavits filed on behalf of the first petitioner. This letter was also explained in a Press Note dated the 22nd March, 1950. Mr. Ghose has submitted that as wholesalers were eliminated from the 8th of March, 1950, all the grounds of detention stated against the first petitioner, who was a whole-sale dealer, became incorrect. I do not think that this contention is correct. As the letter itself shows, the Government of Bihar decided to eliminate the wholesalers only in respect of cloth "for November 1949 and onward packing". There was no elimination of wholesalers in respect of cloth for earlier months. On behalf of the first petitioner, an affidavit was filed in the course of arguments that he had no stock of cloth packed before the 1st November, 1949. That is a question of fact, the truth of which can be found out only on investigation, in "MADAN LAL's Case" 30 Pat 653, I had tried to explain clearly how far it was open to the Court to examine the grounds. I had stated there that it was not open to the Court to go into an attempted explanation of the facts alleged, in order to determine the correctness or otherwise of the grounds of detention. On behalf of the first petitioner, Mr. Ghose really wants us to investigate into the truth or otherwise of the facts alleged in the grounds of detention. I do not think that he has made out that the grounds do not exist, or that they are absurd and self-contradictory.

22. It was argued that the grounds were vague, and there was, thus, a failure to comply with the mandatory provisions of Clause (5) of Article 22 of the Constitution of India. I do not find that the grounds were vague, or that they did not afford an opportunity to the first petitioner to make an effective representation. The first petitioner, as I have already stated, did make a representation which was considered by the Advisory Board.

23. In my opinion, the detention of the first petitioner is legal, "and there are no reasons for interference by us;

24. As to the second petitioner, I have to deal with the two additional points of Mr. Ghose. After arguments had closed in this case, we were informed by Counsel for the State of Bihar that the prosecution against the second petitioner had been withdrawn. The question whether there can be a detention order when a prosecution for a criminal offence is pending, was dealt with by me, at great length, In Subodh Kumar Singh and Another Vs. The State and Others, . I pointed out there that there is no rule of law that unless a choice of one of two alternatives, prosecution or detention is made at the earliest moment, the order of detention must be held to be invalid. "I stated that the proper approach was to consider the facts of each case and then consider whether the order of detention was "mala fide" or not. I still adhere to that view. I may state also that there was an appeal to the Supreme Court against the aforesaid decision, and the appeal was dismissed. Mr. Ghose relied on certain observations made "KAMLA KANT v. EMPEROR" 23 Pat 252 by my learned brother Shearer, J. in a subsequent decision in "Cri. Misc. No. 258 of 1951, decided on the 20th August,

1951" the same Judge explained his earlier observations by stating: "In all the circumstances of the case ("KAMLA KANT AZAD"s Case") it was possible to infer that the orders of detention had not been made in order to prevent the petitioners from acting in a manner prejudicial to the public order, but in order to punish them for what they had al-ready done. It was on this ground and on this ground alone that the decision was approved by the Federal Court ("BASANTA CHANDRA v. KING EMPEROR" 1945 7 PCR 81 ". His Lordship pointed out that if in any particular case, it was impossible to say that the order of detention was made in order to punish the petitioner for having operated or attempted to operate on the blackmarket and not in order to prevent him from doing so, the observations made by him in "KAMALA KANT"s Case" would have no application.

As I look at the matter, the real question is whether the order of detention is mala fide or not. We know now that the prosecution against the second petitioner has been withdrawn; but I am unable to hold, on the basis of the grounds of detention stated against the second petitioner, that the order of detention was for an ulterior or collateral purpose, and not for the purpose of preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. One must always Keep in mind the distinction between "preventive detention" and "punitive action".: the first has reference to a likelihood of some prejudicial activity in future, and the second has reference to some past action for which punishment is needed. The State Government has stated unequivocally that it is satisfied that it is necessary to pass an order of detention against the second petitioner to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, and I am unable to hold, on the basis of the grounds of detention communicated to him, that the order was for any purpose other than that stated by the State Government.

25. As to the other point arising out of the closure of the shop of the second petitioner on the 21st or 22nd February. 1951, our attention has been drawn to certain observations in "DASRATH PRASAD v. THE STATE OF BIHAR", Cri Misc No. 199 of 1951, decided on the 7th June, 1951. C.P. Sinha, J. observed therein:

"During the course of the argument, another point emerged, and it is this. The last but two paragraphs of the grounds, which have already been quoted above, show that the petitioner as a ration shopkeeper had been drawing from Government Godown more foodgrains than was required for the cardholders, and that he was selling the excess foodgrains in the black market, and that, therefore, according to the State Government, if the petitioner was allowed to remain at large, he would indulge in activities to the prejudice of the maintenance of supplies and cervices essential to the community, and, for prevention of such activities, the State Government considered his detention necessary. The question is, if the petitioner has ceased to be a ration shopkeeper, his ration shop has been closed, his licence under the Foodgrains Control Order suspended or cancelled, is it physically possible for the petitioner to indulge in

the activities referred to in these two paragraphs? The complaint against him is that as a ration shopkeeper he used to draw from Government Godown more foodgrains than was necessary to supply to the card-holders, and he was diverting the surplus foodgrains to the blackmarket. If the petitioner had ceased to be a ration shopkeeper, he could not draw any foodgrains from the Government Godown; if he could not, then there could be no apprehension that the petitioner would indulge in activities to the prejudice of maintenance of supplies and services essential to the community. It appears, however, from a judgment of this Court in the case of "MOHAMMAD ABDUL QAYUM v. THE STATE", Cri Misc No. 701 of 1950, decided on the 9th January 1951, that in such a case it was open to the State Government to draw an inference that, if the petitioner was allowed to remain at large, he would indulge in similar activities irrespective of the question whether he had a permit for a ration shop or not. In the present case, the inference drawn by the State Government that the petitioner, if left at large, was likely to indulge in activities to the prejudice of maintenance of supplies and services essential to the community is based on the only fact that the petitioner as a ration shopkeeper used to draw more foodgrains from Government Godown than was necessary which surplus foodgrains he used to divert to the black-market. If that fact on which the inference or apprehension of the State Government was based did not exist, then, in my opinion, it appears doubtful if there was any basis left on which the apprehension or the inference of the State Government could be founded. But, as it is not necessary to decide that question in the present case, I do not like to deal with that point in any greater detail."

26. The observations show clearly enough that the question is not a question of law, and will depend on the facts of each case. Even after the suspension of a licence, a large stock of cloth may remain to be disposed of and the person complained against may even receive a fresh supply of cloth with or without a licence. It is not difficult, for a dealer in the blackmarket to get cloth without a licence. Preventive detention depends on suspicion -- suspicion inferred from circumstances, I and it is for the detaining authority to be satisfied about the inference to be drawn. In my opinion I the mere closure of the shop of the second petitioner or even the temporary seizure of his goods, is no ground for holding that the order of detention is "mala fide". It appears that the licence of the second petitioner has not been cancelled; even if it were cancelled, it is not reasonable to hold that the kind of activities in which the second petitioner indulged, cannot be committed by him again without a licence. The commission of antisocial activities of the nature alleged against the second petitioner does not "necessarily" depend on the obtaining of a licence, though the past acts relate to a violation of the conditions of a licence.

27. For the aforesaid reasons, I would hold that the detention of the second petitioner is also legal.

28. The result, therefore, is that the applications fail, and are dismissed.

Reuben, J.

29. I agree.

Imam, J.

30. I agree.