Puranlal Lakhanpal

Vs

Union of India

Criminal Appeal No. 96 of 1957

(Sayed Jafar Imam, J. L. Kapur, S. K. Das, N. H. Bhagwati, A. K. Sarkar JJ)

17.09.1957

JUDGMENT

S.K. DAS J. -

This is an appeal by special leave, and the appellant is Puran Lal Lakhanpal. On July 21, 1956, the Government of India in the Ministry of Home Affairs passed an order of preventive detention against the appellant in which it was stated, inter alia, that with a view to preventing the appellant from acting in a manner prejudicial to the security of India and the relations of India with foreign powers, it was necessary to make an order against the appellant. The order then concluded - "Now, therefore, in exercise of the powers vested in the Central Government by cl. (a)(i) of sub-s. (1) of s. 3 of the Preventive Detention Act, 1950 (Act No. IV of 1950), as amended, the Central Government hereby orders that the said Shri Puran Lal Lakhanpal, son of Shri Diwan Chand Sharma, be detained."

The appellant was arrested and taken in custody on the same date. On July 24, 1956, the grounds of detention were communicated to the appellant under s. 7 of the Preventive Detention Act, No. IV of 1950, hereinafter referred to as the Act. The case of the appellant was then sent to an Advisory Board constituted under s. 8 of the Act, and the Advisory Board having reported that there was, in its opinion, sufficient cause for detention of the appellant, the Central Government confirmed the order of detention on August 20, 1956, and stated further that the appellant "shall continue in detention for a period of twelve months from the date of his detention". This order was passed under sub-s. (1) of s. 11 of the Act.

Before that date, however, the appellant moved the Punjab High Court as also this Court challenging the legality of his detention and asked for the issue of a writ in the nature of a writ of habeas corpus. The petition to this Court was dismissed and as nothing turns upon that petition, no further reference need be made to it. In the petition to the Punjab High Court under Art. 226 of the Constitution, the appellant was permitted to urge an additional ground to the effect that sub-s. (1) of s. 11 of the Act was unconstitutional inasmuch as it offended against Art. 22(4)(a) of the Constitution. This constitutional point was referred to and decided by a Division Bench of the Punjab High Court by an order dated September 24, 1956. The High Court held that sub-s. (1) of s. 11 of the Act was neither repugnant to nor inconsistent with the provisions of Art. 22(4) of the Constitution. A single Judge of the High Court then dealt with the petition of the appellant on merits and dismissed it by an order dated September 26, 1956. The appellant then moved the Punjab High Court unsuccessfully for leave to appeal to this Court. He then moved this Court, and obtained special leave to appeal from the aforesaid orders of the Punjab High Court dated September 24, and September 26, 1956, respectively.

We heard the appellant, who argued his case in person, on May 22, 23 and 24, 1957. At the conclusion of the arguments on the last day of the term before the commencement of the vacation, we intimated to the appellant the majority decision of the Court that his appeal was dismissed, but stated that reasons for the decision would be given later. These reasons we now propose to give in the paragraphs that follow.

The first and foremost point which the appellant has urged in support of his appeal is the constitutional point, that is, the validity of sub-s. (1) of s. 11 of the Act. The argument of the appellant is that sub-s. (1) of s. 11 of the Act does not conform to the constitutional mandate given by sub-cl. (a) of cl. (4) of Art. 22 of the Constitution. Therefore, our primary duty is "to lay the Article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former". Article 22 of the Constitution, in so far as it is relevant for our purposes, is in these terms :

> #"22. (1)............................ (2)............................##
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> (3) Nothing in clauses (1) and (2) shall apply -
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> (a) to any person who for the time being is an enemy alien; or
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> (b) to any person who is arrested or detained under any law providing for preventive detention.
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> (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless -
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> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause of such detention :
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any lay made by Parliament under sub-clause (b) of clause (7); or
>
> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
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> (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
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> (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.
>
> (7) Parliament may by law prescribe -

> (a) 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);
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> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
>
> (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)."

Section 11 of the Act, which is challenged as unconstitutional states :

> "11. (1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.
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> (2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith."

Now, the point taken by the appellant is this. According to him, the expression 'such detention' occurring in sub-cl. (a) of cl. (4) of Art. 22 refers not merely to the original order of preventive detention but to the detention of a person for a period longer than three months; therefore, the Advisory Board when it makes its report is required under the sub-clause to record its opinion that there is sufficient cause not merely for the original order of detention but also for detention of that person for a period longer than three months. It is contended that such an opinion was not recorded by the Advisory Board in the present case, and sub-s. (2) of s. 10 of the Act merely required the report of the Advisory Board to specify its opinion as to whether or not there was sufficient cause for the detention of the appellant. The appellant's contention is that sub-s. (1) of s. 11 of the Act, in so far as it permits the appropriate Government to continue the detention of the person concerned beyond a period of three months without a specific report from the Advisory Board that there is sufficient cause for his detention for more than three months, is ultra vires; because it does not conform to sub-cl. (a) of cl. (4) of Art. 22, nor does it give effect to the true meaning of the expression 'such detention' occurring in the said sub-clause.

On behalf of the respondent, the argument is that the expression 'such detention' occurring in sub-cl. (a) of cl. (4) of Art. 22 refers back to 'preventive detention' occurring in the first line of cl. (4), and under the said sub-clause the Advisory Board is to give its opinion as to whether there is sufficient cause for the detention of the person concerned; there is no duty cast on the Advisory Board to determine the period of detention, and the failure of the Advisory Board to state in its report that there is sufficient cause for the detention of the person concerned for more than three months is no violation of the constitutional mandate contained in the said sub-clause.

We have to determine the correctness or otherwise of these rival contentions. No decision directly deciding the point at issue has been brought to our notice. There are, however, certain observations, made in A.K. Gopalan v. The State of Madras [[1950] S.C.R. 88, 117.], with regard to the meaning

and effect of sub-cl. (a) of cl. (4) of Art. 22, to which a reference must now be made. At page 117 of the report, Kania, C.J. said :

> "Article 22(4) opens with a double negative. Put in a positive form it will mean that a law which provides for preventive detention for a period longer than three months shall contain a provision establishing an advisory board, (consisting of persons with the qualifications mentioned in sub-clause (a)), and which has to report before the expiration of three months if in its opinion there was sufficient cause for such detention. This clause if it stood by itself and without the remaining provisions of Article 22, will apply both to the Parliament and the State Legislatures. The proviso to this clause further enjoins that even though the advisory board may be of the opinion that there was sufficient cause for such detention, i.e., detention beyond the period of three months, still the detention is not to be permitted beyond the maximum period, if any, prescribed by Parliament under Article 22(7)(b). Again the whole of this sub-clause is made inoperative by Art. 22(4)(b) in respect of an Act of preventive detention passed by Parliament under clauses (7)(a) and (b). Inasmuch as the impugned Act is an Act of the Parliament purported to be so made, clause 22(4) has no operation and may for the present discussion be kept aside."

His Lordship was considering the Act of 1950 previous to the amendments subsequently made therein from 1951 onward, and the observations appear to establish the following three points : first, clause (4) of Art. 22, put in affirmative form, has reference to a law which provides for preventive detention and authorises detention for a period longer than three months; second, the expression 'such detention' has again reference to such a law providing for detention beyond a period of three months; and lastly, cl. (4) of Art. 22 had no application to the Act of 1950 as it then stood. We shall presently show that the first and the second points do not really support the appellant's contention, and the last had particular reference to ss. 9 and 12 of the Act of 1950, as it then stood. The appellant has, however, pointed out that under the Act as it now stands, every order of detention has to be placed before the Advisory Board (s. 9 of the Act) and the Advisory Board has to report about every order of detention (s. 10 of the Act). Though under s. 11A of the Act the maximum period for which any person may be detained in pursuance of a detention order which has been confirmed under s. 11, is twelve months from the date of detention, the Act now contains no provisions as to the circumstances under which, or the class or classes of cases in which, a person may be detained for a period longer than three months without obtaining the opinion of the Advisory Board; therefore, the argument of the appellant is that the last point made by the observations of Kania C.J. is no longer valid in view of the amendments made in the Act of 1950. We have proceeded in this case on the footing that sub-cl. (a) of cl. (4) of Art. 22 applies to the Act as it stands after the amendments, and even on that footing there is, in our opinion, no inconsistency between that sub-clause and the impugned provisions of the Act, as we shall presently explain.

In his dissentient judgment in Gopalan's case (supra), Fazl Ali J., made the following observations with regard to cl. (4) of Art. 22. Said his Lordship at pages 170 and 171 of the report:

> "In connection with the first point, the question arises as to the exact meaning of the words 'such detention' occurring in the end of clause (4)(a). Two alternative interpretations were put forward : (1) 'such detention' means preventive detention; (2) 'such detention' means detention for a period longer than three months. If the first interpretation is correct, then the function of the advisory board would be to go into the merits of the case of each person and simply report whether there was sufficient

> cause for his detention. According to the other interpretation, the function of the advisory board will be to report to the Government whether there is sufficient cause for the person being detained for more than three months. On the whole, I am inclined to agree with the second interpretation. Prima facie, it is a serious matter to detain a person for a long period (more than three months) without any enquiry or trial. But article 22(4)(a) provides that such detention may be ordered on the report of the advisory board. Since the report must be directly connected with the object for which it is required, the safeguard provided by the article, viz., calling for a report from the advisory board, loses its value, if the advisory board is not to apply its mind to the vital question before the Government, namely, whether prolonged detention (detention for more than three months) is justified or not. Under article 22(4)(a), the advisory board has to submit its report before the expiry of three months and may therefore do so on the eighty-ninth day. It would be somewhat farcical to provide, that after a man has been detained for eighty-nine days, an advisory board is to say whether his initial detention was justified. On the other hand, the determination of the question whether prolonged detention (detention for more than three months) is justified must necessarily involve the determination of the question whether the detention was justified at all, and such an interpretation only can give real meaning and effectiveness to the provision. The provision being in the nature of a protection of safeguard, I must naturally lean towards the interpretation which is favourable to the subject and which is also in accord with the object in view."

These observations, it is urged, support the appellant's contention.

Patanjali Sastri J. (as he then was) took a view different from that of Fazl Ali J. in Gopalan's case (supra), and made the following observations at pages 209 and 210 of the report :

> "It was argued that the words 'sufficient cause for such detention' in sub-clause (a) of clause (4) had reference to the detention beyond three months mentioned in clause (4) and that this view was supported by the language of sub-clause (a) of clause (7) whereby Parliament is authorised to 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 without the opinion of an advisory board. In other words, learned counsel submitted, the combined effect of clauses (4) and (7) was that no person could be detained for a period over three months without obtaining the opinion of an advisory board that there was sufficient cause for detention for the longer period, except in cases where Parliament passed a law authorising detention for such period even without the opinion of an advisory board. Thus, these two clauses were concerned solely with the duration of the preventive detention, and so was the advisory board which those clauses provided for that purpose. I am unable to accept this view. I am inclined to think that the words 'such detention' in sub-clause (a) refer back to the preventive detention mentioned in clause (4) and not to detention for a longer period than three months. An advisory board, composed as it has to be of Judges or lawyers, would hardly be in a position to judge how long a person under preventive detention, say, for reasons connected with defence, should be detained. That must be a matter for the executive authorities, the Department of Defence, to determine, as they alone are responsible for the defence of the country and have the necessary data for taking a decision on the point. All that an advisory board can reasonably be asked to do, as a safeguard against the misuse of the power, is to judge

> whether the detention is justified and not arbitrary or mala fide. The fact that the advisory board is required to make its report before the expiry of three months and so could submit it only a day or two earlier cannot legitimately lead to an inference that the board was solely concerned with the issue whether or not the detention should continue beyond that period. Before any such tribunal could send in its report a reasonable time must elapse, as the grounds have to be communicated to the person detained, he has to make his representation to the detaining authority which has got to be placed before the board through the appropriate departmental channel. Each of these steps may, in the course of official routine, take some time, and three months' period might well have been thought a reasonable period to allow before the board could be required to submit its report."

These observations are undoubtedly against the contention of the appellant.

It is necessary to consider the whole scheme of Art. 22 in order to appreciate the true scope and effect of cl. (4). Article 22 provides for protection against arrest and detention in certain cases. Clauses (1) and (2) refer to arrest and detention in certain circumstances and provide for certain safeguards. Clause (3) then states, inter alia, that nothing in cls. (1) and (2) shall apply to any person who is arrested or detained under any law providing for "preventive detention"; in other words, a law relating to "preventive detention" is put in a special category and is dealt with in clauses (4) to (7). The power to legislate laws of preventive detention is given to Parliament and the State Legislatures by the Constitution. This power, however, is not absolute, but is controlled by the provisions of cls. (4), (5), (6) and (7) of Art. 22. The maximum period of detention is not prescribed by the Constitution, but Parliament may by law prescribe such a period. The Constitution contemplates that any law which authorises detention for more than three months should be subject to certain safeguards, as provided in cl. (4) of Art. 22 which directs that the case of a detained person under any law authorising detention for more than three months must be the subject of a report by an Advisory Board. The Advisory Board is to report whether there is sufficient cause for such detention. If the Advisory Board reports that the detention is justified, then only the detaining authority determines the period of detention. On the other hand, if the Advisory Board reports that the detention is not justified, the detained person must be released. Clause (4) of Art. 22 does not state that the Advisory Board has to determine whether the person detained should be detained for more than three months. What it has to determine is whether the detention is at all justified. The setting up of an Advisory Board to determine whether such detention is justified is considered as a sufficient safeguard against arbitrary detention under any law of preventive detention which authorises detention for more than three months. The matter before the Advisory Board is the subject of detention of the person concerned and not for how long he should be detained. Clause (7) of Art. 22 is an exception to cl. (4) of that Article. It authorises Parliament alone to pass a law of preventive detention authorising detention of a person for more than three months without obtaining the opinion of an Advisory Board so long as the circumstances under which and the class or classes of cases in which a person may be detained for a longer period than for three months are set out in the enacted law. The Constitution evidently does not contemplate detention of the person for a period of three months or less as sufficiently serious to have the safeguard of a report by an Advisory Board to the effect that there is sufficient cause for detention. Under the Constitution an Advisory Board is to be set up for all cases of detention under a law authorising detention for more than three months. When the case of a detained person is placed before the Advisory Board under such law it must be assumed that the Advisory Board knows that if it reports that the detention is justified, the detenu may be detained for more than three months and up to the maximum period provided by the law. The expression "such detention" in Art. 22(4)(a) refers to preventive detention

and not to how long the person is to be detained.

Moreover, it is clear that clause (4) lays down a prohibition against any law providing for detention for more than three months without a provision for an Advisory Board, and cl. (5) provides for furnishing the grounds of detention and affording an opportunity of making a representation against the order of detention. But these safeguards are subject to cls. (6) and (7). Under the former, facts, the disclosure of which the detaining authority considers against the public interest, are not required to be furnished. Under the latter, Parliament may prescribe the circumstances under and the class or classes of cases in which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board. The Constitution has therefore in one case given discretion to the Executive not to furnish facts in certain circumstances and in the other case left it to Parliament to prescribe cases or classes of cases in which reference to the Board need not be made. Therefore, both the furnishing of grounds and the report of the Board are, in a sense, limited safeguards. Considering the circumstance that the detention is of a preventive nature, the Executive has necessarily to consider whether a person should be detained and the period for which he should be detained. It could not have been the intention to give the power of determining the necessity of detention of a particular person to the Executive, and leave to another authority - the Board in this case - to say whether the detention should be for three months or more. In the very nature of things the decision as to the period of detention must be of the detaining authority, because it is the authority upon which responsibility for detention has been placed. The reference to the Board is only a safeguard against Executive vagaries and high-handed action and is a machinery devised by the Constitution to review the decision of the Executive on the basis of a representation made by the detenu, the grounds of detention, and where the order is by an officer, the report of such officer. It is not a limitation on the Executive's discretion as to the discharge of its duties connected with preventive detention; it is a safeguard against misuse of power.

What then is the scheme of the Act under our consideration ? An order of detention is made under s. 3 of the Act. If the order is made by any officer under sub-s. (2) of s. 3, a report has to be submitted to the State Government to which the officer is subordinate and the order does not remain in force for more than twelve days unless in the meantime it has been approved by the State Government. Under s. 7 of the Act, the grounds of detention have to be communicated to the detenu, as soon as may be but not later than five days from the date of detention. Section 8 relates to the constitution of an Advisory Board. Under s. 9 in every case where a detention order has been made under the Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the detenu. Section 10 prescribes the procedure of the Advisory Board and lays down that the Advisory Board must submit its report to the appropriate Government within ten weeks from the date of detention. Sub-s. (2) of s. 10 states that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned. Then comes s. 11 which we have already quoted in extenso. The scheme of the Act has been explained in several decisions of this Court. In Makhan Singh Tarsikka v. State of Punjab [[1952] S.C.R. 368, 370.], it was stated that whatever might be the position under the Preventive Detention Act of 1950, before it was amended in 1951, under the Act as amended in 1951, the Government must determine what the period of detention should be only after the Advisory Board to which the case is referred reports that the detention is justified Patanjali Sastri C.J. observed :

> "It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should

> determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported."

In Dattatreya Moreshwar Pangarkar v. State of Bombay [[1952] S.C.R. 612, 626.] Mukherjea J. (as he then was) said :

> "It is now settled by a pronouncement of this Court that not only it is not necessary for the detaining authority to mention the period of detention when passing the original order under s. 3(1) of the Preventive Detention Act, but that the order would be bad and illegal if any period is specified, as it might prejudice the case of the detenu when it goes up for consideration before the Advisory Board. The Advisory Board again has got to express its opinion only on the point as to whether there is sufficient cause of detention of the person concerned. It is neither called upon nor is it competent to say anything regarding the period for which such person should be detained. Once the Advisory Board expresses its view that there is sufficient cause for detention at the date when it makes its report, what action is to be taken subsequently is left entirely to the appropriate Government and it can under s. 11(1) of the Act 'confirm the detention order and continue the detention of the person concerned for such period as it thinks fit'. In my opinion, the words 'for such period as it thinks fit' presuppose and imply that after receipt of the report of the Advisory Board the detaining authority has to make up its mind as to whether the original order of detention should be confirmed and if so, for what further period the detention is to continue. Obviously, that is the proper stage for making an order or decision of this description as the investigation with regard to a particular detenu such as is contemplated by the Preventive Detention Act is then at an end and the appropriate Government is in full possession of all the materials regarding him."

At page 637 of the report, the learned Judge further said :

> "Under the Constitution, the detention of a person under any law providing for preventive detention cannot be for a period of more than three months unless the Advisory Board is of the opinion that there is sufficient cause for the detention of the person concerned. The Constitute itself has specified the maximum limit of the initial detention and detention for a period longer than three months can only be made on the basis of the report of the Advisory Board."

In view of these observations, it is quite clear what the scheme of the Act is. The Act authorises a possible detention of more than three months; the order of detention is therefore referred to the Advisory Board, and it is only when the Advisory Board makes its report that the appropriate Government fixes the period of detention under sub-s. (1) of s. 11 of the Act.

For all these reasons, we hold that sub-s. (1) of s. 11 of the Act does not contravene any of the provisions of Art. 22 and is accordingly valid.

We now proceed to give our reasons with regard to those points on merits which have been urged before us by the appellant. The appellant has contended that the grounds of detention communicated to him are all vague, except ground No. 2, and that the grounds so communicated did not give him an opportunity of making an effective representation, a right guaranteed to him under cl. (5) of Art.

22. The grounds except ground No. 2 were these :

> "1. That since the last two years you are in constant touch with foreign correspondents in India and representatives of foreign countries to whom you have been spreading reports and information about conditions in the State of Jammu and Kashmir which are false and calculated to prejudice the relations of India with foreign powers and also to prejudice the security of the State.
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> #..##
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> 3. That you are in constant touch with certain persons in Pakistan and Pakistani occupied part of Jammu and Kashmir who are hostile to India and you are assisting there persons in their activities which are prejudicial to the security of India.
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> 4. That you are receiving financial assistance from persons in Pakistan and Pakistani occupied part of Jammu and Kashmir for supporting and furthering your aforesaid prejudicial activities.
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> 5. That you are in regular connection with persons in India who are engaged in promoting false propaganda against India in relation to Kashmir and have been attending their secret meetings for planning action and propaganda in relation to Kashmir prejudicial to the security of India.
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> 6. The Central Government is satisfied that you are likely to act in a manner prejudicial to the security of India and in a manner prejudicial to the relations of India with foreign powers and with a view to prevent you from so acting has passed the order for your detention."

The same document which communicated the grounds of detention to the appellant also contained the following statement in paragraphs 7 :

> "The Central Government is satisfied that it is against the public interest to disclose to you any facts or particulars as to dates, persons and places and the nature of your activities and the assistance received or otherwise than those which have been already mentioned."

The argument of the appellant is that by refusing to disclose any facts or particulars as to dates, persons and places, the detaining authority has really deprived the appellant of the valuable right guaranteed to him under cl. (5). This contention of the appellant is concluded by the recent decision of this Court in Lawrence Joachim Joseph D'Souza v. The State of Bombay [[1956] S.C.R. 382.]. It was held therein that the right of the detenu to be furnished with facts or particulars was subject to the limitation mentioned in cl. (6) and even if the grounds communicated were not as precise and specific as might have been desired, the appropriate authority had the right to withhold such facts or particulars, the disclosure of which it considered to be against the public interest. Such a privilege having been exercised in the present case, the appellant cannot be heard to say, apart from the question of mala fides, that the grounds did not disclose the necessary facts or particulars, or that in the absence of such facts or particulars, he was not in a position to make an effective representation. In The State of Bombay v. Atma Ram Sridhar Vaidya [[1951] S.C.R. 167.] this Court has unanimously held that under s. 3 of the Act, it is the satisfaction of the appropriate authority which is necessary for an order of detention, and if the grounds, on which the appropriate authority has

said that it is so satisfied, have a rational connection with the objects which are 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. It has been further held by the majority that cl. (5) of Art. 22 confers two rights on the detenu, namely, first, a right to be informed of the grounds on which the order of detention has been made, and make a representation against the order. If grounds which have a rational connection with the objects mentioned in s. 3 are supplied, the first condition is complied with. But the right to make a representation implies that the detenu should have such information as will enable him to make a representation and if the grounds supplied are not sufficient to enable the detenu to make a representation, he can rely on the second right. The second right, however, is again subject to the right of privilege given by cl. (6) and as has been pointed out in Lawrence D'Souza's case (supra), the obligation to furnish grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest, are both vested in the detaining authority and not in any other.

As in Lawrence D'Souza's case (supra), it is unnecessary in the present case to consider the theoretical contention as to whether or not Art. 22(6) of the Constitution overrides the constitutional right to be furnished grounds under Art. 22(5) to the extent of denying all the particulars and leaving the grounds absolutely vague. We are of the opinion that in the present case the grounds furnished to the appellant, though not as precise and definite as might be desired, gave him a sufficient opportunity of exercising his right under cl. (5) of Art. 22 of the Constitution.

With regard to ground No. 2, the appellant has urged the following points. Ground No. 2 communicated to the appellant is in these terms :

> "2. That you addressed a Press Conference at New Delhi on the 18th day of February, 1956, which was attended by a large body of Press Correspondents of foreign countries and that you made a speech (copy of contents of which is hereto annexed) containing various false statements about the conditions of the people of Kashmir. The combined effect of these statements is prejudicial to the security of India and to the relations of India with foreign powers. Extracts of such statements are given below : (then follow the extracts)."

It is argued (1) that detention on this ground is more punitive than preventive; (2) that it is not relevant to the objects for which the appellant has been detained, namely, the security of India and her relations with foreign powers; and (3) that there are verbal inaccuracies in reciting the ground, with particular reference to what happened at the Press Conference on February 18, 1956. We have considered each one of these arguments are are of the view that not one of them has any substance. Firstly, the ground no doubt relates to what happened on February 18, 1956; that does not, however, mean that the detention of the appellant is punitive in character. What the appellant is likely to do in future must, to a large extent, be inferred from his past conduct. Secondly, we think that the ground has a rational connection with the objects which the appellant has to be prevented from attaining. The objects of the appellant's detention are to prevent him from acting in a manner prejudicial to (1) the security of India and (2) her relations with foreign powers. Both these objects, we think, come within the ground in question. Thirdly, the verbal inaccuracies relied on by the appellant are all so inconsequential in nature that we do not think it necessary to state them in detail. By way of an example, it may be stated that in the extract enclosed with the ground, there is a statement to this effect : "It would be no exaggeration to state that were a plebiscite to be held there today, over 90% of Kashmiris would vote against India etc." In his actual statement, however, the appellant said : "It would not be an exaggeration to state that were a plebiscite to be held there today, over 90% of

Kashmiris would vote against India etc." The only difference between the two is that instead of the word 'not', the word 'no' has been used in the extract; otherwise, there is no difference between the two statements. Such verbal differences are not inaccuracies at all, and we are unable to accept the contention of the appellant that the detaining authority did not apply its mind to the grounds communicated to him.

Lastly, the appellant has raised the question of mala fides. This question has been considered at great length by the learned Judge of the Punjab High Court who dealt with the petition of appellant. The appellant referred in his affidavit to some of his activities from 1954 onwards and to certain events which happened between 1954 and 1956. He also referred to certain statements alleged to have been made by the Prime Minister and the Home Minister, and he averred that both of them were annoyed with him for his activities and therefore the order of detention was not bona fide. We are unable to accept this contention. We agree with the learned Judge of the High Court that the activities of the appellant and the events of 1954 to 1956 referred to by the appellant, do not in any way show that the order of detention made against the appellant was made for any ulterior purpose or for purposes other than those mentioned in the detention order. On the question of mala fides, it is not a relevant consideration whether the activities of the appellant were liked or disliked by the authorities concerned. The only relevant consideration is if the order of detention was made for ulterior purposes or purposes other than those mentioned in the detention order. On the materials placed before us, we unhesitatingly hold that no mala fides have been established.

These are our reasons for the order which we passed on May 24, 1957, dismissing the appeal.

SARKAR J. -

This appeal arises out of an application for the issue of a writ of habeas corpus. In my view the appeal can be disposed of on one ground, and in this judgment I propose to deal with that ground alone.

On July 21, 1956, the appellant was taken into custody under an order of detention passed against him by the Government of India under the Preventive Detention Act, 1950 (Act IV of 1950). On July 24, 1956, the appellant was served with the grounds on which the order of detention had been passed as required by the Act. The appellant thereafter made a representation against the order which was considered by the Advisory Board, constituted under the Act. On August 22, the appellant was served with another order made by the Government of India wherein it was stated that the Advisory Board had reported that there was in its opinion, sufficient cause for the detention of the appellant. This order further stated that in view of the report of the Advisory Board the Government of India confirmed the detention order earlier made against the appellant and that the appellant should continue in detention for a period of 12 months from the date of his detention. The appellant challenged the legality of these orders of detention and moved the High Court of Punjab for the issue of an appropriate writ for his release. The petition was dismissed by the High Court. Hence this appeal.

The petitioner challenges the validity of the orders of detention on the ground that the provision of the Preventive Detention Act, 1950, under which they were made is ultra vires the Constitution. I have come to the conclusion that this objection to the Act is sound and that is why I do not find it necessary to discuss the other contentions raised by the appellant.

The contention of the petitioner is based on Art. 22(4)(a) of the Constitution. The relevant portion

of the article is set out below :

> (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless -
>
> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
>
> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
>
> #...##
>
> (7) Parliament may by law prescribe -
>
> (a) 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);
>
> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention;..

The position, therefore, is that unless Parliament by law otherwise prescribes, the provisions of cl. (4)(a) of Art. 22 have to be complied with by any law providing for preventive detention. Parliament has passed no law prescribing otherwise. The Preventive Detention Act, 1950, has, therefore, in order to be constitutional to satisfy Art. 22(4)(a). The appellant's contention is that it does not do this. Though the words used are somewhat obscure, it is fairly clear, as was accepted at the Bar, that the required provision for the report of the Advisory Board has to be made in the law authorising preventive detention and it is not by the force of Art. 22(4)(a) itself that that report has to be obtained.

The present Act authorises a maximum period of detention of 12 months from the date of detention. It is therefore a law providing for preventive detention and it authorises the detention of a person for a longer period than three months. It must hence contain provisions satisfying sub-cl. (a) of cl. (4) of Art. 22 if it is intended to detain a person under it for a period longer than three months. It has to provide that if under it detention for a period longer than three months is to be ordered then an Advisory Board, constituted as specified, must report that there is in its opinion sufficient cause for such detention. So much is not in dispute. The difficulty is caused by the words "such detention". The appellant contends that they mean detention for a period longer than three months and therefore an Act authorising preventive detention for more than three months has to provide that the Advisory Board must report that there is sufficient cause for detention for a period longer than three months.

The Act in this case does make provisions for the constitution of the Advisory Board and for submitting all cases of detention irrespective of their periods of detention to it for its opinion as to whether or not there is sufficient cause for detention, but it does not provide that where it is intended to detain a person for a period longer than three months then the Advisory Board must report that there was sufficient cause for detention for a period longer than three months. The provision for the opinion of the Advisory Board is contained in s. 10(2) of the Act which is in the following terms :

> S. 10 (2). - The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

If therefore the appellant is right in his contention that the words "such detention" mean detention for a longer period than three months then the provisions of the Act authorising detention for more than three months must be held to be ultra vires. The question is, what do these words mean?

As a matter of pure construction of the language used in sub-cl. (a) it seems to me that the words "such detention" must mean detention for a longer period than three months. The word "such" means, of the kind of degree already described. Of the meanings of the word "such" given in the Oxford Dictionary this I find to be the only one appropriate in the present context. Learned counsel for the respondent did not suggest any other meaning. Now what is the kind or degree of detention that is earlier described in the clause ? The only kind that I find is detention for a longer period than three months. That being so, I feel compelled to accept the appellant's contention.

The learned Solicitor-General opposing the appeal contended that the words "such detention" were capable of two meanings, namely, detention simpliciter and detention for a period longer than three months. He advanced certain reasons why of the two possible constructions the first one should be accepted. I will come to the reasons later. Before doing so I wish to state that I am unable to agree that the words "such detention" are capable of two meanings. Clause (4) contemplates a law of preventive detention but does not authorise such law. Such a law is within the legislative competence of the Parliament and the State legislatures : See Art. 246 of the Constitution, item 9 of list 1 and item 3 of list III in the Seventh Schedule to the Constitution. Having contemplated such a law, what cl. 4 proceeds to do is to lay down that, that law shall not authorise the detention of a person for a longer period than three months unless the Advisory Board has reported that there is in its opinion sufficient cause for such detention. It only imposes a limitation on the power to pass laws authorising preventive detention. This is what Das J. said in A.K. Gopalan v. The State of Madras [[1950] S.C.R. 88.]. He there said (p. 324), "article 21 and 22 have put a limit on the power of the State given under Art. 246 read with the legislative lists". Therefore the only object that cl. (4) purports to deal with is detention for a period longer than three months under a law of preventive detention the existence of which it assumes. Hence the words "such detention" must necessarily refer to detention for a period longer than three months. There is nothing else to which it can refer. Preventive detention without reference to the period of it is not in contemplation of cl. (4) at all. A law for preventive detention is mentioned. The words "such detention" cannot possibly refer to that law. That law may, no doubt, provide for detention for a shorter period but such shorter detention is not mentioned in the clause nor really in its contemplation at all. So no question of the words "such detention" referring to the shorter detention arises.

But suppose the learned Solicitor-General was right in his contention that the words, in the context they are used, are capable of referring both to preventive detention simpliciter and to preventive

detention for a period longer than three months, are there reasons for preferring the first of the two alternative constructions ? I am unable to find any. The learned Solicitor-General said that if the words were referable only to a detention for a period longer than three months then people detained for a shorter period would be deprived of the safeguard of the opinion of the Advisory Board and lose the chance of being set free if it expressed the view that there was no sufficient cause for detention. That no doubt would be so. But I find nothing in the language of cl. (4) to show that such a safeguard was intended. If the language does not support such an intention, then of course this argument must fail, however much the court may like the safeguard to be provided in all cases of detention. If it was the intention of the Constitution to provide such a safeguard it would not have required that the report of the Advisory Board should be made before the expiry of the three months. That is what Fazl Ali, J., said in Gopalan's case [[1950] S.C.R. 88.] at page 171 :

> "Under Art. 22(4)(a), the Advisory Board has to submit its report before the expiry of three months and may therefore do so on the eighty-ninth day. It would be somewhat farcical to provide, that after a man has been detained for eighty-nine days, an advisory board is to say whether his initial detention was justified."

As the Constitution could not have contemplated the situation mentioned by Fazl Ali, J., it could not have intended that all cases of detention irrespective of their periods must also be placed before the Advisory Board. It follows that it did not mean to provide the safeguard referred to by the learned Solicitor-General. In fact, all the other learned Judges who heard Gopalan's case [[1950] S.C.R. 88.], excepting Patanjali Sastri, J., expressed the same view. I set out below what they said :

> Kania, C.J., (page 118 of the Report) :
>
> "Reading article 22 clauses (4) and (7) together it appears to be implied that preventive detention for less than three months, without an advisory board, is permitted under the Chapter on Fundamental Rights, provided such legislation is within the legislative competence of the Parliament or the State Legislature, as the case may be."

Mahajan, J., (p. 228) :

> "If the intention of the Constitution was that a law made on the subject of preventive detention had to be tested on the touchstone of reasonableness, then it would not have troubled itself by expressly making provision in article 22 about the precise scope of the limitation subject to which such a law could be made and by mentioning the procedure that the law dealing with that subject had to provide. Some of the provisions of article 22 would then have been redundant, for instance, the provision that no detention can last longer that three months without the necessity of such detention being examined by an advisory board."

Again at p. 237 :

> "Clause (4) of article 22 enjoins...... that no law can provide for preventive detention for a longer period than three months without reference to an advisory board."

Mukherjea, J., (p. 281) :

> "Preventive detention can be provided for by law for reasons connected with six

> different matters specified in the relevant items in the legislative lists, and whatever the reasons might be, there is a provision contained in article 22(4)(a) which lays down that detention for more than three months could not be permitted except with the sanction of the advisory board."

Das, J., (p. 326) :

> "In short, clause (4) of article 22 provides a limitation on the legislative power as to the period of preventive detention. Apart from imposing a limitation on the legislative power, clause (4) also prescribes a procedure of detention for a period longer than three months by providing for an advisory board."

The learned Solicitor-General then contended that Art. 22 dealt both with preventive detention and other kinds of detention. Thus clauses (1) & (2) dealt with other kinds of detention while clause (4) and the remaining clauses of the article dealt with preventive detention. Clause (3) said that nothing in clauses (1) and (2) shall apply to a person detained under any law providing for preventive detention. The learned Solicitor-General contended that the words "such detention" in clause (4) were intended to refer to preventive detention without reference to its duration as distinguished from the other kinds of detention referred to in clauses (1) and (2). He sought to reinforce his argument by contending that preventive detention for a period longer than three months was not a separate kind of preventive detention and therefore the words "such detention" referred to the only kind of preventive detention mentioned in the article, namely, preventive detention simpliciter and without any reference to the period of detention. I am again unable to agree. It is true that the detention contemplated in the words "such detention" is preventive detention. Clauses (4) to (7) of the article deal with preventive detention alone and with no other kind of detention. Therefore, in these clauses there was no necessity of distinguishing preventive detention as such from other kinds of detention and of using the word "such" for marking this distinction. So read the words "such detention" really mean such preventive detention. The question then arises, which preventive detention ? The answer must be, one variety of preventive detention as distinguished from other varieties.

It is also true that preventive detention for a period longer that three months is none the less preventive detention and is not another kind of detention. At the same time preventive detention for a period longer than three months is not the same thing as preventive detention for a shorter period. It is quite conceivable that with regard to different periods of detention permissible under a law relating to preventive detention different provisions may be made. Preventive detention certainly interferes with a person's liberty. It is an inroad on his freedom. It may be that the makers of the Constitution having given the legislatures power to enact laws providing for preventive detention interfering with a person's liberty did not think it fit to provide any limitation on such power when such detention was to be for a relatively shorter period but thought it fit to restrict the power in the case of detention for what they conceived to be a long period. If such was the intention, then the makers of the Constitution would obviously make a distinction between preventive detention for a shorter period and preventive detention for a longer period. To say that there is no distinction between these kinds of preventive detention is to assume that the makers of the Constitution never intended to make the distinction. For such an assumption I find no justification. Indeed, what I have read from the judgment of this Court in Gopalan's case, would show that the distinction between preventive detention simpliciter and preventive detention for a period longer than three months was in the mind of the makers of the Constitution, for it is there said that no reference to the Advisory Board is contemplated by the Constitution excepting in a case of detention for a period longer than three months.

The present argument of the learned Solicitor-General is on the basis that one of the possible constructions of the words "such detention" is detention for a period longer than three months. That being so, and the word "such" meaning in the ordinary English language, of the kind already described, even if two kinds of detention, namely, preventive detention simpliciter and detention for other reasons, have been earlier mentioned, the kind mentioned nearest to the word "such" must be the kind intended by it. Therefore again the words "such detention" must be taken as referring to detention for a period longer than three months. Indeed cl. (4) and the other clauses have nothing to do with other kinds of detention than preventive detention. The word "such" cannot therefore seek to make a distinction from a thing occurring in a wholly separate provision of the article, namely, clauses (1) and (2). That being so, I am unable to agree that the words "such detention" refer to preventive detention simpliciter.

I now turn to another question that arose. It was said that Art. 22(4)(a) applies only to a law which authorises detention for more than three months; that it is such a law alone which must provide for the opinion of the Advisory Board being obtained. It was contended that, therefore, whenever a law authorising preventive detention provides for a reference to the Advisory Board, it necessarily provides for a resort as to whether there is sufficient cause for a detention for a period longer than three months, and that being so, no matter whether any provision had been made that the Advisory Board must state whether in its opinion sufficient cause existed for a detention for a longer period or not, the report, when made, must necessarily be taken to have expressed such an opinion and the article therefore must be deemed have been complied with. This argument, of course, assumes that the words "such detention" mean detention for a period longer than three months. It assumes that the article requires that where the law of preventive detention authorises a detention for a longer period it is necessary to obtain the opinion of the Advisory Board that there is sufficient cause for detention for such period. Now there is nothing in the article to prevent an Act authorising preventive detention providing for the opinion of the Advisory Board being obtained as to there being sufficient cause for the detention in any case of detention. Such a provision in a law of preventive detention would be perfectly legal. The present Act in fact contains such a provision. Therefore, it cannot be said that whenever a law provides for an opinion of the Advisory Board being obtained as to the sufficiency of the cause for detention, the opinion in view of Art. 22(4)(a) necessarily is as to the sufficiency of the cause of detention for a period longer than three months. Besides, if, as the present argument assumes, it is obligatory in a law authorising preventive detention for a period longer than three months to provide for a report of the Advisory Board stating expressly its opinion as to the sufficiency of the cause for the detention for the period mentioned. I am unable to appreciate that such an obligation is satisfied by not making the required provision but by showing that by necessary implication the required opinion is deemed to have been given, even though in fact it may not have been given. The question is not what the report is to be deemed to have stated nor even what it has in fact stated, but what the statute should provide. If the statute has not made the obligatory provision it must be held to be bad. It would be a strange argument to say that it must be good because though it did not contain the required provision it must in view of the Constitution be deemed to contain it.

It was then said that as it is not for the Advisory Board to decide the period of detention to be ordered there can be no point in providing that its opinion, whether there were sufficient cause for detention for a period longer than three months or not, should be obtained. It seems to me that whether there is any point in obtaining such opinion or not it is wholly irrelevant to enquire. If the language of the Constitution requires such opinion to be obtained, it has to be obtained. I have stated that the language indubitably requires such opinion to be obtained. The language cannot have a different meaning because, otherwise, the provision would be without any point at all. Furthermore,

I am unable to see why if the Government fixes the period of detention, it is unnecessary where the period is to exceed three months to provide for the opinion of an independent body being obtained as to whether there is sufficient cause for detention for that period. In my view it is eminently reasonable to make such a provision. When a person's liberty is to be curtailed for a longer period, a safeguard may be considered necessary which it may not be when the curtailment contemplated is for a comparatively shorter period. I will repeat that the reasonableness of such a provision is implicit in what I have read from the judgment in Gopalan's case [[1950] S.C.R. 88.]. It is said there that it is only in the case of detention for a period longer than three months that the Constitution requires a provision that the Advisory Board's opinion should be obtained. This view is clearly brought out by Fazl Ali, J., when he said in that case at page 171 :

> "Prima facie, it is a serious matter to detain a person for a long period (more than three months) without any enquiry or trial. But article 22(4)(a) provides that such detention may be ordered on the report of the advisory board. Since the report must be directly connected with the object for which it is required, the safeguard provided by the article, viz., calling for a report from the advisory board, loses its value, if the advisory board is not to apply its mind to the vital question before the Government, namely, whether prolonged detention (detention for more than three months) is justified or not."

I have so long discussed the question whether the words "such detention" mean preventive detention simpliciter or preventive detention for a period longer than three months as a question of construction without reference to the authorities. In fact, there is no conclusive authority on the point, but some have been referred to. There I now proceed to consider.

The first case referred to is Gopalan's case [[1950] S.C.R. 88.]. That was also a case concerned with the issue of a writ of habeas corpus, and it turned on the very Act that is before the Court now, as it stood in 1950. At the date the order for detention in that case was made the Act provided that in certain class of cases a person might be detained for a period longer than three months without obtaining the opinion of the Advisory Board in accordance with the provisions of Art. 22(4)(a). Such a provision is sanctioned by cl. (7)(a) of that article. The order for detention made in that case was of a kind where reference to the Advisory Board was not obligatory. That being so, it was not necessary for the court in that case to decide the precise meaning of the words "such detention". None the less, however, three of the learned judges indicated their views on the question and the other three do not seem to have dealt with it. Kania, C.J., expressed the opinion that the words "such detention" meant detention beyond the period of three months. Referring to the proviso to sub-cl. (4)(a), he stated (p. 117) :

> "The proviso to this clause further enjoins that even though the advisory board may be of the opinion that there was sufficient cause for such detention, i.e., detention beyond the period of three months, still the detention is not to be permitted beyond the maximum period, if any, prescribed by Parliament under article 22(7)(b)."

The learned Chief Justice therefore was of the view that under Art. 22(4)(a) the Advisory Board had to be of the opinion that there was sufficient cause for detention beyond the period of three months. Mr. Justice Fazl Ali expressed himself more clearly on the subject and said (pp. 170-171):

> "In connection with the first point, the question arises as to the exact meaning of the words "such detention" occurring in the end of clause (4)(a). Two alternative

> interpretations were put forward : (1) "such detention" mans preventive detention; (2) "such detention" means detention for a period longer than three months. If the first interpretation is correct then the function of the advisory board would be to go into the merits of the case of each person and simply report whether there was sufficient cause for his detention. According to the other interpretation, the function of the advisory board will to be report to the Government whether there is sufficient cause for the person being detained for more than three months. On the whole, I am inclined to agreed with the second interpretation. Prima facie, it is a serious matter to detain a person for a longer period (more than three months) without any enquiry or trial. But article 22(4)(a) provides that such detention may be ordered on the report of the advisory board. Since the report must be directly connected with the object for which it is required, the safeguard provided by the article, viz., calling for a report from the advisory board, loses its value, if the advisory board is not to apply its mind to the vital question before the government, namely whether prolonged detention (detention for more than three months) is justified or not. Under article 22(4)(a), the advisory board has to submit its report before the expiry of three months and may therefore do so on the eighty-ninth day. It would be somewhat farcical to provide, that after a man has been detained for eighty-nine days, an advisory board is to say whether his initial detention was justified. On the other hand, the determination of the question whether prolonged detention (detention for more than three months) is justified must necessarily involve the determination of the question whether the detention was justified at all, and such an interpretation only can give real meaning and effectiveness to the provision. The provision being in the nature of a protection or safeguard, I must naturally lean towards the interpretation which is favorable to the subject and which is also in accord with the object in view."

Patanjali Sastri, J., preferred the other view but he realised that the view taken by Fazl Ali, J., was also a possible view. He expressed himself in these words on the subject (at page 210) :

> "I am inclined to think that the words "such detention" in sub-clause (a) refer back to the preventive detention mentioned in clause (4) and not to detention for a longer period than three months. An advisory board, composed as it has to be of Judges or lawyers, would hardly be in a position to judge how long a person under preventive detention, say, for reasons connected with defence, should be detained. That must be a matter for the executive authorities, the Department of Defence, to determine, as they along are responsible for the defence of the country and have the necessary data for taking a decision on the point. All that an advisory board can reasonable be asked to do, as a safeguard against the misuse of the power, is to judge whether the detention is justified and not arbitrary or mala fide. The fact that the advisory board is required to make its report before the expiry of three months and so could submit it only a day or two earlier cannot legitimately lead to an inference that the board was solely concerned with the issue whether or not the detention should continue beyond that period. Before any such tribunal could send in its report a reasonable time must elapse, as the grounds have to be communicated to the persons detained, he has to make his representation to the detaining authority which has got to be placed before the board through the appropriate departmental channel. Each of these steps may, in the course of official routine, take some time, and three months' period might well have been thought a reasonable period to allow before the board could be required to submit its report.

Assuming, however, that the words "such detention" had reference to the period of detention, there is no apparent reason for confining the enquiry by the advisory board to the sole issue of duration beyond three months without reference to the question as to whether the detention was justified or not. Indeed, it is difficult to conceive how a tribunal could fairly judge whether a person should be detained for more than three months without at the same time considering whether there was sufficient cause for the detention at all. I am of opinion that the advisory board referred to in clause (4) is the machinery devised by the Constitution for reviewing orders for preventive detention in certain cases on a consideration of the representations made by the persons detained. This is the view on which Parliament has proceeded in enacting the impugned Act as will be seen from sections 9 and 10 thereof, and I think it is the correct view. It follows that the petitioner cannot claim to have his case judged by any other impartial tribunal by virtue of article 21 or otherwise."

For the reasons earlier stated I prefer to accept the view expressed by Mr. Justice Fazl Ali.

The next case referred to is Makhan Singh Tarsikka v. The State of Punjab [[1952] S.C.R. 368.]. This was also a case for the issue of a writ of habeas corpus for the release of a person detained under the same Act as it stood in July 1951. In this case the first order for detention, that is to say the order made before the reference to the Advisory Board itself fixed the period of detention. It was held that was illegal because the Act made it plain that it is only after the Advisory Board to which the case has been referred reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order in the present case was, therefore, contrary to the scheme of the Act and cannot be supported. On this ground the petition for the issue of a writ was allowed. This case was obviously not concerned with Art. 22(4)(a) and does not in any manner decide the question before me. I am, therefore, unable to find any assistance from it.

Lastly, reference was made to Dattatreya Moreshwar Pangarkar v. The State of Bombay [[1952] S.C.R. 612.]. That again was concerned with an application for the issue of a writ of habeas corpus and also turned on the present Preventive Detention Act. There, after the initial order for detention which did not mention any period, the case had been referred to the Advisory Board which reported that there was sufficient cause for detention and then the Government issued an order stating that it confirmed the detention order issued against the detenu. The question was whether this confirmatory order was in terms of s. 11(1)(a) of the same Act as in this case as it stood in 1952. That section provided that where the advisory board had reported that there was sufficient cause for detention, the Government might continue the detention for such period as it thought fit. It was contended that the section required the period of detention to be mentioned in the confirmatory order and as the confirmatory order did not justify the period it was bad and did not justify the detention. It was held that such omission did not invalidate the order. Again it will be seen that this case was not concerned with Art. 22(4)(a). We were referred to certain observations of Mr. Justice Mukherjea in this case in support of the proposition that the words "such detention" in Art. 22(4)(a) meant detention simpliciter. These observations are set out below (pp. 626-27) :

> "It is now settled by a pronouncement of this court that not only it is not necessary for the detaining authority to mention the period of detention when passing the original order under section 3(1) of the Preventive Detention Act, but that the order would be bad and illegal if any period is specified, as it might prejudice the case of the detenu when it goes up for consideration before the Advisory Board. The Advisory Board again has got to express its opinion only on the point as to whether there is sufficient cause for detention of the person concerned. It is neither called

> upon nor is it competent to say anything regarding the period for which such person should be detained. Once the Advisory Board expresses its view that there is sufficient cause for detention at the date when it makes its report, what action is to be taken subsequently is left entirely to the appropriate Government and it can under section 11(1) of the Act confirm the detention order and continue the detention of the person concerned for such period as it thinks fit."

It was sought to be argued that Mukherjea, J., intended to say that all that the Advisory Board was required to do was to express its opinion on the question of justification of the detention simpliciter. This may be so, but Mr. Justice Mukherjea was construing the Preventive Detention Act which admittedly made that provision. He was not saying that Art. 22(4)(a) also said the same thing. Indeed what I have read earlier from his judgment in Gopalan's case [[1950] S.C.R. 88.] would show that his view about Art. 22(4)(a) was otherwise. Again the learned Judge was not concerned with the question whether the relevant provision of the Preventive Detention Act was ultra vires the Constitution. Furthermore, for the reasons earlier stated, the fact that the Government decides the term of detention does not indicate that it is not intended that when detention for a period longer than three months is contemplated, it is not necessary to obtain the opinion of Advisory Board as to whether there was sufficient cause for detention for the period. Reference was also made to the following portion of the judgment of Mahajan, J. [[1952] S.C.R. 612.], occurring at p. 637 of the report :

> "Under the Constitution, the detention of a person under any law providing for preventive detention cannot be for a period of more than three months unless the Advisory Board is of the opinion that there is sufficient cause for the detention of the person concerned."

It was suggested that the learned Judge indicated that all that was necessary was for the law to provide for an opinion of the Advisory Board as to the justification of the detention itself irrespective of whether it was to be for a period longer than three months. It is clear that here Mahajan, J., was not considering the meaning of the words "such detention". He was not concerned with deciding whether these words meant detention simpliciter or detention for a period longer than three months. His observations in Gopalan's case [[1950] S.C.R. 88.] that I have earlier set out, would in my view indicate that the Advisory Board is required to give an opinion as to whether detention for a longer period than three months is justified or not. It cannot therefore be said that Mahajan, J., held the view that the words "such detention" in Art. 22(4)(a) mean simply preventive detention.

I therefore come to the conclusion that there is nothing either in Makhan Singh's case [[1952] S.C.R. 368.] or Dattatreya Moreshwar Pangarkar's case [[1952] S.C.R. 612] which takes a view contrary to that which I have taken.

In the result I would allow the appeal.

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