
(1980) 06 GAU CK 0001
In the Gauhati High Court

Nibaran Bora,

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-06-1980

Acts Referred:

Constitution of India, 1950 — Article 13, 213, 22

Citation : (1980) CriLJ 1201

Hon'ble Judges : N. Ibotombi Singh, J

Bench : Single Bench

Judgement

N. Ibotombi Singh, J.—This is a batch of 9 petitions filed by the petitioners for writs of habeas corpus and for orders of release from their detention. The petitioners were directed to be detained under orders made by the District Magistrate, Gauhati, Kamrup, Gauhati, u/s 3(1) of the Assam Preventive Detention Ordinance, 1980 (hereinafter called "the said Ordinance"). The Governor of Assam, in exercise of the powers conferred upon him by Clause (1) of Article 213 of the Constitution read with Order No. GSR/889(E)-published in the Gazette of India, Extraordinary, dated 12th December, 1979, promulgated the said Ordinance, which provides for detention of persons in certain cases and matters connected therewith. The validity of the said Ordinance is challenged by one latin Goswami in Civil Rule No. 203 of 1980 before this Court. The petitioners in these petitions also challenge, inter alia, the validity of the said Ordinance, but they have not pressed it at the time of argument. Counsel for the petitioners has confined himself only to the validity of the orders of detention. As these petitions involve common questions of law and facts, they are heard together and disposed of by this common judgment. Shri Khanindra Chandra Barua, petitioner in Criminal Misc. Case No. 36 of 1980, whose case was heard in the beginning along with the other petitions, has since been released by the Government of Assam. The petition has, therefore, been dismissed by this Court by an order passed on 2-6-1980.

2. Pursuant to the orders of detention made by the District Magistrate, Kamrup,

Gauhati, passed on 18-4-1980, 6 of the petitioners were arrested and detained in the night between 18-4-1980 and 19-4-80-The grounds on which orders were made were communicated to them on 21-4-80. Two other petitioners (1) Nekibar Zaman in Criminal Misc. Case No. 56 of 1980 and (2) Shri Nripen Goswami in Criminal Misc. Case No. 57 of 1980, were similarly arrested and detained pursuant to the orders of detention made on 20-4-80. The grounds on which the orders were made were communicated to them on 29-4-1980.

3. The grounds in the case of all the petitioners are common, save the names of the associates with whom the petitioner was said to have conspired and instigated people in general in Assam and Kamrup district in particular to commit the alleged act, viz., to observe Assam Bundh. By way of specimen, the order of detention Annexure A to each petition, and the grounds on which the order was made, Annexure B to each petition, are re-produced below:

ORDER OF DETENTION:

WHEREAS I am satisfied with respect of the person named as Shri Nibaran Borah, S/o Harayan Borah, C/o P. L. P. Office, Taibullah Road, Gauhati that with a view preventing him from acting in a manner prejudicial to the maintenance of Public Order and supplies and services essential to the community in the Kamrup district, it is necessary to make the following" orders:

Now, therefore, in exercise of the powers conferred on me u/s 3(1) of the Assam Preventive Detention Ordinance, 1980, I, Shri K. Bora, District Magistrate, Kamrup do hereby direct that the said Shri Nibaran Borah be detained with immediate effect and until further orders at the Gauhati Jail.

Sd/- District Magistrate, Kamrup, Gauhati.

GROUND:

1. that you are an active member (Chairman) of Purbanehaliya Lok Parishad, a constituent of the Assam Gana Sangram Parishad. You alongjwith your associates Sarbashri Pabindra Deka, Biren Baishya, Bhrigu Phukan, jlitin Mali, Prafulla Mahanta and Moloy Barua and others conspired and instigated people in general of Assam and Kamrup district in particular to observe frequent "bundhs" including 52 hours "Assam Bundh" on 1-1-80 to 3-1-1980 and on 26-3-80, thereby paralysing normal life of the community which was instrumental in closing of shops, business establishments, Banks, Offices both Govt, and semi-Govt, educationa} institutions, Transport system etc. You are also contemplating to carry on such Bundh in future thereby paralysing normal life of the community.

Your above mentioned activities are considered to be prejudicial to the maintenance of public order.

2. that you along with your associates named above acted prejudicially by instigating people to put economic blockade through illegal picketing in the Oil India Pipeline Pumping Station at Narengi, Gauhati continuously with effect from

27th December, 1979 till date, thereby affecting normal flow of crude oil to the Refineries in Bongaigaon and Baruani which are necessary for maintenance of supplies essential to the community.

These activities of yours referred above constitute prejudicial activities as defined in Section 3(1) of the Assam Preventive Detention Ordinance, 1980.

Sd/- District Magistrate, Kamrup Gauhati.

4. The District Magistrate, Kamrup, Gauhati, reported the fact of order and the grounds therefore in each case to the State Government, which approved of the same.

5. The petitions in Criminal Misc. Case Nos. 32 to 38 of 1980, were presented to the Court on 29-4-1980 and those in Criminal Misc. Case Nos. 56 and 57 of 1980 on 2-5-80. The Court issued Rule Nisi on 29-4-1980, returnable on 7-5-1980 in the first set, and issued Rule Nisi on 2-5-80, returnable on 7-5-80 in the second set. In response to the Rule Nisi, the District Magistrate, Kamrup, Gauhati and the other respondents filed affidavits opposing the petitions. In the affidavit of the Detaining Authority, the District Magistrate, Kamrup, Gauhati, respondent 3, herein, no further particulars or facts are mentioned except to state that the grounds already furnished to the detenus are complete by themselves; nor have the respondents placed any other materials except the order of detention and the grounds connected with each detenu, before the Court to refute the contention that part of the procedure prescribed in Article 22(5) of the Constitution of India, was not complied with.

6. A perusal of Section 3(1) of the said Ordinance, clearly shows that before the Authority specified therein can pass an order, it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects, namely, (i) the security of the State, (ii) the maintenance of public order and (iii) the maintenance of supplies and services essential to the community, and that the Detaining Authority is satisfied that it is necessary to prevent him from acting in any manner prejudicial to one or other of the above three objects. It is well-settled that the satisfaction of the Detaining Authority to which Section 3(1) refers is a subjective satisfaction, and so is not justiciable. Therefore, it would not be open to the detenu to ask the Court to consider as to whether the said satisfaction of the Detaining Authority can be justified by the application of objective tests. If the grounds on which satisfaction is based are such as a rational human being can consider connected in some manner with the objects which are to be prevented from being attained, the question of satisfaction, except on the ground of mala fide, cannot be challenged in a Court of law. The legal position was explained by the Supreme Court in the case of *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, ; *Ram Singh and Others Vs. The State of Delhi and Another*, and *Puranlal Lakhanpal Vs. Union of India (UOI)*, .

7. There is catena of cases in which the Supreme Court has held that if some of the grounds furnished to the detenu are so vague that they would virtually

deprive the detenu of his constitutional right of making an effective representation under Article 22(5) of the Constitution to the Authority prescribed under the preventive law, the order of detention is open to challenge and is liable to be quashed being invalid. Similarly, if any ground furnished to the detenu is found to be irrelevant while considering the application of cases, such as, Clauses (i), (ii) and (iii) of Section 3(1) of the Preventive Law and in that sense is foreign or extraneous to the scope or purpose of the legislative provision, the satisfaction of the Detaining Authority on which the order of detention is based is open to challenge and the detention order is liable to be quashed. See *Ujagar Singh Vs. The State of The Punjab*, ; *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, ; *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, ; *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*, ; *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, and *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*,

8. Dr. Medhi, learned Counsel for the petitioners, assails the validity of the detention orders. His attack is two-fold. First, the grounds on which the order of detention was founded and which were furnished to the detenu are vague; no particulars were given to enable the petitioner to make an effective representation against the order of detention; and thus, the constitutional safeguard provided under Article 22(5) of the Constitution was infringed; Secondly, the grounds are non-existent or irrelevant for the purpose of making of orders u/s 3(1) of the said Ordinance.

9. Mr. P.A. Francis, Senior Advocate, Supreme Court, appearing for the respondents, submits that the grounds of detention are not vague, but are self-contained and that the grounds are germane to the orders of detention.

10. I propose to consider first the question as to whether any of the grounds are so vague that they could not be said to be grounds at all as would enable the detenus to make effective representations against the orders of detentions violating thereby constitutional safeguard provided under Article 22(5) of the Constitution.

11. The grounds communicated to the detenus are of two-fold character falling respectively under two categories contemplated by Section 3(1) of the said Ordinance, viz., (a) the maintenance of public order and (b) the maintenance of supplies and services essential to the community.

12. It may be mentioned that in the order of detention, it is stated that detention is to prevent the detenus from acting in a manner prejudicial to the maintenance of supplies and services essential to the community in the Kamrup district; but ground No. 2 on which the order of detention was based states that the illegal picketing affected the free-flow of crude oil to the refineries in Bongaigaon and Barauni, which is necessary for the maintenance of supplies essential to the community.

13. Elaborating the argument on the first question, it was emphasised by the

learned Counsel for the petitioners that the grounds are extremely vague and not specific; no particulars of the activities alleged are given. The grounds do not mention as to when, where or how the alleged conspiracy and instigation was made. Nor are mentioned the particulars of any overt act being committed by the detenu exhorting anybody to observe bundh by closing down shops and business establishments or abstaining from attending offices and thereby Paralyzing the normal life of the community. Nor are particulars given, it is urged, from which it could be concluded that the detenus were contemplating to carry on bundh in future and thereby paralyse normal life of the community. In substance, his contention is that the grounds which should be communicated to the detenus are all the basic facts and materials, which have been taken into account by the Detaining Authority in making the order of detention, and on which, therefore, the order of detention is passed. The basic facts and materials, it is contended, not having been furnished to the detenus in compliance with the constitutional mandate under Clause 65) of Article 22 of the Constitution to make an effective representations, the detenus are entitled to be released on that account alone. In support of his contention, reliance is placed on the decisions of the Supreme Court in (i) Chaju Ram Vs. The State of Jammu and Kashmir, (ii) Khudiram Das Vs. The State of West Bengal and Others, (iii) Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, and (iv) Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others,

14..In the first place, counsel for the respondents, submits that the grounds envisaged in Article 22(5) of the Constitution are by their very nature conclusions of facts and not a complete detailed recital of all the facts; the conclusions are the "grounds" and they must be supplied to the detenu; no part of such grounds can be held back "or can any more "grounds" be added thereto. It is urged that what must be supplied are the grounds on which the order has been made and nothing else. Reliance is placed in support of his contention on. The State of Bombay Vs. Atma Ram Sridhar Vaidya, In the second place, it is urged that the grounds are not vague. If they are considered to be vague, the detenu could have asked for the particulars as such right flowed from Article 22(5) of the Constitution, as to enable them to make representation to the authority prescribed under the Ordinance. Not having done so, there is no violation of Article 22(5) of the Constitution. Reliance is placed in support of his contention on (i) Lawrence Joachim Joseph D'souza Vs. The State of Bombay, and (ii) Sheoraj Prasad Yadav Vs. State of Bihar and Others,

15. The question as to whether the grounds furnished are vague or not is ultimately a question which has to be determined on a consideration of the circumstances of each case.

16. In my opinion, the principles laid down by the Supreme Court in The State of Bombay Vs. Atma Ram Sridhar Vaidya, (supra) on which reliance is placed by the learned Counsel for the respondents, do not support the contention of the learned Counsel for the respondents. The principles were explained by the

Supreme Court in the sub-sequent decisions. Section (i) Ujagar Singh 1953 Cri LJ 146 (supra), (ii) Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, and (iii) Shibbam Lal Sakscna 1954 Cri LJ 456 (supra).

17. In Ujagar Singh (supra), it was observed that the Supreme Court by a majority in The State of Bombay Vs. Atma Ram Sridhar Vaidya, held (a) that there is nothing in the Preventive Detention Act. 1950, to prevent particulars of the grounds being furnished to the detenu within a reasonable time so that he may have the earliest opportunity of making an effective representation against the detention order-what is reasonable time being dependent on the facts of each case; (b) that failure to furnish grounds with the speedy addition of such particulars as would enable the detenu to make a representation at the earliest opportunity against the detention order can be considered by a Court of Law as an invasion of fundamental right and safeguard guaranteed by the Constitution, viz., being given the earliest opportunity to make a representation.

18. In Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, the Supreme Court referred to the observations by a majority in The State of Bombay Vs. Atma Ram Sridhar Vaidya, where it was held that the person detained is entitled, in addition to the right to have the grounds of his detention communicated to him, to a further right to have particulars "as full and adequate as the circumstances permit" furnished to him so as to enable him to make a representation against the order of detention; the sufficiency of the particulars conveyed in the "second communication" is a justiciable issue, the test being whether it is sufficient to enable the detained person to make a representation "which on being considered, may_ give relief to the detained person". On the question of interpretation of Article 22(5), it was further held that two questions arose for consideration in that case; first, whether the grounds mentioned in sub-para (e) was so vague as to render it difficult, if not impossible, for the petitioner to make an adequate representation to the appropriate authorities, and second, if it is vague, whether one vague ground among others, which are clear and definite, would infringe the constitutional safeguard provided in Article 22(5) of the Constitution. Both these questions were answered in the affirmative. On the question of vagueness, it was held that the question was not whether the petitioner would in fact be prejudicially affected in the matter of securing his release by his representation, but whether his constitutional safeguard had been infringed. Preventive Detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. It was further held that the petitioner has the right under Article 22(5), as interpreted by a majority in Atma Ram's case, to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him" and that this constitutional requirement must be satisfied to each of the grounds communicated to the person detained, subject of course to a claim of privilege under Clause (6) of Article 22.

19. In *Khudiram Das* 1975 Cri LJ 446 (supra), the Supreme Court was concerned with the consideration of the question, -among others, as to what the word "grounds" envisaged in Article 22(5) of the Constitution means. Analysing the imperative mandates contained in Clause (5) of Article 22 of the Constitution, the Supreme Court held that the constitutional imperatives enacted in this Article are two-fold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. The Supreme Court proceeded with the observations that these are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security; the grounds contemplated under Article 22(5) mean all the basic facts, and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based; nothing less than all the basic facts and materials which influenced the detaining authority in making the Order of detention must be communicated to the detenu. It was further held that that is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the Order of detention. No avoidable delay, no short fall in the materials communicated shall stand in the way of the detenu in making an early, yet comprehensive and effective, representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the Constitution makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as the Maintenance of Internal Security Act, 1971. The Supreme Court, while explaining the contents of the grounds in Article 22(5), referred to its earlier decisions in *Golam alias Gulam Malick v. State of West Bengal*, W. P. No. 270 of 1974, D/- 12-9-1974, (Reported in *Golam alias Golam Mallick Vs. The State of West Bengal*, ; *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, and *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*,

20. In *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, the Supreme Court by a majority also held that while the grounds of detention are thus the main factors on which the subjective decision of the Government is based, other materials on which the conclusions in the grounds are founded could and should equally be conveyed to the detained person to enable him "to make out his objection against the order. To put it in other words, the detaining authority has made its decision and passed its order. The detained person is then given an opportunity to urge his objection which in cases of Preventive detention comes always at a later stage. The grounds may have been considered sufficient by the Government

to pass its judgment. But to enable the detained person to make his representation against the order, further details may be furnished to him. This was held to be the true measure of the procedural rights of the detained person under Article 22(5). In that context the Supreme Court observed:

The conferment of the right under Article 22(5) of the Constitution to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish grounds, i.e., materials on which the detention order was made. In our opinion, it is therefore, clear that while there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have an earliest opportunity to make the representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable the detained person to make the representation at the earlier opportunity.

21. The principle enunciated by the Supreme Court in *Atma Ram's* case, as explained in the sub-sequent cases discussed above, negatives the first limb of the contention of the learned Counsel for the respondents. It is crystal clear that all basic facts and materials which have been taken into account by the detaining authority in arriving at the conclusion and on the basis of which the order of detention is made are to be furnished in compliance with the constitutional requirements under Clause (5) of Article 22 so as to enable the detenu to make an effective representation to the authority.

22. As regards the second limb of the contention of the learned Counsel for the respondents, it may be noticed that in *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, the Supreme Court held that the grounds furnished to the detenu were vague. While holding so, it held that if the ground communicated to the detenu is vague, the fact that the detenu could have, but did not, ask for further particulars is immaterial; that would be relevant only for considering the question whether the ground is vague or not. The Supreme Court also explained in that case the observations in *Lawrence Joachim Joseph D'souza Vs. The State of Bombay*, There it was held that if the nature of the activity for which the detention order was such that no better particulars could be given, the detention cannot be struck down as bad. In that case, the ground of detention was that with the financial help of the Portuguese Government, the petitioner was carrying on espionage activities with the help of underground workers and that he was also collecting intelligence about security arrangements on the border area and was making the intelligence available to the Portuguese authorities. In answer to the contention that the ground was vague as no particulars were furnished, the Court first referred to the majority decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, as laying down that the constitutional right of a detenu under Article 22(5), consists of two components, namely, the right to be furnished with the grounds of detention and the right to

be afforded the earliest opportunity for making representation against the detention which implies the right to be furnished with adequate particulars of the grounds of detention to enable proper representation being made. Distinguishing the case, the Supreme Court in Prabhu Dayal's case observed:

No question of public interest is involved in the case in hand. At any rate, no such plea has been put forward in the return. Whether we would have harkened to any such plea in this case, if put forward, is another matter. Any general observations in that judgment will have to be read in the light of the paramount consideration of public interest involved therein. Nor are we satisfied that the fact that the petitioners could have asked for further particulars but that they did not do so, would be enough to salvage the orders of detention.

It further observed that what the Court said in Lawrence Jaochim's case was that if the grounds are not sufficient to enable the detenu to make a representation, the detenu, if he likes may ask for particulars which would enable him to make the representation and the fact that he had made no such application for particulars is a circumstance which may well be taken into consideration, in deciding whether the grounds can be considered to be vague. The case in Lawrence Jaochim on which reliance is placed is as such quite distinguishable from the cases on hand.

23. The decision in Sheoraj Prasad Yadav Vs. State of Bihar and Others, on which reliance is placed by the counsel for the respondents is of no assistance to him. It does not state a principle contrary to the principle laid down by the Supreme Court in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, that if a ground communicated to the detenu is vague, the fact that the detenu could have but did, ask for particulars is immaterial and that that would be relevant only for considering the question whether the ground is vague or not. In that case, the Supreme Court observed that the detenu could have asked for more particulars before filing his representation if the grounds were not very clear to him. But, on perusal of the grounds, the Court was not satisfied that any of them was vague and it did not enable the detenu to make his adequate representation; almost all necessary details were there in all the grounds and that none of them suffers from the vice of vagueness. In view of the clear exposition of law above, the second limb of the argument of the learned Counsel for the respondents is also negated.

24. At this stage, it may be necessary to refer to the observation of the Supreme Court of Kania, C. J. in The State of Bombay Vs. Atma Ram Sridhar Vaidya, as to what is meant by the expression "Vagueness of grounds". The observation runs as follows:

What is meant by vague? Vague can be considered as the antonym of "definite". If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the

circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. that is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Article 22(5) must be one which on being considered may give relief to the detained person.

25. In the light of the principles above, I now proceed to consider the question as to whether the grounds or any other grounds suffer from the vice of vagueness.

26. A break down of ground No. I which relates to activities considered to be prejudicial to the maintenance of Public Order yields the following components. It has two sub-heads:

Sub-head (A):

(I) You are an active member of an association, a constituent of Assam Gana Sangram" Parishad;

(II) You along with your some associates named therein conspired and instigated people in general in Assam and Kamrup District in particular:

(III) To observe frequent bimdh including 52 hours Assam Bundh on 1-1-80 to 3-1-80 and on 26-3-80;

(IV) The bundh was instrumental in closing shops, business establishment, banks, offices both Government and semi Government, educational institutions, transport system, etc.;

(V) The bundh paralysed the normal life of the community, and

Sub-Head (B):

I) You also are contemplating to carry on such bundh in future as to paralyse the normal life of the community. The second ground which is considered to fall in Clause (III) of Section 3 of the Ordinance consists of the following components:

(i) you along with your associates named in ground No. I above instigated people to put economic blockade,

(ii) by resorting to illegal picketing in the Oil India Pipe Line Pumping Station at

Narangi, Gauhati, continuously with effect from 27th December, 1979, till date, and

(iii) the picketing affected the normal flow of crude Oil to the refineries in Bon-gaigaon and Barauni, which is necessary for maintenance of supplies essential to the community.

27. A perusal of components No. (i) and (ii) of sub-head (A) of ground No. I would reveal that the petitioner was charged with having conspired with some associates named therein and instigated people in general in Assam and Kamrup District in particular to do an act specified therein. In my opinion, the bald statements are too wide and vague to be capable of being refuted. No particulars are mentioned as to the places where or the dates on which the alleged conspiracy and/ or instigation was made. Having regard to the statement that people in general in Assam and Kamrup District in particular are said to have been instigated, necessarily the nature of the alleged instigation, i.e by holding meetings or otherwise, and the role played by the detenu are to be mentioned. Not a word also is whispered in the ground of any intimidation or threat being held out to the people to observe Bundh by the petitioner and his associates. There is no mention, in any part of Annexure "B", which cannot be disputed, of the petitioner's asking the people to observe bundh against their free-will or volition. It would be impossible for anybody to make representation against such a vague ground. I am unable to accept the contention of the learned Counsel for the respondents that sub-head (A) of ground No. 1 gives the necessary basic facts for conclusion of the fact that the petitioner conspired with some others and instigated ppeople to commit the act attributed to him, nor can I accept his contention that facts from which the conclusion was, arrived at by the detaining authority, need not be disclosed to the detenus. No plea has, however, been put forward in the return in the cases on hand claiming privilege under Clause (6) of Article 22 that in the opinion of the detaining authority disclosure of facts was considered to be against public interest.

28. The component in sub-head (B) of ground No. I which states that the detenu was contemplating to carry on such bundh in future as to paralyse the normal life of the community is too general, devoid of particulars or basic facts and materials. The antecedent character or activities of the detenu from which it could be concluded that the detenu was contemplating to commit the act attributed to him are not mentioned at all. In the absence of particulars or basic facts and materials from which the conclusion was arrived at by the Detaining Authority, it would also be impossible for anybody to make any effective representation to the Authority. Thus, the gravamen of the charge in subhead (B) is lacking in all the basic facts and materials which were taken into account by the Detaining Authority in making the order of detention and on which the order of detention was based. It also suffers from the vice of vagueness. (See also Chaju Ram Vs. The State of Jammu and Kashmir, and Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others,

29. No doubt, as observed by the Supreme Court in *Naresh Chandra Ganguli Vs. The State of West Bengal and Others*, , the expression "Vagueness" is a relative term, and varies according to the circumstances of each case, but if the statement of facts contains any ground of detention which is such that it is not possible for the detenu to clearly understand what exactly is the allegation against him, and he is thereby prevented from making any effective representation, it does not require much argument to hold that one such vague ground is sufficient to justify the contention that the detenu's fundamental right under Clause (5) of Article 22 of the Constitution has been violated and the order of detention is bad for that reason alone. (See observations of the Supreme Court at para. 8 in *Mohd. Yusuf (supra)*).

30. It is true that by the vary nature, preventive detention is aimed at preventing the detained person from achieving a certain end and the authority making the order, therefore, cannot always be in possession of full detailed information, when it passes the order and information in its possession may fall short of legal proof of any specific offence or act, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Nonetheless,, the facts and events which are the foundation of the order of detention, must be furnished to the detenu as to enable the detenue to make an effective representation.

31. In the cases on hand, it is the case of the respondents that the grounds furnished to the detenus are self-contained. In the affidavit filed by the Detaining Authority, respondent No. 3, herein, no particulars or details are stated except stating that the grounds furnished are sufficient which would enable the detenus to make representation to the authority prescribed. It is observed by the Supreme Court in *Tarapada De and Others Vs. The State of West Bengal*, , that if the detained person contends that the part of the procedure prescribed in Article 22(5) was not complied with, the facts in each case have to be taken into consideration and the authorities are to place materials before the Court to refute that contention. (See observation at para-7). As mentioned earlier, the authorities have not placed any other materials before the Court to refute the contention in the cases before me.

32. I have no doubt in my mind that the language used in specifying ground No. I is so general that it would not enable the detained person to legitimately meet the charges against him, because the only answer which he can make in the circumstances is to say that he did not act, as generally suggested. Having regard to the general language used therein without necessary particulars or basic facts and materials, it is evident that the detenu was not given opportunity to make an effective representation against the order of detention in compliance with the imperative provision of Clause (5) of Article 22 of the Constitution.

33. In regard to ground No. 2, the gravamen of the charge, in sub-stance, is that the detenu along with his associates named in ground No. I, instigated people to commit the act attributed to him. This ground also is extremely vague as in the

case of ground No. I, for want of basic facts and materials. The basic facts and materials from which the conclusion was arrived at that the detenus instigated people to commit the act specified therein have not been mentioned. Envisage for a moment the position of the detenu. On the materials supplied to him and in the absence of the premises on which the conclusion is based the only answer to the ground would be a bare denial. Such sort of representation would be an idle formality, inasmuch as denial without any cogent argument to support it would convince nobody.

34. At the risk of repetition, I may refer to the case in *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*, The Supreme Court, while considering the extent and content of Article 22(5) of the Constitution, observed that the interpretation of Article 22(5), consistently adopted by the Supreme Court, is, however, one of the outstanding contributions of the Court in the cause of human rights. It also reiterates the well settled law that a detenu has two rights under Article; 22(5) of the; Constitution: (1) to be informed, as soon as may be, of the grounds on which the order of, detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first of rights, and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. It held that in either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason for saying that the inclusion of even a single irrelevant or obscure ground among several relevant and clear grounds is an invasion of the detenus' constitutional right as the the court is precluded from adjudicating upon the sufficiency of the grounds and it cannot sub-stitute its objective decision for the subjective satisfaction of the detaining authority.

35. I have given my anxious consideration to the contentions of the learned Counsel of the parties. On a consideration! of the grounds furnished to the detenus referred to above, I am led to conclude that both the grounds on which the order! of detention was passed in each case are vague or obscure. The vagueness of the grounds infringes the second part of detenu's fundamental rights safeguarded under Clause (5) of Article 22 of the Constitution; and on that account alone, the petitioners are entitled to be released from their detention forthwith.

36. I may deal with the last point raised by the learned Counsel for the respondents. On the application of the Union of India and the State of Assam, an interim order was passed by the Hon"ble Supreme Court, staying further proceedings of these petitions. The stay order was vacated by an order of the Hon"ble Supreme Court passed on 30-5-80. A direction was also given sub-

sequently by the Hon'ble Chief Justice of the Supreme Court to proceed further with the hearing of these petitions. Hearing was resumed on 6-6-80. Towards the end of the argument on behalf of the respondents on that day, a point is raised on behalf of the respondents, that during the pendency of these habeas corpus petitions, the State Government has confirmed the detention order which is under challenge in these petitions, on the report of the Advisory Board constituted under the said Ordinance, in each of these cases; and so, no relief can be granted to the detenus, without specific prayer being made in the petitions to set aside the orders of confirmation. No authority has been cited in support of the proposition. Learned Counsel for the petitioners, in reply, submits that there the petitioners challenge the validity of the detention orders as violating their fundamental rights guaranteed under Article 22(5) of the Constitution; and the order of detention in each case is void, being hit by the provisions of Article 13(1)(3) of the Constitution. It is, therefore, urged that the order of confirmation passed by the State Government is itself a nullity; and the question to quash such an order does not arise.

37. In my opinion, the contention of the learned Counsel for the respondents has no force. On the first day of the hearing on 7-5-80, learned Counsel for the respondents raised a preliminary objection to the further proceeding of these cases, in the view that the cases of detenus have been, referred to the Advisory Board constituted under the said Ordinance, and that pending reports by the Advisory Board in the matter, the Court was not to proceed with the hearing of these petitions. The Court by an Order passed on 7-5-80 overruled the objection on the principle of law laid down by the Supreme Court in *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, that the High Court has jurisdiction to proceed with the cases, as the detenus have come to this Court complaining that the detentions are bad, as violating their fundamental rights embodied under Article 22(5) of the Constitution. The effect of the order of the Court passed on 7-5-80 is that if the orders of detention are held void for infringement of the fundamental rights guaranteed under Article 22(5), the orders of confirmation, if any, by the State Government u/s 12(1) of the Ordinance are destitute of legal effect; for, they cannot validate void orders of detention made by the Detaining Authority. It appears to me that the orders of detention are void and not voidable, being hit by Article 13(1)(3) of the Constitution. I agree with the learned Counsel for the petitioners on this question. The question to set aside such orders of confirmation does not arise. It may arise when the orders are voidable, on the settled principle of law that a voidable order is valid till it is set aside or quashed. See *Judicial Review of Administrative Action*, 3rd Edition, by S.A. De Smith, at page 130, and *H. W. R. Wade Administrative Law*, 4th Edition, at Page 296. The contention of the learned Counsel for the respondents, which is devoid of force, is, therefore, rejected.

38. Learned Counsel for both the parties argued at length on the second question also. As I have held that the detention orders are illegal and void on the first question, it is not necessary for me to embark on the other question. Learned

Counsel of both the parties also conceded this legal position.

39. Before I part with the case, I express my indebtedness to the learned Counsel of both the parties for their valuable assistance by placing the laws bearing on the question.

40. In view of the discussions above, the orders of detention, which are said to have been confirmed by the State Government of Assam, are bad in law and void; and, consequently, the eight petitioners in Criminal Misc. Cases Nos. 32 (HC), 33 (HC), 34 (HC), 35 (HC), 37 (HC), 38 (HC), 56 (HC) and 57 (HC) of 1980, are ordered to be released forthwith from their detention. Rule is made absolute in all these cases.