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DETENTION LAW: A "MOST BENEFICENT" MEASURE JUDICIAL TRIAL ONLY DELAYS "HUMANE AND COMPETENT JUSTICE"

The continuance of the Preventive Detention Act for another year—for the present—was a foregone conclusion, and it caused no surprise in any quarter. What did cause some surprise was that the Home Minister, Dr. Katju, who had assumed such a critical attitude to the former regime's Defence of India regulations which were in force in war-time, excelled himself in flippant cynicism, as Mr. Frank Anthony remarked, while dealing with Freedom of Person. He began by saying that he had no use for any "copy-book maxims" about inviolability of personal liberty. He warned the Opposition against pointing to any Constitution like that of the U. S. A. investing personal freedom with special sanctity. Nor would he have any patience with a recital of the invariable practice followed in countries like the United Kingdom not to interfere with the liberty of individuals except in war or a similar other exacting emergency. He adjured members of Parliament to have done with such doctrinairism. Nevertheless, he found Opposition members indulging in these platitudes. Acharya Kripalani, playing the role of the Leader of the Opposition, reminded him of the principles which govern all democratic countries in this matter, and so did Mr. Sadhan Gupta, a Communist member, saying that "there was no country which had resorted to preventive detention in peace-time; it was only in times of grave emergency like that of war when this weapon was used"; and that "the Government had enough powers under the ordinary law to deal with people who indulged in violence." To Dr. Katju's plea to take a realistic view of the situation Acharya Kripalani could only reply that the fact was that "the ideas which were sacred before the liberation of the country had now become outmoded" in the eyes of those now in power; otherwise, the Home Minister could not advance the very same reasons which were put forward by the alien Government in defending curtailment of personal liberty when we were fighting for political freedom, and which the Congress party itself was foremost in refuting.

Pouring contempt on the current general principles which guide all democratic governments in throwing men into jails on mere suspicion and without giving access to

the courts to look into the charges, Dr. Katju evolved alternative principles of his own and invited Parliament to accept them. His thesis was that prevention of a crime before it is committed was far better than to wait till the crime is actually committed and then go about detecting the criminal and punishing him. "It was no good allowing people to commit a crime and then punishing them heavily for it if the mischief could be prevented at its very source." The Detention Act enables the Government to take such preventive action and thus serves "a most beneficent purpose". It is "a most beneficent purpose," because the Act makes it possible for the Government to take quick action against putative offenders and saves society from their subversive activities. And it is good for the would-be criminal also. It is true that this process dispenses with a formal trial in a court of law. But it is to his advantage in the end. Under the ordinary law an accused person would remain under trial for twelve months or even longer. This long drawn-out ordeal is cut short by the Preventive Detention Act. Under it, when a State Government gets some information in its possession, which it thinks reliable, it places the man concerned in detention, and the matter goes immediately before an Advisory Board. The Board, having got the grounds on which the action was taken, goes into the case and decides it within two months. It is only when the Board finds that the grounds are substantial that the detention continues; otherwise the man is released. Thus there is in all essence a trial, and a quick trial at that. It is a trial "conducted in a competent and humane manner." Thus all parties concerned—the executive Government, society at large, and the individual himself—gain by this short-cut to justice. Why then rail against the Act?

Dr. Katju then explained the elaborate safeguards which the Act provided in the interest of personal liberty. First of all, the State Governments use the Act "with the fullest possible care and circumspection." In fact, Dr. Katju was "astonished at the moderation of the State Governments in dealing with difficult situations" and for his own part felt that "it would have been right if they

had been a bit stricter," i. e., freer with the employment of the powers vested in them by the Act. In 1952-53 only some 700 persons were ordered to be detained; 700 in a population of 36 crores. Is not the proportion of detainees infinitesimal? But even assuming that the State Governments were on any occasion arbitrary in the use of their powers, there were enough checks and counterchecks in the Act itself to prevent their misuse. "Where the Advisory Boards found the slightest opportunity of intervening, they did so." But this is not all. "At higher levels, there are the High Courts and the Supreme Court to scrutinise cases where detention is alleged to have been ordered on insufficient or unjustifiable grounds." (This Dr. Katju had the temerity to assert in face of the fact that in case after case the courts have plaintively stated that the Act gives them no power to examine whether the grounds alleged against the detainees were in fact true or false and whether they were sufficient or not to warrant detention. This is of course a necessary consequence of abolishing habeas corpus in the case of these people, and yet Dr. Katju has no hesitation in saying that the courts can examine whether the grounds urged are justifiable or otherwise.) As a result of these safeguards, Dr. Katju said, there were barely 150 persons in detention at present, admittedly a small number compared to the size of the country. Thus, the Act being a distinctly beneficial measure all round, he indicated that it might usefully be placed permanently on the statute book, instead of keeping it there for a year or two and then going on periodically renewing it. From his premise that prevention of a crime is better than punishment following the commission, his reasoning must be admitted to be absolutely sound.

The Government's resolution recommending the continuance of the Act for a year more was passed in the House of the People by 286 votes to 91 and in the Council of States by 47 votes to 14. The authorities may well claim that detention without trial in peace-time has the support of an overwhelming majority of the representatives of the people if even such a majority can justifiably abridge fundamental human rights. But as Acharya Kripalani pointed out, that could be no consolation to any right-thinking person, for history shows that a democracy too can be totalitarian; it can crush people as effectively as any king or emperor. He referred with much warmth of feeling to the absence from Parliament of Dr. Syama Prasad Mukerjee who organised opposition to the Act in the House of the People last year and who subsequently met his death in detention. In the Council of States Dr. Kunzru rose to his feet thrice to speak on the resolution, but had no opportunity to do so. He had therefore to content himself with giving a silent adverse vote.

HABEAS CORPUS PETITIONS

A Fresh Detention Order to be based on Fresh Facts INTERPRETATION OF "FRESH FACTS" IN SEC. 13 (2)

The Patna High Court, in *Rajendra Nath v. State of Bihar*, decided on 26th March 1953 (A.I.R. 1953 Patna 351),

had occasion to interpret the import of the words "fresh facts" in sec. 13 (2) of the Preventive Detention Act, which provides that if, after a detention order has either expired after the maximum duration of one year or has been revoked within that period, a fresh detention order is to be made, it must be based on fresh facts which have arisen or come to light after the expiry or revocation of the previous order.

Mr. Rajendra Nath Pandey had been detained for acting in a manner prejudicial to the maintenance of supplies essential to the community, but this order of detention was revoked some time in December 1952. A few days later, however (i. e., on 5th January 1953), he was again placed under detention by a fresh order. Some of the grounds of detention in the two orders were common, but the new order also included some new grounds. In the habeas corpus petition filed in the High Court the facts mentioned in the grounds were questioned. To this the Court made a short reply that it was not permissible for the Court to go into questions of fact. It said: "This Court cannot go into facts to find out whether the facts were sufficient for the satisfaction of the State Government or not."

Then came the interpretation of "fresh facts" required to give validity to a fresh detention order. It was contended on behalf of the petitioner that "if the grounds mentioned in the fresh order recite the previous grounds as also grounds based on fresh facts, the order of detention must show, on the very face of it, that the satisfaction of the detaining authority was based upon those fresh facts." The Court saw no force in this contention. His Lordship Sinha J., with whom Das J. agreed, said:

The question is whether the grounds given (in the new order of detention) should be dissected and it should be found out whether it was on the previous facts alone or the fresh facts which have arisen after the revocation or on a consideration of both that the satisfaction of the detaining authority was founded. When the detaining authority is in possession of some fresh facts, both past and present, it is on the aggregate effect of all the facts taken together that the detaining authority has got to make up its mind, and it cannot be said with any reasonableness that the past activities of men cannot be taken into account on which the satisfaction of the State Government should be based as to whether or not a particular person should be prevented from acting in a particular manner within the meaning of the Preventive Detention Act. The proposition is now beyond question that it is open to the detaining authority to take into consideration and apply its mind afresh to the past activities as also to the activities which came to light after the revocation of the previous order of detention. When fresh grounds based on fresh facts have been incorporated in the same, in my opinion it is not at all necessary, under provisions of sec. 13 (2) of the Act, for the detaining authority to say expressly that its satisfaction about

the necessity of passing a fresh order of detention was based on fresh facts.

PUBLIC SAFETY ACTS

An Internment Order Sustained

INTERPRETATION OF "REASONABLE RESTRICTIONS"

Mr. Haren Kalita was served with an order of internment under the Assam Maintenance of Public Order Act, 1947. The order directed that for a period of twelve months he should reside within the limits of the Gauhati town, that he should report in person once a week to a police officer, that he should not associate with subversives, etc.

The order was challenged in the High Court on the ground that it was inconsistent with Art. 19 (1) (d) and (e) of the Constitution and was not saved by cl. (5) of the Article which permitted "reasonable restrictions" to be imposed upon the exercise of the rights of freedom of movement and residence. In support two full bench decisions of the Patna and Bombay High Courts were cited, "where it was held in respect of legislations containing in some measure analogous provisions that the legislations were void." In *Brijnandan Sharma v. State of Bihar* (A. I. R. 1950 Patna 322) Meredith C. J. held that the restrictions were not reasonable for the following reasons, as summarised in the instant case by the Chief Justice of the Assam High Court: -

In the case in question, the legislature not only left it to the satisfaction of the State Government to impose restrictions upon the rights of the citizens, but the Act did not provide for any opportunity being given to the individual affected to vindicate himself or challenge the order, or even to learn about the reasons of the order. The Act did not even provide for the service upon him of the grounds of the order.

Chagla C. J., in *Jesingbhai Ishwarlal v. Emperor* (A. I. R. 1950 Bom. 363), similarly expressed himself.

In that case also it appears that the person concerned, against whom the order of externment was made, had no right to be heard in his defence. There was no obligation upon the authorities to tell him what he was charged with, or what were the grounds against him which made it incumbent upon the Government to ask him to leave his home-town. Nor was there any obligation upon the authorities to hear the person in his defence.

But these factors which laid these legislations open to constitutional infirmity were absent from the Public Safety Act of Assam. For this Act provides that when a restrictive order is made against a person, the authority making the order shall communicate to him the grounds on which the order has been made so as to enable him to make a representation against the order, and the State is required to place before the Advisory Council the grounds and the representation. The Advisory Council then submits its report to the State Government, though

the Advisory Council is endowed only with advisory powers. The aggrieved person being given the right to be heard, the Assam High Court ruled that the Patna and Bombay decisions were not applicable to the facts of the instant case.

However, a further question was raised. Although the Act limits the duration of the restrictive order to one year, a proviso to sec. 3 makes it possible for the State Government to extend the duration by similar periods any number of times. It provides that "the State Government may, if and so often as they may deem necessary or expedient, ... direct that the order should continue in force for a further period not exceeding one year at a time," after giving an opportunity to the person concerned to make a representation and after referring the matter to the Advisory Council. The proviso was vehemently attacked as giving to the State Government practically full power to continue the order in force for any length of time. On this point Sarjoo Prasad C. J. said:

The proviso does apparently give power to the State Government to extend the date of the order passed under sec. 2 (1) of the Act almost indefinitely, and the mere observance of the formality of having a representation from the person concerned or of making a reference to the Advisory Council will not be of any substantial advantage to the person affected, because there is no provision in the Act that the report of the Council will be binding on the State Government.

But because this proviso did not affect the petitioner, the Court did not think it necessary to examine it in detail and pronounced on its validity. In the result the application was dismissed (29th April 1953).

SHOLAPUR MILLS ORDINANCE

Held Invalid by the Supreme Court

EXPROPRIATION IN SUBSTANCE

The Constitution Bench of the Supreme Court on 18th December held by a unanimous and concurring judgment that the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance of 1950, subsequently replaced by an Act of Parliament, authorizing the directors appointed by the Government to take over the assets and management of the company, offended against the provisions of Article 31 (2) of the Constitution and was therefore void.

The Bench, consisting of the Chief Justice, Mr. Patanjali Sastri, Mr. Justice Mahajan, Mr. Justice S. R. Das, Mr. Justice Vivian Bose and Mr. Justice Gbulam Hasan, gave the decision on an appeal against an order of the Bombay High Court.

Mr. Justice Mahajan, with whom the other judges concurred, said "the impugned statute had overstepped the limits of legitimate social control legislation and has infringed the fundamental rights of the company guaran-

ted to it under Article 31 (2) of the Constitution " which required compensation to be paid when the State acquired or took possession of private property.

The question arose originally from a petition under Article 32 of the Constitution filed by Chiranjit Lal Chowdhry, an ordinary shareholder of the company, challenging the Act as being in violation of the fundamental rights under Articles 14, 19 and 31 of the Constitution. The Supreme Court by its decision on 4th December 1950 held by a majority judgment of three to two that "the presumption in regard to 'the constitutionality of the Act had not been disproved by the petitioner and that it had not been proved that the impugned statute was a hostile or a discriminatory piece of legislation against him." The minority then held that the impugned statute was void as it abridged the petitioner's fundamental rights under Article 14 of the Constitution.

The present suit, filed by Dwarkadas Shrinivas, a preference shareholder of the company, was decided by the Bombay High Court during the pendency of Chiranjit Lal Chowdhry's petition in the Supreme Court.

The Sholapur Spinning and Weaving Co. Ltd. was incorporated under the Indian Companies Act. In 1949, there was accumulation of stocks and financial difficulties. In order to overcome this situation the directors decided to close the mills and gave notice to workers that the mills would be closed on 27th July 1949.

This created a labour problem and to solve it the Bombay Government appointed a controller to supervise the affairs of the mills under the Essential Supplies Emergency Powers Act, 1946. On November 9, 1949, the controller, in order to resolve the deadlock, decided to call in more capital and he asked the directors of the company to make a call of Rs. 50 per share on the preference shareholders, the amount remaining unpaid on each of the preference shares.

When the directors refused to comply with this requisition, the Governor-General on January 9, 1950 promulgated the impugned ordinance, under which the mills could be managed and run by directors appointed by the Central Government. On the same day, the Central Government acting under section 15 of the ordinance delegated all its powers to the Government of Bombay, which appointed certain directors to take over the assets and management of the mills.

Pursuant to a resolution making a call of Rs. 50 on each of the preference shares, a notice was addressed to the plaintiff, Dwarkadas Shrinivas, who held preference shares, to pay Rs. 1,62,000, the amount to be paid before April 3, 1950. Thereupon the plaintiff, instead of meeting the demand, filed a suit in the Bombay High Court on March 23, 1950, in a representative capacity, challenging the validity of the ordinance and questioning the right of directors appointed by the Government to make the call. The suit was dismissed on 28th June 1950 by the High Court which held that by force of the ordinance the State had neither acquired the property of the plaintiff nor of

the company, and that the State was only supervising the affairs of the company through its nominated directors.

The principal questions that arose for the consideration of the Supreme Court were : first, whether the provisions of the ordinance for taking over the management and administration of the company contravened the provisions of Article 31 (2) of the Constitution and, secondly, whether the ordinance as a whole or any of its provisions infringed Articles 14 and 19 of the Constitution.

Dealing with these questions, Mr. Justice Mahajan said that to decide the two issues it was necessary to examine with some strictness the substance of the legislature for determining what it was that the legislature had really done. The Court, when such questions arose, was not influenced by the mere appearance of the legislation.

In relation to constitutional prohibitions, His Lordship said it was clear that the legislature could not disobey the prohibition merely by employing indirect methods of achieving exactly the same result. Therefore, in all such cases the Court had to look behind the names, forms and appearance to discover the true character and nature of the legislation.

After examining the provisions of the ordinance, Mr. Justice Mahajan said that the result of its provisions was that all the property and effects of the company passed into the hands of the persons nominated by the Central Government who were not members of the company or its shareholders, or in any way connected with it, and who were merely "creatures" of the Central Government or its dummies. The combined effect of the provisions of sections 3, 4 and 12 was that the Central Government became vested with the possession and control of the property of the company, and the normal function of the company under its articles and the Indian Companies Act came to an end.

The shareholders' most valuable right, His Lordship observed, to appoint directors to manage the affairs of the company and be in possession of its property and effects was taken away. In substance, therefore, by the provisions of this ordinance, the company and its shareholders as well as its directors and managing agents had been completely deprived of the possession of the property and effects of the company.

Dealing with the Attorney General's contention on behalf of the State that the effect of the ordinance was that the Central Government had taken over the superintendence of the affairs of the company without in any way disturbing its title in the property and that the impugned legislation was merely regulative in character, Mr. Justice Mahajan said :

The field of superintendence has to be demarcated from the field of eminent domain. It is one thing to superintend the affairs of a concern and it is quite another to take over the affairs and then proceed to carry on its trade through agents appointed by the State itself. It seems to me that under the guise of

superintendence the State is carrying on the business or trade for which the company was incorporated with the capital of the company, but through its own agents who take orders from it and are appointed by it and in the appointment and dismissal of whom the shareholders have absolutely no voice.

In the present case, practically all the incidents of ownership have been taken over by the State and all that has been left with the company is mere paper ownership.

It seemed to him, Mr. Justice Mahajan observed, that our Constitution, subject to certain exceptions, had guaranteed the fullest protection to private property. It had not only provided that no persons could be deprived of property by the executive without legislative sanction, but it had further provided that even the legislature could not deprive a person of his property unless there was a public purpose and then only on payment of compensation.

Dealing with the interpretation of Article 31 of the Constitution and its correlation to Article 19, which guarantees to the citizen the right to acquire, hold and dispose of property, His Lordship said that the true approach to this question was that these two Articles really dealt with two different subjects and one had no direct relation with the other; namely, Article 31 dealt with the field of "eminent domain" and the whole boundary of that field was demarcated in that Article.

Article 31 (1), His Lordship said, declared the first requisite for the exercise of the power of "eminent domain." It guaranteed that a person could not be deprived of property by an executive fiat and that it was only by the exercise of its legislative powers that the State could deprive a person of his property. Article 31 (2) defined the powers of the legislature in the field of "eminent domain." It declared that private property should not be taken over by the State under a law unless the law provided for compensation for the property taken. Clause (3) of the Article placed an additional limitation on State laws enacted on the subject, while clause (1) limited the justiciability of the quantum of compensation in certain cases. Clause (5) was the saving clause. It saved from the operation of Art. 31 (2) laws made on certain subjects.

Referring to Article 31 (5) of the Constitution, Mr. Justice Mahajan said that this saving clause comprehensively included within its ambit all the powers of the State in exercise of which it could deprive a person of property without payment of compensation. From the language employed in the different sub-clauses of Article 31, His Lordship said, it was difficult to escape the conclusion that the words "acquisition" and "taking possession" used in Article 31 (2) had the same meaning as the word "deprivation" in Article 31 (1).

The result of the above discussion was, Mr. Justice Mahajan observed, that in his opinion Article 31 was a self-contained provision delimiting the field of eminent

domain and Articles 31 (1) and (2) dealt with the same topic of compulsory acquisition of property.

Rejecting the contention that the appellant was entitled to the relief claimed by him as it was the company alone that could complain about the abridgment of its fundamental rights by the ordinance in question His Lordship said that on the finding that the property of the company had in effect been taken possession of under the provisions of the ordinance by the State and that the company had been deprived of it, there was no escape from the conclusion that the impugned ordinance and the statute following it were void, as both of them encroached on the fundamental right of the company under Article 31 (2) of the Constitution.

The judgment held that Chiranjit Lal, as holder of an ordinary share which was fully paid up, stood on a different footing from the present appellant, Dwarkadas Shrinivas, and other preference shareholders like him who were "in imminent danger of losing the shares themselves or of losing valuable property in the nature of money which they will have to pay out in order to meet the call." This being the effect of the ordinance, His Lordship along with the Chief Justice and other judges held that the appellant Dwarkadas Shrinivas was entitled to impugn the constitutionality of the ordinance.

The judgment, allowing the appeal, set aside the decision of the High Court and decreed the plaintiff's suit with costs. Their Lordships did not, however, give any decision on the second question, namely, whether the law was void because it infringed the fundamental rights under Articles 14 and 19 as the decision reached on Article 31 was sufficient to allow the appeal.

The Chief Justice, who had discussed in detail the meaning of Articles 19 and 31 in the judgment delivered in the Subodh Gopal case (vide infra), said that the interpretation applied to this case also and agreed with the decision of Mr. Justice Mahajan.

In separate judgments, Mr. Justice Das, Mr. Justice Bose and Mr. Justice Ghulam Hasan arrived at the same decision, namely, that the statute substantially interfered with the right of enjoyment of property held by the appellant and therefore, being hit by Article 31 (2), it should be declared void. Mr. Justice Das said:

(The Act) has far outstepped the limits of police power and is in substance nothing short of expropriation by exercising the power of eminent domain and as the law has not provided for any compensation it must be held to offend against the provisions of Art. 31 (2).

ZAMINDARI ABOLITION ACT

Orissa Estates Act

MANDAMUS GRANTED IN THREE PETITIONS

The Constitution Bench of the Supreme Court on 18th December unanimously held that the State of Orissa had no power under the Orissa Estates Abolition Act, 1951, to

take over the estate of the zamindars of Sarapgarh and Hamgir.

It held that these zamindaris were not "estates," within the meaning of section 2 (g) of the Act, because the zamindars were not "intermediaries" within the meaning of section 2 (h).

By a majority of three to two, the same Bench held that the definitions in sections 2 (g) and 2 (h) applied to the zamindar of Nagda and, therefore, his estate could be taken over by the State of Orissa.

The judgment of the Court was delivered in three appeals preferred by these zamindars against the decision of the Orissa High Court which had dismissed their writ petitions filed under Article 226 of the Constitution challenging the legality of the notification issued by the State Government for taking possession of their zamindaris.

The Orissa State Legislature passed the Orissa Estates Abolition Act of 1951 on September 28, 1951, and after its constitutional validity had been upheld by the High Court, the State Government, on November 27, 1952, issued a number of notifications under the Act covering a large number of estates including those of the present appellants, and called upon them to deliver possession.

These zamindars, thereupon, filed three writ petitions in the High Court praying in each case for a writ in the nature of a writ of mandamus directing the State of Orissa and the Collector of Sundargar not to interfere with the possession of their respective estates.

The zamindars contended that they were not intermediaries, that their properties were not estates, that the forest areas within their properties were not estates, that the Act did not come under Article 31A of the Constitution and was not entitled to its protection and that the Act was discriminatory and offended against the provisions of Article 14.

The High Court held all these arguments invalid.

Mr. Justice S. R. Das, who delivered the majority judgment of the Supreme Court, held that the State Government had no power to issue a notification in respect of any property unless such property was an "estate" as defined in section 2 (g).

A perusal of the relevant part of the definition would at once show that in order to be an "estate" the collection of mahals or villages should, among other things, be held by the same "intermediary."

An "intermediary," according to the definition of section 2 (h), should be, among other things, "a zamindar, ilaqedar, khoposhdar, or a jagirdar, within the meaning of the Wajib-ul-Arz or any sanad, deed or other instrument." The point to note was, His Lordship observed, that in order to be an "intermediary" it was not enough, if the person was a zamindar, ilaqedar, khoposhdar or jagirdar, but he should fall within one or other of the categories "within the meaning of the Wajib-ul-Arz or any sanad, deed or other instrument."

W. Bengal Revenue Sales Act

The Constitution Bench of the Supreme Court on 17th December, in a unanimous and concurring judgment, held, against a decision of the Calcutta High Court, that section 7 of the West Bengal Revenue Sales (West Bengal Amendment) Act, 1950, was *intra vires* of the Constitution.

The decision of the Court, given on an appeal by the State of West Bengal against Subodh Gopal Bose and others, raised issues of great public and private importance regarding the extent of protection which the Constitution of India accorded to ownership of private property.

The first respondent, Mr. Bose, purchased the entire 24-Parganas collectorate at a sale on January 9, 1942. Under the purchase, the respondent acquired, by virtue of section 37 of the Bengal Revenue Sales Act, 1859, the right "to avoid and annul all under tenures and forthwith to eject all under-tenants" with certain exceptions.

In exercise of his rights, Mr. Bose gave notices of ejectment and brought a suit in 1946 to evict certain under-tenants, including the second respondent in the present appeal. The second respondent went on appeal to the District Judge, contending that his under-tenure came within one of the exceptions referred to in section 37 of the Act.

When the appeal was pending, the West Bengal Revenue Sales (West Bengal Amendment) Act was introduced in the Assembly "to avert large-scale evictions." The Bill was passed into an amending Act on March 15, 1950. By section 7 of the Act, which was under contention before the Court, it was provided that "all pending suits, appeals and other proceedings which had not already resulted in delivery of possession shall abate."

Thereupon the respondent, Mr. Bose, went on appeal to the High Court, raising the constitutional issue that section 7 of the Act was void as abridging his fundamental rights under Article 19 (1) (f) and Article 31 of the Constitution.

The High Court held that section 7 was *ultra vires* of the Constitution.

Three separate judgments delivered by Their Lordships of the Supreme Court dealt elaborately with the various constitutional provisions and agreed on the final decision, namely, to allow the West Bengal appeal.

W. BENGAL LAND DEVELOPMENT ACT

A Provision in the Act Declared Invalid

The Constitution Bench of the Supreme Court on 11th December confirmed a decision of the Calcutta High Court against an appeal from the State of West Bengal and held that the latter part of proviso (b) to section 8 of the West Bengal Land Development and Planning Act, 1948 (which fixed the market value as on December 31, 1946, as the

maximum compensation for lands acquired under it), offended against the provisions of Article 31 (2) of the Constitution.

The impugned Act was passed on October 1, 1948, primarily for the settlement of immigrants into West Bengal from East Bengal. It provided for the acquisition and development of land for public purposes. The West Bengal Settlement Kanungo Co-operative Credit Society Ltd. was authorized to undertake a development scheme and the State of West Bengal, the appellant, acquired and made over certain lands to the Society for the scheme.

Some of the respondents, who were owners of the land thus acquired (Mrs. Bela Banerjee and two others), filed a suit in the court of a subordinate judge on July 23, 1950, against the society for a declaration that the impugned Act was void as it contravened the Constitution.

The State of West Bengal was subsequently impleaded in the suit as a defendant. The suit was transferred to the High Court for deciding the constitutional questions involved and the High Court in its judgment held that the impugned Act as a whole was not unconstitutional or void save as regards two provisions in section 8 which referred to the provision making the declaration of the Government conclusive as to the public nature of the purpose of the acquisition and the limitation of the amount of compensation so as not to exceed the market value of land on December 31, 1946.

The main controversy in the appeal before the Supreme Court centred round the constitutionality of the "condition" in proviso (b) to section 8 of the Act which limits the compensation payable so as not to exceed the market value of the land on December 31, 1946.

The Chief Justice, Mr. Patanjali Sastri, delivering the unanimous verdict of the Court, held that "considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value as on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in the letter and spirit with the requirement of Article 31 (2) of the Constitution. The Chief Justice said :

The fixing of an anterior date for the ascertainment of value may not in certain circumstances be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it. But the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be many years later, cannot but be regarded as arbitrary.

Their Lordships dismissing the Government appeal with costs held the latter part of proviso (b) to section 8 of the impugned Act as unconstitutional and void.

COMMENTS

The Bombay Government's Educational Policy RESULTING IN A VIOLATION OF FUNDAMENTAL RIGHTS

The Bombay Government, in order obviously to promote a wider use of the student's mother tongue and to discourage the use of English, has now issued an order prohibiting admission of non-English-speaking children in Anglo-Indian and European schools, in which instruction is imparted through the medium of English. The order will hit Anglo-Indian schools with particular severity, as these schools contain a very large proportion of children of other communities who desire to acquire efficient knowledge of English through such English-teaching schools.

Under the Constitution special provision is made in Art. 337 for continuing for ten years, though to a reduced extent after the first three, the grants Anglo-Indian schools were formerly receiving. But in making this special concession for the benefit of the Anglo-Indian community, the Constitution has inserted a proviso in this Article to the effect that only those Anglo-Indian schools would be eligible for the concession in which "at least 40 per cent. of the annual admissions are made available to members of communities other than the Anglo-Indian community."

The proviso was inserted, it is evident, with a view to removing a tinge of sectionalism from such schools, and the progressive outlook which inspired this policy was warmly welcomed by leaders of the Anglo-Indian community who were all in favour of liberalisation. They were helped in this by the desire of many non-English-speaking parents to give their children education through English. The result was that in the Bombay State the percentage of non-Anglo-Indian children in these schools was as high as 63. But the recent order of the Bombay Government forbidding entrance of all children other than Anglo-Indian in the schools will have the result of putting the schools out of existence altogether, for unless at least 40 per cent. of the children belong to a non-Anglo-Indian community, they will not receive any grant, and without such grants the so-called Anglo-Indian schools presumably cannot survive. And should they be able to survive even without the grants which have been guaranteed to them in the Constitution, they would be reduced to the status of purely sectarian schools, which the Anglo-Indian community itself does not desire and which the Constitution-makers expressly provided against.

Mr. Frank Anthony, M. P., has in a public statement protested against the order and pointed out the disastrous consequences it will have on the progress of education in general and on the education of the Anglo-Indian community in particular. He says :

These schools are being compelled by this order not only to violate the Constitution, but to disqualify themselves for the receipt of the Government's present grants. The order will strike a death-blow to every

one of about 30 Anglo-Indian schools in the Bombay State, many of which have been in existence for generations and have earned the commendation and appreciation of all sections of the people. The structure of these schools has been built up on a progressive policy of throwing their doors open to all communities. . . . It is not known whether the motive of the Bombay Government is deliberately to destroy these schools and so to efface school education through the medium of English, but the consequence of this order will be just that.

Although Anglo-Indian schools number 30, the order affects over 90 schools, and all communities will suffer as a result of it.

Mr. Anthony then proceeds to point out how the order is violative not only of the right guaranteed to his community but fundamental rights in general. He says that the order is a violation of Art. 29 (2) of the Constitution, which provides:

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Similarly, Mr. Anthony points out that the order is a violation of Art. 30 of the Constitution, which in cl. (1) says:

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Mr. Anthony shows how the Anglo-Indian community's choice "is now being gratuitously fettered by the Bombay State and the right accorded to them under Art. 30 unjustifiably interfered with."

We are prepared to admit that the order was not inspired by a bias against the Anglo-Indian community but by a desire to displace English as a medium of instruction as soon as possible, but seeing how far-reaching, its repercussions will be, the Government should in all fairness cancel the order.

Untouchability (Offences) Bill

SIX MONTHS' IMPRISONMENT

Art. 35 (a) (ii) empowers Parliament, as distinguished from State legislatures, to adopt laws prescribing punishment for acts declared to be offences under the Fundamental Rights Part of the Constitution, and the Article requires Parliament to make such laws as soon as possible. Accordingly, the Government of India has now published a bill prescribing punishment for the offence, so declared in Art. 17, of enforcing any disability arising out of untouchability. The bill enumerates some of the various forms in which untouchability is being practised, involving commission of an offence committed within the meaning of Art. 17, and declares that all these offences shall be cognizable.

The clause relating to penalties says that whoever prevents an untouchable from exercising any right con-

ferred by this Act or molests, obstructs or attempts to cause obstruction to an untouchable in the exercise of any such right "shall be punishable with imprisonment, which may extend to six months or with fine which may extend to Rs 500 or with both." Provision is also made for the award of similar punishment to those persons who deny to others the rights to which they are entitled or are a party to the ex-communication of or imposition of any other disability on others on the ground that they have refused to practise untouchability or have done any act in furtherance of the objects of this Act. Whoever abets an offence under this section shall be punishable with the punishment provided for the offence.

Pakistan's Minorities Policy

Announcing revocation of the order which all press facilities were withdrawn from the "Dawn" and the "Evening Star" because the two papers had been carrying on a campaign "which infringed law," the Pakistani Prime Minister said on 1st January in his monthly broadcast to the nation with regard to Pakistan's minorities policy:

Islam is more than a religion. It is a social order enjoining peace and brotherhood of mankind on the people. The rights of minorities to live according to their faith and beliefs will be fully preserved. We are pledged to treat the minorities justly and fairly. I am sure I am voicing the feelings of every singly Pakistani national when I say that we shall stand by that pledge. We shall secure for the minorities the same freedom of thought and action which we would like to ensure for ourselves.

General Amnesty in the Frontier Province

This lifting of the ban on the leading newspapers of Karachi was followed by an announcement on 5th January by a general amnesty to political prisoners in the North-West Frontier Province and removal of restrictions on detenus and exiles under the Frontier Crimes Regulations and security laws and restoration to them of properties that had been confiscated by the Government. Among the persons released the most prominent is Khan Abdul Ghaffar Khan, who was arrested in June 1948 on a charge of indulging in subversive activities and championing the cause of Pakhtoonistan. It was also alleged that he was in correspondence with the Fakir of Ipi regarded as an "inveterate enemy" of Pakistan. Among those restrictions on whose movements were removed is Dr. Khan, who was under orders not to leave his district.

That both the Khan brothers, who played such a notable part in the freedom movement before the partition of the country, are once again free men is a source of a great deal of jubilant feeling in India. Khan Abdul Ghaffar Khan's release was constantly being urged on the Pakistani Government by various bodies, and even the Prime Minister, Mr. Nehru, had done all he could on the diplomatic plane, though his pleading was not very

persuasive in view of the detentions current in the country over whose destinies he himself presides. The Pakistani Government had so far pleaded inability to take the step in view of the abnormal conditions existing in the State. That in its opinion release can now be safely ordered is a measure of the stability which has since been established in Pakistan.

Renewal of the Press Act

PROTEST BY A. I. N. E. C.

The Government of India has by an ordinance continued the operation of the Press Act of 1951, which, as passed, was limited in duration to two years. When it was announced in Parliament that, because the Press Commission has not yet reported on the Press Gag Law, which is one of the matters under its consideration, the law will be temporarily kept in force beyond the time when it was due to expire, the Standing Committee of the All-India Newspaper Editors Conference immediately took the opportunity on 20th December of protesting against this contemplated step in a resolution, which reads as follows :

The Standing Committee of the AINEC notes with surprise the announcement made by the Home Minister in the House of the People that the Government of India propose to promulgate an ordinance renewing the special law dealing with objectionable Press matter. In the opinion of the Committee there is no justification for renewing the expiring Act whose working has vindicated the stand taken by the AINEC that no special Press law is needed and that the ordinary law of the land gives the Government adequate powers to deal with the type of writings against which the Press (Objectionable Matters) Act is directed.

Assault on Newspapermen

The Committee also passed a resolution expressing its disapproval of that portion of the report of Mr. Justice P. B. Mukharji on his inquiry into the assault of newspapermen in Calcutta which relates to the application of sec. 144, Cr. P. C., to reporters of newspapers. The Committee does not claim any special privileges for newspapermen, but it maintains, quite rightly in our opinion, that when a prohibited meeting is reported, the reporters ought to be allowed to work in a group, notwithstanding the prohibition of sec. 144. Reporters find this necessary, in the first place, to protect themselves in an atmosphere of great tension, and, in the second place, to make their conjoint reporting as complete as possible, whereas the report of any single reporter, when covering such a large meeting, is bound to be fragmentary and consequently misleading. We may add that it is the invariable practice of reporters in the U. S. A. in such cases to work in a group. The Standing Committee's resolution is as follows :

The Standing Committee of the AINEC views with grave apprehension the findings of the commission of inquiry into the assault on Press reporters and Press photographers in respect of the application of section 144 Cr. P. C. as likely in effect to impose disabling restrictions on the acknowledged right of newspapermen to be present in the vicinity of unlawful assemblies in the lawful discharge of their function of reporting incidents arising from the defiance of authority. When newspapermen attend meetings of an unlawful character, they are discharging a public duty as representatives of the Press and are entitled to the full protection of the law. In the interests of their own safety on such occasions they have to move about in groups and it will be an interference with the duties of the Press if the authorities were to enforce section 144 against newspapermen functioning in the discharge of their duties. The Committee trusts that the State Government of Bengal and other State Governments will continue to interpret section 144 as they have done in the past.

GLEANINGS

Detention and Press Acts

Criticism by the "Times of India"

The "Times of India" in an editorial comments as follows in its issue of 25th December on the continuance of the Preventive Detention Act by means of a resolution in Parliament and the Press Act by means of an ordinance.

In saying that the Preventive Detention Act should adorn the statute book permanently, the Union Home Minister endorses the public fear that so long as the present Government is in power it will cling to the extraordinary police powers it has assumed. The decision to extend the life of the Detention and Press Acts suggests that Authority's appetite for draconian law is insatiable. It is difficult to say which is the more deplorable—the use of the laws or the repetition of effete arguments in defence of official action. In an attempt to prove that the Detention Act is not as bad as it appears to be, Dr. Katju disclosed that only a little over a hundred persons were in detention and the courts were able to order the release of some detenus. If anything, this proves that the Act is unnecessary. Judgments of the judicial tribunals have shown how the law is abused by the executive, and it is no consolation that in such cases release can ultimately be obtained through the courts. Another old argument which the Government spokesmen reiterated was that it is better to prevent mischief than punish the culprit after its occurrence. On this basis all regulatory and punitive laws should be scrapped and the Detention Act should be made omnibus to include all manner of conceivable offences. The simple truth is that the Act places in the hands of the executive an extraordinary weapon for invading individual liberty. Conditions in this country are not so deleterious as to justify an enactment not lightly undertaken by other countries even in war-time. The official picture of a crime-infested land is not merely incorrect but casts a stigma on a people who despite many provocations are admirably law-abiding. Such criminal activity as exists is no more

than what prevails in other democratic countries and can be adequately dealt with by the ordinary law. This is clear to all dispassionate observers. They can only wonder how Government does not realise that its contention that conditions are not normal even after six years of its rule carries an admission of Government's failure to solve the people's problems satisfactorily.

The case against the Press Act is equally invulnerable. The press was a favourite target of penal legislation under the British, and it is no compliment to the present regime that it, too, should single out the Fourth Estate for special attention. The press claims no special privileges for itself but equally it rejects the official plea for a separate and extraordinary law to deal with it. To say that the press is particularly criminal-minded is to insult an institution which played a noteworthy part in the freedom struggle and fulfils the same patriotic role today in the nation's many-sided battle for development and progress. It is not claimed that there are not occasional lapses on the part of some papers but these can be dealt with under the ordinary law of the land.

It is deplorable that Government should fail to understand that democracy is indivisible and that Authority cannot violate some of its fundamental tenets and simultaneously proclaim its faith in the creed. Laws like the Detention and Press Acts are a gross negation of individual liberty and freedom of expression. It is no argument for invading democratic rights to plead that a particular democracy is still in the making. On the contrary, if faith in democracy is to grow, it becomes the more necessary in an incipient democracy that both the spirit and form of a cherished creed are observed.

Comment of the "Hindustan Standard"

The "Hindustan Standard" of Calcutta carried the following editorial on the Preventive Detention Act in its issue of 31st December. In a previous issue it condemned the revival of the Press Act by an ordinance.

By an overwhelming majority of votes Parliament in the last session upheld the motion justifying the continuance of the Preventive Detention Act. But that does not necessarily indicate the force of arguments in its favour. The logic of arguments given by the Home Minister and other members of the Government party tends on the contrary to go against their case.

One need not take seriously the Home Minister's demagoguery that so long as the Congress Government continued in office it "will never, never tolerate any preaching of violence." He has his own idea of governing the country. He is even "astonished at the moderation shown by the State Governments" in implementing the Act. He would even disapprove of the Supreme Court's action in ordering "release in a large number of cases where only a few of the grounds of detention had been found rather loose." Such observations, however flippantly made, are of dangerous portent. Some members of the Government party have already advocated permanent incorporation of the Act in the statute book. Nowhere in the democratic world detention without trial is retained as a peace-time measure. That which was considered to be a blot in the democratic Constitution of this country is now considered to have served a "most beneficent" purpose.

The report of the operation of the law of preventive detention, as given by the Home Minister, does not, however, convincingly prove its beneficence. As many as 11 States have not considered it necessary to make use of the Act. Evidently they have found the provisions of the ordinary law good enough to maintain law and order. Even in 1951, when conditions may have been considered somewhat disquieting due to uncertainties in the world situation, the number of persons detained without trial totalled only 1,865. A number of persons had to be released on the recommendation of the Advisory Boards, while release order was given by the Supreme Court in a "large number of other cases." The total number of the detenus was only 117 in October last. Evidently the Advisory Boards' intervention, Supreme Court's action or even the "moderation" or leniency shown by the State Governments have not caused any danger to the country. It is a disgrace for a great country like India to say that its internal peace would be otherwise endangered if a handful of men without trial were not kept in detention.

It has been pointed out that the Act is meant not only to quell political violence but also to deal with other anti-social elements. But there are several times more blackmarketers and other anti-social elements in the country, as pointed out by an Opposition member, than the number detained. There is nothing to show that the continuance of the Act has had any deterrent effect on the people. If occasional acts of violence or other anti-social activities have taken place, that is due largely to the inefficiency of the police force and tactlessness and lack of imagination on the part of the authorities concerned. It is not creditable for a democratic Government to plead inability to govern the people by ordinary law.

The Home Minister's contention that an "abnormal situation, threats to law and order and increased incidence of crimes" call for the continuance of the Act is hardly based on facts. It is a disgrace for a popular Government to go on complaining of abnormal situations or raising the bogey of violence. It is a direct censure on the millions in this country, who are peace-loving and law-abiding, to say that they would not behave if not under the constant threat of preventive detention.

There is nothing wrong with the "situation" in this country or with the people here. It was rightly argued by an Opposition member that a "Government having popular support and a leader at the helm who was more popular than any other leader in the world, need not be afraid of street rabwls and dacoits." It should be realised that the popularity which the present Government and the party in power enjoy is not derived from any fear of preventive detention. The very opposite spirit, which led the Congress to defy the lawless laws of the erstwhile bureaucratic regime, won for the present party in power the popularity it now enjoys. Any deviation from that spirit not only disgraces the Government but also brings shame on the people.

Indulgence in violence and lawless activities, as pointed out by the Home Minister, must be deprecated. But to say that the situation in the country is in any way abnormal in comparison with that in any other democratic country is to ignore facts. But such levity in dealing with the fundamental question of personal liberty is repugnant to democratic ideals.