

in order to obtain its approval, which consideration is admittedly incorrect and contrary to facts, it is impossible to take the view that the approval given by the State Government is the approval required by law. The Government Pleader has attempted to argue that so long as the certificate of Government is there that it has approved the order, the provision of s. 3 (3) has been complied with. In our opinion, the approval required is not a mechanical approval; it is an approval which requires a certain mental process and that mental process can only be possible provided not only relevant and proper materials are placed before the Government, but also correct facts are placed before the Government. If the Court is satisfied that the State Government gave its approval on incorrect facts placed before it, then the approval is vitiated by extraneous factors and it cannot be an approval required by law. Therefore, in our opinion, the order made by the Police Commissioner is bad by reason of the fact that an important ground mentioned is not a correct ground, also by reason of the fact that we are satisfied that the detaining authority did not and could not apply its mind to the relevant circumstances which are required by law; finally for the reason that the approval given by the State Government not being a proper approval, in any view of the case the order of detention cannot subsist beyond the period of 12 days mentioned in s. 3 (3).

Therefore the order we propose to pass is that the order passed by the Commissioner of Police will be quashed, and the detenu will be ordered to be released forthwith.

The petitioner must get his costs.

Order set aside.

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APPELLATE CRIMINAL

Before the Chief Justice Mr. M. C. Chagla and Mr. Justice Desai.
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Preventive Detention—Constitution of India Art. 22 (5) and (6)—Preventive Detention Act (IV of 1950), s. 7 (1) (2)—Practice—Grounds for detention—Correct Practice of furnishing—Privilege of not disclosing facts in the public interest—Affidavit of a detaining authority when the detention order is challenged on the ground that certain specific facts are not disclosed and this prevented the detenu from making a proper representation.

Section 7 (1) and (2) of the Preventive Detention Act practically reproduce the provisions of Art. 22 (5) and (6) of the Constitution of India.

Article 22 (5) of the Constitution of India affords to the detenu two important constitutional safeguards: viz. (1) that he should be furnished the grounds on which the detention order has been made, and (2) he

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should be given an opportunity to make an effective representation against the order of detention.

In order that the detenu should be in a position to make an effective representation, the grounds must be furnished to him with as full and adequate particulars as the circumstances permit subject to the provisions of sub-clause (6) of Art. 22 which permit the detaining authority to hold back facts, which in its opinion, it is against the public interest to disclose.

State of Bombay v. Atmaram Shridhar Vaidya,⁽¹⁾ *Ujagar Singh v. The State of Punjab,*⁽²⁾ *Dr. Ram Krishan Bharadwaj v. State of Delhi and others,*⁽³⁾ applied.

If in the petition challenging the order the detenu makes a grievance that certain specific facts have not been disclosed and this has prevented him from making an effective representation it is incumbent upon the detaining authority to make an affidavit and to deal with each of these facts and say that a privilege is claimed with regard to such facts;

Although the question of public interest is not justiciable and although the Constitution and the Preventive Detention Act have left it to detaining authority to decide what facts should be withheld, the Court must at least be satisfied that the authority has applied its mind and has come to the conclusion as to public interest *bona fide* and not arbitrarily or capriciously.

CRIMINAL Application under art. 226 of the Constitution of India and s. 491 of the Criminal Procedure Code praying that the order of detention be set aside and issue of the Writ in the nature of Habeas Corpus.

The order of detention challenged in the petition was as under:—

No. P. D. A. 4-B/ 56
Office of the District Magistrate,
Thana, 9th February 1956.

To

Shri Balkrishna Kashinath Khopkar,
Krishna Khopkar of Thana.

In pursuance of s. 7 of the Preventive Detention Act, 1950 (Act IV of 1950), you are informed that the ground on which the detention order has been made against you under sub-clause (ii) of clause (a) of sub-s. (1) of s. 3 of the said Act. are:—

(a) Since May 1955 you have at Secret and open meetings been inciting and instigating workers of Mills and other Industries in Thana and adjoining villages to resort to intimidation and violence against officials of the Mills and industries and workers who would not act according to your instructions. As a direct result of incitement and instigation by you there were several cases of intimidation and violence indulged in by the aforesaid workers in Thana and adjoining villages. Some of these cases are described below:—

(i) On May 17, 1955 some of the workers of the Castle Mill pelted stones during noon recess and caused damage to the Mill property in the course of a dispute with management and one supervisor in the

1. (1951) S. C. R. 167.

2. (1952) S. C. R. 756.

3. (1953) S. C. R. 708.

Finishing Department of the Mill was assaulted and belaboured by them.

(ii) During the Strike at the Castle Mill on June 6, 1955 and June 24, 1955 a worker and the Engineer Shri L. C. Sharma were assaulted by some of the strikers.

(b) On November 30, 1955 and December 1, 1955 during the secret deleberation of the Maharashtra Prantik Committee of the Communist Party of India held in Bombay to consider the future line of action of the party on Samyukta Maharashtra issue, you advocated mass strikes, Morchas to Mamlatdars' and Collector Offices, disruption of rail traffic and telephone and telegraph lines and burning of police stations in order to paralyse the whole machinery of Government, if the demand for Samyukta Maharashtra was not conceded. Soon after the announcement of the Government decision placing Bombay City under Central Government Administration, you incited and instigated at meetings held secretly in Thana, the local industrial workers to indulge in violence and lawlessness, due to which acts of lawlessness and violence took place at Thana.

Some of these cases are given below:—

(i) On January 17, 1956, some local industrial labour trespassed into the premises of the Ravi Industries, Thana and assaulted Shri Ratilal U. Shah and others of the said Industries.

(ii) On January 19, 1956, some of the local mill hands broke open the shop of Shri Hemraj Raghujji Shah of Charai and took away property worth Rs. 180 consisting of cash and watches, etc.

In all probability, you are likely to continue to indulge in further prejudicial activities of the nature described above.

It is not in the public interest to disclose any further facts.

If you wish to make representations against the order under which you are detained, you should address it to the Government of Bombay and forward it through the Superintendent, Thana District Prison, Thana.

You are also informed that you have a right to claim a personal hearing before the Advisory Board and that you should communicate to Government as soon as possible, your intention of exercising or not that right.

(Sd.) H. A. KHAN,

District Magistrate, Thana.

Seal of the Magistrate of the
District at Thana.

Dated at Thana on the 9th day of February 1956."

The facts material to this report are stated in the Judgment. *K. K. Singhvi* with *K. T. Sule* for the Petitioner.

M. P. Amin, Advocate General with *H. M. Choksi*, Government Pleader for the Respondents.

Chagla C. J.—This is a petition by a person detained under the Preventive Detention Act and the ground on which the order of detention is challenged is that the grounds furnished to the detenu are vague.

Now, before we consider the merits of the petition, it is necessary to lay down what the correct position in law is with regard to the furnishing of grounds to the detenu under the Preventive Detention Act. Section 7 of the Act provides that when a person

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is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than 5 days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a case where such order has been made by the Central Government, to that Government and in a case where it has been made by a State Government or an Officer subordinate thereto, to the State Government, and s. 7 (2) provides that nothing in sub-s. (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Now, this Section, as will be noticed, practically reproduces the provisions of art. 22 (5) and (6) of the Constitution. It is now well settled that art. 22 (5) affords to the detenu two important constitutional safe-guards—(1) to be furnished the grounds on which the detention order has been made and (2) to give him an opportunity to make an effective representation against the order of detention. It is also now well settled that in order that the detenu should be in a position to make an effective representation, the grounds must be furnished to him with as full and adequate particulars as the circumstances permit. But the furnishing of particulars has been expressly made subject to sub-cl. (6) and sub-cl. (6) permits the detaining authority to hold back any facts, which in its opinion, are against the public interest to disclose. It is true that sub-cl. (6) may constitute a rather serious inroad upon the constitutional safeguard afforded to the detenu under sub-s. (5) and it may be that it may not be possible to the detenu to make an effective representation, if with regard to certain material facts, a privilege is claimed. But as a privilege can only be claimed in public interest, the Constitution has placed public interest above the private interest even though the private interest may mean the liberty of the citizen. It is, therefore, necessary to emphasize the fact that the detaining authority must act with a sense of responsibility when it claims a privilege under sub-s. (6) of art. 22. As we envisage the position, when the detaining authority wishes to make an order of detention and has the grounds before it which lead to its satisfaction required by the Act, it must at that stage consider which facts should not be disclosed to the detenu by reason of the fact that it would be against public interest to disclose those facts. Having excepted certain facts, with regard to the remaining facts it would again be for the detaining authority to decide whether to disclose all the facts or some of the facts. The detaining authority may take the view that some facts are irrelevant or they are superfluous or they are unnecessary. But in refusing to disclose these facts, the detaining authority takes the risk of its order being successfully challenged on the ground that some of the grounds disclosed are vague.

Now, in our opinion it is not sufficient for the detaining authority to satisfy the Court that a privilege has been claimed with regard to all facts not disclosed, by some omnibus averment in

the order that other facts than those disclosed have not been disclosed because they are against public interest. If in the petition challenging the order the detenu makes a grievance of the fact that certain specific facts have not been disclosed and which has prevented him from making an effective representation it is incumbent upon the detaining authority to make an affidavit and to deal with each of these facts and to say that a privilege is claimed with regard to these facts. The Court must be in a position to judge that privilege has been *bona fide* claimed with regard to any particulars the failure to disclose which has led to the prejudice of the detenu.

Now, turning to the Authorities, we have first Vaidya's case, which is really the starting point of all discussion with regard to detention orders and that is the judgment reported in *State of Bombay v. Atmaram Shridhar Vaidya*.⁽⁴⁾

At page 182, the learned Chief Justice points out "that the detaining authority is given a special privilege in respect of the facts which are considered not desirable to be disclosed in public interest. As regards the rest, their duty is to disclose facts so as to give the detained person the earliest opportunity to make a representation against the order of detention" and at Page 184, the learned Chief Justice discusses as to what is meant by "vague" and in his opinion it is the antonym of 'definite' and the learned Chief Justice says:

"If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case."

Then comes the passage on which the Advocate General has strongly relied:

"It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case".

Now, we will, with respect to these observations, say that ordinarily a ground is not a proper ground and is a vague ground if the only answer that the detenu can give is a bald denial. There may be cases, extraordinary cases or cases depending on peculiar facts where the Court may take the view that even a ground which could only be answered by a bald denial is a sufficient and adequate ground, and the learned Chief Justice himself goes on to say that if on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention, it cannot be called vague, and at page 188 the learned Chief Justice further clarifies the matter by saying that under the circumstances it is but right to emphasize that the communication made to the detained person to enable him to make the representation should, consistently with the privilege not to disclose facts which are not

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desirable to be disclosed in public interest, be as full and adequate as the circumstances permit and should be made as soon as it can be done. Therefore there is an obligation upon the detaining authority to furnish particulars with regard to the grounds on which the order is made, which are full and adequate and to the extent that they are not full and adequate, this can only be justified provided a privilege is claimed by the detaining authority with regard to those particulars which have not been disclosed.

Then we come to the later judgment of the Supreme Court which is reported in (*Ujagar Singh v. The State of Punjab*⁽⁵⁾) and the view there taken by Mr. Justice Chandrasekhar Aiyar following upon the ruling of Vaidya's case is:—

“That mere vagueness of grounds standing by itself and without leading to an inference of *mala fides* or lack of good faith is not a justiciable issue in a Court of law for the necessity of making the order, inasmuch as the ground or grounds on which the order of detention was made is a matter for the subjective satisfaction of the Government or of the detaining authority”.

Now, with very great respect, we do not read the Vaidya's case as laying down that vagueness of ground is not a justiciable issue and this is made clear by a subsequent decision of the Supreme Court in Bhardwaj's case, reported in *Bharadwaj v. State of Delhi*.⁽⁶⁾ There the Supreme Court not only held that the question of vagueness of a ground was justiciable but went further and also held that if one of the several grounds furnished to the detenu is vague, then notwithstanding the fact that other grounds are definite and precise, the order of detention could not be sustained and this decision was arrived at on the principle that the detenu had a statutory safeguard with regard to each ground and if he could not make an effective representation with regard to each ground, then the statutory safeguard given to him by art. 22 (5) was denied to him. But it may be pointed out that even in Bharadwaj's case, the learned Chief Justice emphasizes the fact that the right under art. 22 (5) is subject to the claim of privilege under sub-cl. (6) and at page 713, the learned Chief Justice says:—

“In this case, the petitioner has the right, under art. 22 (5), as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention “sufficient to enable him to make a representation which on being considered may give relief to him. We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under cl. (6) of art. 22.”

Now, applying these principles to the facts before us, the first ground which is furnished to the detenu is:

“Since May 1955 you have at secret and open meetings been inciting and instigating workers of Mills and other Industries in Thana and adjoining villages to resort to intimidation and violence against officials of the Mills and industries and workers who would not act according to your instructions. As a direct result of incitement and instigation by

5. (1952) S. C. R. 756.

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you there were several cases of intimidation and violence indulged in by the aforesaid workers in Thana and adjoining villages. Some of these cases are described below."

Then we have the instances of the result of incitement. But it will be noticed that no further particulars are given of this ground than what is already stated. Prima facie the ground is vague. In the first place although the order is made on February 6, 1956, no particular time of the activities of the detenu is mentioned and all that he is told is that between May 1955 and February 1956 he has been carrying on these activities. Then he is told that he has been inciting and instigating workmen to resort to intimidation and violence and this incitement, according to the detaining authority, has taken place at secret and open meetings. Now, whatever may be the position with regard to secret meetings, it is indeed surprising that if the detenu carried on this prejudicial activity at open meetings, which we understand to mean public meetings, no particulars with regard to these meetings should have been given at all. If there were public meetings, they must have been held some where, they must have been held some time, they must have been attended by some people. But nothing whatever is mentioned except the fact that at these public meetings apart from secret meetings, instigation was made by the detenu.

Now, how could it possibly be said with regard to these meetings that the particulars given are as full and as adequate as circumstances would permit. If the detaining authority had materials before him with regard to speeches made by this detenu at public meetings and if his detention order was based upon those materials, then there was not the slightest difficulty in the way of the detaining authority furnishing the detenu with those particulars. The Advocate General realised that the grounds furnished is not sufficiently specific or precise and therefore he falls back upon what is stated in the ground that it is not in the public interest to disclose any further facts. Now in the petition, the petitioner has specifically contended that the grounds are vague with the result that it was not possible for the petitioner to make an effective representation against his detention and he goes on to say that

"in the ground (a) he is not told when and where the alleged secret and open meetings took place. He is not told which workers did he instigate. There are a number of mills and industries in Thana and adjoining villages and it is difficult to understand which workers does the respondent no. 1 want to refer. Even the incidents mentioned therein lack in material particulars".

Now, the answer given by the District Magistrate in the affidavit he has made states :

"The allegations made in para. D-4 are denied. The grounds supplied to the petitioner are specific. Relevant particulars of the same are given in sub-para. (i) and (ii) to para. (a) of the said grounds".

Now, this denial is very significant. What is denied is the grievance of the petitioner that the ground is vague. The District

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Magistrate does not say and indeed he cannot say that all the particulars with regard to which the complaint is made had not been furnished to the detenu because it would be against public interest to disclose those facts. If the District Magistrate had said so, the matter would have stood entirely on a different footing. But in the absence of a claim of privilege, it is for the Court to consider whether the ground furnished is a definite and precise ground or a ground which is vitiated by its vagueness. This affidavit was made on March 24, 1956, and perhaps realising that this affidavit may not achieve the result which it was expected to achieve, an additional affidavit was made by the same gentleman on March 31, 1956, and that affidavit is notable for its brevity and the affidavit is:

"I. H. A. Khan, B. A. (Hons.), District Magistrate, Thana, state on solemn affirmation that the following be added to my affidavit dated March 24, 1956, which has been omitted through oversight by the Typist:—

It was and is not in public interest to disclose any further facts".

This is exactly what the District Magistrate had stated in his Order. What the District Magistrate was called upon to meet was specifically the averment with regard to failure to supply specific particulars and privilege should have been claimed with regard to those specific particulars. This statement in the affidavit is as bald and as unmeaning as it is in the order itself.

We should have expected the District Magistrate either to have applied his mind to the grievance of the petitioner and state that each one of the particulars required by the petitioner was denied to him in public interest or he should have frankly admitted that some of the particulars could not be denied to him in public interest but for other reasons, those particulars were not supplied. But this general unspecific averment of public interest is not what the Constitution or the law requires. Although the question of public interest is not justiciable and although the Constitution and the Act has left it to the detaining authority to decide what facts should be withheld, the Court must at least be satisfied that the authority has applied its mind and has come to the conclusion with regard to public interest *bona fide* and not arbitrarily or capriciously. It is because of this that we expect a proper affidavit to be filed by the detaining authority whenever a ground is challenged as being vague.

Under the circumstances, we are of the opinion that this order cannot be sustained.

The result is that the detenu is entitled to be set free and we direct that he should be released forthwith. Government to pay the costs.

Rule absolute.

G. N. V.