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who are acquainted with the actual situation, it was incumbent upon the Government to clear up these matters and present before us the background and the context without which no meaning could be attributed to this species of empty verbiage. As Government did not discharge the duty that lay upon them, I am clearly of opinion that no security order could be passed against the respondent under the provision of section 4(1)(a) of the Press Emergency Act.

DAS J.—During the course of the arguments I entertained some doubt as to the innocence of the meaning and implication of the pamphlet in question, but, in the light of the judgments of my learned brothers Mahajan J. and Mukherjea J., which I have had the advantage of perusing since, I do not feel that I would be justified in dissenting from the construction they have put upon the language used in the pamphlet. I accordingly concur in their conclusion.

BOSE J.—I agree with my brothers Mahajan and Mukherjea.

Appeal dismissed.

Agent for the appellant : *R. C. Prasad.*

Agent for the respondent : *P. K. Chatterjee.*

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THE STATE OF BOMBAY
v.
PURUSHOTTAM JOG NAIK

[PATANJALI SASTRI C. J., MEHER CHAND MAHAJAN, MUKHERJEA, DAS and BOSE JJ.]

Preventive Detention Act (IV of 1950), s. 3—Constitution of India, 1950, Art. 166—Order of detention—Form of order—Order stating that Government *is satisfied—Not stating expressly that it is issued* in the name of *the Governor—Validity—Proof by other evidence—Value of Secretary's evidence—Form of verification.*

The material portion of an order of detention made under s. 3 of the Preventive Detention Act, 1950, ran as follows:

"Whereas the Government of Bombay is satisfied with respect to the person known as J. N. .....that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order it is necessary to make the following order: Now, therefore,.....the Government of Bombay is pleased to direct that the said J. N. be detained.

By order of the Governor of Bombay
(Sd.) V. T. D.
Secretary to the Government of
Bombay, Home Department".

The High Court of Bombay held that the order was defective as it was not "expressed to be in the name of the Governor" within the meaning of Art. 166 (1) and was not accordingly protected by Art. 166 (2) :

Held, that the order was not defective merely because it stated that the *Government* of Bombay was satisfied and that the *Government* of Bombay was pleased to direct that J. N. be detained, and, though the addition of the words "and in his name" to the words "By order of the Governor of Bombay" would have placed the matter beyond controversy, the order was really one expressed to be taken in the name of the Governor of Bombay within Art. 166.

Held further, that, assuming that the order was defective it was open to the State Government to prove by other means that such an order has been validly made. It is not absolutely necessary in every case to call the Minister in charge; if the Secretary or any other person has the requisite means of knowledge and his affidavit is believed, that will be enough.

Verification should invariably be modelled on the lines of O. XIX, r. 3, of the Civil Procedure Code, whether the Code applied in terms or not, and when the matter deposed to is not based on personal knowledge the sources of information must be clearly disclosed.

APPELLATE JURISDICTION: Case No. 30 of 1950. Appeal under Art. 132(1) of the Constitution of India from the Judgment and Order dated 24th October, 1950, of the High Court of Judicature at Bombay (Bavdekar and Vyas JJ.) in Criminal Application No. 1003 of 1950.

M. C. Setalvad (*Attorney-General for India*) and *C. K. Daphtary* (*Solicitor-General for India*) with *G. N. Joshi* for the apellant.

Respondent *ex parte.*

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Bose J.

1952. May 26. The judgment of the Court was delivered by

Bose J.—This is an appeal from an order of the Bombay High Court directing the release of the respondent who had been detained under section 3 of the Preventive Detention Act of 1950.

The learned Attorney-General states at the outset that Government does not want to re-arrest the respondent but merely desires to test the High Court's decision on certain points which will have far-reaching effects on preventive detentions in the State of Bombay. Following the precedent of their Lordships of the Privy Council in *King-Emperor* v. *Vimlabai Deshpande*(1) we proceed to decide the appeal but direct that the respondent shall not in any event be re-arrested in respect of the matters to which the appeal relates.

The respondent was originally arrested under an order of the District Magistrate, Belgaum, dated the 26th February, 1950, though he was then beyond the jurisdiction of that authority. On the 11th of July, 1950, the Bombay High Court held that a detention of that kind was invalid. The decision was given in the case of *In re Ghate*(2). This necessitated a review of 57 cases, among them the respondent's. Orders were passed in all those cases on the 17th of July, 1950. About 52 of the detenus were released and in the remaining cases fresh orders of detention were passed by the Government of Bombay.

In the respondent's case the order was in these terms :

"Whereas the Government of Bombay is satisfied with respect to the person known as Shri Purushottam Jog Naik of Ulga Village, Taluka Karwar, District Kanara, that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, it is necessary to make the following order :

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Preventive

(1) I.L.R. 1946 Nag. 651 at 655. (2) (1950) 52 Bom. L.R. 711.

Detention Act, 1950 (No. IV of 1950), the Government of Bombay is pleased to direct that the said Shri Purushottam Jog Naik be detained.

By order of the Governor of Bombay,
Sd/—V. T. Dehejia,
Secretary to the Government of Bombay,
Home Department.

Dated at Bombay Castle, this 17th day of July, 1950."

He was served with the grounds of detention on the 26th of July, 1950, and with a fuller set on the 9th of August. The original grounds were as follows :

"In furtherance of your campaign for non-payment of rent, you were instigating the people in the Belgaum District to commit acts of violence against landlords.

In all probability, you will continue to do so."

The second set gave the following additional particulars :

"The people in Belgaum District, whom you were instigating to commit acts of violence against landlords in furtherance of your campaign for non-payment of rent, were the tenants in Hadalge and round about villages in the Khanapur Taluka of Belgaum District, and the said instigation was carried on by you for some months till your arrest in April, 1949."

On the 24th of August, 1950, the respondent applied to the Bombay High Court under section 491 of the Criminal Procedure Code for an order of release. He succeeded, and the appeal is against that order.

The first ground on which the learned High Court Judges proceeded was that the detention order of the 17th July was defective as it was not expressed in proper legal form. The basis of their reasoning is this.

Article 166(1) of the Constitution requires that—

"All executive action of the Government of a State shall be expressed to be taken in the name of the Governor."

It will be seen that the order of detention states in the preamble.

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"Whereas the *Government* of Bombay is satisfied..." and the operative part of the order runs—

"Now, therefore..... the *Government* of Bombay is pleased to direct etc."

It does not say that the *Governor* of Bombay is pleased to direct. The learned Judges held that this is not an order expressed to be made in the name of the Governor and accordingly is not protected by clause (2) of article 166. They conceded that the State could prove by other means that a valid order had been passed by the proper authority, but they held that the writing, (Record No. 3), which purports to embody the order, cannot be used to prove that a valid order was made because the formula set out in article 166(1) was not employed. We are unable to agree.

Now we do not wish to encourage laxity of expression, nor do we mean to suggest that ingenious experiments regarding the permissible limits of departure from the language of a Statute or of the Constitution will be worthwhile, but when all is said and done we must look to the substance of article 166 and of the Order.

The short answer in this case is that the order under consideration *is* "expressed" to be made in the name of the Governor because it says "By order of the Governor." One of the meanings of "expressed" is to make known the opinions or the feelings of a particular person and when a Secretary to Government apprehends a man and tells him in the order that this is being done under the orders of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, is making known to the detenu the opinion and feelings and orders of the Governor. In our opinion, the Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirements is there.

It has to be remembered that this order was made under the Preventive Detention Act, 1950, and therefore had to conform to its terms. Section 3 of the Act provides that the *State Government* may if satisfied,

"make an order directing that such person be detained."

It is true that under section 3[(43a) (a)] of the General Clauses Act the words "the State Government" mean the Governor, but if that be so, then the expression must be given the same meaning in the order which merely reproduces the language of section 3, not indeed because the General Clauses Act applies to the order (it does not) but because the order is reproducing the language of the Act and must therefore be taken to have the same meaning as in the Act itself, particularly as the order concludes with the words,

"By order of the Governor of Bombay."

It will be noticed that section 3 of the Preventive Detention Act enables certain authorities specified by it to make orders of detention. These include, not only State Governments but also the Central Government, any District Magistrate or Sub-Divisional Magistrate and certain Commissioners of Police. The list does not include the Governor of a State. Now, though the term "State Government" appearing in an enactment means the Governor of the State, there is no provision of law which equates the term Governor with the State Government of which he happens to be the head. On the contrary, the Constitution invests him with certain functions and powers which are separate from those of his Government. It was therefore appropriate that the order in this case should have set out that the Government of Bombay was satisfied and not some other authority not contemplated by the Act and that that Government directed the detention. It was also proper that the order should have been executed under the orders of the Governor authenticated, under the rules, by the signature of the Secretary. It is true that addition of the words "and in his name" to the words "By order of the Governor of Bombay" would have placed the matter beyond controversy but we are unable to see how an order which purports to be an order

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of the Governor of Bombay can fail to be otherwise than in his name. If A signs his name to a communication that communication goes out in his name. Equally, if he employs an agent to sign on his behalf and the agent states that he is signing under the orders of A, the document still goes forth in the name of A. In our opinion, the High Court was wrong on this point.

The next step in the High Court's reasoning was this. The learned Judges held that the writing produced as the order did not prove itself because of the defect we have just considered but that nevertheless it was open to the State Government to prove by other means that such an order had been validly made. The learned Judges therefore called upon Government to make an affidavit setting out the facts. An affidavit was made by the Home Secretary but the learned Judges were not satisfied and asked for a further affidavit. The Home Secretary thereupon made a second one but the learned Judges were still not satisfied and considered that the Minister in charge should have made an affidavit himself.

We do not intend to discuss this matter because once an order of this kind is unable to prove itself and has to be proved by other means it becomes impossible to lay down any rule regarding either the quantum of evidence necessary to satisfy the Court which is called upon to decide the question or the nature of the evidence required. This is a question of fact which must be different in each case. Of course, sitting as a court of appeal, it would have been necessary for us to decide this had we reached a different conclusion on the first point and had the State Government desired the re-arrest of the respondent. But as we are only asked to deal with general principles, all we need say as regards this is that it is not necessary in every case to call the Minister in charge. If the Secretary, or any other person, has the requisite means of knowledge and his affidavit is believed, that will be enough.

We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verifications should invariably be modelled on the lines of Order XIX, rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins C. J. and Woodroffe J. in *Padmabati Dasi* v. *Rasik Lal Dhar*(1) and endorse the learned Judges' observations.

In fairness to the Home Secretary we deem it right to say that his veracity was neither doubted nor impugned by the High Court, but only his means of knowledge. He was speaking of the "satisfaction" of the Minister and the High Court was not satisfied regarding his knowledge of the state of the Minister's mind. The learned Judges considered that the Minister himself would have been a more satisfactory source of information, but as we say, this is not a question of law. As a matter of abstract law, of course, the state of man's mind can be proved by evidence other than that of the man himself, and if the Home Secretary has the requisite means of knowledge, for example, if the Minister had told him that he was satisfied or he had indicated satisfaction by his conduct and acts, and the Home Secretary's affidavit was regarded as sufficient in the particular case, then that would constitute legally sufficient proof. But whether that would be enough in any given case, or whether the "best evidence rule" should be applied in strictness in that particular case, must necessarily depend upon its facts. In the present case, there was the element that 57 cases were dealt with in the course of 6 days

(1) (1910) I.L.R. 37 Cal. 259.

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and orders passed in all on one day. But we do not intend to enter into the merits. All we desire to say is that if the learned Judges of the High Court intended to lay down as a proposition of law that an affidavit from the Minister in charge of the department is indispensable in all such cases, then they went too far.

The learned Attorney-General contended that the Minister in charge could not be asked to divulge these matters because of article 163(3) of the Constitution. We do not decide this question and leave it open.

Another point which was argued related to the privilege which the Home Secretary claimed on behalf of the State Government under article 22(6) of the Constitution. Government disclosed certain facts in the grounds furnished to the detenu and claimed privilege regarding the rest of the facts in its possession. In our opinion, the grounds supplied were sufficiently specific and they could form a proper basis for the "satisfaction" of the Government. As regards the rest, Government has claimed privilege in the affidavit of the Home Secretary on the ground of public interest. This raises further questions which we do not intend to examine as the respondent is not to be re-arrested.

The order of release was, in our opinion, wrong, but in view of Government's undertaking not to re-arrest the respondent, we direct that he be not re-arrested in respect of the matters to which this appeal relates.

Order of High Court set aside.

Agent for the appellant : *P. A. Mehta.*

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