

1960

January 20.

JAGAN NATH SATHU

v.

THE UNION OF INDIA

(B. P. SINHA, C. J., JAFER IMAM, A. K. SARKAR,  
K. N. WANCHOO AND J. C. SHAH, JJ.)

*Preventive detention—Status of Pakistan in relation to India—If a foreign power—Grounds of detention—Principles of natural justice—Preventive Detention Act, 1950 (4 of 1950).—Constitution of India, Item 9, List I, Seventh Schedule.*

The petitioner was detained by an order of the Central Government under s. 3, of the Preventive Detention Act, 1950. The Advisory Board which considered the petitioner's case in accordance with the provisions of the Act did not recommend that the order of detention should be withdrawn. The allegations against the petitioner were that he was carrying on propaganda of hatred and contempt against the Government of India and the State of Jammu and Kashmir by sending for publication in a widely published foreign Newspaper, false, one-sided and misleading information about the administration of the State and the condition of India in general and the said State in particular. The petitioner's contentions, inter alia, were that being a member of the Commonwealth, Pakistan, where the newspaper was published, was not a Foreign State and could not therefore be regarded as a Foreign power, that the principles of natural justice were violated by the Advisory Board in considering the respondent's case in his absence and that materials placed before the Advisory Board were not supplied to him.

*Held*, that on a correct interpretation of the expression "foreign affairs" appearing in Item 9, List I, Seventh Schedule of the Constitution and the words "the relations of India with foreign powers" in s. 3 of the Act, Pakistan must be regarded as a foreign power although that country might be a member of the Commonwealth like India. Under Art. 367 (3) a country might not be regarded as a Foreign State for the purposes of the Constitution but that country might be a foreign power for other purposes. The Commonwealth is an Association of Nations each having a sovereign status independent of the other in its internal and foreign affairs.

The provisions of s. 10 of the Act did not offend against the principles of natural justice and the procedure adopted by the Advisory Board in the present case was not in Contravention thereof.

**ORIGINAL JURISDICTION: Writ Petition No. 170 of 1959.**

Petition under Article 32 of the Constitution of India for enforcement of Fundamental rights.

*R. V. S. Mani*, for the petitioner.

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*C. K. Dephtary, Solicitor-General of India, B. R. L. Iyengar and R. H. Dhebar*, for the respondent. *Jagan Nath Sathu*  
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1960, January 20. The Judgment of the Court *The Union of India* was delivered by

IMAM J.—This petition was heard on January 4, 1960, and we intimated that it was being dismissed and reasons for the same will follow later. We proceed to give our reasons now.

*Imam J.*

The petitioner was detained by an order dated May 4, 1959, of the Central Government under the provisions of s. 3 of the Preventive Detention Act, 1950 (hereinafter referred to as the Act). The grounds of detention dated May 7, 1959, were served on the petitioner. His case was considered by the Advisory Board constituted by the Central Government under s. 8 of the Act. On the report of the Advisory Board the Central Government by its order dated June 23, 1959, directed that the petitioner be detained until May, 4 1960. It is against this order of detention that the present petition under Art. 32 of the Constitution has been filed by the petitioner.

The grounds of detention contained 5 grounds upon which the Central Government was satisfied that it was necessary to detain the petitioner as he was likely to act further in a manner prejudicial to the security of India and the relations of India with foreign powers. It was further stated in the grounds of detention that the Central Government considered it against the public interest to disclose to the petitioner any facts or particulars as to dates, persons, places, nature of activities and the assistance given by him other than those which had been mentioned in the grounds of detention. The grounds of detention further mentioned that some of the specimen despatches sent by the petitioner and some of the reports appearing in a newspaper published in Pakistan were annexed thereto.

From the grounds of detention it would appear that the allegation against the petitioner was that he had been engaged in carrying on propaganda against the Government of India and the Government of the

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State of Jammu and Kashmir established by law and against the administration of that State Government in a manner calculated to bring into hatred and contempt the Government of the State and the Government of India; that in furtherance of his propaganda the petitioner had been inter alia sending for publication in a foreign newspaper despatches of news and views relating to the State of Jammu and Kashmir containing false, incomplete, one-sided and misleading information about the administration of the State by the Government of that State, about the policy of the Government of India in relation to that State and about the conditions in India in general and in the State of Jammu and Kashmir in particular; that the said despatches were published prominently by the said newspaper, having a large circulation in Pakistan and other foreign countries, in a manner prejudicial to India and her cause in relation to the State of Jammu and Kashmir and also prejudicial to the relations of India with foreign powers; that the petitioner was in regular touch and closely associated with several persons who are hostile to the cause of India in relation to the State of Jammu and Kashmir and were engaged in activities prejudicial to the security of India and that the cumulative effect of the petitioner's aforesaid activities was prejudicial to the relations of India with foreign powers in general and particularly in regard to the cause of India in respect of the State of Jammu and Kashmir and the maintenance of public order therein.

We have examined the various extracts from the despatches sent by the petitioner annexed to the grounds of detention served upon him. They disclose sufficient particulars to enable the petitioner to make a representation to the Advisory Board. Having regard to what appears in these extracts from the despatches sent to the newspaper concerned, they disclose sufficient grounds for the action taken by the Central Government in detaining the petitioner.

On behalf of the petitioner it was urged that the order of detention was confined only to two matters (1) that it was made with a view to preventing the

petitioner from acting in a manner prejudicial to the relations of India with foreign powers and (2) to the security of India. As to the first matter, it was argued that Pakistan not being a Foreign State, there could be no question of any act of the petitioner being prejudicial to the relations of India with foreign powers. It was pointed out that under Art. 367(3) of the Constitution, for the purposes of the Constitution, Foreign State meant any State other than India. The proviso, however, enabled the President, subject to the provisions of any law made by Parliament, by order to declare any State not to be Foreign State for such purposes as may be specified in the order. Reference was made to the Constitution (Declaration as to Foreign State) Order, 1950 (hereinafter referred to as the Order) made by the Governor General of India under Art. 392(3) of the Constitution read with Art. 367(3). The Order directed that it shall come into force at once, that is to say, on January 23, 1950. Clause (2) of the Order states: "Subject to the provisions of any law made by Parliament, every country within the Commonwealth is hereby declared not to be a Foreign State for the purposes of the Constitution". On behalf of the petitioner it was urged that by the Order, Pakistan being a member of the Commonwealth, was declared not to be a Foreign State. Although the Order was subject to the provisions of any law made by Parliament no law had yet been enacted by Parliament contrary to the declaration made by the Order. Pakistan not being a Foreign State could not therefore be regarded as a foreign power and none of the acts of the petitioner referred to in the grounds of detention could therefore be regarded as acts prejudicial to the relations of India with foreign powers. The ground in this respect being an invalid ground the order of detention must be set aside because even if one ground was an invalid ground the entire order of detention must be set aside though other grounds appeared to be valid grounds, having regard to certain decisions of this Court.

It was also urged on behalf of the petitioner that none of the extracts of the despatches and the grounds

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of detention disclose any word or phrase suggesting incitement to violence or subversion of the Government of the State of Jammu and Kashmir or of the Government of India. Accordingly, there could be no question of any act of the petitioner being prejudicial to the security of India.

Some other submissions were also urged on behalf of the petitioner with respect to the grounds of detention which will be dealt with in due course.

It was also urged that in violation of the principles of natural justice the respondent's case was heard by the Advisory Board prior to the case of the petitioner and in his absence and that copies of the further materials, which were placed before the Advisory Board by the respondent, were not supplied to the petitioner.

As already stated the contention on behalf of the petitioner has been that Pakistan is not a Foreign State and therefore cannot be regarded as a foreign power. It is true, that in view of the Order, for the purposes of the Constitution of India, Pakistan is not a Foreign State. There is, however, a distinction between a country not being regarded as a Foreign State for the purposes of the Constitution and that country being a foreign power for other purposes. The Commonwealth is an Association of Nations each of which has a sovereign status independent of each other in its internal and foreign affairs. They have a sovereign status as complete as that of any nation which is not a member of the Commonwealth. Each member of the Commonwealth can have diplomatic relations with each other and with nations outside the Commonwealth. Indeed, in the matter of sovereign status they are as independent as any nation outside the Commonwealth. It follows, therefore, that in their relations between each other and nations outside the Commonwealth they must be regarded as foreign powers and their affairs as between them are foreign affairs. In our opinion, that which is not concerned with the internal affairs of a member of the Commonwealth, is its external affair, that is to say, a foreign affair.

Under item 9 of List I of the Seventh Schedule of the Constitution, Parliament is empowered to enact laws with respect to preventive detention for reasons connected with defence, foreign affairs or the security of India and persons subjected to such detention. Under s. 3 of the Act the Central Government or the State Government may, if satisfied with respect to any person, with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers or the security of India, make an order directing that such person be detained, if it thinks it necessary so to do. The expression "Foreign Affairs" includes the relations of India with foreign powers. The question for decision is whether Pakistan is a foreign power. On a correct interpretation of the meaning of the words "the relations of India with foreign powers" we have no doubt that Pakistan must be regarded as a foreign power, although that country may be a part of the Commonwealth as India is. It has sovereignty in matters of internal administration and external relations quite independent and disconnected with the sovereignty of India or any other member of the Commonwealth in these respects. Pakistan has its own diplomatic relations with various countries including India. Apart from its membership of the Commonwealth, the independent sovereign status of Pakistan is the same as the sovereign status of any country outside the Commonwealth. It was, however, suggested that the Order made by the Governor General took Pakistan outside the category of a foreign power. In our opinion, this is a fallacious argument because Art. 367(3) itself states that for the purposes of the Indian Constitution Foreign State means any State other than India but the President, and before the commencement of the Constitution the Governor General of India under Art. 392(3), may by order declare any State not to be a Foreign State for such purposes as may be specified in the Order. In the Order the Governor General declared that every country within the Commonwealth was not a Foreign State for the purposes of the Constitution. In the Constitution of India there are various Articles in which the expression

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Foreign State appears, e.g., Art. 18(2), (3), (4), Art. 19(2), Art. 102(1)(d) and Art. 191(1)(d). It is clear, therefore, that under the Order, for the purposes of these Articles or any other Article where the expression "Foreign State" appears, that expression would not cover a country within the Commonwealth unless Parliament enacted otherwise. The Order cannot be brought into aid for the purposes of construing the expression "foreign affairs" appearing in item 9 of List I of the Seventh Schedule and the expression "foreign powers" in s. 3 of the Act. These expressions must be construed in the ordinary way giving the words their ordinary meaning. We have no doubt that Pakistan is a foreign power. Under the provisions of the Act the Central Government and the State Governments could detain a person who was acting in a manner prejudicial to the relations of India with foreign powers which would include Pakistan. It is to be further remembered that neither in the order of detention nor in the grounds of detention there is any mention of Pakistan specifically. On the contrary, in the grounds of detention, it is clearly stated that the cumulative effect of the petitioner's activities was prejudicial to the relations of India with foreign powers in general (vide grounds 3 and 4). The grounds of detention refer to the publication in a foreign newspaper of despatches of news and views relating to the State of Jammu and Kashmir containing false, incomplete, one-sided and misleading information and about the policy of the Government of India in relation to that State. The extracts of the despatches, sent by the petitioner to the foreign newspaper, annexed to the grounds of detention show that they are not only prejudicial to the Government of India vis-a-vis Pakistan but they are prejudicial to the relations of India with foreign powers in general, the subject of the affairs of the State of Jammu and Kashmir not being a matter of interest solely to Pakistan but also of interest to other foreign powers.

Coming now to objections made as to the grounds of detention : regarding ground No. 1, it was urged that this ground was outside the scope of the order of

detention. This ground mentions that the petitioner is engaged in carrying on propaganda against the Government of India and the Government of the State of Jammu and Kashmir in such a manner as to bring these two Governments into hatred and contempt. In our opinion, it cannot be said that this ground is beyond the scope of the order of detention because the bringing of the Government of India and the Government of the State of Jammu and Kashmir into hatred and contempt does involve the security of India.

Regarding ground No. 2 it was urged that it does not disclose a single suggestion about the subversive activities of the petitioner, nor does it disclose what portions of the despatches were false, incomplete, misleading or one-sided. It was further pointed out that this ground speaks of the conditions in India in general and the policy of the Government of India in relation to the State of Jammu and Kashmir. What the policy of the Government of India is concerning that State is not stated. All these allegations were so vague that they gave no real opportunity to the petitioner to make a representation. Similarly, concerning grounds 3 and 4 it was urged that the grounds did not disclose what was the cause of India in relation to the State of Jammu and Kashmir. Here again, sufficient particulars were not given to enable the petitioner to make an effective representation to the Advisory Board. In our opinion, none of these contentions has any substance because with the grounds of detention were annexed extracts from the despatches sent by the petitioner to the newspaper "Dawn" published in Pakistan. These extracts gave sufficient particulars to enable the petitioner to make a representation with respect to all matters stated in the grounds of detention.

Coming now to the submission that the respondent's case was heard before the petitioner's case and in his absence and that copies of further materials placed before the Advisory Board by the respondent were not supplied to the petitioner, it is necessary to refer to the procedure to be adopted by the Advisory Board under

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the provisions of the Act. Under s. 9, in every case where a detention order has been made the appropriate Government must within 30 days from the date of detention place before the Advisory Board the grounds, on which the order has been made, and the representation, if any, made by the detenus and, in a case where an order has been made by an officer, also the report by such officer under sub-s. (3) of s. 3. Section 10 sets out the procedure which the Advisory Board must follow when reference has been made to it under s. 9. Section 10(1) states :

“The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, 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, submit its report to the appropriate Government within ten weeks from the date of detention.”

It is clear from these provisions that the Advisory Board after considering the materials placed before it under s. 9 can call for further information from the appropriate Government, and that thereafter if in any particular case it considers it essential so to do or if the detenu desires to be heard, after hearing him, submit its report to the appropriate Government. In such a situation the Advisory Board must of necessity obtain further information from the appropriate Government before it hears the detenu. In our opinion, there is nothing in s. 10 which offends against the principles of natural justice. Furthermore, the petition does not assert as a matter of fact that the respondent's case was heard in the absence of the petitioner. Indeed, the respondent's affidavit does not admit that any such thing happened.

As for the copies of the further materials placed by the respondent before the Advisory Board not being supplied to the petitioner, it has to be observed that in paragraph 3 of the grounds of detention it was

clearly stated that the Central Government considered it against public interest to disclose to the petitioner any facts or particulars as to dates, persons, places, nature of activities and the assistance given by him other than those which had already been mentioned in the grounds of detention. Under Art. 22(6) of the Constitution it is clearly stated that nothing in cl. (5) of that Article shall require the authority making an order of detention to disclose facts which such authority considers to be against public interest to be disclosed. In the present case the authority concerned had declined to disclose in the public interest any facts or particulars as to dates, persons, places, nature of activities and the assistance given by the petitioner other than those which had already been mentioned in the grounds of detention. In such circumstances, it would have been entirely inappropriate for the respondent to supply copies of the further materials placed before the Advisory Board although the Advisory Board may have required further information in order to satisfy itself.

The petition is accordingly dismissed.

*Petition dismissed.*

M/s. ALOPI PARSHAD & SONS, LTD.

v.

THE UNION OF INDIA

(S. K. DAS, K. N. WANCHOO AND J. C. SHAH, JJ.)

*Arbitration—Award, setting aside of—Error on the face of the record—Reference of specific questions—Contract—Terms of payment specified—Change of circumstances—Power of arbitrator to vary terms—Quantum Meruit payment, when justified.*

The appellants were appointed under an agreement in writing by the Governor-General as agents for purchasing and supplying ghee required for the Army personnel with effect from October 1, 1937. After the outbreak of the World War II there was an enormous increase in the demand of ghee by the Government and the agreement was revised by mutual consent on June 20, 1942, and the original rates of payment were scaled down. On December 6, 1943, the appellants made a representation to the Government for enhancing the rates as conditions had become

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