P.L. Lakhanpal vs Union Of India & Ors on 21 September, 1966

Equivalent citations: 1967 AIR 908, 1967 SCR (1) 434, AIR 1967 SUPREME COURT 908, 1967 2 SCR 454

Author: J.M. Shelat

Bench: J.M. Shelat, K. Subba Rao, M. Hidayatullah, S.M. Sikri, G.K. Mitter

PETITIONER:
P.L. LAKHANPAL

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT:
21/09/1966

BENCH:
SHELAT, J.M.
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SHELAT, J.M.
RAO, K. SUBBA (CJ)
HIDAYATULLAH, M.
SIKRI, S.M.
MITTER, G.K.

CITATION:
1967 AIR 908 1967 SCR (1) 434
CITATOR INFO :
C 1967 SC1507 (3)
RF 1973 SC1425 (18)
D 1988 SC1459 (15)
R 1990 SC 176 (32)

ACT:
Defence of India Rules 1962, rr. 30(1)(b) and 30A(9)-Scope of.

HEADNOTE:
The petitioner who was the editor of a newspaper was detained by and order of the Central Government under r. 30(1)(b) of the Defence of India Rules, 1962, and the detention was continued by another order of the Central Government passed six months later, under r. 30A(9). The

first order directed the petitioner's detention with a view to preventing him from acting in any manner prejudicial to the defence of India, civil defence, public safety and the maintenance-of public order, but the order continuing the detention set out only the defence of India and civil defence. The petitioner challenged the second order of the following grounds:-(i)the detention was punitive and not preventive, because his writings in is paper were the grounds of his original detention but that the paper had since become defunct; (ii) the two additional grounds given in the original order and omitted in the latter order must be held to have been non-existent at the time of the original order, and therefore, the original order based on such non-existent grounds was illegal, and could not be validly continued under r. 3OA(9); (iii) even if the Government was competent to continue the detention, the validity of the decision of the Government to continue the detention depended upon the existence of relevant circumstances which would necessitate the- continuation and such circumstances were demonstrable; and (iv) the Minister who passed the second order should have filed a counter affidavit showing that he applied his mind to the material before he passed the order continuing the detention.

HELD : (i) Assuming that the petitioners writings in his paper were relied on for the purpose of passing the original order, they were not the only materials on which the original order and the order continuing the detention were based. The authorities had taken into consideration the over-all picture of all his anti-Indian and pro-Pakistani activities. Therefore, the fact that his paper had since become defunct would make no difference because the jurisdiction to detain is not in respect of a mischief already committed but in anticipation. that the person concerned may in future act prejudicially. [436 H; 437 A-B; 439 C-D]

(ii) The decision to continue the detention order was within the scope of r. 30A and was therefore sustainable. [446 A-B]

Rule 30-A provides for a review of the order of detention, the procedure therefor,, the different reviewing authorities, the period within which such review has to be made and the obligation to decide whether the detention should be continued or cancelled after taking into account all the circumstances of the case. Sub-rule (9) provides that where a detention order is passed, by the Central or a State Government such order shall be reviewed at intervals of not more than six months by the Government which made the-order and upon such review decide whether to continue or cancel the order. The object of the review is to decide whether there is a necessity to continue the detention order or not in

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the fight of the facts and circumstances including any development that has taken place in the meantime. If the

reviewing authority finds that such a development has taken place in the sense that the reasons which led to the passing of the original order no longer subsist or that some of them do not subsist that is not to say that those reasons did not exist at the time of passing the original order and that the satisfaction was on grounds which did not then exist. There is no analogy between the provisions of review in the Defence of India Rules and in the Preventive Detention Act, 1950 and therefore, the decisions on that Act cannot be availed of by the petitioner. [438 H; 439 B; 445 F-H; 446 A-B]

(iii) The words used in r. 30(1) (b) and r. 30A are satisfaction in one case, and decision after taking into account all the circumstances of the case in the other. Unlike r. 30(1)(b), the power to continue the detention after review is not dependent on the solution of the Government. Under r. 30A the Government is enjoined upon to decide whether the detention should be continued or cancelled. The substitution of decision instead of satisfaction is an indication that the criterion for continuing the detent on is the existence of those facts and circumstances which necessitate it. The existence of such facts which is the determinant for the exercise of the power is demonstrable, and if they are shown not to exist the decision would not be a decision within the meaning of r. 30A and would be amenable on that ground to challenge. The counter affidavit of the Deputy Secretary, on record, disclosed the anti-national activities of the petitioner and that the decision under r. 30A that the petitioner had acted and was likely to act in a manner prejudicial to the defence of India and civil defence was arrived at by the Minister after an examination of all the materials before him. So long as the decision was arrived at on such materials, since this Court does not sit in appeal against such a decision, it would not ordinarily examine the adequacy or the truth of those materials and would not interfere with the decision on the ground that if the Court had examined them it would have come to a different conclusion. [440 C, 441 F-H; 446 F-G]

Sadhu Singh v. Delhi Administration, [1966] 1 S.C.R. 243 referred to.

(iv) It was not a case of a mala fide exercise of power or a case of non-application of mind by the authority concerned. Since no allegation,-, of malice or dishonesty have been made in the petition personally against the Minister., his omission to file a counter-affidavit, by itself, could not be a ground to sustain the allegation of mala fides or non-application of mind. [446 D-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 137 of 1966. Petition under Art. 32 of the Constitution of India for a writ in the nature of habeas corpus.

The petitioner appeared in person.

S. V. Gupte, Solicitor-General. R. H. Dhebar and B.R.G.K. Achar, for the respondents.

The Judgment of the Court was delivered by Shelat, J. The petitioner was detained by an order dated December 10, 1965 under Rule 30(i)(b) of the Defence of India Rules, 1962. The order inter alia stated:

> "Whereas the Central Government is satisfied that with a view to preventing Shri P. L. Lakhanpal .... from acting in any manner prejudicial to tile defence of India, and civil defence, public safety and the maintenance of public order, it is necessary that he should be detained."

On December 24, 1965 he filed a writ petition under Art. 32 of the Constitution in this Court for a writ of habeas corpus challenging his detention inter alia on the grounds that Rule 30(i)(b) was ultra vires s. 3(2)(15)(i) of the Defence of India Act, 1962, that Rule 23 of the Defence of India (Delhi Detenues) Rules, 1964 gave him a right to make a representation by providing a review of the said detention order and also by providing that a detenu will be allowed to interview a legal practitioner for the purpose of drafting his representation and that his said right was violated by his being prevented from making such a representation, that the said order violated s. 44 inasmuch as though he was an editor of a newspaper action against him was not taken as such editor as provided by that section and certain other provisions in the Act resulting in the invalidity of the said order and that the said order was mala fide as the Union Home Minister had failed to file an affidavit swearing as to his satisfaction although the petition contained specific allegations denying such satisfaction. That petition(1) was heard and was dismissed on April 19, 1966 rejecting the aforesaid contentions. On June 11, 1966 the Central Government passed an order continuing the said detention order under r. 3OA(9). But whereas the order of December 10, 1965 directed the petitioner's detention with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, public safety and the maintenance of public order the said order continuing his detention set out only the defence of India and civil defence. Likewise, though the original order described the petitioner as the son of the late Shri Diwan Chand Sharma, editor of the Evening View residing at etc., the order of June 11, 1966 simply described him as the son of the late Shri Diwan Chand Sharma. This difference probably was and had to be made as by reason of his detention he was no longer editing the said newspaper and was no longer residing at the address set out in the original order. In the present petition the petitioner challenges both the orders on the following grounds:-

> (i) that there is no valid order of detention under any of the provisions of the Act or the Rules made thereunder;
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> (ii) that his continued detention under the order of June 1 1, 1966 was in contravention of Rule 23 of the Defence of India (Delhi Detenues) Rules, 1964

inasmuch as he was denied the right of representation by a letter of the Deputy Secretary in the Ministry of' Home Affairs dated December 27, 1965;

(1) W.P. 47 of 1966 decided on April 19, 1966.

(iii) that the detention was punitive and not preventive as the principal ground of his detention viz., his writings in his said paper had ceased to be the ground since the said paper had become defunct, the requisite declaration in respect thereof having lapsed;

(iv) that the said detention order contravened section 44 of the Act; and

(v) that the orders of detention and continuation were illegal as they were mala, fide and made without any application of mind by the Home Minister; consequently there was no satisfaction as required by s. 3 and r. 30(i)(b).

Contentions 2, 4 and part of Contention 5 in so far as they concern the original order of detention no longer survive as they were disposed of by the decision in W.P. 47 of 1966. The petitioner therefore cannot be permitted to reagitate the same questions, it not being his case that any new circumstances have arisen justifying their reagitation. Contention No. 3 also cannot be sustained because the affidavit clearly shows that the detention was ordered not only because of his writings in the said newspaper but that the said two orders were made after taking into consideration the over-all picture of his activities. Annexure D to the petition is the affidavit of B. S. Raghavan, Deputy Secretary in the Ministry of Home Affairs, filed in the previous petition. In that affidavit it was clearly stated that the activities of the petitioner "do conclusively prove that the petitioner is a pro-Pakistani and anti-Indian"; that "there was material before the Union Home Minister about the prejudicial activities of the petitioner and he was satisfied that it was necessary to detail the petitioner" and that "it was the anti-national activities of the petitioner that was responsible for his detention." That affidavit also stated that "the petitioner's activities were sufficient in themselves to enable the Central Government to come to the conclusion that if the petitioner was not detained he was likely to act in a manner prejudicial to the defence of India, civil defence, public safety and the maintenance of public order." In the return filed in the present petition also the same officer has once again stated that "he (the petitioner) is a pro- Pakistani agitator acting against the integrity and the solidarity of India. The history of the activities of the petitioner shows that he is a pro-Pakistani propagandist and seeks to undermine the unity and integrity of India and has close contacts and associations with elements which seek to encourage force and violence in relation to Kashmir. The petitioner has been in constant touch with the representatives of foreign powers in India, inimical towards India." Para 4 of the return also states that he "is a paid pro-Pakistani and anti-Indian". It is true that the deponent in his counter-affidavit in the previous petition had relied on certain extracts culled out from the petitioner's writings but those extracts as stated by the deponent were in answer to the petitioner's claim that he was a journalist and an editor. But assuming that the petitioner's writings were relied on for the purpose of passing the original order, it is manifest that they were not the only materials on which the order was based and the authorities had taken into consideration the over-all picture of all his activities. If that be so the fact that his paper has now become defunct

would make no difference and it cannot consequently be held that the order is punitive and not preventive. This leaves the first and part of his fifth contention for consideration.

The petitioners argument on the first contention was that the order dated June 11, 1966 being based only on the ground of defence of India and civil defence the other grounds given in the original order- must be held to be non-existent and that the validity of the original order being dependent upon the satisfaction. of the Central Government it is impossible to predicate whether the said order was not made on the basis of the non-existent grounds. Therefore he argued there was no valid satisfaction and the order founded on such invalid satisfaction could not be continued under r. 3OA(9); (2) that even if the Central Government was competent to continue the petitioner's detention the validity of the order of the 11th June, 1966 not being determinative on the subjective satisfaction but upon a decision of the Government the grounds and the materials on which such decision was made must exist and the Government was therefore bound to establish that there were materials before it upon which its said decision was based. In order to appreciate these contentions it will be necessary to ascertain the true scope of r. 30A and the scheme of the said Rules. Section 3(1) of the Act empowers in generality the Central Government to make such Rules as appear to be necessary or expedient for securing the defence of India and civil defence etc. Sub-section 2 provides that such Rules may provide for all or any of the matters therein set out. Clause (15)(i) empowers the Central Government to make rules providing for detention of any person (a) whom the authority empowered by the Rule to detain suspects on grounds appearing to that authority to be reasonable of having acted, acting or being about to act or being likely to act in any manner prejudicial to the defence of India and civil defence etc., or lb) with respect to whom that authority is satisfied that his detention is necessary for the purpose of preventing him from acting in any such prejudicial manner. Clause 15(i) and the other Rules contemplate and empower, besides the Central Government, other authority to detain, such authority being not below the rank of a District Magistrate. The jurisdiction of such authority is conditioned under the first part on his suspicion and under the second part on his satisfaction that detention is necessary for purposes therein set out. The suspicion, of course has to be on grounds appearing to that authority to be reasonable and the satisfaction under the second part is the satisfaction of that authority that detention is necessary to prevent the person in question from acting in any manner prejudicial to the matters set out therein. Rule 30(1)(b) provides that the Central .or the State Government if it is satisfied with respect to any particular person that it is necessary so to do, may make an order directing that he be detained. In Writ Petition 47 of 1966 filed by the petitioner earlier this Court made a distinction between the first and the second part of section 3(2)(15)(i) and held that Rule 30(1)(b) was made under the second part of that sub-clause and that consequently the only thing required was that the authority must be satisfied that detention was necessary for purposes mentioned therein. It is therefore clear that the only condition precedent for the exercise of power thereunder is the satisfaction of the Central or the State Government that it is necessary to detain the person ,concerned to prevent him from acting in a manner prejudicial to the several matters or any one or more of them therein set out. Rule 30A was introduced in the Rules by notification G.S.R. 183 dated December 28, 1962. It defines a detention order as meaning one passed under r. 30(1)(b) and provides for a review in accordance with the provisions therein contained. Sub-rule 3 provides that where a detention order is made by the Central or a State Government or an Administrator a review is to be made by the same authority. Under sub-rule 4, if a detention order is passed by an officer

authorised by a State Government the reviewing authority would consist of two officers specified by that Government. If all order is made by an officer authorised by the Administrator the reviewing authority is the Administrator. Under sub-rule 5, if ,a detention order is made by an authorised officer he has to forthwith report the fact to the reviewing authority. Under sub-rule 6 on such report the reviewing authority after taking into account all 'the circumstances of the case has to recommend to the State Government either to confirm or cancel the order and thereupon that Government may confirm or cancel the order as it may deem fit. Where the reviewing authority is the Administrator he may either confirm or cancel the order after taking into account all the circumstances of the case. Sub-rule 7 provides that every detention order passed by an authorised officer and confirmed by the State Government would be reviewed by the reviewing authority at intervals of not more than six months and in the light of the recommendation of that authority the State Government shall decide whether the order shall be continued or cancelled. A similar provision in respect of an order passed by an officer authorised by an Administrator is contained in sub-rule 8. Sub-rule 9 with which we are immediately concerned provides that where a detention order is passed by the Central or a State Government such order shall be reviewed at the aforesaid intervals by the Govern- ment which made it and upon such review the Government shall decide whether the order should be continued or cancelled.Thus where the detention is continued after the first six months, a review by the prescribed authority is obligatory and a decision of the Central or the State Government or the Administrator as the case may be is the condition precedent for continued detention. Rule 30A thus provides for a review, the procedure therefor, the different reviewing authorities, the period within which such review has to be made and the obligation to decide whether the detention should be continued or cancelled after taking into account all the circumstances of the case.

In the present case we are concerned not with a detention order passed by an authorised officer but by the Central Government. In the case of such an order made under rule 30(1)(b) the determinative factor is the satisfaction in regard to a particular person that it is necessary to detain him with a view to prevent him from acting prejudicially to the matters or any one or more of them therein set out. The jurisdiction to detain is not in respect of a mischief already committed but in anticipation that the person concerned may in future act prejudicially. Such satisfaction is exclusively that of the detaining authority and it is inherent in the power that it is and has to be the subjective satisfaction. Presumably an emergency having been declared by the President the legislature granted such a drastic and unique power enabling the Government to act quickly to prevent the person concerned from doing anything deterimental to the said matters. In such a case it must have been presumed by the legislature that a judicial process under normal laws may be either inept or inappropriate. Thus the condition precedent to the exercise of jurisdiction to detain under r. 30(1)(b) is only the subjective satisfaction that it is necessary to detain the person concerned. (cf. Rammanohar Lohia v. The State of Bihar).(1) Considering, however, the fact that the notification inducting in the Rules rule 30A providing for a review was issued in December 1962 it would appear that the necessity for ensuring that a person is not improperly detained or is not unnecessarily continued in detention was felt and that must have been the reason why a review was provided for immediately after the detention in the case where an authorised officer has passed the order and in the case of an order passed by the Government, Central or State as the case may be, by that Government at every interval of not more than six months. It may be recalled that in the case of an order by an officer it is

incumbent upon him to forthwith report to the reviewing authority whereupon the reviewing authority has to recommend to the State Government whether to confirm or cancel the order. Thus a check on the exercise of power by an authorised officer was considered necessary. Though there is no such immediate review in (1) [1966] 1 S.C.R. 709.

the case of an order passed by the Central or a State Government, ,sub-rules 7, 8 and 9 of Rule 30A provide for a review at intervals of not more than six months (a) by the reviewing authority in the case of an order passed by an officer and (b) by the Government in the case of an order passed by the Government. The provision for review is again a check preventing a person being unnecessarily, continued in detention, and whether the reviewing authority is the Government or the officers it is the Government which has to decide whether the detention should be continued or cancelled. ,and such decision is the condition precedent for an order of continuation of detention. The difference in the words used in Rule .30(1)(b) and Rule 30A viz., satisfaction in one case and decision after taking into account all the circumstances of the case in the other cannot be accidental but must be deliberate and purposeful. The phraseology used in Rule 30A is not "in its opinion" or is satisfied" or "has reason to believe" etc., as often used in modern statutes and rules.

The question then is: what precisely does the word "decide" in Rule 30A mean ? It is no doubt a popular and not a technical word .According to its dictionary -meaning "to decide" means "settle (question, issue, dispute) by giving victory to one side; give judgment (between, for, in favour of, against); bring, come, to a resolution" and "decision" means "settlement, (of question etc)., conclusion, formal judgment, making up one's mind, resolve, resoluteness, decided character." As Fazl Ali J. in Province of Bombay v. Advani(1) observed:

> "The word'decision' in common parlance is more or less a neutral expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to dec ide some-
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> thing does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference and the real test is: Is there any duty to decide judicially?"

In that case the question was whether the decision of the Bombay Government under s. 3 of the Bombay Land Requisition Ordinance, 5 of 1947 that a property was required for a public purpose was a quasi judicial act and a writ of certiorari would lie against such a decision. The majority held that it was an administrative act but it is noteworthy that Mukherjea J. who differed along with Mahajan J. (as he then was) was of the view that the question whether a public purpose exists or not had to be determined under that section by the Government of Bombay as there was a lis or a controversy between the interest of the public on the one hand and that of the individual who owned the property on the other, and the deter-

(1) [1950] S.C.R. 621 at 642.

initiation of the Government was a judicial act such determination being a collateral matter on which the jurisdiction to requisition was founded and not a part of the executive act of requisitioning. We are however not called upon in the present case to decide whether the function of review and the decision which may be made by the Government is a judicial or a quasi judicial function or not.Indeed,the petitioner has not raised any such question whether the order of the 11th June 1966 was a judicial or a quasi-judicial one. We do not therefore propose to examine the relevant provisions of the Rules from that point of view. The question raised by the petitioner before us is whether the validity of the decision depends upon the existence of relevant circumstances which would necessitate the continuation of detention and whether such circumstances on which it is founded are demonstrable. As tersely put by Lord Atkin in his famous dissent in Liversidge v. Anderson (1) is the decision one of a case of thinking that a person has a broken ankle and not a case of his really having a broken ankle or- as Mahajan J. (as he then was) put it in Advani's case(2) at p. 659 of the Report:-

> "Similarly can it be said that s. 4 contemplates merely a vacancy in the mind of the Government, not a vacancy in fact as a real thing."

If the decision is to be founded on a mere subjective satisfaction or opinion it would be in the former category but if it is to be founded on a fact it has to fall in the latter category and in that event it would have to be regarded as one based on an objective test. It follows that where the exercise of power is not conditioned on a mere opinion or satisfaction but on the existence of a set of facts or circumstances that power can be exercised where they exist. The authority in such a case is required to exercise the power in the manner and within the limits authorised by the legislature. The existence of such facts which is the determinant for the exercise of the power is demonstrable.

Unlike Rule 30(1)(b) the power to continue the detention after review is not dependent on the satisfaction of the Government. Rule 30A postulates that ordinarily detention should not be for more than six months unless found necessary. It is for that reason that under the Rules when the period of six months expires the Government is enjoined upon to decide whether it should be continued or cancelled. Though the legislature has made the Government the exclusive forum for such a decision, its decision has to be founded on facts and circumstances which make the continuation necessary in order to prevent the detenu acting in a manner prejudicial to the matters set out therein.The substitution of decision instead of satisfaction is a clear indication that the criterion (1) [1942] A.C. 206.

(2) [1950] S.C.R. 621.

for continuing the detention is the existence of those facts and circumstances which necessitate it. It is not unreasonable to think that the legislature decided to confer power the exercise of which was made dependent upon the subjective satisfaction at the initial stage but where continuation of detent ion was concerned, it thought that there should be different considerations. At that stage there would be ample time and opportunity for the Government to scrutinise the case fully and ascertain whether facts and circumstances exist demanding continuation and therefore deliberately used the word "decide" instead of the words "is satisfied". Therefore where such circumstances do

not exist there would be no necessity for continuation and yet if the Government decides to continue the detention,such a decision would be beyond the scope of Rule 30A and would not be a decision within the meaning of or under that rule.Cases may arise where circumstances exist leading to the authority's satisfaction that a particular person should be detained but those circumstances may not exist at the time when the review is made. In the latter case it is impossible to say that the Government can still decide to continue the detention nor is it possible to say that it is the Government's opinion or satisfaction that such facts and circumstances exist which is the criterion. The decision on a review has to be arrived at from the facts and cir- cumstances which actually subsisted at the time when the original order was made in the light of subsequent developments and not merely those existing at the time when the order was made. In such a case the decision can be challenged as one not within the scope of or under the rule and therefore unauthorised or as one based on considerations irrelevant to the power.

Our attention was however drawn to the decision in Sadhu Singh v. Delhi Administration(1) where Shah J. sitting singly during vacation has held that the order of detention passed by the District Magistrate and its confirmation by the Delhi Administration were acts pre-eminently executive, subject to subjective satisfaction and therefore not subject to a judicial review. He, however, added that even then the court's power is not excluded to investigate into compliance with the procedural safeguards imposed by the statute or into the existence of prescribed conditions precedent to the exercise of power or into a plea that the order was made mala fide or for a collateral purpose. The learned Judge then proceeded to consider the plea that the review under r. 30A(8) was a quasi judicial proceeding and that a review of the facts in the light of subsequent developments, including the change of views, if any, of the detenu since he was detained cannot effectively be made unless he was afforded an opportunity to make his representation and convince the reviewing authority that the facts and circumstances which may have justified the original (1) [1966] 1 S.C.R. 243.

order did not continue to exist or in the context of changed circumstances did not justify the continuation of the detention. In ,repelling this plea, the learned Judge observed:

> "Making of an order of detention proceeds upon the subjective satisfaction of the prescribed authority in the light of circumstances placed before him or coming to his knowledge, that it is necessary to detain the person concerned with a view to preventing him from acting..... If that order is purely executive and not open to review by the Court, a review of those very circumstances on which the order was made in the light of circumstances since the date of that order cannot but be regarded as an executive order. Satisfaction of the authority under r. 30(1) proceeding upon facts and circumstances which justifies him in making an order of detention and the satisfaction upon review of those very facts and circumstances in the light of circumstances which came into existence since the order of detention are the result of an executive determination and are not subject to judicial review."

On this view he held that the review was not a judicial function nor did the statute require the safeguard of a judicial approach or the right of being heard. He also negatived the plea that the word "decide" in r. 3OA(8) meant that there was a lis observing as follows "That only imports that the

Administration after reviewing the material circumstances has to decide whether the detention of the detenu should be continued or cancelled.

Undoubtedly, in reviewing the order of detention, the Administrator would be taking into account all the relevant circumstances existing at the time when the order was made, the subsequent developments which have a bearing on the detention of the detenu and the representation, if any, made by the detenu. But the rule contemplates review of the detention order and in the exercise of a power to review a condition of a judicial approach is not implied."

Shah J. in this decision was primarily dealing with the question whether the function of review and a decision following it is a judicial function and whether there is a lis between the power of the Government to continue detention on the one hand and the right of the detenu to be released on the other As already stated that question does not arise before us and we refrain from deciding, it. Though he rejected that plea the learned Judge has yet said in explicit terms that the reviewing authority has to consider "the material circumstances " and then has to decide whether the detention should be continued or not. He has also emphasised that M 15 sup. CI/66-15 the Administrator while reviewing has to take into account the relevant circumstances" existing at the time when the Original order was made and the subsequent developments having "a bearing on the detention". The decision thus presupposes that the Government or the Administrator, as the case may be, cannot decide to continue the detention without considering all the relevant circumstances which existed at the time of the original order and those which exist at the time when the authority decides to continue the detention. While making the plea that the use of the word 'decide" in r. 30A meant that there is a lis, it does not appear to have been argued that assuming that the power to continue the detention was ministerial the condition precedent to the exercise of that power is not the subjective satisfaction but the decision from the facts and circumstances and that the validity of the exercise of that power is dependent on the existence of facts and circumstances relevant to the purpose set out in r. 30(1) and r. 30A. If they are shown not to exist surely the decision would not be a decision within the meaning of r. 30A and would be amenable on that ground to a challenge.

The question then is, is the decision to continue the order of detention one within the scope of r. 30A ? Relying on the omission in the order of June 11, 1966 of the words "public safety and the maintenance of public order" the petitioner contended that it must be held that those two grounds never existed and that since the exercise of power to detain depended on the satisfaction of the Government it cannot be predicated that the omitted grounds did not affect the Government during the process of its satisfaction. He relied on two decisions of this Court, (1) Baradwaj v. State of Delhi(1) and (2) Shibban Lal v. State of U.P.(2) Both the cases were under the Preventive Detention Act, IV of 1950. In Baradwaj's case(2) the question was not of a ground not existing but of a ground being found to be vague and it was held that even though the rest of the grounds were not vague, the detention was not in accordance with the procedure established by law and was therefore illegal. The decision therefore turned on the question whether under Art. 22(5) of the Constitution the detenu had an opportunity ,of effectively making a representation. In Shibbanlal's case(2) the Court held that where the Government itself while confirming the detention in exercise of its power under s. II admits that one of the two grounds mentioned in the original order was unsubstantial or non-existent, to say that the other ground which still remained was quite sufficient to sustain the

order would be to substitute an objective judicial test for the subjective decision of the ,executive authority which was against the legislative policy underlying the statute. In such cases, the position would be the same .,as if one of the two grounds was irrelevant for the purpose of the (1) [1953] S.C.R.708 (2) A.I.R. 1964 S.C.179 Act or was wholly illusory and this would vitiate the detention order as a whole. These decisions cannot help the petitioner.In the first place the scheme of the Preventive Detention Act is entirely different from the Act and the Rules before us. Section 3 of that Act confers the power of detention. Section 7 requires the detaining authority to furnish grounds of detention to the detenu to make a representation. Section 8 requires the setting up of Advisory Boards. Section 9 requires reference of the order passed by the- authority to such Advisory Board together with the representation, if any, made by the detenu. Under section 10, the Board has to make a report to the Government and the report would be whether there is sufficient cause for detention or not. Under s. 11, the Government may confirm the detention order and continue the detention where the report is that there is sufficient cause. But where the Board reports that there is no such sufficient cause, the Government has to revoke the detention order. It is clear from s. 9 and the sections following it that the Government has to make the reference to the Board within 30 days from the order and the Board has to find whether there is sufficient cause for detention or not. The review by the Board is thus almost contemporaneous. If therefore the Board finds that certain grounds furnished to the detenu did not in fact exist, it means that they did not exist at the time when the authority made up its mind to pass the order. It is for that reason that the courts have held that since the order is based on subjective satisfaction, it is not possible to say whether or not the grounds found not to have existed affected the process of satisfaction of the autho- rity or not and to say that those only which existed had made up the satisfaction would be to substitute the court's objective test in place of the subjective satisfaction of the detaining authority. The scheme of rules 30(1) and 30A is totally different from that of the Preventive Detention Act. Where an order is made under r. 30(1)(b), its review is at intervals of periods of not more than six months. The object of the review is to decide whether there is a necessity to continue the detention order or not in the light of the facts and circumstances including any development that has taken place in the meantime. If the reviewing authority finds that such a development has taken place in the sense that the reasons which led to the passing of the original order no longer subsist or that some of them do not subsist, that is not to say that those reasons did not exist at the time of passing the original order and therefore the satisfaction was on grounds which did not then exist. It is easy to visualise a case where the authority is satisfied that an order of detention is necessary to prevent a detenu from acting in a manner prejudicial to all the objects set out in r. 30 (1). At the end of six months the reviewing authority on the materials before it may come to a decision that the detention is still necessary as the detenu is likely to act in a manner prejudicial to some but not all the matters. Provided such decision is arrived at within the scope of r. 30A the decision to con- tinue the detention order would be sustainable. There is thus no analogy between the provisions of review in the two Acts and therefore decisions on the Preventive Detention Act cannot be availed of by the petitioner.

As regards the contention as to mala fides it will be observed that the original order was passed by the Union Home Minister while the order under r. 30A was passed by the Minister of State of Home Affairs. The first part of the contention has already been rejected by this Court in the petitioner's earlier Writ Petition and therefore cannot be reagitated. The contention in regard to the second part

was that since the State Minister himself has not filed an affidavit swearing to his decision and the affidavit on re- cord is that of the Deputy Secretary there is nothing to show that the Minister had arrived at a decision that there were facts and circumstances necessitating the continuation of the petitioner's detention. The reasons given by the petitioner for this contention are in substance the same as those urged in the earlier petition and which were rejected by this Court then. Since no allegation of malice or dishonesty have been made in the petition personally against the Minister it is not possible to say that his omission to file an affidavit in reply by itself would be any ground to sustain the allegation of mala fides or non-application of mind. The affidavit by the Deputy Secretary discloses that the decision under r. 30A was arrived at by the Minister after an examination of all the materials before him. The affidavit also discloses the activities of the petitioner and the conclusion arrived at by the Minister that the petitioner had acted and was likely to act in a manner prejudicial to the defence of India and civil defence. So long as that decision was arrived at on materials, since this Court does not sit in appeal against such a decision it would not ordinarily examine the adequacy or the truth of those materials and would not interfere with that decision on the ground that if the Court had examined them it would have come to a different conclusion. It is therefore not possible to agree with the contention that this is a case of a mala fide exercise of power or a case of non-application of mind by the authority concerned.

For the reasons aforesaid the petition fails and is dismissed.

V.P.S. Petition dismissed.