
(1954) 02 CAL CK 0031

Calcutta High Court

Case No: None

Shri Krishna Sharma

APPELLANT

Vs

The State of West
Bengal and Others

RESPONDENT

Date of Decision: Feb. 11, 1954

Acts Referred:

- Constitution of India, 1950 - Article 12, 13, 14, 143, 19

Citation: (1954) CriLJ 1722

Hon'ble Judges: Guha, J; Guha Ray, J

Bench: Division Bench

Judgement

Guha, J.

These are two applications praying that orders under Article 226 of the Constitution of India may be made and writs in the nature of Habeas Corpus issued in favour of Mahabir Prasad Periwal and his brother Gajanand Periwal now detained in the Darjeeling Jail under two detention orders passed under the Preventive Detention Act. The two cases were heard together and the arguments in both the cases are practically the same. This judgment will govern both the cases.

2. Before dealing with the arguments advanced before us it is necessary to set out a few facts. On 20-8-1953, Mahabir Prasad Periwal and his brother Gajanand Periwal were arrested at Kalimpong and thereafter detained in the Darjeeling Jail under an order dated 19-8-1953 under the Preventive Detention Act 4 of 1950 purported to have been passed by the Deputy Commissioner of Darjeeling. Rules were obtained from this Court in both the cases and on 1-10-1953 a Bench of this Court held that the orders of detention were illegal and directed that both the detenus be set at liberty forthwith.

Thereupon on 4-10-1953 both Mahabir Prasad Periwal and Gajanand Periwal were released from Darjeeling Jail, but they were immediately served with fresh orders under the Preventive Detention Act of 1950 by the District Magistrate of Darjeeling, who

happens to be the same officer as the Deputy Commissioner of Darjeeling who had passed the previous detention orders. Since then both the detenus have been in detention and the present applications are directed against these subsequent orders of detention passed on 4-10-1953. Grounds as contemplated u/s 7, Preventive Detention Act, were served upon them on the same date, that is, 4-10-1953.

3. Various points have been urged on behalf of the petitioners and the main points canvassed before us may be now dealt with seriatim.

4. It has been contended on behalf of the detenus that Section 3(l)(a)(iii), Preventive Detention Act, empowering the Central Government or the State Government to detain a person with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community is ultra vires and "a fortiori" the corresponding power as conferred on the District Magistrates, Additional District Magistrates, etc., by Sub-section (2) of the Act is also ultra vires the Constitution. It is contended that by making the above-mentioned provisions the Legislature has parted with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. It is urged that this is not legislation as contemplated in Article 246 of the Constitution.

More particularly it has been contended that in the impugned legislation Parliament has not stated what it means by the term "supplies and services "essential" to the community" with the result that this vital matter has been left to the unfettered discretion of other authorities and in this respect the provisions of the P. D. Act have been contrasted with the corresponding provisions of Essential Supplies Act (Act 24 of 1939 (1946?), Defence of India Act u/s 2, Sub-section (1), Section 2(2), Clause (XX), Rule 81D, Clause (aa) of the Defence of India Rules, Bombay Public Security Measures (Amendment) Act, 1950 (Section 8).

5. It has also been pointed out that in the P. D. Act there is no provision for the usual rule-making power to carry out the purposes of the Act, thereby going to show further how completely Legislature has abdicated its true functions and left everything to the hands of other authorities. Reference has also been made to the brief preamble of the P. D. Act as compared with the ampler preamble of the Essential Supplies Act. In support of his argument Mr. Kar has drawn our attention to several passages in the judgment of Mukherjea J. in re Article 143, Constitution of India and Delhi Laws Act, (1912) etc. AIR 1951 SC 332 (A) and he has also referred in this connection to the case of - [Mulchand Khatar Vs. The State](#), to which one of us was a party. His argument in brief is that so far as the relevant provision of the P. D. Act is concerned the Legislature has not discharged itself its primary or essential duty and that it cannot be said in the present case that delegation was resorted to as a secondary or subsidiary measure with the result that the legislation in question is bad, being no legislation at all.

To this the reply of the learned Advocate General is briefly that in view of the decision of the Supreme Court in [A.K. Gopalan Vs. The State of Madras](#), which held, inter alia, that the impugned Act is no delegation of legislative power, this line of attack based on the alleged delegation of legislative power is not open to Mr. Kar. In this connection the learned Advocate General drew our attention to the observations of their Lordships of the Supreme Court at pages 42-43, 66-67, 77, 84, 105-108 and 122-123 of the report.

Mr. Kar in his turn contends that in "Gopalan"s case (C)" the provisions of Sections 3, 7, 12 and 14 of the P. D. Act were examined by the Supreme Court in the light of Articles 12, 13, 14, 19, 21, 22 and 32(1) of the Constitution and in that case the question in debate in the present case, viz., whether the impugned provision of the P. D. Act was legislation at all within the meaning of Articles 245 and 246 of the Constitution was not decided, and in support of this contention Mr. Kar has drawn our attention to the case of - [Ram Singh and Others Vs. The State of Delhi and Another](#), as explaining what was actually decided by the Supreme Court in A. K. Gopalan"s case (C)". Our attention was drawn in particular to certain observations of Patanjali Sastri J, in that case, viz.,

The interpretation of these Articles (i.e. Articles 19, 21 and 22 of the Constitution) and their correlation were elaborately dealt with by the Full Court in "Gopalan"s case (C)" It was decided by a majority of 5 to 1 that a law which authorises deprivation of personal liberty did not fall within the purview of Article 19 and its validity was not to be judged by the criteria indicated in that Article but depended on its compliance with the requirements of Articles 21 and 22 and as Section 3 (of the P. D. Act) satisfied those requirements, it was constitutional.

I do not read the above passage as laying down comprehensively all that was decided in the exhaustive judgment in "Gopalan"s case (C)", as I shall attempt to show. Incidentally I may quote a passage from the judgment of Bose J. in this very case, viz., "Ram Singh"s case (D)". His Lordship"s observations are as follows:

So far as the Constitution is concerned, it has given Parliament the power to legislate on this subject by Article 246 read with item 9 of List I of Schedule 7 and item 3 in List HI and I have no doubt that the legislation sought to be impugned here is intra vires.

The above passage would appear to lend support to the learned Advocate General"s contention on the point.

6. Leaving "Ram Singh"s case (D)" for a moment, let us see whether "A. K. Gopalan"s case (C)" supports the contention of the learned Advocate General. Though considerations of space do not permit me to quote extensively from the very elaborate judgment in "Gopalan"s case (C)", it is necessary to refer to at least a few passages in that judgment as bearing on the point under discussion. Chief Justice Kania observed:

It was first argued that by Section 3 (of the P. D. Act) the Parliament had delegated its legislative power to the executive officer in detaining a person on his being satisfied of its

necessity. It was urged that the satisfaction must be of the legislative body. This contention of delegation of the legislative power in such cases has been considered and rejected in numerous cases by our Federal Court and by the English Courts Section 3 of the impugned Act (i.e. P. D. Act) is no delegation at all of all legislative power. It only confers discretion on the officer to enforce the law made by the Legislature.

His Lordship proceeds to observe:

Section 3 is also impugned on the ground that it does not provide an objective standard which the Court can utilise for determining whether the requirements of law have been complied with. It is clear that no such objective standard of conduct can be prescribed, except as laying down conduct tending to achieve or to avoid a particular object.

The first passage quoted above would appear to meet Mr. Kar's contention that the impugned provision in Section 3 of the P. D. Act is bad being an instance of unwarranted delegation of legislative power, while the second passage would seem to furnish an answer to Mr. Kar's line of attack based upon the contention that Legislature had not given an indication as to what were essential supplies and services and as such failed to lay down a form or standard for the guidance of other authorities.

In the above case (viz., "Gopalan's case (C)", Das J. observed, inter alia, as follows:

In other words, it is contended that Parliament has not legislated but has delegated its legislative power to the executive authorities. I do not think that there is any substance in this contention. In the first place this is not an objection as to procedure but as to substantive law which is not open to the Court's scrutiny. In the next place this contention overlooks the basic distinction between the delegation of power to make the law and the conferring of an authority and discretion as to its execution to be exercised under and in pursuance of the law.

7. These are not merely solitary passages culled out of a lengthy judgment. There are passages in somewhat similar strain in the judgments of the other Judges as well who decided "Gopalan's case (C)".

8. In the face of the passages referred to above, it is difficult to uphold Mr. Kar's contention that the impugned provision of Section 3 of the P. D. Act is not a valid piece of legislation. Incidentally it may be observed that if Mr. Kar's contention be upheld not only will Section 3(1)(a)(iii) and Section 3(2) of the P. D. Act fall, but also the other provisions of Section 3 and with it the entire Act will fall - a sweeping result indeed! It is true that the decision of the Supreme Court in the "Delhi Laws Act case (A)" was given subsequent to the decision in "Gopalan's case (C)", but I am not prepared to hold that even according to the tests laid down in the "Delhi Laws Act case (A)", the impugned provisions of the P. D. Act amount to an invalid piece of legislation. The fact that what were essential commodities were laid down in certain statutes, e.g., Essential Supplies Act, etc., cannot be considered to be a valid ground for nullifying the impugned provisions of the

Preventive Detention Act."

9. It has further been urged by Mr. Kar that the order of detention passed by the District Magistrate on 4-10-53 is bad on the ground that he was not the proper authority to keep Mr. Kar's client under detention u/s 3(l)(a)(iii) of the P. D. Act. In order to appreciate this contention, it is necessary to state the facts a bit more fully. On 4-10-53 an order was served upon Mahabir Prasad Periwal (Mr. Kar's client) detaining him in exercise of the powers conferred by Section 3(2) of the P. D. Act, 1950

with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

On the same day the District Magistrate served upon him the grounds of detention. Those grounds were described as "grounds of detention order u/s 3(l)(a)(iii) of the Preventive Detention Act, 1950 (Act 4 of 1950)". Thereafter the grounds - ten in number - were set forth.

This was followed by a paragraph which ran as follows-

Hence with a view to preventing you from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, I hereby order that you be detained u/s 3(1)(a)(iii) of the Preventive Detention Act, 1950 (Act 4 of 1950).

In these circumstances, Mr. Kar's contention is that his client is reasonably in doubt whether he has been detained u/s 3(l)(a)(iii) of the P. D. Act, or u/s 3(2) of it. If under the former, Mr. Kar's contention is that the detention order is bad, because under it it is the Central or the State Government and not the District Magistrate, which is the appropriate authority for passing the order. Mr. Kar's contention further is that if the detention order be held to be u/s 3(2), the District Magistrate had no business to state in the grounds for detention supplied to his client that the detention was u/s 3(l)(a)(iii) and in these circumstances the detention order was equally bad and his client was entitled to be released on this ground alone,

In this connection Mr. Kar laid considerable stress upon the observations of Chief Justice Patanjali Sastri in the case of [Ram Narayan Singh Vs. The State of Delhi and Others](#), to the effect that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty must strictly and scrupulously observe the forms and rules of law. We are unable, however, to attach undue weight to what was after all a "slip" on the part of the District Magistrate, as the learned Advocate General put it. It is abundantly clear that Mr. Kar's client has been detained by the District Magistrate u/s 3(2). This is clear from the initial order of detention served upon Mahabir Prasad on 4-10-53 and the District Magistrate was competent to pass such order. Sub-section (2) of Section 3 authorised him to exercise the power conferred by Sub-section (1), Sub-clause (iii) of Clause (a).

Section 7 no doubt required the District Magistrate to communicate to the detenu the grounds of detention, but it did not require him to set forth over again the specific provisions of the P. D. Act under which the detention order was made and if in addition to setting forth the grounds which he did correctly enough the District Magistrate made a "slip" in a superfluous portion of the relevant communication, it cannot be said that he did not observe the "forms and rules of the law" so as to vitiate his order. The detenus could not reasonably have been misled in any way by the slip or inaccuracy, nor could they be handicapped in making their representation against the orders of detention.

10. The next argument of Mr. Kar raises an important issue. In order to appreciate this argument it is necessary to refer to some historical facts. In 1913 a conference of British, Chinese and Tibetan Plenipotentiaries was convened in Simla to negotiate an agreement regarding the international status of Tibet and a Tripartite convention was drawn up and in 1914 it was initiated by the representatives of the three parties. The representative of the Emperor of India was Sir A. H. Mc-Mahon, Secretary to the Government of India, Foreign and Political Department. The Chinese Government, however, refused to ratify the convention. It was, however, ratified by Great Britain and Tibet and accepted as binding by them as between themselves. By Article 7 of this convention the Tibet Trade Regulations of 1893 and 1908 were cancelled and the Tibetan Government undertook, to negotiate with the British Government new Trade Regulations. In pursuance of this undertaking, "Anglo-Tibet Trade Regulations, 1914" were signed on 3-7-1914 by the Plenipotentiaries of the two countries and they came into effect from the date of the signature.

Clause VIII of these Regulations is very important for our present purposes. It runs thus:

VIII. Import and export in the following articles:

Arms, ammunition, military stores, liquors and intoxicating or narcotic drugs may at the option of either Government be entirely prohibited or permitted only on such conditions as either Government on their own side may think fit to impose.

(According to Mr. Kar, the implication of this clause read with the other clauses is that freedom of export and import of other commodities between India and Tibet was guaranteed).

Clause IX which dealt with the period of currency of the Regulations may also be quoted. It runs thus-

IX. The present Regulations shall be in force for a period of ten years reckoned from the date of signature by the two Plenipotentiaries; but, if no demand for revision be made on either side within six months after the end of the first ten years the Regulations shall remain in force for another ten years from the end of the first ten years; and so it shall be at the end of each successive ten years.

(According to Mr. Kar, the Regulations of 1914 are still operative in terms of the above clause, there having been no revision yet),

11. From 15-8-1947 the partition of India became operative and by the Indian Independence Act, 1947, passed by British Parliament two independent Dominions, viz., India and Pakistan came into existence.

12. In exercise of the powers conferred upon him by Section 9, Indian Independence Act, 1947, of all other powers enabling him in that behalf, the Governor General promulgated on 14-8-47 the Indian Independence (International Arrangements) Order, 1947. The schedule to this Order recorded an agreement as to the devolution of international rights and obligations upon the Dominions of India and Pakistan. Clause 3(1) of the schedule laid down that rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

13. I shall now attempt to set out the conclusions that Mr. Kar seeks to draw from the above historical facts-

(a) The whole field of Anglo-Tibetan Trade was covered by Anglo-Tibet Trade Regulations of 1914 and so far as articles of trade not specifically mentioned in clause VIII quoted above, were concerned it has to be held that complete freedom of trade, i.e., export and import between India and Tibet, was guaranteed. This conferred on citizens of India a right of free export of non-specified articles out of India to Tibet.

(b) The arrangement indicated above continued in force up to 1954 by reason of clause IX of the 1914 Regulations. It had the effect of a law in force or existing law which, notwithstanding the repeal of the Indian Independence Act, 1947, by Article 395 of the Constitution, was continued in force under Article 372(1). Reference was also made in this connection to Section 1.8(1), Indian Independence Act, 1947.

(c) The non-ratification by China of the convention of 1914 did not affect its binding force so far as the other two contracting parties, viz., Great Britain and Tibet were concerned. As mentioned before, the convention was accepted by those parties as binding between themselves.

(d) At least since 1947, when the Indian Independence (International Arrangements) Order, 1947, was promulgated by the Governor General of India, citizens were entitled to enforce or protect their right of free export of articles (not specifically mentioned in clause VIII of the Anglo-Tibet Regulations, 1914) out of India to Tibet against the Government of India and for that purpose they could have recourse to Indian Courts.

(e) In view of the provisions of the Anglo-Tibet Trade Regulations of 1914, export of goods to Tibet (other than the goods prohibited by those Trade Regulations) did not constitute an offence and cannot be the basis of any valid detention order under the P. D.

Act.

14. The contention of the learned Advocate General was, first, assuming that under the Anglo-Tibet Trade Regulations of 1914 unfettered export of goods (other than the goods specifically mentioned in clause VIII of those Regulations) was permitted, subsequent Indian statutes, e.g., Essential Supplies Act, 1946, and the various Orders passed thereunder, Imports and Exports (Control) Act, 1947 (Central Act 18 of 1947) and Notification No. 91-CW(1)/51 issued thereunder prohibiting or regulating to any place outside India export of specified goods, would prevail over the implied provisions of the earlier Anglo-Tibet Regulations, 1914 and, as such, export of goods out of India to Tibet in violation of such subsequent Indian statutes would not only amount to an offence under the Indian law but could also lay the foundations for an order under the P. D. Act,

Secondly, the learned Advocate General argues the Indian Independence (International Arrangements) Order, 1947, regulates the rights and obligations under International agreements as between the Dominions of India and Pakistan and not the rights and obligations of the citizens of those Dominions against their Governments for which provision has been made in the Indian Independence (Rights, Property and Liabilities) Order, 1947.

Thirdly, it is argued, even assuming that citizens of India have acquired any rights according to the Indian Independence (International Arrangements) Order, 1947, they can be canvassed only in an International Court of Justice and not in the Municipal Courts of India.

15. It is necessary to pronounce our opinion on some of the points canvassed above.

16. So far as the first proposition of Mr. Kar - conclusion (a) referred to above - is concerned, I am inclined to think that it is correct to the extent that Anglo-Tibet Trade Regulations must be deemed, by necessary implication, to have provided for free export from India to Tibet and vice versa of goods not specifically mentioned in clause VIII thereof. As pointed out in Schwarzenoerger's International Law, Vol. I, 2nd Edn., (1949), the maxim "*expressio unius est exclusio alterius*" is "applicable to the construction of treaties as well as the municipal statutes and contracts" (p. 216). Several examples of the application of the maxim are given by Schwarzenberger. It is true that this method of construction has to be applied with caution, but there can hardly be any reason for doubt that in appropriate cases it may be resorted to for the construction of treaties. The question is whether it should be resorted to in the present case. I am inclined to answer the question in the affirmative.

The tripartite convention of 1914 expressly cancelled the existing Trade Regulations, viz., the Tibet Trade Regulations of 1893 and 1904 (Art. 7(a)) and the Tibetan Government engaged to negotiate new Trade Regulations (Art. 7(b)). It was in these circumstances that the Anglo-Tibet Trade Regulations of 1914 were negotiated. The primary rule is that

a treaty has to be liberally construed so as to carry out the intention and purpose of the contracting parties thereto (Vide Lauterpacht's Annual Digest and Reports of Public International Law Cases, year 1947, at p. 164). In the interpretation of international agreements it is often necessary to adopt a more liberal method of construction than that which might be fairly applied in the case of private instruments. Reading the various clauses of the Regulations and bearing in mind the background of the circumstances in which they came to be negotiated, it would be somewhat surprising to suppose that the high contracting parties confined their attention to only a few articles of trade, viz., arms, ammunition, military stores, liquors and intoxicating or narcotic drugs (Vide clause VIII) and left other and commoner articles of merchandise e.g. clothing, foodstuff, etc., entirely unprovided for. It would seem to be more rational to infer that as regards the latter articles which were not specifically mentioned free and unfettered commerce was intended.

17. Assuming that the Anglo-Tibet Regulations of 1914 make it obligatory on the part of India to observe their terms scrupulously during the period of their currency and to ensure free export out of India to Tibet of articles not specifically mentioned in clause VIII, several questions arise for decision.

18. One of these questions is whether a municipal Court or, for the matter of that, an Indian Court is competent to enquire into a matter involving the construction of treaties and a connected question is whether treaty obligations can be enforced in municipal Courts. Mr. Kar has referred in this connection to *Walker v. Baird* (1892) AC 491 (F). Lord Herschell delivering the judgment of the Privy Council observed,

The suggestion that they (i.e. acts of an officer of the Crown) can be justified as acts of State, or that the Court was not competent to inquire into a matter involving the construction of treaties and other acts of State is wholly untenable.

The above case has been construed as showing indirectly that according to English law international agreements to which Great Britain may be a party and obligations arising therefrom will not be regarded as a part of the ordinary law of the land, except in so far as they may have received the assent of the Legislature.

Mr. Kar drew our attention to an old Chancery case as well, viz., - *Weymberg v. Touch* (1669) 22 ER 724 (G). He has also relied upon the following passage-

In all cases the Courts are competent to inquire into matters involving the construction of treaties and other acts of State" (Halsbury's Laws of England, Vol. VI (2nd Edn.), p. 523).

He has drawn our attention to a few other cases to be referred to presently. In this connection the learned Advocate General has drawn our attention to the cases of - *AIR 1924 226* (Privy Council) (H) and - *Secretary of State v. Rustom Khan AIR 1941 PC 64* (I) for the proposition that for acts of State no municipal Court of justice can afford a remedy. As regards the principle underlying these two cases Mr. Kar has, however, invited our attention to the observations of Lord Phillimore in the case of - *Johnstone v. Pedlar*

(1921) 2 AC 262 (J) where the principle laid down in (1892) AC 491 (F) to the effect - "Because between Her Majesty and one of her subjects there can be no such thing as an act of State" was referred to with approval.

In "Cases in Constitutional Law" by Keir & Lawson (3rd Edn.) at p. 298 it has been observed that all that the Crown does in the sphere of foreign affairs falls within the category of acts of State and the making of a treaty being an act of State, treaty obligations cannot be enforced in a municipal Court. In this connection the observations of Lord Coleridge C. J. in - *Rustomjee v. Reg* (1876) 2 QBD 69 (K) have also been referred to; in that case it was held, inter alia, that in all that relates to the making and performance of a treaty with another Sovereign the Crown is not, and cannot be, either a trustee or an agent for any subject whatsoever, This case was followed by the House of Lords in the case of - *Civilian War Claimants Association Ltd. v. The King* 1932 AC 14 (L).

Mr. Kar no doubt drew our attention to a passage in the judgment of Lord Atkin to the effect that there is nothing to prevent the Crown acting as agent or trustee if it deliberately chooses to do so. We do not find anything in the present case, however, to hold that any such deliberate choice was made. Our attention has also been drawn to Sections 519 and 520 of Oppenheim's International Law, 6th Edn. (Vol. I at pp. 929-30), It is pointed out there that as International Law is primarily a law between States only and exclusively, treaties as a rule can have effect upon States only, though it is also stated that this rule can be altered by the express or implied terms of the treaty, in which case its provisions become self-executory. It would seem from a consideration of the above authorities that the general principle is that though municipal Courts are competent to inquire into matters involving the construction of treaties and other acts of State, treaty obligations cannot be enforced in municipal Courts, It is true that the term "act of State" is sometimes used loosely to express any lawful act done by the executive Government and if it affects the person or property of subjects within its jurisdiction, its legality can be questioned in municipal Courts. The present case is, however, not of that nature: here we are directly concerned with the question of the right of municipal Courts to enforce treaty obligations. From this standpoint the present petitions are not entitled to succeed.

19. It is necessary now to examine the scope and nature of the Indian Independence (International Arrangements) Order, 1947. According to Mr. Kar, it gives statutory recognition to the rights of citizens of India to export freely to Tibet articles not specifically mentioned in clause VIII of the Anglo-Tibet Trade Regulations, 1914, and such rights became part of the municipal law of India enforceable in Indian Courts. The learned Advocate General does not accept these propositions. According to him, the Indian Independence (International Arrangements) Order, 1947, has nothing to do with the rights of the citizens of India and Pakistan and it is simply an agreement reached at a meeting of the Partition Council between the Dominions of India and Pakistan laying down as to how rights and obligations under international agreements will devolve upon the two Dominions. Paragraphs 3 and 4 of the Schedule to the Order which are material for our present purpose, appear to bear out the contention of the learned Advocate General. The

language of the heading of the Schedule also points in the same direction. It runs thus: "Agreement as to the Devolution of International Rights and Obligations upon the Dominions of India and Pakistan."

The language used in that heading and in other parts of the above Order may also be contrasted with the language used in the Indian Independence (Rights, Property and Liabilities) Order, 1947, e.g. para 3(1) according to which admittedly citizens of India and Pakistan had certain rights against the respective Governments. Considering all the circumstances, we are not inclined to read more into the Indian Independence (International Arrangements) Order, 1947, than what is expressly stated therein and we are unable, therefore, to uphold Mr. Kar's contention that it conferred at the time when it was promulgated, i.e. in 1947, any rights upon the citizens of India against their Government flowing from the Anglo-Tibet Trade Regulations, 1914, nor can we hold that any such right subsists up to the present time.

Assuming that according to the Anglo-Tibet Trade Regulations of 1914 free export to Tibet (out of India) of articles not specifically referred to in clause VIII was permitted, it does not appear that so far as Indian citizens are concerned, it received statutory recognition and became a part of the municipal law of India. There is apparent repugnance between the implied provision of the Anglo-Tibet Trade Regulations, 1914, permitting free trade between the two countries on the one hand, and the subsequent Indian statutes, e.g. Essential Supplies Act, 1946, and the numerous orders issued thereunder, the Imports and Exports (Control) Acts of 1945 and 1947 and Notification No. 91 - CW(1)/51 dated 7-7-52 putting restrictions on such free trade on the other and it is not easy to reconcile the divergent sets of provisions. In the circumstances the learned Advocate General has contended that in the face of this conflict, the subsequent Indian legislation must prevail.

Mr. Kar, on the other hand, invokes the maxim "*Generalia specialibus non derogant*" and contends that the Anglo-Tibet Trade Regulations, 1914, governing the special case of trade and commerce between India and Tibet should prevail over the general Indian law enshrined in the statutes referred to by the learned Advocate General. According to Mr. Kar, the Indian statutes in question including subsidiary legislation under them seek to govern trade and commerce between India and other countries in general. This contention of Mr. Kar would have been more convincing, however, if it was a case of conflict between two Indian statutes only--the prior enactment being special and the subsequent enactment being general. The conflict in the present case goes deeper however in that there is conflict between non-Indian law, assuming for a moment that the implied provisions of Anglo-Tibet Trade Regulations, 1914 constitute law, and subsequent Indian statutes.

The language of the Indian Statutes is clear enough: in the interests of India, they seek to put restrictions in the way of trade between India and other countries. If that language be in conflict with any principle of international law as is said to be deducible from the implied

provisions of the Anglo-Tibet Trade Regulations of 1914, municipal Courts of India have got to obey the laws passed by the Legislature of the country to which they owe their allegiance. In interpreting and applying municipal law, these Courts will try to adopt such a construction as will not bring it into conflict with rights and obligations deducible from rules of international law. If such rules, or rights and obligations are inconsistent with the positive regulations of municipal law, municipal Courts cannot override the latter. It is futile in such circumstances to seek to reconcile, by strained construction, what are really irreconcilable.

20. It has also been urged on behalf of both the detained persons that practically all the grounds of detention served upon them u/s 7 of the P. D. Act are vague, that some of the grounds are wholly vague, that some again are irrelevant or non-existent and "extraneous to the scope or purpose" of the legislative provision and that accordingly both of them ought to be set at liberty. In this connection reliance was placed upon the case of *Shibban Lal Saxena v. State of Uttar Pradesh* AIR 954 SC 179 (M) for the proposition that when a detention order gives two grounds and one was found to be non-existent, the order of detention cannot be upheld on the other ground. The cases of AIR 1943 1 (Federal Court); [Tarapada De and Others Vs. The State of West Bengal](#), and - [Safatulla Khan Vs. The Chief Secretary to the Government of West Bengal and Another](#), were also, relied upon in this connection.

Much stress was also laid on the case of - [Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others](#), , which lays down, inter alia, that one vague ground among others which are clear and definite would infringe Article 22(5) of the Constitution. This case has decided further that a detained person has the right under Article 22(5) of the Constitution to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which on being considered may give relief to him. As regards Mahabir Prasad (Misc. Case 188/53) it was contended on his behalf that the grounds, viz., 1, 2, 3, 6, 7, 8, 9 and 10 served upon him did not contain sufficient particulars according to the standard mentioned above. As regards ground 2, it was argued that it was wholly irrelevant. As regards ground 6, it was contended that apart from being vague, it was not easily intelligible, whereas as regards ground 7, it was urged that it was both vague and ambiguous. Similarly, in regard to the case of Gajanand (Misc. Case 187/53), it was contended that all the "grounds" were vague.

In both the cases, there was the general contention that all the "grounds" were charges of so-called "smuggling" which was not an offence at all being permissible according to the Anglo-Tibet Convention and accordingly no order of detention could be founded upon such allegations: they were "extraneous to the scope or purpose" of the P. D. Act, to use the language of - *Shibban Lal Saxena's* case (M)" mentioned above. As regards the criticism that most of the grounds were Vague", it was pointed out that sufficient particulars in regard to time, place, persons (e.g., use of the phrase "Tibetan traders" in some of the grounds without further specification), Vehicles (e.g., "Jeeps" specified in some of the "grounds" but not in other cases) were not given and there was infringement

of the constitutional safeguard of the detained persons to have "particulars as full and adequate as the circumstances permit" furnished to them to enable them to make a representation against the orders of detention. (See - Ram Krishna Bharadwaj's case (Q)" referred to above).

21. In reply the learned Advocate General submitted that in view of the decision of the Supreme Court in - Ram Krishna Bharadwaj's case (Q)", he could not challenge the proposition that are Vague ground" was enough to amount to an infringement of Article 22(5), though he drew our attention to the observations of Chandra Sekhar Ayyar J. in the case of [Ujagar Singh Vs. The State of The Punjab](#), to the effect that mere vagueness of grounds standing by itself and without leading to an inference of mala fides or lack of good faith is not a justiciable issue in a Court of law for the necessity of making the order. The learned Advocate General laid considerable stress upon the observations of their Lordships of the Supreme Court in the case of - [The State of Bombay Vs. Atma Ram Sridhar Vaidya](#), where the meaning of the word Vague" in its application to Article 22(5) of the constitution was explained. In that case Chief Justice Kania observed:

It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. If on reading the ground furnished it is being intelligently " understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague.

Further it was observed that

by their very nature the grounds are conclusions of facts and not a complete detailed recital of facts. The conclusions drawn from the available facts will show in which of the three categories of prejudicial acts the suspected activity of the particular person is considered to fall. These conclusions are the "grounds" and they must be supplied.

Particular stress was laid by the learned Advocate General on this passage in support of his argument that there was no vagueness in the grounds supplied to both the detained persons. Mr. Kar has drawn our attention, however, to the observations of Patanjali Sastri J., and Mahajan J. in the case of [Ram Singh and Others Vs. The State of Delhi and Another](#), as regards the implication of the majority decision in the case of - The State of Bombay v. Atma Ram (S) referred to above.

22. Testing the "grounds" supplied to both the detained persons in the present cases, it is clear enough that even singly, far more so collectively, they are conclusions drawn from the available facts showing that their suspected activities fall within the category of prejudicial acts affecting the maintenance of supplies essential to the community. Moreover, though not all the "grounds" are equally full, we are unable to hold even in the case of the "grounds" with the least details, e.g., ground 2 in the case of Gajanand (Misc. Case 187/53) and ground 9 in the case of Mahabir Prasad (Misc. Case 188/53) that they

are not capable of being intelligently understood and are not sufficiently definite to furnish materials to enable them to make a representation against the respective orders of detention.

It was argued on the lines of - Safatulla's case (P)" decided by a Bench of this Court that the only answer of the detenus to the above grounds could be to deny them, but as pointed out in the majority decision of the Supreme Court in - Atma Ram Vaidya's case (S)" the grounds are not necessarily vague On that account only. Considering those particular grounds in the circumstances of the present cases, we are of opinion that they cannot be held to be vague in the sense indicated above. These observations apply with greater force to the case of the other "grounds" served upon the detenus. Even a cursory perusal of those grounds shows that they are much more detailed. This line of attack, therefore, based on the alleged insufficiency of the grounds must fail.

23. It has been mentioned before that some of the grounds have been attacked on the score of being ambiguous or not being sufficiently intelligible. Even bearing in mind the fact that both the detained persons are laymen called upon to make their representation without legal assistance, the grounds were not really such as to baffle their understanding.

24. The other ground of attack was, as pointed out before, that the grounds were extraneous to the scope or purpose of the P. D. Act, free export of textiles, etc., being permissible according to the Anglo-Tibetan Convention of 1914. Our attention was also invited to Central Government Notification No. PY 603(2) I dated 21-10-1946, up to condition (b) thereof providing that no order made by the Provincial Government shall have effect so as to prohibit or restrict the export, from any place in the province to any place outside India, of any article or thing. In this connection special reference was made to "ground 7" served upon Mahabiy Prasad.

25. It was also contended that the learned Advocate General has not pointed out what specific provisions of law were infringed by the detained persons so far as the grounds that were served upon them u/s 7, Preventive Detention Act, are concerned.

26. In reply our attention has been drawn to Notification No, 91 C. W. (D/45 dated 3-11-1945, issued by the Government of India in exercise of the powers conferred by Sub-rule (3) of Rule 84 of the Defence of India Rules and in supersession of the previous Notification as mentioned therein. In this connection our attention has been invited to certain items in the Schedule to this Notification, viz., item No, 24 of Part A, item 8 of Part B, items 6(vii), (f) and (k) of Part C. By this Notification the Central Government prohibited the export of specified articles to any place outside India subject to certain conditions.

27. Our attention was also invited in this connection to certain orders and Notifications issued by the Government of West Bengal. One of them was West Bengal Food Stuffs Anti-Hoarding Order, 1951; another was a Notification No. 2817 D. C. S. dated 27-2-46

under the Bengal Rationing Order, 1943. There was also a Notification, viz., No. 2818 D. C. S. dated 27-2-46, which was also referred to. Reference was also made to West Bengal Food Grains (Movement Control) Order, 1951, Clause 3 of which has a special bearing on the point under discussion. This Notification, it would appear, was issued in exercise of the power conferred by Sub-section (1) of Section 3, Essential Supplies (Temporary Powers) Act 1946 (24 of 1946) and Notification of the Government of India in the Department of Food No. PY-603(2) 1 dated 21-10-1946.

28. Our attention was drawn further to Section 4 of the Imports and Exports Control Act, 1947, (Act 8 of 1947) which provided for the continuance of existing orders.

29. As regards the specific objection raised by Mr. Kar to the effect that whatever orders were passed by the Provincial Government must not be in conflict with the provisions laid down in condition (b) of Notification No. PY-603(2) 1 dated 22-10-1946, of the Central Government, on behalf of the State our attention was invited to the case of - [Darshan Singh and Others Vs. State of Punjab](#), and relying on the principles laid down in that case it was contended that the Provincial orders were within the scope and ambit of the legislation permissible to that Government and in pith and substance the enactment in question and the orders issued thereunder dealt exclusively with provincial matters. We are of opinion that there is force in the contention urged before us on behalf of the State and accordingly it was not permissible for either of the detenus to export out of India the commodities mentioned in the grounds served upon them without necessary license or permit or in violation of the relevant orders in force at the relevant time.

Apart from the Anglo-Tibetan Trade Regulations of 1914, nothing was pointed out to us on behalf of the petitioners showing that free export of the commodities in question was permitted according to law. Considering all these circumstances we hold, therefore, that such export from India to Tibet without permit or license violated the law of the land. What Mahabir Prasad Periwal and Gajanand Periwal are alleged to have done was not permitted by law and the detention orders in question cannot therefore be challenged.

30. It was also urged following the case of - Bakhtwar Singh v. The State AIR 1951 HL 157 that illegally exporting goods from one country to another by evading licensing regulations and possibly the payment of customs duty was different from endangering the supply of an essential commodity in the country from which they are exported and it by no means necessarily follows that the first will result in the second. On the facts of the cases before us as can be gathered from the "grounds" for detention, it is apparent, however, that there was persistent "smuggling" out of India to Tibet of a very large quantity of essential commodities and if in the circumstances, the detaining authority was satisfied that the maintenance of such supplies was endangered, we do not think that his order can be challenged on this ground.

31. The detention orders in the two cases have also been attacked on the ground of mala fides on the part of the detaining authority. We are not prepared, however, to accept this

contention. It has been urged, inter alia, that the authority in question, viz., the District Magistrate of Darjeeling did not apply his mind to the facts before passing the detention orders and it is also said that he passed them mechanically. In support of this contention reliance has been placed upon what was stated in the "grounds" supplied to the detenus as the provisions under which they were detained and which were conceded by the learned Advocate General to be "slips".

Even if the District Magistrate made a mistake in this regard, we cannot hold that this goes to show that he did not apply his mind. In his affidavits the District Magistrate has stated that he considered all the materials. Nor can it be urged that the detention orders were mala fide simply because the District Magistrate passed them shortly after the previous detention orders were set aside by this Court, nor can they be held to be mala fide or bad on the ground that only the past activities of the detenus were relied upon. "Tarapada De"s case (O)", referred to before, - [Naranjan Singh Nathawan Vs. The State of Punjab](#), and [Bhim Sen For R.S. Malik Mathra Das and Others Vs. The State of Punjab](#), may be seen in this connection. They furnish a sufficient answer to this line of attack. This ground of attack must also fail.

32. These were the main points canvassed before us and in view of our observations on them, we do not think that any good reason has been made out justifying our interference with the impugned detention orders. Both the applications must therefore be dismissed.

33. The rules are discharged accordingly.

Guha Ray, J.

34. I agree.