CRIMINAL WRIT

Before Kapur and Dulat, JJ.

RAM SINGH,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS *Respondents*

Criminal Writ No. 22 of 1952

1953

Nov. 11th.

Abducted Persons (Recovery and Restoration) Act (LXV of 1949)—Section 6—Tribunal constituted under—Decision by the Tribunal—Whether can be quashed by certiorari or under supervisory powers—Constitution of India—Articles 226 and 227—Writ of habeas corpus—Whether can issue—Principles of natural justice stated—Interpretation of Statutes—Rule stated.

R.S. alleging himself to be the husband of R who was found to be an abducted person by the Tribunal constituted under section 6 of the Abducted Persons (Recovery and Restoration) Act, 1949, applied under Articles 226 and 227 of the Constitution of India for a writ of certiorari to quash the proceedings of the Tribunal and for a writ of habeas corpus. It was pleaded by the respondents that the Tribunal had acted in accordance with the Rules framed under section 10 of the Act and, therefore, the High Court had no jurisdiction to issue the writs prayed for.

Held, that the Tribunal having acted within its jurisdiction and no error apparent on the face of the record having been proved, the High Court cannot interfere. The Statute has given to the Tribunal the power to determine facts and to exercise jurisdiction, and the mere fact that wrong decision has been given on those facts is not a question which goes to the jurisdiction of the Tribunal. The question being within the jurisdiction of the Tribunal, it is not for the High Court acting in its supervisory jurisdiction to review that decision nor can the High Court issue a writ of certiorari for the purpose of quashing the order.

Held, that the Tribunal having held the persons to be abducted persons the question of validity of detention loses all force, because the legality of the detention is to be decided at the time of the return of the writ and not with reference to the date of institution of the proceedings.

Held, that the four principles of natural justice which are deducible from cases decided in England are :—

(1) There shall be an opportunity to be heard to both sides.
(2) The Tribunal deciding the controversy should be impartial and free from bias. A person cannot therefore be a Judge in one's own cause.
(3) The decision must be made in good faith and it must not be made in order to achieve some object other than that for which the power to adjudicate is given.
(4) Though procedure may not approximate to a trial in Court and the Tribunal may obtain evidence in any manner it likes yet a fair opportunity must be given to the opposite party to contradict it.

Held also, that there has been no infringement of the concept of natural justice in this case because :—

(1) The Rules themselves prescribe a procedure which has been followed; and
(2) Reasonable opportunity was given to the petitioners to appear and lead evidence.

Held further, that the Act has to be interpreted taking into consideration not only the language of the statute but also from a consideration of the conditions which gave rise to it and of the mischief which it was passed to remedy and then we have to give 'force' and 'life' to the intention of the legislature. Therefore a duty is cast on the Courts to see that the object of the Act is subserved rather than thwarted. In this manner the Court will better subserve the public interest which after all is the interest of every citizen of the country, but that does not mean that any strained interpretation is to be put on the Act.

*(Petition was referred by the Hon'ble Mr. Justice Soni,—*vide *his order dated the 22nd July, 1953, in Cr. Writ: 22-53).*

Petition under Articles 226 and 227 Constitution of India and Section 491 of the Criminal Procedure Code, praying as under :—

(a) That this Hon'ble Court be pleased to issue a writ of habeas corpus or certiorari or direction or order and quash the order, dated the 24th September, 1953, passed by the Tribunal.

(b) That this Hon'ble Court be pleased to issue a writ of habeas corpus to the effect that the person of Bachan Kaur along with her 4 children be brought before the court and they be restored.

(c) That a direction be issued allowing the petitioner to interview Bachan Kaur.

(d) That any other direction or order which may be necessary in the interest of justice be also given.

(e) That the 4 children be delivered to the custody of the petitioner.

SHAMAIR CHAND and P. C. JAIN, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

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KAPUR, J. These are two rules obtained against the State of the Punjab and two others, one under Article 226 of the Constitution and section 491 of the Code of Criminal Procedure and the other under Articles 226 and 227 of the Constitution of India.

In Criminal Writ No. 22 of 1953, it was alleged in the petition dated the 17th June 1953 that a woman Bachan Kaur (her Mohammadan name was Mst. Rusmat) was married to Ram Singh petitioner about ten years ago and there was a document to support this marriage and this document had been taken possession of by the police when the said Bachan Kaur was "arrested by the police" on the 21st May 1953, that Bachan Kaur had been living as the wife of the petitioner for a period of about ten years and had been taken into custody from the house of the petitioner along with four children who were born after the 15th of August 1947. Writ of habeas corpus was prayed for in this case. These allegations were denied by Miss S. K. Fatima, Camp Commandant of the Muslim Camp at Jullundur. An application was later made on the 20th July, 1953, for the production of this woman in Court. The petition was granted but subsequently the order for production was discharged. Miss Mridula Sarabhai made an affidavit on the 13th August 1953 in this petition in which the marriage was denied as also the taking into possession of the document evidencing marriage and it was stated that Bachan Kaur was really Mussummat Rusmat and that she had been abducted a month before the breaking out of the disturbances in 1947 and that as the woman was an abducted person she had been rightly taken into custody by the Abducted Persons Recovery Staff. Another affidavit was filed by Miss Mridula Sarabhai on the 1st October 1953, but it is not necessary to give the contents of this affidavit. The matter was originally before Mr. Justice Soni and as one of the prayers was

that the petitioner should be allowed to see the woman the matter was referred to a Division Bench.

The matter was then placed before Soni, J., and myself and as by then (by an order, dated the 24th September, 1953 the woman was found by the Tribunal appointed under the Abducted Persons (Recovery and Restoration) Amendment Act, 1952, Act LXXVII of 1952, hereinafter to be termed the Act, to be an abducted person, we allowed an amendment of the petition particularly as many questions arose as a result of this determination. In the case of Bachan Kaur the amended petition praying for writs of certiorari and habeas corpus was filed on the 21st October 1953, which is supported by an affidavit. It was alleged that Bachan Kaur is not an abducted person as she eloped with the petitioner long before the disturbances, had embraced Sikhism, had married Ram Singh, her previous husband being dead, that the enquiry before the Tribunal was illegal on account of undue pressure brought on Bachan Kaur and because the witnesses from Pakistan were not examined in the presence of the petitioner and the procedure which was followed contravened the principles of natural justice. It was also submitted that Ram Singh should be allowed to interview Mst. Bachan Kaur so that she may be able to exercise her unfettered or free choice to stay in India or to go to Pakistan. Thus in this application there were three prayers :—

(i) for the issuing of a writ of habeas corpus;

(ii) for a writ of certiorari for quashing the order passed by the Tribunal on the 24th September 1953; and

(iii) for the petitioner being allowed to interview Bachan Kaur.

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As a subsidiary prayer the custody of four children born of Bachan Kaur was also asked to be given to the petitioner.

When Mst. Bachan Kaur alias Rusmat was recovered from the house of Ram Singh the matter was first enquired into by the Recovery Staff. Before them Mst. Rusmat alias Bachan Kaur was first examined and then Ram Singh, the petitioner, also made a statement as also one Jogindar Singh. Statements of the relations of Mst. Rusmat were also recorded by this staff. The matter was then placed before the Tribunal constituted under the Act and they gave several opportunities to Ram Singh, but he produced no evidence nor did he appear before the Tribunal himself. After recording the evidence of the witnesses who were produced before them and taking into consideration the evidence which had been recorded by the Recovery Staff the Tribunal held that Mussummat Rusmat alias Bachan Kaur and four children were abducted persons within the meaning of the Act and as Mussummat Rusmat wanted to take her eldest son Gajjan Singh and youngest son Jagat Singh with her and wanted to leave other children for restoration to Ram Singh the Tribunal ordered that Mst. Rusmat and her two sons Gajjan Singh and Jagat Singh should be sent to Pakistan and the other two children be restored to Ram Singh.

I now come to the facts of the second case which was brought by Pritam Singh on the 8th July 1953 alleging that Amar Kaur alias Safo or Jiwan, the woman in dispute in that case, was not an abducted person as she had embraced Sikhism and was living with the petitioner as his wife for the last twleve years and had children, the eldest being ten years old. It was further alleged that no notice had been given to him as to the date of enquiry which was to be held by the Tribunal and that undue pressure and intimidation was being employed to make Amar Kaur make wrong statements of facts. It was also submitted that the woman was in illegal custody as she was not

being allowed to see the petitioner Pritam Singh. The prayer was for the issue of a writ of habeas corpus for the woman being brought to this Court for recording her statement and for interview with the petitioner in the Camp. It was also prayed that this Court may direct the Tribunal to hold an enquiry "immediately" and to allow the petitioner to present his case before the Tribunal. This case was also placed before Mr. Justice Soni who referred the case to a Division Bench.

This case also was originally heard by Mr. Justice Soni and myself and as certain facts emerged from a perusal of the record, the petitioner was allowed to amend the petition and an amended petition was filed on the 12th of October, 1953, in which a prayer was added for quashing the order of the Tribunal constituted under the Act, dated the 23rd September 1953.

Amar Kaur was originally known as Mst. Safo and Jiwan. She was married to one Gaman and the case of the petitioner Pritam Singh was that she had contracted a liaison with him, that she left her husband Gaman about six years before the partition and was then divorced by him and that since her divorce by her husband she was residing with him (the petitioner) as his wife after having been converted to Sikhism and married to him by *chaddarandazi*. Pritam Singh appeared with his witnesses before the Tribunal on the 3rd September 1953. Those witnesses were Munshi Ram, Chambela Singh, Chiranji Ram and Tara Singh.

This woman Mst. Jiwan or Amar Kaur when examined by the Tribunal expressed her willingness to go to Pakistan with her sister Majidan taking with her two sons Gurbaksh Singh and Nichhattar Singh.

In an affidavit which has been filed by Pandit Thakar Dass, one of the members of the Tribunal, dated the 29th October, 1953, it is stated that Pritam Singh was given the substance of the

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statements which had been made by the witnesses who had stated that Amar Kaur alias Jiwan was an abducted person.

After going through the evidence, the Tribunal came to the conclusion that Amar Kaur alias Jiwan was an abducted person and that her eldest son Gurbakhsh Singh whose original name was Mushtaq and Nichhatar Singh were abducted persons as defined in the Act.

As Soni, J., has retired this case has come up before this Bench.

I shall first take up the question of issuing writs of certiorari in the two cases. The constitutionality of the Act was attacked in this Court and on appeal to the Supreme Court it was held to be *intra vires* in the *State of Punjab* v. *Ajaib Singh and others* (1). There it was held that the Act does not infringe Article 22 (1) and (2) of the Constitution nor was it inconsistent with the provisions of Article 19 (1) (d) and (e) and Article 21, and although one of the learned Judges of this Court had held it to be *ultra vires* the Article 19 (1) (g) of the Constitution, it was not supported on that ground in the Supreme Court.

The Act has to be interpreted taking into consideration not only the language of the statute but also from a consideration of the conditions which gave rise to it and of the mischief which it was passed to remedy and then we have to give 'force' and 'life' to the intention of the Legislature. This is what was said by Denning, L.J. in *Seaford Court Estates Limited* v. *Asher* (2). Therefore a duty is cast on the Courts to see that the object of the Act is subserved rather than thwarted. In this manner the Court will better subserve the public interest which after all is the interest of every citizen of the country, but that does not mean that any strained interpretation is to be put on the Act.

(1) 1953 S.C.R. 254
(2) (1949) 2 A.E.R 155

The object of the Act is given in the preamble to be—

> "An Act to provide, in pursuance of an agreement with Pakistan, for the recovery and restoration of abducted persons."

'Abducted person' is defined in section 2 (a) of the Act as meaning :—

> "* * a male child under the age of sixteen years or female of whatever age who is, or immediately before the 1st day of March, 1947, was a Muslim and who, on or after that day and before the 1st day of January, 1949, has become separated from his or her family and is found to be living with or under the control of any other individual or family, and in the latter case includes a child born to any such female after the said date."

Section 3 provides for establishment of camps by the Central Government and it gives powers to certain police officers to recover abducted persons. Section 6 provides for the determination of the question whether any person detained is or is not an abducted person and it reads :—

> "6. (1) If any question arises whether a person detained in a camp is or is not an abducted person or whether such person should be restored to his or her relative or handed over to any other persons or conveyed out of India or allowed to leave the camp, it shall be referred to, and decided by a Tribunal constituted for the purpose by the Central Government.
>
> (2) The decision of the Tribunal constituted under subsection (1) shall be final. Provided that the Central Government

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may, either of its own motion or on the application of any party interested in the matter, review or revise any such decision. Thus it is left to this Tribunal to decide whether any person is an abducted person or not and this decision is final.

Section 8 bars the jurisdiction of the Courts to question the detention in a Camp and under section 10 powers are given to the Central Government to make rules.

Under the rule-making power provisions are made about various matters given in section 10, and rule 7 provides for restoration of abducted persons to their relatives where no dispute exists. Rule 8 deals with the Constitution of the Tribunal and rule 9 with the procedure to be followed by the Tribunal, and this I may quote *in extenso*—

> "9. (1) The Tribunal shall, subject to the provisions hereinafter contained, have power to regulate its own procedure, including the fixing of the place, date and time of its sittings.
>
> (2) In the disposal of any matter coming before it, the Tribunal shall not be bound by any law relating to civil or criminal procedure or evidence but shall follow such procedure as will enable it to arrive at a proper decision, and shall give to every person interested who may appear before it a reasonable opportunity of being heard:
>
> Provided that no legal practitioner shall be entitled to appear on behalf of any person in any matter before the Tribunal."

Under rule 12 power is given to the Central Government to review or revise the decision of the Tribunal.

The jurisdiction which is given by the Act to the Tribunal is of the kind which is dealt with in the judgment of Lord Esher, M. R. in *Reg* v. *Commissioner of Income-tax* (1). The learned Master of the Rolls divided the case into two categories thus—

> "When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There, it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. *But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, and* on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. *In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding*

(1) 21 Q.B.D. 313

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certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, *including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and* if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

This was quoted with approval in a judgment of the Supreme Court, *Ebrahim Aboobakar and another* v. *Custodian-General of Evacuee Property* (1). As was said by Mahajan, J., in that case the present Tribunal also falls within clause (2) of the classification of the Master of the Rolls. In these circumstances, and I again base my opinion on the observations in that case at page 705, the High Court cannot issue a writ of certiorari for the purpose of quashing the order.

It was then submitted that the procedure followed by the Tribunal was an infringement of the concept of natural justice and that the order was erroneous in law. Reliance was placed on *Board of Education* v. *Rice* (2), where Lord Loreburn, L.C., at page 182 was of the opinion that whether the determination of the matter is settled by discretion involving no law or involves matters of law and fact they (the Board of Education) "must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything." It was also held that they (the Board) are not bound to treat such a question as though it was a trial. They need not examine witnesses on oath and obtain evidence in any way they think best, always giving a fair opportunity to the parties for correcting or contradicting any relevant statement prejudicial to them.

(1) 1952 S.C.R. 596, 703
(2) 1911 A.C. 179

But Lord Shaw did not accept this principle in *Local Government Board* v. *Arlidge* (1). At page 138 his Lordship said—

> "And the assumption that the methods of natural justice are ex-necessitate those of Courts of justice is wholly unfounded * *. In so far as the term 'natural justice' means that a result or process should be just, it is harmless, * * * *; in so far as it attempts to reflect the old *jus naturale* it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far it is resorted to for other purposes, vacuous."

The four principles of natural justice which are deducible from cases decided in England are:—

(1) There shall be an opportunity to be heard to both sides.
(2) The Tribunal deciding the controversy should be impartial and free from bias. A person cannot, therefore, be a Judge in one's own cause.
(3) The decision must be made in good faith and it must not be made in order to achieve some object other than that for which the power to adjudicate is given.
(4) Though procedure may not approximate to a trial in Court and the Tribunal may obtain evidence in any manner it likes yet a fair opportunity must be given to the opposite party to contradict it.

In India the concept of natural justice has been given by Patanjali Sastri. J., as he then was, in *Gopalan's case* (2). According to this learned Judge the universal and immutable principles of natural justice are:—

(1) objective and ascertainable standard of conduct to which it is possible to conform;

(1) 1915 A.C. 120
(2) 1950 S.C.R. 88, 197

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(2) notice to the party of the accusation against him;

(3) a reasonable opportunity to establish innocence; and

(4) an impartial tribunal capable of giving unbiassed judgment.

According to Willoughby the concept of natural justice means:—

(1) that he shall have due notice which may be actual or constructive of the institution of proceedings * *;

(2) that reasonable opportunity to appear and defend his rights including the right himself to testify, to produce witnesses and to introduce relevant documents and other evidence;

(3) that the Tribunal in or before which his rights are adjudicated is so constituted as to give reasonable assurance of its honesty and impartiality; and

(4) that it is a Court of competent jurisdiction.

I cannot see what principle of natural justice has been transgressed in the two cases before us. Mr. Rajindar Sachar arguing for Pritam Singh submitted that statements had been recorded by the Tribunal in his absence, but we have the affidavit of Pandit Thakar Das, one of the members of the Tribunal, that he gave to the petitioner a gist of what was stated by the witnesses against him. According to the rules of procedure to be followed by the Tribunal which has been prescribed by the Rules under the Act they have been authorised to regulate their own procedure, and in disposing of any matter coming before them they are not bound by any law relating to civil or criminal procedure or the laws of evidence. All they are

required to do is to follow such procedure as will enable them to arrive at a proper decision and they are required to give to every person interested a reasonable opportunity to appear before them and being heard. The procedure which has been prescribed, as I have said, is a statutory procedure, and it has not been shown in what manner the Tribunal infringed the rules made under the statute. Even if this rule was not there, I cannot see how the principles of natural justice were infringed in this case.

Reference was then made to *Errington* v. *Minister of Health* (1), where at page 264, Greer, L.J., said that "a *quasi* judicial body cannot hear evidence from one side in the absence of another." Whether this will be good law in view of the Stevenage case—*Franklin and others* v. *Minister of Town and County Planning* (2) it is not necessary to decide in this case; nor would this question really arise in view of the procedure prescribed under the rules. But what are the requirements of natural justice before Tribunals, under a duty to act judicially, has now been decided in *Nakkuda Ali's case* (3), by their Lordships of the Privy Council. There the license of Nakkuda Ali was cancelled by the Controller of Textiles in Ceylon and Nakkuda Ali obtained in the nature of a writ of certiorari for quashing the order. Their Lordships said at page 81—

> "It is impossible to see in this any departure from natural justice. The respondent had before him ample material that would warrant a belief that the appellant had been instrumental in getting the interpolations made and securing for himself a larger credit at the bank than he was entitled to. Nor did the procedure adopted fail to give the appellant the essentials that justice would require, assuming the respondent

(1) (1935) 1 K.B. 249
(2) 1948 A.C. 87
(3) 1951 A.C. 66

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to have been under a duty to act judicially. The appellant was informed in precise terms what it was that he was suspected of: and he was given a proper opportunity of dissipating the suspicion and having such representations as might aid him put forward by counsel on his behalf. In fact, the explanation that he did offer was hardly "calculated to allay the respondent's suspicions; probably it confirmed them."

In yet another case, *Jayaratne* v. *Bapu Miya Mohamed Miya* (1), where also the Controller of Textiles in Ceylon had revoked the license of a dealer, it was held that the Controller in arriving at his conclusion may have been right or wrong or may have acted not on some suspicion but on suspicion which arose reasonably out of the facts that were before him, namely discrepancies in the books and papers of dealer's firm, which suspicion was not removed by the explanation given by the dealer, but this would not show that the principles of natural justice had been violated. It was further held that even if the Controller was under a duty to act judicially in arriving at his decision, the proceeding before him was not a regular trial nor was a strict proof of the charge against the dealer essential. Their Lordships also explained *Arlidge's case* (2). Delivering the judgment of the Board Lord Radcliffe at page 896 said :—

> "This was directly in contradiction with the respondent's story, and there was no "reason why, of the two accounts of what had taken place, the appellant should not decide to accept that of his own officials. There would be nothing to violate natural justice in doing so. He had taken care to let the respondent know with precision what were the discrepancies in the Department's books

(1) 54 C.W.N. 893
(2) 1915 A.C. 120

that related to his accounts; he had told him that he regarded the paying-in slips as having been tampered with, and that the respondent had got the interpolations made so as to procure for himself a false ledger credit; and he had invited an explanation. The respondent had given as much explanation as he would or could, apart from what he had already stated at the Assistant Controller's enquiry."

Again their Lordships of the Supreme Court in *Parry's case* (1), observed at page 524:—

> "The Commissioner was certainly bound to decide the questions and he did decide them. At the worst, he may have come to an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction."

The learned Advocate-General drew our attention to *The King* v. *Justices of Lincolnshire,* (2), where it was held that merely because the Justices had acted on the uncorroborated testimony of a mother in bastardy proceedings it could not be said that they had not acted within their jurisdiction and a writ of certiorari would therefore not lie.

I would, therefore, hold that there has been no infringement of the concept of natural justice in this case because :—

(1) the Rules themselves prescribe a procedure which has been followed; and
(2) reasonable opportunity was given to Pritam Singh and Ram Singh petitioners to appear and lead evidence.

(1) 1952 S.C.R. 519
(2) (1926) 2 K.B. 192

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The Tribunal having acted within its jurisdiction and no error apparent on the face of the record having been proved, this Court cannot interfere. The statute has given to the Tribunal the power to determine facts and to exercise jurisdiction, and the mere fact that wrong decision has been given on those facts is not a question which goes to the jurisdiction of the Tribunal. I should not be understood to express any opinion on the question of the correctness or otherwise of the decision of the Tribunal.

It was then submitted that the women cannot be sent to Pakistan, but that again is a question which is within the jurisdiction of the Tribunal and it is not for this Court acting in its supervisory jurisdiction to review that decision. So long as the matter is within the jurisdiction of the Tribunal, in my opinion, this Court will not interfere on the facts which have been proved in this case.

The case of Ram Singh is no different. He did not even appear before the Tribunal and what I have said in regard to Pritam Singh's case would apply to the facts of this case also.

The constitutionality of the Act was then attacked on the ground that it infringes Article 19 (1) (g) of the Constitution of India and reliance was placed on an observation of Bhandari, J., as he then was, in *Ajaib Singh's Case*, (1) in paragraph 32, but this matter has, in my opinion, been settled by the judgment of their Lordships of the Supreme Court in *the State of Punjab* v. *Ajaib Singh* (2). Delivering the judgment of the Court, Das, J., there said :—

> "The learned counsel for the respondent Ajaib Singh contended that the Act was inconsistent with the provisions of article 19 (1) (d) and (e) and article 21. This matter is concluded by the

(1) A.I.R. 1952 Pb. 318
(2) 1953 S.C.R. 254

majority decision of this Court in *Gopalan's case* (1) and the High Court quite correctly negatived this contention. Sri Dadachanji has not sought to support the views of Bhandari, J., regarding the Act being inconsistent with article 19 (1) (g). Nor has learned counsel seriously pressed the objection of unconstitutionality based on article 15, which, in our view, was rightly rejected by the High Court."

This contention has, in my opinion, no force and I would, therefore, repel it.

Question was then raised as to the right of the petitioners to interview their respective and alleged wives and in support of this reliance was placed on the judgments of the Lahore High Court which involved the question of right of a person to interview his legal adviser. Those cases have, in my opinion, no application to the facts of this case, and as in the present two cases it has been held that the persons detained are abducted persons the petitioner can have no right of interviewing them, and it is not necessary to decide in this case as to what would be the position, before the adjudication by the Tribunal as to whether a person detained is or is not an abducted person.

It was also submitted that because interviews were not being allowed the detention was illegal. It is not necessary to decide this question also in these cases, because once it has been held by the Tribunal that the persons are abducted persons the question of validity of detention loses all force, because the legality of the detention is to be decided at the time of the return and not with reference to the date of institution of the proceedings; see *Naranjan Singh Nathawan* v. *the State of Punjab*, (2).

(1) (1950) S.C.R. 88
(2) 1952 S.C.R. 395