interim rent is envisaged by the Act and the Controller has an inherent power to enforce payment of the sum so settled. Without in any way pre-judging the issue with regard to the quantum of standard rent, I reduce the interim rent from Rs. 120 to Rs. 100 per mensem. This reduction is being made merely to alleviate the hardship of the tenants in making a lump sum payment of a large amount and it should not be understood in any way to be a reflection on the merits of the dispute. It is mutually agreed by counsel that the interim rent fixed at the rate of Rs. 100 per mensem after deducting a sum of Rs. 1,320.15 paise would come to Rs. 3,654.85 paise uptil the end of July, 1965. This amount should be paid by the tenants within one month and if there is default in making the payment, this appeal would be deemed to have been dismissed *in toto*. The interim rent will hereafter be paid at Rs. 100 per mensem till the final adjudication on the question of standard rent payable by the 15th day of every month. The parties are left to bear their own costs of this appeal.

B.R.T.

CRIMINAL MISCELLANEOUS.

Before H. R. Khanna, J.

HARKISHAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB, AND ANOTHER,—*Respondents.*

Criminal Writ No. 4 of 1965.

1965

July, 26th

Preventive Detention Act (IV of 1950)—S. 4—Punjab Detenus Rules (1950) framed under—Whether valid—Preventive detention—Consequences of—Whether different from those of punitive detention—Order of the Government imposing restrictions on detenus—Whether justiciable—Defence of India Act (LI of 1962)—S. 44—"Authority"—Whether includes Central and State Governments.

Held, that the Punjab Detenus Rules, 1950, have been framed by the Punjab Government for the purpose of determining the conditions of detention of persons detained in any prison in the State of Punjab. The effect of these rules is to avoid differential treatment and arbitrariness in the matter of treatment of the detenus and the jail authorities, in whose custody the detenus are kept, are bound to

abide by those rules. The Government under sub-rule (4) of rule 30 of the Defence of India Rules had the power to lay down the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline for the petitioner while in detention, and it has specified that the petitioner would be governed by the Punjab Detenus Rules. These rules were within the rule-making power of the Government and as they are not shown to be violative of any law, they cannot be struck down. The mere fact that the rules framed by the Kerala Government in the matter are comparatively more liberal, is no ground for striking down the Punjab Rules.

Held, that comprehensive powers of different varieties have been vested in the authorities concerned by Rule 30 of the Defence of India Rules, 1962, for placing restrictions on a person with a view to preventing him from acting in any manner prejudicial to the Defence of India and Civil Defence and other matters specified. It is for the authorities concerned to decide about the restriction which, in the circumstances of the case, is necessary to be imposed upon the person proceeded against for the achievement of the object mentioned in the rule. Detention in the very nature of things brings in its wake restrictions upon the person detained and he cannot claim a good many rights which are otherwise possessed by a free man. For example, the right of free movement and of association with others of one's choice would no longer be there as soon as a person is detained, because the exercise of that right necessarily postulates that one is a free person. Likewise, a number of other rights of the person detained would be curtailed. It would, therefore, be not a correct approach to consider the case of a detained person in the context of the rights of a free man because the resultant effect of the detention of a person necessarily is that a number of his personal rights come to an end while others get considerably curtailed. Once the order of detention is passed, the detenu becomes subject to restrictions and the Government is well within its rights to direct that the detenu will be governed in the matters of maintenance and discipline by Punjab Detenus Rules. Further as, according to sub-rule (4), it is for the Government to determine the conditions of maintenance and discipline under which the detenu is to be detained, the Court cannot substitute its own opinion with regard to those conditions for that of the Government.

Held, further, that it would make no difference so far as the exercise of the rights is concerned whether a person is under punitive detention as a result of conviction for some offence, or whether he is under preventive detention because of an order of detention having been made under the Defence of India Rules or the Preventive Detention Act. It is no doubt true that the circumstances leading to the detention in the two cases would be essentially different and the

object underlying the detention is also not the same, the fact all the same remains that the consequence is the same, because both the courses result in detention. It also cannot be said that though a person losses many of his personal rights as a result of punitive detention, those rights subsist and remain intact and unimpaired if he is under preventive detention. The loss of those rights is a necessary corollary of the act of detention and it makes no material difference whether the detention is punitive or preventive.

Held, that the word "authority" in section 44 of the Defence of India Act, 1962, includes the Central and State Governments and the limitation imposed by that section is intended to also operate when orders under the Act are made by those Governments. The words "authority" or "authorities" have been used in sub-section (3) of section 3 of the Act in addition to the Central and State Governments with a view to make it clear that besides those Governments the powers specified in that sub-section could be conferred on other authorities also but it does not follow from that that where the word "authority" alone is used it would not cover the Central and State Governments. While enacting the Defence of India Act a safeguard was added in the form of section 44 providing that the authority or the persons in pursuance of the Act would interfere with 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 would not be a correct approach in the interpretation of the section to hold that while the other authorities and officers would keep in view the wholesome principle embodied in the section, the Central and State Governments can by-pass that principle and exclude it from consideration when action is taken by such Governments. The reason underlying the enactment of that section would hold good equally whether the action is taken by the Government or by its officers or other subordinate authority.

Petition under Article 226 of the Constitution of India praying that the following reliefs be granted to the petitioner :—

(*i*) *Rules No.* 6, 7, 8, 9, 13, 14, 16, 17, 18, 21, 26, 29; 30, 31, 37, 44, 44-*A*, 46 *and* 49 *of the Punjab Detenu Rules of* 1950 *be declared as illegal and* ultra vires *and that they are in applicable so far as the petitioner's detention is concerned*;

(*ii*) *Respondents be directed to allow the petitioner all periodicals, newspapers and books which are legally printed and published and are not proscribed or banned and also allow him to write any number of letters to his friends and relatives including co-detenus and to have as*

many interviews with them as are necessary to keep social contact and not to put any time bar for legal interviews ;

(iii) Respondents further be directed to allow the petitioner to contribute articles on art, literature economic and history which are not connected with the public safety and interests and the Defence of India, and Civil Defence and also provide necessary clothing, furniture and other amenities of life which are necessary for the petitioner's comfort and the respondents be also directed to remove all limitations on the petitioner's spending from his pocket; and further praying that the respondents be directed to produce the petitioner in this Hon'ble Court when this petition comes up for hearing as he desires to argue his case personally.

ANAND SARUP AND A. S. BAINS, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL AND P. R. JAIN, ADVOCATE, for the Respondents.

ORDER

Khanna, J. KHANNA, J.—This judgment would dispose of two petitions (Criminal Writ No. 4 of 1965, and Criminal Original No. 44(M) of 1965), which have been filed by Shri Harkaishan Singh Surjeet and Shri Bhim Singh, Advocate, respectively questioning the validity of the Punjab Detenus Rules, 1950. It is stated by Mr. Anand Swarup on behalf of both the petitioners that the matter involved in the two petitions is the same, and arguments have only been addressed in Criminal Writ No. 4 of 1965. It would consequently be necessary to give facts only of that petition.

The brief facts of the case in Criminal Writ No. 4 of 1965, are that the petitioner, who belongs to the Communist Party of India and claims to be a member of its highest body, was arrested under orders of the Government of Kerala, dated the 29th December, 1964, under rule 30(1)(b) of the Defence of India Rules and detained in the Central Jail, Viyyur. The petitioner at his request was transferred to a Punjab Jail by the Kerala Government with the consent of the Punjab Government. On 24th March, 1965, the Government of Kerala cancelled the order of detention of the petitioner and he was released from detention on 31st March, 1965. On the same day the petitioner was served with an order of detention which had been made by

the Punjab Government on 29th December, 1964, regarding the detention of the petitioner under rule 30(1)(b) of the Defence of India Rules. In that order it was stated that the petitioner was reported to be indulging in anti-national and pro-China activities which were prejudicial to the Defence of India and Civil Defence, and that the Governor of the Punjab was satisfied that with a view to preventing the petitioner from acting in a manner prejudicial to the Defence of India and Civil Defence it was necessary to detain him. It was further directed in that order that in the matter relating to maintenance, discipline and the punishment of offences and breaches of discipline the petitioner would be governed by the Punjab Detenus Rules, 1950, as amended up-to-date. The petitioner was thereafter detained for some time in Rohtak Jail, but was later transferred to the Nabha Jail.

According to the petitioner, while he was detained in Central Jail, Viyyur, under conditions given in Travancore Cochin Security Prisoners Order, 1950, he was allowed to receive in Jail all publications, books, newspapers and periodicals which were not prescribed or banned by the Government and was allowed a weekly interview. Another interview was also permitted if the petitioner did not write a letter. Furniture and clothes commensurate with the mode of living of the petitioner were placed at his disposal. Amenities in the nature of medical treatment and articles of toilet were also allowed to him. In Nabha Jail, however, the Superintendent of Jail refused to allow the petitioner any newspaper or periodical except a selected few provided in the rules. The petitioner claims that on account of the Punjab rules, he has been deprived of opportunity to contribute articles to newspapers on art, literature, economics and history. There are also restrictions on interviews which, according to the petitioner, are more stringent. Furniture provided in the Punjab Jails, it is stated, is scanty and the petitioner is not allowed to correspond with the other detenus. Restrictions have also been placed on the spending of money by the petitioner from his own pocket. The petitioner's stand is that the conditions, under which he is detained, are punitive. He accordingly, claims that rules Nos. 6 to 9, 13, 14, 16 to 18, 21, 26, 29 to 31, 37, 44, 44-A, 46 and 49 of the Punjab Detenus Rules be struck down as illegal and *ultra vires*.

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In a supplementary affidavit, dated the 3rd April, 1965, the petitioner has stated that he was first placed in 'A' Class, but was subsequently placed in 'B' Class. The petitioner claims to be entitled to be placed in 'A' Class in accordance with his political status. Prayer has also been made by the petitioner for grant of family allowance Another prayer made in this affidavit by the petitioner is that he be kept in a jail near his home district. It is, however, conceded that this prayer has become infructuous because the petitioner since the filing of the affidavit has been transferred to Nabha Jail.

The petition has been resisted by the respondents and the affidavits of Shri Jagdish Chandra, Deputy Secretary to Government, Punjab, have been filed. The stand taken on behalf of the respondents is that the petitioner is governed by the Punjab Detenus Rules, 1950, which give the directions for the supply of newspapers, periodicals and interviews. The furniture and other amenities are stated to be supplied to the petitioner in accordance with those rules, and the question of placing further restrictions on him, it is averred, does not arise. The petition is stated to be not competent and the matter raised therein, to be not justiciable. The detenu's claim for family allowance, according to the respondents, is considered on merits and is granted where the circumstances allow. The claim of the petitioner for family allowance and pension, it has been stated at the Bar, has not been allowed. As regards the classification of the petitioner, the case of the respondent is that he has been placed in 'B' Class as he was entitled to that class according to the Punjab Detenus Rules.

There was also an allegation made in the petition that the petitioner while being detained in Rohtak Jail was kept in solitary confinement. This allegation was denied on behalf of the respondents. In any case, there is no dispute now that the Nabha Jail, wherein the petitioner is now detained, has also a large number of other communist detenus, and the petitioner mixes with them freely.

Before dealing with the contentions, which have been advanced on behalf of the petitioner, it would be pertinent to briefly refer to the rules, the validity of which has been impugned by the petitioner. The Punjab Detenus Rules have been framed by the Governor of Punjab in exercise

of the powers conferred by section 4 of the Preventive Detention Act No. (IV of 1950). As mentioned earlier, it was specified in the order of detention of the petitioner that he would be governed by these rules in the matters relating to maintenance, discipline and punishment for offences and breaches of discipline. Rule 1 mentions that the rules would apply to persons detained under the Preventive Detention Act, while rule 2 contains the definition clauses. Rule 3 provides that detenus shall be classified as A, B and C class detenus by the District Magistrate or the Sub-Divisional Magistrate concerned, subject to confirmation by the State Government. Rules 4 and 5 deal respectively with the matters of accommodation and diet. According to rule 6, each detenus may wear his own clothes and his relations may, if so permitted by the Superintendent, send in extra clothes and bedding. List is also given of the clothes which shall be supplied by the Superintendent to a detenu who is unable to provide himself with clothing and bedding, and condition is added that in case those articles are supplied the detenu would not be permitted to use private bedding and clothes. Rule 7 states that A and B class detenus would be provided with furniture and eating utensils as are admissible to A and B Class prisoners, respectively. Those detenus would also be supplied with mosquito-nets by the Superintendent. According to rule 8 a detenu may receive from his relatives or friends at intervals of not less than a month, funds not exceeding in the aggregate Rs. 20 per mensem, to supplement amenities of life, in the case of A class detenu, Rs. 10 in the case of B class detenu and Rs. 5 in the case of C class detenu. Provision is also made for higher allowance if A class detenu applies to the Government giving reasons in support of the request. According to rule 9, A and B class detenus would be paid a lump sum allowance of Rs. 5-8-0 for the purchase of toilet articles and would make their own arrangements for the purchase of those articles. There is also provision for supply of soap and *datan* to C class detenus, but we are not concerned with that. Rules 10 to 12 have not been assailed and need not be referred. Rule 13 makes provision for interviews by near relatives, while under rule 14 interviews to near relatives can be allowed by the Superintendent of Jail and in the case of others by the Deputy Inspector-General, Criminal Investigation Department. According to rule 16, no detenu would be allowed more than one interview in a fortnight and not more than five

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persons in the case of A and B Class detenus and two persons in the case of C class detenus would be permitted to visit a person who is a detenu at one interview. Provision is also made for taking of children by the persons admitted for interview with the permission of the Superintendent. Rule 17 fixes Thursday as the day on which interviews shall ordinarily take place, while rule 18 specifies the period of interview as an hour, with near relatives and half an hour with others. Rule 21 deals with interviews with legal adviser or other person in connection with a pending or contemplated proceeding in a court of law, and provides that applications for such an interview should be preferred to the Deputy Inspector-General of Police, Criminal Investigation Department, while rule 22 directs that a statement be maintained by the Superintendent of all interviews between a detenu and his relatives and friends. Rule 26 deals with correspondence and censorship and provides that detenus of A, B and C class shall ordinarily be permitted to write three, two and one letter each respectively and to receive any number of such letters per week. Direction is also contained that all correspondence to and from a detenu shall be confined purely to domestic matters and it is ordained that letters containing references to political or communal matters shall be withheld. Rule 29 states that all books and newspapers shall be transmitted to and from detenus by the senior police officer of the district through the Superintendent of the Jail concerned. The senior police officer may, at his discretion, withhold any newspapers or books and in such a case shall make a report to the Deputy Inspector-General, Criminal Investigation Department. Newspapers, periodicals and magazines which have been approved by the Government for detenus shall, however, be handed over to a detenu without prior censorship. Under rule 30, A and B class detenus are allowed to receive from the approved list two dailies, two weeklies and two monthlies and C class detenus, one daily, one weekly and one monthly at their own expense, while under rule 31, A, B and C class detenus can receive 10, 6 and 3 books per month, respectively. Rule 37 makes provision for the supply of writing material to the detenu at his own expense. According to rule 44, the detenus should be allowed to play volley-ball and badminton if there is room in the jail for that and the number of detenus warrants it. The detenus are further allowed to play indoor games like chess and playing cards at their own expense. Detenus

are also allowed to keep gramophones and such radio sets as are suitable for local reception at their expense. According to rule 44-A, detenus may be assigned tasks, subject to availability of working accommodation in the jail with due regard to their state of health, physical and mental capacity, and character and antecedents. Provision is also made for payment of remuneration for their labour. Rule 46 directs that A class detenus should be allowed to travel in Inter Class on transfer from one jail to another as also on release or otherwise. Rule 49 deals with medical treatment and it is provided therein that detenus would ordinarily be treated by the medical officer of the jail. Where, however, it is necessary, the detenu may be removed to the Civil Hospital outside the jail. In such an event, the Superintendent of Police would make arrangements for guarding the detenu in the hospital.

Mr. Anand Swarup, learned counsel for the petitioner, has argued that the object of the detention of the petitioner was to prevent him from acting in any manner prejudicial to the Defence of India and Civil Defence and that consequently the restrictions which are placed on the petitioner should be such as are directly related to the achievement of that object. Any other restriction, it is submitted, is unwarranted. The restrictions in the matter of interview, correspondence, books and newspapers as also diet and furniture, which have been placed upon the detenus by the Punjab Detenus Rules, 1950, according to the learned counsel, transform the detention from being preventive into one which is punitive. The rules, Mr. Anand Swarup, further contends, violate section 44 of the Defence of India Act, according to which "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."

I have given the matter my consideration and am of the view that the contentions advanced on behalf of the petitioner are not well-founded. Rule 30 of the Defence of India Rules, enumerates the different types of restrictions which can be imposed upon a person with a view to preventing him from acting in any manner prejudicial to the Defence of India and Civil Defence and other allied matters

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mentioned therein, and it is provided that an order made under that rule may direct that such person may remove himself from India or that he be detained or be restrained from remaining in a specified area or required to reside and remain in any specified place or area. The rules also empower the authority concerned to require a person to notify his movements, or impose upon him restrictions in respect of employment, business, association, communication with other persons and in respect of other activities or prohibit and restrict the possession or use by him of any such article or thing or otherwise regulate his conduct in any such manner as may be specified.

It would, thus, appear that comprehensive powers of different varieties have been vested in the authorities concerned for placing restrictions on a person with a view to preventing him from acting in any manner prejudicial to the Defence of India and Civil Defence and other matters specified. It is for the authorities concerned to decide about the restriction which, in the circumstances of the case, is necessary to be imposed upon the person proceeded against for the achievement of the object mentioned in the rule. So far as the petitioner is concerned, the Punjab Government considered it necessary that he be detained with a view to prevent him from acting in a manner prejudicial to the Defence of India and Civil Defence and for the purpose of the present petition it will have to be assumed that the order made by the Punjab Government for the detention of the petitioner was a valid one. As the petitioner has been lawfully detained, a number of consequences flow from the fact of detention. Detention in the very nature of things brings in its wake restrictions upon the person detained and he cannot claim a good many rights which are otherwise possessed by a free man. For example, the right of free movement and of association with others of one's choice would no longer be there as soon as a person is detained, because the exercise of that right necessarily postulates that one is a free person. Likewise, a number of other rights of the person detained would be curtailed. It would, therefore, be not a correct approach to consider the case of a detained person in the context of the rights of a free man because the resultant effect of the detention of a person necessarily is that a number of his personal rights come to an end while others get considerably curtailed. As observed by Patanjali

Sastri J. (as he then was) in *A. K. Gopalan* v. *State of Madras* (1), in para 102:

> "Read as a whole and viewed in its setting among the group of provisions (Articles 19—22) relating to "Right to Freedom", Article 19 seems to my mind to pre-suppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests. It was said that sub-clause (f) would militate against this view, as the enjoyment of the right "to acquire, hold and dispose of property" does not depend upon the owner retaining his personal freedom. This assumption is obviously wrong as regards movable properties, and even as regards immovables he could not acquire or dispose of them from behind the prison bars; nor could he "hold" them in the sense of exercising rights of possession and control over them which is what the word seems to mean in the context. But where, as a penalty for committing a crime or otherwise the citizen is lawfully deprived of his freedom, there could no longer be any question of his exercising or enforcing the rights referred to in clause (1)."

Although the above observations were made in the context of the argument that preventive detention of the petitioner in that case was illegal, as it struck against the fundamental rights possessed by him under Article 19 of the Constitution, the observations because of their comprehensive and general nature have a direct bearing on the present case. Das, J. (he he then was), dealt with the same matter in the following words in para 224:—

> "Finally, the ambit and scope of the rights protected by Article 19(1) have to be considered. Does it protect the right of free movement and the other personal rights therein mentioned in all circumstances irrespective of any other consideration? Does it not postulate a capacity to exercise the rights? Does its protection continue even

(1) A.I.R. 1950 S.C. 27.

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though the citizen lawfully loses his capacity for exercising those rights? How can the continuance of those personal rights be compatible with the lawful detention of the person? These personal rights and lawful detention cannot go together."

It would also, in my opinion, make no difference so far as the exercise of the rights is concerned whether a person is under punitive detention as a result of conviction for some offence, or whether he is under preventive detention because of an order of detention having been made under the Defence of India Rules or the Preventive Detention Act. It is no doubt true that the circumstances leading to the detention in the two cases would be essentially different and the object underlying the detention is also not the same, the fact all the same remains that the consequence is the same, because both the courses result in detention. It also cannot be said that though a person loses many of his personal rights as a result of punitive detention, those rights subsist and remain intact and unimpaired if he is under preventive detention. The loss of those rights is a necessary corollary of the act of detention and it makes no material difference whether the detention is punitive or preventive. I may in this context refer to the following observations of Das, J., in para 225 of *Gopalan's case*:—

> "It follows that the rights enumerated in Article 19(1) subsist while the citizen has the legal capacity to exercise them. If his capacity to exercise them is gone by reason of a lawful conviction with respect to the rights in sub-clauses (a) to (e) and (g) or by reason of a wrongful compulsory acquisition with respect to the right in sub-clause (f), he ceases to have those rights while his incapacity lasts. It further follows that if a citizen's freedom of the person is lawfully taken away otherwise than as a result of a lawful conviction for an offence, that citizen, for precisely the same reason, cannot exercise any of the rights attached to his person including those enumerated in sub-clauses (a) to (e) and (g) of Article 19(1). In my judgment, a lawful detention, whether punitive or preventive, does not offend against the protection conferred by Article

19(1)(a) to (e) and (g), for those rights must necessarily cease when the freedom of the person is lawfully taken away. In short, those rights end where the lawful detention begins."

In the above view of the matter, the contention that the detention of the petitioner has been transformed from preventive to punitive detention, cannot be accepted.

So far as the Punjab Detenus Rules are concerned, I find that the Government has framed those rules for the purpose of determining the conditions of detention of persons detained in any prison in the State of Punjab. The effect of these rules is to avoid differential treatment and arbitrariness in the matter of treatment of the detenus and the jail authorities, in whose custody the detenus are kept, are bound to abide by those rules. The Government under sub-rule (4) of rule 30 of the Defence of India Rules had the power to lay down the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline for the petitioner while in detention, and it has specfied that the petitioner would be governed by the Punjab Detenus Rules. These rules were within the rule-making power of the Government and as they are not shown to be violative of any law, they cannot be struck down. The mere fact that the rules framed by the Kerala Government in the matter are comparatively more liberal, is no ground for striking down the Punjab Rules.

As regards the argument based upon section 44 of the Defence of India Act is concerned, I find that this was a matter which had to be kept in view when decision was to be taken as to which one of the different restrictions in sub-rule (1) of rule 30 should be imposed upon the petitioner. The Government, as observed earlier, considered it essential to detain the petitioner. Once the order of detention was passed, the petitioner became subject to restrictions and the Government was well within its rights to direct that the petitioner would be governed in the matters of maintenance and discipline by Punjab Detenus Rules. Further as, according to sub-rule (4), it was for the Government to determine the conditions of maintenance and discipline under which the petitioner was to be detained, the Court cannot substitute its own opinion with regard to those conditions for that of the Government.

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Mr. Anand Swarup, has referred to the case of *George Fernandes* v. *The State of Maharashtra* (2). In that case the petitioner had been detained under rule 30 of the Defence of India Rules and was governed by the Bombay Conditions of Detention Order, 1951. Rule 16 of that Order did not lay down any limitation on the number of books to be received by a detenu though it was provided that the postal order containing the books would first be opened by the Commissioner or the Superintendent and the delivery of such books to the prisoner would be refused by the Commissioner or the Superintendent if in his opinion it was not suitable. An order was made by the Superintendent that the number of books to be made available to the petitioner at one time should be 12 of which 10 might be non-religious books and 2 religious books. In a petition filed by the detenu the order of the Superintendent was quashed and it was directed that no restriction be placed on the number of books that might be supplied to the detenu unless a particular book was determined to be unsuitable by the authority. It would appear from the above that the order made by the Superintendent in that case was contrary to the Bombay Conditions of Detention Order and for that reason was held to be not valid. In the present case it has not been shown that the restrictions placed upon the petitioner are in excess of those warranted by the Punjab Detenus Rules and as such the petitioner cannot derive much assistance from the above authority. Indeed, there can be hardly any dispute on the point that if the authorities concerned place restrictions on the detenu in excess of those warranted by the Punjab Detenus Rules, the action of the authorities would be liable to be impeached. Likewise, if a restriction or penalty is imposed upon the detenu *mala fide* and in order to mete out differential treatment to him as was done in the case of *Ranbir Singh Sehgal* v. *The State of Punjab* (3), the Court would interfere and afford redress to the person concerned. Where, however, as in the present case, the authorities act within the purview of rules and their action is not shown to be *mala fide* the question of interference by the Court would not arise.

I may state that Mr. Kaushal on behalf of the State has argued that the limitation mentioned in section 44 of the Defence of India Act applies only when an order is

(2) 1963 Bom. L.R. 185.
(3) A.I.R. 1962 S.C. 510.

made by an authority or person and not by the Government. According to Mr. Kaushal, the word "authority" used in section 44 does not include the Government. He has in this context relied upon a Division Bench case of Bombay High Court, *Aminchand Valanji* v. *G. B. Kotak* (4), wherein Tamble, J., observed that the expression "authority" in the Defence of India Act does not include the Central Government, because the learned Judge was of the view that the expressions "Central Government" and "authority" were used in contradistinction. Mr. Kaushal has further referred to provisions like sub-section (3) of section 3 of the Defence of India Act, wherein the word "authority" has been used in addition to the Central and State Governments in some clauses. After giving the matter my consideration I am unable to agree with the view that the word "authority" in section 44 does not include the Central and State Governments and that the limitation imposed by that section was not intended to operate when orders under the Act were made by those Governments. The words "authority" or "authorities" have been used in sub-section (3) of section 3 of the Act in addition to the Central and State Governments with a view to make it clear that besides those Governments the powers specified in that sub-section could be conferred on other authorities also, but it does not follow from that that where the word "authority" alone is used it would not cover the Central and State Governments. Rule 30 has been framed in pursuance of the powers conferred upon the Central Government by clause (15) of sub-section (2) of section 3 of the Act, and the clause reads as under:—

> "(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely,—
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> * * *
> * * *
> * * *
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> (15) notwithstanding anything in any other law for the time being in force,—
>
> (i) the apprehension and detention in custody of any person whom the authority empowered

(4) 1964 Bom. L.R. 234.

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by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate) on grounds appearing to that authority to be reasonable, of being of hostile origin or of having acted, acting, being about to act or being likely to act in a manner prejudicial to the Defence of India and Civil Defence, the security of the State the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention and necessary for the purpose of preventing him from acting in any such prejudicial manner,

(ii) the prohibition of such person from entering or residing or remaining in any area;

(iii) the compelling of such person to reside and remain in any area, or to do or abstain from doing anything; and

(iv) the review of orders of detention passed in pursuance of any rule made under sub-clause (i);"

It is not disputed that under rule 30, the Central and State Governments are authorised to order the detention of a person and pass other orders mentioned in that rule. If the interpretation suggested by Mr. Kaushal were to be accepted and the word "authority" were held not to include the Central and State Governments, no rule could have been framed empowering the Central or State Governments to detain a person or pass other orders mentioned in rule 30. Mr. Kaushal, however, concedes that the Central and State Governments could pass such an order and, in the circumstances, the limited interpretation of the word "authority" suggested by him cannot be accepted. I may state that in *Smt. Godavari Shamrao Parulekar* v. *The State of Maharashtra and others* (5), their Lordships of the Supreme Court assumed, while dealing with an argument based upon section 44 of the Defence of India Act, that the

(5) A.I.R. 1964 S.C. 1128.

aforesaid section could also be invoked even if the order for detention had been made by a State Government, though on merits the argument was found to be not tenable.

The Defence of India Act is a piece of legislation which was enacted with a view to meet the emergency following the Chinese attack on the Northern borders of the country. Some of the provisions of the Act and the rules framed thereunder make serious inroads on the rights of the individual and the liberty of the subject but the Parliament in its wisdom has allowed this thing because the security of the nation was deemed to be of paramount and overriding importance before which the rights of individual as well as the conception of the liberty of the subject must give way. All the same a safeguard was added in the form of section 44 of the Defence of India Act, that the authority or person in pursuance of the Act would interfere with 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 would not, in my opinion, be a correct approach in the interpretation of the section to hold that while the other authorities and officers would keep in view the wholesome principle embo- in the section, the Central and State Governments ca- pass that principle and exclude it from consideration when action is taken by such Governments. The reason underlying the enactment of that section would hold good equally whether the action is taken by the Government or by its officers or other subordinate authority.

Argument has also been advanced by Mr. Kaushal, that the provisions of section 44 of the Defence of India Act are directory and not mandatory. It is conceded that there is a conflict on the point and the same has been noted in *K.T.K. Thangamani* v. *The Chief Secretary, Government* made above repelling the argument of the petitioner on the of *Madras and another* (6). In view of my observation score of section 44 of the Defence of India Act, it is not necessary to go into the matter as to whether the provisions of section 44 are mandatory or directory.

The two petitions fail and are dismissed.

B.R.T.

(6) A.I.R. 1965 Mad. 225.

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