BIDYA DEB BARMA ETC.

v.

DISTRICT MAGISTRATE, TRIPURA, AGARTALA

August 6, 1968

[M. HIDAYATULLAH, C.J., J. M. SHELAT, V. BHARGAVA, G. K. MITTER AND C. A. VAIDIALINGAM, JJ.]

Preventive Detention Act 4 *of* 1950, *ss.* 3(3) *and* 3(4)—*Section* 3(3) *requiring District Magistrate to report order of detention to State Government 'forthwith'—Meaning of 'forthwith'—State Government's order whether must be communicated to detenu—Communication under s.* 3(4) *by State Government to Central Government—Effect of delay—'As soon as may be' in s.* 3(4), *meaning of—Detention whether* mala fide*—Grounds whether vague—Grounds of detention supplied in language not known to detenu—Effect of delay in raising objection.*

The petitioners were arrested and detained on February 11, 1968 under the Preventive Detention Act, 1950 by the orders of the District Magistrate, Tripura. They challenged their detention on the following among other grounds: (i) that the District Magistrate passed the orders of detention on February 9, 1968 but made his report to the State Government only on February 13 and therefore the report was not made 'forthwith' as required by s. 3(3); (ii) that the State Government did not communicate the approval to the detenus and without such communication the order could not be effective; (iii) that the State Government recorded its approval under s. 3(3) on February 19 but communicated it to the Central Government only on February 22 and this was not done 'as soon as may be' within the meaning of s. 3(4); (iv) that the grounds supplied were vague; (v) that the detention order was *mala fide*. One of the petitioners also relied on the fact that the grounds were supplied to him in English which he did not understand.

HELD: (i) The word 'forthwith' has been interpreted by this Court in *Joglekar's* case to mean the period during which the detaining authority could not "without any fault of his own" send the report. In the present case the order of detention passed on February 9 was communicated to the State Government on February 13 but the District Magistrate in his affidavit had explained that he was occupied with urgent official work and that 10th and 11th were holidays. Thus there was delay only because the report was not made on the 12th. Even if the meaning from the ruling in *Joglekar's* case is applied strictly, the delay was explained sufficiently. [565 C; 566A, D]

Keshav Nilkanth Joglekar v. *The Commissioner of Police Greater Bombay*, [1956] S.C.R. 653 at p. 658—60, applied.

(ii) There is no provision in the Act that the approval under s. 3(3) must be communicated to the detenu. Section 3(3) does not specify that the order of approval is anything more than an administrative approval by the State Government. If this be so the necessity of communication of the approval does not arise with that strictness as does the decision under r. 30A(8) of the Defence of India Rules. Although it may be fair even under the Preventive Detention Act to inform the detenu of all the stages through which his detention passes, and it may be desirable to have a provision to that effect included in it, the existing state of the law did not justify the importation of the strict rule to cases under this Act. [566 F, 567 D, G]

A The scheme of the Preventive Detention Act is merely to approve the original detention by the District Magistrate and the continued detention after 12 days is not under any fresh order but the same old order with the added approval, and what the detenu can question is the original detention and not the approval thereof. [567 H]

Raja Harish Chandra Raj Singh v. *Deputy Land Acquisition Officer & Anr.*, [1962] 1 S.C.R. 676, *Bachhittar Singh* v. *State of Punjab,* B [1962] Supp. 3 S.C.R. 713 and *Biren Dutta & Ors.* v. *Chief Commissioner of Tripura & Anr.*, [1964] 8 S.C.R. 295, distinguished.

(iii) The State Government having reached its decision on February 19, its communication under s. 3(4) to the Central Government on February 22 was not so delayed that it is not covered by the expression 'as early as may be' which was explained in *Joglekar's case* to mean 'what is reasonably convenient'. Various things have to be done before the C report to the Central Government can be made and a gap of 3 days is understandable. [568 D]

(iv) The grounds in the present case had been supplied to the detenu with sufficient particularity to enable them to make an effective representation. The cases of *Rameshwar Lal Patwari* and *Motilal Jain* were distinguishable. [569 F-570 A]

D *Rameshwar Lal Patwari* v. *State of Bihar,* [1968] 2 S.C.R. 505 and *Motilal Jain* v. *State of Bihar,* [1968] 3 S.C.R. 587 distinguished.

(v) On the facts and circumstances of the case the allegation of *mala fides* against the detaining authority could not be accepted. [570 B]

(vi) The objection that the grounds of detention were given in a language which the detenu did not understand was raised in this Court E for the first time. The Court could not entertain this belated complaint especially when the detenu did not seem to have suffered at all for this reason. If there was the slightest feeling that he had been handicapped the court would have seriously considered the matter. [572 A-B]

Harikisan v. *State of Maharashtra & Ors.*, [1962] 2 Supp. S.C.R. 918, referred to.

F ORIGINAL JURISDICTION : Writ Petitions Nos. 89 to 92 and 94 of 1968.

Petitions under Art. 32 of the Constitution of India for enforcement of the fundamental rights.

M. K. Ramamurthi, for the petitioners (in all the petitions).

G *Niren De, Solicitor-General* and *R. N. Sachthey,* for the respondent (in all the petitions).

The Judgment of the Court was delivered by

Hidayatullah, C.J. These are five writ petitions under Article 32 of the Constitution of India by persons detained under the H Preventive Detention Act (4 of 1950) by virtue of orders passed by the District Magistrate Tripura on February 2, 1968. These detenus (and another since released) were arrested on February 11, 1968. State Government was informed of the fact of deten-

tion on February 13, and the grounds of detention were communicated to the detenus on February 15. State Government gave the approval on February 19 and telegraphically communicated to the Central Government the fact of the detention on February 22 under section 3(4). On March 11, the Advisory Board considered the cases. The present petitions were filed on March 12, 1968. The Advisory Board made its report to the State Government under section 10 of the Act on April 17, 1968. On April 26, 1968, the State Government made the order detaining the petitioners for a period of one year. This detention is challenged before us.

The petitions were argued by Mr. Ramamurthy together. The law points raised by him in these cases were common and will be dealt with together. Part of the facts were also common although some special features were pointed out in some cases. We propose to deal with the common points of law and facts together and then to consider the special facts separately.

The points of law were (1) that the detention was illegal as the report of the District Magistrate was not submitted forthwith as required by section 3(3) of the Act, (2) that the detention was again illegal as the order of approval of State Government under s. 3(3) was not communicated to the petitioners, (3) that the detention was illegal as the State Government had not reported the fact to the Central Government as soon as possible and without avoidable delay. The common points of fact are that the grounds were vague and the detention was for a collateral purpose and *mala fide*.

The order of detention in each case was made on the 9th of February. The arrest and detention commenced from the 11th. The communication was on February 13. Section 3(3) of the Act lays down :

"3. The Central Government or the State Government may

(1) . . . . . .

(3) When any order is made under this section (by an officer mentioned in sub-section (2) he shall forthwith report the act to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion (have a bearing on the matter, and no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government)."

A The question is whether the detention became illegal because 4 days were allowed to pass from the order of detention and 2 days from the date of arrest. The third sub-section quoted above uses the word 'forthwith'. Explaining this word Maxwell in Interpretation of Statutes (Eleventh Edn.) at p. 341 observes as follows :

> B "When a statute requires that something shall be done "forthwith", or "immediately" or even "instantly", it should probably be understood as allowing a reasonable time for doing it."

The word 'forthwith' in section 3(3) and the phrase 'as soon as may be' used in the fourth sub-section were considered in *Keshav Nilkanth Joglekar* v. *The Commissioner of Police, Greater Bom-*
C *bay*(1). In that case the delay was of 8 days. Giving proper meaning to the expression it was observed :

> "We agree that "forthwith" in section 3(3) cannot mean the same thing as "as soon as may be" in section 7, and that the former is more preemptory than the latter. The difference between the two expressions lies,
> D in our opinion, in this that while under section 7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under section 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report."

E The delay of 8 days was held explained thus :

> "What happened on the 16th and the following days are now matters of history. **The great city of Bombay** was convulsed in disorders, which are among the worst that this country has witnessed. The Bombay police had a most difficult task to perform in securing life and pro-
> F perty, and the authorities must have been working at high pressure in maintaining law and order. It is obvious that the Commissioner was not sleeping over the orders which he had passed or lounging supinely over them. The delay such as it is, is due to causes not of his making, but to causes to which the activities of the
> G petitioners very largely contributed. We have no hesitation in accepting the affidavit, and we hold that the delay in sending the report could not have been avoided by the Commissioner and that when they were sent by him, they were sent "forthwith" within the meaning of section 3(3) of the Act."

H In the present case the delay is much shorter. The 10th and 11th of February were close holidays. The communication was

(1) [1956] S.C.R. 653 at pages 658-660.

on the 13th. Thus there was only delay because the report was not made on the 12th. Explaining the delay the District Magistrate in his affidavit says :

> "I say that 10th February, 1968 was a holiday, being the second Saturday of the month and 11th February, 1968 was Sunday. I say that serious reports about the activities of the Mizo National Front and Sangkrak Party, which are tribal groups of hostiles who had set up an independent Government and were indulging in subversive acts against the local Government and were committing dacoities, murder, arson etc. particularly aimed at non-tribals, were received at that time which kept me extremely busy during those days. Besides this, I also say that I was in the midst of paddy procurements and there was very heavy rush of work in my office in those days. I say that 10th and 11th February, 1968, being holidays and order being communicated on the 13th to the State Government, was communicated "forthwith" as required by law."

In our judgment even if the meaning from the ruling is applied with strictness, the delay was explained sufficiently. The District Magistrate was hard put to for time and the surrounding circumstances explain the very short delay. A much larger delay was held in this Court not to militate against section 3(3) and we think there is less room for interference in this case than existed in the former case. We accordingly reject the first of the law points.

The second point has no force. There is no provision in the Act that such an approval must be communicated to the detenu. The argument is that this must be implied from the object of the Act. The detaining authority is answerable to the State Government. Sub-section (3) gives validity to the order for a period of 12 days even without approval. The approval was done within the time and began to operate as soon as made. It was contended that the approval ought to have been communicated to the detenu and without this communication the detention could not be legal.

Reliance was placed upon certain cases to show that persons affected by an order must be communicated that order if it is to be effective. In *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another*(1) (a case under the Land Acquisition Act 1894) it was held that the award of the Collector must be communicated, and that this was an essential requirement of fair play and natural justice. The Court was considering a question of limitation which ran 'from the date of the Collector's

(1) [1962] 1 S.C.R. 676.

A award' in the proviso to s. 18 and was not prepared to construe those words in a literal or mechanical way. The reason which prevailed for making a distinction between an order passed and an order communicated do not obtain here.

In *Bachhittar Singh* v. *The State of Punjab*(1) an order of dismissal of a public servant passed by the Minister on the file was B not communicated and it was held that it was only provisional till communicated. This case is not in point. The next case *Biren Dutta and others* v. *Chief Commissioner of Tripura and another*(2) deals with detention under the Defence of India Rules 1962 rules 30(1)(b) and 30A(8). The reason of rule 30A(8) was stated by this Court to be that it is in the nature of an independent deci- C sion and further detention can be justified only if the decision is recorded as required by the rule, and it must be in writing clearly and unambiguously to indicate the decision. It was further observed that the decision must be communicated. This case is really no authority in the context of the present case. Section 3(3) of the Preventive Detention Act does not specify that the order of approval is anything more than an administrative approval by the D State Government. If this be so the necessity of communication of the approval does not arise with that strictness as does the decision under Rule 30A(8) of the Defence of India Rules. The Solicitor General on that occasion conceded this position. The dispute then narrowed to the question whether Art. 166 applied. This point was not decided by this Court but basing itself on the E admission that the decision to continue the detention must be in writing, this Court considered whether there was substantial compliance with this requirement. A brief memorandum was produced which merely recorded that a decision was reached. This Court held that the memorandum could not reasonably be said to include a decision that the detention of the detenus was thought F necessary beyond six months. Such orders were held not to contain a written record of the decision with appropriate reasons.

In our opinion the provisions of the Preventive Detention Act cannot be equated to those of the Defence of India Act and the Rules. While we are of opinion that even in detention under the Preventive Detention Act it would be fair to inform the detenu G of all the stages through which his detention passes and a provision to that effect should be included in it, we are not satisfied that in view of the state of the existing law we can import the strict rule here. The scheme of the Preventive Detention Act is merely to approve the original detention by the District Magistrate and the continued detention after 12 days is not under any fresh order but the same old order with the added approval and what the H detenu can question if he be so minded, is the original detention and not the approval thereof. (See in this connection also

(1) [1962] Supp. 3 S.C.R. 713. (2) [1964] 8 S.C.R. 295.

Mohammed Afzal Khan v. *State of Jammu & Kashmir*(1). We accordingly consider the ruling inapplicable. A

It is next contended that the State Government was also guilty of undue and unreasonable delay in reporting to the Central Government. The State Government communicated the decision on February 22. State Government received the communication from the District Magistrate on February 13, and approved the action on February 19. The communication to the Central Government on February 22 was not so much delayed that it is not covered by the expression 'as early as may be' explained by this Court in *Keshav Nilkanth Joglekar* v. *The Commissioner of Police Greater Bombay's*(2) case. Mr. Ramamurthy desired us to calculate the time from February 9 but we do not think that is possible. Time can only be calculated from the moment the matter reached the State Government. The State Government took a week to consider these cases and it is reasonable to think that there might be a few more cases which are not before us. Having reached the decision on the February 19, the action of the State Government in communicating the matter to the Central Government on February 22 cannot be said to be so delayed as to render the detention illegal. Various things have to be done before the report to the Central Government can be made and a gap of 3 days is understandable. We see no forces in this point. B C D

This brings us to the merits of the detention. Here the charge is that the grounds furnished to the detenus were vague and the detention itself *mala fide*. The grounds are practically the same except for very minor changes to which attention will be drawn when we deal with individual cases. We may set down the grounds of detention from Petition No. 89 of 1968 as sample. E

> "You are being detained in pursuance of the Detention order made under sub-clauses (ii) and (iii) of clause (a) of sub section (1) of section 3 Preventive Detention Act, 1950 as you have been acting in manner prejudicial to the maintenance of public order and supplies essential to the community as evidenced by the particulars given below :— F
>
> 1. That you have been instigating the loyal villagers particularly the tribals living in and around the Forest Reserve areas to damage the forest plantation and to do Jhuming in Reserve Forest areas in violation of forest laws. Towards the end, you have been attending a number of secret meetings in which it was decided to urge the public to start campaign against the Forest Department and to destroy the forest plantation. That you have by your activities created resentment against G H

(1) [1957] S.C.R. 63. (2) [1950] S.C.R.

A the forest departments and the Forest Laws under Teliamura P. S. thereby endangering the maintenance of public order.

2. That you have been instigating the loyal cultivators from delivering the paddy to the Government which has been requisitioned under the Tripura Food-
B grains Requisition Order for the maintenance of supplies of foodgrains to the people in lean months. You have been instigating and inciting the people to offer organised and violent resistance against the paddy procurement staff. Towards this end, you have been attending a number of secret meetings in which it was
C decided to urge the public to start campaign against the procurement of paddy. You have been directly inciting the people in a number of mass meetings also. That you have by your speeches and activities induced the people of certain areas to offer violent resistance to paddy procurement thereby preventing the Government from maintaining supplies essential to the community
D during times of need.

The above reports are evident from the facts that on 12-11-67 you attended a mass meeting at Kalyanpur, a secret meeting on 13-11-67 at Asha rambari, again mass meetings at Teliamura on 28-11-67 at Moharchhara Bazar on 16-12-67, on 6-1-68 at Teliamura and on 21-1-68 at Stable ground, Agartala.

Because of your activities and incitement, on 2-2-68 the procurement staff were offered a strong and violent resistance by an unruly mob at Chalitabari P. S. Teliamura."

F It is submitted that the grounds do not give any details since no particulars of time, place and circumstances have been mentioned, and relevant and irrelevant matters have been included. Reference is made to two cases decided recently by this Court in which the grounds were found insufficient. They are : *Rameshwar Lal Patwari* v. *State of Bihar*(1) and *Motilal Jain* v. *State of Bihar & Others*(2). We find no such vagueness in the grounds as was
G found established in the two cases. The grounds begin by stating generally what the activities were. They consisted of instigation of tribal people to practise *jhuming* and preventing the authorities from delivering paddy to Government under the procurement schemes. This instigation it is said was through mass and secret meetings and resulted in violent resistance to Govern-
H ment. Having said this the grounds then specify the places where and the dates on which the meetings were held and the date on which and place at which the resistance took place. In our judg-

(1) [1968] 2 S.C.R. 505. (2) [1968] 3 S.C.R. 587.

ment more detailed information was not necessary to give the detenus an opportunity to make their representations. The grounds here are specific and very unlike those in the cases relied upon. We reject the contention.

As regards *mala fides* and collateral purpose alleged to be the real reason, the averment is that the detention was ordered to prevent the detenus from actively campaigning for the Panchayat elections that were to take place on the 19th and 20th February, 1968. This has been denied and looking to the circumstances of this area which are notorious there is no doubt in our minds that the affidavit of the District Magistrate is reliable. This ends the submissions which are common to these five cases. We now proceed to discuss individual objections.

Writ Petition 89 *of* 1968. There is no special objection in Writ Petition 89 of 1968 beyond what has been discussed above and it is accordingly dismissed.

Writ Petition 90 *of* 1968 : Here too there is no special ground urged before us and the petition is accordingly dismissed.

Writ Petition 91 *of* 1968 : The first objection is that there is a mistake of identity. The petitioner claims to be Dasrath s/o Krishna Deb whereas in the order of detention and other papers is described as Dasrath s/o the Late Krishna Chandra Deb Barma. It is also submitted that Krishna Chandra Deb is alive and, therefore, the order of detention concerned some other person. It is denied by the District Magistrate that the order was not passed against the present detenu himself. The addition of Barma is explained by the District Magistrate as a popular suffix to the name. The District Magistrate has further said that in Tripura it is usual to have Barma in addition to Deb in the surname and that this ground of identity has been raised for the first time in this Court. The address of the petitioner is accurate and the father's name is also correct. Nothing much turns on the fact that the father was described as dead. The petitioner has not objected till he reached this Court and the authorities would hardly be expected to hold a wrong man and let the real man go free. We reject this contention.

The next contention concerns the discrepancy in the dates of meetings and what happened as a result of his activities and incitement. The two sets of dates may be put side by side :

Meetings	*Result*
25-11-67	18-6-67
16-12-67	21-6-67
26-12-67	24-6-67
27-12-67	25-6-67
30-12-67	23-12-67
3-1-68	21-1-68

A It is argued that the results in all but two dates could not follow activities which were later. The explanation is simple. The results were said to be because of the activities of the petitioner. The mention of dates of meetings is merely some evidence to show the kind of activity. We are concerned with preventive detention. Ordinarily what we have to satisfy ourselves B about is the satisfaction of the authority and the absence of *mala fides* and whether all the opportunities of making representation were given. There were enough instances cited of the conduct on which detention was ordered for the petitioner to make an effective representation. The situation in this area was already bad and the later activities would not make it any better. We do not think that the detention suffers from any defect. The petition C will be dismissed.

Writ Petition 92 *of* 1968.

The objection here is of the same character as in Writ Petition 89/91. An additional complaint here is that he is supposed to have instigated people to go on strike and prevented the motor D drivers and rickshaw pullers from plying their vehicles on the roads and government employees from going to office and threatened individual shop-keepers to keep their shops closed, but no details are supplied. It is submitted that this brings the case within the rulings of this Court. We think this case is distinguishable from the case of a black marketer who is charged with having sold contraband articles or at higher prices or hoarded E goods. General allegations there without concrete instances would be difficult to represent against. Here the matter is different. It is an integrated conduct of instigation against law and order which is being charged. Several aspects of it are mentioned. They range from *jhuming* in forests and resistance to procurement to arranging for strikes. Instances of mass and secret meetings are F furnished and the ramifications of conduct in other directions are mentioned. In these circumstances the petitioner is expected to represent against the instances and if he convinces that he took no part in the agitation, the other aspects of his activity will be sufficiently answered. A case of this type stands on slightly different footing from the cases of black marketing earlier decided G by this Court. In our judgment no successful ground has been made out and the petition must fail. It will be dismissed.

Writ Petition 94 *of* 1968.

The petitioner in this case has complained that the order of detention and the grounds supplied to him were in English and he knows only Bengali and Tripuri. He refers to *Harikisan* v. *The* H *State of Maharashtra & Others*(1). In that case the detenu had asked for a Hindi translation and had been denied that facility.

(1) [1962] 2 Supp. S.C.R. 918.

We find that this objection was taken here but no request was made at any earlier time. The original petition did not contain any such objection. It was raised for the first time in the rejoinder. The petitioner does not seem to have suffered at all. He has filed the petition in English and questioned the implications of the language of the order and the grounds. Of course, he had the assistance of the other detenus who know English. If there had been the slightest feeling that he was handicapped, we would have seriously considered the matter but in his case it appears that this point was presented not to start with but after everything was over. We cannot entertain such a belated complaint. The petition will be dismissed.

In conclusion all the petitions fail and will be dismissed.

G.C. *Petitions dismissed.*