(1948) 09 AHC CK 0022

Allahabad High Court

Case No: None

Durgadas and Others		APPELLANT
	Vs	
Rex		RESPONDENT

Date of Decision: Sept. 15, 1948

Citation: AIR 1949 All 148 : (1949) CriLJ 214

Hon'ble Judges: Malik, C.J; Wanchoo, J; Raghubar Dayal, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Malik, C.J.

These are applications under B. 491, Criminal P. G for the release of the applicants who were detained under the United Provinces Maintenance of Public Order (Temporary) Act, 1947 (U. P. Act (IV [4] of 1947). These cases came before my learned brothers, Raghubar Dayal and Wanchoo, who thought it proper to refer certain points for decision by a larger Bench in view of the fact that the points were of general importance. In his referring order brother Raghubar Dayal has said:

The grounds furnished to the various detenu applicants raise questions of fall or substantial compliance with the provisions of Section 5 of the aforesaid Act... they can be grouped for purposes of determining the question of compliance of S. S of the Act in general terms....I would include in one group the "Applications of Shiv Dutt...and others where the grounds give some details and do refer to the personal conduct of the detenu proceeded against, The grounds may not be full and complete.

In the other group I would include the applications of Girraj Kishore and...others ... In these cases the grounds are mentioned in much less detail and it is also possible to argue whether on the basis of those grounds one can reasonably come to the conclusion that the detenu was expected to act in any of the prejudicial manners mentioned in Section 3 of the Act, This would raise the question whether it is open

to the Court to enter into the question whether the District Magistrate could have been reasonably satisfied on the basis of the material before him.

After having made these observations he formulated the points for reference to the Pull Bench.

2. The first point on which he wanted an authoritative decision is the requirement of Section 5 of the Act in the abstract, if possible, and with reference to the grounds furnished:

In the cases referred to by him in particular, and also on the question whether it is open to this Court to question the satisfaction of the District Magistrate contemplated in Section 3 of the Act with respect to its being arrived at reasonably or otherwise.

3. In the cases that were referred by my brother, Wanchoo, he formulated three questions for answer;

(1) the scope and extent of Section 5 of the Act (iv [4] of 1947);

(2) What are the minimum requirements which must be fulfilled before it can be said that there has been compliance with Section 5 and whether they are fulfilled in this case:

(3) Whether non-compliance with S. B makes the detention illegal from the very beginning, i. e. invalidates the order u/s 8 or merely renders further detention improper, without invalidating the order u/s 3

4. Questions (l) and (2) formulated by my brother Wanchoo, more or less, overlap and are the same as the first question framed by my brother, Raghubar Dayal. The questions for decision, therefore, are really the three questions formulated by brother Wanchoo and the last question formulated by brother Raghubar Dayal:

Whether it is open to this Court to question the satisfaction of the District Magistrate contemplated in Section 3 of the Act with respect to its being arrived at reasonably or otherwise.

5. These cases have bean argued at length before us by the learned Additional Government Advocate and the Advocate-General on behalf of the Provincial Government and by counsel re. presenting the applicants. The arguments have oranged on a variety of points, but we shall confine ourselves to the points that have been referred to us.

6. The Provincial Legislatures have been given u/s 100, Government of India Act, 1935 (26 Geo. V, oh. 2) power to make laws for a Province, or any part thereof, with respect to any of the matters enumerated in List II of Sob. 7, while the Dominion Legislature has power to make laws with respect to any of the matters enumerated in List II in the said Schedule. The Dominion Legislature under List I item (l) has

power to make laws with respect to preven- tive detention for reasons of State connected with defence, external affairs or relations with Acceding States, while under List n, item (l) the Provincial Legislature has power to make laws with respect to:

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.

7. On the lapse of the Defence of India Rules on 1st October 1946, in view of the political situation in the country and the communal disturbances the Governor passed an ordinance (United Provinces Maintenance of Public Order Ordinance 1 of 1946) which was later replaced by the United Provinces Maintenance of Public Order (Temporary) Act, (Act iv [4] of 1947). The preamble of the Act is as follows:

Whereas for securing public safety, public order and communal harmony it is expedient to provide for preventive detention, imposition and recovery of collective fines, control of meetings and processions and of services essential to the life of the community and other purposes connected therewith;

It is hereby enacted as follows.

8. We are mainly concerned with S3. 8 (1) and 5 of this Act. Section 3 (l) and 5 are as follows:

Section 3 (I), "The Provincial Government, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the public safety, or the maintenance of public order or communal harmony it is necessary so to do, may make an order(a) directing that he be detained;...

Section 5."As soon as may be after an order in respect of any person is made under clause (a) of sub-b. (1) of Section 3, the officer or authority making the order shall communicate to the person affected thereby the grounds on which the order against him has been made and such other particulars as may In the opinion of such officer or authority, be sufficient to enable him to make a representation against the order and such person may at any time thereafter make a representation in writing to such officer or authority against the order. It shall be the duty of such officer or authority to inform such person of his right of making such representation and to afford him the earliest practicable opportunity of doing so. If the Government is satisfied on considering the representation made, that it is no longer necessary to maintain the order, the order made u/s 3 shall be cancelled.

9. Reliance has also been placed on B. IB of the Act which provides that:

No order made in exercise of any power conferred by or under this Act or any rule made thereunder shall be called in question in any Court.

10. u/s 8 (2) of the Act, all District Magistrates had power to pass an order of detention which was valid for a period of fifteen days only, while the Provincial Government could order detention for a period of six months u/s of the Act.

11. Section 11 of the Act authorises the Provincial Government to delegate any of its powers to any officer or authority, not being an officer or authority subordinate to the Central Government. Under this power of delegation, the Provincial Government has authorised all District Magistrates and certain Additional District Magistrates to peace orders u/s 3 for preventive detention for a period upto six months of persons with respect to whom they are satisfied that they are likely to act in a manner prejudicial to the public safety or the maintenance of public order or communal harmony. The powers u/s 6 of the Act have also been delegated to them where they have passed the detention order. Most of the orders that have come up for consideration before this Court were of either the District Magistrates or Additional District Magistrates. Some of them were also passed by the Provincial Government.

12. The scheme of the Act is that if the detaining authority is satisfied with respect to any person that he is likely to act in future in a manner prejudicial to public safety etc., he may foe detained for a definite period which may be extended upto the maximum period of six months. Within a reasonable time after his detention the detaining authority has to give to the detenu information why he has been detained and to tell him that he has a right to make a representation to the detaining authority and give him every facility to do so at the earliest opportunity. The detaining authority is then required to consider the representation if any made by the detenu and, if satisfied, that he has been unnecessarily detained, direct his release.

13. The questions that have mainly come up for consideration before the Court are, firstly, when should this information be supplied, and secondly, what should be the nature and extent of the information, that is, how detailed and specific should be the information about the materials on a consideration of which the detain-ing authority was satisfied or came to believe that detention was necessary and took action. The object of Section 5, as I made clear in the first case that came up to this Court, Emperor Vs. Sumer Singh, , is to enable the detenu to satisfy the detaining authority that the information received by it against him was incorrect and there was no real reason for his detention.

14. On the first point as to when the information should be supplied and what would be the result if no information is supplied within that time, there is no doubt or dispute now. Decisions are all one way that the information required to be supplied u/s 5 should be given within a reasonable time. It is also now well settled that non-compliance with the provisions of Section 5 of the Act makes further detention illegal or improper.

15. In a case, therefore, where the detaining authority has not supplied any grounds or particulars whatsoever, or has not supplied ground or particulars within a reasonable time and, therefore, Section 5 has not been complied with, the-detention become a illegal or improper. The Act makes a serious encroachment on the liberties of the subject and empowers the executive to keep a man in custody without trial. The provision of the Act have, therefore, to be strictly interpreted and must be fully complied with. Where the detaining authority has not complied with any mandatory provision of the Act, further detention becomes illegal or improper. It is not disputed by the learned Advocate General that the provisions of Section 5 are mandatory. They give the detenu a valuable right to know, why action has been taken against him and to make a representation that his detention is not justified, even though the representation is to the same authority that has directed his detention. Brett, L, J., in Dale''s case; Enraght''s case (1881) 6 QED 576 at p. 461 : 50 LJQB 234) observed:

It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take oar  to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with, extreme regularity the Court will not allow the imprisonment to continue.

With great respect I agree with this observation. The detention, therefore, becomes illegal if Section & of the Act is not complied with.

16. One of the points that has been referred to us is whether non-compliance with the provisions of Section 6, invalidates the detention order passed u/s 8 of the Act and makes it void ab initio, or it only makes further detention illegal. From Section 5 it will appear that the Act contemplates the arrest of the detenu first and the supply of the reasons to him afterwards. Non-compliance with a subsequent condition may make further detention illegal; but it would not be necessarily make the order under B. 3 void ah initio unless it can be assumed that as the pro. visions of Section 5 were not complied with the detention order u/s 3 was passed without any grounds whatsoever and was, therefore, not a bona fide order. I do not think that mere non-compliance with a subsequent requirement of the statute necessarily leads to the conclusion that the previous order of detention must have been without any justification and was not a bona fide act. I am of the opinion that ordinarily non-compliance with the provisions of Section 5 makes-further detention of the detenu illegal from the date of such non-compliance and it cannot have the effect of making the order void ab initio. I respectfully agree with the opinion expressed by the Full Bench of the Patna High Court in the case of Murat Patwa Vs. Province of Bihar, that it is the detention which becomes illegal if the grounds for the detention are not communicated to the detenu within a reasonable time. This is my answer to the third question formulated by my learned brother Wanchoo.

17. Coming to the first and second questions formulated by brother Wanchoo about the scope and extent of Section 5 and about the minimum requirements which must be fulfilled before it can be said that there has been compliance with Section 5, we must keep in mind the object with which the section was enacted. As I have already said, the clear intention of the Legislature is that the detenu should know why the detaining authority considers that he may act in a manner prejudicial to public safety, etc. Before the detaining authority can be satisfied that a person is likely to act in the future in a manner prejudicial to public safety etc., it must have some grounds on which that opinion is based. These grounds may, in some cases, be the previous conduct of the detenu, or the information that the detaining authority has about his future intentions, or his association with an organization that has been acting in a manner prejudicial to public safety, etc. The detenu is not entitled to know the evidence, nor the source of the information, but he must be furnished with the grounds for his detention and sufficient details to enable him to make out a case, if he can, for the consideration of the detaining authority.

18. It is urged before us by Mr. P. C. Chaturvedi on behalf of Durga Das that the Magistrate must set out the manner in which the detenu is likely to act in future and those are the grounds that have to be conveyed to the detenu u/s 5 of the Act. In other words, what he says is that the grounds in Section 5 mean the forecast of the manner in which the detaining authority believes a certain person would act unless he is taken into custody and the particulars are the other information for such belief. This argument does not appeal to me. The detaining authority is not expected to communicate to the detenu a forecast of his anticipated activities but to give the reasons for its satisfaction why the preventive detention is necessary in the interest of public safety etc. I have already said that the grounds of such belief may be his past activities, or information about his future intentions, or his association with others who have been acting in a prejudicial manner.

19. What information should be conveyed to the detenu which would be sufficient to enable him to make a proper representation would depend in each case upon the circumstances of that case and upon the grounds that had satisfied the detaining authority of the necessity for such detention. It is difficult to lay down any hard and fast rule about it.

20. It is true that there is a fundamental difference between a criminal trial for an offence already committed and preventive detention. In the case of a criminal trial, the accused is being prosecuted for what he has already done and, since the prosecution is charging him with that offence, the prosecution should be in a position to give detailed information about the alleged offence. Clear particulars have to be given in the charge so that the accused may know the offence with which he is being charged. Sections 535 and 537, Criminal P. C, however, provide that failure to frame a charge or a defective charge will not vitiate a trial unless the Court of appeal is satisfied that it has in fact occasioned a failure of justice. In the case of

preventive detention, on the other hand, the accused is not always detained for what he has done but for what he is expected to do and the same detailed information may not always be possible to have and to give But that does not justify the detaining authority in-making the provisions of Section 5 nugatory by giving such vague, indefinite or incomplete information that the detenu is not able to make an effective-representation. It has been urged that the detenu knows all about his own activities and what may be vague and indefinite to us, may not be vague and indefinite to him. I am not able to accept this argument, firstly, because the duty has been cast by the Legislature upon the detaining authority to supply the grounds for the detention and secondly, because the detenu is not expected to delve into his past and to guess which part of it has been taken an objection to and was the ground which satisfied the detaining authority that his detention was necessary in the interest of public safety, etc.

21. The detaining authority must have some grounds on which it is satisfied that the detention-order is necessary. Those grounds must be conveyed to the detenu. If only some of the grounds are conveyed to the detenu and others which have weighed with the detaining authority are not conveyed to him a fortiori he cannot give any explanation about the grounds that have not been conveyed to him. It, therefore, appears to be obvious that the grounds for detention which have weighed with the detaining authority must all be conveyed to the detenu. As regards particulars an option is given to the detaining authority that it has to convey only such other particulars as may in his opinion be sufficient to enable him to make a representation against the order. The section has been carefully drafted and it shows that the only particulars that a. detaining authority can keep back are such as it may consider to be unnecessary. The detainng authority is expected to apply its mind to -the particulars supplied and see that the particulars supplied are sufficient to enable the detenu to make a representation. The particulars that may not be necessary for the purpose of making a representation can be kept back. It may be pointed out that the section does not provide for withholding of any ground in public interest as is provided for in similar Acts in some other Provinces. The option to give only necessary particulars had to be given to the detaining authority for two reasons. If this option had not been given, firstly the detaining authority would have to give all the particulars whether they were necessary or not; and secondly, there may be cases where no particulars at all are needed. As the representation is to be made to the detaining authority itself, it is the best person to judge what details are necessary and should be communicated to the detenu, I have already said it and in view of its importance I may repeat it again that the discretion of the detaining authority is limited and it can rule out such particulars as may not be necessary in its opinion for a representation and this discretion has, there-.fore, to be honestly exercised.

22. It is not possible to lay down any detailed directions about the grounds and particulars supplied u/s 5 that may or may not be deemed sufficient compliance

with the provisions of the Act. To my mind, the grounds and particulars cannot be treated as two entirely distinct and separate matters. There is some difference between the two which is obvious from the fact that in the same section both the words have been used. Grounds are probably the main reasons for the belief or satisfaction mentioned in Section 3, and particulars are the details thereof, but there may be cases where the grounds themselves include the particulars and no further particulars are needed. It will be for the Courts in each case to judge whether the grounds and particulars supplied are vague, indefinite or incomplete or are sufficient to enable a detenu to make an effective representation. By the word ''effective'' I mean that he is able to place before the detaining authority facts and circumstances which would go to show that the belief that he would act in a manner detrimental to public safety, etc. is not justified, I have already said that all the grounds must be communicated and such particulars may be kept back as are un-necessary for purposes of a representation. I realise that these terms are vague and may not be helpful to the Courts that are called upon to decide each case. When we come to the grounds furnished u/s 5 in the six cases that are before us it will be possible to apply these observations to the facts of those cases.

23. Broadly speaking, I may say that, when the detaining authority is satisfied that a detenu would act in a manner prejudicial to public safety etc., because of the way he has acted in the past, it should be possible for the detaining authority to give details of his past activities which have come to its knowledge. When, on the other band, the detaining authority passes the order of detention, not because of any past activities of the detenu but merely on receipt of information about the detenu''s future intentions, it may not be necessary for the detaining authority to communicate the source of the information, but the nature of the information with such particulars as could be available should be communicated. Where the detenu is being detained, not by reason of any of his past activities but because he has joined or continues to be a member of an association of persons who have acted in & particular manner in the past and it is, therefore, expected that the detenu would act in a similar manner in future, the detenu is entitled to know details about the association or organization concerned, the nature of its unlawful activities and. his part in them, which has induced the belief in the mind of the detaining authority that the detenu would act in a manner prejudicial to public safety, etc.

24. I have already said in answer to question 3, that, if the provisions of Section 5 have not been complied with at all, further detention is bad. Further there may be a case where the communication u/s 5 may be so vague or indefinite that it does not give sufficient grounds and particulars to allow the detenu to make a representation, i. e., in form Section 5 has been complied with but in substance there has been a non-compliance. If the Court is of the opinion that in substance Section 6 of the Act has not been com. plied with it would, to my mind, amount to non-compliance with the provisions of Section 5 and would lead to the same result, i, e,, further detention of the detenu would become illegal or improper.

25. On behalf of the Provincial Government it has been urged that if the detenu has not complained to the detaining authority that the information supplied to him is vague and insufficient, he should not be allowed to make a grievance of it in Court and secondly, that if in the opinion of the Court the grounds and particulars supplied are vague, indefinite or insufficient we should give the detaining authority a chance to supply better grounds and particulars. We cannot accept any of these contentions. Section it has cast a duty on the detaining authority and if it has not done its duty and has thereby in. curred a liability, there is no reason why the detenu should make a complaint to it and not come to the Court and ask for his release on the ground that a mandatory provision of the statute not having been fulfilled his further detention has become illegal. In Emperor Vs. Sumer Singh, , I had given the detaining authority one week''s time to comply with the requirement of Section 5 of the Act after I had come to the conclusion that the provisions of Section 5 had not been complied with. After having considered the matter more fully and in view of the fact that I have already held that the grounds and particulars have to be supplied within a Reasonable time, so that the detenu may have "the earliest practicable opportunity" of making a representation, and an unreasonable delay would make the detention illegal, I agree with the opinion expressed by brother Raghubar Dayal in ''King Emperor v. Inder Prakash 1948 A.L.J.R. 385 : AIR 1949 ALL. 87) that
the legal consequences of the non-compliance with Section 5 cannot depend on the conduct of the District Magistrate subsequent to any such direction given by the Court. The legal consequences would depend on the .nature of the initial conduct and its effect in law.

26. Besides vague, indefinite and incomplete grounds there may be cases where grounds and particulars supplied u/s 5 though otherwise full and complete are such as are beyond the scope of Act IV [4] of 1947. The Act authorises detention to prevent a person from acting in a manner prejudicial to "the public safety or the maintenance of public order or communal harmony." The act was passed under the authority given in the Government of India Act, 1935, List 2, Item 1 which provides that the detention must be connected with maintenance of public order, If the grounds and particulars supplied show that there is no connection between them and maintenance of public order, the order must be held to be a fraud upon the Act and the detention of the detenu an illegal detention.

27. My answer, therefore, to question (l) and first part of question (2) framed by brother Wanchoo, is as follows:

(a) the grounds and particulars must be supplied to the detenu within a reasonable time;

(b) the grounds and particulars must not be vague, indefinite or incomplete and must convey sufficient information to the detenu to enable him to make a

representation that the detaining authority was wrong in its belief that his detention was necessary in the interest of public safety, etc. ;

(c) the grounds and particulars supplied under 9. 6 should show that the detention is within the scope and object of the Act. If the detention is beyond the scope and object of the Act, the detention must be held to be illegal;

(d) the detenu is not bound to complain first to the detaining authority that the information supplied is vague and indefinite before he can come to the Court ;

(e) if, in the opinion of the Court, the grounds supplied are vague, indefinite and insufficient, the Court must hold that further detention is illegal or improper, except in such cases where the Court can come to the conclusion that the order under B. 3 was itself bad ;

(f) if, in the opinion of the Court, such grounds and particulars have been supplied as enable the detenu to make an effective representation, so that the provisions of Section 5 have been substantially complied with, the detention would not be deemed to be illegal or improper merely because of the omission of some particular which has not prejudiced the detenu ; and

(g) the provisions of Section 5 are mandatory and the detaining authority must, therefore, strictly comply with them.

28. The second part of question No. 2 deals with the specific cases that have been referred to us and we are asked to express our opinion whether the minimum requirements of Section 5 were, fulfilled in each case. I shall deal with this part of the question when I come to the specific cases.

29. Corning now to the last question formulated by my brother Raghubar Dayal:

Whether it is open to this Court to question the satisfaction of the District Magistrate contemplated in Section 3 of the Act with respect to its being arrived at reasonably or otherwise.

Great reliance is placed on Section 15 that:

No order made in exeroi9e of any power conferred by or under this Act or any rule made thereunder shall be called in question in any Court.

30. This section would, however, protect only such orders as may have been passed in exercise of the power conferred by or under the Act or any rule made thereunder. If the order is not in exercise of any power conferred by or under this Act, or any rule made under it, or in other words is not made in conformity with the power conferred upon the detaining authority, the order is not protected by this section. In the case of AIR 1945 156 (Privy Council) Lord Than, kerton discussing Section 16 (l), Defence of India Act, which provided that

No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

observed that the

sub-section assumes that the order is made in exercise of the power, which clearly leaves it open to challenge on the ground that it was not made in conformity with the power conferred.

31. Section 8 lays down that the Provincial Government, in which term may be included the authority to which the delegation has been made, if satisfied with respect to any person that he would act in a particular manner which is prejudicial to public safety etc., may direct his detention. When in answer to a writ of habeas corpus the detaining authority produces the order of detention, it is open to the detenu to prove that the authority detaining him had not the power to pass the order. On production of the order, the Court would presume in favour of its validity, provided the authority passing the order had the jurisdiction to do so under the Statute or under any properly delegated power. It is further open to the detenu to prove that he is not the person for the detention of whom the order had been made or that the order is mala fide or a fraud on the Act or where the information supplied u/s 5 shows that it is beyond the scope and object of the Act, The learned Advocate-General does not contest so far. He, however, has urged that it is not open to the Court to go into the question of the satisfaction of the detaining authority and that the section contemplates the satisfaction of the authority passing the order and, if that authority is satisfied, whatever the grounds on which such satisfaction is based, it is not open to the Court to go into that matter.

32. It is admitted that, if the detenu can prove that the detaining authority was in fact not satisfied, the order of detention would be illegal, as the basis of the power of detention is the satisfaction of the detaining authority. In other words, the power to issue a valid order depends upon the fulfilment of a condition. That being so, the Courts have a right to see whether the condition has been fiulfilled i. e,, whether the detaining authority was in fact satisfied. The burden of proving not an objective fact but a subjective state of mind of the detaining authority is necessarily heavy, but it appears that it is not an impossible burden. In the case of AIR 1945 156 (Privy Council) the detenu was able to prove that the detaining authority was not in fact satisfied.

33. In similar Acts in most other Provinces there is a right given that facts, which the detaining authority may consider against public interest to disclose, may not be disclosed to the detenu under sections corresponding to our Section 5. In our Act, however, no such power of withholding facts is given to the detaining authority, with the result that it has to disclose all the grounds and sufficient particulars. A question may arise where the grounds and particulars supplied are such that the Court comes to the conclusion that no reasonable person could on that material be

satisfied that the detention order was necessary ''whether the Court can then hold that the detention order u/s 3 was bad?'' The learned Advocate-General has strongly relied on the case o Liversidge v. Sir John Anderson 1942 A.C. 206 : 110 LJKB 724) and the-case of Green v. Secretary of State for Home Affairs, reported in the same volume at p. 284 : 111 LJKB 24).

34. Green''s case 1942 AO 284 : 111 LJKB 24) arose out of an application for a writ of habeas corpus. He was detained under Regn. 18B,, para. (1), Defence (General) Regulations, 1939. Liversidge''s case 1912 AO 206 : 110 LJKB. 724), on the other hand, was an action for damages for false imprisonment for being detained under the same provision. Regulation 16, para, (l), gave the Secretary of State the power-to detain a person if he had reasonable cause to-believe that he was a person of hostile origin etc. One of the question discussed in the case was whether the Secretary of State for Home-Affairs was liable to satisfy the Court that there were reasonable ground for has belief, It would be noticed that our Act only use the word ''satisfied'' and not that he is ''satisfied on reasonable-grounds.'' In Liversidge''s and Greene''s cases (1942 AOC 284) their Lordships of the House of Lords held that the words in the Regulation ''has reasonable cause to believe'' in the context in which they are found, refer simply to the belief of the Secretary of State based on his view as to there being reasonable cause for the'' belief which justifies the detention order and therefore, the question whether the Secretary of State bad reasonable grounds to believe or not? could not be mooted in Courts. There are, however, two distinguishing features in those cases-One of the grounds on which their Lordships based this decision was that the Secretary of State could not be called on to disclose his in. formation or grounds of belief, if he took the view that it would be contrary to the public interest to do so. The other important distinction is that the Regulations were passed not by the Parliament but by His Majesty by Order in Council under the Emergency Powers (Defence} Act, 1989, which gave His Majesty by Order in, Council power

To make such regulations as appear to him to be necessary or expedient for securing the public safety, this-defence of the realm, the maintenance of the public order...for the detention of persons whose detention appears to the Secretary of State to be expedient in the interest of the public safety or the defence of the realm.

In view of the grave emergency, the Parliament had clearly given to His Majesty by Order in Council powers to make regulations to detain any person when expedient. If expediency was to determine the right to detain, then no question-of the reasonableness of the grounds for the detention could arise and in'' such a case it could not be said that the regulation was not co-extensive with the Act under which it was made and that the King in Council by the regulation intended to give the Secretary of State less powers than what Parliament clearly indicated could be given to him. In view of these distinctions, to my mind, the decisions in Liversidges'' case, (1942 AC. 206: HOLJ. k. b. 724), Greene''s case, (1942 AC. 284 : 111 LJKB 24) and Ex

parte Budd, LB 1942 1 AEIt. 373 : 1942 3 KB. 14), may be distinguished.

35. Their Lordships pointed out in Greene''s case, (1942 AO 284 : 111 LJKB 24), that the Secretary of State could not be called upon to disclose his information or grounds of belief, if he took the view that it would be contrary to the public interest to do so. Such is not the case under our Statute as u/s 5 the Statute has placed the burden on the detaining authority to disclose all the grounds for the detention and also to furnish sufficient particulars. In this, our Act is different from similar Acts in other Provinces which give the detaining authority the right to keep back facts which it may consider not desirable to disclose in public interest. The grounds and the particulars, therefore, being before the Court, if they are vague and indefinite, we have already held that Section 5 in that case has not been fully complied with; and if the grounds and particulars are not within the scope and object of the Act then we have held the order itself would be bad. If the grounds and particulars supplied fulfil the requirements of s. S and yet the Court considers that a reasonable person could not have been satisfied on that material that the detention of the detenu was necessary, the question arises ''whether in that case the Court can interfere?''

36. If the word ''satisfied'' is interpreted to mean the ''subjective satisfaction'' or ''the state of mind of the detaining authority'' then obviously it is not possible for the Courts to interfere. For however flimsy, if there is some material it cannot be said that there was absolutely no ground for satisfaction. To my mind, ''satisfaction'' only means that ''he must be in fact satisfied,'' or, in other words, ''honestly satisfied'' and not a dishonest satisfaction, which will be no satisfaction at all. We have to remember that the satisfaction has to be on the consideration of the materials available to the detaining authority which may not be legal evidence.

37. If the Legislature has used the words ''satisfied on reasonable grounds'' and the meaning of the words was not cut down by the con-text in which they were used as in Liversidge''s case, (1942 AO 206 : 110 LJKB 724), or if there was no provision giving the detaining authority the right to keep back some facts, the Courts would be justified in going into the question whether there were reasonable grounds for the satisfaction and it would be for the authority passing the order of detention to satisfy the Court that it had such grounds. It would be in that case for the detaining authority to disclose the grounds and to establish that there were reason, able grounds for the order. In our Statute, however, the words ''satisfied on reasonable grounds'' are not there. learned Counsel has placed great reliance on the observations of Lord Wright that ''satisfied'' must mean ''reasonably satisfied.'' The point for consideration before him was whether the words ''has reasonable cause to believe'' are anything more than a belief or mental state of the Secretary of State for Home Affairs. His Lordship said:

Except for the word ''reasonable,'' which I shall later discuss, there is no reference to anything but his personal belief, because I think that actual belief is implied by the

words ''has reasonable cause to believe,'' His belief is something personal to himself. The reasonable cause can only be material in so far as it is an element present to his mind which determines his own belief. The'' cause to believe Ms part of the content of his mind.

In a later part of the judgment discussing an earlier measure and the argument on the basis thereof His Lordship observed:

The point which was emphasized by the appellant in this appeal was that the language used in the earlier form of the regulation was different in that it omitted the word ''reasonable,'' The clause was: ''The Secretary of State, 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 or the defanoa of the realm it is necessary to do so may make an order..'' It is, as I apprehend, not contested that under this earlier form of the regulation the matter was left to the discretion of the Secretary, but it was contended that the change from ''if satisfied'' to ''if he has reasonable cause to believe'' made all the difference and converted the plenary power of the Secretary into a power the exercise of which was subject to the judgment of a Court of law. Such, it was said, was the compelling force of the word ''reasonable'' that by itself it overrode every consideration, however peremptory, and that it inexorably excluded the idea of a merely executive discretion and introduced the opinion of a Court instead. I have already rejected that construction of the actual language in the present a form of the regulation. The actual language is the acid test, and I see no ground for attaching so much weight to so Blight a difference in words. ''Satisfied'' must mean ''reasonably satisfied.'' It cannot import an arbitrary or irrational state of being satisfied. I find the distinction between ''reasonably satisfied'' and ''has reasonable cause to believe too tenuous....I do not find in the later edition any indication of evil to be cured, but, if defects are to be remedied, it was to be done by extending the Home Secretary''s power on the one hand, and on the other enlarging the safeguards of the subject. It does not in terms provide for review by the Court.

38. I have extensively quoted from Lord Wright''s judgment as the sentence " ''satisfied'' must mean ''reasonably satisfied'' " has been interpreted to mean that ''reasonably satisfied'' is something ''more than satisfied,'' while His Lord- ship appears to cut down the meaning of the words ''reasonably satisfied'' and say B that it does not imply anything more than the mental satisfaction of the Home Secretary.

39. Subject to what I have said above, I am of the opinion that it is not open to the Court to question the reasonableness or otherwise of the satisfaction of the detaining authority.

40. Coming now to the individual cases; in the case of Hari Ballabh, son of Radhey Ballabh and three others, Ram Niwas, Bachan Singh and Babu Earn Gupta, the grounds and particulars supplied u/s 5 to Hari Ballabh are:

That you being a member of the Rashtriya Swayam Sewak Sangh, an ''unlawful association'' are carrying on subversive activities, spreading alarmist statements and rumours and promoting communal and political friction and that it is moat unsafe to allow you to remain at large.

The grounds and particulars supplied to Ram Niwas and Bachan Singh are identical. The grounds and particulars supplied to Babu Earn Gupta are slightly differently worded and are as follows:

That you being a member of an unlawful association, the Rashtriya Swayam Sewak Sangh, are carrying on subversive activities and conducting yourself in such a way as to promote communal friction'' and incite political trouble and that it is most unsafe to allow you to remain at large.

The grounds, therefore, against these four are their association with the Rashtriya Swayam Sewak Sangh and the allegation that they are carrying on subversive activities and conducting themselves in a manner to promote communal friction and incite political trouble. No particulars at all have been given and the applicants are left to guess for themselves what is the particular activity that is objected to by the detaining authority.

41. Ram Niwas, Baohan Singh and Hari Ballabh were arrested early in March 1948 and the Rashtriya Swayam Sewak Sangh was declared an unlawful association on 5th February 1948. No information was supplied about the part played by the detenu in the unlawful activities of the organization which had induced the belief in the mind of the detaining authority that the detenu would act in a manner prejudicial to public safety etc. The organization may have had ostensible lawful objects and yet might have had certain secret aims and objects which are objectionable. A person may be a member of an organization only knowing its ostensible objects and unless information is given of the facts on which the detaining authority considered that detention was necessary, it is not possible for the detenu to make an effective representation. As a sample of how grounds and particulars should be given, I may refer to the case of Ex parte Lees, (1941) 1 kb. 72 at pp. 73 and 74 : 110 LJKB 42), where the grounds have been set out and particulars were separately given. I am, therefore, of the opinion that the particulars supplied in these four cases are wholly insufficient and Section 5, U. P. Maintenance of Public Order (Temporary) Act, 1947 (U. P. Act IV [4] of 1947) has not been complied with.

42. Coming now to the case of Shyam Sunder Tripathi the grounds and particulars supplied are almost similar to the grounds and particulars supplied to Hari Ballabh and others mentioned above. The only addition is that the detenu

Is suspected of sending threatening letters to the-Hon''ble Ministers and other high officials of the Government for action taken against the Rashtriya Swayam Sewak Sangh.

As regards the other information it is ''worded as follows:

You are a zealous worker of the Rashtriya Swayam Sewak Sangh which has been declared unlawful and have persisted in the activities of this organisation. Your action are prejudicial to the public safety and maintenance of public order and communal harmony.

Barring vague generalisations, there is nothing else, and except for denying the allegations made against him it does not appear how the detenu could have made an effective representation to the authorities concerned. For the reasons already given by me, I am of the opinion that in this case also there has been "ho substantial compliance with Section 3. ;

43. Mohammad Sharif has already been released and learned Counsel has stated that as the application has become infructuous he does not propose to press it. It is not, therefore, necessary to express any opinion in his case.

44. We then come to the case of Amir Hasan, son of Ahmad Husain. In the notice u/s 5, it is mentioned that he is an active worker of the Muslim National Guard, that he is inciting communal feelings with a view to commit acts of violence and that arms and ammunition were recovered from his house and his remaining at large is dangerous to public peace and safety. The particulars supplied were that unlicensed arms and ammunition were found from his house. It was possible for the detaining authority if the notice had been carefully worded to give details about the date, time and place etc, when arms and ammunition were recovered, but we find from the affidavit filed in this Court that the applicant knew what incident was being referred to and was not prejudiced. There has been, therefore, substantial compliance with the provisions of Section 5 in this case.

45. The last group consists of two applications, one by Durga Das, son of Hira Lai, and the other by Rajendra Sharma, Jugan Lai and Gyanendra. The grounds and particulars supplied to them u/s 6 are, more or less, in identical terms. The applicants were ordered to be detained somewhere towards the end of April. The notices under a. 5 are dated 28th April 1948, and they are in the following terms:

Whereas the Rashtriya Swayam Sewak Sangh Laving been declared an unlawful association as its members ate likely to commit act of violence, disturb the public tranquillity,-and interfere with the administration of the law, and;

Whereas I am satisfied that you...are an active member of this unlawful organization and are still attending its private meetings and inciting people to carry on Its activities in order to disturb the public tranquillity, and interfere with administration of the law...

46. The above notice mentions the name of the organization, the fact that it was declared unlawful, the nature of its unlawful activities and the fact that the detenu was taking part in them, but no particulars are given which would enable the detenu

to make an effective representation. It has been mentioned that the detenu was attending private meetings; if the place and time had been given, the detenu could have satisfied the detaining authority that on the particular date or at the particular time be was at another place, i. e something in the nature of an alibi. The learned Advocate. General has relied on the decision in Ex parte Budd (1942) 1 ALLBB. 373 : 1942 2 KB. 14), where Budd had been detained by reason of his membership of an organization known as the British Union before it was dissolved. In the case of Budd the organization known as the British Union had been effectively suppressed. The fact that it was effectively suppressed was admitted by the Home Secretary in the House of Commons. It was argued that if the organization had been effectively suppressed, there could be no reason for the detention of Budd on the ground that he was at one time a member of an organization which no longer existed. But as was pointed out, an organization may have been legally dissolved, but it may still exist in fact Lord Greene observed that "an organization may well cease to be dangerous if all its members are interned, but it may become dangerous if they, or perhaps any one them, are or is released." Reliance is placed by the learned Advocate General on these observations of Lord Greene, but under Regn. 18B (1A) if the Secretary of State is satisfied that a. person had been a member of any of the organizations mentioned in that Regulation, the orders of detention could be passed against him. The mere fact, therefore, that Budd had at one time been a member of the British Union would be sufficient under this Regulation to justify the Secretary of State in taking him into custody. The decision in Ex parte Budd (1942 1 ALLEE 873 : 1942 2 KB. 14), is therefore, distinguishable. The Rashtriya Swayam Sewak Sangh was declared an unlawful association in February 1948. The orders of detention were passed in these cases in April 1948, This distinguishes these cases from those where the persons were detained on the ground of their membership of the organization soon after the organization was declared unlawful. No particulars, however, having been furnished which could enable the detenu to make an effective representation, I must hold that there has not been substantial compliance with the provisions of Section 6 of the Act.

47. My answers to the questions referred to-the Full Bench are as indicated above.

Raghubar Dayal, J.

48. I agree.

Wanchoo, J.

49. I agree.