1952

D. K. Nabhirajiah v. The State of Mysore and Others.

Chandrasekhara Aiyar J.

the Control Order purports to have been made not only under clause (bb) of sub-rule (2) of rule 81 of the Defence of India Rules, but also under the Supplies, Services and Miscellaneous Provisions (Temporary Powers) Act of 1947. We have not got this Act before us and it was not even referred to in the course of the arguments. Hence, no decision is called for on this point.

The petition fails and is dismissed without any order as to costs.

Petition dismissed.

Agent for the petitioner : *K. R. Krishnaswamy.*

Agent for the respondents : *P. A. Mehta.*

UJAGAR SINGH

v.

THE STATE OF THE PUNJAB

and

JAGJIT SINGH

v.

THE STATE OF THE PUNJAB

1951

Feb. 23.

[SAIYID FAZL ALI, PATANJALI SASTRI, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR, JJ.]

Preventive Detention Act (IV of 1950), ss. 3, 12—Detention order—Non-specification of period of detention—Ground supplied vague and same as in earlier order—Particulars supplied after 4 months—Legality of detention—Duty to supply particulars 'as soon as may be'—Form of detention order—Order signed by Home Secretary—Validity.

Non-specification of any definite period in a detention order made under s. 3 of the Preventive Detention Act, IV of 1950, is not a material omission rendering the order invalid in view of the provisions contained in clauses (4) (a) and (7) (a) of Art. 22 of the Constitution and s. 12 of the Act.

An order of detention which expressly states that the Governor of the State concerned was satisfied of the necessity of

making such an order and that it was made by the order of the Governor is not defective merely because it is signed by the Home Secretary.

Communication of the grounds of the order need not be made directly by the authority making the order but may be made through recognized channels prescribed by the administrative rules of business.

The past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclination of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. If the authority making an order is satisfied that the ground on which the detenue was detained on a former occasion is still available and that there was need for detention on its basis no *mala fides* can be attributed to the authority from the fact that the ground alleged for the second detention is the same as that of the first detention.

Whether grounds have been communicated "as soon as may be" must depend on the facts of each case. No arbitrary time limit can be laid down.

The recent rulings of the Supreme Court establish (*a*) 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, inasmuch as the ground or grounds on which the order of detention was made is a matter for the subjective satisfaction of the Government or of the detaining authority; (*b*) that *there is nothing in the Act to prevent* particulars of the grounds being furnished to the detenu within a reasonable time so that he may have the earliest opportunity of making a representation against the detention order—what is reasonable time being dependent on the facts of each case; (*c*) that failure to furnish grounds with the speedy addition of such particulars as would enable the detenu to make a representation at the earliest opportunity against the detention order can be considered by a court of law as an invasion of a fundamental right or safeguard guaranteed by the Constitution, *viz.*, being given the earliest opportunity to make a representation; and (*d*) that no new grounds could be supplied to strengthen or fortify the original order of detention.

Where the petitioners against whom detention orders were made were given only vague grounds and there was inexcusable delay of nearly 4 months in acquainting them of the particulars, *held* that their detention was illegal and they should be released.

ORIGINAL JURISDICTION :—Petitions Nos 149 and 167 of 1950.

1951

Ujagar Singh v. *The State of Punjab.*

Chandrasekhara Aiyar J.

Application under Art. 32 of the Constitution for a writ in the nature of habeas corpus.

Bawa Shiv Charan Singh for the petitioner in Petition No. 149.

N. S. Bindra for the petitioner in Petition No. 167.

B. K. Khanna, Advocate-General of the Punjab, for the respondent in both the petitions.

M. C. Setalvad, Attorney-General for India, for the Union of India (Intervener in Petition No. 149).

1951. February 23. The Judgment of the Court was delivered by

CHANDRASEKHARA AIYAR J.—The earlier of the two petitions has been filed by one Ujagar Singh, under article 32 of the Constitution of India, for a writ of *habeas corpus* and for an order of release from detention. The latter petition is a similar one by one Jagjit Singh. In both the petitions the respondent is the State of Punjab. The orders of detention were made under the Preventive Detention Act IV of 1950. The petitions are not connected with each other, except that they raise the same grounds.

In petition No. 149 of 1950, Ujagar Singh was originally arrested and detained under the East Punjab Public Safety Act on 29th September, 1948. He was released on 28th March, 1949, but on the same date, there was an internment order against him. On 29th September, 1949, he was re-arrested. On 2nd March, 1950, an order of detention under the Preventive Detention Act, 1950, was served on him, and on 3rd April, 1950, he was served with the grounds of detention dated 11th March, 1950. Both in September, 1949, and in March, 1950, the ground alleged was "You tried to create public disorder amongst tenants in *Una Tehsil* by circulating and distributing objectionable literature issued by underground communists." Additional grounds were furnished in July 1950.

In petition No. 167 of 1950, Jagjit Singh was arrested on 24th July, 1948, under the provisions of the

Punjab Safety Act, 1947. After the East Punjab Public Safety Act, 1949, came into force, a fresh detention order dated 14th May, 1949, was served on him and he continued to be kept in jail. Grounds of detention were given to him on 7th September, 1949. A fresh order of detention under the Preventive Detention Act (IV of 1950) dated 2nd March, 1950, was served on 7th March, 1950. Grounds of detention dated 11th March, 1950, were served on him on 3rd April, 1950. Both in September 1949 and April 1950, the same ground was given, *i.e.*, "In pursuance of the policy of the Communist Party, you were engaged in preparing the masses for violent revolutionary campaign and attended secret party meetings to give effect to this programme." Additional or supplementary grounds were served on 5th August, 1950.

Several contentions were advanced on behalf of the petitioners challenging the legality of their detention and urging, that as the detention was unlawful and the petitioners' fundamental right of personal liberty had been infringed, they should be set at liberty. The points taken on their behalf can be briefly summarised as follows. As the ground of detention now mentioned was the same as the ground specified in 1948 or 1949, *i.e.*, months earlier under the Provincial Acts, the order of detention was made mechanically and was really *mala fide* in the sense that there is nothing to show that were was any fresh satisfaction on the part of the detaining authority that detention was necessary in the interests of public order. Secondly, the grounds were not given "as soon as may be", which is required under section 7 of the Act; and as an unusually long period of time elapsed between the order of detention and the giving of the grounds, the detention must be held to be unlawful after the lapse of a reasonable time. Thirdly, the grounds given originally were so vague that they could not be said to be grounds at all such as would enable the detenu to make any representation against the order. Fourthly, supplementary grounds could not be furnished and should not be taken into account in considering whether the

1951

Ujagar Singh v. *The State of Punjab.*

Chandrasekhara Aiyar J.

original order was lawful, or whether the detention became unlawful after a particular period of time. Two other points of a subsidiary nature were also raised, namely that the order was bad as the period of detention was not specified therein as appears to be required by section 12 and that the grounds given did not purport to state that the authority making the order was the Governor of the State.

There is no substance in the last two points. Section 12 of the Act does not require that the period of detention should be specified in the order itself where the detention is with a view to preventing any person from acting in any manner prejudicial to the maintenance of public order. The section itself provides that he can be detained without obtaining the opinion of an Advisory Board for a period longer than three months but not exceeding one year from the date of detention. Normally, the detention period shall not exceed three months, unless an Advisory Board reports before the expiration of the said period that there is in its opinion sufficient cause for such detention. See article 22, clause (4), sub-clause (a) of the Constitution. Under sub-clause (7) (a) of the same article, Parliament may by law prescribe "the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)." Therefore, detention for more than three months can be justified either on the ground of an opinion of the Advisory Board sanctioning or warranting longer detention or on the ground that the detention is to secure the due maintenance of public order, in which case it cannot exceed one year in any event, as stated in section 12 of the Preventive Detention Act. It is thus clear that the period is not to exceed three months generally, but may go up to one year in certain special cases. In view of these provisions, the non-specification of any definite period

in the detention order is not a material omission rendering the order itself invalid.

Under section 3 of the Preventive Detention Act, the authority to make the order is the State Government. Section 166 (1) of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the *Governor*. The orders of detention expressly state that the Governor of Punjab was satisfied of their necessity and that they were made by his order. The orders are signed no doubt by the Home Secretary, but this is no defect. The communication of the grounds need not be made directly by the authority making the order. Section 7 does not require this. The communication may be through recognized channels prescribed by the administrative rules of business.

Let us now turn our attention to the main contentions. There is nothing strange or surprising in the fact that the same grounds have been repeated after the lapse of several months in both the cases when it is remembered that the petitioners were under detention and in jail during the whole of the intervening period. No fresh activities could be attributed to them. There could only be a repetition of the original ground or grounds, whether good or bad. It does not follow from this that the satisfaction of the detaining authority was purely mechanical and that the mind did not go with the pen. The past conduct or antecedent history of a person can be taken into account when making a detention order, and, as a matter of fact, it is largely from prior events showing the tendencies or inclinations of the man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. If the authority satisfied himself that the original ground was still available and that there was need for detention on its basis, no *mala fides* can be attributed to the authority from this fact alone.

The Act does not fix the time within which the grounds should be furnished to the person detained.

1951

Ujagar Singh v. *The State of Punjab.*

Chandrasekhara Aiyar J.

It merely states that the communication must be "as soon as may be". This means reasonable despatch and what is reasonable must depend on the facts of each case. No arbitrary time limit can be set down. The delays in the communication of the grounds in the two petitions have been adequately explained by the Home Secretary who says in his affidavits that grounds had to be supplied to nearly 250 detenus and that the printing of the necessary forms occupied some time. According to him, he made an order even on 11-3-1950 for the supply of the grounds.

The extreme vagueness of the grounds is alone left as the chief line of attack. As stated already, the original ground communicated in Petition No. 149 of 1950 is "to create public disorder amongst tenants in the Tehsil by circulating and distributing objectionable literature issued by underground communists". In the other petition, the ground is "In pursuance of the policy of the Communist Party you were engaged in preparing the masses for violent revolutionary campaign and attended secret party meetings to give effect to this programme." We shall leave aside for the moment the supplementary grounds furnished later.

There can be little doubt that in both the cases the grounds furnished in the first instance were highly vague. If we had only *Iswar Das's* case to go by, Petition No. 30 of 1950, such vagueness by itself would constitute a justification for release of the petitioners. Since the date of that decision, however, this Court had to consider the question at great length in two cases from Bombay and Calcutta respectively—Cases Nos. 22 and 24 of 1950—where the subject of the meaning and scope of section 7 of the Preventive Detention Act and article 22, sub clauses (5) and (6) of the Constitution of India, came up for elaborate consideration. The said cases were decided on 25th January, 1951, and we are now governed by the principles laid down in these judgments. It was held by a majority of the Judges in Case No. 22 of 1950(1)

(1) *State of Bombay* v. *Atmaram Sridhar Vaidya* [1951] S.C.R. 167.

(a) 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, inasmuch as the ground or grounds on which the order of detention was made is a matter for the subjective satisfaction of the Government or of the detaining authority; (b) that *there is nothing in the Act to prevent* particulars of the grounds being furnished to the detenu within a reasonable time, so that he may have the earliest opportunity of making a representation against the detention order—what is reasonable time being dependent on the facts of each case; (c) that failure to furnish grounds with the speedy addition of such particulars as would enable the detenu to make a representation at the earliest opportunity against the detention order can be considered by a court of law as an invasion of a fundamental right or safeguard guaranteed by the Constitution, *viz.,* being given the earliest opportunity to make a representation; and (d) that no new grounds could be supplied to strengthen or fortify the original order of detention.

We are not concerned so much with the earlier history of the detenus as with what happened to them under the Preventive Detention Act, 1950. Overlooking the fact that the ground mentioned in March 1950 was the same as that given in September 1949, and condoning the vagueness in the original ground furnished in both the cases to support the making of the order, it is impossible to justify the delay of nearly *four months* in furnishing what have been called additional or supplementary grounds.

Let us take up Petition No. 149 first. In the grounds furnished in July 1950, there are several which do not apparently relate to the original ground. "You were responsible for hartal by labourers working on Bhalera Dam in October 1947"... "You instigated labourers working in Nangal in 1948 to go on strike to secure the acceptance of their demands" ... "After release you absconded yourself from your village and

1951

Ujagar Singh v. *The State of Punjab.*

Chandrasekhara Aiyar J.

remained untraced for a considerable period" .... "When you were re-arrested on 29-9-1949, lot of objectionable communist literature was recovered from your personal search"—*are instances of new grounds,* and they have to be eliminated therefore from consideration. In Jagjit Singh's petition No. 167 of 1950, the supplemental grounds, which are as many as ten in number, are dated 31-7-1950, but they were served on him on 5-8-1950, that is two days after he had prepared his petition to this court under article 32 of the Constitution. The grounds may be taken as particulars of the general allegation made against him on 3-4-1950 when the original grounds of detention were served. But the time factor to enable him to make a represention at the earliest opportunity was not borne in mind or adhered to. In the affidavit of Shri Vishan Bhagwan, Home Secretary to the Punjab Government, dated 6th September, 1950, no explanation has been offered for this abnormal delay in the specification of the particulars. This delay is very unfortunate indeed. But for its occurrence the petitioner would not have been able to urge that one of the valuable rights guaranteed to him by the Constitution has been violated. It is not alleged by the Home Secretary that the detenu was furnished with these particulars when he was arrested and detained under the Provincial Act and that consequently it was considered unnecessary to give him the same particulars once over. On the other hand, the detenu's complaint has throughout been that he was given no particulars at all till the 5th August, 1950.

As the petitioners were given only vague grounds which were not particularised or made specific so as to afford them the earliest opportunity of making representations against their detention orders, and their having been inexcusable delay in acquainting them with particulars of what was alleged, the petitioners have to be released, the rules being made absolute. Ordered accordingly.

1951

Ujagar Singh v. *The State of Punjab.*

Chandrasekhara Aiyar J.

PATANJALI SASTRI J.—I concur in the order proposed by my learned brother Chandrasekhara Aiyar J.

DAS J.—In view of the majority decision in Case No. 22 of 1950 (*The State of Bombay* v. *Atma Ram Sridhar Acharya*), I concur in the order proposed by my learned brother.

Order accordingly.

Petition No. 194 of 1950

Agent for the petitioner: *R. R. Biswas.*

Agent for the respondent: *P. A. Mehta.*

Agent for the intervener: *P. A. Mehta.*

Petition No. 167 of 1950

Agent for the petition: *R. S. Narula.*

Agent for the respondent: *P. A. Mehta.*

THE UNION OF INDIA

v.

HIRA DEVI AND ANOTHER.

1952

May 21.

[MEHER CHAND MAHAJAN, CHANDRASEKHARA AIYAR and BOSE, JJ.]

Civil Procedure code, 1908, *s.* 60 (*k*)—*Provident Funds Act (XIX of* 1925), *ss.* 2 (*a*), 3 (1)—*Compulsory deposit in Provident Fund—Exemption from attachment—Appointment of receiver—Legality.*

A receiver cannot be appointed in execution of a decree in respect of a compulsory deposit in a Provident Fund due to the judgment debtor. Whatever doubts may have existed under the earlier Act of 1897, the definition of "compulsory deposit" in s. 2 (a) of the Provident Funds Act (XIX of 1925) clearly includes deposits remaining to the credit of the subscriber or depositor after he has retired from service.

Arrears of salary and allowances stand upon a different footing and are not exempt from being proceeded against in execution.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 132 of 1951.

Appeal by Special Leave from the Judgment and Decree dated 17th May, 1950, of the High Court of Judicature at Calcutta (Harries C.J. and Sinha J.) in Appeal No. 41 of 1950 arising out of the Order of