
(1948) 12 GAU CK 0005
In the Gauhati High Court

Tarun Sen Deka and Others

APPELLANT

Vs

Government of Assam

RESPONDENT

Date of Decision : 03-12-1948

Acts Referred:

Assam Maintenance of Public Order Act, 1947 — Section 2(1)(a), 3

Citation : (1949) CriLJ 762

Hon'ble Judges : Lodge, C.J;Thadani, J

Bench : Division Bench

Judgement

Thadani, J.—We have before us for our consideration petitions of U detenus made under the provisions of Section 491, Criminal P. C. Of these detenuess Fazal Rahman, Jyotirmoy Chakravarty, Nurul Shekh, and Bipin Chakravarty have been released by the Provincial Government and we are not invited to give out decision in regard to their detention.

2. Against the petitioners, Tarun Sen Deka, Mohanlal Mukherjee, Bipin Dalai, Kamini Sarma, Arbindo Ghosh, Nirendra Lahiri, Upendra Chandra Das, Mohibuddin Musi fresh orders for their detention have been passed after they had been released and in view of our order passed in Nirendra Mohan v. Government of Assam, Criminal Mis. case No. 15 of 1948 on 19th November A.I.R.1949 Gau 87 their detention must be held to be legal and the validity of the period of their detention has not been questioned in view of Section 3, Assam Maintenance of Public Order Act (Act V [5] of 1947), 1947.

3. It is only the ease of the remaining two detenuess, namely, Bijoy Kumar Das and Sukhomoy Chakravarty which requires our consideration and I regret to say that I find myself in disagreement with the order proposed by the learned Chief Justice in regard to the validity of the duration of their detention.

4. It appears that on 21st May 1948, the District Magistrate of Goalpara Mr. K. C. Barua, passed the following orders against the petitioners Bijoy Kumar Das and Sukhomoy Chakravarty;

Whereas, I, Mr. K. C. Barua, District Magistrate, Goalpara, am satisfied from the report submitted by the Superintendent of Police, Goalpara, dated 21-5-48, with respect to Bijoy Kumar Das son of late Bhabani Das of Dhubri town.

That he has been carrying on regular violent agitation among the public of Dhubri town and its suburbs on the pretext of social services urging the illiterate mass to join hand³ with him and his leftist followers to do acts prejudicial to the public safety and maintenance of public order, always advocating seizure of power and subverting the existing Government established by law and that with a view to prevent him from acting in a manner prejudicial to the public safety and maintenance of public order, it is necessary to make an order directing that the said Bijoy Kumar Das be detained

I, in exercise of the powers conferred on me u/s 2, Clause (1), sub cl. (a), Assam Maintenance of Public Order Act, 1947 (Assam Act V [5] of 1947), read with Assam Government Notification No. HMI. 31/47 dated 21st February 1948, direct that the said Bijoy Kumar Das be detained in jail custody for period of 6 (six) months with effect from the date of service of this order under S 2 (1) (a) of the said Act, read with the same Government Notification.

Given under my hand and seal this 21st day of May 1948.

Whereas, I, Mr. K. C. Barua, District Magistrate, Goalpara, am satisfied from the report submitted by the Superintendent of Police, Goalpara, dated 21st June 1948. With respect to Sukhomoy Chakravarty, son of late Satis Chandra Chakravarty of Malkhangar, Dacca at present residing in Dhubri town, that he has been carrying on regular violent agitations amongst the public of Dhubri town and its suburbs, on the pretext of social services, urging the illiterate mass to join hands with him and his leftist followers to do acts prejudicial to the public safety and maintenance of public order, always advocating seizure of power and subverting the existing Government established by law and that with a view to prevent him from acting in a manner prejudicial to the public safety and maintenance of public order, it is necessary to make an order directing that the said Sukhomoy Chakravarty be detained.

I, in exercise of the powers conferred on me u/s 2, cl. (1), Sub-section (a), Assam Maintenance of Public Order Act, 1947 (Assam Act V [5] of 1947) read with Assam Government Notification No. HMI. 31/47 dated 21st February 1948 direct that the said Sukhomoy Chakravarty be detained in jail custody for period of 6 (six) months with effect from the date of service of the order u/s 2 (1) (a) of the said Act, read with the same Government Notification.

Given under my hand and seal this 21st June 1948.

5. The difference of opinion between the learned Chief Justice and myself has arisen as to the duration of the two orders referred to above with reference to Section 2, Sub-section (1) and (2) and Section 9 of the Act. Sub-sections (1) and (2) of Section 2 read as follows:

2. (1) 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 to do so, may make an order

(a) directing that he be detained ;

(b) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or persons as may be specified therein, he shall not be in any such area or place in Assam as may be specified in the order;

(c) requiring him to reside or remain in such place or within such area in Assam as may be specified in the order, and if he is not already there to proceed to that place or area within such time as may be specified in the order ;

(d) requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times and to such authority or person as may be specified in the order ;

(e) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions ;

(f) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order;

(g) otherwise regulating his conduct in any such particular manner as may be specified in the order; (2) A District Magistrate may exercise the power conferred by S 1. (a) of Sub-section (1) and an order so made by him shall be valid for a period not exceeding two months.

Under Section 2 of the Act, two authorities have been empowered to make an order in terms of Clause (a), namely the Provincial Government and the District Magistrate. The Provincial Government is empowered to make an order in terms of Clause (a) u/s 2 (1), whereas the District Magistrate is authorised to make an order in terms of Clause (a) u/s 2 (2) and not u/s 2 (1). A District Magistrate, however, acting as a delegate of the Provincial Government makes an order in terms of Clause (a) u/s 2 (1) and not u/s 2 (2). The meaning of the words in Section 2 (2), namely, that a District Magistrate may exercise the power conferred by Clause (a) of subs, (1), is, in my opinion merely this that a District Magistrate qua District Magistrate by virtue of Section 2 (2) may make an order of detention in terms of Clause (a) which a Provincial Government is empowered to make u/s 2 (1). This, I think is the distinction between the meaning of Sections 2 (1) and 2 (2) and the limitation prescribed by Section 2 (2) as to the duration of the detention, namely, a period not exceeding 2 months governs an order made by a District Magistrate qua District Magistrate u/s 2 (2). Section 2 (2) expressly says that an order so made by a District Magistrate shall be valid for a period not exceeding two months. The words "order so made" mean an order

made u/s 2 (2) and not u/s 2 (1).

6. Now, it is common ground that the two orders passed by the learned District Magistrate were passed by him in pursuance of the power delegated to him by the Provincial Government under a. 9 of the Act, which reads:

9. The provincial Government may by order direct that any power or duty, which is conferred or imposed on the Provincial Government, shall in such circumstances and under such conditions, if any, as may be specified in that direction, be exercised or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.

7. The simple question for consideration is for what period are the two orders to be regarded as valid? Are they to be regarded as valid for a period not exceeding six months or are they to be regarded as valid for a period not exceeding 2 months? In my view, they are to be regarded as valid for a period not exceeding six months for the reason that the orders passed by the learned District Magistrate of Goalpara were not orders passed by him qua District Magistrate u/s 2 (2), but were passed by him as a delegate of the Provincial Government, u/s 2 (1) the same section and sub-section under which the Provincial Government itself could have passed the orders. The orders in question, not having been passed u/s 2 (2), were not subject to the provision which says that an order passed u/s 2 (2) shall be in force for a period not exceeding 2 months.

8. u/s 9 of the Act, any person who is not an officer or authority subordinate to the Central Government can be directed to exercise the power or duty conferred on the Provincial Government. It is not disputed that a District Magistrate who is not subordinate to the Central Government can be so directed, but it is argued that the duration for which an order made by a District Magistrate who is so directed is valid for a period not exceeding 3 months. It is this argument which I am unable to accept.

9. It is to be observed that whereas the power of a District Magistrate qua District Magistrate, to make an order u/s 2 (2) is limited to Clause (a), there is no such limitation on his power as a delegate of the Provincial Government acting u/s 2 (1). Suppose, for instance, a District Magistrate as a delegate of the Provincial Government had passed an order under any of the cls. (b) to (g) of 8. 2 (1) can it be said that he had passed the order u/s 2 (2) ? The answer, in my opinion, is clearly in the negative in view of the fact that his power to make an order u/s 2 (2) is limited to the terms of clause (a) only. It follows then that when a District Magistrate as a delegate of the Provincial Government passes an order under any of the clauses (a) to (g) it is in fact an order passed by him under a. 2 (1) and not u/s 2 (2). I can see no justification for differentiating between an order passed by a District Magistrate as a delegate of the Provincial Government in terms of clause (a) and an order passed by him as such delegate under any of the other clauses. Moreover, the Provincial Government while directing a District Magistrate u/s 9, is empowered to prescribe conditions ot1

circumstances in addition to those contained in Section 2 (I). Supposing the Provincial Government had prescribed a condition, namely, that a District Magistrate as delegate of the Provincial Government will not be competent to pass an order in terms of clause (a) unless the person sought to be detained was participating in a strike. The District Magistrate then as delegate of the Provincial Government could not have detained any person unless he was satisfied that he was participating in a strike, but as a District Magistrate as distinct from a delegate of the Provincial Government he would still be competent to order a person's detention u/s 2 (2), independently of the Provincial Government and without his being involved in any strike. The latter order if passed would be subject to the provision limiting the duration of the order u/s 2(2) to a period not exceeding two months. But the provision in B. 2 (2) would not govern his order passed as a delegate of the Provincial Government in terms of clause (a) against a person who was participating in a strike, because such an order would be passed u/s 2(1) and would be valid for a period not exceeding six months by virtue of Section 3 of the Act.

10. In this view of the relevant sections of the Act, the question for consideration, in my opinion, is not whether powers in respect of an order of detention without trial in excess of those contained in Section 2 (2) of the Act can be delegated to a District Magistrate under the provisions of Section 9. Section 2 (1) which empowers the Provincial Government to make an order of detention does not prescribe the period for which an order of detention made by the Provincial Government shall be in force. It is only B. 3 of the Act which says that an order made u/s 2, shall not be in force for a period exceeding six months. It is true that Section 3 governs all orders whether made by the Provincial Government or a District Magistrate, but it also governs orders passed by a delegate of the Provincial Government. Moreover, it is within the competence of the Provincial Government or a delegate of the Provincial Government to make an order u/s 2 (I) (a) for a period not exceeding 2 months. It is only when the order of the Provincial Government or a delegate passed under B. 2 (1) (a) is silent as to the period or is in excess of 6 months that Section 3 of the Act would enable a Court to regard the order when it is silent as to its duration as one for a period" not exceeding 6 months or when it is an order in excess of 6 months to enable a Court to rectify the error and limit the period to one not exceeding 6 months.

11. When the Provincial Government delegates its power u/s 9 of the Act to a District Magistrate it does not tell the District Magistrate to make an order of detention for a period not exceeding 6 months. By virtue of the powers delegated to a District Magistrate, the District Magistrate is empowered to make an order of detention such as a Provincial Government is empowered to make u/s 2 (I) (a) which does not prescribe the period of detention. The question, therefore, for consideration, in my opinion, is under what sub-section of Section 2 does a District Magistrate as a delegate of the Provincial Government u/s 9 of the Act pass an order of detention. My view is that he does so u/s 2 (1) and not u/s 2

(2) and that in respect of an order made u/s 9 (I) the period for which it shall be in force is a period not exceeding 6 months by virtue of Section 3 of the Act.

12. I am reluctant to speculate as to the intention of the legislature and to substitute an intention different from the one expressed by it in the words of the enactment. The Legislature has empowered the Provincial Government to delegate its powers to any officer or authority subordinate to the Central Government. If it was intended to exclude the District Magistrate because the Legislature had conferred power upon him under s. 2, the Legislature could have said "to any officer or authority not being a District Magistrate and not subordinate to the Central Government."

13. I am also reluctant to displace a provision contained in one section of the Act and place it under another section.

14. In the present case I find it difficult to displace the provision as to the duration of the detention in Section 2 (2) and read it as if it were a proviso to S. 2 of the Act. The provision contained in Section 2 (2) governs an order made by a District Magistrate qua District Magistrate u/s 2 (2). It does not govern an order made by a District Magistrate as a delegate of the Provincial Government, not only because the provision expressly refers to an order so made, that is to say, an order made by a District Magistrate qua District Magistrate u/s 2 (2) but also because of the language of Section 9 which is different from the language of S. 2 (I) and I have attempted to illustrate the difference in the earlier part of my judgment by giving an example of a direction by the Provincial Government to its delegate to make an order of detention only when the person sought to be detained is participating in a strike. As Section 3 also governs an order passed by a delegate of the Provincial Government and there is no bar under the provisions of Section 9 to a District Magistrate being appointed a delegate, the proper place for the provision in Section 2 (2) is in Section 3 (2) and not in Section 3.

15. The learned Advocate-General has referred to a decision of a single Judge of the Allahabad High Court in *Daya Shanker Malaviya Vs. Emperor*, in which the same point, namely the period for which an order passed by a District Magistrate as delegate of the Provincial Government was validly in force was taken on behalf of the petitioner. In that case the enactment involved was the U. P. Maintenance of Public Order (Temporary) Act (IV [4] of 1917). Section 11 of the U. P. Act corresponds to Section 9 of the Assam Act and Section 3 (I) (a) of the U. P. Act corresponds to Section 2 (I) of the Assam Act and Section 3 (2) of the U. P. Act corresponds to Section 2 (2) of the Assam Act. *Wanchoo J.* in interpreting Ss 3 (1) (a), 3 (2) and 11 of the U. P. Act observed:

I do not think that there is any inconsistency between the power delegated to the District Magistrates and the power given to them u/s 3 (2) of the Act. It is obvious from the scheme of the Act that the Legislature intended that the District Magistrates would, by themselves, have power only for detaining a person for 15

days. But the Legislature further provided by giving the Provincial Government authority to delegate its own power u/s 11 that if the Provincial Government thought it fit that any District Magistrate should be invested with its own power of detention for six months, it could give that power to that District Magistrate. Section 11 does not except the delegation of the Provincial Government's power u/s 3 (1) (a). I do not, therefore, see any inconsistency or exceeding of the power granted under the Act in this case. What the Legislature has obviously provided is this. It granted the District Magistrates power of detention under the Act for 15 days. It also said that the Provincial Government's power of detention for six months could be conferred on the District Magistrates, if the Provincial Government so decided. Therefore, when the Provincial Government decided to do so by virtue of its power of delegation u/s 11, the District Magistrate got the authority to detain a person upto six months, as provided in the Notification and there was no question of there being any inconsistency between Section 3 (2) and the power delegated to the District Magistrate or the District Magistrate being delegated any more power than was contemplated by the Act. The order, therefore, detaining the applicant for three months cannot be illegal on this ground.

16. With respect I agree with his interpretation of the relevant sections of the U. P. Act which it is common ground correspond to Sections 2 (1) (a) and 2 (2) and 9 of the Assam Act.

17. I am, therefore, of the opinion that the petitioners' detention for a period not exceeding six months passed by the learned District Magistrate as a delegate of the Provincial Government is not illegal and that they are, therefore, legally detained. In the result I would dismiss their petitions.

Lodge, C.J.

18. This is an application under the provisions of Section 491, Criminal P. C, The material facts are as follows:

19. The fourteen petitioners were arrested and taken into custody ; and orders u/s 2 (1) (a), Assam Maintenance of Public Order Act, 1947, were made by the District Magistrate. Subsequently, in view of the decision of this Court in the case of Chyne v. The State, new orders u/s 2 (1) (a) of the above Act were passed by the Provincial Government with regard to petitioners (1) Tarun Ser Deka, (2) Mohanlal Mukherjee, (3) Bipin Dalai, (4) Kamini Sarma, (5) Arbinda Ghosh, (6) Nirendra Lahiri, (7) Upendra Chandra Das, and (8) Muhibuddin alias Mudi ; and petitioners Fazal Rahman, Jyotirmoy Chakravarty, Nurul Sheikh, and Bipin Chakravarty, were released from custody before this rule came up for bearing.

20. The case of those petitioners against whom fresh orders were issued by the Provincial Government is governed by our decision in Nirendra Mohan Lahiri v. Government of Assam Cri. Misc. Case No. 15 of 1948 : A. I. R. 1949 Gau 37 and the rule in their case must be discharged. We are now concerned in this rule only with the petitions of petitioners Bijoy Kumar Das and Sukhomoy Chakravarty.

21. In the case of these petitioners, orders of detention were passed by the District Magistrate, in each case, purporting to act under a direction made by the Provincial Government under the provisions of 3. 9, Assam Maintenance of Public Order Act, 1947. One of the orders reads:

Whereas, I, Mr. K. C. Barua, District Magistrate, Goalpara, am satisfied from the report submitted by the Superintendent of police, Goalpara, dated 21st May 1948, with respect to Bijoy Kumar Das, son of late Bhabani Das of Dhubri Town, that he has been carrying on regular violent agitations amongst the public of Dhubri town and its suburbs, on the pretext of social services, urging the illiterate mass to join hands with him and his leftist followers to do acts prejudicial to the public safety and maintenance of public order, always advocating seizure of power subverting the existing Government established by law, and that with a view to prevent him from acting in a manner prejudicial to the public safety and maintenance of public order, it is necessary to make an order directing that the said Bijoy Kumar Das be detained.

I, in exercise of the powers conferred on me u/s 2, Clause (1), Sub-clause (a) (Assam Maintenance of Public Order Act, 1947 (Assam Act V of 1947) read with Assam Government Notification No. HMI. 31/47, dated 21st February 1948, direct that the said Bijoy Kumar Das be detained in Jail custody for a period of 6 (six) months with effect from the date of service of this order u/s 2 (1) (a) of the said Act, read with the same Government Notification.

Given under my hand and the seal this 21st day of May 1948.

The other order is in exactly similar terms. These orders were passed on 21st May 1948 and 31st June 1948, respectively and more than two months have expired since the orders were passed.

22. The question for our consideration is whether, in view of the provisions of Section 2 (2), Assam Maintenance of Public Order Act, 1947, the above orders are valid for a period exceeding two months.

23. The Assam Maintenance of Public Order Act, 1947, makes provision for preventive detention, the imposition of collective fines, and the control of meetings and processions, and of certain essential services. Under the Act, the Provincial Government is empowered in the first place to pass the necessary orders, but there is a section, viz: Section 9 of the Act, which empowers the Provincial Government to delegate this power to any officer with certain exceptions. But, in respect of the power to order detention without trial, there is a specific provision in S. a (2) that the power may be exercised by a District Magistrate.

24. The question for our consideration is whether powers in respect of an order of detention without trial in excess of those contained in Section 2 (2) of the Act, can be delegated to a District Magistrate under the provisions of Section 9.

25. The sections material to a consideration of this question are Bs. 2 (1), 2 (2),

8 and 9 of the Act. They read:

Section 3(1):

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 ;

(b) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or persons as may be specified therein, he shall not be in any such area or place in Assam as may be specified in the order ;

(c) requiring him to reside or remain in such place or within such area in Assam as may be specified in the order, and if he is not already there, to proceed to that place or area within such time as may be specified in the order ;

(d) requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times and to such authority or person as may be specified in the order ;

(e) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions ;

(f) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order ;

(g) otherwise regulating his conduct in any such particular manner as may be specified in the order.

Section 2(2):

A District Magistrate may exercise the power conferred by Clause (a) of Sub-section (1) and an order so made by him shall be valid for a period not exceeding two months.

Section 3:

An order made u/s 2 shall be in force for a period not exceeding six months unless earlier revoked by the authority making the order:

Provided that any such revocation shall not prevent the making u/s 2 of a fresh order to the same effect as the order revoked.

Section 9:

The Provincial Government may by order direct that any power or duty, which is conferred or imposed on the Provincial Government, shall in such circumstances

and under such conditions, if any, as may be specified in that direction, be exercised or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.

26. On behalf of the petitioners it is urged that an order of detention u/s 2 (1) (a) passed by a District Magistrate is valid for a period not exceeding two months, by virtue of the provisions of Section 2 (2), and that under no circumstances can the order be valid for a longer period.

27. On behalf of the State, it is urged that distinction must be made between orders passed by a District Magistrate by virtue of the power conferred by B. 2 (2) of the Act, and orders passed by the same officer by virtue of powers delegated to him under the provisions of Section 9 of the Act. The learned Advocate-General contended that u/s 2 (2) of the Act, the District Magistrate exercised a power conferred on him by the Act, and that that power was limited by the provisions of the section ; but that under 8, 9 of the Act, the District Magistrate acted as a delegate of the Provincial Government and that consequently he exercised all the powers of the Provincial Government, and that the restrictions contained in Section 3 (2) did not apply.

28. On behalf of the Government, it was argued that it would result in anomaly if any other view were taken, in as much as obviously the Provincial Government may, u/s 9 of the Act, direct an officer subordinate to the District Magistrate to exercise the powers conferred by 8. 2, and in that case, u/s 3 of the Act, the orders so passed might remain in force for a period of his months. It was argued that it could never have been the intention of the legislature that officers subordinate to a District Magistrate might be entrusted with powers more extensive than those with which the District Magistrate himself could be entrusted.

29. I am not impressed by this argument. True, so far as the language of the statute goes, the Provincial Government has the power to delegate its functions to almost any officer or authority even to a Head Constable or a Daroga and if the Provincial Government did so delegate its authority and if at the same time the Provincial Government did not delegate authority to the District Magistrate, the Head Constable or Daroga would undoubtedly have more extensive powers under the Act than the District Magistrate, The answer seems to me obvious. The legislature realised that it was conferring powers on a responsible Government and that such a Government would not for a moment contemplate delegating powers of the nature conferred by this Act, on any officer or authority not occupying a post of sufficient responsibility. I would go further and hold that the provisions in Section 2 (2) of the Act indicate that the legislature contemplated the delegation of powers u/s 9 only to officers and authorities occupying a more responsible position than that of District Magistrate e. g., the Chief Secretary to the Government or the Commissioner of Divisions.

30. In my opinion, it is well established that where powers are conferred by

statute on any person, and by the same statute that person is authorised to delegate the powers to another, the powers of the delegate are co. extensive with the powers of the delegator, unless there is a .provision to the contrary in the statute itself. In the present case, I have no doubt that order under B. 2 (l) (a) of the Act passed by any delegate other than a District Magistrate and that orders under Sections 2 (l) (b) to 2 (l) (g) passed by any delegate, including a District Magistrate, shall be in force for a period not exceeding six months unless earlier revoked, in accordance with the provisions of Section 3. The question remains whether the powers of a District Magistrate acting as a delegate u/s 9 of the Act, are still limited by the provisions of 8. 2 (2) of the Act.

31. Section 2 (1) of the Act confers on the Provincial Government power to pass certain orders and Section 9 of the Act authorises the Provincial Government to delegate these powers. These two sections do not indicate how long the orders so passed are to remain in force. The duration of the orders must be ascertained from the other provisions of the statute. It follows, therefore, that these sections are not self-contained and must be read subject to other pro-visions of the statute. Further, since there is nothing to indicate that they are to be read subject to any other particular provision, they must be read subject to all the other provisions dealing with these orders, unless it can be shown that any particular provision is inapplicable.

32. One of the provisions dealing with these orders is to be found in Section 3, which is in perfectly general terms. Another such provision is to be found in Section 2 (2) of the Act. That Section 3 is applicable is conceded. The question is whether Section 2 (2) is also applicable.

33. Obviously, the first thing is to determine the literal meaning of the words of Section 2 (2). The first portion of the sub-section is clear; and we are now only concerned with the words "and an order so made by him shall be valid for a period not exceeding two months." In my opinion, this phrase is simply an abbreviation for the words "and an order made by him in exercise of the power conferred by Clause (a) of Sub-section (l) shall be valid for a period not exceeding two months." If this is correct, then, unless a limited meaning is to be attached to the words owing to the fact that they find place in s. a (2), and not in Section 3, they certainly apply to all orders passed by a District Magistrate under the powers conferred by Section 2 (l) (a).

34. On behalf of the State, it is argued that because the words find place in 3, 2 (2), they are to be read as meaning "an order made by a District Magistrate under the power conferred by Clause (a) of Sub-section (i), shall be valid for a period not exceeding two months" if made under the authority conferred by this sub-section, and not under authority delegated under 8. 9.

35. This argument has to be examined. But before doing so, I would observe that if the interpretation placed by the State on this provision, is merely one reasonable interpretation and is not the only reasonable interpretation, then in

my opinion this interpretation should be rejected in favour of any other reasonable interpretation, more favourable to the liberty of the subject. A statute restricting the liberties of the subject should be read strictly, and where there is an ambiguity, the interpretation favourable to the liberty of the subject should be adopted.

36. I should have expected this provision to have found place in Section 3, as a proviso to that Section instead of in Section 3 (a) ; and if the words which I regard as equivalent had occurred as a proviso to Section 3, I should have had no hesitation in holding that they were applicable to orders made by a District Magistrate whether he were acting by virtue of the power conferred by Section 2 (2) or by virtue of a power delegated u/s 9 of the Act. Can any different interpretation be placed upon them simply because they find place in Section 2 (2), instead of in Section 3 ? Or, to put it in other words, Did the Legislature in placing this provision in Section 2(2) intend that by so doing, a limited meaning, not found in the words themselves, should be ascribed to them ? I think not. If the Legislature had intended deliberately to provide that an order of detention by a District Magistrate acting as a delegate as distinct from acting u/s 2 (2), should remain in force for six months, it would have been easy to word the provision in unambiguous language. I am satisfied that the inclusion of the provision in Section 2 (2) -is merely an instance of inartistic drafting. I am not satisfied that a different meaning is to be given to the words than would be given if they had found place in Section 8, instead of in Section 2 (9). In other words, the full meaning is to be given to the actual words used, and not a restricted meaning which the words themselves do not justify.

37. A suggestion has been made in the course of argument that the effect of the word "so" in Section 2 (2) of the Act is to limit the provision to an order made by virtue of the power conferred under that sub-section. In my opinion, that is not correct; the words "an order so made by him" merely mean "an order made by him in exercise of the power conferred by Clause (a), of Sub-section (1), and do not mean "an order made by him by virtue of the power conferred by this sub-section".

38. For these reasons, therefore, it seems to me that the powers of a District Magistrate when acting as a delegate of the Provincial Government, are still limited by the provisions of Section 2 (2) of the Act, and that an order of detention passed by him is not valid for a period exceeding two months.

39. The learned Advocate-General referred in the course of his argument, to two decided cases, viz: *Pyari Lai Sharma v. Emperor* AIR 1918 ALL. 842 : 1918 Cri. L. J. 477 and *In re Khrhnaji Gopal Brahme* AIR 1948 36 Bom. 360 : 1918 Cri L. J.39 524. I am unable to appreciate the relevance of the latter decision to the present problem: the former decision, though based on the provisions of the U. P. Maintenance of Public Order (Temporary) Act, 1947, is in point and supports the view urged by the learned Advocate-General. With great respect, I am unable to agree with that decision.

40. In the result, therefore, I am of opinion that the orders of the District Magistrate in respect of petitioners (1) Bijoy Kumar Das, and (2) Sukhomoy Chakravarty were valid for periods not exceeding two months, and that they have, therefore, ceased to be valid. In these circumstances, in my opinion, the petitioners are entitled to be set at liberty.