# Dr. Ram Manohar Lohia Vs State of Bihar and Others

**Court:** Supreme Court of India

**Date of Decision:** Sept. 7, 1965

**Acts Referred:** Constitution of India, 1950 â€" Article 19, 21, 22, 226, 32
Defence (General) Regulations, 1939 â€" Regulation 18
Defence of India Act, 1962 â€" Section 3, 3(1), 3(15), 40(2), 44
Defence of India Rules, 1962 â€"

**Citation:** AIR 1966 SC 740 : (1966) 14 BLJR 513 : (1966) CriLJ 608 : (1966) 1 SCR 709

**Hon'ble Judges:** Raghubar Dayal, J; R. S. Bachawat, J; M. Hidayatullah, J; J. R. Madholkar, J; A. K. Sarkar, J

**Bench:** Full Bench

**Final Decision:** Allowed

## Judgement

Sarkar J. - Hidayatullah J. [on behalf of himself and Bachawat J. and Mudholkar J. delivered separate concurring Judgment. Raghubar Dayal J.

delivered a dissenting Opinion.

Sarkar, J.
Dr. Ram Manohar Lohia, a member of the Lok Sabha, has moved the Court under Art. 32 of the constitution for a writ of

habeas corpus directing his release from detention under an order passed by the District Magistrate of Patna. The order was purported to have

been made under r. 30 [1] [b] of the Defence of India Rules, 1962.

2. Dr. Lohia, who argued his case in person, based his claim to be released on a number of grounds. I do not propose to deal with all these

grounds for I have come to the conclusion that he is entitled to be released on one of them and to the discussion of that ground alone I will confine

my judgment. With regard to his other ground I will content myself only with the observation that as at present advised, I have not been impressed

by them.

3. The order of detention runs thus: Whereas I. J. N. Sahu, District Magistrate. Patna am satisfied..... that with a view to preventing

him from acting in any manner prejudicial to the public safety and the maintenance of law and order, it is necessary to make an order that he be

detained. Now, therefore, in exercise of the powers conferred by clause [b] of sub-rule [1] of rule 30 of the Defence of India Rules, 1962 read

with Notification No. 180/CW..... I hereby direct that..... Dr. Ram Manohar lohia be arrested..... and detained in the Central Jail

Hazaribagh, until further orders.""Now the point made by Dr. Lohia is that this order is not in terms of the rule under which it purports to have been

made and, therefore, furnishes no legal justification for detention. The reason why it is said that the order is not in terms of the rule is that the rule

does not justify the detention of a person to prevent him from acting in a manner prejudicial to the maintenance of law and or while the order

directs detention for such purpose. It is admitted that the rule provides for an order of detention being made to prevent act prejudicial to the

maintenance of public order, but it is said that public order and law and order are not the same thing, and, therefore, though an order of detention

to prevent acts prejudicial to public order might be justifiable, a similar order to prevent acts prejudicial to law and order would not be justified by

the rule. It seems to me that this contention is well founded.

4. Before proceeding to state my reasons for this view, I have to dispose of an arguments in bar advanced by the respondent State. That

arguments is that the petitioner has, in view of a certain order of the President to which I will presently refer, no right to move the court under Art.

for his release. It is said that we can not, therefore, hear Dr. Lohia''s application at all. To appreciate this contention, certain facts have to be sated

and I proceed to do so at once.

5. Article 352 of the Constitution gives the President of India a power to declare by Proclamation that a grave emergency exists whereby the

security of India is threatened inter alia by external aggression. On October 26, 1962, the President issued a Proclamation under this article that

such an emergency existed. This presumably was done in view of China''s attack on the north eastern frontiers of India in September 1962. On the

same day as the Proclamation was made, the President passed the Defence of India Ordinance and rules were then made thereunder on

November 5, 1962. The Ordinance was later, on December 12, 1962, replaced by the Defence oÃ¯Â¿Â½ India Act, 1962 which however continued

in force the rules made under the Ordinance. On November 3,1962, the President made an order under Art. 359(1) which he was entitled to do,

declaring ""that the right of any person to move any court for the enforcement of the rights conferred by article 21 and article 22 of the Constitution

shall remain suspended for the period during which the Proclamation...,..., is in force, if such person has been deprived of any such rights under the

Defence of India Ordinance, 1962 or any rule or order made thereunder."" There is no doubt that the reference in this Order to the ""Defence of

India Ordinance, 1962"" must, after that Ordinance was replaced by the Act, as earlier stated, be understood as a reference to the Act: see

279609 . I should now state that the Proclamation is still in force.

6. It is not in dispute that the present petition has been made for the enforcement of Dr. Lohia"s right to personal liberty under Arts. 21 and 22.

These articles in substance-and it should suffice for the present purpose to say no more-give people a certain personal liberty. It is said by the

respondent State that the Presidential Order under Art. 359(1) altogether prevents us from entertaining Dr. Lohia"s petition and, therefore, it

should be thrown out at once. This would no doubt, subject to certain exceptions to which a reference is not necessary for the purposes of the

present judgment, be correct if the Order of November 3, 1962 took away all rights to personal liberty under Arts. 21 and 22, But this, the Order

does not do. It deprives a person of his right to move a court for the enforcement of a right to such personal liberty only when he has been

deprived of it by the Defence of India Act-it is not necessary to refer to the Ordinance any more as it has been replaced by the Act-or any rule or

order made thereunder. If he has not been so deprived, the Order does not take away his right to move a court. Thus if a person is detained under

the Preventive Detention Act, 1950, his right to move the Court for enforcement of his rights under Arts. 21 and 22 remains intact. That is not a

case in which his right to do so can be said to have been taken away by the President"s Order. This Court has in fact heard applications under Art.

32 challenging a detention under that Act: see 282688 . If any person says, as Dr. Lohia does, that he has been deprived of his personal liberty by

an order not made under the Act or the Rules, there is nothing in the President"s Order under Art. 359(1) to deprive him of his right to move the

Court under Art. 32. The Court must examine his contention and decide whether he has been detained under the Act or the Rules and can only

throw out his petition when it finds that he was so detained, but not before then. If it finds that he was not so detained, it must proceed to hear his

petition on its merits. The right under Art. 32 is one of the fundamental rights that the Constitution has guaranteed to all persons and it cannot be

taken away except by the methods as provided in the Constitution, one of which is by an order made under Art. 359. the contention that an order

under that article has not taken away the constitutional right to personal liberty must be examined.

7. Mr. Verma said that Smith v. East Elloe Rural District Conn-cilL.R.[1956] A.C. 736 supported the contention of the respondent State. I do not

think so. That case turned on an entirely different statute. That statute provided a method of challenging a certain order by which property was

compulsorily purchased and stated that it could not be questioned in any other way at all. It was there held that an action to set aside the order

even on the ground of having been made mala fide, did not lie as under the provision no action was maintainable for the purpose. That case is of no

assistance in deciding the question in what circumstance a right to move the court has been taken away by the entirely different provisions that we

have to consider. Here only a right to move a court in certain circumstances has been taken away and the question is, has the court been moved on

the present occasion in one of those circumstances ? The President''s Order does not bar an enquiry into that question. Apart from the fact that the

reasoning on which the English case is based, has no application here, we have clear observations in judgments of this Court which show that the

Order of the President does not form a bar to all applications for release from detention under the Act or the Rules. I will refer only to one of them.

In 282631 it was said, ""If in challenging the validity of his detention order, the detenu is pleading any right outside the rights specified in the Order,

his right to move any court in that behalf is not suspended"" and by way of illustration of this proposition, a case where a person was detained in

violation of the mandatory provisions of the Defence of India Act was mentioned. That is the present case as the petitioner contends that the order

of detention is not justified by the Act or Rules and hence is against its provisions. The petitioner is entitled to be heard and the present contention

of the respondent State must be held to be ill founded and must fail.

8. I now proceed to consider the merits of Dr. Lohia''s contention that the order detaining him has not been made under the Defence of India

Rules. I here pause to observe that it is was not so made, there is no other justification for his detention; none is indeed advanced. He would then

be entitled to his release.

9. I have already stated that the Proclamation of Emergency was made as the security of India was threatened by external aggression. That

Proclamation of emergency was the justification for the Act. The Act in fact recited the Proclamation in its preamble. Section 3 of the Act gave the

Central Government power to make rules providing for the detention of persons without trial for various reasons there mentioned. Rule 30d)(b)

under which the order of detention of Dr. Lohia was made was framed under s. 3 and is in these terms ; ""The Central Government or the State

Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the

defence of India and civil defence, the public safety, the maintenance of public order, India''s relations with foreign powers, the maintenance of

peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life

of the community, it is necessary to do so, may make an order-(a) ..... (b) directing that he be detained."" As I have said earlier, the order was

made by the District Magistrate, Patna, to whom the power of the Government of the State of Bihar in this regard had been duly delegated under

s. 40(2) of the Act.

10. Under this rule a Government can make an order of detention against a person if it is satisfied that it is necessary to do so to prevent him from

acting in a manner prejudicial, among other things, to public safety and the maintenance of public order. The detention order in this case is based

on the ground that it was necessary to make it to prevent Dr. Lohia from acting in any manner prejudicial to public safety and the maintenance of

law nnd order. I will, in discussing the contention of Dr. Lohia, proceed on the basis as if the order directing detention was only for preventing him

from acting in a manner prejudicial to the maintenance of law and order. I will consider what effect the inclusion in the order of detention of a

reference to the necessity for maintaining public safety has, later. The question is whether an order could be made legally under the rule for

preventing disturbance of law and order. The rule does not say so. The order, therefore, would not be in terms of the rule unless it could be said

that the expression ""law and order"" means the same thing as ""public order"" which occurs in the rule. Could that then be said ? I find no reason to

think so. Many of the things mentioned in the rule may in a general sense be referable to the necessity for maintaining law and order. But the rule

advisedly does not use that expression.

11. It is commonplace that words in a statutory provision take their meaning from the context in which they are used. The context in the present

case is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what

was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent

situation. It is conceivable that the expression maintenance of law and order occurring in the detention order may not have been used in the sense

of prevention of disorder of a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local

significance only. To take an illustration, if people indulging in the Hindu religious festivity of Holi become rowdy, prevention of that disturbance

may be called the maintenance of law and order. Such maintenance of law and order was obviously not in the contemplation of the Rules.

12. What the Magistrate making the order exactly had in mind, by the use of the words law and order, we do not know. Indeed, we are not

entitled to know that for it is well settled that courts cannot enquiry into the grounds on which the Government thought that it was satisfied that it

was necessary to make an order of detention. Courts are only entitled to look at the face of the order. This was stressed on us by learned counsel

for the respondent state and the authorities fully justify that view. If, therefore, on its face an order of detention is in terms of the rule, a court is

bound to stay its hands and uphold the order. I am leaving here out of consideration a contention that an order good on the face of it is bad for

reasons dehors it, for example, because it had been made mala fide. Subject to this and other similar exceptions to which I have earlier referred

and as to which it is unnecessary to say anything in the present context and also because the matter has already been examined by this Court in a

number of cases-a court cannot go behind the face of the order of detention to determine its validity.

13. The satisfaction of the Government which justifies the order under the rule is a subjective satisfaction, A court cannot enquire whether grounds

existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If that is

so,-and that indeed is what the respondent State contends,-it seems to me that when an order is on the face of it not in terras of the rule, a court

cannot equally enter into an investigation whether the order of detention was in fact, that is to say, irrespective of what is stated in it, in terms of the

rule. In other words, in such a case the State cannot be heard to say or prove that the order was in fact made, for example, to prevent acts

prejudicial to public order which would bring it within the rule though the order does not say so. To allow that to be done would be to uphold a

detention without a proper order. The rule does not envisage such a situation. The statements in the affidavit used in the present case by the

respondent State are, therefore, of no avail for establishing that the order of detention is in terms of the rule. The detention was not under the

affidavit but under the order. It is of some significance to point out that the affidavit sworn by the District Magistrate who made the order of

detention does not say that by the use of the expression law and order he meant public order.

14. It was said that this was too technical a view of the matter; there was no charm in words used, I am not persuaded by this argument. The

question is of substance. If a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be

so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter. We are dealing with a statute

which drastically interferes with the personal liberty of people, we are dealing with an order behind the face of which a court is prevented from

going. I am not complaining of that. Circumstances may make it necessary. But it would be legitimate to require in such cases strict observance of

the rules. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu. It is certainly

more than doubtful whether law and order means the same as public order. I am not impressed by the argument that the reference in the detention

order to r. 30(1) (b) shows that by law and order what was meant was public order. That is a most mischievous way of approaching the question.

If that were right, a reference to the rule in the order might equally justify all other errors in it. Indeed it might with almost equal justification then be

said that a reference to the rule and an order of detention would be enough. That being so, the only course open to us is to hold that the rules have

not been strictly observed. If for the purpose of justifying the detention such compliance by itself is enough, a non-compliance must have a contrary

effect.

15. Carltona Ltd. v. Commissioners of Works [1943] 2 All .560 is an interesting case to which reference may be made in this connection. It

turned on a statutory Regulation empowering a specified authority to take possession of land for the purposes mentioned in it in various terms but

which terms did not include the expression ""national interest"". Under this Regulation possession of certain premises of the Carltona Company was

taken after serving a notice on it that that was being done ""in the national interest"". It was contended by the Carltona Company that it had been

illegally deprived of the possession of its premises because the notice showed that that possession was not being taken in terms of the Regulation.

This contention failed as it was held that ihe giving of the notice was not a pre-requisite to the exercise of the powers under the Regulation and that

the notice was no more than a notification that the authorities were exercising the powers. It was said that the1 notice was useful only as evidence

of the state of the mind of the writer and, that being so, other evidence was admissible to establish the fact that the possession of the premises was

being taken for the reasons mentioned in the Regulation. Our case is entirely different. It is not a case of a notice. Under r. 30(1)(b) a person can

be detained only by an order and there is no doubt that the order of detention has to be in writing. It is not a case where the order is only evidence

of the detention having been made under the rule. It. is the only warrant for the detention. The order further is conclusive as to the state of the mind

of the person x."ho made it; no evidence is admissible to prove that state of mind. It seems to me that if the Carltona case was concerned with an

order which alone resulted in the dispossession, the decision in that case might well have been otherwise. I would here remind, to prevent any

possible misconception, that I am not considering a case where the order is challenged on the ground of mala fides or other similar grounds to

which I have earlier referred.

16. Before leaving this aspect of the case, it is necessary to refer to two other things. The first is a mistake appearing in the order of detention on

which some argument was based by Dr. Lohia for quashing the order. It will be remembered that the order mentioned a certain Notification No.

180/CW. The Notification intended to be mentioned however was one No. 1115/CW and the Notification No. 180/CW had been mentioned by

mistake. It was under Notification No. 1115/CW that the power of the State Government to make an order of detention was delegated to the

District Magistrate under the provisions of s. 40(2) of the Act to which I have earlier referred. The reference to the notification was to indicate the

delegation of power. The Notification actually mentioned in the order did not, however, contain the necessary delegation. The result was that the

order did not show on its face that the District Magistrate who had made it had the necessary authority to do so. This mistake however did not

vitiate the order at all. Nothing in the rules requires that an order of detention should state that the authority making it has the power to do so. It

may be that an order made by an authority to whom the Government''s power has not been delegated, is a nullity and the order can be challenged

on that ground. This may be one of the cases where an order good on its face may nonetheless be illegal. When the power of the person making

the order is challenged, the only fact to be proved is that the power to make the order had been duly delegated to him. That can be proved by the

necessary evidence, that is, by the production of the order of delegation. That would be a case somewhat like the Carltona case. In spite of the

mistake hi the order as to the Notification delegating the power, evidence can be given to show that the delegation had in fact been made. To admit

such evidence would not be going behind the face of the order because what is necessary to appear on the face of the order is the satisfaction of

the authority of the necessity for the detention for any of the reasons mentioned in r. 30( 1) (b) and not the authority of the maker of the order.

17. The second thing to which I wish to refer is that it appeared from the affidavit sworn by the District Magistrate that prior to the making of the

order, he had recorded a note which has in these words : ""Perused the report of the Senior S. P. Patna for detention of Dr. Ram Manohar Lohia,

M.P. under rule 30(1 )(b) of the Defence of India Rules, on the ground that his being at large is prejudicial to the public safety and maintenance of

public order. From the report of the ST. S. P., Patna, I am satisfied that Dr. Ram Manohar Lohia, M.P. aforesaid be detained under rule 30(l)(b)

of the Defence of India Rules. Accordingly, I order that Dr. Ram Manohar Lohia be detained....."" I am unable to see that this note is of any

assistance to the respondent State hi this case. It is not the order of detention. The respondent State does not say that it is."" I have earlier stated

that extraneous evidence is not admissible to prove that the rule has been complied with though the order of detention does not show that. Indeed,

this note does not even say that the District Magistrate was satisfied that if .was necessary to make an order of detention to prevent Dr. Lohia from

acting in a manner pro-judicial to the maintenance of public order. It only says that the Superintendent of Police reported that he was so satisfied.

The satisfaction of the Superintendent of Police would provide no warrant for the detention or the order; with it we have nothing to do.

18. For these reasons, in my view, the detention order if it had been based only on the ground of prevention of acts prejudicial to the maintenance

of law and order, it would not have been in terms of r. 30(l)(b) and would not have justified the detention. As I have earlier pointed out, however,

it also mentions as another ground for detention, the prevention of acts prejudicial to public safety. In so far as it does so, It is clearly within the

rule. Without more, we have to accept an order -mad on that ground as a perfectly legal order. The result then is that the detention order mentions

two grounds one of which is in terms of the rule while the other is not. What then is the effect of that ? Does it cure the illegality in the order that I

have earlier noticed ? This question is clearly .settled by authorities. In 265360 it was held that such an order would be a bad order,, the reason

being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and

contributed to the creation of his subjective satisfaction which formed the basis of the order. The order has, therefore, to be held illegal though it

mentioned a ground on which % legal order of detention could have been based. I should also point out that the District Magistrate has not said in

his affidavit that he would have been satisfied of the necessity of the detention order only for the reason, that it was necessary to detain Dr. Lohia

to prevent him from acting in a manner prejudicial to public safety.

19. In the result, in my view, the detention order is not under the Rules. The detention of Dr. Lohia under that order is not legal and cannot be

justified. He is entitled to be set at liberty and I would order accordingly.

Hidayatullah, J.

20. Dr. Ram Manohar Lohia, M. P. has filed this petition under Art. 32 of the Constitution asking for a writ of habeas corpus for release from

detention ordered by the District Magistrate, Patna under Rule 30 [1] [b] of the Defence of India Rules, 1962. He was arrested at Patna on the

night between 9th and 10th August, 1965. As it will be necessary to refer to the terms of the order served on him it is reproduced here:

ORDER

No. 3912 C. Dated, Patna, the 9th August 1965

Whereas I., J.

N. Sahu, District Magistrate, Patna, am satisfied with respect to the person known as Dr. Ram, Manohar Lohia, Circuit Houses, Patna, that with a

view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order, it is necessary to make an

order that he be detained.

Now, therefore, in exercise of the powers conferred by clause [b] of sub clause [i] of rule 30 of the Defence of India Rules, 1962, read with

Notification No. 180/CW, dated the 20th March 1964, of the Government of Bihar, Political [Special] Department, I hereby direct that the said

Dr. Ram Manohar Lohia be arrested by the police wherever found and detained in the Central Jail, Hazaribagh, until further orders.

Sd/- J. N. Sahu,

9/8/1965.

District Magistrate, Patna

Sd/- Ram Manohar Lohia,

10th August - 1.40.

21. Dr. Lohia was lodged in the Hazaribagh Central Jail at 3.30 p.m. on August 10, 1965. He sent a letter in Hindi together with an affidavit sworn

in the jail to the Chief Justice, which was received on August 13, 1965, in the Registry of this Court. Although the petition was somewhat irregular,

this Court issued a rule and as no objection has been taken on the ground of form we say nothing more about it.

22. In his affidavit Dr. Lohia stated that he was arrested at midnight on August 9, 1965 and was told that it was on charges of arson but later was

served with the order of detention and that in this way his arrest for a substantive offence was turned into preventive detention. He further stated

that the order of detention Ã¯Â¿Â½bowed that he was to be detained in Bankipur Jail but the name of the Jail was scored out and ""Central Jail,

Hazaribagh"" was substituted which led him to conclude that typed orders of detention were kept ready and that the District Magistrate did not

exercise his mind in each individual case. He contended that his detention under Rule 30(1) (b) was illegal because, according to him, that rule

dealt with prejudicial activities in relation to the defence of India and civil defence and not with maintenance of law and order of a purely local

character. He alleged that the arrest was mala fide and malicious; that it was made to prevent him from participating in the House of the People

which was to go into Session from August 16 and particularly to keep him away from the debate on the Kutch issue. He further alleged that he had

only addressed a very large gathering in Patna and had disclosed certain things about the Bihar Government which incensed that Government and

caused them to retaliate in this manner and that detention was made to prevent further disclosures by him.

23. In answer to Dr. Lohia''s affidavit two affidavits were filed on behalf of the respondents. One affidavit, filed by the District Magistrate, Patna,

denied that there was any malice or mala fides in the arrest of Dr. Lohia. The District Magistrate stated that he had received a report from the

Senior Superintendent of Police, Patna, in regard to the conduct and activities of Dr. Lohia and after considering the report he had ordered Dr.

Lohia''s detention to prevent him from acting in any manner prejudicial to the public safety and maintenance of public order. He stated further that

he was fully satisfied that the forces of disorder ""which were sought to be let loose if not properly controlled would envelop the whole of the State

of Bihar and possibly might spread in other parts of the country which would necessarily affect the problem of external defence as well in more

ways than one"". He said that the report of the Senior Superintendent of Police, Patna, contained facts which he considered sufficient for taking the

said action but he could not disclose the contents of that report in the public interest. He sought to correct, what he called, a slip in the order

passed by him, by stating that notification No. 11155C, dated 11th August 1964, was meant instead of the notification mentioned there. He stated

further that as the disturbance was on a very large scale it was thought expedient to keep ready typed copies of detention orders and to make

necessary alterations in them to suit individual cases, at the time of the actual issuance of the orders, and that it was because of this that the words

Central Jail Hazaribagh"" were substituted for ""Bankipur Jail"". He denied that he had not considered the necessity of detention in each individual

case. He repudiated the charge that the arrest was made at the instance of Government and affirmed that the action was taken on his own

responsibility and in the discharge of his duty as District Magistrate and not in consultation with the Central or the State Government!. He denied

that the arrest and detention were the result of anger on the part of any or a desire to prevent Dr. Lohia from circulating any damaging information

about Government. The District Magistrate produced an order which, he said, was recorded before the order of detention. As we shall refer to

that order later it is reproduced here :

9-8-1965.

Perused the report of the Senior S. P. Patna, for detention of Dr. Ram Manohar Lohia, M. P. under rule 30 [1] [b] of the Defence of India Rules,

on the Ground that his being at large is prejudicial to the public safety and maintenance of public order. From the report of the Sr. S. P. Patna, I

am satisfied that Dr. Ram Manohar Lohia, M. P. aforesaid be detained under rule 30 [1] [b] of the Defence of India Rules. Accordingly, I order

that Dr. Ram Manohar Lohia be detained under rule 30 [1] [b] of the Defence of India Rules read with Notification No. 180/CW dated 20-3-

1964 in the Hazaribagh Central Jail until further orders.

Send four copies of the warrant of arrest of they Sr. S. P. Patna for immediate compliance. He should return two copies of it after service on the

detenu.

Sd/- J. N. Sahu. District Magistrate, Patna.

24. The second affidavit was sworn by Rajpati Singh, Police Inspector attached to the Kotwali Police Station, Patna. He stated in his affidavit that

the order was served on Dr. Lohia at 1-40 A. M. on August 10, 1965 and not at midnight, He denied that DR. Lohia was arrested earlier or that

at the time of his arrest, he was informed that the arrest was for an offence or offence of arson. He admitted, however, that he had told him that

cases of arson and loot had taken place. He affirmed that there was no charge of arson against Dr. Lohia.

25. Dr. Lohia filed a rejoinder affidavit and in that affidavit he stated that the internal evidence furnished by the order taken with the counter

affidavits disclosed that his arrest and detention were patently illegal. He pointed out that while Rule 30 [1] [b] provided that detention could be

made for the maintenance of public order, the order stated that Dr. Lohia was arrested for maintenance of law and order. He characterised the

counter affidavits as full of lies and narrated other facts intending to show that there was a conspiracy to seal his mouth so that disclosure against

the Bihar Government might not be made. This represents the material on which the present petition is based or opposed.

26. The petition was argued by Dr. Lohia in person though he was receiving assistance in constructing his arguments. His contentions are that he is

not being detained under the Defence of India Rules but arbitrarily; that even if he is being detained under the said Rules the law has been flagrantly

violated; that the order passed against him is mala fide; and that the District Magistrate did not exercise the delegated power but went outside it in

various ways rendering detention illegal.

27. On behalf of the State a preliminary objection is raised that the application itself is incompetent and that by the operation of Art. 359 read with

the President''s Order issued under that Article on November 3, 1962, Dr. Lohia''s right to move the Supreme Court under Art. 32 of the

Constitution is taken away during the period of emergency proclaimed under Art. 352 as long as the President''s Order continues. On merits it is

contended on behalf of the State of Bihar that the petition, if not barred, does not make out a case against the legality of the detention; that this

Court cannot consider the question of good faith and that the only enquiry open to this Court is whether there is or is not an order under Rule 30(l)

(b) of the Defence of India Rules 1962. If this Court finds that there is such an order the enquiry is closed because the petition must then be

considered as incompetent. The State Government admits that the words of Rule 30(1 )(b) and s. 3 of the Defence of India Act were not used in

the order of detention but contends that maintenance of public order and maintenance of law and order do not indicate different .things and that the

area covered by maintenance of law and order is the same if not smaller than the area covered by the expression maintenance of public order. We

shall go into the last contention more elaborately after dealing with the preliminary objection.

28. Questions about the right of persons detained under the Defence of India Rules to move the Court have come up frequently before this Court

and many of the arguments which are raised here have already been considered in a series of cases. For example, it has been ruled in 279609 that

the right of any person detained under the Defence of India Rules to move any court for the enforcement of his rights conferred by Arts. 21 and 22

of the Constitution remains suspended in view of the President''s Order of November 3, 1962. It has also been ruled that such a person cannot

raise the question that the Defence of India Act or the Rules are not valid because, if allowed to do so, that would mean that the petitioner''s right

to move the court is intact. Other questions arising from detentions under the Defence of India Rules were further considered in 282631 . It is there

pointed out that, although the right of the detenu to move the Court is taken away that can only be in cases in which the proper detaining authority

passes a valid order of detention and the order is made bona fide for the purpose which it professes. It would, therefore, appear from the latter

case that there is an area of enquiry open before a court will declare that the detenu has lost his right to move the court. That area at least

embraces an enquiry into whether there is action by a competent authority and in accordance with Defence of India Act and the Rules thereunder.

Such an enquiry may not entitle the court to go into the merits of the case once it is established that proper action has been taken, for the

satisfaction is subjective, but till that appears the court is bound to enquire into the legality of the detention. It was contended that 282631 case

arose under Art. 226 and that what is stated there applies only to petitions under that article. This is a misapprehension. The ruling made no

difference between the Art. 32 and Art. 226 in the matter of the bar created by Art. 359 and the President''s Order. What is stated there applies

to petitions for the enforcement of Fundamental Rights whether by way of Art. 32 or Art. 226.

29. Mr. Verma appearing for the State of Bihar, however, contends that the area of the enquiry cannot embrace anything more than finding out

whether there is an order of detention or not and the moment such an order, good on its face, is produced all enquiry into good faith, sufficiency of

the reasons or the legality or illegality of the action comes to an end, for to go into such matters is tantamount to allowing the petitioner to move the

court which the President''s Order does not permit. He contends that the courts power to issue a writ of habeas corpus in such cases is then away

as completely as if Clause [2] of Art. 32 made no mention of the writ of habeas corpus. According to him, an order under rule 30 [1] [b] proper

on its face, must put an end to enquiry of any kind. In view of this objection it is necessary to state the exact result of the President''s Order for this

has not been laid down in any earlier decision of this Court.

30. The President declared a state of grave emergency by issuing a Proclamation under Art. 352. on October 26, 1962. This Proclamation of

Emergency gave rise to certain extraordinary powers which are to be found in Part XVIII of the Constitution, entitled Emergency Provisions.

Article 358 suspended the provisions of Art. 19 during the Emergency and Art. 359 permitted the suspension of the enforcement of the rights

conferred by Part III. That articles reads:

359. Suspension of the enforcement of the rights conferred by Part III during emergencies:

[1] Where a proclamation of Emergency is in operation, the president may by order declare that the right to move any court for the enforcement of

such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights

so mentioned shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the

order.

[2] An order made as aforesaid may extend to the whole or any part of the territory of India.

[3] Every order made under clause [1] shall, as soon as may be after it is made, be laid before each House of Parliament.

31. The President issued an order on November 3, 1962. The Order reads:

ORDER

New Delhi, the 3rd November, 1962

G. S. R. 1454-In exercise of the Power conferred by clause [1] of article 359 of the Constitution, the president hereby declares that the right of

any person to move any court for the enforcement of the rights conferred by article 21 and article 22 of the Constitution shall remain suspended for

the period during which the Proclamation of Emergency issued under clause [1] of article 352 thereof on the 26th October 1962, is in force, if such

person has been deprived of any such rights under the Defence of India Ordinance 1962 [4 of 1962] or any rule or order made thereunder.

No. F. 4/62-Poll[Spl]. V. VISWANATHAN, Secy.

32. As a result of the above order the right of any person to move any court for the rights conferred by Arts. 21 and 22 of the constitution remains

suspended, if such person is deprived of any such rights under the Defence of India Ordinance 1962 [now the Defence of India Act, 1962] or any

rule or order made there under. No doubt, as the article under which the President"s. Order was passed and also that order say, the right to move

the court is taken away but that is in respect of a right conferred on any person by Arts. 21 and 22 and provided such person is deprived of the

right under the Defence of India ordinance [now the act] or any rule or order made thereunder. Two things stand forth. The first is that only the

enforcement in a court of law of rights conferred by Arts. 21 and 22 is suspended and the second is that the deprivation must be under the

Defence of India Ordinance [now the Act] or any rule or over made thereunder. The word thereunder shows that the authority of the Defence of

India Act must be made out in each case whether the deprivation is by rule or order.

33. It, therefore, becomes necessary to inquire what are the rights which are so affected ? This can only be found out by looking into the content of

the Arts. 21 and 22. Article 21 lays down that no person is to be deprived of his life or personal liberty except according to procedure established

by law. This article thinks in terms of the ordinary laws which govern our society when there is no declaration of emergency and which are enacted

subject to the provisions of the Constitution including the Chapter on Fundamental Rights but other than those made under the powers conferred

by the Emergency Provisions in Part XVIII. When the President suspended the operation of Art. 21 he took away from any person dealt with

under the terms of his Order, the right to plead in a court of law that he was being deprived of his life and personal liberty otherwise than according

to the procedure established by the laws of the country. In other words, he could not invoke the procedure established by ordinary law. But the

President did not make lawless actions lawful. He only took away the fundamental right in Art. 21 in respect of a person proceeded against under

the Defence of India Act or any rule or order made thereunder. Thus a person so proceeded could not claim to be tried under the ordinary law or

bring an action under the ordinary law. But to be able to say that the right to move the court for the enforcement of rights under Art, 21 is

suspended, it is necessary to establish that such person has been deprived of any such right under the Defence of India Act or any rule or order

made thereunder, that is to say under the authority of the Act. The action of the authorities empowered by the Defence of India Act is not

completely shielded from the scrutiny of courts. The scrutiny with reference to procedure established by laws other than the Defence of India Act

is, of course, shut out but an enquiry whether the action is justified under the Defence of India Act itself is not shut out. Thus the State Government

or the District Magistrate cannot add a clause of their own to the Defence of India Act or even the Rules and take action under that clause. Just as

action is limited in its extent, by the power conferred, so also the power to move the court is curtailed only when there is strict compliance with the

Defence of India Act and the Rules. The Court will not enquire whether any other law is not followed or breached but the Court will enquire

whether the Defence of India Act or the Rules have been obeyed or not. That part of the enquiry and consequently the right of a person to move

the court to have that enquiry made, is not affected.

34. The President''s Order next refers to Art. 22. That Article creates protection against illegal arrest and detention. Clause [1] confers some rights

some rights on the person arrested. Clause [2] lays down the procedure which must be followed after an arrest is made. By Clause [3] the first

two clauses do not apply to an alien enemy or to a person arrested or detained under any law providing for preventive detention. Clauses [4], [5],

[6], and [7] provide for the procedure for dealing with person arrested or detained under any law providing for preventive detention, and lay down

the minimum or compulsory requirements. The provisions of Art. 22 would have applied to arrest and detentions under the Defence of India Act

also if the President''s Order had not taken away from such a person the right to move any court to enforce the protections of Art. 22.

35. The net result of the President''s Order is to stop all claims to enforce rights arising from laws other than the Defence of India Act and the Rules

and the provisions of Art. 22 at variance with the Defence of India Act and the Rules are of no avail. But the President''s Order does not say that

even if a person is proceeded against in breach of the Defence of India Act or the Rules he cannot move the court to complain that the Act and the

Rules, under colour of which some action is taken, do not warrant it. It was thus that this Court questioned detention orders by Additional District

Magistrates who were not authorised to make them or detentions of persons who were already in detention after conviction or otherwise for such

a long period that detention orders served could have had no relation to the requirements of the Defence of India Act or the Rules. Some of these

cases arose under Art. 226 of the Constitution but in considering the bar of Art. 359 read with the President''s Order, there is no difference

between a petition under that article and a petition under Art. 32. It follows, therefore, that this Court acting under Art. 32 on a petition for the

issue of a writ of habeas corpus, may not allow claims based on other laws or on the protection of Art. 22, but it may not and, indeed, must not,

allow breaches of the Defence of India Act or the Rules to go unquestioned. The President''s Order neither says so nor is there any such

intendment.

36. There is, however, another aspect which needs to be mentioned here. That is the question of want of good faith on the part of those who take

action and whether such a plea can be raised. This topic was dealt with in 282631 . At page 828 the following observation is to be found:-

Take also a case where the detenu moves the court for a writ of Habeas Corpus on the ground that his detention has been ordered mala fide. It is

hardly necessary to emphasise that the exercise of a power mala fide is wholly outside the scope of the Act conferring the power and can always

be successfully challenged. It is true that a mere allegation that the detention is mala fide would not be enough; the detenu will have to prove the

mala fides. But if the mala fides are alleged, the detenu cannot be precluded from substantiating his plea on the ground of the bar created by Art.

359[1] and the president''s dential Order. That is another kind of plea which is outside the purview of Art 359 [1].

37. Mr. Verma, however, contends on the authority of Smith v. East Elloe Rural District Cormical and Others that the validity of the orders under

the Defence of India rules 1962 cannot be challenged on the ground of bad faith when the action is otherwise proper that case dealt with the

Acquisition of Land [Authorization Procedure] Act 1946 [9 and 10 Geo 6 Ch. 49]. Paragraph 15 [1] of part IV of Schedule to that Act provided:

If any person aggrieved by a compulsory purchase order desires to question the validity thereof..... on the ground that the authorization of a

compulsory purchase thereby granted is not empowered to be granted under this Act..... he may, within six weeks from the date on which notice

of the confirmation or making of the order..... is first published..... make an application to the High Court.....

38. The appellant more than six weeks after the notice had been published brought an action, claiming inter alia that the order was made and

confirmed wrongfully and in bad faith on the part of the clerk. Paragraph 16 of that Act provided:

Subject to the provisions of the last foregoing paragraph, a compulsory purchase order..... shall not..... be questioned in any legal proceeding

whatsoever.....

39. The House of Lords [by majority] held that the jurisdiction of the court was ousted in such wise that even questions of bad faith could not be

raised. Viscount Simonds regretted that it should be so, but giving effect to the language of paragraph 16, held that even an allegation of bad faith

was within the bar of paragraph 16. Lord Morton of Henryton, Lord Ried and Lord Somervill of Harrow were of opinion that paragraph 15 gave

no such opportunity. Lord Radcliffe dissented.

40. The cited case can have no relevance here because the statute provided for ouster of courts'' jurisdiction in very different circumstances.

Although this Court has already stated that allegations of bad faith can be considered, it may be added that where statutory powers are conferred

to take drastic action against the life and liberty of a citizen, those who exercise it may not depart from the purpose. Vast powers in the public

interest are granted but under strict conditions. If a person, under colour of exercising the statutory power, acts from some improper or ulterior

motive, he acts in bad faith. The action of the authority is capable of being viewed in two ways. Where power is misused but there is good faith the

act is only ultra vires but where the misuse of power is in bad faith there is added to the ultra vires character of the act, another vitiating

circumstance. Courts have always acted to restrain a misuse of statutory power and the more readily when improper motives underlie it. The

misuse may arise from a breach of the law conferring the power or from an abuse of the power in bad faith. In either case the courts can be moved

for we do not think that Art. 359 or the President''s Order were intended to condone an illegitimate enforcement of the Defence of India Act.

41. We now proceed to examine the contentions of Dr. Lohia by which he claims to be entitled to have the order of the District Magistrate set

aside. It is convenient to begin with the allegation of want of good faith. Dr. Lohia alleges that there was a conspiracy between the Central

Government, the State of Bihar, the Senior Superintendent of Police and the District Magistrate, Patna, to stifle his disclosures against the Bihar

Government, the Chief Minister and others. He also alleges that he was arrested for a substantive offence under the Indian Penal Code but the

arrest has been converted into preventive detention to avoid proof in a court of law. He says that he was about to leave Patna and if the train was

not late he would have gone away and he hints that his detention was made to prevent him from taking part in the Session of Parliament. The

District Magistrate and the Inspector of Police deny these allegations. The District Magistrate has given the background of events in which he made

the order on his responsibility. On reading the affidavits on both sides, we are satisfied that the contentions of Dr. Lohia are ill-founded and that the

order of detention was made by the District Magistrate in good faith.

42. There is no dispute that the District Magistrate was duly authorized to act under Rule 30 of the Defence of India Rules, 1962. Dr. Lohia

however, says that the order is in flagrant disregard of the requirements of the Defence of India Act, 1962 and the rules. For this purpose he bases

his argument on three circumstances.

[i] that the District Magistrate acted outside his jurisdiction as created by Notification No. 11155-C dated 11-8-1964 published in the Bihar

Gazette Extra dated August 11, 1964:

[ii] that the District Magistrate''s order is defective because be purports to derive power from notification No. 180 of March 20, 1964 which had

been rescinded; and

[iii] the District Magistrate purports to act to maintain law and order when he can only act to maintain public order under the Defence of India Act

and the Rules thereunder.

43. We shall now consider these grounds of objection. Before we do so we may read the provisions of the Defence of India Act and the Rules to

which reference may be necessary.

44. The first part of the Defence of India Act we wish to read is the long title and the preamble. They Are:

An Act to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain

offences and for matters connected therewith.

WHEREAS the president has declare by Proclamation under clause [1] of article 352 of the Constitution that a grave emergency exists whereby

the security of India is threatened by external aggression.

45. AND WHEREAS it is necessary to provided for special measures to ensures to ensure the public safety and interest, the defence of India and

Civil defence and for the trial of certain offences and for matters connected therewith:

We may next read section 3 which confers powers to make rules:

3. Power to make rules.

[1] The Central Government may, by notification in the official Gazette, make such rules as appear to it necessary or expedient for securing the

defence of India and civil defence, the public safety, the maintenances of public order or the efficient conduct of military operations, or for

maintaining supplies and services essential to the life of the community.

46. Then by way of illustration and without prejudice to the generality of the powers conferred by sub-s [1], certain specific things are mentioned

for which provision may be made by rules. Clause 15 provides.

[15] Notwithstanding anything in any other law for the time being being in force:-

[1] the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain [the authority

empowered to detain not being lower in rank than that of a District Magistrate] suspects, on grounds appearing to that authority to be reasonable,

of being of hostile origin or of having acted, acting, being about to act or being likely to act in manner prejudicial to the defence of India and civil

defence, the security of the state, the public safety or interest, the maintenance of public order, India''s relations with foreign states, the maintenance

of peaceful conditions in any part or are of Indian or the efficient conduct of military operations, or with respect to whom that authority is satisfied

that his apprehension and detention are necessary for the purposes of preventing him from acting in any such prejudicial manner.

[ii] the prohibition of such person from entering or residing or remaining in any area.

[iii] the compelling of such person to reside and remain in any area, or to do or abstain from doing anything, and

[iv] the review of orders of detention passed in pursuance of any rule made under sub clauses [1].

47. We need not trouble ourselves with the other clauses, Section 44 next provides:

44 Ordinary avocations of life to be interfered will as little as possible.

Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as

may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.

48. By virtue of the powers conferred by s. 3 of the Defence of India Ordinance, 1962 [now the act], the Defence Indian Rules 1962 were

framed. Part IV of these Rules is headed |Restriction of Movements and Activities of Person and it consists of Rules 25-30, 30-A, 30-B and 31-

34. These rules provide for various subjects such as Entering enemy territory [Rules 25], "" Entering India [Rule 26], Information to be supplied by

persons entering India [Rules 27], or Leaving India [Rules 28], Regulation of Movement of person with India [Rules 29], power of photographing

etc. of suspected person [Rule 31], Control and winding up of certain organization [Rule 32], Provisions for Persons captured as prisoners [Rule

33] and Change of name by citizens of India [Rules 34]. We are really not concerned with these rules but the heading are mentioned to consider

the argument of Dr. Lohia on No. [1] above. Rule 30 with which we are primarily concerned consists of eight sub-rules. We are concerned only

with sub-Rule [1]. That rules

30. Restriction of Movement of suspected persons, restriction orders and detention orders:

[1] The Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him form

acting in any manner prejudicial to the defence of Indian an civil defence, the public safety, the maintenance of public order, India''s relations with

foreign powers, the maintenance of peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of

supplies, and services essential to the life of the community, it is necessary so to do, may make an order:

[a]

[b] directing that he be detained:

Under s. 40 [2] of the Defence of India Act, the State Government may by order direct that the power conferred by the Rules may be exercised

by any officer or authority in such circumstances and under such conditions as may be specified in the direction. A special limitation was indicated

in s. 3 [15] of the Act, where authority is given for making rules in connection with the apprehension and detention in custody of persons, that the

delegation should not be made to an officer below the rank of a District Magistrate.

49. By virtue of these various powers the State Government issued a notification on March 20, 1964 authorising all District Magistrate to exercises

the powers of Government under Rule 30 [1] [b].

50. That notification was later rescinded by another notification issued on June, 5, 1964. A fresh notification [No. 11155-C] was issued on August

11, 1964. This was necessary because of a mistake in the first notification. The new notification reads:

No. 11155-C - In exercise of the powers conferred by sub-section [2] of section [40] the Defence of India Act, 1962 [Act 51 of 162], the

Governor of Bihar is pleased to direct that the powers exercisable by the State Government under clause [b] of sub-rule [1] of rule 30 of the

Defence of India rules 1962, shall be exercised by all District Magistrate within their respective jurisdictions.

By Order of the Governor of Bihar M. K. Mukherji Secretary to Government.

51. Dr. Lohia contends that the District Magistrate in his affidavit says that he apprehended danger not only in his district but in the whole of Bihar

State and even outside and hence he has not acted within his jurisdiction. His argument attempts to make out, what we may call, an exercise of

extraterritorial jurisdiction on the part of the District Magistrate. He contends also that the notification are bad because although the Defence of

India Act contemplates the imposition of conditions, none were imposed and no circumstances for the exercise of power were specified. In our

judgment, none of these arguments can be accepted.

52. Section 40(2) of the Act does not require the imposition of any conditions but only permits it. This is apparent from the words ""if any"" in the

sub-section. The only condition that the State Government thought necessary to impose is that the District Magistrates must act within their

respective jurisdictions. It cannot be said that this condition was not complied with. Dr. Lohia was in the Patna District at the time. There was

nothing wrong if the District Magistrate took a broad view of his activities so as to weigh the possible harm if he was not detained. Such a viewing

of the activities of a person before passing the order against him does not necessarily spell out extraterritoriality in the sense suggested but is really

designed to assess properly the potentiality of danger which is the main object of the rule to prevent, We and nothing wrong with the order on the

score of jurisdiction and argument No. (i) stated above must fail. Argument No. (ii) is not of any substance. There was a clerical error in

mentioning the notification and the error did not vitiate the order of detention.

53. This brings us to the last contention of Dr. Lohia and that is the most serious of all. He points out that the District Magistrate purports to detain

him with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order and argues that

the District Magistrate had misunderstood his own powers which were to prevent acts prejudicial to public order and, therefore, the detention is

illegal. On the other side, Mr. Verma contends that the Act and the Rules speak of public order which is a concept much wider in content than the

concept of law and order and includes the latter, and whatever is done in furtherance of law and order must necessarily be in furtherance of public

order. Much debate took place on the meaning of the two expressions. Alternatively, the State of Bihar contends that the order passed by the

District Magistrate prior to the issue of the actual order of detention made use of the phrase ""maintenance of public order"" and the affidavit which

the District Magistrate swore in support of the return also uses that phrase and, therefore, the District Magistrate was aware of what his

powers.were and did exercise than correctly and in accordance with the Defence of India Act and the Rules. We snail now consider the rival

contentions.

54. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title

and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public, safety and interest, the

defence of india and civil defence. The expressions public safety and interest between them indicate the range of action for maintaining -security,

peace and tranquillity of India whereas the expressions defence of India and civil defence connote defence of India and its people against

aggression from outside and! action of persons within the country. These generic terms were used, because the Act seeks to provide for a

congeries of action of which preventive detention is just a small part. In conferring power to make rules, s. 3 of the Defence of India Act enlarges

upon the terms of the preamble by specification of details. It speaks of defence of India aiv'' civil dcfenc;; and public safety without change but it

expands the idea of public interest into ""maintenance of public order, the efficient conduct of military operations and maintaining of supplies and

services essential to the life of the community"". Then it mentions by way of illustration in Clause (15) of the same section the power of apprehension

and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not

being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable:--

(a) of being of hostile origin; or

(b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to-

(i) the defence of India and civil defence;

(ii) the security of the State;

(iii) the public safety or interest;

(iv) the maintenance of public order;

(v) India"s relations with foreign states;

(vi) the maintenance of peaceful conditions in any part of area of India; or

(vii) the efficient conduct of military operations.

55. It will thus appear that security of the state, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in

any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows rule 30,

which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The

argument of Dr. Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse rule 30 which we quoted

earlier and which follows the scheme of section 3(15). The question is whether by taking power to prevent Dr. Lohia from acting to the prejudice

of ""law and order"" as against ""public order"" the District Magistrate went outside his powers.

56. The subject of preventive detention has been discussed almost threadbare and one can hardly venture in any direction without coming face to

face with rulings of courts. These cases are now legion. It may be taken as settled that the satisfaction of the detaining authority cannot be

subjected to objective tests, that the courts are not to exercise appellate powers over such authorities and that an order proper on its face, passed

by a competent authority in good faith is a complete answer to a petition such as this. The rulings in our country adopt this approach as do the

English Courts. In England one reason given for the adoption of this approach was that the power was entrusted to the Home Secretary and to the

Home Secretary alone. In India courts are ordinarily satisfied on the production of a proper order of detention made in good faith by an authority

duly authorised and have not enquired further even though the power is exercised by thousands of officers subordinate to the Central and State

Governments as their delegates. When from the order itself circumstances appear which raise a doubt whether the officer concerned had not

misconceived his own powers, there is need to pause and enquire. This is more so when the exercise of power is at the lowest level permissible

under the Defence of India Act. The enquiry then is not with a view to investigate the sufficiency of the materials but into the officer''s notions of his

power, for it cannot be conceived for a moment that even if the court did not concern itself about the sufficiency or otherwise of the materials on

which action is taken, it would, on proof from the order itself that the officer did not realise the extent of his own powers, not question the action.

The order of detention is the authority for detention. That is all which the detenu or the court can see. It discloses how the District Magistrate

viewed the activity of the detenu and what the District Magistrate intended to prevent happening. If the order passed by him shows that he thought

that his powers were more extensive than they actually were, the order might fail to be a good order.

57. The District Magistrate here acted to maintain law and order and not public order. There are only two possibilities : (i) that there was a slip in

preparing the order, or (ii) that maintenance of law and order was in the mind of the District Magistrate and he thought it meant the same thing as

maintenance of public order. As to the first ii may be stated at once that the District Magistrate did not specify it as such in his affidavit. He filed an

earlier order by him in which he had used the words ""public order"" and which we have quoted earlier. That order did not refer to his own state of

the mind but to the report of the Senior Superintendent of Police. In his affidavit he mentioned ""public order"" again but did not say that the words

law and order"" in his order detaining Dr. Lohia were a slip. He corrected the error about the notification but naively let pass the other, and more

material error, without any remark. Before us every effort possible was made to reconcile ""public order"" with ""law and order"" as, indeed, by a

process of paraphrasing, it is possible to raise an air of similitude between them. Such .similitude is possible to raise even between phrases as

dissimilar as ""for preventing breach of the peace"", ""in the interest of the public"", ""for protecting the interests of a class of persons"", ""for

administrative reasons"" and ""for maintaining law and order"". We cannot go by similitude. If public order connotes something different from law and

order even though there may be some common territory between them then obviously the District Magistrate might have traversed ground not

within ""public order"". It would then not do to say that the action is referrable to one power rather than the other, just as easily as one reconciles

diverse phrases by a gloss. When the liberty of the citizen is put within the reach of authority and the scrutiny from courts is barred, the action must

comply not only with the substantive requirements of the law but also with those forms which alone can indicate that the substance has been

complied with. It is, therefore, necessary to examine critically, the order which mentioned ""law and order"" with a view to ascertaining whether the

District Magistrate did not act outside his powers.

58. Before we do so we find it necessary to deal with an argument of Mr. Shastri who followed Mr. Verma. He contends that there is no magic in

using the formula of the Act and Rules for the language of the Act and the Rules can be quoted mechanically. We regret such an attitude. The

President in his Order takes away the fundamental rights under Arts. 21 and 22 from a person provided he has been detained under the Defence

of India Act or the rules made thereunder. The Order is strict against the citizen but it is also strict against the authority. There can be no toleration

of a pretence of using the Defence of India Act. The President''s Order itself creates protection against things such as arbitrariness, misunderstood

powers, mistake of identity by making his order apply only to cases where the detention is under the Act or the rules thereunder. No doubt, what

matters is the substance but the form discloses the approach of the detaining authority to the serious question and the error in the form raises the

enquiry about the gubstance. It is not every error in the order which will start such an enquiry. We have paid no attention to the error in the

reference to the notification because that may well be a slip, and power and jurisdiction is referrable to the notification under which they would

have validity. The other is not such a veneal fault. It opens the door to enquiry what did the District Magistrate conceive to be his powers ?

59. In proceeding to discuss this question we may consider a decision of the Court of Appeal in England in Carltona Ltd. v. Commissioners of

Works and Others [1943] All. 560 Curiously enough it was brought to our notice by Dr. Lohia and not by the other side. That case arose under

Regulation 51(1) of the Defence (General) Regulations in England during the last World War. The Regulation read :

A competent authority, if it appears to that authority to be necessary or expedient so to do in the interests of the public safety, the defence of the

realm or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may take possession of

any land, and may give such directions as appear to the competent authority to be necessary or expedient in connection with the taking of

possession of that land.

60. There was an order against Carltona Ltd. by the Commissioner of Works requisitioning the factory. The order read :

I have to inform you that the department have come to the conclusion that it is essential, in the national interest, to take possession of the above

premises occupied by you.

61. It was objected on behalf of the Company that the mind was not directed to any one of the various heads mentioned in the Regulation which

were put in the alternative. Lord Greene, M. R. speaking on behalf of Lord Goddard (then Lord Justice) and Lord du Parcq (then Lord Justice)

observed :

It was said that it was the duty of the person acting in the capacity of "a competent authority" to examine the facts of the case and consider under

which, if any, of those various heads the matter came, and it is said that the assistant secretary did nothing of the kind. It is to be observed that

those heads are not mutually exclusive heads at all. They overlap at every point and many matters will fall under two or more of them, or under all

four. I read the evidence as meaning that the assistant secretary, seeing quite clearly that the case with which he was dealing and the need that he

wished to satisfy was one which came under the regulation, did not solemnly sit down and ask himself whether it was for the efficient prosecution

of the war that this storage was required for maintaining supplies and services essential to the life of the community. He took the view that it was

required either for all those purposes, or, at any rate, for some of them, and I must confess it seems to me that it would have been a waste of time

on the facts of this case for anyone seriously to sit down and ask himself under which particular head the case fell. He regarded it, as I interpret his

evidence, as falling under all the .heads, and that may very well be having regard to the facts that these heads overlap in the way that I have

mentioned. It seems to me, therefore, that there is no substance in that point, and his evidence makes it quite clear that he did bring his mind to

bear on the question whether it appeared to him to ba necessary or expedient to requisition this property for the purposes named, or some of

them.

62. The case is distinguishable on more than one ground. To begin with, it dealt with an entirely different situation and different provision of law.

No order in writing specifying satisfaction on any or all of the grounds was required. Detention under Regulation 18-B required an order just as

detention under the Defence of India Act. The distinction between action under Regulation; 51 and that under Regulation 18-B was noticed by the

Court of Appeal in Point of Ayr Collieries Ltd. v. Lloyd-George [1943] .All..546 , It is manifest that when property was requisitioned it would

have been a futile exercise to determine whether the act promoted the efficient prosecution of the war, or the maintaining of supplies and services.

But when a person is apprehended and detained it may be necessary to set out with some accuracy what he did or was likely to do within the

provisions of Rule 30, to merit the detention. The use of one phrase meaning a different thing in place of that required by the Act would not do,

unless the phrase imported means the same thing as the phrase in the Act. Here the phrase used is maintenance of law and order and we must see

how that phrase fits into the Rule which speaks of maintenance of ""public order"". The words ""public order"" were considered on some previous

occasions in this Court and the observations made there are used to prove that maintenance of public order is the same thing as maintenance of law

and order. We shall refer to some of these observations before we discuss the two phrases in the context of the Defence of India Rules.

63. Reliance is first placed upon a decision of the Federal Court in Lakhi Narayan Das v. Province of Bihar [1949] F.C.R. 693 where the Court

dealing with item 1 of Provincial List, 7th Schedule in the Government of India Act, 1935 which read-

Public order (but not including the use of His Majesty''s naval, military or air forces in aid of the civil power)

observed that ""Public Order"" with which that item began was ""a most comprehensive term"". Reference is also made to Ramesh Thapar v. State of

Madras [1950] S.C.R. 594 where this Court dealing with the same subject matter also observed :

....."Public order" is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political

society as a result of internal regulations enforced by the Government which they have established..... it must be taken that ''public safety'' is

used as a part of the wider concept of public order.....

and referring to Entry in List III (Concurrent List) of the 7th Schedule of the Constitution which includes the ""security of a State"" and ""maintenance

of public order"" as distinct topics of legislation, observed-

..... The Constitution thus requires a line to be drawn in the field of public order or tranquillity, marking off, may be, roughly, the boundary

between those serious and aggravated forms of public disorder which are circulated to endanger the security of the State and the relatively minor

breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind.

Fazl Ali, J., took a different view which he had expressed more fully in 281925 but he also observed that ""public safety"" had, as a result of a long

course of legislative practice, acquired a well recognised meaning and was taken to denote safety or security of the State and that the expression

public order"" was wide enough to cover small disturbances of the peace which do not jeopardise the security of the State and paraphrased the

words ""public order"" as public tranquillity.

64. Both the aspects of the matter were again before this Court in 283135 when dealing with the wording of clause (2) of Art. 19 as amended by

the Constitution (First Amendment) Act, 1951, it fell to the decided what ""public order"" meant. Subba Rao J. speaking for the Court referred to all

earlier rulings and quoting from them came to the conclusion that ""public order"" was equated with public peace and safety and said :

..... Presumably in an attempt to get over the effect of these two decisions, the expression ""public order"" was inserted in Art. 19(2) of the

Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within

the scope of Art. 19. ..... "".

65. Summing up the position as he gathered from the earlier cases, the learned Judge observed :

..... ""Public order"" is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in

contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State;..... "".

66. These observations determine the meaning of the words ""public order"" in contradistinction to expressions such as ""public order"", ""security of he

State"". They were made in different contexts. The first three cases dealt with the meaning in the legislation Lists as to which, it is settled, we must

give as large a meaning as possible. In the last case the meaning of ""public order"" was given in relation to the necessity for amending the

Constitution as a result of he pronouncements of this Court. The context in which the words were used was different, the occasion was different

and the object in sight was different.

67. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to

act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended

result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small

disturbances and at the other the most serious and cataclysmic happenings. Does the expression ""public order"" take in every kind of disorder or

only some ? The answer to this serves to distinguish ""public order"" from ""law and order"" because the latter undoubtedly takes in all of them. Public

order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight

there is disorder but not public disorder, They can" be dealt with under the powers to maintain law and order but cannot be detained on the

ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal

passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other example* can be imagined. The

contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A

mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances

which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not

in aid of maintenance of law and order under ordinary circumstances.

68. It will thus appear that just as ""public order"" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than

those affecting ""security of State"", ""law and order"" also comprehends disorders of less gravity than those affecting ""public order"". One has to

imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the

smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect

public order but not security of the State. By using the expression ""maintenance of law and order"" the District Magistrate was widening his own

field of action and was adding a clause to the Defence of India Rules.

69. We do not know the material on which the District Magistrate acted. If we could examine the reasons we may be able to say whether the

action can still be said to fall within the other topic public safety. That enquiry is not open to us. If we looked into the matter from that angle we

would be acting outside our powers. The order on its face shows two reasons. There is nothing to show that one purpose was considered to be

more essential than the other. We are not, therefore, certain that the District Magistrate was influenced by one consideration and not both. The

order of detention is a warrant which authorises action. Affidavits hardly improve the order as it is. If there is allegation of bad faith they can be

seen to determine the question of good faith. If mistaken identity is alleged we can satisfy ourselves about the identity. But if action is taken to

maintain law and order instead of maintaining public order, there is room to think that the powers were misconceived and if there is such a

fundamental error then the action remains vulnerable. It will not be possible to say that although maintenance of law and order were specified, what

was considered was the problem of maintenance of public order. The error is an error of a fundamental character and unlike quoting a wrong

notification. It is thus apparent why one error in the order of detention is admitted but not the other, and why with elaborate arguments it is

attempted to establish that ""public order"" involves elements more numerous than ""law and order"" where, in fact, the truth is the other way.

70. It may be mentioned that Dr. Lohia claimed that the satisfaction of the President under Art. 359 is open to scrutiny of the court. We have not

allowed him to argue this point which is now concluded by rulings of this Court.

71. In our judgment the order of the District Magistrate exceeded his powers. He proposed to act to maintain law and order and the order cannot

now be read differently even if there is an affidavit the other way. We have pondered deeply over this case. The action of the District Magistrate

was entirely his own. He was, no doubt, facing a law and order problem but he could deal with such a problem through the ordinary law of the

land and not by means of the Defence of India Act and the Rules. His powers were limited to taking action to maintain public order. He could not

run the law and order problems in his District by taking recourse to the provisions for detention under the Defence of India Act. If he thought in

terms of ""public order"" he should have said so in the order or explained how the error arose. He does neither. If the needs of public order demand

action a proper order should be passed. The detention must, therefore, be declared to be outside the Defence of India Act, 1962 and the Rules

made thereunder. Dr. Lohia is entitled to be released from custody and we order accordingly.

Raghubar Dayal, J.

72. In this writ petition Dr. Lohia challenges the validity of the order made by the District Magistrate, Patna, dated August 9, 1965, under Clause

(b) of sub-r. (1) of r. 30 of the Defence of India Rules, 1962, hereinafter called the Rules. This order is as follows :

Whereas I, J. N. Sahu, District Magistrate, Patna, am satisfied with respect to the person known as Dr. Ram Manohar Lohia, Circuit House,

Patna that with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order, it is

necessary to make an order that he be detained.

Now, therefore, in the exercise of the powers conferred by clause (b) of sub-rule (1) of rule 30 of the Defence of India Rules, 1962 read with

Notification No. 180/CW dated the 20th March 1964 of the Govt. of Bihar, Political (Special) Department, I hereby direct that the said Dr. Ram

Manohar Lohia be arrested by the police wherever found and detained in the Central Jail Hazaribagh, until further orders.

73. If this order is valid, Dr. Lohia cannot move this Court for the enforcement of his rights conferred by arts. 21 and 22 of the Constitution, in

view of the Order of the President dated November 3, 1962, in the exercise of powers conferred on him by Clause (1) of art. 359 of the

Constitution.

74. Dr. Lohia has challenged the validity of this order on several grounds. I agree with the views expressed by Hidayatullah J. about all the

contentions except one. That contention is that the appropriate authority is not empowered to order detention with a view to prevent a person from

acting in any way prejudicial to the maintenance of law and order. It is urged that though the District Magistrate could order the detention of the

petitioner with a view to prevent him from acting in any way prejudicial to the public safety and the maintenance of public order, he could not order

detention with a view to prevent the petitioner from acting prejudicially to the public safety and maintenance of law and order, as the latter object,

being not synonymous with the object of preventing him from acting prejudicial to public order, is outside the purview of the provisions of r. 30(1)

of the rules and that, therefore, the entire order is bad. I do not agree with this contention.

75. Under r. 30(1) (b), the District Magistrate could have made the order of detention with respect to Dr. Lohia if he was satisfied that he be

detained with a view to prevent him from acting in any manner prejudicial to public safety or maintenance of public order. Such satisfaction is

subjective and not objective. The Court cannot investigate about the adequacy of the reasons which led to his satisfaction. The Court can,

however, investigate whether he exercised the power under r. 30 honestly and bona fide or not i.e., whether he ordered detention on being

satisfied as required by r. 30. What is crucial for the validity of the detention order is such satisfaction and not the form in which the detention order

is framed. A detenu can question the validity of the detention order-valid on its face- on various grounds including that of bona fide. The onus will

be on him to prove bona fides. He can question the validity of the detention order on the same ground when, on its face, it appears to be invalid. In

such a case the onus will be on the detaining authority to establish that it was made bona fide.

76. An order is made mala fide when it is not made for the purpose laid down in the Act or the rules and is made for an extraneous purpose. The

contention of the petitioner to the effect that the detention order cannot be made in the satisfaction of the detaining authority that it is necessary to

prevent him from acting in a manner prejudicial to the maintenance of law and order, in effect, amounts to the contention that it is made mala fide.

77. The detaining authority is fee to establish that any defect in the detention order is of form only and not of substance, it being satisfied of the

necessity to detain the person for a purpose mentioned in r. 30 though the purpose has been inaccurately stated in the detention order. The

existence of the satisfaction required by r. 30 does not depend on what is said in the detention order, and can be established by the District

Magistrate by his affidavit. We have therefore to examine whether the District Magistrate was really satisfied about the necessity to detain Dr.

Lohia with a view to prevent him from acting in a manner prejudicial to public safety and maintenance of public order.

78. The impugned order was passed under r. 30(1) (b) of the rules. The District Magistrate decided to detain the appellant with two objects,

firstly, to prevent him from acting in any way prejudicial to public safety and, secondly, to prevent him from acting in any way prejudicial to the

maintenance of law and order. The District Magistrate has-even in the absence of any such contention as under discussion and which was raised

after the filing of the District Magistrate''s affidavit-said that having regard to, inter alia, the circumstances which were developing in Patna on

August 9, 1965, he was fully satisfied, in view of the report made by the Senior Superintendent of Police, Patna, in regard to Dr. Lohia''s conduct

and activities, that it was necessary to direct that he be detained in order to prevent him from acting further in any manner prejudicial to the public

safety and maintenance of public order. There is no reason to disbelieve his statement. His original order, set out below, bears but this statement o

Perused the report of the Senior S. P. Patna for detention of Dr. Ram Manohar Lohia, M. P. under rule 30(1) (b) of the Defence of India Rules,

on the ground that his being at large is prejudicial to the public safety and maintenance of public order. From the report of the Sr. S. P., Patna, I

am satisfied that Dr. Ram Manohar Lohia, M. P., aforesaid, be detained under rule 30(1) (b) of the Defence of India Rules. Accordingly, I order

that Dr. Ram Manohar Lohia be detained under rule 30(1) (b) of the Defence of India Rules read with Notification No. 180/CW dated 20-3-64 in

the Hazaribagh Central Jail until further orders.

79. The District Magistrate''s omission to repeat in the second sentence where he speaks of his satisfaction that Dr. Lohia be detained with a view

to preventing him from acting prejudicially to the public safety and maintenance of public order, does not mean that he was not so satisfied when

the earlier sentence makes reference to the report of the Senior Superintendent of Police for detaining Dr. Lohia on the ground of his being at large

to be prejudicial to public safety and maintenance of public order.

80. The District Magistrate referred, in para 3 of his affidavit, to his satisfaction that the forces of disorder which were sought to be let loose, if not

properly controlled, would envelop the whole State of Bihar and possibly might spread in other parts of the country which would necessarily affect

the problem of external defence as well in more ways that one. The possibilities of such forces of disorder spreading to other parts of the country

satisfied him with the necessity of taking immediate action to neutralize those forces. It appears from his statements in paras 6 and 7 of the same

affidavit that actual disturbances took place at Patna that day and that he had to operate from the Control Room. In para 9 he states that the action

taken against Dr. Lohia was purely for the purpose of maintenance of public peace in the circumstances stated by him earlier.

81. In his rejoinder affidavit Dr. Lohia states with reference to the alleged forces of disorder referred to by the District Magistrate that even if he

was promoting what the executive would call "forces of disorder", he was doing so not with a view to impair the defences of the country but

further to strengthen them, that the various allegations made against him were extraneous to the scope and purpose of the legislative provisions of

the proclamations of emergency which had no rational relationship to the circumstances which were developing in Patna on August 9, 1965.

82. Even in his original affidavit Dr. Lohia stated in para 6 that :

It is also revealing to note that after the events of the 9th August for which responsibility should have been sought to be fixed either though trial or

enquiry, on me or Government or anybody else, I addressed a crowd of nearly a lakh for over an hour after seven in the evening.

83. The setting of the events that appear to have happened at Patna on August 9, 1965 further bear out the statement of the District Magistrate

that he was satisfied of the necessity to detain Dr. Lohia in order to prevent him from acting in a manner prejudicial to public order.

84. Further, the expression ''maintenance of law and order'' is not used in cl. (1) of r. 30. The corresponding expression used therein is

''maintenance of public order''. The two expressions are not much different. The expression ''public order'' has been construed by this Court in a

few cases, the latest of them being The Superintendent, Central Prison, 283135 wherein it was said at p. 839 :

''Public order'' is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in

contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

85. The expression ''maintenance of law and order'' would cover ''maintenance of public safety and tranquillity''. It may be, as urged for the

petitioner, an expression of wider import than public order but, in the context in which it is used in the detention order and in view of its use

generally, it should be construed to mean maintenance of law and order in regard to the maintenance of public tranquillity. It is not usually used

merely with reference to enforcement of law by the agency of the State prosecuting offenders against way of the numerous laws enacted for the

purposes of a well-regulated society. Simple and ostensibly minor incidents at times lead to widespread disturbances affecting public safety and

tranquillity.

86. Reference may be made to the case reported as Sodhi Shamsher Singh v. State of Pepsu AIR 1954 S.C. 376. In that case certain persons

were detained under an order under s. 3(1) of the Preventive Detention Act, 1950, on grounds which, in substance, were that one of them had

published certain pamphlets whose circulation, in the opinion of the Government, tended to encourage the Sikhs to resort to acts of lawlessness

and plunge the Hindus into a feeling of utter frustration and discouragement and consequently to make them take the law into their hands for the

redress of their grievances. Section 3(1) of the Preventive Detention Act, 1950, reads :

The Central Government or the State Government may-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to-

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii).....

(b)....., make an order directing that such person be detained.

87. This Court used the expression ''maintenance of law and order'' in place of ''maintenance of public order'' used in s. 3(1) (a) (ii) at three places

in paras 4 and 5 of the judgment. I do not refer to these to show that the Court has construed the expression ''maintenance of public order'' as

''maintenance of law and order'' but to reinforce my view that the expression ''maintenance of law and order'' is generally used for ''maintenance of

public safety and tranquillity'' which is covered by the expression ''public order''. When this Court used this expression in place of ''maintenance of

public order'' I cannot conclude, as urged by the petitioner, that the District Magistrate''s using the expression ''maintenance of law and order'' in

place of ''maintenance of public order'' is any indication of the fact that he had not applied his mind to the requirements of the provisions of r. 30(1)

or had not actually come to the conclusion that it was necessary to detain Dr. Lohia with a view to prevent him from acting in any manner

prejudicial to the maintenance of public order.

88. If the expression ''maintenance of law and order'' in the impugned order be not construed as referring to ''maintenance of public order'' the

impugned order cannot be said to be invalid in view of it being made with a double objective, i.e., with object of preventing Dr. Lohia from acting

prejudicially to the public safety and from acting prejudicially to the maintenance of law and order. If the District Magistrate was satisfied, as the

impugned order and the affidavit of the District Magistrate show that he was satisfied that it was necessary to detain Dr. Lohia with a view to

preventing him from acting prejudicially to public safety, that itself would have justified his passing the impugned order. His satisfaction with respect

to any of the purposes mentioned in r. 30(1) which would justify his ordering the detention of a person is sufficient for the validity of the order.

There is no room for considering that he might not have passed the impugned order merely with one object in view, the object being to prevent Dr.

Lohia from acting prejudicially to public safety. The entire circumstances in which the order has been made and which I have referred to earlier,

point to that.

89. The question before us is not really at par with the question that arose in 281763 . In that case the provisions impugned were those of a statute

whose language authorised the passing of orders which could be constitutional in certain circumstances and unconstitutional in others. In such a

context, it was said that where a law purports to authorize the imposition of restrictions on a fundamental right in language wide enough to cover

restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even

so far as it may be applied within the constitutional limits, as it is not severable; so long as the possibility of its being applied for purpose not

sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. It was so held as, otherwise, the orders

passed for purposes not sanctioned by the Constitution would have been in accordance with the law held valid. The validity of the orders passed

under a valid law-the Defence of India Act and the rules have to be assumed to be valid-depends on their being made by the appropriate authority

in accordance with the law empowering it to pass the orders.

90. The question before us is also not at par with the question which often arises in construing the validity of detention orders passed under the

Preventive Detention Act for the reason that some of the grounds for the satisfaction of the appropriate authority were irrelevant or non-existent.

The presence of such grounds raised the question whether the remaining good grounds would have led the authority to the requisite subjective

satisfaction for ordering detention. In the present case, however, the question is different. The question is whether the District Magistrate would

have made the order of detention on his satisfaction merely to the effect that it was necessary to detain Dr. Lohia with a view to prevent him from

acting in a manner prejudicial to public safety. It is not that his satisfaction is based on two grounds, one of which is irrelevant or non- existent.

91. Even in such cases, this Court has held in 281568 :

The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its

subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of

reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. That is so

because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out

of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been

on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds

would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles,

however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective

satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such

an order based on subjective satisfaction can be held to be invalid.

92. As stated earlier, there does not appear to be any reason why the District Magistrate would not have passed the order of detention against Dr.

Lohia on his satisfaction that it was necessary to prevent him from acting prejudicially to public safety. On such satisfaction, it was incumbent on

him to pass the order and he must have passed it.

93. I am therefore of opinion that the District Magistrate made the impugned detention order on his being satisfied that it was necessary to do so

with a view to prevent Dr. Lohia from acting in a manner prejudicial to public safety and maintenance of public order and that the impugned order

is valid. Consequently, Dr. Lohia cannot move this Court for the enforcement of his rights under arts. 21 and 22 of the Constitution in view of the

President"s Order under art. 359(1) of the Constitution. I would dismiss this petition.

Mudholkar, J.

94. I agree that the petition of Dr. Ram Manohar Lohia under Art. 32 of the Constitution be granted and would briefly indicate my reasons for

granting it.

95. At the outset I shall consider an objection of Mr. S. P. Varma on behalf of the State as to the tenability of the petition. The objection is two-

fold. In the first place, according to him, in view of the Proclamation made by the President under Art. 359 this Court has no jurisdiction to

entertain it. In the second place his contention is that the order of detention made against the petitioner being one under the Defence of India Rules,

he cannot challenge the validity of his detention thereunder in any court. In support of these contentions Mr. Varma relies on the decision of this

Court in 279609 . In that case this Court has, while holding that the right of a person whose detention has been ordered under the Defence of India

Rules to move any court for the enforcement of his rights under Art. 21 of the Constitution is suspended during the continuance of the emergency

declared by the President by a Proclamation under Art. 352, held that the powers conferred on this Court by Art. 32 of the Constitution are not

suspended. It is true that where a person has been detained under the Defence of India Rules he cannot move this Court under Art. 32 for the

enforcement of his right under Art. 21 and so there will be no occasion for this Court to exercise its powers under that article in such a case. But

what would be the position in a case where an order for detention purporting to be made under the Defence of India Rules was itself one which

was beyond the scope of the Rules ? For, before an entry into the portals of this Court can be denied to detenu he must be shown an order under

r. 30(1) of the Defence of India Rules made by a competent authority stating that it is satisfied that the detenu is likely to indulge in activities which

will be pre- , judicial to one or more of the matters referred to in the rule. If the detenu contends that the order, though it purports to be under r.

30(1) of the Rules, was not competently made, this Court has the detenu contends that the order, though it purports to be under order if the Court

finds that it was not competently made or was ambiguous it must exercise its powers under Art. 32 of the Con-ititution, entertain his petition

thereunder and make an appropriate order.

96. In this case the District Magistrate, Patna purported to make an order under r. 30 (1) of the Defence of India Rules. The State has placed on

record copies of two orders : one is said to have been recorded by the District Magistrate on his file and another which was served on Dr. Lohia.

We are not concerned with the former because the operative order must be the one served on the detenu. The District Magistrate may well keep

the former in the drawer of his table or alter it as often as he likes. It cannot, therefore, be regarded as anything more than a draft order. The order

which finally emerged from him and was served on the detenu would thus be the only one which matters. The grounds for detention given in the

latter order are that Dr. Lohia''s being at large is prejudicial to public safety and maintenance of law and order. Under r. 30(1) an order of

detention of a person can be made ""with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence,

public safety, the maintenance of public order, India''s relations with foreign powers, the maintenance of peaceful conditions in any part of India,

the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community"". I find it difficult to

accept Dr. Lohia''s argument that the appropriate authority must entertain an apprehension that the person to be detained is likely to participate in

every one of the activities referred to hi the rule. To accept it would be, apart from making a departure from the rules of grammar, (for doing which

no valid grounds exist), making not only the rule in question but also s. 3 of the Defence of India Act where similar language is used almost

ineffective. What has, however, to be considered is his other argument. The question posed by the argument is whether an authority competent to

make an order under the aforesaid provision can make such an order on the ground that the authority feels it necessary to prevent a person from

acting in any manner prejudicial to the maintenance of law and order. The expression ""law and order"" does not find any place in the rule and is not

synonymous with ""public order"". It seems to me that ""law and order"" is a comprehensive expression in which would be included not merely public

order, but matters such as public peace, tranquillity, orderliness in a locality or a local area and perhaps some other matters. ""Public order"" is

something distinct from order or orderliness in a local area. Under r. 30(1) no power is conferred upon that authority to detain a person on the

ground that it is necessary so to do in order to prevent that person from acting in a manner prejudicial to the maintenance of order in a local area.

What is it that the District Magistrate, Patna had in mind when he ordered the detention of the petitioner ? Was the apprehension entertained by the

District Magistrate that Dr. Lohia, if left at large, was likely to do something which will imperil the maintenance of public order generally or was it

that he apprehended that Dr. Lohia"s activities may cause disturbances in a particular locality? There is thus an ambiguity on the face of the order

and, therefore, the order must be held to be bad. No doubt, the order also refers to the apprehension felt by the District Magistrate about Dr.

Lohia"s acting in a manner prejudicial to public safety. But then the question arises, what is it that weighed with the District Magistrate, the

apprehension regarding public safety or an apprehension regarding the maintenance of law and order ? Again, would the District Magistrate have

made the order solely on the ground that he felt apprehension regarding the maintenance of public safety because of the activities in which he

thought Dr. Lohia might indulge ? It could well be that upon the material before him the District Magistrate would have refrained from making an

order under r. 30 solely upon the first ground. Or on the other hand he would have made the order solely upon that ground. His order, however,

which is the only material on the basis of which we can properly consider the matter gives no indication that the District Magistrate would have

been prepared to make it only upon the ground relating to public safety. In the circumstances I agree with my brethren Sarkar and Hidaya-tullah

that the order of detention cannot be sustained. I have m>t referred to any decisions because they have already been dealt with fully in the

judgments of my learned brethren. In the result, therefore, I allow the petition and direct that Dr. Lohia be set at liberty.

ORDER

In view of the majority opinion, we allow the Petition and order that the petitioner be set at liberty.