PATNA HIGH COURT

Dayanand Modi

Vs

State of Bihar

Cr. Misc. Nos. 590.13, 610, 536, 535 and 537 of 1950

(Das and Narayan, JJ.)

05.01.1951

JUDGMENT

Das, J.

1. Since the latter part of November 1950, we heard, with occasional breaks, a large number of habeas corpus appls. in which common questions of law and fact arose for our consideration and decision. We reserved judgment in these cases to enable learned counsel, arguing the different appellants to make all their submissions before we pronounced judgment. We are now proceeding to judgment in these cases in batches. The first batch of cases, which will be governed by this judgment, consists of six appellants the numbers of which have been mentioned in the first two pages of this judgment.

2. All the appellants relate to, and are on behalf of, certain persons who have been detained by an order of the State Govt. under Section 3, Preventive Detention Act, 1950 (to be referred to hereinafter as the Detention Act). The State Govt. states, in the orders of detention, that it is satisfied that it is necessary to make the orders, with a view to preventing the detenus from acting in any manner prejudicial to "the maintenance of supplies and services essential to the community"; in other words, the orders purport to have been made under Section 3 (1) (a) (iii) of the Detention Act. In the grounds communicated to the detenus, the expression used, in some of the cases, is that "the State Government is satisfied that if the detenu is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of "supplies essential to the community", the expression "and services" having been dropped. I am mentioning this fact at this stage, as one of the main contentions of learned counsel for the petitioners relates to this matter. It would, I think, be convenient if we first consider in these cases the questions of law that have been raised, and then go into the grounds of detention, in detail, of each detenu. The questions of law are common to all the appellants but the grounds communicated though similar in nature, vary from case to case and would require a separate treatment in each case.

3. The principal contention of law, which is common to all these appellants and has been very strenuously canvassed at the bar, may be thus put in nutshell; it is contended that the activities on the basis of which the orders of detention have been made (which activities are loosely and

commonly called "black marketing" or "hoarding" in food or cloth) do not attract the operation of Clause (iii) of sub-Section 1 (a) of Section 3 of the Detention Act. To understand this contention, it is necessary to give some more details. The relevant portion (omitting unnecessary details) of Section 3 of the Detention Act reads thus :

> "The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, make an order directing that such person be detained."

Learned counsel for the petitioners have emphasized the word "and" occurring between the words "supplies" and "services". It is contended that the word "and" has been used in the ordinary conjunctive sense, and mere maintenance of supplies or maintenance of services does not attract the operation of Clause (iii) aforesaid. It is argued that what attracts the operation of that clause is the maintenance of both supplies and services essential to the community; in other words, the "supplies" must go together with the "services."

4. This argument has been further developed with reference to the three Lists - Union List, State List and Concurrent List - in the Seventh Schedule of the Constitution of India. The Detention Act is an Act made by Parliament and extends to the whole of India. It is a temporary Act in the sense that it shall cease to have effect on 1.4.1951, save as respects things done or omitted to be done before that date, vide Section 1 (3) of the Detention Act. Entry 9 of the Union List is :

> "Preventive detention for reasons connected with Defense, Foreign Affairs, or the security of India; persons subjected to such detention." The concurrent list also deals with preventive detention in Entry 3, which reads thus :
> "Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention."

It is to be noted that Clause (iii) of Section 3(1)(a) of the Detention Act is taken from Entry 3 of the Concurrent List. It should be made clear at the very outset, that the question raised before us is not really one of legislative competency : it is conceded that by reason of Entry 3 above, Parliament had power to legislate for preventive detention for reasons connected with the maintenance of supplies and services essential to the community. What is contended before us is that the kind of activities to which a reference has been made in the grounds of detention in these cases, does not attract the operation of Clause (iii). It is pointed out that Entries 26 and 27 of the State List relate to :

> "26. Trade and commerce within the State, subject to the provisions of Entry 33 of List III.
> 27. Production, supply and distribution of goods, subject to the provisions of Entry 33 of List III."
> Entry 33 of List III relates to a different matter and need not detain us. What is contended

before us is that the activities in respect of which the orders of detention have been made come more properly under Entry 27, or possibly Entry 26, of the State List; and under Article 246, Constitution of India, the Legislature of the State had exclusive power to make laws with regard to those items : therefore, those activities do not come within the meaning of the expression "maintenance of supplies and services essential to the community" as contemplated in Entry 3 of the Concurrent List. It is contended that that expression embraces such matters as the supply of electric energy, public water works, etc., the maintenance of which comprises both "supplies and services essential to the community."

5. Learned counsel for the petitioners took us through the Defense of India Act and the Rules made thereunder, Ordinance 18 of 1946 and Ordinance 20 of 1946. A reference was also made to the Essential Supplies (Temporary Powers) Act, 1946. It was pointed out that Section 2(1), Defense of India Act, used the expression "for maintaining supplies and services essential to the life of the community." Clause (ix) of sub-sections (2) of Section 2 and Clause (xx) of the same sub-section also used the same expression. In the Rules made under the Defense of India Act, the expression used was "maintenance of supplies and services essential to the community" in some Rules; in other Rules, "maintenance of essential services or supplies;" in some other Rules, the word "services" was dropped altogether, and the expression used was "maintaining supplies essential to the life of the community" (see in this connection Rules 65, 77A, 80, 81D and 88, Defense of India Rules). It is contended that by reason of the use of the aforesaid expressions in the Defense of India Act and the Rules made thereunder, the expression "maintenance of supplies and services essential to the community" with the use of the conjunctive 'and' therein, acquired a technical meaning, and Parliament when it enacted the Detention Act, must have had that meaning in mind when it used the expression "maintenance of supplies and services essential to the community." It is contended that the technical meaning of the expression is such as to relate to the supply of electrical energy, water and such other articles as are dealt with by what are known as public utility concerns. It is pointed out that the Essential Supplies (Temporary Powers) Act, 1946, and Ordinance XVIII (18) of 1946, on the other hand, purport to legislate for production, supply and distribution of goods, or trade and commerce in certain commodities; in other words, they relate to Entries 26 and 27 of the State List. By Ordinance XX (20) of 1946, Rule 81, Defense of India Rules was altered, and the expression used was "maintaining supplies and services essential to the life of the community in connection with regulating or prohibiting the production, distribution, use or consumption of electric energy, etc.:" therefore, it is contended that the expression "maintenance of supplies and services essential to the community" has a connotation which is different from mere production, supply and distribution of goods, or trade and commerce; and the activities of the detenus in these cases, assuming the activities to be such as are mentioned in the grounds, come more properly under the latter than the former category.

6. In order to dispose of these arguments and contentions, the details whereof I have stated above, it is necessary to make a brief reference to the "activities" on the basis of which the orders of detention have been made. I shall, latter on, refer to the grounds of detention in detail when I take up the case of each detenu. Here, I shall refer to the grounds in two of the cases by way of illustration only. In the case of Dayanand Modi (Cr. Misc. No. 690 of 1950), which was the first

case heard by us and in which the legal contentions mentioned above were elaborated by Sir Sultan Ahmed, the grounds, after referring to the duties of a licensee under the Bihar Cotton Cloth and Yarn (Control) Order 1948 and the artificial scarcity in cloth created by withholding from sale of certain varieties of cloth, stated that on a search of the shop of the detenu an excess of some dhotis and saris and of several thousand yards of a popular variety of cloth was found which, it was stated, was evidently kept for black marketing. In Cr. Misc. 613 of 1950, the detenu is one Mohan Lal. The grounds communicated to him show that on a search of his shop, he was found to be in possession of 138 pairs of dhotis and sans in excess of the quantity shown in his accounts. The accounts also disclosed a shortage of 458 yards of yardage cloth. It was further alleged that he attempted to mislead the checking officer by counting only ten pieces of saris in each bundle when they contained twenty pieces. For the purpose of the argument which we are now considering, it must be assumed that the grounds, or the facts relating thereto, are correct and do exist in fact. In this batch of cases, when we originally heard them, there were some cases which related to similar activities in the matter of foodstuff, such as rice and wheat. By reason of the fact that some of the detenus have already been released by the State Govt., this batch now no longer contains any case relating to food, but the nature of the activities with regard to food is the same as with regard to cloth, and the question of law which we are now deciding will apply equally to both classes of cases.

7. Now, the question is whether activities of the nature referred to above come within the expression "maintenance of supplies and services essential to the community" occurring in Clause (iii) of Section 3(1)(a) of the Detention Act. In my opinion, the answer to the question should be in the affirmative, and my reasons are these.

8. The expression "maintenance of supplies and services essential to the community" which was used in the Defense of India Act and the Rules made thereunder was, in all probability, copied from the Emergency Powers (Defense) Act, 1939, passed in England during the last war (2 and 3 Geo. VI, C. 62). Section 1 of that Act enabled His Majesty to make Defense Regulations by Orders in Council for, among other things, "maintaining supplies and services essential to the life of the community". The entire fascicle of Defense Regulations made under that statute were not available to us, but in two of the English decisions which were brought to our notice, some of the Defense Regulations were quoted. In the celebrated case of *Liversidge v. Anderson*[1], Regn. 18B was quoted, in para (1A) of which the expression used was "the maintenance of supplies or services essential to the life of the community." It is worthy of note that though the parent statute used the expression "and" the Regulation made thereunder used the expression "or". In *Point of Ayr Collieries, Ltd. v. Lloyd George*[2], Regn. 55 (4) was quoted : the expression used in this Regulation was "for maintaining supplies and services essential to the life of the community". It would, thus, appear that in the Regulations made under the Emergency Powers (Defense)
Act, 1939, the word "supplies" and the word "services" were sometimes coupled with the conjunctive "and" and sometimes with the disjunctive "or", though the statute itself used the expression "for maintaining supplies and services essential to the life of the community". In the subsequent statute, Emergency Powers (Defense) Act, 1940, which extended the powers under the previous statute, the expression used was "for maintaining supplies or services essential to the life of the community". On a careful comparison of the English Statutes and the Regulations made thereunder as also the Defense of India Act and the Rules made thereunder, it seems to me that the word "and" between the words "supplies" and "services" was not used in any restrictive sense, but in a comprehensive sense; in other words, authority was given to make Regulations or

Rules, as the case might be, for maintaining supplies essential to the life of the community, or for maintaining services essential to the life of the community, or for both. That is the reason why in some of the Defense Regulations made under the English statute and in some of the Rules made under the Defense of India Act in India, the expression "and" was used while in some others the expression 'or' was used. The authority was there to make Regulations or Rules for either of the two matters, essential supplies and essential services, and also for both together. I do not think that there was any necessary intendment to restrict the operation of the expression to such matters only as the supply of electrical energy, public water supply, etc., as is contended by learned counsel for the petitioners I think that exactly same is the meaning of the expression used in the Detention Act of 1950. With regard to the use of the conjunctions "or" and "and", Maxwell has made the following observations (Maxwell on Interpretation of Statutes, 9th Edn., p. 244) :

> "To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other. The 43 ELIZ. C.3, for instance, in speaking of property to be employed for the maintenance of 'sick and maimed soldiers, referred to soldiers who were either the one 'or' the other, and not only to those who were both."

It is observed in Stroud's Judicial Dictionary (2nd Edn., p. 82), that the word 'and' had generally a cumulative sense; some times, however, it is by force of context read as 'or'. It seems to me that the manifest intention of Parliament in the use of the expression "maintenance of supplies and services essential to the community" in Clause (iii) of Section 3 (1) (a) of the Detention Act was to provide for preventive detention for reasons connected with the maintenance of supplies essential to the community or the maintenance of services essential to the community or both.

9. The matter may also be looked at from another point of view. A supply of food or cloth which is essential to the community has, indeed, a service aspect as well. If the supply is stopped or interfered with, then the service which that supply ensures is also stopped or interfered with. The word "service" has a wider connotation, and one can think of "services" which do not necessarily depend on a supply of goods or commodities; e.g., the service rendered by workers in essential undertakings. But the supply of an essential commodity cannot be contemplated as entirely divorced from service; because an essential supply is a service to the community.

10. One can easily imagine a situation in which the supply of food or cloth is more essential to the life of the community than the supply of electric energy. To say, in that situation, that the supply of electric energy is a service to the community, but the supply of food or cloth is not a service to the community will, in my opinion, be absurd. I am definitely of the opinion that any activity which directly interferes with or threatens the maintenance of the supply of such primary necessities of life as food or cloth attracts the operation of Clause (iii) of Section 3(1) (a) of the Detention Act.

11. One word of caution is, however, necessary here. The word "maintenance" has to be given its due meaning : it means "act of maintaining," "keeping up," "continuance." In my opinion, any apprehended act of black marketing or hoarding will directly affect maintenance (as that word is ordinarily understood) of supply and service essential to the community.

12. It is, I think, wrong to say that because production, supply and distribution of goods or trade and commerce within the State are separate entries in the State List, therefore, the expression used in Clause (iii) of Section 3 (1) (a) of the Detention Act has a narrow or restricted meaning. It has been said more than once that the entries in the Legislative Lists are not to be treated as water-tight compartments. For judging legislative competence, what is to be seen is the primary object of the legislation or the pith and substance. We are not here concerned with legislative competency. As observed by Patanjali Sastri, J., in *Machindar Sivaji v. The King*[3], is a distinction between legislation in exercise of the power granted under an entry in the legislative list and action taken by the executive in pursuance of such legislation. When Parliament enacted cl, (iii) of Section 3 (1) (a) of the Detention Act, the primary object was preventive detention of a person who was likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community : the apprehended act may incidentally have reference to the production, supply or distribution of goods, but that would not necessarily take it out of the mischief sought to be reached by Clause (iii) of Section 3 (1) (a) of the Detention Act. It is worthy of note that entry 3 of the Concurrent List talks of preventive detention for reasons (inter alia) connected with the maintenance of supplies and services essential to the community. The expression "for reasons connected with" is important: it means that the detention is for reasons connected with the maintenance of supplies and services essential to the community. Such detention may affect the supply of goods, but that does not mean that the detention is for an object other than what is contemplated by Entry 3 of the Concurrent List.

13. Mr. Basanta Chandra Ghose, who argued some of these cases raised another contention to which a passing reference may be made at this stage. He contended that Clause (iii) of Section 3 (1) (a) of the Detention Act should be construed on the principle of ejusdem generis as being related to Clause (ii), which precedes Clause (iii) and which relates to the security of the State or the maintenance of public order. His contention is that the maintenance of supplies and services essential to the community referred to in Clause (iii) must have some relation to the maintenance of public order or the security of the State. I need only say that I am unable to accept this narrow construction of Clause (iii). The ejusdem generis rule is one to be applied with
great caution and not pushed too far. The caution given by Farwell, L.J., that "unless you can find a category, there is no room for the application of the ejusdem generis doctrine" can bear repetition, and where the words are clearly wide in their meaning, they ought not to be qualified on the ground of their association with other words (see Craies on Statute Law, Edn. 4, p. 167). In *Rex v. Basudeva*[4], the question of the relation between black marketing in essential commodities and the maintenance of public order was considered by the FC. It was observed by their Lordships :

> "It is true that black marketing in essential commodities may at times lead to a disturbance of public order, but so may, for example, the rash driving of an automobile or the sale of adulterated food stuffs. Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of Entry 1 of List II."

The Entry to which their Lordships were referring in that case was Entry I of List II of Schedule VII, Government of India Act, 1935, which related, among other things, to "preventive detention for reasons connected with maintenance of public order." There was no such expression as

"maintenance of supplies and services essential to the community" in that Entry. It may well be that the scope of Entry 3 of the Concurrent List was advisedly widened by including the maintenance of supplies and services essential to the community, as one of the matters in connection with which a law for preventive detention could be made.

14. For all these reasons, I must overrule the contention that the activities referred in the grounds of detention in these cases do not attract the operation of Clause (iii) of Section 3 (1) (a) of the Detention Act.

15. The other contention of law which has been raised in some of these cases is this. It is pointed out that Section 3 (1) of the Detention Act says that the State Govt. must be satisfied that it is necessary to make the order with a view to preventing a person from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The argument before us is that three courses were open to the State Govt. : (a) cancellation of the licence; (b) prosecution under the Essential Supplies (Temporary Powers) Act, 1946; (c) detention. It is contended that when cancellation of the licence or prosecution of the offender would have more effectively served the purpose, it was not open to the State Govt. to pass an order of detention. Another contention has been that it was not at all open to the State Govt. to detain a person against whom a prosecution for an alleged offence was pending. As to the first argument, the short answer, I think, is that it was for the State Govt. to decide which alternative it should adopt or which was most effective in the circumstances of the case. I do not think that it is for this Ct. to decide the matter, or even to express any opinion as to which alternative should be the most effective. I can do no better than quote the observations of Lord Greene M.R. in *Point of Ayr Collieries Ltd. v. Lloyd George*[5]*,*

> "If one thing is settled beyond the possibility of dispute, it is that, in construing regulations of this character expressed in this particular form of language, it is for the competent authority, whatever Ministry that may be, to decide as to whether or not a case for the exercise of the powers has arisen." As to the second argument that it was not open to the State Govt. to detain a person against whom a prosecution was pending, we recently considered this question in Cri. Misc. Nos. 626 and 627 of 1950, D/-21.12.1950. I do not wish to repeat what I said there, after a careful consideration of the cases cited at the bar. I need merely summaries the conclusions at which we arrived. The answer to the question whether detention and prosecution can be simultaneously made does not depend on any rule of law : the question has to be approached, and answered in each case, on the footing whether the order of detention, in view of the pending prosecution, is *bona fide* or not. For answering the question the uncontroverted facts may have to be considered, and the test will be whether the order of detention is for the purpose it purports to be or really for any ulterior or collateral purpose. One point of distinction between some of these cases and Cri. Misc. Nos. 626 and 627 of 1950 must be noted here. We found in Cri. Misc. Nos. 626 and 627 of 1950 that the grounds of detention and the grounds on which prosecution was made were not the same. In these cases, however, the prosecution, if any, for an offence under the Essential Supplies (Temporary Powers) Act, 1946, arose out of the same facts which ultimately led to the detention. In the course of his arguments the

learned Govt. Advocate stated before us that the State Govt. had passed orders for taking necessary steps for the withdrawal of pending prosecutions in cases where such prosecution was pending on the same facts. In view of this statement it is, I think, unnecessary to consider this matter any further, except to state that I am unable to accept the extreme proposition of Mr. Basanta Chandra Ghose to the effect that when an offence is alleged to have been committed, the State Govt. has no authority to detain, but must launch a prosecution and wait for the decision of the Ct. Nor am I impressed by the other argument that the withdrawal of a pending prosecution will, in certain cases, amount to an acquittal and therefore, deprive the State Govt. of any legal authority to make an order, of detention on the same facts. These contentions fail to take note of the basic distinction between preventive detention and punitive detention, and if accepted, will defeat the very object of the Detention Act. Mr. Ghose relied on certain observations of Ram Labhaya, J., in *Labaram Deka v. The State, (a decision of the Assam High Court[6])* which seem to lend some support to his contention. Thadani, C.J., another member of the Bench, made it clear that he was not a party to those observations. With due respect, I am unable to accept those observations as laying down any rule of law. The other decisions cited at the bar on this point we considered in Cri. Misc. Nos. 626 and 627 of 1950.

16. Having disposed of the contentions of law which are common to these cases, I now proceed to a consideration of the grounds of detention in each case in order to determine (a) if there has been any failure to comply with the mandatory provisions of Article 22 of the Constitution; (b) if the order of detention is mala fide; or (c) if it is bad for any other reason. For the sake of convenience, I would take each case
separately.

17. Cri. Misc. No. 590 of 1950. (Name of the detenu is Dayanand Modi) - The order of detention in this case was passed on 11.10.1950, and the Petitioner was arrested on 13.10.1950. The grounds of detention were communicated to the Petitioner on 22.10.1950. In the grounds it was stated that the Petitioner Sri Dayanand Modi was the director and one of the proprietors of the firm of Messrs Modi and Sons, which firm held a licence under Section 3, Bihar Cotton Cloth and Yarn (Control) Order, 1948. It was stated that in the capacity of a licensee the firm was appointed as one of the cloth importers in Bihar. In paras. 2 and 3 of the grounds, a reference was made to the method by which importers of cloth in the State of Bihar got their quota of the cloth allotted to them, and also to the conditions of the licence under which a register of daily transactions has to be maintained. In para. 4, reference was made to the scarcity of cloth artificially created by some antisocial cloth dealers who withheld from sale certain varieties of cloth. Then follow paras. 5, 6 and 7 which I had better quote in extenso :

"5. The stock and account of the firm, relating to cloth were accordingly checked on 4.10.1950, and it was discovered that account books had not been written properly from 3.8.1950 to 4.10.1950, in respect of the receipt and sale of cloth from the mill by the Textile Comr. and received by the licensee.

6. According to the stock register they should have the following cloths in their shop on 4.10.1950.

Yardage	... 3,01.668 yards
Chadars	... 3,722
Fents	... 14 lbs.

But on physical verification the following stocks were found in the shop,

Dhotis and saris	... 16,491 pairs
Yardage	... 3,37,412 yards
Chadars	... 1,454
Fents	... 240

Thus an excess of 2031 saris and dhotis and 35.743 yards of popular variety cloth was found in the shop which was evidently kept for black-marketing during the Puja and Muharram. The shortage of 2268 chadars had evidently been sold in black market.

7. The following past history of the proprietors of the firm shows that Shri Dayanand Modi habitually indulged in hoarding cloth and selling the same in black market at exorbitant prices. (a) Shri Dayanand Modi was prosecuted under Section 81 (4), Defense of India Rules, read with Sections 353/188, Indian Penal Code, for snatching the cloth seized on account of forged stamping from the hands of the cloth Inspector. He was, however, acquitted of the charges. (b) In accordance with the instruction contained in telegram No. 75TRX, dated 4.2.1948, the S.D.O. Sadar reserved 20% of the cloth for supply to the low paid Govt. servants. But this firm disposed of the stock in black-market for getting more money than what he would have got by selling to Govt. servants at controlled price. (c) In spite of a decision of Cloth Controller that distribution of popular and non-popular variety of cloth to the retailers from the stock of Messrs. Modi and Sons will be made by the D.C. Banchi, Shri Dayanand Modi disposed of 18,000 yards of popular variety of cloth on 25.7.1950 to retailers of his own choice. (d) On 3.8.1950, the retailers linked to this importer, staged a demonstration of dissatisfaction with black flags and bundle of non-saleable cloth kept in rickshaw protesting against the firm as they had sold popular varieties of cloth in black market and supplied them only non-popular varieties which had no market. (e) A truck load of cloth sent by Shri Dayanand Modi outside Ranchi towards the Daltonganj was detected near Kuru barrier by the Inspector of antismuggling force."
In the concluding portion of the grounds, it was stated that the State Govt. was satisfied that if the Petitioner was allowed to remain at large, he would indulge in activities prejudicial to the maintenance of supplies essential to the community.

18. It has been contended before us that the order of detention in this case is mala fide and bad, because (a) the alleged grounds have no existence in fact, and (b) there is no firm of the name of Messrs Modi and Sons, and the Petitioner is not one of the proprietors of any such firm. It is stated that there is a limited liability company of the name of Modi and Sons Limited; but the Petitioner was neither the managing director, nor the manager of the said company.

19. To appreciate contention (a) above, it is necessary to refer to the affidavit made by one Sitaram Lohia, a relative of the detenu, in support of the petitioner In this affidavit, it was stated that on 3.8.1950, the District Supply Officer of Ranchi removed the stock register, vouchers and other papers. These papers were demanded back several times, but were not returned : therefore,

it was stated that the allegation in para. 5 of the grounds had no existence in fact, because in the absence of the stock register and other books of account which had been removed on 3.8.1950, it was physically impossible to write up the books which were not in the possession of the company. As to the allegations in para. 6 of the grounds, they were denied; moreover, it was stated that as the stock register had been taken away on 3.8.1950, and no entries could be made therein between 3.8.1950 and 4.10.1950, on which date the physical verification was made, there would inevitably be a discrepancy between what was shown in the stock register and what was found on physical verification. As to the allegations in para. 7 of the grounds, it was stated that ground (a) of para. 7 showed that the order was mala fide, because even after the acquittal of the Petitioner on merits, the State Govt. were alleging a prosecution which had failed as one of the grounds for detention. As to ground (b) of para. 7, it was alleged that the order of the Sub-Divisional officer dated 4.2.1948, was not addressed to Modi and Sons. It was further stated that the direction of the Sub-Divisional Officer to supply cloth to Govt. servants was fully complied with, and cloth was supplied to all Govt. servants mentioned in a chart kept by the District Supply Inspector. As to ground (e) of para. 7, it was stated that the decision referred to therein was never communicated to Messrs Modi and Sons. As to ground (d) of para. 7, it was stated that Messrs Modi and Sons supplied cloth to such retailers as were duly approved of by the District Supply Officer. As to ground (e) of para. 7, it was stated that it related to cloth freely released (as distinguished from quota cloth) and was sold to licensed dealers of Daltonganj - which was permissible under the law. The aforesaid statements made in the affidavit of Sita Ram Lohia were not controverted by the State of Bihar. The learned Advocate-General, who appeared for the State of Bihar in some of these cases, took up the following position. He contended that it was not open to this Ct. to go behind the grounds communicated by the State Govt. or to enquire into the correctness or otherwise of the facts stated therein : according to him, this Ct. must accept the grounds or facts as stated by the State Govt. and the only point to be considered by this Ct. is whether the grounds are relevant to the object of detention. He further submitted that the correctness or otherwise of the grounds would be a matter for the Advisory Board constituted under Section 8 of the Detention Act : therefore, no affidavit in reply need be filed by the State Govt. The learned Advocate General made it clear to us that, in his view, a question of principle was involved, and he invited a decision on that question. He said that he took whatever risk there was in not filing an affidavit in reply.

20. It is important to remember here why the grounds have to be communicated to the detenu. Under Article 22 (5) of the Constitution, the authority making the detention order shall, as soon as may be, communicate the grounds on which the order has been made and shall afford the detenu the earliest opportunity of making a representation against the order. I think that it is quite clear that the grounds have to be communicated so as to afford the detenu an opportunity of making a representation against the order. Clause (6) of Article 22 of the Constitution says that nothing in Clause (5) shall require the authority making the detention order to disclose facts which such authority considers to be against the public interest to disclose. It is clear that a distinction is drawn between 'grounds' and 'facts.' There is, in the reported decisions, a discussion of the meaning of the aforesaid two expressions. In *Safatulla Khan v. Chief Secretary of West Bengal*[7], it has been stated that the grounds are the bases of the allegations, and the facts are the evidence on which the bases of the allegations are to be established. Without going into an exact definition of the aforesaid two expressions 'grounds' and 'facts,' one can say, without fear of much contradiction, that the 'grounds,' are based on and arise out of 'facts.' In this case, we are concerned only with such facts as have been disclosed and on which the grounds are based. It is,

I think, now well-settled law that the satisfaction, which Section 3 (1) of the Detention Act speaks of, is the satisfaction of the State Govt., and it is not open to this Ct. to substitute its own judgment for that of the State Govt. In other words, the sufficiency or adequacy of the facts on which the grounds of an order of detention are based is not a question which can be agitated in this Ct., though if the grounds are vague and indefinite and afford no real opportunity to make a representation, the Ct. may hold that there has been a contravention of the mandatory provisions of Article 22 (5) of the Constitution. The matter was put very succinctly in *Point of Ayr Collieries, Ltd. v. Lloyd George*[8]*,*

> "It is for the competent authority to judge of the adequacy of the evidence before it. It is for the competent authority to judge of the credibility of thatevidence. It is for the competent authority to judge whether or not it is desirable or necessary to make further investigations before taking action. It is for the competent authority to decide whether the situation requires an immediate step, or whether some delay may be allowed for further investigation and perhaps negotiation.....one thing is certain, and that is that those matters are not within the competence of this Ct. It is the competent authority that is selected by Parliament come to the decision, and, if that decision is come to in good faish, this Ct. has no power to interfere, provided, of course, that the action is one which is within the four corners of the authority delegated to the Minister."

The same point of view was expressed in *Machindar Shivaji v. The King*[9]*,* which dealt with the C.P. and Berar Public Safety Act. Referring to Section 2 (1)(a) of that Act, his Lordship Patanjali Sastri, J., observed :

> "In the present case, Section 2 (1) (a), like most other similar enactments, authorises the detention of any person if the Provincial Govt. is 'satisfied' that he is acting or is likely to act in a manner prejudicial to public safety, order or tranquillity. The language clearly shows that the responsibility for making a detention order rests on the provincial executive, as they alone are entrusted with the duty of maintaining public peace, and it would be a serious derogation from that responsibility if the Ct. were to substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction was grounded."

His Lordship went on, however, to point out :

> "The Ct. can, however, examine the grounds disclosed by the Govt. to see if they are relevant to the object which the legislation has in view, namely, the prevention of acts prejudicial to public safety and tranquillity, for 'satisfaction' in this connection must be grounded on material which is of rationally probative value."

His Lordship then considered the affidavit of the Chief Secretary filed on behalf of the Provincial Govt. and found that the test laid down by him was fulfilled. Therefore, it is not quite correct to say that this Ct. cannot examine the grounds at ail. It is true that this Ct. cannot examine the grounds for the purpose of substituting its own judgment for that of the State Govt., but surely

this Ct. can examine the grounds in order to see if the order of detention is *bona fide* or whether the grounds on which the order of detention is founded are based on materials of rationally probative value. If the facts (disclosed in the grounds) to which the grounds relate, or on which the grounds are based, do not at all exist, how then can one say that non-existent facts or non-existent materials have a rationally probative value? If the alleged grounds or the facts on which they are stated to be based, do not exist at all, then the order of detention cannot be said to be a *bona fide* order. It must be remembered that when it
is stated that the order is mala fide, no dishonest motive is necessarily imputed : it merely means that the order is bad for want of necessary care and caution, or is for some purpose other than what is stated in the order of detention. If an order of detention is stated to be based on certain grounds but on uncontroverted facts it appears that those grounds do not really exist, then it follows that the order of detention is made for reasons other than those disclosed in the grounds : in that sense the order will be a mala fide order, and will also contravene Article 22 (5) of the Constitution. I must make it clear, however, that the onus of showing that the order is mala fide rests on the detenu; and the onus is a heavy onus which may be very difficult to discharge. One of the ways by which a detenu can show that the order is not *bona fide* is by stating facts by means of an affidavit, and if these facts are uncontroverted, they may be taken into consideration by this Ct. for the purpose of seeing if the order is bona fide, or if the order is based on materials of a rationally probative value, or if the order contravenes the fundamental right guaranteed by Article 22 (5) of the Constitution. I remember many cases in which an affidavit in reply was made by the State Govt., particularly in cases where the facts alleged by the detenu, if uncontroverted, were likely to lead to the inference that the order was not bona fide. A mere denial by the detenu would not be enough to discharge the onus which rests on him; but the detenu may be in a position to state definite facts which would show that the order of detention was bad either for want of good faith, or on the ground that it was based on materials which did not at all exist in fact. I respectfully agree with the observations of Meredith, J., (as he then was) in connection with a similar question of principle raised by the Advocate-General in *Basanta Chandra v. Emperor*[10], The observations were :

> "I will not go so far as to hold that in no case could an affidavit be necessary. There might be cases where the affidavits of the petitioners disclosed specific circumstances casting a real doubt on the *bona fides* of the orders."

I am, therefore, of the opinion that the extreme position taken up by the learned Advocate-General with regard to the filing of an affidavit in reply by the State Govt. has no support in law or reason.

21. The grounds communicated to the detenu of this case show that the main ground on which the order of detention was based was the failure to enter the stock book between the dates, 3.8.1950 and 4.10.1950. On the uncontroverted affidavit of Sita Ram Lohia, it appears that the stock book was taken away by the District Supply Officer of Ranchi : therefore, the failure to enter the stock book had no rationally probative value, nor any relevance to the object of detention. In my opinion, the same infirmity affects grounds 6 and 7, in view of the circumstances disclosed by the affidavit of Sita Ram Lohia.

22. One other point must be made clear here. Affidavits have been filed on behalf of the detenus

in almost all the cases. Some affidavits contain mere denials; some attempt to give an explanation of the facts found against the detenus, which explanation may or may not be true. Such affidavits do not, in our opinion, discharge or shift the onus. If the alleged facts exist but two inferences are possible, it is for the
State Govt. to make up its mind as to the inference to be drawn. This Ct. cannot say that a particular inference should have been drawn from the facts. But if the affidavit on behalf of the detenu discloses such specific circumstances as to show that the alleged facts or grounds are non est, then the order has no legs to stand upon.

23. For these reasons, I would hold that the order of detention in this case is bad. It is unnecessary to consider the other contention that the Petitioner is not the proprietor, nor the managing director of Messrs. Modi and Sons. I would accordingly allow the petitioner and direct that the Petitioner be released forthwith.

24. (His Lordship then considered the petitioners . in Cr. Misc. 613 of 1950 (detenu Mohan Lal), Cr. Misc. 610 of 1950 (detenu Shree Nivas Murerka), Cr Misc. 536 of 1950 (detenu Mahabir Prasad), Cr. Misc. 535 of 1950 (detenu Kedar Nath Poddar) and Cr. Misc. 537 of 1950 (detenu Govind Ram) and concluded :) The result, therefore, is that we would allow only one of the petitioners ., namely that of Dayanand Modi (Cr. Misc. 590 of 1950), and reject the appellants on behalf of the other detenus. "We direct that Dayanand Modi be released forthwith.

Narayan, J.

25. I agree.

Ordered accordingly.

Cases Referred.

[1](1942) AC 206 : (1941-3 All England Reporter 338)
[2](1943) 2 All England Reporter 546
[3](1949) 11 FCR 827 : (AIR 1950 FC 129 : 51 Cr LJ 1480)
[4] AIR 1950 FC 67 : (51 Cr LJ 1011)
[5](1943) 2 All England Reporter 546
[6]55 CWN 13 : (AIR 1951 Ass 43 : 52 Cr LJ 434)
[7]55 CWN 27 : (AIR 1951 Calcutta 194 : 51 Cr L J 1569)
[8](1943) 2 All England Reporter 546
[9] AIR 1950 FC 129 : (51 Cr LJ 1480)
[10]23 Pat 968 at p. 991 : (AIR 1945 Pat 44 FB)