THE NATIONAL SECURITY ACT, 1980
(Act No. 65 of 1980),

[27th December, 1980]

An Act to provide for preventive detention in certain cases and for matters connected therewith

Be it enacted by Parliament in the thirty-first Year of the Republic of India as follows:

1. Short title and extent:
(1) This Act may be called the *National Security Act, 1980*.
(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions:
In this Act, unless the context otherwise requires:

(a) "*appropriate Government*" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to State Government or as respects a person detained under such order, the State Government;

(b)"*detention order*" means an order made under *Sec. 3*;

[c]"*foreigner*" has the same meaning as in the *Foreigners Act, 1946 (31 of 1946)*;

(d) "*person*" includes a foreigner;

(e) "*State Government*", in relation to a Union territory means the administrator thereof.

3. Power to make orders detaining certain persons:

(1) The Central Government or the State Government may,
(a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or
[b] If satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India. It is necessary so to do make an order directing that such person he detained.

(2) The Central Government or the State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State Government or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation:
For the purposes of this sub-section "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies or commodities essential to the community" as defined in the explanation to sub-section (1) of *Sec 3* of the *Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980)*, and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail In any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:
Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instances exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one tune.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate 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 meantime, it has been approved by the State Government:
Provided that where under *Sec. 8* the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particular as, in the opinion of the State Government, have a bearing on the necessity for the order.

STATE AMENDMENT

Punjab and Union Territory of Chandigarh:
In its application to the State of Punjab and Union territory of Chandigarh, in sub-section (4) of *Sec. 3* in the proviso:
(a) for the words "ten days", the words "fifteen days" shall be substituted;
(b) for the words "fifteen days", the words "twenty days" shall be substituted.

Comments

Grounds of detention:
It is well settled that the detaining authority cannot by an affidavit filed in Court supplement what is stated in the grounds of detention or add to it. It is difficult to infer from the solitary ground set out in the grounds of detention that the act alleged to have been committed by the petitioner would have disturbed public order as distinct from law and order or that one single act committed by the petitioner was of such a character that it could reasonably be inferred by the detaining authority that if not detained, he would be likely to indulge in such activity in future. Therefore it was held that the ground of detention given in support of the order of detention was irrelevant and no reasonable inference could he drawn from that ground which would justify the making of the order of detention.

Detention of the detenu:
In *Ajal Dixit* v. *State of Uttar Pradesh*, it has been held that it is necessary in each case to examine the facts to determine, not the sufficiency of the grounds nor the truth of the grounds, but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of detenu is necessary for maintenance of public order. In view of the nature of the allegation mentioned in the grounds, in the instant case are not of such nature as to lead to any apprehension that the even tempo of the community would be endangered. Therefore the detention of the detenu under *Sec. 3* (2) of the Act was not justified.

Non-furnishing of copies of statement whether really prevents forming effective representation:
The non-furnishing of copies of statements really prevented the appellant from making effective representation against his detention and since the constitutional safeguard in this behalf was clearly breached the impugned detention order cannot be sustained.
In the instant case the statement of Iboyaima Singh was clearly material, which influenced the mind of the detaining authority in reaching the requisite subjective satisfaction. Even so no copy of the statement of Iboyaima Singh has been furnished to the appellant and non-furnishing of the copy of that statement has clearly prejudiced the appellant in exercise of his right of making effective representations

Furnishing of comments delayed; Detention vitiated:
In the present case satisfaction of the District Magistrate, has no relevance to the public order, cannot be said to be beyond the judicial scrutiny. The Central Government has an explanation for the time taken by detaining authorities for the disposal of the petitioner's representation made to it. The detention is therefore not vitiated on this ground unless it is further found that the time taken by the State Government in sending their comments was inordinate. The State Government has not placed facts from which an inference can be from the time taken by them in furnishing comments was justified. The Central Government too cannot be absolved from their responsibilities of taking steps to get the comments from the State Government within a reasonable time when the same was being delayed. Taking these facts into consideration the impugned order is vitiated on this ground also. The petitioner shall be set free forthwith if not required to be detained in connection with any other cases.

Delay in communicating grounds of detention and its effect:
A bare reading of *Sec. 3* shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been

made, promptly. This has to be done as soon as possible and ordinarily not later than 5 days. The detaining authority is permitted to exceed this limitation of 5 days in exceptional circumstances. The grounds of detention, under exceptional circumstances, can be communicated to the detenu within a period not later than 15 days from the date of detention, but when the detaining authority takes time longer than 5 days he has to record reasons why the grounds of detention could not be communicated within 5 days. It is clear in this case that the grounds of detention were communicated to the petitioner long after 10 days. There is no record evidencing any reason for this long delay. As indicated earlier, the mandate enacted in the section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such an order must be supported by an order recording reasons. If reasons are not recorded, the order of detention will automatically fail. Even if reasons are not recorded, they have to inspire confidence in the Court are subject to legal scrutiny. If the reasons are unsatisfactory, Courts could still quash the order of detention.

Incidents mentioned in the rowdy sheet were unrelated to public order; Validity of detention order:

No doubt, the past conduct and even the acts of black-marketing and smuggling can also form the basis for detention if they have any bearing on public order. But, in the instant case, the incident mentioned in item 1 of the "Conviction particulars" in the rowdy sheet relates to past incident and has no bearing at all on the public order. The detenu was not chargesheeted in the case referred to in item 2 of the rowdy sheet. The fact that some other persons were chargesheeted, for offences under *Secs. 148, 324* and *302*, I.P.C., and that they were acquitted would not constitute a valid ground for detention of the detenu. As the two of the incidents mentioned in the rowdy sheet are unrelated to public order, the order of detention stands vitiated.

Ground was both vague and not germane to the charge of a threat to public order; Whether could form the basis of valid detention order:

Where in a case the ground was both vague and not germane to the charge of a threat to public order. It must be held that it is not possible to sustain the order of detention. In the instant case it was contended that ground No. 1 was vague and irrelevant, and could not form the basis of valid detention order and further that the petitioner was materially prejudiced thereby and prevented from making an effective representation. Attention was focused on ground No. 1 of the detention, which was to the effect that on 27th January, 1981 the Sub-Divisional Magistrate, Ghaziabad, passed an order that from the report dated 1st October, 1980, submitted by the Tahsildar, Ghaziabad, the fact had been emerged that some land belonging to the Gram Sabha, Pasonda of Tahsil Ghaziabad had been fraudulently put in possession of some persons by the petitioner and his associates. The area of the land was mentioned but the names of the persons alleged to have been inducted on the aforesaid land were not disclosed. It is inconceivable that the petitioner could have made any effective representation, unless the very names of the land-grabbers were disclosed. Thus there is sufficient force in the other submission also made on behalf of the petitioner, namely, that the ground was irrelevant and could not be construed as a fact amounting to breach of or threat to public order. It is on the face of it an individual crime, which can be dealt with precisely as a challenge to law and order, and there is nothing either in the nature or gravity of the act *per se* which may impart to it the character of an invasion of public order. It is not touched with the faintest sprinkle of public disorder. It is further clear that the incidents, covered by

the other grounds of detention served on the petitioner are of an entirely different category, being cases of violence and assault.

Continued detention of the detenu, if justified:
In this case there were grounds for the passing of the detention order but after that the detenu has surrendered for whatever reasons, therefore the order of detention though justified when it was passed but at the time of the service of the order there was no proper consideration of the fact that the detenu was in custody or that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case therefore, the continued detention of the detenu under the Act is not justified.

Total absence of application of mind; Effect of:
In the instant case there is absolutely no mention in the order about the fact that the petitioner was an under-trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention. Therefore it was held that the detenu was entitled to be released.
Unless it clearly appears that preventive detention is being resorted to as the line of least resistance where criminal prosecution would be the usual course, no fault can be found with it. What is to be seen is whether the detaining authority has applied its mind or not to the question whether it was necessary to make preventive detention. In the instant case there is evidence of application of mind.
The subjective satisfaction on the prevailing circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word "or" signifies either of the two situations for different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail in future. The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind, but in that case the two circumstances would have to be joined by the conjunctive word "and" not the disjunctive word "or". The use of the disjunctive word "or" in the impugned Government order only indicates non-application of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used disjunctive word "or" in the impugned order.

Difference between law and order and public order:
Conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. The Supreme Court held that one has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquillity. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot

be laid down. As and when an order of detention is questioned, it is for the Court to apply these well-known tests to find out whether impugned activities upon which the order of detention is grounded go under the classification of public order or belong to the category of law and order.

Incidents which formed grounds of detention were not only stated but were also irrelevant; Validity of detention order:

It is an admitted position in the instant case, that so far as grounds No. 2 relating to the incidents which took place in connection with the agitation in Crompton Greaves Company are concerned, the detenu was not even joined as an accused in the charge-sheet filed before the Court. Therefore, it can safely be said that with the said incidents detenu was not at all concerned and, therefore, so far as detention under *Sec. 3*(2) of the National Security Act is concerned, the said ground is wholly irrelevant. It is by now well settled that when an order is based on a cumulative effect of all the grounds of detention and when it is ultimately held that any one of them is either irrelevant or vague, then the order of detention as a whole is *ab initio* void and illegal.

It has to be borne in mind that if more than one grounds are stated in the grounds then the fact that one of the grounds is bad would not alter order of detention after the Amendment of the Act in 1984 provided the other grounds were valid. But quite apart from the same, it appears that none of the grounds was vague. The grounds must be understood in the light of the background and the context of the facts. It was quite clear what the detaining authorities were trying to convey was that the petitioner stated things of the nature and it was to teach Hindus a lesson. Hence it was meant to create communal tension. There was no irrelevancy or vagueness in the grounds. On this ground the challenge cannot be sustained.

Once it is held that the incidents dated 3rd August, 1980, are wholly irrelevant for the purpose of detention, then the earlier incidents referred to in grounds No. 1 have no nexus with the detention order which is passed in June 1981, because on that basis alone it cannot be held that there was any live link for passing an order of detention under *Sec. 3* (2) of the *National Security Act, 1980*. In June, 1981. To say the least, on the basis of such stale grounds no satisfaction could he arrived at as contemplated by *Sec. 3* (2) of the National Security Act. Therefore the detenu was directed to be released.

In actual practice the grounds supplied as an objective test for determining the question whether a nexus reasonably exists between grounds of detention and the detention order or whether some infirmities had crept in. A conjoined reading of the detention order and the grounds of detention is, therefore, necessary. It is largely from prior events showing tendencies or inclinations of a man that inference can be drawn whether he is likely in future to act in a prejudicial manner. But such conduct should be reasonably proximate and should have a rational connection with the conclusion that the detention order must be carefully considered. Though the possibility of prosecution being launched is not an irrelevant consideration. Failure to consider such possibility would not vitiate the detention order.

Apprehension to again carry on criminal activities; Whether a valid ground for detention:

In *Ramesh Yadav* v. *District Magistrate*, Etah, on a reading of the grounds, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case if the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the ball application had to be opposed and in case ball was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in

detention as an undertrial prisoner was likely to get the ball an order of detention under the *National Security Act*, should ordinarily be passed.
Where a person accused of certain offences whereunder he is undergoing trial of has been acquitted, the appeal is pending and in respect of which he may be granted bail may not in all circumstances entitle an authority of direct preventive detention and the principle enunciated in *Ramesh Yadav* v. *District Magistrate*, Etah, must apply but where the offences in respect of which the detenu is accused are so interlinked and continuous in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention.

Further detention; Legality of:
It cannot be denied, in the instant case that the immediate object of the District Magistrate was to prevent the petitioners from taking part in the activities of rasta roko or civil disobedience, or "curfew" as mentioned in the grounds of detention. This immediate object having been fulfilled, it is clear that further detention of the petitioners would not be, in the spirit in which the order of detention must have been passed based on the grounds of the case.

Inordinate delay of 28 days in considering the representation of the detenu; Effect of:
The representation in the instant case, was made on 19th October 1981, and it was rejected an 16th November, 1981, the very date on which the report of the Advisory Board was also received. There was thus a delay of 28 days in considering the representation.
It is admitted that the representation was received in the office of respondent, the State of Bihar, on 20th October, 1981. On 20th October, 1981, a copy of the representation was sent to the District Magistrate, Gopalganj, the detaining authority. The District Magistrate, returned the representation with his comments on 31st October, 1981 and it was received in the Department of Home (Special) on 4th November, 1981. On 5th November, 1981, It was examined by the Deputy Secretary, Home (Special) Department. On 6th November, 1981, it was received by the Special Secretary, Home (Special) Department, who endorsed it to the Chief Minister on 10th November, 1981. The District Magistrate took more than 9 days in examining the representation and in forwarding his comments, and for this there is no explanation.
In the circumstances of this case delay of 28 days in disposing of the representation as inordinate delay which would vitiate the order.

4. Execution of detention orders:
A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the *Code of Criminal Procedure, 1973 (2 of 1974)*.

Comment

Execution of detention orders can be made at any place within the country. It has been provided under this section that the execution of detention orders may be made in the manner as provided for the execution of warrants of arrest under the *Criminal Procedure Code, 1973*. Like a warrant of arrest, a detention order may be

executed at anywhere in India.

5. Power to regulate place and conditions of detention:
Every person in respect of whom a detention order has been made shall be liable:
(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline, and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and
(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:
Provided that no order shall be made by a State Government under Cl. (b) for the removal of a person from one State to another State except with the consent of the Government of the other State.

5-A. Grounds of detention severable:
Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the *National Security (Second Amendment) Act, 1984*] under *Sec. 3* which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly:
(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are:
(i) vague,
(ii) non-existent,
(iii) not relevant,
(iv) not connected or not proximately connected with such, person, or
(v) invalid for any other reason whatsoever, and is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in Sec 3 with reference to the remaining ground or grounds and made the order of detention.

(b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied in that section with reference to the remaining ground or grounds.

6. Detention order not to be invalid or inoperative on certain grounds:
No detention order shall be invalid or inoperative merely by reason:
(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons:
(1) If the Central Government or the State Government or an officer mentioned in sub-section (3) of *Sec. 3*, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed that Government or officer may:

(a) make a report in writing of the fact to Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides ;
(b) by order notified in the Official Gazette direct the said person to appear before such officer at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under Cl. (a) of sub-section (1). the provisions of *Secs. 82, 83, 84* and *85* of the *Code of Criminal Procedure, 1973 (2 of 1974)*, shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under Cl. (b) of sub-section (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the *Code of Criminal Procedure, 1973 (2 of 1974)*, every offence under sub-section (3) shall be cognizable.

8. Grounds of order of detention to be disclosed to persons affected by the order:
(1) When a person is detained in pursuance of a detention order, the authority, making the order shall as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the ground on which the order has been made and shall afford him the earliest opportunity of making representation against the order to the appropriate Government.
(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

STATE AMENDMENT

Punjab and Union Territory of Chandigarh:
In its application to the State of Punjab and Union territory of Chandigarh in sub-section (1) of *Sec. 8* for the words "ten days", the words "fifteen days" shall be substituted.

Comments

Grounds of order of detention shall be communicated to the person concerned by the authority making the order. Grounds of detention shall be communicated within five days from the date of detention. In some cases it can be ten days also but then the authority concerned has to give some reasons in writing of doing so. Thus the earlier opportunity of making representation against the order to the Government had been provided under this section. In the latter part of the section, it has also been mentioned that the authorities concerned are not bound to disclose every facts if they think it necessary not to disclose in the public Interest.

Copies of the confessional statements not furnished with grounds of detention; Effect of:
The detenu is entitled to be released in view of the failure to furnish necessary documents to enable him to make a proper representation. In the instant case the

grounds were based upon the confessional statements. The confessional statements were the very core of the grounds. Yet copies of those statements were not furnished to the detenu along with the grounds of detention. Thereby the detenu was denied the opportunity of making a proper and adequate representation. Therefore the detenu was directed to be released.

Non-forwarding of copy of representation by Jail Superintendent to Central Govt.; Effect of:

It is not disputed that the detenu gave nine copies of the representation to the Superintendent Jail for onward submissive to the authorities. The Superintendent Jail, in the circumstances of this case, was under an obligation to send one copy of the representation to the Central Government. The Superintendent Jail sent the representation only to the State Government and not to the Central Government. When the detenu gave sufficient number of copies of his representation and left it to the jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent Jail was legally bound to send one copy to the Central Government. So the detenu was denied his right to make an effective representation and on that short ground his detention is liable to be quashed.

Violation of the section:

It is well-settled law and has been reiterated time and again that the detaining authority is bound to give the detenu an opportunity to make a representation against his detention at the earliest and any unreasonable delay in furnishing a copy of the grounds or documents is a denial of such opportunity rendering the detention illegal. In the present case, the petitioner had made a representation on 19th July, 1982. He had complained therein, as also much earlier on 4th July. 1982 that he could not make an effective representation as the grounds and documents in Urdu had not been supplied to him. In the circumstances the furnishing of the grounds and documents in Urdu to him only on 27th July, 1982 was in clear violation of *Sec. 8* of the *National Security Act, 1980*, and the provisions of Art. 22 (5) of the Constitution of India.

There is no controversy about the fact that the detention order and the grounds were written in English language and copies of documents annexed to the grounds were in Urdu script. Despite the fact that the petitioner wrote cut the receipts dated 22nd of May, 1990, and 5th of June, 1990, respectively in Hindi and specifically demanded by his representation dated 7th June, 1990, Hindi translation of the documents, the same were supplied to him only on the day of the meeting of the Advisory Board, or thereafter, on 5th July, 1990. In these circumstances, it is apparent that the detaining authority failed to afford to the petitioner the opportunity of making an effective and proper representation against the detention order and thus, it failed to observe the safeguards provided by Art. 22 (5) of the Constitution of India and *Sec. 8* of the Act. As a result, detention of the petitioner is vitiated.

In the present case the averment of the District Magistrate deserves to be accepted as the other material against the petitioner contained in the report of the Station Officer, Mughalpura is either not proximate to the time of the passing of the detention order or has any nexus with the object of the Act or does not appear to be supported by any evidence. No prejudice was thus caused to the petitioner by the non-supply of the copy of the report of the Station Officer, Mughalpura dated 1st duly, 1982 and the report of Laxmi Narain Sharma Assistant Public Prosecutor made to the Senior Public Prosecutor dated 23rd June 1982 in making his representation. Article 22 (5) of the Constitution and *Sec. 8* of the Act were thus not violated.

9. Constitution of Advisory Boards:

1) The Central Government and each state Government, shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.
(2) Every such Board shall consist of three persons who are, or have been or are qualified to be appointed as, Judges of a High Court and such persons shall be appointed by the appropriate Government.
(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards:
Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under *Sec. 9*, the grounds on which the order has been made and the representation if any made by the person affected by the order and in case where the order has been made by an officer mentioned in sub-section (3) of *Sec. 3*, also the report by such officer under sub-section (4) of that section.

Comments:

Scope of section:
Section 10 provides that the State Government has the obligation to cause the papers relating to detention to be placed, along with the representation if made within three weeks from the date of detention before the Advisory Board. Where a representation is not made in regard to the detention, the papers without the representation have to be placed before the Board within the time prescribed. Where a representation is made within reasonable time the same has also to be promptly attended to and has to he placed before the Board. In the case order of detention was made on 7th August, 1981.
The High Court found that the petitioner had made a representation on 16th August, 1981, which the authorities of the jail had forwarded to the District Magistrate, and he in turn sent the same to the State Government on 24th August, 1981. The State Government received the representation on 25th August, 1981; and caused it to be placed before the Advisory Board ova 29th August, 1981. According to the High Court. "the representation of the petitioner was placed before the Advisory Board twenty-two days after the date of detention of the petitioner."
The Supreme Court held 28th August was the last date of three weeks from the date of detention but the representation had been placed before the Board on 29th August, 1981. There has been an assertion on behalf of the State Government that the representation was forwarded to the Board on 28th August. 1981 and seems to have been received there on the following day. In the face of these facts the High Court should not have quashed the order of detentions.

Compliance of Sec. 10:
It is noteworthy that *Sec. 10* of the *National Security Act*, requires that the State Government must place the relevant papers and representation of the detenu, If any received by that time, before the Advisory Board within three weeks from the date of detention. The expression "within three weeks" would not mean that the State Government should necessarily wait up to deadline. In fact, *Sec. 10* provides simply

the maximum time limit and nothing beyond that. The State Government is thus empowered to place the relevant papers before the Advisory Board at any time within that period and rather in such matters expedition is always indicated though detention would not be vitiated even if the maximum period permissible is availed of in the present case, the detention order was passed on 9th August, 1982 and served on 10th August 1932 and the matter was referred to the Advisory Board on 9th August, 1982 which was permissible in accordance with law. Courts have to look into the substance and not technicalities and once it is found that the representation of the detenu has been placed before the Advisory Board within the stipulated period most expeditiously through the limb of the State Government there is complete compliance of *Sec. 10* of the detention of the petitioner is not vitiated on that ground.

11. Procedure of Advisory Boards:

1) The Advisory Board shall, after considering the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of the Advisory Board:

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient causes for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

13. Maximum period of detention:

The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under *Sec. 12* shall be twelve months from the date of detention:

Provided that nothing contained in the section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

Comment

The maximum period of detention under this section shall be twelve months from the date of detention. No person can be detained more than a year in pursuance of the

detention order confirmed under *Sec. 12* of the Act. But the Government has been given the power to revoke or modify any earlier date also.

14. Revocation of detention order:
(1) Without prejudice to the provisions of *Sec. 21* of the *General Clauses Act, 1987 (10 of 1897)*, a detention order may, at any time be revoked or modified:
(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of *Sec. 3* by the State Government to which that officer is subordinate or by the Central Government;
(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry of revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under *Sec. 3* against the same person:
Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

Comment

Doctrine of constructive *res judicata*, Applicability of:
The principles are that the application of the doctrine of constructive *res judicata* is confined only to civil action and is entirely inapplicable to any illegal detention and do not bar a subsequent petition for a writ of habeas corpus. *Section 14* of the *National Security Act*, provides that a detention order may at any time be revoked or modified by the State Government or by the Central Government. When that is the position, it cannot be urged that if such right of the detenu is defeated for any non consideration of his representation, the detenu will be devoid of any remedy by moving the Court simply because his earlier writ-petition, much before the representation in question made on other grounds has been rejected. Thus, it cannot be urged that once any writ-petition is decided before any remedy is sought under *Sec. 14* of the Act, upholding the detention the detenu cannot avail of that additional remedy provided under *Sec. 14* of the Act. The remedy under *Sec. 14* of the Act is an independent remedy, which is available to the detenu. The petition in the instant case was not barred on account of any judgement in earlier petition and the petition on new grounds, which arose subsequent to the disposal of the earlier writ petition, is maintainable.

14-A Circumstances in which persons may he detained for periods longer than three months without obtaining the opinion of Advisory Boards:
(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any judgement, decree or order of any Court of other authority, any person in respect of whole an order of detention has been made under this Act at any time before the [8th day of June 1989], may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding six

months from the date of his detention where such person had been detained with a view to preventing him, in any distention where such person had been detained with a view to preventing him, in any disturbed area:

(i) from interfering with the efforts of Government in coping with the terrorist and disruptive activities, and
(ii) from acting in any manner prejudicial to:
(a) the defence of India; or
(b) the security of India; or
(c) the security of the State; or
(d) the maintenance of public order; or
(e) the maintenance of supplies and services essential to the community.

Explanation 1:
The provisions of the explanation to sub-section (2) of *Sec. 3* shall apply for the purposes of this sub-section as they apply for the purposes of that sub-section.

Explanation 2:
In this sub-section, "disturbed area" means any area which is for the time being declared by notification under *Sec. 3* of the *Punjab Disturbed Area Act, 1983 (32 of 1983)* or under *Sec. 3* of the *Chandigarh Disturbed Areas Act, 1983 (33 of 1983)* to be a disturbed area.

Explanation 3:
In this sub-section, "terrorist and disruptive activities" means "terrorist acts" and "disruptive activities" within the meaning of the *Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987).*
(2) In the case of any person to whom sub-section (1) applies, *Secs. 3, 8 and 10* to *14* shall have effect subject to the following modifications, namely:

(a) in *Sec. 3*, :
(i) in sub-section (4), in the proviso,:
[A] for the words "ten days", the words "fifteen days" shall be substituted;
[B] for the words "fifteen days", the words "twenty days" shall be substituted;
(ii) in sub-section (5), for the words "seven days", the words "fifteen days" shall be substituted;

(b) in *Sec. 8*, in sub-section (1). for the words "ten days", the words "fifteen days" shall be substituted ,

(c) in *Sec. 10* for the words "shall, within three weeks", the words "shall, within four months and two weeks" shall be substituted;

(d) in *Sec. 11*,-
(i) sub-section (1), for the words "seven weeks", the words "five months and three weeks", shall be substituted;
(ii) in sub-section (2), for the words "detention of the person concerned". the words "continued detention of the person. concerned" shall be substituted;

(e) in *Sec. 12*, for the words "for the detention", at both places where they occur, the words "for the continued detention" shall be substituted;

(f) in *Sec. 13*, for the words "twelve months". the words "two years" shall be

substituted;

(g) in *Sec. 14*, in the proviso to sub-section (2) for the words "twelve months", the words "two years" shall be substituted.

Comment

The Act shall, in its application to the State of Punjab and the Union Territory of Chandigarh, have effect subject to the above section.

15. Temporary release of persons detained:
(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions, or upon such conditions specified in the direction as that person accepts and may, at any tune, cancel his release.
(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond, with or without sureties for the due observance of the conditions specified in the direction.
(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release as the case may be.
(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term, which may extend to two years, or with fine, or with both.
(5) If any person released under sub-section (1) fails to fufill any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith:
No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

Comment

The bar has been created by this section for filing a suit or instituting any legal proceedings against the Government for or any person anything done in good faith or intended to be done in pursuance of the National Security Act. Thus the section provided the protection of action done in good faith.

17. Act not to have effect with respect to detentions under State laws:
(1) Nothing in this Act shall apply or have any effect with respect to orders of detention made under any State law, which are in force immediately before the commencement of the *National Security Ordinance, 1980 (11 of 1980)*, and accordingly every person in respect of whom an order of detention made under any State Law is in force immediately before such commencement, shall be governed

with respect to such detention by the provisions of such State law or where the State law under which such order of detention is made is an Ordinance (hereinafter referred to as the State Ordinance) promulgated by the Governor of that State Ordinance has been replaced:
before such commencement by an enactment which is passed by the Legislature of that State and the application of which is confirmed to orders of detention made before such commencement under the State Ordinance by such enactment, as if this Act has not been enacted.

(2) Nothing in this section shall be deemed to bar the making under *Sec. 3*, of a detention order against any person referred to in sub-section (1) after the detention order in force in respect of him as aforesaid immediately before the commencement of the *National Security Ordinance, 1980 (11 of 1980),* ceases to have effect for any reason whatsoever.

Explanation:

For the purpose of this section, "State law' means any law providing for preventive detention on all or any of the grounds on which an order of detention may be made under sub-section (2) of *Sec. 3* and in force in any State immediately before the commencement of the said Ordinance.

18. Repeal and writing:
(1)*The National Security Ordinance, 1980 (11 of 1980),* is hereby repealed.
(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act had come into force on the 23rd day of September, 1980, and, in particular any reference made under *Sec. 10* of the said Ordinance and pending before any Advisory Board immediately before the date on which this Act receives the assent of the President may continue to be dealt with by that Board after that date as if such Board has been constituted under *Sec. 9* of this Act.