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We may add that the amendment of 1953 took effect from April 1, 1953 and that of 1956 from April 1, 1956.

Apart from the view expressed by the learned Judges as regards the effect of the changes made in s. 34(1) with the provisos we have set out earlier a view which we have held is not correct—they did not further consider the proper construction to be placed on the second proviso to s. 34(3) of the Act on which the validity of the impugned notice to the respondents must ultimately be decided.

As we have pointed out earlier, at the beginning of the judgment, the learned Judges confined their attention practically only to the construction of proviso (iii) to s. 34(1) which was decided in favour of the respondents and did not permit them to argue the other points raised by them. We do not propose to decide these other points, particularly for the reason that the parties are not agreed as to what precisely were the contentions which were raised for argument.

For the reasons stated above, the decision of the High Court is clearly wrong. We, therefore, allow the appeal, set aside the order of the High Court and remit the matter to it for the consideration of the other points which were raised before it by the respondents but upon which they were not heard. As regards costs we think that they should abide the result of the appeal before the High Court.

Appeal allowed and case remanded.

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January, 29

GODAVARI SHAMRAO PARULEKAR

v.

STATE OF MAHARASHTRA AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR, JJ.).

Detention under Preventive Detention Act, 1950—Order revoked by the State Government—Re-arrest under Defence of India Rules—Validity —Proper authority for passing order of detention—Allocation of

business of Governor under Art. 166(3) *of Constitution whether necessary—Satisfaction of State Government that detention is necessary—Who should pass order of detention—Revocation of order of detention during pendency of appeal.*

Appellants were first detained on November 7, 1962 under Preventive Detention Act, 1950. That order was revoked by the Government and the appellants were released but re-arrested under Rule 30 of the Defence of India Rules. The orders of detention were served on appellants in Jail. The appellants challenged those orders in the High Court by filing *habeas corpus* petitions under Art. 226 of the Constitution and s. 491 of the Code of Criminal Procedure. The writ petitions were dismissed by the High Court and the appellants came to this Court under a certificate from the High Court.

The contentions raised by the appellants were that their detention was illegal because the detention order was served on them when they were in jail, that the orders of detention were passed without the satisfaction of the authority concerned regarding their necessity, the satisfaction was to be that of the Governor and not of any Minister, that there should have been fresh allocation of business by the Governor under Art. 166(3) of the Constitution after the passing of the Defence of India Ordinance, Act and Rules, that before the State Government could exercise the power conferred by Rule 30, there had to be delegation by the Central Government that the order of detention did not show that s. 44 of Defence of India Act was kept in mind when the order was made and that unless the order showed on the face of it that the State Government thought that detention was the only mode in which the purpose of the Act and Rules could be carried out, the order was bad. Dismissing the appeals.

Held: The orders of detention passed by the State Government and their service on the appellants in jail were perfectly valid and did not make the detention illegal. The appellants were detained not as undertrials or as convicted persons but as detenus and hence the cases of *Rameshwar Shaw* and *Makhan Singh Tarsikka* did not apply in the present case.

Reading the detention order as a whole, it was clear that it did say in substance that it was necessary to detain the appellants with a view to preventing them from acting in a manner prejudicial to the Defence of India, public safety and maintenance of public order. There was no difference between the words "so to do" in Rule 30 and the words "to make the following order" in the detention order.

As the detention order mentioned both the defence of India and maintenance of public order, such an order could be made on the satisfaction of a Minister who was incharge of both the subjects in view of the Rules of Business promulgated by the Governor.

It was not necessary that fresh allocation of business should be made by the Governor under Art. 166(3) after the passing of the Defence of India Ordinance, Act and Rules. It is enough if the allocation of the

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subject to which the Defence of India Ordinance, Act and Rules refer has been made with reference to the three lists in the Seventh Schedule and if such allocation already exists, it may be taken advantage of if and when laws are passed.

Rule 30 of the Defence of India Rules lays down that the power can be exercised by the Central Government or the State Government and hence no further delegation is necessary in favour of the State Government for the exercise of power under Rule 30.

It is true that s. 44 of the Defence of India Act provides that there should be as little interference with the ordinary avocation of life as possible when orders are made under the Act or the Rules, but that does not mean that a detention order must show on the face of it that the State Government had considered the various clauses of Rule 30(1) and had come to the conclusion that the only way in which the purpose of the Act and the Rules could be carried out was by the use of Rule 30(1)(b). When the order says that it is necessary to make an order of detention in order to restrain the prejudicial activities mentioned therein, it means that that was the only way which the State Government thought was necessary to adopt in order to meet the situation. It is for the detenu to show that the order had gone beyond the needs of the situation and was therefore contrary to s. 44.

Makhan Singh Tarsikka v. *State of Punjab* A.I.R. 1964 S.C: 381 *Keshav Talpade* v. *King Emperor*, [1944] F.C.R. 57, *Rameshwar Shaw* v. *District Magistrate, Burdwan*, A.I.R. 1964 S.C. 334, *Makhan Singh Tarasikka* v. *State of Punjab*, A.I.R. 1964 S.C. 1120, referred to

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 109—111 of 1963.

Appeals from the judgment and order dated May 31, 1963, of the Bombay High Court in Criminal Applications Nos. 217, 218 and 114 of 1963.

The appellants (in Cr. A. Nos. 109 & 110 of 1963) appeared in person.

Janardan Sharma and *Appellant also*, for the Appellant (in Cr. A. No. 111 of 1963).

N. S. Bindra and *R. H. Dhebar*, for respondents (in Cr. A. Nos. 109—111 of 1963).

Purushottam Trikamdas and *R. H. Dhebar*, for the respondents (in Cr. A. No. 110 of 1963).

January 29, 1964. The Judgment of the Court was delivered by

WANCHOO J.—These three appeals on certificates granted by the Bombay High Court raise common questions of law and will be dealt with together. They arise out of three *habeas corpus* petitions filed by the appellants in the High Court under s. 491 of the Code of Criminal Procedure challenging their detention under r. 30 of the Defence of India Rules (hereinafter referred to as the Rules). A large number of constitutional questions were raised in the applications and were decided by the High Court against the appellants. These appeals came up for hearing in August 1963 along with some other appeals from decisions of other High Courts, and the constitutional questions were decided by this Court on September 2, 1963, (see *Makhan Singh Tarsikka* v. *State of Punjab*) (1). It was held therein that the applications under s. 491 (1) of the Code of Criminal Procedure were incompetent in so far as they sought to challenge the validity of the detention on the ground that the Defence of India Act and Rules framed thereunder suffer from the vice that they contravened the fundamental rights guaranteed by Arts. 14, 21, 22(4), (5) and (7). The other points raised in the appeals were not considered at that time and it was directed that the appeals should be set down for hearing before a Constitution Bench to be dealt with in accordance with law. Consequently, these appeals have been put up before this Bench for disposal of the other points raised therein.

A preliminary objection has however, been raised on behalf of the State to the hearing of these appeals on the ground that the orders under which the appellants were detained and which are under consideration in these appeals had been revoked by the State Government and fresh orders of detention had been passed, and in consequence these appeals had become infructuous. Reliance in this connection is placed on the decision of the Federal Court in *Keshav Talpade* v. *King Emperor*(2). In that case the detenu was released while his appeal was pending before the Federal Court. It was however urged on his behalf that even

(1) A.I.R. (1964) S.C. 381.

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though he had been released and no order could thereafter be made on the *habeas corpus* application, the court should pronounce an opinion on the correctness of the High Court judgment. The Federal Court refused to do so and dismissed the appeal on the ground that no order in the appeal could be made after the release of the detenu. Generally speaking, no useful purpose would be served by the appeal court deciding the appeal in a *habeas corpus* matter where the detenu has been released before the appeal comes up for final hearing. But the facts in the present case are different. Here what has happened is that the earlier order of detention which is the basis of the present appeals has been revoked by the Government of Maharashtra on the ground of a technical defect and a fresh order of detention was passed on the same date, and the appellants were immediately re-arrested after their release from jail under the fresh order of detention. In the Federal Court case, however, it appears that the detenu was released and there was no question of a fresh order of detention being made on the same day leading to his re-arrest. In the circumstances, it is urged by the appellants that though technically the appellants were released before the present appeals came up for final hearing, in substance they are under detention even now and the points of law raised by them against the earlier order of detention will apply equally to the fresh order of detention. It is therefore urged that the Court should decide the present appeals as that would settle the law and help the detenus in case they make fresh application under s. 491 of the Code of Criminal Procedure against the fresh order of detention. It is further urged that the appellants intend after the emergency is over to sue for damages for false imprisonment and the order of the Bombay High Court would stand in their way in case such a suit is brought, and therefore an authoritative pronouncement on the questions of law raised should be made by this Court in the present appeals, even though technically the order out of which the present appeals have arisen has been revoked. We are of opinion that the circumstances of the present cases are different from the circumstances in *Keshav Talpade's* case(1) and therefore it would be in the interests of justice to decide

(1) [1944] F.C.R. 57.

the points raised in the present appeals. We may add that there is nothing to preclude this Court from deciding the appeals even though the order from which these appeals have arisen has been revoked, though ordinarily this Court would not do so. But as we have already indicated, it seems to us just and fair in view of the fact that the appellants have not been finally released and are still under detention under a fresh order of detention under the Rules that the points raised in these appeals should be decided. The points are of general importance and are likely to arise in many cases. We therefore over-rule the preliminary objection.

The facts in the three appeals are similar and we shall therefore briefly refer to the facts in Appeal No. 110 for the purposes of dealing with the points raised on behalf of the appellants.

The appellants were first detained on November 7, 1962 by an order made by the Commissioner of Police, Greater Bombay, under the Preventive Detention Act, No. IV of 1950. The matter was then reported to the Government. Before this, however, the security of India had been threatened by the Chinese invasion and an Emergency had been declared under Art. 352 of the Constitution. Further on October 26, 1962, the Defence of India Ordinance 1962 was passed, followed by the Rules framed thereunder. When the matter came before the Government, it decided that the order of November 7, 1962 made by the Commissioner of Police should be revoked and ordered accordingly on November 10. On the same day, the Government decided to detain the appellants and passed an order under r. 30 of the Rules. This order said that with a view to preventing the appellants from acting in a manner prejudicial to the defence of India, the public safety and the maintenance of public order, it was necessary to detain them, and therefore in exercise of the powers conferred upon the Government by r. 30 of the Rules, the Government directed the detention of the appellants. This order was served on the appellants in jail. It was challenged by the appellants by filing *habeas corpus* petition under Art. 226 of the Constitution and under s. 491 of the Code of Criminal Procedure. The

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High Court, as already indicated, dismissed the applications but granted leave to the appellants to appeal to this Court. The constitutional points raised, as already indicated, were decided by this Court on September 2, 1963, and now we are concerned with the other points raised on behalf of the appellants.

The first contention that has been urged is that the detention is illegal inasmuch as the detention order was served on the appellants while they were in jail, and reliance in this connection is placed on the judgments of this Court in the cases of *Rameshwar Shaw* v. *District Magistrate, Burdwan*(1), and *Makhan Singh Tarsikka* v. *The State of Punjab*(2). In those cases, it was held by this Court that where a person is detained in jail as an under-trial prisoner no order of detention either under the Preventive Detention Act or under the Rules could be served on him because one of the necessary ingredients which go to make up the satisfaction of the detaining authority is necessarily absent in such a case. It was pointed out in *Rameshwar Shaw's* case(1) that "before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention." The same principle was reiterated in the case of *Makhan Singh Tarsikka*(2). There is however a vital difference between the facts of those two cases and the facts in the present appeals. Those two cases were concerned with the service of an order of detention under the Preventive Detention Act or under the Rules on a person who was in jail in one of two

(1) A. I. 1964 S.C. 334. (2) A. I. R. 1964 S.C. 1120

circumstances, namely—(1) where he was in jail as an under-trial prisoner and the period for which he was in jail was indeterminate, or (2) where he was in jail as a convicted person and the period of his sentence had still to run for some length of time. In those cases the service of the order of detention under the Preventive Detention Act or under the Rules in jail would not be legal for one of the necessary ingredients about which the authority had to be satisfied would be absent, namely, that it was necessary to detain the person concerned which could only be postulated of a person who was not already in prison. In the present cases, however, the appellants were not under detention either as under-trial prisoners for an indeterminate time or as convicted persons whose sentences were still to run for some length of time. They were detained under the Preventive Detention Act by an order of November 7, 1962 which had been reported to Government for approval and which order could only remain in force for 12 days under s. 3 (3) of the Preventive Detention Act unless in the meantime it had been approved by the State Government. The State Government, however, decided on November 10, 1962, to revoke the order of the Commissioner of Police under the Preventive Detention Act and to pass an order itself under the Rules. In those circumstances, the principle of the two cases referred to above would not in our opinion apply, for the detention of the appellants depended upon the approval of the State Government. The State Government, however, decided to revoke the order of November 7, 1962 and instead decided to pass an order under the Rules on the same day, namely November 10, 1962. In these circumstances it would be in our opinion an empty formality to allow the appellants to go out of jail on the revocation of the order of November 7, and to serve them with the order dated November 10, 1962 as soon as they were out of jail. Where the detention is not of the two kinds considered in the cases of *Rameshwar Shaw*(1) and *Makhan Singh Tarsikka*(2) and is either under the Preventive Detention Act or under the Rules, and its duration is dependent upon the will of the State Government, we cannot see any reason for holding that if the State Government decides

(1) 1964 S.C. 334. (2) A. I. R. 1964 S.C. 1120.

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to revoke an earlier order of detention it cannot pass a fresh order of detention the same day and serve it on the detenu in jail, for the two orders are really of the same nature and are directed towards the same purpose. Further the order of the Commissioner dated November 7, 1962 was subject to the approval of the State Government without which it could only be in force for 12 days. In these circumstances the order passed by the State Government on November 10 under the Rules when it had decided to revoke the order of November 7, 1962, would in our opinion be perfectly valid so far as the time of the making of the order was concerned and its service in jail on the persons who were detained not as under-trials or as convicted persons but as detenus, could not be assailed on the ground on which the order of detention was assailed in the cases of *Rameshwar Shaw*(1) and *Makhan Singh Tariskka*(2). The principal of those two cases cannot in our opinion be applied to a case where a fresh order of detention is passed after the cancellation or revocation of an earlier order of detention. The contention therefore that the making of the order of detention on November 10, 1962 or its service in jail in these cases, makes the detention illegal, must be negatived.

It is next urged that the detaining authority has failed to arrive at that kind of satisfaction which the Rules require. This contention is based on the words of the order dated November 10, 1962. Rule 30 *inter alia* lays down that the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, it is necessary so to do, may make an order directing that the person be detained. Now the order of November 10, 1962 is in these terms:—

"No. S.B.III/DOR.1162-IV
Home Department (Special)

(1) A.I.R. 1964 S.C. 334. (2) A.I.R. 1964 S.C. 1120.

ORDER

"Whereas the Government of Maharashtra is satisfied with respect to the person known as Shri Shamrao Vishnu Parulekar of Bombay that with a view to preventing him from acting in a manner prejudicial to the defence of India, the public safety and the maintenance of public order, it is necessary to make the following order:

"Now, therefore, in exercise of the powers conferred upon it by rule 30 of the Defence of India Rules, 1962, the Government of Maharashtra does hereby direct that the said Shri Shamrao Vishnu Parulekar be detained.

By order and in the name of
the Governor of Maharashtra

Sd. Deputy Secretary to
Government of Maharashtra,
(Home Department)

Sachivalaya, Bombay,
this 10th day of November, 1962".

The contention of the appellants is that the first part of the order does not say that it is necessary to detain the appellants. The words used in the first part of the order are "it is necessary to make the following order" and then follows the second part which says that the Government directs that the said person be detained. We are of opinion that when the first part says "it is necessary to make the following order", it in effect says that "it is necessary so to do" which is what r. 30 of the Rules requires. Reading the order as a whole, in substance it does say that it is necessary to detain the person with a view to preventing him from acting in a manner prejudicial to the defence of India, etc. In r. 30 the words are "so to do" while in the order they are "to make the following order". The two expressions in our opinion mean the same thing and we cannot

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accept the argument that the satisfaction necessary under r. 30 of the Rules was not arrived at in these cases by the authority making the order.

Then it is urged that as the State Government is equivalant to the Governor, it is the Governor who should be satisfied and not the Home Minister as is the case according to the affidavit filed on behalf of the State Government. The State Government in this connection relies on the Rules of Business, copy of which has been made available to us. These rules have been framed by the Governor under Art. 166 of the Constitution for the more convenient transaction of the business of Government and for the allocation among Ministers of the said business. In the affidavit on behalf of the State Government reliance is placed on item 2 (b) of the First Schedule to the Rules of Business dealing with subjects allocated to the Home Department (Special), entry (7) which provides for preventive detention for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community. During the hearing, our attention was drawn to item (1) of the First Schedule to the Rules of Business dealing with subjects allotted to General Administration Department, entry (44), which provides for preventive detention for reasons connected with defence, foreign affairs or the security of India. It is obvious from the Rules of Business that preventive detention has been divided into two parts and allocated to two different departments. Where preventive detention is for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community, it can be dealt with by the Minister in-charge of item 2 (b) dealing with subjects allocated to the Home Department (Special); but where the preventive detention is for reasons connected with defence, foreign affairs or the security of India, it can be dealt with by the Minister in-charge of item 1 relating to subjects allotted to the General Administration Department. The detention order in the present cases states that it was made with a view to preventing the appellants from acting in a manner prejudicial to the defence of India, the public

safety and the maintenance of public order. As the detention order mentions both the defence of India and the maintenance of public order, such an order could only be made by a Minister who was in-charge both of item 1 relating to subjects allotted to the General Administration Department and of item 2(b) relating to subjects allotted to Home Department (Special). In the affidavit on behalf of the State the order was sought to be justified on the ground that it was made by the Home Minister in-charge of item 2 (b) relating to subjects allocated to the Home Department (Special). We are of opinion that as the detention order was for reasons connected with the defence of India also, it could not be dealt with under item 2 (b), entry (7) only which item deals with subjects allocated to the Home Department (Special) and had to be dealt by a Minister who was in-charge of both item 1 relating to subjects allotted to the General Administration Department and item 2 (b) relating to subjects allotted to Home Deparment (Special). In the original affidavit filed on behalf of the State it was however not clear whether the Minister who dealt with these orders was also in-charge of the subjects allotted to the General Administration Department but it was stated at the bar that the Minister who dealt with the matter and passed the order on the basis of which the appellants were detained was in-charge not only of item 2 (b) relating to subjects allocated to the Home Department (Special) but was also in-charge of item 1 relating to subjects allotted to the General Administration Department. We therefore called upon the State Government to file an affidavit to that effect and an affidavit was filed on December 21, 1963. That affidavit says that the order of November 10, 1962 was passed by the Chief Minister who was at the relevent time in-charge both of the General Administration Department as well as the Home Department (Special). We have already referred to the terms of the order of detention. That order refers to three reasons as the basis for the order, namely, (i) the defence of India, (ii) the public safety, and (iii) the maintenance of public order. Now preventive detention connected with the defence of India could only be ordered under the Rules of Business by the Minister who was in-charge of the General Administration Department

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while preventive detention for reasons connected with the maintenance of public order could only be ordered by the Minister in-charge of subjects allocated to the Home Department (Special). The order therefore in the present case could only be made by a Minister who was in-charge both of subjects allotted to the General Administration Department and subjects allotted to the Home Department (Special). In view of the affidavit now filed it appears that the Chief Minister was in-charge of both the departments and in the circumstances he could pass the order under challenge. The contention under this head must therefore fail.

The next argument is that there is no order of allocation made by the Governor under Art. 166 of the Constitution after the passing of the Defence of India Ordinance and the Rules framed thereunder and therefore the allocation of business by the Rules of Business which were enforced by an order of the Governor dated May 1, 1960 would not be of any effect in allocating the subject of preventive detention arising under the Defence of India Ordinance Act and the Rules to the Minister and the Governor should have passed the order of detention himself. We are of opinion that there is no force in this contention. Allocation of business under Art 166 (2) of the Constitution is not made with reference to particular laws which may be in force at the time the allocation is made; it is made with reference to the three lists of the Seventh Schedule to the Constitution, for the executive power of the Centre and the State together extends to matters with respect to which Parliament and the Legislature of a State may make laws. Therefore, when allocation of business is made it is made with reference to the three Lists in the Seventh Schedule and thus the allocation in the Rules of Business provides for all contingencies which may arise for the exercise of the executive power. Such allocation may be made even in advance of legislation made by Parliament to be available whenever Parliament makes legislation conferring power on a State Government with respect to matters in List I of the Seventh Schedule. It was therefore in our opinion not necessary that there should have been an allocation made by the Governor under Art. 166 (3) of the power to detain under

the Defence of India Ordinance, Act and Rules after they were passed; it will be enough if the allocation of the subject to which the Defence of India Ordinance, Act and Rules refer has been made with reference to the three Lists in the Seventh Schedule and if such allocation already exists, it may be taken advantage of if and when laws are passed. Preventive detention is provided for in List I, item 9, for reasons connected with defence, foreign affairs and the security of India, and in item 3 of List III for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community. The allocation of business made under Art. 166 is in pursuance of these entries in the three Lists in the Seventh Schedule and would be available to be used whenever any law relating to these entries is made and power is conferred on the State Government to act under that law. The contention of the appellants that fresh allocation should have been made under Art. 166 (3) by the Governor after the passing of the Defence of India Ordinance, Act and Rules must therefore fail.

Lastly reliance is placed on ss. 40 and 44 of the Defence of India Act. Section 40 gives power to the Central Government to delegate its powers under the Act or the Rules to any officer or authority subordinate to the Central Government or to any State Government or any officer or authority subordinate to such Government or to any other authority, and the argument is that before the State Government can exercise the power conferred by r. 30, there has to be a delegation by the Central Government. This argument in our opinion is misconceived. It is true that s. 40 gives authority to the Central Government to delegate its powers under the Act or the Rules to the State Government and others. But no delegation under that section is required for the exercise of the power under r. 30 by the State Government, for r. 30 itself lays down that the power therein can be exercised by the Central Government or the State Government. No further delegation therefore was necessary in favour of the State Government in so far as the exercise of power under r. 30 is concerned.

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Next it is urged that the order of detention does not show that s. 44 was kept in mind when it was made. Section 44 lays down that "any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence". It is urged that an order of detention necessarily interferes completely with the ordinary avocation of life of the person detained and therefore before such an order could be made, s. 44 should be borne in mind. Therefore the order of detention is to be made when it is the only way of carrying out the purposes of the Act, for s. 44 provides that there should be as little interference with the ordinary avocations of life as possible under the Act. The argument further is that r. 30 (1) provides as many as eight clauses which provide for the regulation of conduct of an individual and cl. (b) relating to detention, which amounts to complete interference with the avocation of life of the detenu could only be resorted to in view of s. 44 when it is shown that no other way of regulating the conduct of the person detained as provided in the other clauses of r. 30 (1) would meet the needs of the situation. So it is urged that unless the order shows on the face of it that the State Government thought that the detention was the only mode in which the purposes of the Act and the Rules could be carried out, the order would be bad in view of s. 44 of the Act. We are of opinion that there is no force in this contention. It is true that s. 44 provides that there should be as little interference with the ordinary avocations of life as possible when orders are made under the Act or the Rules; but that does not mean that a detention order must show on the face of it that the State Government had considered the various clauses of r. 30 (1) and had come to the conclusion that the only way in which the purposes of the Act and the Rules could be carried out was by the use of cl. (b) of r. 30 (1). In our opinion when the order says that *it is necessary* to make an order of detention in order to restrain the prejudicial activities mentioned therein it means that that was the only way which the State Government thought was *necessary* to adopt in order to meet the situation. It will then

be for the detenu to show that the order had gone beyond the needs of the situation and was therefore contrary to s. 44. No such thing has been shown in the present cases and we are satisfied that the orders in question cannot be said to go beyond the needs of the situation, even assuming that s. 44 is mandatory as urged on behalf of the appellants and not merely directory as urged on behalf of the State.

The appeals therefore fail and are hereby dismissed.

Appeals dismissed

STATE OF GUJARAT

v.

VORA FIDDALI BADRUDDIN MITHIBARWALA

1964

January 30,

(B. P. SINHA, C. J., K. SUBBA RAO, M. HIDAYATULLAH, J. C. SHAH, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR JJ.)

Act of State—Ruler of a native state granted certain rights in forest to grantees—State merged with Dominion of India—Dominion of India did not recognise the grant—Effect of non-recognition before Constitution and after Constitution—If non-recognition of the grant amounts to an act of State—Government of India Act 1935*—Constitution of India, Art.* 32.

The Ruler of the State of Sant had issued a *Tharao* dated 12th March 1948, granting full right and authority to the jagirdars over the forests in their respective villages. Pursuant to the agreement dated March 19, 1948, the State of Sant merged with the Dominion of India. On October 1, 1948, Shree V. P. Menon, Secretary to the Government of India, wrote a letter to the Maharana of Sant State expressly declaring that no order passed or action taken by the Maharana before the day of April 1st 1948, would be questioned. After merger there was obstruction by the forest officers when the respondents were cutting the forests, but after some correspondence they were permitted to cut the trees on furnishing an undertaking that they would abide by the decision of the government. The Government of Bombay, after considering the implications of the *Tharao,* decided that the order was *mala fide* and cancelled it on 8th July 1949 In the meantime these respondents were stopped from working the forests by the Government of Bombay.