

Wasiuddin Ahmed

Vs

District Magistrate, Aligarh, U. P. and Others

Writ Petition No. 3252 of 1981

(A.P. Sen, Baharul Islam JJ)

16.10.1981

JUDGMENT

A.P. SEN, J. –

1. This is petition under Article 32 of the Constitution by one Wasiuddin Ahmed for the issuance of a writ of habeas corpus for the release of his brother, Manzar Safi alias Safiuddin who has been detained by an order of detention dated February 21, 1981 passed by the District Magistrate, Aligarh, under sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as the Act), on his being satisfied that his detention was necessary with a view to preventing him from "acting in any manner prejudicial to the maintenance of public order". On the same day, the District Magistrate made a report to the State Government about the passing of the detention order together with the grounds of detention and all other particulars bearing on the same. The said rewrite and other particular were considered by the State Government and it approved of the detention order under sub-section (4) of Section 3 of the Act and sent a report to the Central Government under Section 3(5) of the Act. It appears that the detenu could not be apprehended till March 9, 1981 when he suddenly emerged in the glare of limelight before the Press under the case of politicians at Delhi. He was taken to custody by the Aligarh Police from Tilak Marg Police Station, New Delhi. The District Magistrate apprehending an untoward incident in his district, directed, that the detenu be taken to the Central Jail, Agra, where he was served with the detention order together with the grounds of detention as well as documents in support thereof, but the detenu declined to accept the documents on the ground that he was not conversant with Hindi. The detenu was removed to the Central Jail, Fatehgarh where he is at present under detente.

2. The State Government forwarded the case of the petitioner to the Advisory Board in due course under Section 10 of the Act along with detention order together with the grounds of detention. The detenu was on March, 25, 1981 served with translated copies of some 80 documents, many of which were in Hindi. At the hearing before the Advisory Board on April 21, 1981, the detenu submitted his representation. On the same day, the Advisory Board, after considering the material placed before it and said representation and after giving a personal hearing to the detenu, made a report to the State Government under sub-section (1) of Section 11 of the Act to be effect that there was sufficient cause for the detention. By an order dated May, 1, 1981, the State Government, in exercise of its powers under sub-section (1) of Section 12 of the Act, confirmed the order of detention.

3. In the response to the rule nisi, the District Magistrate, Aligarh, the Joint Secretary to the State Government of Uttar Pradesh, Ministry of Home and the Additional District Magistrate (City), Aligarh have filed counter-affidavits by which they explain the circumstances which led to the

issuance of the detention order. They controvert the allegations made by the detenu and unequivocally state that the constitutional safeguard of Article 22(5) and that of Section 8 of the Act, have been strictly complied with. They allege that the detenu on his being taken in to detention on March 3, 1981 was served with the order of detention together with the grounds of detention and the relevant documents in support thereof at the Central Jail, Agra but he refused to accept the documents some of which happen to be in Hindi, the official language of Uttar Pradesh on the pretext that he did not know Hindi. But a few days thereafter from the General Jail, Fatehgarh he desired to have English translation of all the documents which were later given to him. They assert that the detenu knows Hindi very well but kept on harassing all concerned by pleading ignorance of the language for the purpose of compelling the District Administration to supply English translation of all the Hindi documents. They contend that the grounds of detention set out all the basic facts and material which had been taken into account by the District Magistrate in making the order of detention and that his subjective satisfaction was reached on a consideration of all the materials placed before him. They state that the detenu instead of making a representation before the Government submitted it directly to the Advisory Board and further that the Advisory Board gave him a personal hearing. They contend that the District Magistrate was entitled to take into consideration besides what had been reported against the detenu, such other particulars, as in his opinion, had a bearing on the matter such as intelligence reports and his previous criminal record, etc.

4. It appears that the detenu led a crusade against Professor Irfan Habib, an eminent scholar of Indian History and an enlightened man of progressive views who is the Dean of the Faculty of Social Sciences, Aligarh Muslim University. The detenu is a person aged 39 years, a resident of Timer Das Sarai, Sambal, District Moradabad and was a student of the Aligarh Muslim University in the year of 1967 when he left his studies due to the death of his grandfather. It appears that he took an active part in the communal riots in Moradabad in February 1976. On March 1, 1976, he was placed under detention under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 during the period of Emergency. In the 1977, he contested the elections to the Lok Sabha and also to the Uttar Pradesh Legislative Assembly as an independent candidate. On July 30, 1978, he was externed from Sambal region of the Moradabad district. After ten years of break in his studies, he re-joined the Aligarh Muslim University as a student of B.A. (Hons.) obviously for political reasons and not to pursue his studies further, having failed to establish himself in the family business. He claims to be a journalist and to have written several articles on international affairs and is a convener of the Human Rights Forum in the University and also claims to be a prominent worker and an active protector of human rights.

5. The detenu is a fundamentalist and started creating discord between the Muslims and Hindus in the student community which disturbed the even tempo in the University campus. The Aligarh Muslim University has 18,000 students and there are 7000 members of the teaching and other staff. There was an open confrontation between the two communities leading to acts of violence and hooliganism. There was a serious law and order situation and on January 31, 1981 the District Magistrate clamped a prohibitory order under Section 144 of the Code of Criminal Procedure, 1973 inside and outside the campus of the University in order to maintain public peace and tranquillity. Despite the prohibitory order under Section 144 of the Code, the detenu and his followers continued to defy the ban and the situation took a turn for the worse. For maintenance of public order, the District Administration had to call in twenty companies of the Provincial Armed Constabulary and ten of the Central Reserve Police, who were stationed at Aligarh to assist the local police, and the University had to be closed for an indefinite period. Although 213 students taking part in the agitation were taken into the custody, the District Magistrate in his counter affidavit has stated that

after due circumspection, he passed the order of detention of the detenu alone, who had instigated the students to indulge in violent activities, with a view to preventing him from acting in a manner prejudicial to the maintenance of public order.

6. The prejudicial activities of the detenu leading to public disorder as revealed in the grounds of detention : On February 6, 1980 at about 11.30 a.m. the detenu went to Professor I.D. Pant, Reader in Geology and leveled certain charges against him, saying that he was a representative of M. Sc. Final Geology, with the threat that he was a resident of Sambal, District Moradabad and was under detention for two years during the period of Emergency and "had finished dozens of Hindus and there would be no difficulty in finishing one more Hindu". Professor Pant reported the matter to the Proctor. The Vice-Chancellor thereupon sent down the detenu of June 25, 1980 on the ground of his misbehaviour with a senior teacher. On June 30, 1980 the students' Union of the University sent a threatening letter to the Vice-Chancellor to the effect that numerous students were with the detenu and the ground on which he was sent down were baseless, and demanded that the order of the Vice-Chancellor be withdrawn. The report of Professor Pant placed before the Disciplinary Committee of the University on July 3, 1980. The clarification given by the detenu was considered and the Disciplinary Committee found him guilty of the charge of misbehaves. The Committee ordered him to submit a written apology to the Vice-Chancellor for his acts of misbehaviour with Professor Pant and on his failure to do so, the matter was to come up before the Committee again. The detenu was imposed a fine of Rs. 50 for his acts indiscipline. While the matter was pending before the Disciplinary Committee, Professor Irfan Habeeb of the Faculty of Social Sciences caught the detenu who was appearing in B.A. (Hons.) 3rd Year examination of the year 1980 while using unfair means on July 7, 1980. Professor Irfan Habeeb placed the matter before the Examination Committee on September 27, 1980. The Committee accordingly cancelled the result of the detenu for the year 1979-80

7. Professor Irfan Habeeb appears to have incurred the displeasure of the detenu because on September 10, 1980 he wrote to the Registrar of the University stating that the detenu in the compliance with the order of the Disciplinary Committee had neither tendered a written apology nor deposited the fine of Rs. 50 for his act of misbehaviour with Professor Pant. The other reason for which the detenu spearheaded students' agitation against Professor Irfan Habeeb was because he on December 12, 1980 informed the Registrar that the Superintendent of Policy (City) by his letter dated December 8, 1980 had written to him about the past history of the detenu. It appeared therefrom that the detenu had taken an active part in the Communal riots at Moradabad during February 1976, that he was placed under detention under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 during the period of Emergency and that on July 30, 1978 he was externed from the Sambal region of the Moradabad district. It also appears that the detenu had been convicted in a criminal case and there were three other criminal cases pending against him. Professor Irfan Habeeb requested the Registrar that the past criminal record of the detenu should be put before the Disciplinary Committee which was to be held on the next day.

8. On December 30, 1980, the detenu having disobeyed the earlier order of the Disciplinary Committee, as he did not apologise in writing for his act of misconduct, the Disciplinary Committee rusticated him from the Aligarh Muslim University. Thereupon the detenu spearheaded a students' agitation against Professor Irfan Habeeb and wielded out a threat to him. On December 18, 1980 Professor Irfan Habeeb sent a detailed report to the Vice-Chancellor. On December 22, 1980, the detenu addressed a letter to the Proctor to the effect that he had come to know from a local newspaper that he had been rusticated from the University saying that he should controvert the news otherwise the peace of the University would be disturbed. The leaders of the students' Union of the

University also sent threatening letter to the Vice-Chancellor on December 27, 1980 attributing that the detenu had been rusticated under the influence exercised by Professor Irfan Habeeb, and he was called upon to withdraw the rustication order otherwise they would resort to other means. This was followed by the another letter of the students' Union dated January 4, 1981 written at the instigation of the detenu that, in case the rustication order was not withdrawn and Professor Irfan Habeeb was not removed from Deanship, they would start hunger strike for 24 hours at his residence from 2 p.m. on the next day. The students went about shouting slogans to that effect in the University campus and since the rustication order was not withdrawn, the leader of the Union distributed a cyclostyled pamphlet in Urdu on July 14, 1981 within the University campus. On the same day, a meeting of the students' Union was held and it was decided that unless Professor Irfan Habeeb withdrew his statement published in the Indian Express of January 13, 1981, he should be removed from the office of Dean and if the resolution of the Union was not accepted the students would start a dharna at the residence of the Vice-Chancellor. One more cyclostyled pamphlet in Urdu was distributed in the University campus alleging that Professor Irfan Habeeb was a re-incarnation of Karl Marx and Lenin, that the administration of the University was in the hands of a few persons and the time had now come when they should come out with confrontation with that group. Thereafter, a series of incidents took place which disturbed the peace of the University campus and completely paralysed the working of the University. On January 18, 1981 the students at the instigation of the detenu started a dharna at the residence of the Vice-Chancellor. The main door of his residence was locked and he was not allowed to go anywhere from his residence. The students also locked the doors of other departments of the University and the working of the University came to a standstill. The dharna at the Vice-Chancellor's residence continued up to January 31, 1981 when the District Magistrate issued a prohibitory order under Section 144 of the Code inside and outside the campus of the University. Despite the prohibitory order under Section 144 of the Code, the students continued the gherao of the Vice-Chancellor. On January 31, 1981 the police in a pre-dawn swoop arrested 213 students of the University, and the University was closed for an indefinite period.

9. After setting out the activities of the detenu the grounds of detention recite:

Shri Manzar Safi organised different groups of students on the basis of Islam religion. They distributed one pamphlet in Urdu in which it was alleged that Vice-Chancellor is not evaluating the agitation properly. In fact this agitation is between the supporters of Islam and components. Professor Irfan Habeeb has raised an army of his supporters in order to achieve the goal of his ideology. It is a great blow on the character of University. If the Mohammedans would have not approved it, then the mosques might have been turned into temples. And before starting the daily work of University, the recitation of Ramayan would have been started instead of Holy Quran. Under influence of desperate movement of Shri Manzar Safi students took part in the Gherao of Vice-Chancellor and demonstration. Thus there became an open confrontation between communal and progressive groups.

Shri Manzar Safi from inside and outside of University campus, instigated the students to be violent. His agitation created disturbances in the daily routine of University and it is adversely affecting the Aligarh City Public Order and communal feelings, because Aligarh is very sensitive regarding communal riots from before.

On the above mentioned grounds, I am satisfied that Shri Manzar Safi is acting in a manner prejudicial to the maintenance of public order. And with a view to prevent him from indulging in

such activities, it is necessary to detain him under National Security Act, 1980.

# District Magistrate Aligarh 21-2-1981##

10. We are informed that the University has now re-opened on August 17, 1981, i.e. after a closure of more than six months.

11. The Court has the delicate task of balancing the interest of the community as against the rights of an individual. The Aligarh Muslim University established under Section 3 of the Aligarh Muslim University Act, 1920 for imparting liberal education, is a part of our national heritage. The community has a vital interest to foster the growth and prosperity of this great educational institution based on purely secular ideologies. The Court has to see that the law is not used arbitrarily to suppress the citizen of his right to life and liberty. The Court must, therefore, be satisfied that the constitutional safeguards under Article 22(5) read with Section 8 of the Act have not been transgressed; otherwise, the impugned order of detention is liable to be struck down.

12. Before dealing with the merits, it is necessary to point out that the averment in paragraph 3 of the writ petition is that the detenu was served with an order of detention in Hindi, a language with which he was not conversant. The petitioner along with the writ petition filed a translated copy of the impugned order of detention which purpose to show that the detention was for "maintenance of law and order" and not for "maintenance of public order". As this was not in consonance with the subjective satisfaction of the District Magistrate as recorded in the grounds of detention set out above, and since this prima facie appeared to be a serious legal infirmity, we called upon learned counsel for the State to produce the original order of detention passed by the District Magistrate. It clearly shows that the District Magistrate was satisfied that the detention of the detenu was necessary "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order".

13. In support of the petition, learned counsel for the petitioner has, in substance, challenged the validity of the impugned order of detention on the following grounds, namely : (1) while the order of detention was served on the detenu, he was not "informed" in the grounds of detention of his constitutional right to make a representation against such order of detention and also the right to be heard by the Advisory Board; (2) the procedural safeguards of Article 22(5) and Section 8 of the Act were not complied with since the detenu was not supplied with any document till March 25, 1981 and some of them as of today have not been supplied at all, and further that the grounds of detention and the documents in support thereof were in Hindi and not Urdu, that is, in a language with which the detenu was not conversant; (3) the order of detention is also vitiated because the District Magistrate acted on extraneous considerations by relying on intelligence reports and history-sheet, which were not disclosed to the detenu and, therefore, he was deprived of the right under Article 22(5) of making an effective representation; (4) the grounds of detention served on the detenu are not connected with "maintenance of public order", but they relate to "maintenance of law and order" and, therefore, the impugned order of detention purported to have been passed by the District Magistrate in exercise of his powers under sub-section (2) of Section 3 of the Act is liable to be struck down, as being invalid; and (5) the impugned order of detention passed by the District Magistrate is also liable to be set aside as being mala fide and actuated with personal prejudice and bias. We regret, we are unable to accept any of these contentions

14. This Court has forged certain procedural safeguards in the case of preventive detention of citizens. The constitutional imperatives indicated in Article 22(5) are two-fold: (1) the detaining

authority must, as soon as may be, that is, as soon as practicable, after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. The right to make a representation implies what it means "the right of making an effective representation". Where certain documents are relied upon in the grounds of detention the grounds would be incomplete without such documents. The detenu, therefore, has the right to be furnished with the grounds of detention along with the documents relied upon : Khudiram Das v. State of West Bengal [(1975) 2 SCC 81 : 1975 SCC (Cri) 435] and Narendra Purshotam Umrao v. B.B. Gujral [(1979) 2 SCR 315 : (1979) 2 SCC 637 : 1979 SCC (Cri) 557].

15. The power of preventive detention by the Government under the National Security Act is necessarily subject to the limitation enjoined on the exercise of such power by Article 22(5) of the Constitution as construed by this Court.

16. In a series of decisions, this Court has, on a construction of Article 22(5) of the Constitution, read with sub-section (3) of Section 3 of the COFEPOSA Act, held that "the right of making an effective representation" carries with it the right to copies of documents relied upon in the grounds of detention. Factual contents of the grounds of detention on which the subjective satisfaction of the detaining authority was based have to be disclosed to the detenu to make an effective representation. It is, however, not necessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of events and which are not relied upon by the detaining authority in making the order of detention : Ramchandra A. Kamat v. Union of India [(1980) 2 SCC 270 : 1980 SCC (Cri) 414]; Frances Coralie Mullin v. W.C. Khambra & Co. [(1980) 2 SCC 275 : 1980 SCC (Cri) 419]; Mangalbai Motiram Patel v. State of Maharashtra [(1980) 4 SCC 470 : 1981 SCC (Cri) 49]; Pritam Nath Hoon v. Union of India [(1980) 4 SCC 525 : 1981 SCC (Cri) 19]; Smt. Icchu Devi Choraria v. Union of India [(1980) 4 SCC 531 : 1981 SCC (Cri) 25]; Smt. Shalini Soni v. Union of India [(1980) 4 SCC 544 : 1981 SCC (Cri) 38] and Mst. L.M.S. Ummu Saleema v. B.B. Gujral [(1981) 3 SCR 647 : (1981) SCC 317 : 1981 SCC (Cri) 720].

17. The rationale of these decisions is that the right to be supplied with copies of the documents, statements and other materials relied upon in the grounds of detention without any delay flows as a necessary corollary from the right conferred to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available the latter cannot be meaningfully exercised. The constitutional imperatives of Article 22(5) which enjoins a duty on the detaining authority making an order of detention to afford the detenu "the earliest opportunity of making a representation against the order" equally applies to a detention under Section 3 of the National Security Act.

18. In the instant case, however, there was no infraction of the constitutional safeguards enshrined in Article 22(5). We are satisfied that there was no failure on the part of the Government to discharge its obligations under Article 22(5) of the Constitution and Section 8 of the Act. There is no warrant for the submission that the detenu was deprived of the right of being afforded the earliest opportunity as enjoined by Article 22(5) and Section 8 of the Act in that he was not served with the grounds of detention and the relevant documents in support thereof at the earliest opportunity on March 9, 1981 when he was placed under detention or within a reasonable time thereafter and that the documents were indeed not furnished in a language with which he was not conversant. There was no such grievance made in the representation filed by the detenu before the Advisory Board. The contention now raised that the detenu was not furnished with copies of the relevant documents is only an afterthought. In the instant case, the detenu had the earliest opportunity of making a

representation when the order of detention as well as grounds of detention were served on him personally on March 9, 1981 at the Central Jail, Agra but he refused to receive the documents on the ground that they were in Hindi. The detenu disdained from making a representation to the detaining authority. In fact, the detenu did make a detailed representation before the Advisory Board. A bare perusal of the representation would show that it was drawn by a person conversant with law.

19. It is unfortunate that there was a failure to mention in the grounds of detention, that the detenu had the right to make a representation against the order of detention as envisaged by Article 22(5) of the Constitution read with Section 8 of the Act, and also the right of being heard before the Advisory Board while he was served with the order of detention. It is expected of a detaining authority while serving an order of detention, as a rule to mention in the grounds of detention, that the detenu has a right to make a representation against the order of detention and also a right to be heard by the Advisory Board. In the present case, the grounds of detention served upon the detenu do not contain any such recital. It, however, appears that the detenu was furnished a copy of the Constitution on March 25, 1981 at the Central Jail, Fatehgarh, presumably at his own request, for the purpose of making a representation against the order of detention. The words "and shall afford" in Article 22(5) have a positive content in matters of personal liberty. The law insists upon the literal performance of procedural requirement. The need for observance of procedural safeguards, particularly in cases of deprivation of life and liberty is of prime importance to the body politic. It is, therefore, imperative that the detaining authority must "apprise" a detenu of his constitutional right under Article 22(5) to make a representation against the order of detention and of his right to be heard before the Advisory Board. The right of the detenu to make a representation under Article 22(5) would be, in many cases, of little avail if the detenu is not "informed" of this right. The failure to comply with this requirement, however, does not have the effect of vitiating the impugned order of detention or render the continued detention of the detenu illegal in this case for the reason that the detenu is an enlightened person and has been in active politics and was, therefore, fully cognisant of his right to make a representation under Article 22(5) of the Constitution and under Section 8 of the Act. In fact, the detenu appeared before the Advisory Board and filed a representation against the order of detention and was also personally heard by the Advisory Board.

20. The report of the Advisory Board placed before us clearly shows that the detenu appeared before it and admitted that he had been served with the detention order and the grounds of detention as well as 80 documents. He also stated that whatever he had to say had been put in writing in his representation and there is not a whisper that he was not afforded the earliest opportunity of making a representation under Article 22(5) or that he had not been supplied with the grounds of detention or with the copies of the relevant documents. He admitted before the Advisory Board that he knows Hindi and he actually read out the documents in Hindi while making his submissions before the Advisory Board. The Joint Secretary to the Government of Uttar Pradesh, Ministry of Home, along with his counter - affidavit has filed a copy of the statement made by the detenu before the Advisory Board which reads :

I have been served with the detention order and the grounds of detention as well as 80 documents. I have submitted my representation dated 21st April, 1981 in writing before the Advisory Board today when I was produced before the Advisory Board for personal hearing. Along with my representation I have filed certain documents for the perusal of the Board. Whatever I have to say against the detention order or the grounds of detention, I have put them in writing in my representation. I have nothing more to add to it nor do I want to place any other evidence in support of my contention except the documents which I have filed today before the Advisory Board.

Much stress was, however, laid on the fact that the detenu had not been furnished with the copies of the first information reports in the criminal case in which he was convicted and in the three other criminal cases pending against him. It is said that the failure to furnish these documents vitiates the impugned order of detention. The contention appears to be misconceived. Under sub-section (5) of Section 173 of the Code of Criminal Procedure, 1973 the detenu had already been supplied with all the documents or relevant extracts thereof on which the prosecution relied in the criminal case in which he was convicted as well as on which the prosecution proposes to rely in the three criminal cases pending against him. There was, therefore, no need to supply the copies of the first information reports referred to in the grounds of detention over again, and no grievance can be made that the detenu was deprived of the right of making a representation at the earliest opportunity due to non-supply of these documents. The contention that the constitutional safeguards under Article 22(5) read with Section 8 of the Act were not complied with due to non-supply of documents or failure to supply the documents in a language with which the detenu was conversant, must, therefore, fail.

21. No doubt, the constitutional imperatives of Article 22(5) enjoin the disclosure of all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention, but this right of the detenu is subject to the provisions of Article 22(6). Article 22(6) of the Constitution provides that nothing in clause (5) shall require an authority making an order of detention, to disclose facts which such authority considers to be against public interest. Under Article 22(6), the District Magistrate was, therefore, not bound to disclose the intelligence reports and it was also not necessary for him to supply the history-sheet, if any. In *Khudiram Das v. State of West Bengal* [(1975) 2 SCC 81 : 1975 SCC (Cri) 435], the Court, in somewhat similar circumstances, held that the non-disclosure of the history-sheet had not the effect of invalidating the order of detention.

22. On the merits, it is argued that the grounds of detention served on the detenu were not connected with "maintenance of public order", but they relate to "maintenance of law and order". There is no merit in the contention whatsoever. The distinction between "law and order" and "public order" has been brought out succinctly in *Dr. Ram Manohar Lohia v. State of Bihar* [(1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608]; *Arun Ghosh v. State of West Bengal* [(1970) 3 SCR 288 : (1970) 1 SCC 98]; *Pushkar Mukherjee v. State of West Bengal* [(1969) 2 SCR 635 : (1969) 1 SCC 10 : 1970 Cri LJ 852] and *Nagendra Nath Mondal v. State of West Bengal* [(1972) 1 SCC 498 : 1972 SCC (Cri) 227]. As to what is meant by "public order", Hidayatullah, J. (as he then was) said in *Ram Manohar Lohia case* [(1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] that any contravention of law always affects order but before it could be said to affect "public order", it must affect the community or the public at large. He went on to consider the three concepts viz. "law and order", "public order" and "the security of the State", generally used in preventive detention laws, and indicated that to appreciate the extent and scope of each one of them, we should have three concentric circles, the largest of them representing "law and order", the next representing "public order" and the smallest representing "the security of the State". An act may affect "law and order", but not "public order", just as an act may affect "public order" but not "the security of the State". The true distinction between the areas of law and order and public order lies not merely in the nature of quality of the act but upon the degree and extent of its reach upon the society. The acts similar in nature but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific individuals and, therefore, touches the problem of law and order only, while in other it might affect public order.

23. In *Arun Ghosh case* [(1970) 3 SCR 288 : (1970) 1 SCC 98], the concepts of "law and order" and

"public order" were pointed out and it was observed that the distinction is one of the degree and the extent of the reach of the act upon the society. The Court, speaking through Hidayatullah C.J., observed "an act by itself is not determinant of its gravity. In its quality it may not differ from another but in its potentiality it may be very different". The principles laid down in Ram Manohar Lohia case [(1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] were reiterated in Arun Ghosh case [(1970) 3 SCR 288 : (1970) 1 SCC 98]. So, it has to be seen in the instant case whether the petitioner's activities have any impact upon the local community, or to put it in words of Hidayatullah, C.J. in Arun Ghosh case [(1970) 3 SCR 288 : (1970) 1 SCC 98] "disturb the even tempo of the life of the community of that specific locality".

24. It is in this light that the acts relied upon for ordering detention in the case before us have to be judged. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu covered a wide field, calculated to disturb public peace and tranquillity. The series of acts on the part of the detenu which completely paralysed the whole working of the University and the University had to be closed indefinitely due to serious public disorder, squarely falls within the realm of public order. The situation became so grave that the District Magistrate had to call in 20 companies of Provincial Armed Constabulary and 10 companies of Central Reserve Police for the maintenance of public order. There can be no doubt that creating terror or disorder based on ideological differences in a town like Aligarh where the Muslim population predominates, which may lead to communal violence, pertains to "public order" and not merely to "law and order".

25. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary.

26. The District Magistrate has in his counter-affidavit stated that he was satisfied on the materials placed before him, that the detention of the detenu was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The District Magistrate states that he passed the order with due circumspection, and that he had no other alternative but to pass an order of detention in respect of the detenu, that is, in the case of one out of the six persons, as he found that his activities had become unmanageable and were creating serious public disorder.

27. Lastly, it was urged that the impugned order of detention was liable to be struck down as mala fide and actuated with personal prejudice and bias of the District Magistrate. We are unable to hold from the material on record that there was any bias on the part of the District Magistrate. The contention is based on the alleged statement made by the District Magistrate at a press conference held at Aligarh on January 31, 1981, after the disturbances in the university campus leading to the closure of the University and arrest of 213 students, as reported in "The Statesman", "The Indian Express" and "The Times of India" the next day. The statement of his was made on January 31, 1981 i.e. as much as 21 days before the passing of the impugned order of detention. It is therefore urged that the District Magistrate was actuated by personal prejudice and bias in passing the impugned order of detention. The District Magistrate in his counter affidavit has categorically denied that he ever made the statements attributed to him and stated that he had been misreported in the Press, in some of the newspapers. According to him, only The Times of India correctly reported his statement. He denies that he ever said that an order of detention under the Act had been issued against six undesirable persons including the detenu but states that he only expressed the

apprehension that if these persons did not refrain from instigating communal riots or in partaking in such riots, one day they would have to be detained under the Act. If that be so, then it can not be inferred that there was want of good faith on the part of the District Magistrate or that he was actuated with personal prejudice or bias. There is no reason for us not to act on the counter-affidavit of the District Magistrate. The contention that the order of detention was mala fide or that the District Magistrate was actuated with improper motives cannot, therefore, prevail.

28. There being no invalidity in the impugned order of detention, the writ petition fails and is dismissed.

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