(1975) 2 Supreme Court Cases 81

(Before P. Jaganmohan Reddy, P. N. Bhagwati, P. K. Goswami and R. S. Sarkaria, JJ.)

KHUDIRAM DAS .. .. Petitioner ;

Versus

THE STATE OF WEST BENGAL AND OTHERS .. Respondents.

Writ Petition No. 324 of 1974, decided on November 26, 1974

Constitution of India — Article 22 — Nature and scope of — Constitutional protections under — "Grounds" — Meaning of — If includes only the final conclusions or also the basic facts and materials

Held :

Article 22 provides various safeguards calculated to protect personal liberty against arbitrary restraint without trial. These safeguards cannot be regarded as substantial. They are essentially procedural in character and their efficacy depends on the care and caution and the sense of responsibility with which they are regarded by the detaining authority. (Para 5)

The constitutional imperatives enacted in this article are twofold ; (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. (Para 5)

The communication of the grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an effective representation. Hence 'grounds' mean **all the basic facts and materials** which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based. It is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. (Para 6)

Therefore nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). (Para 6)

Golam alias *Golam Mallick* v. *State of W. B.*, (1975) 2 SCC 4 : 1975 SCC (Cri) 370 ; *Ram Krishan Bhardwaj* v. *State of Delhi*, 1953 SCR 708 : AIR 1953 SC 318 : 1953 Cri LJ 1241 and *Shamrao Vishnu Parulekar* v. *District Magistrate, Thana*, 1956 SCR 644 : 1957 Cri LJ 5, *followed.*

Preventive Detention — Subjective satisfaction — Nature of — Whether capable of objective assessment — Extent of judicial review possible — Administrative Law — Discretionary power — Exercise of — Judicial review of

Held :

Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. (Para 8)

State of Madras v. *V. G. Row*, 1952 SCR 597 : AIR 1952 SC 196, *relied on.*

Rex v. *Halliday*, 1917 AC 260, *referred to.*

The matters considered by the detaining authority are matters susceptible of

objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority. The power of detention is not a quasi-judicial power. (Para 8)

Bhut Nath Mete v. *State of W. B.*, (1974) 1 SCC 645 : 1974 SCC (Cri) 300, *explained and distinguished.*

However, subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. (Para 9)

Such instances are, firstly, where the authority has not applied its mind at all : in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied; secondly, where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority; thirdly, where in exercising the power, the authority has acted under the dictation of another body; fourthly, application of a wrong test or the misconstruction of a statute; fifthly, where the satisfaction is not grounded on materials which are of rationally probative value, i.e. the grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached and they must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute; sixthly, failure of the authority to have regard to the express or implied statutory requirements of giving regard to certain matters when exercising the power, and lastly, where the subjective satisfaction is not such that any reasonable person could possibly arrive at and the inference is that the authority did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts. (Paras 9 and 10)

Emperor v. *Shibnath Bannerji*, AIR 1943 FC 75 : 1944 FCR 1 : 45 Cri LJ 341; *Commissioner of Police* v. *Gordhandas Bhanji*, 1952 SCR 135 : AIR 1952 SC 16; *Simms Motor Units Ltd.* v. *Minister of Labour and National Service*, (1946) 2 All ER 201; *Machindar* v. *King*, AIR 1950 FC 129 : 51 Cri LJ 1480 : 1949 FCR 827; *Pratap Singh* v. *State of Punjab*, AIR 1964 SC 72 : (1964) 4 SCR 733; *Sharp* v. *Wakefield*, 1891 AC 173, 179; *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*, (1948) 1 KB 223 : (1947) 2 All ER 680; *Smith* v. *West Ellor Rural District Council*, 1956 AC 736 : (1956) 1 All ER 855; *Fawcett Properties Ltd.* v. *Buckingham County Council*, 1961 AC 636 : (1960) 3 All ER 503; *Ross* v. *Papadopollos*, (1958) 1 WLR 546 : (1958) 2 All ER 28, *relied on.*

The courts in such cases do not act as an appellate authority but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the Legislature has confided in it. Though the last mentioned ground above tends to blur the dividing line between subjective satisfaction and objective determination, the dividing line is very much there howsoever faint or delicate it may be, and courts have never failed to recognise it. (Para 10)

Debu Mahto v. *State of W. B.*, (1974) 4 SCC 135 : 1974 SCC (Cri) 274, *relied on.*

Therefore, there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. (Para 11)

United States v. *Wunderlick*, (1951) 342 US 98, *referred to.*

Preventive Detention — MISA, 1971 — Constitutionality of — Challenge under Article 19 if open — Whether besides conforming to Article 22 it must conform to Articles 19(2) to (6) and 14

Held :

It is settled beyond controversy that even if a law of preventive detention may pass the test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. So a law relating to preventive detention must meet the requirements of Articles 14 & 19. (Para 12)

Rustom Cavasjee Cooper v. *Union of India*, (1970) 1 SCC 248 ; *Sambhu Nath Sarkar* v. *State of W. B.*, (1973) 1 SCC 856 : 1973 SCC (Cri) 618 ; *Haradhan Saha* v. *State of W. B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816, *followed.*

A. K. Gopalan v. *State of Madras*, 1950 SCR 88 : AIR 1950 SC 27 : 51 Cri LJ 1383, *referred to.*

In **Haradhan Saha's case,** MISA, 1971 has been held not to violate Article 19. Now the petitioner cannot be permitted to reagitate the same question merely on the ground that some argument directed against the constitutional validity of the Act under Article 19 was not advanced or considered by the Court in that case. (Para 12)

Haradhan Saha v. *State of W. B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816, *applied.*

Preventive detention — Grounds for — Communication of — History-sheet of detenu — Whether statement of detaining Magistrate that he was not influenced by anything else than that stated in the detention order precludes the Court from calling for and examining the history-sheet and other basic facts and particulars — Constitution of India, Article 22(5) — MISA, 1971, Section 8(1)

Held :

It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority. (Para 13)

If there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. (Para 15)

Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the **ipse dixit** of the District Magistrate that he was not so influenced and **a fortiori,** if such materials is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention. (Para 15)

On facts, the material in the history-sheet did not constitute any additional material prejudicial to the petitioner which could be said to have gone into the formation of the subjective satisfaction of the District Magistrate and the non-disclosure of it to the petitioner did not have the effect of invalidating the order of detention. The rest merely provided the backdrop of the prevailing situation in the area and did not constitute material prejudicial to the petitioner which ought to have been disclosed to him. So there has been no violation of the constitutional guarantee. (Para 16)

Preventive detention — Grounds for — Communication of — "Other particulars" which are also required to be communicated by the detaining Magistrate to the State Government under Section 3(3), MISA, held, do not constitute part of the basic material and particulars and need not be communicated to the detenn (Paras 17 to 19)

Haradhan Saha v. *State of W. B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816, *explained and distinguished.*

Petition dismissed M/2244/CR

The Judgment of the Court was delivered by

BHAGWATI, J.—This is a petition for a writ of habeas corpus under Article 32 of the Constitution challenging the validity of the detention of the petitioner under an order of detention dated November 3, 1973 passed by the District Magistrate, Malda under sub-section (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971. The questions raised in this petition are of importance as they effect the fundamental right of personal liberty which is one of the most cherished fundamental rights guaranteed by the Constitution. It is necessary to state the facts giving rise to this petition in so far as they are material to a proper understanding of the important issues involved in this petition.

2. The District Magistrate, Malda passed an order of detention dated November 3, 1973 under sub-section (1) read with sub-section (2) of Section 3 of the Act directing that the petitioner be detained on the ground that it was necessary so to do "with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community". Within two days after the making of the order of detention, that is on November 5, 1973, the District Magistrate made a report to the State Government and forwarded to the State Government, along with his report, copies of the order of detention, the history-sheet of the petitioner — a document to which we shall have occasion to refer in some detail a little later — and the grounds on which the order of detention was made. The State Government, presumably on a consideration of the total material forwarded by the District Magistrate, approved the order of detention on November 12, 1973 under sub-section (3) of Section 3 of the Act. It appears that the petitioner could not be apprehended for some time and it was only on December 25, 1973 that he was ultimately arrested pursuant to the order of detention. Immediately on his arrest, the petitioner was served with a copy of the grounds of detention as required by Section 8, sub-section (1) of the Act. The grounds of detention stated that the petitioner was being detained :

> . . . on the grounds that you have been acting in a manner prejudicial to the maintenance of supplies and services — essential to the community as evi-

denced from the particulars given below :

1. That on April 22, 1973 at night at about 20.00 hrs. you along with your associates broke open an electrical transformer of STC cluster No. 8 at Uttar Laxmipur village, P.S. Kaliachak. At the time of operation the guard detected it and challenged you. You and your associates chased him with hasuas, iron rod etc. to assault, when the guard fled away to save his life. You and your associates took away copper wire from the transformer. As a result tube wells of the cluster became inoperative. Thus you disrupted the supply of water in cultivation of paddy resulting failure of crops.
2. That on May 1, 1973 at about 23.00 hrs. you along with your associates broke open the transformer at village Dariapur under Mauza Bedrabad, P.S. Kaliachak and took away the valuable portions and the copper wire of the transformer. When the villagers protested, you and your associates threatened them with death. As such the villagers left the place out of fear. As a result of such theft supply of electricity was disrupted in the area.
3. That on May 23, 1973 at 00.15 hrs. you along with your associates Abdul Hamid, son of Nur Md. of Uttar Laxmipur Dafedortola, Mehini Ranjan Das alias Hittan s/o L. Arjan Mondal of Uttar Laxmipur, Nafar Bhakattolal and two others removed the transformer from the electrical part of village Natichapa Nayagram Deep tube well for the purpose of committing theft of copper wire. When the same was brought down to the ground, O.C. Kaliachak P.S. with other staff who were on ambush patrol caught hold of you and two of your associates on the spot. Thus you acted in a manner prejudicial to the maintenance of supplies and services — essential to the community.

The petitioner did not make his representation against the order of detention until the beginning of February, 1974, but in the meantime, in obedience of Section 10 of the Act, the case of the petitioner was placed by the State Government before the Advisory Board on January 22, 1974 and the grounds of detention were also forwarded to the Advisory Board in order to enable it to give its opinion. The representation of the petitioner against the order of detention was in the meanwhile received by the State Government on February 5, 1974. The State Government considered the representation of the petitioner and rejected it on February 7, 1974, but since the case of the petitioner was pending consideration by the Advisory Board, the State Government forwarded it to the Advisory Board for its consideration. The Advisory Board thereafter submitted its report to the State Government on February 26, 1974 under Section 11 of the Act stating that in its opinion there was sufficient cause for the detention of the petitioner. The State Government, on receipt of the report of the Advisory Board, passed an order dated March 5, 1974 confirming the detention of the petitioner under Section 12, sub-section (1) of the Act, and this order of confirmation was served on the petitioner through the Superintendent of Police, Murshidabad. It is this detention, originating in the order of detention, approved by the State Government and continued under the order of confirmation passed by the State Government that is being challenged in the present petition.

3. The petition was presented by the petitioner from jail and since he was not represented by any counsel, this Court appointed Mr. R. K. Jain, amicus curiae to present the case on behalf of the petitioner. Mr. R. K. Jain on behalf of the petitioner urged the following grounds against the

validity of the order of detention :

(a) It is apparent from the grounds of detention furnished to the petitioner that there were only three incidents of theft on which the District Magistrate relied for the purpose of coming to a satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. These three incidents were objectively not sufficient to justify such satisfaction and the order of detention based on such satisfaction was, therefore, bad.

(b) If the view be taken that the power to detain a person could be exercised by the detaining authority merely on its subjective satisfaction which could not be tested with reference to objective standards, Section 3 of the Act, which empowered the detaining authority to exercise the power of detention on the basis of its subjective satisfaction, imposed unreasonable restrictions on the fundamental rights of the petitioner under Article 19(1) and was, therefore, ultra vires that article.

(c) The history-sheet of the petitioner was before the District Magistrate when he made the order of detention and though the District Magistrate stated in his affidavit in reply that beyond the three incidents mentioned in the grounds of detention he did not take any other material in the history-sheet into account in passing the order of detention, it was impossible to say that he was not influenced by such other material and since no opportunity was given to the petitioner to make an effective representation against such other material, the order of detention was in contravention of Article 22(5) of the Constitution and Section 8, subsection (1) of the Act and was on that account invalid.

(d) The history-sheet of the petitioner which contained other relevant material in regard to the petitioner in addition to the three incidents referred to in the grounds of detention was before the State Government when it approved the order of detention and in the absence of any statement to the contrary on behalf of the State Government in the affidavit in reply, it must be inferred that the State Government took such other material into account in approving the order of detention. This was contrary to the constitutional mandate in Article 22(5) of the Constitution and the legal mandate in Section 3 read with Section 8 of the Act and it vitiated the order of approval made by the State Government and rendered the detention of the petitioner illegal.

4. These were the main grounds of challenge urged by Mr. R. K. Jain on behalf of the petitioner. We shall proceed to examine them.

5. We will first consider the constitutional background against which the Act has been enacted and then refer to the material provisions of the Act. The relevant article of the Constitution having a bearing on this question is Article 22. This article has been analysed in more cases than one by this Court and it is clear from the decided cases that this article provides various safeguards calculated to protect personal liberty against arbitrary restraint without trial. These safeguards cannot be regarded as substantial. They are essentially procedural in character and their efficacy depends on the care and caution and the sense of responsibility with which they are regarded by the detaining authority. Two of these safeguards, which relate to the observance of the principles of natural justice and which *a fortiori* are intended to act as a check on arbitrary exercise of power, are to be found in Article 22(5) of the Constitution. This provision of the Constitution introduces two procedural requirements embodying the rule of *audi alteram partem* to a limited but a crucial and

compulsive extent by providing that :

> When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

The constitutional imperatives enacted in this article are two-fold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. But, what is the content of these safeguards ? What does the word 'grounds' mean ? Does it mean only the final conclusions reached by the detaining authority on which alone the order of detention can be made, or does it include the basic facts and materials from which the conclusions justifying the order of detention are drawn by the detaining authority ? What is the inter-relation between the requirements of the first and the second safeguards ? Is the efficacy of the second safeguard violated by non-observance of the requirement of the first safeguard ? If all the 'grounds' which weighed with the detaining authority are not communicated to the detenu, does it constitute merely a breach of the first safeguard or does it also involve the violation of the second ?

6. The answer to these questions does not present any serious difficulty if only we consider the reason why the grounds are required to be communicated to the detenu 'as soon as may be' after the detention. Obviously the reason is two-fold. In the first place, the requirement of communication of grounds of detention acts as a check against arbitrary and capricious exercise of power. The detaining authority cannot whisk away a person and put him behind bars at its own sweet will. It must have grounds for doing so and those grounds must be communicated to the detenu, so that, not only the detenu may know what are the facts and materials before the detaining authority on the basis of which he is being deprived of his personal liberty, but he can also invoke the power of judicial review, howsoever limited and peripheral it may be. Secondly, the detenu has to be afforded an opportunity of making a representation against the order of detention. But if the grounds of detention are not communicated to him, how can he make an effective representation ? The opportunity of making a representation would be rendered illusory. The communication of the grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an effective representation. If this be the true reason for providing that the grounds of which the order of detention is made should be communicated to the detenu, it is obvious that the 'grounds' mean *all the basic facts and materials* which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the

order of detention is based. To quote the words of one of us (Sarkaria, J.) in *Golam* alias *Golam Mallick* v. *State of W. B.*[1]:

> . . . in the context, 'grounds' does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 3 of the Act; nor is its connotation restricted to a bare statement of conclusions of fact. It means something more. That 'something' is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. The basic facts and material particulars, therefore, which are the foundation of the order of detention, will also be covered by 'grounds' within the contemplation of Article 22(5) and Section 8, and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against the public interest.

This has always been the view consistently taken by this Court in a series of decisions. It is not necessary to burden this judgment with citation of all these decisions. It would be sufficient if we quote the following observations of Patanjali Sastri, C.J., in *Ram Krishan Bhardwaj* v. *State of Delhi*[2] :

> . . . the petitioner has the right under Article 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.

Venkatarama Ayyar, J., also pointed out in *Shamrao Vishnu Parulekar* v. *District Magistrate, Thana*[3] that construing the words 'grounds on which the order has been made' in their natural and ordinary sense,

> they would include **any information or material on which** the order was based. The Oxford Concise Dictionary gives the following meanings to the word 'ground': 'Base, foundation, motive, valid reason'. On this definition, **the materials** on which the District Magistrate considered that an order of detention should be made could properly be described as grounds therefor. (emphasis supplied)

It is, therefore, clear that nothing *less than all* the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detenu in making an early, yet comprehensive and effective, representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the Constitution-makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as the Maintenance of Internal Security Act, 1971.

7. We may now refer to the provisions of the Maintenance of Internal Security Act, 1971. Section 3, sub-section (1) confers power of

1. (1975) 2 SCC 4: 1975 SCC (Cri) 370.
2. 1953 SCR 708: AIR 1953 SC 318: 1953 Cri LJ 1241.
3. 1956 SCR 644: AIR 1957 SC 23: 1957 Cri LJ 5.

preventive detention on the Central and State Governments in the following terms :

> The Central Government or the State Government may,—
>
> (a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to—
>
> (i) the defence of India, the relation of India with foreign powers, or the security of India, or
>
> (ii) the security of the State or the maintenance of public order, or
>
> (iii) the maintenance of supplies and services essential to the community, or
>
> (b) * * * *
>
> it is necessary so to do, make order directing that such person be detained.

Sub-section (2) of Section 3 vests this power of preventive detention also in a District Magistrate by enacting that a District Magistrate "may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (*a*) of sub-section (1), exercise the power conferred by the said sub-section". But when an order of detention is made by a District Magistrate, sub-section (3) of Section 3 requires that :

> . . . he shall forthwith report the fact 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 shall remain in force for more than twelve days from the making thereof unless in the meantime it has been approved by the State Government.

Sections 4, 5, 6 and 7 are not material for the purpose of the present petition and we need not refer to them. Section 8 is important and it may be reproduced as follows :

> (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention, communciate 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 to the appropriate Government.
>
> (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Section 9 provides for the constitution of an Advisory Board and Section 10 lays on obligation on the appropriate Government, in every case where an order of detention has been made, to place before the Advisory Board, within thirty days from the date of detention under the order, "the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3". The Advisory Board is required by Section 11, sub-section (1) to submit its report to the appropriate Government within ten weeks from the date of detention after considering the materials placed before it and after calling for such further information as it may deem necessary, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person. Where the Advisory Board reports that there is in its opinion no sufficient cause for the detention of the person concerned,

the appropriate Government is obliged under Section 12, sub-section (2) to revoke the order of detention. If, on the other hand, the opinion of the Advisory Board is that there is sufficient cause for the detention, the appropriate Government may under Section 12, sub-section (1) confirm the order of detention and continue the detention or revoke the order of detention as it thinks fit on a consideration of all the facts and circumstances which are before it. These are the material provisions of the Act which have a bearing on the determination of the question arising in this petition.

8. Now it is clear on a plain reading of the language of sub-sections (1) and (2) of Section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner, as set out in sub-clauses (i), (ii) and (iii) of clause (*a*) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of Section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in *State of Madras* v. *V. G. Row*[4] that preventive detention is "largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *Rex* v. *Halliday*[5], namely, that "the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position,

4. 1952 SCR 597 : AIR 1952 SC 196. 5. 1917 AC 260.

experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a *quasi-judicial* power. It was, however, sought to be contended on behalf of the petitioner, relying on the observation of this Court in *Bhut Nath Mete* v. *State of W. B.*[6] that the exercise of the power of detention "implies a *quasi-judicial* approach", that the power must be registered as a *quasi-judicial* power. But we do not think it would be right to read this observation in the manner contended on behalf of the petitioner. This observation was not meant to convey that the power of detention is a *quasi-judicial* power. The only thing which it intended to emphasise was that the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention.

9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. *Emperor* v. *Shibnath Bannerji*[7] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose: such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner

6. (1974) 1 SCC 645: 1974 SCC (Cri) 300. 7. AIR 1943 FC 75: 1944 FCR 1: 45 Cri LJ 341.

of Police did in *Commissioner of Police* v. *Gordhandas Bhanji*[8] and the officer of the Ministry of Labour and National Service did in *Simms Motor Units Ltd.* v. *Minister of Labour and National Service*[9], the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded 'on materials which are of rationally probative value'. *Machindar* v. *King*[10]. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *Pratap Singh* v. *State of Punjab*[11]. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.

10. There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharp* v. *Wakefield*[12] :

> . . . when it is said that something is to be done within the discretion of the authorities . . . that something is to be done according to the rules of reason and justice, not according to private opinion . . . according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.

So far as this ground is concerned, the courts in the United States have gone much further than the courts in England or in this country. The United States courts are prepared to review administrative findings which are not supported by substantial evidence, that is by "such relevant findings as a reasonable man may accept adequate to support a conclusion". But in England and in India, the courts stop short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If", to use the words of Lord Greene, M.R., in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*[13] words which have found approval of the House of Lords in *Smith* v. *West Ellor Rural District Council*[14] and *Fawceit Properties Ltd.* v.

8. 1952 SCR 135 : AIR 1952 SC 16.
9. (1946) 2 All ER 201.
10. AIR 1950 FC 129 : 51 Cri LJ 1480 : 1949 FCR 827.
11. AIR 1964 SC 72 : (1964) 4 SCR 733.
12. 1891 AC 173, 179.
13. (1948) 1 KB 223 : (1947) 2 All ER 680.
14. 1956 AC 736 : (1956) 1 All ER 855.

Buckingham County Council[15] — "the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts". *Ross* v. *Papadopollos*[16]. The power of the Court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the Legislature has confided in it. It is on this ground that the order of preventive detention made by the District Magistrate in *Debu Mahto* v. *State of West Bengal*[17] was struck down by this Court. There, in that case, one single solitary act of wagon breaking was relied upon by the District Magistrate for reaching the satisfaction that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services to the community, it was necessary to detain him. This Court pointed out subject to certain reservations that it was difficult to see how "one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking". This Court did not go into the adequacy or sufficiency of the grounds on which the order of detention was based, but merely examined whether on the grounds given to the detenu, any reasonable authority could possibly come to the conclusion to which the District Magistrate did. It is true that this ground in a sense tends to blur the dividing line between subjective satisfaction and objective determination but the dividing line is very much there howsoever faint or delicate it may be, the courts have never failed to recognise it.

11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. "Law has reached its finest moments", said Justice Douglas, "when it has freed man from the unlimited discretion of some ruler, some . . . official, some bureaucrat . . . . Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions". *United States* v. *Wunderlick*[18]. And this is much more so in a case where personal liberty is involved. That is why the courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds.

12. The next question which then arises for consideration is whether Section 3 of the Act in so far as it empowers the detaining authority to exercise the power of detention on the basis of its subjective

15. 1961 AC 636 : (1960) 3 All ER 503.
16. (1958) 1 WLR 546 : (1958) 2 All ER 28.
17. (1974) 4 SCC 135 : 1974 SCC(Cri) 274.
18. (1951) 342 US 98.

satisfaction imposes unreasonable restrictions on the fundamental rights of the petitioner under clauses (*a*) to (*d*) and (*g*) of Article 19, and is, therefore, ultra vires and void. The view taken by the majority in *A. K. Gopalan* v. *State of Madras*[19] was that Article 22 is a self-contained code, and therefore, a law of preventive detention does not have to satisfy the requirements of Articles 14, 19 and 21. This view came to be considered by this Court in three subsequent decisions to all of which one of us (P. Jaganmohan, Reddy, J.) was a party. In *Rustom Cavasjee Cooper* v. *Union of India*[20], it was held by a majority of judges, only Ray, J., as he then was, dissenting, that though a law of preventive detention may pass the test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. The ratio of the majority judgment in *R. C. Cooper's case* was explained in clear and categorical terms by Shelat, J., speaking on behalf of seven judges in *Shambhu Nath Sarkar* v. *State of West Bengal*[21]. The learned Judge said : [SCC p. 879 : SCC (CRI) p. 641, para 39]

> In **Gopalan's case** (supra) the majority court had held that Article 22 was a self-contained code and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14 and 21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(a)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtainable under clause (5) of that Article. In **R. C. Cooper v. Union of India** the aforesaid premise of the majority in **Gopalan's case** (supra) was disapproved and therefore it no longer holds the field. Though **Cooper's case** dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in **Gopalan's case** to be incorrect.

Subsequently in *Haradhan Saha* v. *State of West Bengal*[22], a Bench of five judges, after referring to the decisions in *A. K. Gopalan's case* and *R. C. Cooper's case* and pointing out the context in which *R. C. Cooper's case* held that the acquisition of property directly impinged the right of the bank to carry on business, other than banking, guaranteed under Article 19 and Article 31(2) was not a protection against the infringement of that guaranteed right, proceeded on the assumption that the Act which is for preventive detention has to be tested in regard to its reasonableness with reference to Article 19. That decision accepted and applied the ratio in *Shambhu Nath Sarkar's case* as well as *R. C. Cooper's case* to both of which Ray, C.J., was a party. This question, thus, stands concluded and a final seal is put on this controversy and in view of these decisions, it is not open to any one now to contend that a law of preventive detention, which falls within Article 22, does not have to meet the requirement of Article 14 or Article 19. Indeed, in *Haradhan Saha's case*, this Court proceeded to consider the challenge of Article 19 to the validity of the Act and held that the Act did not violate any of the constitutional guarantees embodied in Article 19 and was valid. Since this Court negatived the challenge to the validity of the Act on the ground of infraction of Article 19 and upheld it as a valid piece

19. 1950 SCR 88 : AIR 1950 SC 27 : 51 Cri LJ 1383.
20. (1970) 3 SCR 530 : (1970) 1 SCC 248.
21. (1973) 1 SCC 856 : 1973 SCC(Cri) 618.
22. (1975) 3 SCC 198 : 1974 SCC(Cri) 816.

of legislation in *Haradhan Saha's case,* the petitioner cannot be permitted to reagitate the same question merely on the ground that some argument directed against the constitutional validity of the Act under Article 19 was not advanced or considered by the Court in that case. The decision in *Haradhan Saha's case* must be regarded as having finally laid at rest any question as to the constitutional validity of the Act on the ground of challenge under Article 19.

13. That disposes of grounds (*a*) and (*b*) and we must now proceed to consider ground (*c*). Now before we consider ground (*c*), we must deal with an objection raised by Counsel on behalf of the State, which, if well founded, would cut short an inquiry into this ground. Counsel on behalf of the State submitted that though the District Magistrate in his affidavit in reply admitted that besides the three incidents referred to in the grounds of detention, other material was also placed before him, he stated on oath that he did not take such other material into account in making the order of detention and this statement on oath made by him must be accepted as correct and that should be an end to all further inquiry by the Court. He strenuously protested against the Court requiring the State to produce the history-sheet of the petitioner containing other material which was before the District Magistrate. His argument was that it was not competent to the Court to probe further into the matter for the purpose of examining what was the nature of the other material before the District Magistrate and whether he was influenced by such other material in making the order of detention. This claim made by Counsel on behalf of the State is indeed a bold claim calculated to shut out judicial intrusion merely on the strength of *ipse dixit* of the detaining authority. We cannot countenance such a claim. Indeed, in *Daktar Mudi* v. *State of West Bengal*[23] a similar claim was made on behalf of the State of West Bengal and it was negatived by this very Bench speaking through one of us (P. Jaganmohan Reddy, J.) in the following words : [SCC pp. 303-304, paras 5 & 6 ; SCC (CRI) pp. 911-912]

> It was contended by Mr. Mukherjee on behalf of the State Government that this Court ought not look into the record for satisfying itself as to whether the District Magistrate could have arrived at the conclusion when he says he has arrived at that satisfaction only on the grounds mentioned in the detention order. We do not think that this would be a correct approach. Where the liberty of a subject is involved and he has been detained without trial, and a law made pursuant to Article 22 which provides certain safeguards, it is the duty of this Court as the custodian and sentinel on the ever vigilant guard of the freedom of an individual to scrutinize with due care and anxiety that this precious right which he has under the Constitution is not in any way taken away capriciously, arbitrarily or without any legal justification.
>
> This Court has held that where grounds are furnished to the detenu those grounds must not be vague and must be such as to enable him to make a proper and effective representation, against his detention. This Court has further held that where there are several grounds, even if one ground is vague, then it is difficult to say whether the ground which is vague and in respect of which the detenu could not make an effective representation did not influence the mind of the detaining authority in arriving at his subjective satisfaction that the detenu would in future be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. If the detention order is held invalid

23. AIR 1974 SC 2086 : (1975) 3 SCC 301 : 1974 SCC (Cri) 909.

on this count, it would be equally so in a case where there are other materials on which the detaining authority could have been influenced in arriving at his subjective satisfaction but which he has not mentioned in the grounds of detention, nor communicated them to the detenu. In such circumstances whether the other materials on record had any effect on the mind of the detaining authority cannot be accepted solely on his statement, because to admit that he alone has such a right would be to accept that the mere **ipse dixit** of the detaining authority would be sufficient and cannot be looked into. There is a possibility that certain materials on record would disclose that the activities of the detenu are of a serious nature having a nexus with the object of the Act, namely, the prevention of prejudicial acts affecting the maintenance of supplies and services essential to the community, and having proximity with the time when the subjective satisfaction forming the basis of the detention order had been arrived at. If these elements exist, then the Court would be justified in taking the view that these must have influenced the subjective satisfaction of the detaining authority and the omission to indicate those materials to the detenu would prejudice him in making an effective representation. If so, the detention order on that account would be illegal.

Where the liberty of the subject is involved, it is the bounden duty of the Court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and the subject is not deprived of his personal liberty otherwise than in accordance with law. Section 8(1) of the Act, which merely re-enacts the constitutional requirements of Article 22(5), insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority.

14. Now, here, it was common ground that the history-sheet of the petitioner was placed by the police authorities before the District Magistrate and it was read by him. The history-sheet recited the following facts and particulars :

This does not help him in maintaining the family and as such he became associated with the criminals viz. Kanani Mondal of Krishnapur, Kuren Mondal of Krishnapur. He picked up the habit of committing theft of copper wire and as such he mixed up with Mohini Ranjan Das **alias** Nillan of Uttar Lakshipur, P.S. Koliachak and committed theft of copper wires and there were several theft of transformers from villages like Betrabad, Uttar Lakshipur, Sultanganj, Nandalalpur all under Kuliachack P. S.,

and then proceeded to narrate the three incidents set out in the grounds of detention as "some of his misdeeds". The material which was before the District Magistrate, thus, consisted of the facts and particulars extracted above from the history-sheet in addition to the three incidents set out in the grounds of detention. This material was not disclosed to the petitioner as, according to the statement of the District Magistrate in his affidavit-in-reply, he had not taken it into account in reaching his subjecive satisfaction. The question is whether this statement made by the District Magistrate in his affidavit-in-reply should be accepted as correct. Is there anything in this material which should persuade us to say that the District Magistrate must have been influenced by it and we should not, therefore, accept his assertion at its face value?

15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the *ipse dixit* of the District Magistrate that he was not so influenced and *a fortiori*, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention.

16. But in the present case we do not find that there is any such infirmity vitiating the order of detention against the petitioner. The material in the history-sheet of the petitioner which was not disclosed to him referred to two circumstances. One was that the petitioner had picked up the habit of committing thefts of copper wires and he committed thefts of copper wires and the other was that there were several thefts of transformers from villages like Betrabad, Uttar Lakshipur, Sultanganj and Nandlalpur. So far as the first circumstance is concerned, it was merely a generalisation based on the three incidents referred to in the grounds of detention and it did not refer to any other incidents of theft

of copper wires besides the three enumerated in the grounds of detention. It did not, therefore, constitute any additional material prejudicial to the petitioner which could be said to have gone into the formation of the subjective satisfaction of the District Magistrate and the non-disclosure of it to the petitioner did not have the effect of invalidating the order of detention. The second circumstance was not directed against any activity of the petitioner at all. It merely provided the background of the social malady which must have been exercising the mind of the authority charged with the administration of law and order when it said that there were several thefts of transformers from Betrabad, Uttar Lakshipur, Sultanganj and Nandlalpur villages and it was in the context of this background that the three incidents referred to in the grounds of detention were considered by the District Magistrate. What were alleged against the petitioner were only the three incidents set not in the grounds of detention. The thefts of transformers referred to in the second circumstance were not attributed to the petitioner. They merely provided the backdrop of the prevailing situation in the area and did not constitute material prejudicial to the petitioner which ought to have been disclosed to him. There was, therefore, no material before the District Magistrate, other than the three incidents set out in the grounds of detention, which went into the formation of the subjective satisfaction of the District Magistrate and which ought, therefore, to have been communicated to the petitioner. Ground (*c*) must accordingly be rejected.

17. That takes us to ground (*d*) which impugns the order of approval passed by the State Government under Section 3, sub-section (3) of the Act. This requirement of approval of the State Government imposed by Section 3, sub-section (3) is intended to act as a check on the exercise of the power of detention by the District Magistrate under Section 3, sub-section (2) of the Act. Therefore, *a fortiori* all the basic facts and materials which weighed with the District Magistrate in reaching his subjective satisfaction must be placed before the State Government, so that the State Government can, as a supervisory authority, decide whether the power of detention has been properly or improperly exercised by the District Magistrate. But in addition to such basic facts and materials, which constitute the grounds of detention, the District Magistrate is also required to send to the State Government under Section 3, sub-section (3) "such other particulars as in his opinion have a bearing on the matter". Obviously, these "other particulars" would be different from the basic facts and materials which constitute the grounds of detention and would not be material which has gone into the formation of the subjective satisfaction of the District Magistrate. If there are any materials of such a nature as could reasonably be said to have influenced the District Magistrate in arriving at his subjective satisfaction, they would be part of the grounds of detention and not "other particulars". It is not possible to categorise precisely what these "other particulars" can be, but they may include particulars relating to the background of the circumstances in which the District Magistrate reached his subjective satisfaction leading to the making of the order of detention or particulars found to be administratively necessary for him to communicate to the State

Government, so that the State Government may be able to effectively discharge its function as an overseeing superior authority while determining whether or not to grant approval to the order of detention made by the District Magistrate. There is nothing in Article 22(5) of the Constitution or in any provision of the Act which requires that these "other particulars" should be communicated to the detenu. The only requirement of communication is in regard to the basic facts and materials which constitute the grounds of detention and if there are "other particulars" besides the grounds of detention which are communicated to the State Government, they need not be disclosed to the detenu. We cannot import any requirement of disclosure in regard to these "other particulars" merely on the basis of a supposed intention of the Legislature when there is nothing in the State which evinces any such intention.

18. The petitioner, however, relied very strongly on the following observations of this Court in *Haradhan Saha's case* (supra) : [SCC p. 206 : SCC (CRI) p. 824, para 23]

> The Preventive Detention Act, 1950, was considered by this Court and it is an established rule of this Court that a detenu has a right to be apprised of all the materials on which an order of detention is passed or approved,

and contended that the detenu was, therefore, entitled to a disclosure not only of the grounds of detention but also of "other particulars" communicated by the District Magistrate to the State Government under Section 3, sub-section (3). We do not think the observations relied upon by the petitioner support his contention. There can be no doubt that when the Court made these observations, what it had in mind was the materials which constituted the grounds of detention and not "other particulars", for the making of the order of detention would be based on the former and not on the latter and so also its approval by the State Government. What the Court meant to say in making these observations was that all the materials on which the order of detention is made or approved, that is, the materials constituting the grounds of detention, must be communicated to the detenu and not that "other particulars" communicated to the State Government under Section 3, sub-section (3) which do not form the basis of the making of the order of detention or its approval should be disclosed to the detenu. The Court could not have intended to say that in addition to the grounds of detention "other particulars" mentioned in Section 3, sub-section (3) should also be communicated to the detenu when there is no requirement to that effect either in Article 22(5) of the Constitution or in any provision of the Act. We may point out that in fact no such question arose for decision in that case and the Court was not called upon to decide whether "other particulars" communicated to the State Government under Section 3, sub-section (3) are required to be disclosed to the detenu. The Court merely reiterated the well-settled proposition that the materials constituting the grounds of detention on which the order of detention is made by the District Magistrate and approved by the State Government must be communicated to the detenu. The observations made by the Court did not go further than this and cannot be read in the manner contended on behalf of the petitioner.

19. Now in the present case, as already pointed out above, the

material from the history-sheet, which was not disclosed to the petitioner, did not form part of the grounds of detention on which the order of detention was made by the District Magistrate and approved by the State Government, but merely constituted "other particulars" communicated by the District Magistrate to the State Government under Section 3, sub-section (3). There was, therefore, no obligation on the District Magistrate or the State Government to disclose this material to the petitioner and the non-disclosure of it to the petitioner did not have the effect of invalidating the approval of the State Government to the order of detention. Ground (*d*) must also, therefore, fail and be rejected.

20. We accordingly dismiss the petition and discharge the rule.

(1975) 2 Supreme Court Cases 100

(Before V. R. Krishna Iyer, R. S. Sarkaria and A. C. Gupta, JJ.)

THE STATE OF MADHYA PRADESH AND OTHERS .. Appellants ;

Versus

TIKAMDAS .. Respondent.

Civil Appeal No. 668 of 1968†, decided on April 22, 1975

Administrative Law — Subordinate legislation — Whether can be made giving retrospective effect — M.P. Foreign Liquor Rules — Rule IV — Amended retrospectively — Whether ultra vires M. P. Excise Act, 1915 — Sections 62 and 63 — Excise

On April 25, 1964 the M. P. Government by virtue of its powers under Sections 62 and 63 of the M. P. Excise Act, 1915 amended M. P. Foreign Liquor Rules which were published on April 25, 1964 but given effect retrospectively from April 1, 1964. On the basis of the amendment a demand for the difference of licence fee was made.

Held :

There is no doubt that unlike legislation made by a sovereign Legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf. (Para 5)

Section 63 specifically states that all rules made and notifications issued under this Act shall be published in the official gazette and shall have effect from the date of such publication or from such other date as may be specified in that behalf. By this the Legislature has clearly empowered its delegate, the State Government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. Therefore, ante-dating the effect of the amendment of Rule IV is not obnoxious to the scheme or ultra vires Section 62. (Para 5)

Excise — M. P. Excise Act, 1915 — Foreign Liquor Rules — Rule IV as amended in 1964 — Enhancement of licence fee — Liability to pay difference of fees on the balance of stock — Balance stock whether covered by the enhanced fee

The respondent held a licence for the sale of foreign liquor issued under

†From the Judgment and Order, dated March 2, 1965 of the Madhya Pradesh High Court in Misc. Petition No. 348 of 1964.