Joti Parshad
v.
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Khosla, J.

according to the Police Rules. The Inspector-General of Police has rightly stressed the importance of discipline in the Police Force and this Court will not do anything which will undermine that discipline. I do not think that in the present case there has been any manifest injustice to the petitioner. He behaved in a most indisciplined and objectionable manner. He made aspersions and wild accusations against the superior officers as has been pointed out by the Inspector-General of Police. If he is sent back to the Police Force he will not make a useful and an efficient and certainly not a disciplined officer. I feel, therefore, that this petition should be dismissed and I accordingly dismiss it but in the circumstances I make no order as to costs.

CRIMINAL WRIT

Before Kapur, J.

PANDIT PREM NATH BAZAZ,—*Petitioner.*

v.

UNION OF INDIA AND ANOTHER,—*Respondents.*

Criminal Writ No. 195-D of 1955

1955

Dec., 2nd

Preventive Detention Act (IV of 1950)—Section 3—Grounds of detention—Sufficiency of—Whether justiciable—Detention challenged by detenue—Grounds of.

Held, that (1) whether the grounds given are sufficient or not is not within the ambit of the decision of the Court and it is the subjective decision of the Government which is implied;

(2) there must be a rational connection between the grounds stated by the Government and the objects which are to be prevented under the statute;

(3) that the grounds must not be vague and this applies to each one of the grounds communicated to the detained person, but this is subject to the claim of privilege under clause (6) of Article 22 of the Constitution and, therefore, withholding facts is not a contravention of the constitutional rights of a detenue;

(4) that even if one of the grounds is vague and the others are not, the detention is not in accordance with the procedure established by law and is, therefore, illegal;

(5) that a detenue can challenge his detention in a Court of law on the ground of *mala fides;* and

(6) the Preventive Detention is a serious invasion of personal liberty and even the most meagre safeguard provided by the Constitution against the proper exercise of the power must be enforced by the Court.

The State of Bombay v. *Atma Ram* (1), *Tarapada De* v. *The State of Bengal* (2), *Ram Kishan Bhardwaj* v. *The State of Delhi and others* (3), *Sodhi Shamsher Singh* v. *The State of Pepsu* (4), *Shibban Lal Saxena* v. *The State of Uttar Pradesh* (5), *Bhagat Singh* v. *The King Emperor* (6), and *Bhim Sen's case* (7), relied on; *Asa Ram* v. *State* (8), *Arun Kumar Sinha* v. *Province of Bihar* (9), *Har Tirath Singh 's case* (10), *Romesh Thapar's case* (11), *Ashutosh*

(1) 1951 S.C.R. 167
(2) 1951 S.C.R. 212
(3) 1953 S.C.R. 708
(4) A.I.R. 1954 S.C. 276
(5) 1954 S. C. R. 480
(6) I, L. R. 12 Lah. 280
(7) 1952 S.C.R. 19
(8) A.I.R. 1950 All. 709
(9) A.I.R. 1949 Pat. 236
(10) A.I.R. 1950 E.P. 222
(11) 1950 S.C.R. 594

Lahiry's case (1), and *Khalifa Janki Das's case* (2), distinguished and held inapplicable.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Habeas Corpus or any other writ or order to which the petitioner is entitled under the law be issued setting aside the detention of the petitioner and orders for petitioner's forthwith release be passed.

MALIK RAM BHEJA MAL and G. R. CHOPRA, for Petitioner.

C. K. DAPHTARY, Solicitor-General, R. H. DHEBAR and BISHAMBAR DAYAL, for Respondents.

ORDER

Kapur, J.

KAPUR, J. This is a rule obtained by the detenue Prem Nath Bazaz against the Union of India to show cause why the order of detention be not set aside and the petitioner set at liberty

According to the petition, the petitioner is an old worker in the cause of freedom movement of Kashmir with which he has been connected for twenty-five years. He was elected the President of the S. D. Yuvak Sabha in 1931 and he was a non-official member of the Grievances Enquiry Commission set up by the State Government under the chairmanship of Sir Bertrand Glancy. In collaboration with Sheikh Abdullah he started an Urdu Weekly "The Hamdard" which subsequently became a daily and the petitioner continued to edit it up to 1947 when he was arrested. He was a founder-member of the executive of the Kashmir National Conference, but he severed his connection with it in 1941 because of some

(1) A.I.R. 1953 S.C. 451
(2) A.I.R. 1950 E.P. 172

ideological differences. He has since been the Chairman of the Kashmir Socialist Party and founded the Kashmir Kisan Mazdoor Conference and is the author of various books amongst others of 'Inside Kashmir' published in 1940 and 'History of Struggle for freedom in Kashmir' published in 1954. He has stated in his affidavit that he believes in democracy and secularism and has tried to propagate both these in the State and ever since the Kashmir dispute arose he has been advocating its solution by peaceful methods. He was arrested in 1947 by the Kashmir Government and was in detention till 1950 when he was externed from the State and has since been residing at Delhi and been editing an English Monthly "The Voice of Kashmir" which was being published from Delhi since November 1954.

On the 8th September, 1955 the petitioner was arrested under the orders of the Central Government under section 3 of the Preventive Detention Act, and with the petition he has attached a copy of the order served on him and a copy of the grounds which are dated the 10th September, 1955.

These grounds indicate that the charge against the petitioner is that he has published certain articles the combined effect of which, according to the Government, is prejudicial to the security of India. In this order of the 10th September, 1955, which was served on the petitioner on the 11th, three extracts from various issues of 'The Voice of Kashmir' are given. The first is from an editorial 'Spokesman of the Oppressed' in the issue of November 1954. The second is also from the same issue under the title 'A Report on Kashmir'. The third is from the issue of April, 1955 under the title 'Kashmir Democrats Approach Bandung Conference.'

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There are also two abstracts from the statements published by the petitioner in "The Daily Siyasat", an Urdu paper of Kanpur, dated the 25th August, 1955 and from 'The Dawn' of Karachi dated the 24th August, 1955 and "The Pakistan Times" of Lahore dated the 26th August, 1955.

The second ground of detention given against the petitioner is—

> "That you are in constant communication with certain persons in Pakistan and in the Pakistan occupied part of Jammu and Kashmir State, and are assisting these persons in their activities which are prejudicial to the security of India and are hereby acting in a manner prejudicial to the security of India. It is against the public interest to disclose to you the names of these persons, the nature of their activities or the manner of the assistance given by you, or to give you any facts or particulars other than what is stated herein."

On this material, the order states, that the Government is satisfied that the petitioner is likely to act in a manner prejudicial to the security of India, and, therefore, with a view to prevent him from so acting the order for detention has been passed.

The order is challenged on the grounds—

(1) that the grounds supplied to the petitioner are "vague, indefinite, unintelligible and incomplete" and they do not enable the petitioner to make any effective representation to the Advisory Board ;

(2) that the grounds do not indicate whether any illegality is "involved in respect of the articles and statements objected to" ;

(3) that ground No. 2 is both vague and incomplete as from its perusal the detenue is not able to make an effective representation. It is admitted that the authorities cannot be compelled to furnish facts but at the same time they cannot under the cloak of 'public interest' make the grounds vague ;

(4) that there is no relation between the object of detention, i.e., security of India, and the grounds furnished to the detenue ;

(5) that the petitioner has merely exercised his fundamental rights and has neither preached violence, subversiveness or incitement to criminal action in the absence of which the security of India cannot be endangered ; and

(6) that the order is *mala fide.*

It was not challenged that sufficiency of grounds is not a justiciable issue but the sufficiency of the grounds to enable the petitioner to make a proper representation, it was submitted, is justiciable.

The law in regard to what is justiciable or not and how far the Courts can interfere with orders of detention has been laid down by the Supreme Court in the following authorities which were quoted by counsel. *The State of Bombay* v.

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Atma Ram. (1), *Tarapada De* v. *The State of West Bengal* (2), *Ram Kishan Bhardwaj* v. *The State of Delhi and others* (3), *Sodhi Shamsher Singh* v. *The State of Pepsu* (4), and *Shibban Lal Saxena* v. *The State of Uttar Pradesh* (5).

In *The State of Bombay* v. *Atma Ram* (1), it was held that the satisfaction contemplated under the Act is the satisfaction of the relevant Government, and if the grounds on which it is stated that the Government are satisfied have a rational connection with the objects which were to be prevented from being attained, the question of satisfaction cannot be challenged in a Court of law except on the ground of *mala fides*, and the majority of the Court held that clause (5) of Article 22 confers two constitutional rights on a detenue, firstly a right to be informed of the grounds on which the order of detention has been made, and secondly, to be afforded the earliest opportunity to make a representation against the order, and these rights are distinct. If there is a rational connection with the objects mentioned in section 3 of the Act, the first condition is complied with. But the right to make a representation implies that the detenue should have information to enable him to make a representation. An infringement of either of these two rights entitles him to a release. In his judgment Kania. C. J. said at page 176—

> "If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some

(1) 1951 S.C.R. 167
(2) 1951 S.C.R. 212
(3) 1953 S.C.R. 708
(4) A.I.R. 1954 S.C. 276
(5) 1954 S.C.R. 480

manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of *mala fides* cannot be challenged in a Court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the Court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a Court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

At page 183 the learned Chief Justice pointed out—

"* *, the question whether the vagueness or indefinite nature of the statements furnished to the detained person is such as to give him the earliest opportunity to make a representation to the authority is a matter within the jurisdiction of the Court's enquiry and subject to the Court's decision."

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The test laid down by his Lordship was—

> "As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable the detained person to make the representation at the earliest opportunity."

In *Tarapada De* v. *The State of West Bengal* (1), the Supreme Court stated the law to be that the sufficiency of the grounds for the purposes of satisfaction of the Government is not a matter for examination by the Court, their sufficiency to give the detained person the earliest opportunity to make a representation can be examined by the Court, but only for that purpose. Dealing with the vagueness of grounds it was held by the Supreme Court in that case that they do not stand on the same footing as "irrelevant grounds" because an irrelevant ground has no connection at all with the satisfaction of the Government which makes the order of detention.

In *Ram Kishan Bhardwaj's case* (2), it was held that where one of the grounds mentioned was vague and even though the other grounds were not, the detention was not in accordance with the procedure established by law and is therefore illegal and that the constitutional requirement that the grounds must not be vague applies to each one of the grounds communicated to the detenue subject to the claim of privilege under clause (6) of Article 22 of the Constitution. The ground which was held to be vague in that case was—

> "(e) You have been organising the movement by enrolling volunteers among the refugees in your capacity as President of

(1) 1951 S.C.R. 212
(2) 1953 S.C.R. 708

the Refugee Association of the Bara Hindu Rao."

Reference was then made to *Sodhi Shamsher Singh's case* (1), where it was held that the Supreme Court cannot be invited to undertake an investigation into the sufficiency of the matter upon which the satisfaction of the Government purports to be grounded. It can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view.

Counsel for the petitioner also relied on *Arun Kumar Sinha* v. *Province of Bihar* (2), for the proposition that it is necessary to indicate the illegality of the action of the detenue, and merely saying that a detenue had attempted to participate in strikes or was responsible for the strikes and was a trusted lieutenant of a Communist leader and was a link between certain Communists was not sufficient and are not grounds which will enable the detenue to make effective representation against the order of detention. They are vague or general assertions. Whatever else this ruling may lay down, it does not, in my opinion, say that the grounds must indicate as to whether the activities are illegal and what that illegality is. The reference to that portion of the judgment where it was held that without mentioning whether the strike was legal or illegal is not a ground of such precision or adequate to enable the detenue to make a representation is applicable to the facts of the present case. That case certainly does not, in my opinion, lay down that it is incumbent upon the Government to indicate the illegality. Reliance was also placed on *Asa Ram* v. *State* (3) ; where taking part in a strike of students was held not to be a good ground for detaining a person. As to how far this judgment is in conflict with

(1) A.I.R. 1954 S.C. 276
(2) A.I.R. 1949 Pat. 236
(3) A.I.R. 1950 All. 709

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Atma Ram's case (1), and other cases of the Supreme Court, it is not necessary to decide in this case, but, in my opinion, this case does not help the petitioner. The decided cases, therefore, show—

(1) that whether the gorunds given are sufficient or not is not within the ambit of the decision of the Court and it is the subjective decision of the Government which is implied. As the Privy Council laid down in *Bhagat Singh* v. *The King Emperor* (2), the Governor-General was the Judge whether there was an emergency or not for the promulgation of an Ordinance where the language in the statute was—

> "The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of British India or any part thereof, and any Ordinance so made shall, for the space of not more than six months from the promulgation, have the like force of law as an Act passed by the Indian Legislature, but the power of making Ordinance under this section is subject to the like restrictions, as the power of the Indian Legislature to make laws; and any Ordinance made under this Section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by any such Act."

(2) there must be a rational connection between the grounds stated by the Government and

(1) 1951 S.C.R. 167
(2) I.L.R. 12 Lah. 280

the objects which are to be prevented under the statute ;

(3) that the grounds must not be vague and this applies to each one of the grounds communicated to the detained person, but this is subject to the claim of privilege under clause (6) of Article 22 of the Constitution ;

(4) that even if one of the grounds is vague and the others are not, the detention is not in accordance with the procedure established by law and is therefore illegal ; and

(5) that a detenue can challenge his detention in a Court of law on the ground of *mala fides*.

The grounds which have been given by the Government are, on the authority of the supreme Court, not justiciable in regard to their sufficiency, but the petitioner submits that they are not sufficient for him to make any effective representation and that they are vague. I am unable to agree with this submission. In my view they are neither vague nor insufficient to enable the petitioner to make a proper representation. The petitioner, however, brings in the question of illegality and relies upon the following observation of Patanjali Sastri, C. J. in *Ram Kishan Bhardwaj's case* (1).

> "On the first question, the Attorney-General argued that the grounds must be read as a whole and so read, the ground mentioned in sub-paragraph (e) could reasonably be taken to mean, that the petitioner was organising the movement by enrolling volunteers from the 4th to 10th March in the area known as Bara Hindu Rao. The interpretation is plausible but the petitioner, who

(1) 1953 S.C.R. 708 p. 712

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is a layman not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the ground in the sense explained by the Attorney-General. Surely, it is up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting the grounds. We must, therefore, hold that the ground mentioned in sub-paragraph (e) of paragraph 2 is vague in the sense explained above."

This observation does not support the contention raised by counsel. It only negatives the submission which was made by the Attorney-General in that case that the detenue was not a lawyer experienced in the interpretation of documents and therefore was not expected to read all the grounds together. That is a long way from saying that in the grounds served on a detenue the illegality and the extent of it must be indicated. It is not necessary for me to quote from the extracts which have been relied upon by the Union for their satisfaction. Whether they are good grounds or bad grounds is not for this Court to decide but I find nothing vague or insufficient in these grounds to hold that there is a contravention of any of the constitutional rights of the petitioner. This order makes it clear that the extracts from the different issues of "The Voice of Kashmir" of which the petitioner is the Editor and the two statements which have been published in "The Siyasat" of Kanpur dated the 25th September, 1955 and in "The Dawn" of Karachi and "The Pakistan Times" of Lahore have the combined effect of being prejudicial to the security of India. The particulars are sufficiently clear and I do not think they can be classed within the word "vague".

The second ground no doubt does not give the facts although it does indicate what is the nature of the activities objected to, but as was pointed out in *Ram Kishan Bhardwaj's case* (1), the grounds communicated are subject to the claim of the privilege under clause (6) of Article 22 of the Constitution which provides—

> "22 (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose."

In view of the provision in the Constitution and the pronouncement of the Supreme Court in *Ram Kishan Bhardwaj's case* (1), withholding facts is not a contravention of the constitutional rights of the petitioner.

In *Har Tirath Singh's case* (2), the Crown did not claim any privilege and that was not a case under the Preventive Detention Act but under the East Punjab Safety Act, nor would *Romesh Thapar's case* (3), be applicable because whatever else it may have held, it was not a case under the Preventive Detention Act but was a case under the Madras Public Safety Act.

Lastly, it was urged that the action of the Government is *mala fide*. It was urged that the Government could have proceeded under the ordinary law of the land and the use of the Preventive Detention Act was for an ulterior motive. I find no proof of this and therefore, *Ashutosh Lahiry's case* (4), or *Khalifa Janki Das's case* (5), has no application to the facts of the present case, nor can it be said that the vagueness is so great as to amount to *mala fide*.

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(1) 1953 S.C.R. 708
(2) A.I.R. 1950 E.P. 222
(3) 1950 S.C.R. 594
(4) A.I.R. 1953 S.C. 451
(5) A.I.R. 1950 E.P. 172

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I have already held that the grounds are not vague and in view of the decision of the Supreme Court in *Bhim Sen's case* (1), it is not illegal to look at the past conduct of a person because that may give rise to subjective satisfaction of the Government.

It is true that the Preventive Detention is a serious invasion of personal liberty and even the most meagre safeguard provided by the Constitution against the proper exercise of the power must be enforced by the Court, but in the present case I find no ground for holding that there has been contravention of the constitutional safeguards of the petitioner.

I, therefore, dismiss this petition and discharge the rule.

APPELLATE CIVIL

Before Harnam Singh, J.

DASONDHA SINGH AND OTHERS,—*Appellants.*

v.

LAL SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 703 of 1951

1955

Dec., 8th

Punjab Tenancy Act (XVI of 1887)—Section 59(1)(d)—Land owned by the Common Ancestor in 1862—Land not occupied by the Common Ancestor or his descendants between 1878 and 1882—Whether land occupied by the Common Ancestor within the meaning of Clause (d) of section 59(1) of the Punjab Tenancy Act.

Held, that for the application of section 59(1)(d) it is not sufficient that the land was occupied by the Common Ancestor. The words "male collateral relatives in the male line of descent from the Common Ancestor of the deceased tenant and those relatives" occurring in clause (d) of section 59(1) of the Act imply that the land should have descended from the Common Ancestor to his heirs.

(1) 1952 S.C.R. 19