1953

April 16.

DR. RAM KRISHAN BHARDWAJ

v.

THE STATE OF DELHI AND OTHERS.

[PATANJALI SASTRI C.J., MUKHERJEA, S. R. DAS, GHULAM HASAN and BHAGWATI JJ.]

Preventive Detention Act, 1952, s. 3—Constitution of India, 1950, Arts. 21, 22(5)—Detenu's right to be supplied with full particulars—Vague ground—Right to be released—Vagueness of one of several grounds—Effect of.

Under Art. 21 (5) as interpreted by an earlier decision of this court a person detained under the Preventive Detention Act is entitled, in addition to the right to have the ground of his detention communicated to him, to a further right to have particulars as full and adequate as the circumstances permit furnished to him as to enable him to make a representation against the order of detention and the sufficiency of particulars conveyed in the second communication is a justiciable issue, the test being whether they are sufficient to enable the detained person to make a representation which on being considered may give him relief.

The constitutional requirement that the grounds must not be vague must be satisfied with respect to each of the grounds communicated to the person detained subject to the claim of privilege under cl. (6) of Art. 22 of the Constitution.

Where one of the grounds mentioned was "you have been organising the movement (Praja Parishad Movement) by enrolling volunteers among the refugees in your capacity as President of the Refugee Association of Bara Hindu Rao":

Held, that this ground was vague and even though the other grounds were not vague the detention was not in accordance with the procedure established by law and was therefore illegal.

Dictum: Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court.

ORIGINAL JURISDICTION: Petition No. 67 of 1953.

Petition under Art. 32 of the Constitution of India for a writ in the nature of *habeas corpus*.

Veda Vyas (*V. N. Sethi* and *S. K. Kapur*, with him) for the petitioner

M. C. Setalvad, Attorney-General for India (*G. N. Joshi*, with him) for the respondents.

1953. April 16. The Judgment of the Court was delivered by

PATANJALI SASTRI C.J.—This is a petition under article 32 of the Constitution for the issue of a writ in the nature of *habeas corpus* directing the release of the petitioner Dr. Ram Krishan Bhardwaj who is a medical practitioner in Delhi and is now said to be under unlawful detention.

The petitioner was arrested on the 10th March, 1953, under an order of the District Magistrate of Delhi made under section 3 of the Preventive Detention Act as amended. The grounds of detention were communicated to the petitioner on the 15th March, 1953. The first paragraph of that communication states that "the Jan Sangh, the Hindu Mahasabha and the Ram Rajya Parishad have started an unlawful campaign in sympathy with the Praja Parishad movement of Kashmir for defiance of the law, involving violence and threat to the maintenance of public order" as evidenced by the sub-paragraphs which follow. The incidents referred to in sub-paragraphs (a) to (l) are said to have ranged from the 4th to the 10th March, 1953, the date on which the petitioner was arrested, but they do not directly implicate the petitioner. They merely give particulars of the alleged unlawful activities of the three political organizations referred to above. Sub-paragraph (m) is important, as on it is founded the first contention of Mr. Veda Vyas, the learned counsel for the petitioner. It runs as follows:—

"(m) On the evening of 11th March, 1953, there was very heavy brick-batting indulged in by or at the instance of Jan Sangh and Mahasabha workers in Sabzimandi when the police dispersed a Jan Sangh and Hindu Mahasabha procession and several persons including policemen, journalists and other non-officials were injured. An assault was made on Miss Mridula Sarabhai and Sri Dan Dayal one of her associates received a stab injury."

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Patanjali Sastri C. J.

It will be noticed that the incidents related in the sub-paragraph are alleged to have taken place on the 11th March, the day after the petitioner was arrested and detained. Mr. Veda Vyas relies upon it as showing that the District Magistrate did not apply his mind to the alleged necessity for the detention of the petitioner as, if he had done so, he could not possibly have referred to what happened on the 11th March as a ground of justification for what he did on the 10th. The so called grounds on which the detention is said to have been based must, it was suggested, have been prepared by some clerk or subordinate in the District Magistrate's office and mechanically signed by him. The learned Attorney-General explained that the incidents of the 11th March were referred to not as a ground for the arrest and detention of the petitioner, but merely as evidencing the unlawful activities of the movement organized by the Jan Sangh and the other political bodies of which the petitioner was an active member. The explanation is hardly convincing and we cannot but regard this lapse in chronology as a mark of carelessness. Notwithstanding repeated admonition by this Court that due care and attention must be bestowed upon matters involving the liberty of the individual, it is distressing to find that such matters are dealt with in a careless and casual manner. In view, however, of the statements in the affidavit filed by the District Magistrate before us that he carefully perused and considered the reports and materials placed before him by responsible Intelligence Officers and that he was fully satisfied that the petitioner was assisting the movement and agitation started by the Jan Sangh, etc., we are not prepared to hold that the District Magistrate failed to apply his mind to the relevant considerations before he made the detention order as suggested for the petitioner.

The second contention raised by Mr. Veda Vyas is more formidable. As already stated, the first paragraph of the statement of grounds, while it sets out the unlawful activities of the three political bodies,

does not directly implicate the petitioner in any of them. The second paragraph shows how the petitioner was concerned in those activities. It begins by stating "The following facts show that you are personally helping and actively participating in the above mentioned movement which has resulted in violence and threat to maintenance of public order". Then follow four sub-paragraphs (a) to (d) which refer to private meetings of the Working Committee of the Jan Sangh in January and February, 1953, where, it is alleged, it was decided to launch and intensify the campaign and the petitioner made inflammatory speeches. Sub-paragraph (e) on which this contention is based runs thus :

"(e) You have been organising the movement by enrolling volunteers among the refugees in your capacity as President of the Refugee Association of the Bara Hindu Rao,"

a local area in Delhi. It is argued by Mr. Veda Vyas that this ground is extremely vague and gives no particulars to enable the petitioner to make an adequate representation against the order of detention and thus infringes the constitutional safeguard provided in article 22 (5). Learned counsel relies on the decision in *Atma Ram Vaidya's* case(1) where this Court held by a majority that the person detained is entitled, in addition to the right to have the grounds of his detention communicated to him, to a further right to have particulars "as full and adequate as the circumstances permit" furnished to him so as to enable him to make a representation against the order of detention. It was further held that the sufficiency of the particulars conveyed in the "second communication" is a justiciable issue, the test being whether it is sufficient to enable the detained person to make a representation "which, on being considered, may give relief to the detained person". On this interpretation of article 22 (5) two questions arise for consideration : first, whether the ground mentioned in sub-paragraph (e) is so vague

as to render it difficult, if not impossible, for the petitioner to make an adequate representation to the appropriate authorities, and second, if it is vague, whether on vague ground among others, which are clear and definite, would infringe the constitutional safeguard provided in article 22(5).

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 organizing the movement by enrolling volunteers from the 4th to 10th March in the area known as Bara Hindu Rao. This interpretation is plausible, but the petitioner, who 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 the ground mentioned in sub-paragraph (e) of paragraph 2 is vague in the sense explained above.

On the second question, there is no considered pronouncement by this Court, though in some cases it would appear to have been assumed, in the absence of any argument, that one or two vague grounds could not affect the validity of the detention where there are other sufficiently clear and definite grounds to support the detention. Mr. Veda Vyas now argues that even though the petitioner might succeed in rebutting the other grounds to the satisfaction of the Advisory Board, his representation might fail to carry conviction so far as the ground mentioned in sub-paragraph (e) was concerned in the absence of particulars which he could rebut and the Advisory Board might, therefore, recommend the continuance of his detention. The argument is not without force, as the possibility suggested cannot altogether be ruled out. The Attorney-General drew attention to the recent amendment of section 10 of the Preventive Detention

Act as a result of which the petitioner would be entitled to be heard in person before the Advisory Board if he so desires and, it was said, that he would thus have the opportunity of getting the necessary particulars through the Board who could call upon the appropriate Government to furnish particulars if the Board thought that the demand for them was in the circumstances just and reasonable. The petitioner would thus suffer no hardship or prejudice by reason of sufficient particulars not having been already furnished to him. The question however is not whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representation, but whether his constitutional safeguard has been infringed. ✓Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under article 22(5), as interpreted by this Court by a majority, 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." We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under clause (6) of article 22. 'That not having been done in regard to the ground mentioned in sub-paragraph (e) of paragraph 2 of the statement of grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of article 21. The petitioner is therefore entitled to be released and we accordingly direct him to be set at liberty forthwith.

Petition allowed.

Agent for the petitioner : *Ganpat Rai.*

Agent for the respondent : *G. H. Rajadhyaksha.*