State Of West Bengal vs Ashok Dey & Ors. Etc. Etc on 19 November, 1971

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Author: I.D. Dua

Bench: I.D. Dua, S.M. Sikri, J.M. Shelat

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
ASHOK DEY & ORS. ETC. ETC.

DATE OF JUDGMENT19/11/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SIKRI, S.M. (CJ)
SHELAT, J.M.
MITTER, G.K.

CITATION:
1972 AIR 1660 1972 SCR (2) 434
1972 SCC (1) 179
CITATOR INFO :
RF 1972 SC1670 (11)
RF 1972 SC1924 (1,5)
R 1974 SC 613 (10,33,52)

ACT:
Constitution of India, Arts. 22(4) and 22(7)-Power of State Legislature to make law providing for preventive detention for more than three months under Art. 22(4) is concurrent with that of Parliament under Art. 22(7) -West Bengal (Prevention of Unlawful Activities) Act, 1970 (President's Act 19 of 1970), ss. 10 to 13-Sections are not violative of Art. 22(7) and are valid-Article 22(7) is permissive-President's Act, 19 of 1970 is not violative of Art. 19(1)(d) of Constitution--S. 3(2)(c) of Act, construction of.

HEADNOTE:
The respondents were detained under the West Bengal (Prevention of Violent Activities) Act, 1970. In writ petitions before the High Court they challenged the constitutional validity of the Act on the following grounds: (1) that it was not a law made by Parliament as contemplated by Art. 22(7) of the Constitution with the result that the extension of the detention for a period longer than three months was unconstitutional. Sections 10 to 13 of the Act were described as violative of Art. 22(4) and (7) of the Constitution; (2) that the restrictions both in respect of substantive law and in respect of procedure imposed by the Act on detenus' right guaranteed Art. 19(1)(a) were unreasonable and, therefore, the Act was unconstitutional; and (3) that the Act was violative of Art. 14 of the Constitution in as much as it gave arbitrary. unguided and uncanalised power to the State Executive without prescribing any guidelines for its exercise. The High Court held that the Act was not a law made by Parliament in terms of Art. 22(7) of the Constitution. It further held that the Provisions contained in ss. 11 and 13 of the Act relating to the procedure before the Advisory Board in respect of the person detained for a longer period than three months were ultra vires Art. 22(7) of the Constitution because under the said Article, Parliament alone has been invested with jurisdiction to legislate on these matters. On the question of applicability of Art. 19(1) the High Court came to the conclusion that it Was not applicable to the impugned Act. The challenge on the basis of Art. 14 of the Constitution was also repelled as the classification contemplated by the Act could by no means be considered unreasonable. Appeal to this Court was filed by the State.
HELD : (1) Article 22(7)(b) and (c) are not mandatory. Clause of the Article on its plain reading merely authorises or enables the Parliament to make a law prescribing (i) the circumstances under which a person may be detained for a period longer than three months (ii) the maximum period for which a person may in any class or classes of cases be detained under the law providing for preventive detention and (iii) the procedure to be followed by the Advisory Board in an inquiry under cl. (4)(a) of this Article. The respondents' contention that 'may' in the opening part of this Article must he read as "shall" in respect of sub-,cis. (b) and (c) though it retains its normal permissive character in so far as cl. (a) is concerned, in the absence of special compelling, reasons can be supported neither on principle nor by precedent. On the other hand this Court in Krishnan's case as well as in Gopalan's case held sub-cl. (b) of cf. (7) to be permissive. [439 H-440 B]
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S. Krishnan v. State of Madras, [1951] S.C.R. 621, 639 and

Gopalan v. State of Madras, [1950] S.C.R. 88, relied on.

The power of the State Legislature under Art. 246 with respect to preventive detention enumerated in Entry 3 of List III is co-extensive with that or Parliament with respect to such preventive detention and it must necessarily extend to all incidental matters connected with preventive detention as contemplated by this entry, subject only to the condition that it does not come into conflict with a law made by Parliament with respect to the same matter. There is no provision of the Constitution nor of any other law which would justify limitation on the power of the State Legislature to make a valid law providing for detention under Art. 22(4) for a period beyond three months on the ground of absence of law made by Parliament permitting detention for such period. Had the Constitution intended such a result it would certainly have made express provision to that effect. Security of a State, maintenance of public order, and of supplies and services essential to the community demand effective safeguards in the larger interest of sustenance of peaceful democratic way of life. [440 G-441 F]

Majority view in Pooranlal Lakhan Pal v. Union of India, [1958] S.C.R. 460, held binding.

(2) (a) The restrictions on the citizen's freedom as embodied in Art. 19(1) (d) of the Constitution placed by the Act must be held to be eminently in the interest of general public. This Court can and should take judicial notice of the historical events which led to the President's rule. Those events fully demonstrate the necessity in the interest of the general public to brings on the statute book the provisions of the Act. The challenge to cls. (a), (b), (d) and (e) of s. 3(2) of the Act was prima facie unfounded for there can be no two opinions about the acts covered by these clauses being reasonably likely to be prejudicial to the maintenance of public order. That, disturbance of public order in a State may in turn prejudicially affect its security it also undeniable. Fairly close and rational nexus between these clauses and the maintenance of public order and security of the State of West Bengal is writ large on the face of these clauses. [443 C-D; 445 E-F]

(b) When one closely examines the circumstances in which the Act was passed, the mischief intended to be remedied by its enactment, and the purpose and object of enacting it, cl. (c) of sub-s. (2) considered in the background of sub-s. (1) of s. (3) must be construed to mean causing insult to the Indian National Flag or to any other object of public veneration in such a situation as reasonably exposes the act, causing such insult to the view of those, who hold these objects in veneration or to the public view, and it would not cover cases when the Indian National Flag or other object of public veneration is mutilated, damaged, burnt defiled or destroyed, completely unseen or when incapable of being seen, by anyone whose feelings are likely to be hurt

thereby. The act causing insult referred to in cl. (c) must be such as would be capable of arousing the feelings of indignation in someone and that can only be the case when insult is caused in the circumstances just explained. So construed, cl.(c) would, be clearly within the expression "acting in any manner prejudicial to the maintenance of public order". This restricted construction of cl. (c) is admissible on the statutory language and the legislative scheme. On this construction the challenge to cl. (c) on the basis that insulting an object of public veneration in privacy could have no rational nexus with the disturbance of public order or security of the State, must fail. [445 H-446 D]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 217 to 233 of 1971.

Appeals from the judgment and order dated September 13, 1971 of the Calcutta High Court in Criminal Misc. Cases Nos. 169, 177, 222, 224, 229, 230, 231, 237, 285, 236, 287, 316, 328, 329, 330 and 331 of 1971.

Niren De, Attorney-General, D. N. Mukherjee and G. S. Chaterjee, for the appellant (in all the appeals). Niren De, Attorney-General, R. H. Dhebar, Ram Panjwani and S. P. Nayar, for the Attorney-General for India (in all the appeals).

Somnath Chatterjee, D. K. Sinha, Rathin Das, and Indira Jai Singh, for the respondents (in Cr. As. Nos. 219, 223 and 225 to 227 of 1971).

Aruk Prakash Chatterjee, Rathin Das, Dalip K. Sinha and Indira Jai Singh, for the respondents (in Cr. As. Nos. 228 and 230 to 233 of 1971).

The Judgment of the Court was delivered by Dua, J.-These appeals have been presented to this Court pursuant to certificate of fitness granted by the Calcutta High Court under Art. 132(1) of the Constitution from a common judgment of that Court allowing 17 writ petitions presented on behalf of the persons detained under the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970) (hereafter called the Act). In the High Court the constitutional validity of the Act was challenged on the grounds :(1) that it was not a law made by Parliament as contemplated by Art. 22(7) of the Constitution with the result that the extension of the detention for a period longer than three months was unconstitutional. Sections 10 to 13 of the Act were described as violative of Art. 22(4) and (7) of the Constitution; (2) that the restrictions both in respect of substantive law and in respect of procedure imposed by the Act on detenus' right guaranteed by Art. 19(1)(d) were unreasonable and, therefore, the Act was unconstitutional; and (3) that the Act was violative of Art. 14 of the Constitution inasmuch as it gave arbitrary, unguided and uncanalised

power to the State Executive without prescribing any guidelines for its exercise.

The High Court held that the Act was not a law made by Parliament in terms of Art. 22(7) of the Constitution. This conclusion is not questioned by the learned Attorney General before us and indeed he has conceded that the Act is not a law made by Parliament as contemplated by Art. 22(7). The High Court then considered the question of the effect of the Act, if it is to be deemed to be an Act passed by the West Bengal Legislature. On this point it came to the conclusion that the provisions contained in ss. 1 1 and 13 of the Act relating to the procedure before the Advisory Board in respect of the person detained for a longer period than three months was ultra vires Art. 22(7) of the Constitution because under the said Article, Parliament alone has been invested with jurisdiction to legislate on these matters. The State Legislature was accordingly held to be incompetent to make a law prescribing procedure for the Advisory Board and also to make a law providing for detention for more than three months. On the question of applicability of Art. 19(1) the High Court came to the conclusion that it was not applicable to the impugned Act and, therefore, the Act could not be struck down as violative of Art. 19(1)(d) or under any other clause of Art. 19(1). The challenge on the basis of Art. 14 of the Constitution was also repelled as the classification contemplated by the Act could by no means be considered unreasonable. In the final result on the ground of invalidity of ss. II and 13 the writ petition was allowed with respect to the detention of the detenus beyond the period of three months.

In this Court the learned Attorney General has concentrated his attack on the impugned judgment on the argument that Art. 22(7) of the Constitution does not confer exclusive jurisdiction on the Parliament to make a law for valid detention of persons for a period longer than three months and that the State Legislature is fully competent, to make laws for detention, to prescribe procedure for the Advisory Board and also to make law for the detenus beyond the period of three months.

In order to appreciate the legal position it is desirable to reproduce Art. 22 of the Constitution :

> "22. Protection against arrest and detention in certain cases :
>
> (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
>
> (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and not such person shall be detained in custody beyond the said period without the authority of a magistrate.
>
> (3) Nothing in clauses (1) and (2) shall apply-
>
> (a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in Clause (5) shall require the authority making any such order as is referred to in that ,clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

(a) the circumstances tinder which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in any inquiry under sub-clause

(a) of clause (4)."

It is clear that cl. (4) of this Article only prohibits a law providing for preventive detention, to authorise detention of a person for more than three months unless an Advisory Board as

contemplated by sub-cl. (a) of the said clause has, before the expiry of three months of detention, reported that in its opinion there is sufficient cause for such detention, or unless such person is detained in accordance with the provisions of any law made by Parliament under sub-cl. (a) and (b) of cl. (7). Again, even when an Advisory Board has, under sub-cl. (a) of cl. (7), reported the existence of sufficient cause, detention cannot exceed the maximum period prescribed by a law made by Parliament under sub-cl. (b) of this clause. The expression "such detention" in sub-cl. (a) of cl. (4), according to the majority view in Pooranlal Lakhan Pal v. Union of India(1) refers to preventive detention and not to any period for which such detention is to continue because the decision about the period of detention can only be taken by the detaining authority.

Now, the argument raised in the High Court and accepted by it and repeated before us by Shri S. N. Chatterji on behalf of the respondents is that cl. (7) (b) of Art. 22 makes it obligatory for the Parliament to prescribe by law the maximum period for which a person may be detained as also the procedure to be followed by the Advisory Board in holding the enquiry under cl. (4) (a) of this Article. According to the submission, in the absence of such a law by Parliament no order of detention can authorise detention of any person for a period longer than three months and at the expiry of three months all persons detained under the Act must be released.

We are unable to accept this construction of cl. (7) of Art.

22. It is noteworthy that Shri Chatterji, learned counsel for the respondents, expressly conceded before us that Art. 22(7) is only an enabling or a permissive provision and it does not impose a mandatory obligation on the Parliament to make a law prescribing the circumstances under which a person may be detained for more than three months as stated therein. But according to him sub-cl. (b) and (c) of cl. (7) do contain a mandate to the Parliament which is obligatory. In our view, cl. (7) of this Article on its plain reading merely authorises or enables the (1) [1958] S.C.R. 460.

Parliament to make a law prescribing, (i) the circumstances under which a person may be detained for a period longer than three months, (ii) the maximum period for which a person may in any class or classes of cases be detained under any law providing for preventive detention and (iii) the procedure to be followed by the Advisory Board in an enquiry under cl. (4) (a) of this Article. The respondents' contention that "may" in the opening part of this Article must be read as "shall" in respect of subclauses (b) and (c) though it retains its normal permissive character in so far as cl. (a) is concerned, in the absence of special compelling reasons can be supported neither on principle nor by precedent of which we are aware. On the other hand this Court has in S. Krishnan v. State of Madras(1), agreeing with the observations of Kania C.J. in Gopalan v. State of Madras 2 held sub-cl. (b) of cl. (7) to be permissive. This opinion is not only binding on us but we are also in respectful agreement with it. Apart from the exclusive power of the Parliament to make laws in respect of "preventive detention for reasons connected with defence, foreign affairs or security of India; persons subject to such detention" (vide Art. 246 (1) and Entry 9 List I, Seventh Schedule), Parliament and State Legislatures have both concurrent powers to make laws in respect of "preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subject to such detentions" (vide Art. 246(2) and Entry 3 in List III of Seventh Schedule). A law made by

Parliament in respect of preventive detention falling under Entry 3 of List III has to prevail over a State law on the subject to the extent to which it is repugnant lo the State law unless the State law is covered by Art. 254(2). Parliament, however, is not debarred by cl. (2), as is clear from the Proviso. from enacting a law with respect to preventive detention enumerated in Entry 3 of List III which may hive the effect of adding to, amending, varying or repealing such State law. The State Legislature has thus plenary power to make a law providing for preventive detention within the limitations imposed by the Constitution just noticed. The power of the State Legislatures under Art. 246 with respect to preventive detention enumerated in Entry 3 of List III is co-extensive with that of Parliament with respect to such preventive detention and it must necessarily extend to all incidental matters connected with preventive detention as contemplated by this entry, subject only to the condition that it does not come into conflict with a law made by Parliament with respect to the same matter. There is no provision of the Constitution to which our attention has been drawn nor has any principle of law or precedent been brought to our notice, which would (1) [1951] S.C.R. 621 at 639.

(2) [1950] S.C.R. 88.

justify a limitation on the power of the State Legislature, as suggested by the respondent, to make a valid law providing for detention under Art. 22(4) for a period beyond three months on the ground of absence of a law made by Parliament permitting detention for such period. Had the Constitution intended such a result it would certainly have made an express provision to that effect. Since Art. 22 covers the subject of preventive decision both under the law made by Parliament and that made by State Legislatures, if State Legislatures were intended by the Constitution to function under a limitation in respect of the period of detention one would have expected to find such a limitation expressly stated in this Article. But as we read cl. (7) of Art. 22 it merely invests the Parliament with an overriding power enabling it, if the circumstances so require, to make a law, providing for preventive detention prescribing the circumstances under which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board and, also, prescribing the maximum period for which any person may be detained under any such law and further prescribing the procedure to be followed by an Advisory Board. It does not prohibit the State Legislature from making a law either providing for preventive detention for a longer period than three month-, when there is a provision for securing the opinion of an Advisory Board or prescribing procedure to be followed by such Advisory Board. Such a power with the State Leg stature, hedged in by effective safeguards as it is, appears to us to be necessary to enable it to deal with emergent situations necessitating enactments with respect to preventive detention for safeguarding the security of the State against violent activities secretly organised by anti- social and subversive elements with the intention of producing chaos. Security of a State, maintenance of public order and of supplies and services essential to the community demand effective safeguards in the larger interest of sustenance of peaceful democratic way of life. Article 22, therefore, must be construed on its plain language consistently with the basic requirement of preventing anti- social subversive element's from imperiling the security of States or the maintenance of public order or of essential supplies and services therein.

On behalf of the respondents some stress was laid on the dissenting opinion of Sarkar J., (as he then was) in Pooranlal Lakhan Pal's case(1). The majority view in that case is, however, not only binding on us but we are in respectful agreement with that view.

Shri A. P. Chatterjee also appearing for the respondents addressed elaborate arguments in support of the submission that, after the decision in R. C. Cooper v. Union of India(2) the view (1) [1958] S.C.R. 460 (2) [1970]3 S.C.R. 530.

taken in Gopalan's case (supra), that Art. 22 is exhaustive on the subject of preventive detention and Art. 19(1)(d) is wholly out of the picture, is no longer good law. On this premise he attempted to develop his attack on the reasonableness of the restrictions imposed on the fundamental right of a person detained under the Act, to move freely throughout the territory of India. According to his submission the restrictions imposed on the persons detained under the Act are not in the interest of the general public with the result that the Act must be struck down as violative of Art. 19 (1) (d). On behalf of the appellants this argument was countered on the ground that Cooper's case (supra) was strictly confined only to the right of property and that the right to personal freedom was not directly involved. In the alternative, according to the learned Attorney General, the restrictions imposed on a person who is detained with a view to preventing him from acting in any manner Prejudicial to the security of the State or the maintenance of public order, as the impugned Act purports to do, cannot be considered not to be in the interest of the general public.

In our opinion, assuming that Art. 19(1)(d) of the Consti- tution is attracted to the case of preventive detention, restrictions imposed by the Act on the fundamental rights of a citizen, who has been detained under the Act, to move freely throughout the territory of India, with a view to preventing him from acting in any manner prejudicial to the security of the State of West Bengal or maintenance of public order, are clearly in the interest of the general public. The Act, it has to be borne in mind, was brought on the statute book by the President because of a feeling of "increasing anxiety over the continuing violent activities in West Bengal of the 'Naxalites', other similar extremist groups and antisocial elements operating with them." (vide Reasons for the enactment). The existing laws, as "Reasons for enactment" also expressly point out, were "found to be inadequate for dealing with the situation" and it was considered "necessary to vest the State administration with powers to detain persons in order to prevent them from indulging in violent activities". To complete the historical background, it may, at this stage, be pointed out, that on March 19, 1970 a proclamation had been issued by the President under Art. 356 of the Constitution from which it is clear that he was satisfied that a situation had arisen in which the Government of that State could not be carried on in accordance with the provisions of the Constitution and the President assumed to himself all the functions of the Government of that State. Pursuant to that proclamation on April 29, 1970 the Parliament passed the West Bengal State Legislature (Delegation of Powers) Act, 17 of 1970 whereby the power of the Legislature of the State of West Bengal to make laws was conferred on the President. This would clearly show that the situation in the State of West Bengal was not normal when the Act was enacted. It is of course undemable that in considering, statutes like the one before us this Court ought to shove the greatest concern and solicitude in upholding and safeguarding the fundamental right of liberty of the citizen. But as against that, we must not forget the historical background in which the necessity for enacting the Act was felt by the President. It is

also noteworthy that before enacting this Act the Committee constituted under the proviso to S. 3(2) of Act 17 of 1970 was also duly consulted. Keeping in view the times we are living in particularly the present situation in the State of West Bengal, where lawlessness and sabotage has since a long time been rampant to an extent hitherto unknown, it seems to us that the restrictions on the citizens freedom, as embodied in Art. 19 (1) (d) of the Constitution, placed by the Act, must be held to be eminently in the interest of the general public. This Court can and should take judicial notice of the historical events which led to the President's rule. Those events, in our view, fully demonstrate the necessity in the interest of the general public to bring on the statute book the provisions of the Act. The general argument challenging the vires of the Act is thus wholly without substance. Shri A. P. Chatterjee next directed his attack to the validity of the various clauses of sub-s. (2) of s. 3 of the Act. According to the submission these clauses arbitrarily extend the scope of the expression "acting in any manner prejudicial to the security of a State or the maintenance of public order." Let us turn to s.3 to see how far the respondents' attack is substantiated. This section reads :-

> "3(1) The State Government may, if satisfied with respect lo any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
>
> (2) For the purposes of sub-section (1), the expression 'acting in any manner prejudicial to the security of the State or the maintenance of public order' means-
>
> (a) using, or instigating any person by words, either spoken or written or by signs or by visible representations or otherwise, to use, any lethal weapon-
>
> (i) to promote or propagate any cause or ideology, the promotion or propagation of 16-L500 Sup Cl/72 which affects, or is likely to affect, adver-

sely the security of the State, or the main- tenance of public order; or

(ii) to overthrow or to overawe the Govern- ment established by law in India.

Explanation.---In this clause, 'lethal weapon' includes fire-arms, explosive or corrosive substances, swords, spears, daggers, bows and arrows; or

(b) committing mischief, within the meaning of section 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government or any local', authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building, where the commission of such mischief disturbs, or is 'likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

Explanation.-In this clause, 'object of public veneration' includes any portrait or statute of an eminent Indian, installed in a public place as a mark of respect to him or to his memory; or

(d) committing, or instigating any person to commit, any offence, punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 or the Explosive Substances Act, 1908, where the commission of such offence disturbs, or is likely to disturb, public order; or

(e) in the case of a person referred to in clauses (a) to (f) of section 110 of the Code of Criminal Procedure, 1898, committing any offence punishable with imprisonment where the commission of such offence disturbs, or is likely to disturb, public order.

(3) Any of the following officers, namely

(a) District Magistrates,

(b) Additional District Magistrates specially empowered in this behalf by the State Government,.

(c) in the Presidency-town of Calcutta, the Commissioner of Police, Calcutta, may, if satisfied as provided in sub-section (1), exercise the power conferred by the said sub-section.

(4) When any order is made under this section by an officer specified in sub-section (3), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter and no such order shall remain in force for more than twelve days after the making thereof unless, in the mean time, it has been approved by the State Government. (5) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central G overnment together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government have a bearing on the necessity for the order."

The challenge to cl. (a), (b), (d) and (e) is prima facie unfounded for there 'can be no two opinions about the acts covered by these clauses being reasonably likely to be prejudicial to the maintenance of public order. That, disturbance of public order in a State may in turn prejudicially affect its security, is also undeniable. Fairly close and rational nexus between these clauses and the maintenance of public order and security of the State of West Bengal is writ large on the face of these clauses. In view of the clear language of these clauses we consider it wholly unnecessary to deal with them at greater length. In regard to cl. (c) Shri Chatterjee laid emphasis on the fact that causing insult to the Indian National Flag or to any other object of public veneration, as clarified in the explanation, need not always result in an act which may- be considered prejudicial to the security of the State or the maintenance of public order. Insulting the object of public veneration in privacy without the act causing insult being noticed by anyone who holds them in veneration, it was argued, could have no rational nexus with disturbance of public order or security of a State. The argument stated in the abstract is attractive. But when one closely examines the circumstances in

which the Act was passed, the mischief intended to be remedied by its enactment, and the purpose and object of enacting it, cl. (c) of sub-s. (2), considered in the background of sub-s. (1) of s. 3 must, in our opinion, be construed to mean causing insult to the Indian National Flag or to any other object of public veneration in such a situation as reasonably exposes the act, causing such insult, to the view of those, who hold these objects in veneration or to the public view, and it would not cover cases where the Indian National Flag or other object of public veneration is mutilated, damaged, burnt, defiled or destroyed, completely unseen or when incapable of being seen, by anyone whose feelings are likely to be hurt thereby. The act causing insult referred to in cl. (c) must be such as would be capable of arousing the feelings of indignation in someone and that can only be the case when insult is caused in the circumstances just explained. So construed, cl. (c) would, in our view, be clearly within the expression 'acting in any manner prejudicial to the maintenance of public order'. It would perhaps have been better if this aspect had been clarified in the Act, but legitimately imputing to the law-maker the intention to enact a valid provision of law within the constitutional limitations designed effectively to achieve its object and purpose, the construction of cl. (c), in our view, must be restricted as just explained, such restricted construction being admissible on the statutory language and the legislative scheme. On this construction the challenge must fail.

Before concluding we may mention that originally this appeal was heard by a Bench of five Judges, including our learned brother late Mr. Justice S.C. Roy and before his sudden tragic death he had expressed his agreement with our decision and approved the draft judgment. Unfortunately, before the judgment could be announced the cruel hand of death snatched him away from our midst. This appeal was, however, again formally placed,for rehearing this morning before us.

The result is that these appeals must be allowed and the judgment of the High Court set aside. As the counsel for the respondents state that there are some other points on the merits which require determination, the writ petitions will now be heard and disposed of by the High Court on those points.

G.C. Appeals allowed.