
(1948) 07 PAT CK 0004
In the Patna High Court

Nek Mohammad and Others

APPELLANT

Vs

The Province of Bihar

RESPONDENT

Date of Decision : 30-07-1948

Acts Referred:

General Clauses Act, 1897 — Section 3, 4A, 8

Government of India Act, 1935 — Section 100, 102, 104, 107, 49

Citation : (1949) CriLJ 44

Hon'ble Judges : Meredith Sinha, J; Das, J

Bench : Division Bench

Judgement

Das, J.—These are twelve petitions u/s 491, Criminal P. C. These twelve petitions have given rise to ten criminal miscellaneous cases, the numbers of which are mentioned at the top of this page. The reason why there are ten cases is that three applications which were received together from the Deputy Commissioner of Ranchi have been numbered as one case (criminal Miscellaneous case no 193 of 1948).

2. In respect of each one of these petitioners an order of detention has been passed u/s 2 (1), Bihar Maintenance of Public Order Act, 1947 (hereinafter referred to as the Act). The learned Government Advocate appearing on behalf of the Crown has furnished us with copies of the grounds on which the orders of detention were passed. This has reference to Section 4 of the Act. According to the grounds given, the petitioners may be broadly classified under two heads? those against whom it was alleged that they were members of the E. S. S. (Rashtriya Swayamsewak Sangh) and those who were alleged to be members of the Muslim League National Guard, The petitioners who come in the first category are Bhaskar Krishna Rao Zinjarde, Bandu Phanse, Nardeo Gupta, Sashidhar Dwivedi, Dr. K. P. Rode, Pandit" Thakur Prasad Tewari and Ramrajib Singh and those in the second category are Nek Mohammad, Nizamuddin Ahmad, Gulam Ashraf, Mohammad Jan and Mohammad Mohiuddin. I may here observe that the organization known as the R. S. S. was declared unlawful u/s 16, Criminal Law Amendment Act, 1908, on 4th February 1948, and the Muslim

League National Guard was similarly declared unlawful on 8th February 1948. The petitioners who were alleged to be members of the R. S. S. were arrested between the dates, 5th February 1948 and 8th February 1948. Two of the petitioners, Ramrajib Singh and Sashidhar Dwivedi, appear to have surrendered before the Magistrates concerned on learning that warrants of arrest were pending against them. Ramrajib Singh says that he surrendered on 10th February 1948, and Sashidhar Dwivedi on 6th April 1948. The members of the Muslim League National Guard were arrested between 9th February 1949, and 17th February 1948. While dealing with the case of each individual petitioner, I shall give further details, such as, the date of arrest, the date on which the order of detention was passed, the date on which the grounds of detention were served and the date on which a representation was made by the petitioner. I propose first to deal with those common points which arise in the case of all the petitioners, and then proceed to discuss the case of each individual petitioner. Though we have heard the cases in three batches, some of the contentions urged by learned Counsel apply equally to all the petitioners. These contentions may be logically divided into three branches : 1) Those relating to the validity of the Act (namely, if the Act is ultra vires the Provincial Legislature or has ceased to be effective after a certain date); (2) those relating to the interpretation of the different provisions of the Act, particularly Sections 2 and A; and (3) those relating to the alleged failure of the authority which made the orders of detention to comply with the provisions of the Act, with particular reference to the provisions of Section 1. The contentions in the first category go to the root of the matter, and if upheld, would make the Act invalid and the orders of detention would naturally fall with the Act. The contentions in the other two branches are inter-connected.

3. I shall consider these contentions in the order in which I have mentioned them. learned Counsel for the petitioners has contended before us that the Act is ultra vires the Provincial Legislature as it relates not merely to public order but to public safety. The argument has been developed in the following manner. It is urged that the Provincial Legislature, which u/s 60, Government of India Act, 1935 (as it stood on the relevant date and before 15th August 1947) consisted of His Majesty represented by the Governor and two Chambers, was competent to make laws with respect to any of the matters enumerated in List 2 or List 3 of Sch. 7, respectively known as the Provincial Legislative List and the Concurrent Legislative List. learned Counsel has drawn our attention to Section 100, Government of India Act, 1935, and has contended that the power to make laws with respect to any of the matters enumerated in the Concurrent Legislative List by the Provincial Legislature was subject to Sub-section (1) of Section 100 and the power to make laws with respect to any of the matters enumerated in the Provincial Legislative List was similarly subject to the first two sub-sections of Section 100. learned Counsel has then drawn our attention to item 1, Provincial Legislative List which, inter alia, contains the following particulars:

Public Order (but not including the use of His Majesty's naval, military or air

forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order and persons subjected to such detention.

It is pointed out that no such item as "public safety" occurs in any of the three Legislative Lists, though item 1 of List 1 (Federal Legislative List) refers to

preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

learned Counsel for the petitioners has then urged that the residual powers of legislation vest in the Governor-General who may, u/s 104, Government of India Act. empower by public notification either the Federal Legislature or the Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists of sub. 7. It is contended that no action having been taken u/s 104, Government of India Act, it was beyond the competence of the Provincial Legislature to make laws with regard to "public safety." learned Counsel has drawn a distinction between "public order" and "public safety." He has suggested that "public safety" has reference to danger from external aggression and "public order" to internal commotion or disturbance, and in that view, has contended that if "public safety" at all comes under any item of the three Legislative Lists, it does so under item 1 of the Federal Legislative List, which mentions, amongst other things, preventive detention in British India for reasons of State connected with defence, external affairs, etc.

4. It would facilitate the consideration of the arguments mentioned above if I give here a brief resume of the provisions of the Bihar Maintenance of Public Order Act, 1947. The preamble of the Act recites:

Whereas it is expedient to provide for preventive detention, imposition of collective fines, control of meetings and processions, imposition of censorship, requisitioning of property and prevention of unlawful drilling and the wearing of unofficial uniforms in connection with the public safety and maintenance of order in the Province of Bihar.

The Act has 19 sections. The sections which deal with preventive detention are Sections 2, 3, & 5. These sections are followed by other sections which deal with such subjects as control of meetings and processions, power of imposing censorship, control of documents printed outside the Province, requisitioning of property, unlawful drilling, wearing of unofficial uniforms, etc., in the order in which the subjects have been mentioned. Then, there are miscellaneous provisions dealing with attempts to contravene the provisions of the Act, delegation of powers and duties, etc. Section 16 of the Act is of some importance and may be quoted in extenso. It says ; "The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force." Section 2 (1) which is the most important section for the purpose of the arguments which we are now considering says, inter alia, as follows:

The Provincial Government, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order it is necessary so to do, may make an order (a) directing that he be detained.

Section 3 says that an order made u/s 2 shall be in force for a period not exceeding six months from the date on which it is made unless earlier revoked by the authority making the order. Section 4 relates to grounds of detention. I shall have to consider the terms of Section 4 in detail in connexion with another argument, and for the purpose of the arguments which we are now considering it is not necessary to quote the terms of Section 4. learned Counsel for the petitioners has emphasised that the expression "public safety" occurs both in the preamble and in Section 2 (1). He has further emphasised that the word "and" between the two expressions "public safety" and "maintenance of public order" shows that the two expressions relate to different subjects.

5. In my opinion, learned Counsel for the petitioners has approached the subjects mentioned in the three Legislative Lists from an entirely wrong, narrow and technical point of view. It has been more than once held that in interpreting a Constitution Act a wide meaning should be given to the words which confer upon any Legislature the power to legislate on certain topics and, within the ambit of the words, the most sovereign powers must be understood to be given to the Legislature. It has been further held that the entries in the Constitution Act should be given a large and liberal interpretation, the reason being that the allocation of the subjects in the three Lists is not by way of scientific definition but by way of a mere simplex enumeration of broad categories: see the observations made by their Lordships of the Federal Court in the matter of the Central Provinces and Berar Sales of Motor Spirits and Lubricants Taxation Act. AIR 1989 F.C. 1 : ILR (1939) Kar. 6). Dealing with the question of the interpretation of the subjects in the three Legislative Lists, it was observed by his Lordship Gwyer C. J. in AIR 1941 47 (Federal Court) as follows:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in fit for bidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance," or its "true nature and character" for the purpose of determining whether it is legislation with respect to matters in their list or in that.

In *Prafulla Kumar Mukherjee V. Bank of Commerce, Ltd., Khulna* AIR 1947 P. C. 60 : 1947 F. C. 28) it was pointed out by their Lordships of the Privy Council that it was not possible to make so clean a cut between the powers of the various Legislatures that they would never overlap. Their Lordships then say;

Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with.

6. If these observations are kept in view, then there can be no doubt that the true nature and character of the Act under our consideration brings it within item 1 of the Provincial Legislative List. That item mentions first "public order" in its general and widest sense, subject only to one limitation that it does not include the use of his Majesty's naval, military or air forces in aid of the civil power; then there is a further particular: "preventive detention for reasons connected with the maintenance of public order." This particular merely indicates one aspect of public order. The expression "public order" in List I of the Provincial Legislative List must, in its context, be taken in a comprehensive sense so as to include public safety in its relation to the maintenance of public order. The expression "public safety" may have one meaning in one context and another in a different context; for example, traffic regulations for motor vehicles may have an aspect of public safety; so also adulteration of foodstuffs and other goods. The subject of adulteration of foodstuffs is item 80 of the Provincial Legislative List. I do not think it can be contended for one moment that the Provincial Legislature has no power to make laws with respect to adulteration of foodstuffs and other goods, merely because the subject may, in some of its aspects, be connected with public safety. In the same way the maintenance of public order undoubtedly involves considerations of public safety, but surely that would not be a ground for holding that the Provincial Legislature is not competent to make laws for the maintenance of public order. It is worthy of note that, apart from the general subject of "public order" mentioned in item 1 of the Provincial Legislative List, one particular aspect of public order, namely, preventive detention for reasons connected with the maintenance of public order, is specifically mentioned. I emphasise the words "for reasons connected with the maintenance of public order." One of the reasons connected with the maintenance of public order may well be public safety. If we consider the scope and purpose of the Act. as a whole, then the conclusion at which one is bound to reach is that in its true nature and character it deals with the maintenance of public order involving, no doubt, considerations of public safety as well. In the context in which the expression "public safety" occurs in the preamble and in Section 2 (1) of the Act, it is either synonymous with public order or is comprehended by the more general term "public order" and the use of the word "and" is not disjunctive. I do not think that there is any encroachment on item I of the Federal Legislative List which deals with, inter alia, preventive detention in British India for reasons of State connected with defence, external affairs, etc. That item may also have an aspect of public safety, but of a different character altogether, being connected with defence, external affairs, or the discharge of the functions of the Crown in

its relation to the Indian States.

7. learned Counsel for the petitioners has relied on certain observations made by his Lordship Zafrulla Khan J. in the case of *King-Emperor v. Sibnath Banerjee* 24 P. L. T. 332 : AIR 1943 P. C. 75: 45 Cri.L. J. 341). The observations will be found at page 345. His Lordship said as follows:

The argument before us was limited to the ground that "public safety or interest" was not one of the heads specified in entry No. 1 of List I or entry No. 1 of List II of Sen. 7, Constitution Act, as subjects in respect of which Indian Legislation might provide for "preventive detention." The judgment of this Court in AIR 1943 1 (Privy Council) clearly proceeded on the footing that such legislation was covered by the two entries. We think that the expressions "reasons of State connected with defence" and "reasons connected with the maintenance of public order" are wide enough to include "public safety or interest."

It is contended that those observations show that "public safety" was considered to be covered by the two items in the two lists taken together, and in view of the proclamation of emergency under B. 102, Government of India Act, the Federal Legislature had power then to make laws for a province with respect to any of the matters enumerated in the Provincial Legislative List, but now the Provincial Legislature cannot make laws with respect to any of the matters enumerated in List I. I do not read those observations in the sense in which learned Counsel for the petitioners takes them. The question before their Lordships was whether Section 2, Defence of India Act, was ultra vires the Indian Legislature, and it was not necessary for their Lordships to consider whether the legislation in question came within List I or List II. It would have been enough to decide that it came within the subjects mentioned in either of the two lists or the two lists taken together. It cannot, therefore, be said that the Federal Court had decided that public safety as a subject of legislation would not come within item 1 of List I; on the contrary, the observation was to the effect that the expression "reasons connected with the maintenance of public order" was wide enough to include "public safety or interest." As I have already stated, many of the subjects mentioned in the three lists have a "public safety" aspect, and the maintenance of public order undoubtedly includes public safety.

8. There are certain other observations in another decision of the Federal Court, *Keshav Talpade v. King-Emperor* 24 P.L.T. 168; A.I.R 1913 P.C 1: 44 . L .J. 558) on which learned Counsel for the petitioners places some reliance. These observations, which will be found at pages 173 and 174 of the report, are:

If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one of two good reasons had been before them.

These observations were made with reference to Certain observations made by

Chagla J. (as he then was) when the case was before the Bombay High Court. The observations of Chagla J. were to the following effect:

As I have pointed out, there is no doubt that it was Competent for the Government of Bombay to detain the applicant on the ground that his detention was necessary inasmuch as he was acting in a manner prejudicial to the defence of British India and also for the maintenance of public order. It may be that the other two grounds given in the order are not justified by any Of the items in Sen. 7, but if the two or even one of the two grounds are justified as giving powers to the Indian Legislature, I do not think it makes any difference to the validity of the order if the Government of Bombay proceeds to give further reasons which are not well founded.

Gwyer C. J. expressed a doubt whether the aforesaid observations were a correct statement of the Jaw. learned Counsel for the petitioners contends that if public safety is not included in any of the subjects mentioned in sch. 7, Government of India Act, 1935, then the whole of the impugned Act must be held to be invalid inasmuch as it is not known to what extent public safety has influenced the Provincial Legislature in making the law in question. For one thing, the observations of Gwyer C. J. seem to me to be in the nature of obiter. No decision was given, but merely a doubt was expressed. Secondly, it is not correct to say that considerations of public safety cannot be held to be included within the subject mentioned as "public order" or "maintenance of public order." I must, therefore, hold, contrary to the arguments made by learned Counsel for the petitioners, that the use of the expression "public safety" in the preamble and in Section 2 (I) of the Act does not make the Act ultra vires the Provincial Legislature. In its true nature and character, the impugned Act is well within the subjects mentioned in item 1 of List n. I may, in passing, state that the decision in AIR 1943 1 (Privy Council) wa3 not accepted as correct on another point by their Lordships of the Privy Council: see AIR 1945 156 (Privy Council)

9. The next argument on behalf of the petitioners is that the Act has ceased to have legal validity after 14th March 1948, To appreciate this argument, it is necessary fo quote some of the terms of Section 1 of the Act. Sub-section (3) of Section 1 says that the Act shall remain in force for a period of one year from the date of its commencement. Then, there is a proviso which says that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that the Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification. The Act received, the assent of the Governor General on 15th March 1947, and came in force on that date. By notification no. 8734C-121/47, dated 11th March 1948, the Governor of Bihar extended the Act for a period of one year, purporting to act under the proviso referred to above. The contention of learned Counsel is that despite the notification the Act had ceased to be of any force after 14th March 1948. It is urged that by assenting to the proviso the Governor-General had

really delegated his power "to assent in favour of the Provincial Government. It is contended that such delegation is illegal and the proviso has no legal validity. learned Counsel has put his argument in this way: it is pointed out that in spite of Section 16 of the Act, which I have already quoted in extenso, the Act in effect deals with some of the subjects mentioned in List III (Con-current Legislative List) such as criminal law (item 1) and criminal procedure (item 2). It is then pointed out that some of the provisions of the Act, particularly those dealing with detention, are repugnant to the provisions of the Criminal Procedure Code, and without the assent of the Governor General, those provisions of the Act which are so repugnant will be void under the provisions of Section 107, Government of India Act, It is thus contended that the assent of the Governor General was a sine qua non for the validity of the enactment in question. If the assent of the Governor General was essential for the initial enactment, it would be essential for its re-enactment or continuance for another year. The contention before us is that the Governor. General has, in effect, delegated his power of assent to such re-enactment or continuance in favour of the Provincial Government.

10. The argument is ingenious, but will be found on a closer scrutiny to be unsubstantial. When the Governor-General gave his assent to the Act, he gave his assent to the proviso to Sub-section (8) of s. 1 of the Act; in other words, the Governor-General assented to that provision which says that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that the Act shall remain in force for a further period of one year. I do not see how it can be suggested that the Governor-General has delegated his power of assent; on the contrary, it seems to me that he has exercised his power of assent. The utmost that can be said is that the assent is a conditional assent, the condition being that the provincial Government can act only on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council. Conditional assent of this kind is not unknown to legislative practice; for example, there are many Acts the operation of which is postponed to a later date, it being left to the executive to decide on which date the Act will come into force. The Governor-General has given assent to such Acts, and I have never heard it being argued that the assent was a delegation of his power by the Governor-General.

11. A case of similar nature, though not exactly the same, went up to the Privy Council (AIR 1945 48 (Privy Council)). There an Ordinance was promulgated by the Governor-General by which certain Special Criminal Courts were set up, the Ordinance taking the form that the actual setting up of a Special Court under the terms of the Ordinance should take place at the time and within the limits judged to be necessary by the Provincial Government specially concerned. One of the arguments was that this was delegated legislation. With regard to this argument their Lordships observed:

Their Lordships are unable to see that there was any valid objection, in point of legality, to the Governor-General's Ordinance taking the form that the actual

setting up of a Special Court under the terms of the Ordinance should take place at the time within the limits judged to be necessary by the Provincial Government specially concerned. This is not delegated legislation at all. It is merely an example of the not uncommon legislative arrangement by which the local application of the provision of a statute is determined by the judgment of a local administrative body as to its necessity.

A reference was made to the well-known decision in *Queen v. Burah* (1878) 3 A. C. 889 : 4 Cal. 172 (p. c.)). I do not see any difference in principle between the kind of legislation referred to above by their Lordships of the Judicial Committee and the one under our consideration. The Legislature has in its wisdom left it to the executive to decide whether a particular Act should come in force at a later date or should be continued for a further period. When the Legislature incorporates such a provision in the Act, the provision is as much law as any other provision of the Act. When the Governor-General gives his assent to the entire Act, he gives his assent to the particular provision in question as well. I do not think any question of delegation arises here. It must be remembered that the Governor-General gives his assent to a bill passed by the Provincial Legislature when it is reserved for his consideration by the Governor, acting in accordance with the provisions of Section 75, Government of India Act. In giving his assent the Governor-General does not act as a delegate, and there is no question of the application of the principle *delegatus non potest delegare*.

12. In dealing with the arguments of learned Counsel for the petitioners on this topic I have assumed that the impugned Act contains provisions which may be said to be repugnant to the provisions of the Criminal Procedure Code, which is stated to be an exhaustive Code with regard to matters with which it deals, and that the assent of the Governor-General was necessary to avoid the effect of such repugnancy. I have shown that even on that assumption the impugned Act has been validly assented to by the Governor-General, and there is no question of any delegation of the power of the Governor-General. I must not be understood, however, to have expressed myself finally and conclusively on the question if the provisions of the Act, in spite of Section 16, relate to criminal law and procedure and if some of the provisions have the effect of amending the provisions of the Code of Criminal Procedure. There has been some argument before us about the legal effect of that part of the proviso to sub-s. (3) of S. 1 which says that the Provincial Government may continue the Act for a further period of one year "with such modifications, if any, as may be specified in the notification." It has been conceded before us that the notification by which the Act was continued for another year did not contain any modifications; therefore, the legal effect of that part of the proviso need not be considered.

13. Next, it has been contended that it is only the Provincial Government which can continue the Act for a further period of one year, but the notification continuing the Act for another year has been issued by the Governor of Bihar. learned Counsel for the petitioners has drawn a distinction between the

"Provincial Government" and the "Governor," and has contended that the continuance of the Act for a further period of one year has no validity inasmuch as the notification was not issued by the Provincial Government. This argument appears to me to be based on a misapprehension of the legal position with regard to executive acts of the Provincial Government. As far as I can make out, the Government of India Act, 1935, as it stood on the relevant date, does not use the expression "Provincial Government" with regard to the Provincial Executive. In Section 49 of the said Act it is stated that the executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any Court, Judge, or officer or any local or other authority. Section 50 states, inter alia, that there shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the said Act required to exercise his functions or any of them in his discretion. We have, therefore, to go to Indian law for the meaning of the expression "Provincial Government." In Section 3(43a), General Clauses Act, 1897, the expression "Provincial Government" is stated to mean, in a Governor's Province, the Governor acting or not acting in his discretion; and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the Government of India Act. This definition will not apply to a Provincial Act by virtue of Section 3 only. There is, however, another section, Section 4A, General Clauses Act, 1897, which says that the definition of "Provincial Government" given in Section 8 shall apply also, unless there is anything repugnant in the subject or context, to all Indian laws. "Indian law" has been defined in s. 3(27a) to include any law, ordinance, order, bye-law, rule or regulation passed or made at any time by any competent Legislature, authority or person in British India. It seems to me, therefore, that by virtue of Section 4A read with Sections 3(27a) and 3(43a), the expression "Provincial Government" used in the impugned Act means nothing more or less than the Governor of Bihar. If, therefore, the notification continuing the Act was issued in the name of the Governor, there was no illegality about it. I may also refer to Section 59, Government of India Act, 1935, which says that all executive action of the Government of Province shall be expressed to be taken in the name of the Governor. Sub-section (2) of the section says that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. It is thus clear that the Governor of Bihar was legally competent to issue the notification continuing the Act for a period of another year, and there is no allegation in any of the petitions that the notification was not authenticated in a manner required by subs. (2) of Section 59.

14. While on this point, I may dispose of another argument raised on behalf of the petitioners which does not challenge the Act itself, but challenges the orders of detention passed under it. The orders of detention in these cases are, more or less, in the following form:

Whereas the Governor of Bihar is satisfied with respect to the person known as...that with a view to preventing him from acting in a manner prejudicial to the public safety and the maintenance of public order it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by el. (a) of sub-a. (1) of Section 2, Bihar Maintenance of Public Order Act, 1947, the Governor of Bihar is pleased to direct that...be detained until further orders of the Governor of Bihar.

15. The contention of learned Counsel for the petitioners is that though the orders purport to be the orders of the Governor, duly authenticated, they are not really so, inasmuch as under the new rules of executive business the orders were passed by the Minister concerned and not by the Governor. This contention of learned Counsel is not based on any allegation made in any of the petitions. None of the petitioners ever alleged that the orders were not made by the persons who purported to make them. Moreover, I do not think that it matters whether the orders were actually passed by a Minister. I have already referred to Section 59, Government of India Act which says that all executive action of the Government of a Province shall be expressed to be taken in the name of the Governor. There can be no doubt that the orders in question came within the executive action of the Provincial Government, and they had to be expressed in the name of the Governor. This point was considered" by the Federal Court in AIR 1943 75 (Federal Court) . The majority of the Judges of the Federal Court were of the view that the person who should be satisfied, in connection with orders of detention under B. 26, Defence of India Rules, must be the Governor himself. Spens C. J. took a different view which was accepted by their Lordships of the Privy Council when the case went up to them (AIR 1945 156 (Privy Council)). Their Lordships "ex-pressed themselves as follows:

Their Lordships are, therefore, in agreement, with the learned Chief Justice of the Federal Court that such matters as those which fell to be dealt with by the Governor under Rule 26, could be dealt with by him in the normal manner in which the executive business of the Provincial Government was carried on under the provisions of Chap. II, of Part III, of the Act of 1935, and, in particular, under the provisions of Section 49 and the Rules of business made u/s 59.

If so, as is contended by learned Counsel for the petitioners the new rules of executive business contemplate that a Subordinate Officer, such as the Minister, need be satisfied before the orders are issued, the orders will still be expressed in the name of the Governor, I need not say anything more on this point, as it does not arise out of the allegations made in the petitions. I have already stated that in none of the petitions it was alleged that the person who was to be

satisfied under the law was not satisfied before the orders were made.

16. I now proceed to consider the arguments in the second branch. Firstly, it is contended that on a true interpretation of Section 2 (I) of the Act, the Crown must in all cases prove that the Provincial Government was reasonably satisfied that with a view to preventing the person from acting in a manner prejudicial to the public safety and the maintenance of public order, it was necessary to detain him. learned Counsel for the petitioners has contended that the legislation in question is not emergency legislation, and there is no presumption in favour of the Crown. He has a] be contended that the principles laid down in connection with similar orders of detention under R, 26, Defence of India Rules, in such well known English decisions as *Liversidge v. John Anderson* 1942 A. C. 206 : HOL. J. K. B. 724) and *Greene v. Secretary of State for Home Affairs* 1942 A.c. 284 : 111 L. J.K. B. 24) should not be applied in the cases under our consideration. learned Counsel suggests that those were cases of emergency legislation, whereas the impugned Act is not really emergency legislation. learned Counsel has gone so far as to suggest that emergency legislation in India can only be made when the Governor-General has made a proclamation of emergency u/s 102, Government of India Act.

17. In my view, these contentions of learned Counsel for the petitioners cannot be accepted as correct. Whether the piece of legislation with which we are dealing is emergency legislation or not must be considered from a conspectus of the whole Act. I have already referred to the pre. amble and the various provisions of the Act. The Act is of a temporary nature and considered in the light of the various provisions made, there can be no doubt that it is a piece of emergency legislation. This very point was considered by a Full Bench of this Court in *Murat Patwa Vs. Province of Bihar*, where after considering the preamble and the relevant provisions, it was stated as follows: "and this sub-section read with the preamble shows that the Act is in the nature of emergency legislation." It seems to me that the point is so obvious that I need not labour it. It is clear to me that the principles of interpretation laid down in *Liversidge v. Sir John Anderson* 1942 A. C. 206 : 110 L. J. K. B. 724) and *Greene v. Secretary of State for Home Affairs* 1942 A. C. 284 : 111 L. J. K. B. 24) will apply in the present cases. As Lord Wright had said in *Liversidge*¹ s case 1942 A.C. 206 : 110 L. J. K. B. 724), the word "satisfied" must mean "reasonably satisfied." It cannot import an arbitrary or irrational state of being satisfied. Their Lordships, however, agreed, Lord Atkin alone dissenting, that provided the authority making the order acts in good faith, it is his satisfaction that really matters and the Court cannot act as a Court of appeal over the decision of the authority making the order of detention. It was further pointed out that when the order ex facie showed that the authority making the order of detention was satisfied, a presumption arose in favour of the authority making the order of detention and a heavy onus lay on the petitioner to show to the contrary. These propositions are, I think, well settled now and have been accepted by the Courts in India. In *Kamla Kant Azad v. King-Emperor* 28 Pat 252 : AIR 1944 pat. 854) these propositions were

accepted, and it was pointed out that it was not for the Court to inquire into and pronounce on the validity of the reasons which led to the making of the order, provided the authority making the order had acted in good faith. The matter was put in a nutshell by Mackinnon L. J. in *Rex v. Secretary of State for Home Affairs*, (Ex parte Greene) (1942) 1 K.B. 87.

The power of the Home Secretary to issue a valid order depends on the fulfilment of a condition. The nature of that condition is very material. It is not the existence of an objective fact, for example, that the person concerned is an alien. It is the existence of a subjective state of mind in the Home secretary, that is, that he has reasonable grounds for believing certain facts to exist, and, by implication, that he honestly entertains that belief. If an order asserting the existence of that state of mind and belief, in valid form, has been made, the onus on the applicant of disproving its existence is obviously much more difficult than would be the disproof of an objective fact, for example, that the man is an alien. Evidence of the applicant that he does not know that there are any reasons for the Home Secretary's belief or denial that there are or can be any reasons for it, is not a sufficient discharge of the onus so as to call on the Home Secretary to explain and justify the assertion of his order.

18. The same view was expressed by their Lordships of the Privy Council in AIR 1945 156 (Privy Council) where their Lordships quoted with approval the dictum of the learned Chief Justice of the Federal Court of India in which he said:

It is quite a different thing to question the accuracy of recital contained in a duly authenticated order, particularly where that recital purports to state as a fact the carrying out of what I regard as a condition necessary to the valid making of that order. In the normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by a Court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a prima facie case that the recital is not accurate.

I think these principles apply with regard to the interpretation of Section 2 (1) of the Act and the orders of detention passed thereunder. If therefore the orders state that the Governor was satisfied that it was necessary to make an order of detention we must accept the position that he was so satisfied, unless there are grounds for holding that he was not acting in good faith, or that the order was a sham order or in excess of the powers given to him under the Act.

19. This brings me to the last and most important argument on behalf of the petitioners. Section 1 of the Act is in the following terms: ?

Where an order is made in respect of any person under Clause (a) of Sub-section (1) of Section 2, as soon as may be after the order is made, the authority making the order shall communicate to the person affected thereby so far as such communication can be made without disclosing facts which the said

authority considers it would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in the opinion of such authority sufficient to enable him to make if he wishes a representation against the order and such person may at any time thereafter make a representation in writing to such authority against the order and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest practical opportunity of doing so.

It has been held in the Full Bench decision already referred to, Bhubaneshwar Prasad Narain Sinha Vs. Rajeshwar Prasad Narain Sinha and Others, that the provisions of Section 4 of the Act are mandatory and absolute, and a failure to comply with those provisions would render the detention or continued detention un-lawful. The point, therefore, at once arises if there has been a real compliance with the provisions of Section 4 in these cases. I shall presently state the details of the grounds given against each one of the petitioners. But before I do so, it would be convenient if I say a few words about the true nature and meaning of Section 4 of the Act, The section is clearly meant as a safeguard against arbitrary detention by the executive, and it should be the duty of the Court to see that this safeguard is not whittled away. The section talks of three things (a) the grounds on which the order of detention has been made, (b) facts connected with those grounds or on which the grounds are based, and (c) such particulars as are in the opinion of the authority making the order of detention sufficient to enable the detenu to make a representation against the order. The section also says that the grounds of detention shall be communicated as soon as may be after the order is made and the detenu should be informed that he has the right to make a representation. The section also enjoins on the authority the duty to afford the detenu the earliest practical opportunity of making a representation. The scope of the section as a whole and with particular regard to the communication of the grounds as soon as may be, was considered in Murat Patwa Vs. Province of Bihar, . The question which we are now considering is of a somewhat different character.

20. The question is if and when the grounds given are general, vague and indefinite and no particulars are given to enable the detenu to make an effective representation, can it be said that the provisions of Section 4 have been complied with ? This question has been considered and answered in the negative in a large number of decisions of various High Courts in different Provinces with regard to similar Acts passed in those Provinces. Some of the decisions have been reported and some are still to be reported. learned Counsel for the petitioners has given us certified copies of several of those unreported decisions. I shall refer to some of them in detail. But one is struck by the unanimity of opinion expressed therein. All the High Courts whose decisions have been placed before us have unanimously held that the giving of vague, indefinite and general grounds of detention is no compliance with the provisions of the Act.

21. There are two decisions of the Bombay High Court, one a Division Bench decision and the other a Full Bench decision in which this view has been expressed. The Division Bench decision has been reported in *Be Krishnaji Gopal Brahma* 50 Bom. L. R 175 : AIR 1948 Bom. 860: 49 Cri.L. J. 524 and the Full Bench decision is reported *Shantaram Abasaheb Powar Vs. Keru Krishna Koli*, . Section a (I) of the Bombay Act, known as the Bombay Public Security Measures Act, 1947, corresponds to Section 2 (I) of the Bihar Act with a slight variation in the wording. The Bombay Act says that "if the Provincial Government is satisfied that any person is acting in a manner prejudicial to the public safety," etc. whereas the Bihar Act says "if the Provincial Government is satisfied that with a view to preventing a particular person from acting in a manner prejudicial to the public safety" etc. The Bombay Act seems to contemplate acts in the present tense, whereas the Bihar Act refers to acts in the future and is more clearly a preventive, and not punitive, measure. Section 3 of the Bombay Act corresponds to Section 4 of the Bihar Act with this difference that in the Bombay Act the clause "without disclosing facts which it considers against the public interest to disclose" comes after and not before that part of the section which says "shall communicate the grounds as be on as may be". I do not think this difference in the collocation of the clause makes any vital difference in interpretation.

22. It is clear that under the section the authority passing the order of detention shall communicate the grounds and I emphasise the word "shall"; but it need not disclose facts which it considers it would be against the public interest to disclose. A question has been raised before us if "facts" and "grounds" mean the same thing. There are some decisions in which it has been held that "grounds" mean the conclusions or reasons based on "facts". Whether such a distinction can be made or not, it seems to me that u/s 4 of the Bihar Act the facts may be so intertwined with the grounds that the Provincial Government may be in a position to say that the grounds cannot be disclosed without disclosing the facts. In none of the cases before us has it been alleged that there were valid grounds which could not be disclosed, because they were so intertwined with facts and disclosure of which would have been against the public interest. With regard to "particulars" it is clear from the section that a distinction is made between "grounds" and "particulars", in spite of the use of the word "other" before "particulars". The authority making the order is given a discretion to give such particulars as are in the opinion of that authority sufficient to enable the detenu to make a representation against the order of detention. The discretion, however, is not to be exercised capriciously, and if no particulars are given or particulars are given in such a way as to make it impossible for the detenu to make a representation against the order, then there is a failure to comply with the mandatory provisions of the section and the detenu is deprived of, to use the words of the section, "the earliest practical opportunity" of making a representation. In the Division Bench decision of the Bombay High Court referred to above it was held that u/s 8 of the Bombay Act the authority need not disclose all the facts, but the communication must give sufficient indication to the detenu

as to the reasons which impelled the authority to take action; although they may not be exhaustive, the grounds and the particulars should be sufficiently precise, so as to make it possible for the detenu to make a representation, and, if possible, remove any misapprehension on the part of the authority. In the Full Bench decision it was held that the grounds furnished must be clear, precise and accurate; grounds which are vague and indefinite and which contain no particulars whatever are no grounds at all within the meaning of Section 3 of the Bombay Act.

23. There have been a large number of decisions in the Allahabad High Court where applications u/s 491, Criminal P. C., are dealt with by a single Judge. The decisions, therefore, are all single Judge decisions. A similar view has been expressed in those decisions, for example, in *Emperor v. Inder Prakash*, Cri. Mis. no. 875 of 1948 : AIR 1949 ALL. 37) decided by Raghubar Dayal, J. on 29th June 1948. There is, however, one distinction between the United Provinces Act (Act iv [4] of 1947) and the Bihar Act. Section 5 of the United Provinces Act deals with the giving of grounds. There is no such clause in the United Provinces Act, similar to the clause

so far as such communication can be made without disclosing the facts which the said authority considers it would be against the public interest to disclose.

In some of the Allahabad decisions it has been held that all the grounds must be disclosed. I do not think one can go to that extent under the Bihar Act. It has, however, been pointed out in the Allahabad decisions that the Legislature has provided a safeguard in Section 5 of the United Provinces Act and the option given to the authority of giving such particulars as to enable a detenu to make representation cannot be exercised in such a way as to nullify the safeguard, which can be the only check on the possible abuse of the powers of the executive u/s 3 of the United Provinces Act. These observations apply with equal force to Section 4 of the Bihar Act. The same view has been expressed in a decision of the Oudh Chief Court given on 20th April 1948, which has not yet been reported.

24. The Nagpur High Court had occasion to deal with the same question with reference to the Central Provinces and Berar Public Safety Act, 1947. Section 5 of that Act corresponds to Section 4 of the Bihar Act with a slight variation in the collocation of the clauses. u/s 5, Central Provinces Act, the authority making the order need not disclose facts which it considers against the public interest to disclose. An option is also given to mention such particulars as are in the opinion of that authority sufficient to enable the detenu to make a representation. In *Shree Ramchandra Bapat of Indore v. Provincial Government, Central Provinces and Berar*, (Misc. cri. case No. 263 of 1948), decided by Vivian Bose and Sen, JJ. on 20th May 1948, the following observations were made

The law here, unlike the law which was previously in existence, makes certain definite safeguards in favour of the subject. It requires the Provincial Government to furnish the detenu with the grounds of his detention and such

particulars thereof as are sufficient in its opinion to enable him to make a representation, The word "particulars" is well known in the law and therefore when it is used in this Act, it must be construed in the same sense in which it is used in other Acts and other parts of the law. We hold that the particulars furnished in this case do not comply with the law. They are not particulars. They are merely general and vague assertions.

While dealing with the word "particulars" their Lordships said:

The word "particulars" is well-known. It is explained in the CPC in respect of many different kinds of suits, such as, for example, contracts torts, fraud, and undue influence and the like.

There has been some argument before us whether the particulars to be given to the detenu should be like particulars mentioned in a charge of indictment. One has to remember that a charge in a criminal case relates to an offence which has been committed. Here, however, we are dealing with a preventive measures, and it may not be feasible in all cases to mention the particulars in the same way as they are mentioned in a charge. But that does not mean that vague and general assertions can take the place of particulars. The particulars must be such as would enable the detenu to make a representation; otherwise the very purpose of giving particulars is defeated. A reference was made to another decision of the Nagpur High Court in Govind Laxman Bedekar v. Provincial Government of the Central Provinces and Berar, (Misc. cri. case no. 154 of 1948) decided by Hemeon and Hidayatullah JJ. on 8th April 1948. It was there stated that the Provincial Government was bound to state all the grounds and particulars. As I have said above, u/s 4, Bihar Act one cannot go so far as to say that all the grounds must be disclosed.

25. I now proceed to state the grounds in each individual case.

26. Criminal Miscellaneous Case No. 170 0/1948: Nek Mohammad: This man was arrested on 11th February 1948, for an offence u/s 17, Criminal Law Amendment" Act, 1908. He applied for bail on 16th February 1948. The order of detention was made on 23rd February 1948, and the grounds were served on 3rd March 1948. The grounds were:

That he has been one of the leading organisers of the Muslim National Guard which has been declared unlawful and he has been associated with the secret activities of this organisation,

It is stated that he made a representation to which no reply has been received.

27. Criminal Miscellaneous Case No, 180 of 1948:

Nizamuddin Ahmed: He was arrested on 10th February 1948, He applied for bail on 16th February 1948. The order of detention was passed on 23rd February 1948, and the grounds were served on 3rd March 1948. He made a representation on 6th March 1948, to which no reply has been received. The

grounds were:

That he has been an active member as well as an organiser in charge of the Bettiah Sub-divisional Muslim National Guard which has been declared unlawful. He has also been carrying out underground training of volunteers of this area and is a threat to public peace.

28. Criminal Miscellaneous Case No. 181 of 1948:

Gulam Ashraf: He was arrested on 10th February 1948. The order of detention was made on 23rd February 1948, and the grounds were served on 3rd March 1948. He made a representation on 5th March 1948, to which no reply has been received. The grounds were:

Specially trained at Patna he has been an active member of the Muslim National Guard which has been, declared unlawful and has been working as a secret courier. He has been closely associated with the secret and underground activities of this Muslim National Guard.

29. Criminal Miscellaneous Case No. 185 of 1948:

Mohammad Jan: He was arrested on 9th February 1948. The order of detention was made on 23rd February 1948. The grounds were served on 3rd March 1948. The grounds were:

That strongly suspected of illegally disposing of ammunition he has been an active member and Secretary of the Muslim National Guard which has been declared unlawful.

I may state here that this man was a licensed dealer in ammunition, and it is alleged by him in his petition that his stock of ammunition was seized in April 1947, and he could not have disposed of ammunition after the seizure of his stock.

30. Criminal Miscellaneous Case No. 188 of 1948:

Mohammad Mohiuddin: This man was arrested on 17th February 1948. The order of detention was made on 24th February 1948. The grounds were served on 6th March 1948. The grounds were:

That he has been an important worker of the Muslim League National Guard and is also brigadier of a secret branch of the Muslim League National Guard which has been declared unlawful.

A question of identity has been raised in this case, and it has been suggested that the correct name of the petitioner is Sheikh Mohiuddin and not Mohammad Mohiuddin. I shall deal with this point in due course.

31. Criminal Miscellaneous Case No. 193 of 1948:

Bhashar Krishna Rao Zinjarde and others: There are three petitioners in this

case? Bhaskar Krishna Rap Zinjarde, Bandu Phanse and Nardeo Gupta, All these persons were arrested on 5th February 1948. The order of detention was made on 11th or 13th February 1948. The grounds were served on 21st February 1948. The grounds were more or less the same for all the three petitioners, and were:

That he is an active organiser of E. S. S. which had been declared unlawful. He shares in the Ideology of this organisation in activities of which he fully participates and as such is considered to be a menace to public safety and maintenance of public order.

32. Criminal Miscellaneous Case No, 224 of 1948:

Sashidhar Dwivedi: This man surrendered before the Magistrate on 6th April 1948. The grounds in his case were:

That he as an active worker and organiser of Hajipur R. S. S. which has been declared an unlawful association by Government. He was giving training to the members of the E. S. S., along with Gopal Ambedkar the Chief Executive Organiser of the R. S. S.

33. Criminal Miscellaneous Case No. 233 of 1948:

Dr. K. P. be de: He was arrested on 8th February 1948. The order of detention was made on 16th February 1948. The grounds were served On 4th March 1948. The grounds were:

A Maharashtra employee of Rohtas Industry he laid the foundation of the R. S. S. Dalmianagar, is himself a worker and organiser and he has been the Chief Organiser at" Dehri and Dalmianagar of the B. S. S. which had been declared unlawful. Government has received report that he is one of the most important men of the inner circle of the Sangh and is a, definite threat to the public peace.

34. Criminal Miscellaneous Case No. 247 of 1948:

Pandit Thakur Prasad Tewari: He was arrested on 7th February 1948. The order of detention was made on 17th February 1948, and the grounds were served on 29th February 1948, The grounds were:

That he is an active member, a local leader of the president of the Supaul Branch of the R. S. S. which has been declared an unlawful organisation. Besides his local activities he has a contact with branches of the R. S. S. in Nepal and presided over the last winter camp of the R. S. S. at Nagpur. He shares "in the objects of this organisation which has been declared to be unlawful.

35. Criminal Miscellaneous Case No. 283 of 1948:

Ramrajib Singh: this man surrendered on 10th February 1948. The grounds were. "That he has been an active member of the R. S. S. which has been declared unlawful.

36. It would appear from the grounds quoted above that except in the case of one (Mohammad Jan), no other particulars have been given against any of the petitioners except the bars statement that he has been a worker, organizer or member of the R. S. S. or the Muslim League National Guard, as the case may be. In the case of some it has been stated that he is carrying out underground training of volunteers or working as a secret courier or is an officer of the secret branch of the Muslim League National Guard or has been giving training to members-of the R. S. S. or is an important man in the inner circle of the R. S. S. All these are vague and general assertions which mean nothing except membership of the organization known as the R. S. S. or the Muslim League National Guard, There is no reference to the nature of the activity indulged in by any of the petitioners, apart from membership of the R, S. S, or the Muslim League National Guard. It is not stated for what purpose the underground training of volunteers was made or what the secret branch was doing or what was the ideology or activity of the R. S. S. in which the persons detained. were engaged. It is to be remembered in this connexion that some of the petitioners were arrested on the day following the declaration of the organizations as unlawful organizations, and some were arrested within a few days. There is nothing in the grounds to show that any of these persons were engaged in activities prejudicial to public safety and the maintenance of public order, after the organizations of which they were members had been declared unlawful. I do not suggest that, under a preventive measure like the one under which the orders were made, the Provincial Government were not entitled to draw a conclusion from the past activities of the persons detained. There is, how-ever, no reference to the nature of their past activities apart from mere membership of a particular organization. Even where activities have been referred to, no particulars have been given and the nature of the activities is not indicated. There are general and vague statements to the effect that the activity was underground or secret etc. A secret or underground activity means nothing, unless the nature of the activity is indicated and some particulars at least are given. I know of organizations which help others in secret. Secret activity does not necessarily mean that it is an activity subversive of law and order.

37. learned Counsel for the petitioners has referred us to Shripad Ramchandra Jog and Others Vs. Emperor, . That was a case in which the accused persons were charged with being members of an association rendered unlawful by a declaration of the Bombay Government. Each of the accused persons was prosecuted u/s 17, Criminal Law Amendment Act, 1908. One of the questions which arose was whether the Crown was bound to prove that the accused persons were members of the association in question after it was declared unlawful. It was held that there was no justification whatever for presuming that because a person was a member of an association which, was lawful, he remained a member of that association after it had been declared unlawful. Beaumont, C. J. (as he then was) said that to make such a presumption would be to ignore the presumption of innocence which was always made in a

criminal case, and the presumption which is made in cases, whether civil or criminal, that people behave rightly and properly, He referred to the maxim *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium* (all things are presumed to be rightly done until the contrary is proved.)

38. The Criminal Law Amendment Act, 1908, is a punitive measure, and the question has been raised before us if the same principles would apply with regard to a preventive measure where there is no such onus of proof as there is on the prosecution with regard to an ordinary criminal case of the commission of an offence. I do not think that the question need be discussed from the academic point of view of presumptions only. Let us assume that there is no presumption of innocence with regard to a preventive measure. There is, however, no presumption that people would not behave rightly and properly after an organization has been declared unlawful. I fail to see how mere membership of an organization which has been recently declared unlawful, can be a good ground for detention u/s 4 of the Act, without any reference to the nature of the activity in which the person detained was engaged and without any particulars of that activity, It was, of course, open to the Provincial Government to proceed against any of the petitioners who continued to be members of an unlawful association u/s 17, Criminal Law Amendment Act. It is noteworthy that some of the petitioners were originally arrested for an offence under that section. I am unable to hold that a statement in the grounds that the detenu is a member of an organization or association which has been recently declared unlawful, without any reference to the nature of the activity in which he is or was engaged and without any particulars of that activity, is a sufficient compliance with the-mandatory provisions of Section 4 of the Act.

39. The learned Government Advocate has contended before us that the nature of the activities of the two organizations, the R. S. S. and the Muslim League National Guard, were indicated by the Provincial Government in the notifications by which they were declared unlawful and therefore, the petitioners must be held to have knowledge of the notifications in question; in other words, the learned Government Advocate wished us to incorporate those notifications in the grounds given. I do not think that Section 4 of the Act contemplates that the persons detained should gather the grounds from some documents of which they may have no knowledge or to which they may have no access in jail. Assuming, however, that the petitioners knew the reasons which led the Provincial Government to declare the two associations unlawful, it does, by no means, follow that they indulged in activities which were subversive of public safety and the maintenance of public order, either before or after the two organizations were declared unlawful. The crucial point is the nature of the activity in which the persons detained have been engaged, and in order to enable the detained persons to make an effective representation the Provincial Government must indicate the nature of that activity and give particulars thereof. In the absence of any indication of the nature of the activity and particulars thereof, the grounds must be held to be no grounds at all u/s 4 of the Act. While on this subject, I

must point out that some of the grounds have been stated in an unintelligent and ungrammatical form. For example, in the case of the three petitioners of Criminal Miscellaneous Case No. 193 of 1948 it has been stated that they shared in the ideology of the R. S. S. in the activities of which they participated and, as such, they are considered to be a menace to public safety. Nothing is stated about the ideology of the R. S. S. nor is it stated what the activities are in which they participated. It is difficult to understand what the expression "as such" means in the context.

40. I must refer in particular to the case of Mohommad Jan (criminal Miscellaneous case No. 185 of 1948.) In his case, at least one special ground is mentioned, namely, that he was suspected of illegally disposing of ammunition, apart from his membership of the Muslim League National Guard. If other particulars were given to remove the vagueness from this ground, it might have been one the sufficiency of which this Court would not be competent to question. But no particulars were given, and it would be impossible for the detenu to make any representation without knowing anything about the time or place of the alleged illegal disposal of ammunition. In the circumstances all that the detenu could say was that his stock of ammunition had already been seized in April, 1947, and he could not have dealt in ammunition after the seizure of his stock. On a careful consideration of the case of this petitioner, I am of the view that in his case also the ground is vague and no particulars have been given which would enable the detenu to make an effective representation.

41. Mohammad Mohiuddin has raised the question of mistaken identity. I do not think there is anything in this. Whatever may have been the position when he was first arrested, the order of detention mentions his father's name, and I am not prepared to accept the contention that he was arrested in place of another man bearing, more or less, the same name.

42. There is one other point which I must refer. The learned Government Advocate has not claimed privilege with regard to any of the papers which have been placed before us. In several of the cases the District Magistrate concerned has sent us a copy of the report of the Superintendent of Police addressed to the Government of Bihar for the detention of the particular person mentioned in the report. These reports are very enlightening and shew that nothing was known of the antecedents of the persons reported against, except that they were members of the R. S. S. or the Muslim League National Guard, the activities of which were considered to be prejudicial to public safety and the maintenance of public order. Nothing is stated about the nature of the activities in which the persons reported against were engaged. This would shew that, except mere membership of a particular organisation, which has been declared unlawful, there was nothing else against those persons.

43. The learned Government Advocate has contended before us that it was not necessary for the Provincial Government to disclose all the particulars, and that the decision in *Ex parte Greene's case* (1942) 1 K. B. 87 is an authority for the

proposition that the detention order would not be invalid, if the grounds are not correctly given. That was a case in which by mistake the Chairman of the Advisory committee served wrong grounds on the person detained. One of the questions raised was if that would invalidate the order of detention. Their Lordships found that no prejudice had been caused and that Greene had received earlier documents in which the correct grounds of detention and the particulars thereof were given. In that context Goddard, L. J, made the following observations on which the learned Government Advocate has relied:

Moreover, a mistake in the document served on him after he was in custody cannot, in my opinion, invalidate the original detention or render its continuance invalid.

These observations must, however, be read in the context in which they were made and with particular reference to the following earlier observations made by his Lordship, They were as follows:

It appears that when, under para (5) of the regulation, the appellant was informed of the grounds on which the order had been made against him and was furnished with particulars to enable him to present his case to the advisory committee, those grounds stated that he had been concerned in acts prejudicial to the public safety, instead of saying that he was of hostile associations which was the ground on which the order was in fact made. This was unfortunate, but the appellant was not and could not have been in any way prejudiced. He had been served with a true copy of the actual order, and the particulars given to him, or at least most of them, clearly stated why he was regarded as of hostile associations.

44. That case cannot, therefore, be an authority for holding that where the particulars are not given as required by law, the order of detention is still valid; on the contrary, in the first Budd case (*Rex v. Secretary of State for Home Affairs, Ex parte Budd*, *The Times*, May 28, 1941 : 1941 2 ALL 749, the order of detention was made on the ground of membership of an organization within the mischief aimed at by the regulation in question. The grounds served on Budd were, however, wrong grounds, The Court released the applicant, holding in effect that it was an essential requirement of the regulation that the prisoner should be informed truly of the grounds of the order made- by the Home Secretary. There is, therefore, no English decision in support of the view of the learned Government Advocate that though the particulars as required by law have not been given, the detention order must still be held to be valid, The conclusion at which I have arrived after a careful consideration of the grounds given in these cases is that there has been a failure to comply with mandatory provisions of Section 4. of the Act and the detention of the petitioners is, therefore, illegal. I must make it clear that I have expressed no opinion about the activities of the B. S. S. or the Muslim League National Guard: those activities may or may not be prejudicial to public safety and the maintenance of public order. All that I have found is that the authority making the order of

detention has given no indication to the detenus of the activities in which they were engaged nor has it given any particulars thereof, so as to enable the petitioners to make an effective representation. The result has been that the detenus have been deprived of the only safeguard the Legislature has provided against arbitrary detention.

45. In the result the rules should be made absolute in all these cases, and the petitioners, twelve in number, will be ordered to be released.

Meredith, J.

46. I am in complete agreement with the exhaustive judgment of Das J. and have nothing to add.

Sinha, J.

47. I also am of the same opinion.