MADRAS PUBLIC ORDER ACT

SECTION NINE "ULTRA VIRES"

COURT'S SUPREME JUDGMENT

BAN ON BOMBAY WEEKLY QUASHED

NEW DELHI, May 26, ench of the Supremenajority of five to one, Madras Governfull bench by a majori quashed the The Court, to-day ment's to-day quashed the Madras Government's order banning the entry of the Bombay weekly Cross Roads, into the State of Madras. Their Lordships were delivering judgment on a petition by Mr. Ramesh Thapar, Editor of Cross Roads, against the ban.

The dissenting Judge was Mr. Justice Fazl Ali.

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Section 9 of the Madras Maintenance of Public Order Act, under which the ban was imposed, was declared ultra wires of the Constitution of India by Their Lordships.

Their Lordships.

Section 9 of the Madras Maintenance of Public Order Act, among other things empowers the Government to prohibit or regulate the entry into or the circulation, sale or distribution in the State of any newspaper or periodicals.

This was the first case in which violation of Article 19(1) (A) of the Indian Constitution conferring the right to freedom of speech and expression was alleged. hibit

PRE-CENSORSHIP ORDER SET ASIDE

By a majority of five to one, the Supreme Court quashed the order of the Chief Commissioner of Delhi imposing pre-censorship on a local weekly Organizer. The dissenting Judge was Mr. Justice Fazl Ah.

Section 7 (1) (C) of the East Punjab Public Safety Act, under which the order was made, was declared ultravires of the Constitution of India and void. The judgment was delivered this morning on a petition filed by Mr. N. R. Mulkani, Editor, and Mr. Brij Bhusan, Printer and Publisher of the Organizer. The judgment allowing the petition

morning on a petition filed by Mr. N. R. Mulkani, Editor, and Mr. Brij Bhusan, Printer and Publisher of the Organiser.

The judgment allowing the petition of Cross Roads was delivered by Mr. Justice Patanjali Sastri with whom the Chief Justice, Mr. Harilal Kania, Mr. Justice Das, Mr. Justice Mookherjee and Mr. Justice Mahajan concurred.

Mr. Patanjali Sastri first referred to the contention of the counsel for Madras State that as a matter of orderly procedure, the petitioner should first resort to the High Court at Madras which under Section 226 of the Constitution had concurrent jurisdiction to deal with the matter. He then observed, "This (Supreme) Court is as constituted the protector and guarantor of Fundamental Rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights".

Mr. Justice Sastri proceeded to examine the cuestion whether the Madras Mainte-

Mr. Justice Sastri proceeded to examine the question whether the Madras Maintenance of Public Order Act with particular reference to Section 9(1-A) was a "law relating to any matter which undermines the security of or tends to eyerthrow the State". State MEANING OF F SECURING PUBLIC SAFETY

He said that "public safety" ordinarily meant security of the public or their freedom from danger. In that sense anything which tended to prevent discussion of the securing of public health, it may well mean securing the public against rash driving on a public way and the like, and not necessarily the security of the State.

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securing of public health, it may well mean securing the public against rash driving on a public way and the like, and not necessarily the security of the State.

"It was said that an enactment which provided for drastic remedies like preventive detention and ban on newspapers must be taken to relate to matters affecting the security of the State rather than trivial offences like rash driving or an affray. But whatever ends the impugned Act may have been intended to subserve, and whatever aims its framers may have had in view, its application and scope cannot, in the absence of limiting words in the Statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State. Nor is there any guarantee that those authorised to exercise the powers under the Act will, in using them, discriminate between those who act prejudicially to the security of the State and those who do not".

He continued: "The Constitution in formulating the varying criteria for permissible legislation, imposing restrictions on the Fundamental Rights enumerated in Article 19 (1) has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it and made their prevention the sule justification for legislative "abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the right to freedom of speech and expression, while the right of peaceable assembly (Sub-Clause B) and the right of association (Sib-Clause C) may be restricted under Clauses 3 and 4 of Article 19 in the interests of public order which, in those clauses, includes the security of the State".

Mr. Justice Sastri observed that it was worthy of note that the word "sedition" which occurred in Article 13 (2) of the Draft Constitution prepared by the Draft inglement of repression and of speech, unless it is such as to undermine

DECISION IN PUNJAB CASE

ir. Justice Patanjali Sastri's judgment the Organiser case was also concurred h by four other Judges. In this case the titioner had contended that Section 7 (1) of the East Punjab Public Safety Act ler which the pre-censorship order was yed was invalid. Ir. Justice Patanjali Sastri said that petitione (C) of tunder w

in the East Punjab Public Safety Act under which the pre-censorship order was served was invalid.

Mr. Justice Patanjali Sastri said that since this question turned on considerations which were essentially the same as those in the decision on Crossroads petition, he would quash the pre-censorship order of the Chief Commissioner of Delhi. Mr. Justice Fazl Ali, who gave a dissenting judgment, said that while "public disorder" was wide enough to cover a small riot or any affray and other cases where peace was disturbed by or affected a small group of persons, "public unsafety" would usually be connected with serious internal disorders and such disturbances of public tranquility as jeopardised the security of the State. He observed that the prominence given to "public safety" in the title—"East Punjab Public Safety Act strongly suggested that the Act was intended to deal with serious cases of public disorder which affected public safety or the security of the State or cases in which, owing to some kind of energency or a grave situation having arisen even public disorders of comparatively small dimensions might have far-reaching effect on the security of the State. It was to be noted, he said, that the Act purported to provide special measures to ensure public safety and maintenance of public order."

He turned to the deletion of the word "sedition in the Draft Constitution and approvingly quoted the definition of the word (Continued on page 6)

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(Centinued from page 4)

by Chief Justice Gwyer in the Niharendu Dutt Muzumdar versus the King case of 1942 which said: "Public disorder, or the reasonable anticipation or likelihood of public disorder, is the gist of the offence of sedition and the acts or words com-plained of must either incite to disorder or must be such as to satisfy reasonable or ruist be such as to satisfy reasonable men that that is their intention or tendicty". The framers of the Constitution must have, therefore, found themselves face to face with the dilemma as to whether the word sedition should be used at all in Article 19 (2) and if it was to be used in what sense it was to be used.

Mr. Justice Fazl Alt continued that the framers of the Constitution used the more general words which covered sedition and everything else which made sedition a serieverything else which made section a serious offence. That sedition undermined the security of the State usually through the medium of public disorder was also a matter on which eninent Judges and jurists were agreed. So it was difficult to held that public disorder or disturbances of public tranquility were not matters with the undermined the security of the undermined the security of the which State.

State.

Continuing he said it could not be held that Section 7 (1) (C) under which Organiser was served with a pre-censorship order fell outside the ambit of Article 19 (2). "That clause clearly stated that nothing in Clause (1) (A) shall affect the operation of any existing law relating to any matter which undermined the security of, or tended to overthrow, the State. I have tried to show that public disorders and disturbances of public tranquility do undermine the security of the State and if the Act is a law aimed at preventing such disorders, it fulfils the requirement of the Constitution."

Mr. Justice Fazi Ali referred to an affi-, Mr. Justice Fazi Ali referred to an affi-davit sworn by the Home Secretary to the Chief Commissioner of Delhi, who also stated among other things that the order in question was passed by the Chief Com-missioner in consultation with the Central Press Advisory Committee "which is an in-dependent body elected by the Ali-India Newspaper Editors" Conference and is composed of representatives of some of the leading powers such as the Hinduston. leading papers such as the Hindustan Times, Statesman etc. He therefore, held that it was beyond the power of the Court to grant the reliefs claimed by the journal.