MASOOD ALAM ETC.

v.

UNION OF INDIA & ORS.

January 11, 1973

[A. ALAGIRISWAMI, I. D. DUA AND C. A. VAIDIALINGAM, JJ.]

Maintenance of Internal Security Act, 1971 *Section* 3(1), *Section* 14(2)—*"Fresh facts"—Whether fresh detention can be ordered without fresh facts after revocation of expiry of the earlier order—Mala fides—Whether detention order under Maintenance of Internal Security Act malafides, if objectionable activities attract preventive provisions (Chapter VIII) of the Cr. P. C. also—Whether second detention order rendered mala fide by the fact that the order was served when the detenu was already in jail.*

The detenu was arrested on June 15, 1972 under section 3(1)(a)(i) and (ii) of the Maintenance of Internal Security Act, 1971. The order was issued on the same date on which he was arrested under sections 107/117/151 of the Cr. P. C. The order was to expire on the 26th June, 1972 as the same was not approved under s. 3(3) by the Government. On 25-6-1972, a fresh order of detention was passed which was served on the detenu on 26-6-1972 while in jail. The second order did not mention any fresh grounds of detentions. Both the detention order were challenged on the grounds (i) that no fresh facts were disclosed for the fresh detention as required by s. 14(2) of act and (iii) that the orders were *mala fide*. Granting the writ of *habeas corpus* and directing the release of the petitioner.

HELD : The second detention order was made without alleging any fresh facts after the expiry of the first order. The power of preventive detention is an extraordinary power intended to be exercised in extraordinary emergent circumstances. The legislative scheme of ss. 13 and 14 of the Act suggest that the detaining authority is expected to know and to take into account all the exising grounds and make one order of detention which must not go beyond the period fixed and fix the maximum period of detention upto 12 months from the date of detention. It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to camouflage of making a fresh order operative soon after the expiry of the period of detention, and also to minimise the resort to detention orders, that s. 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made. [276H-277D]

Manubhusan Roy Prodhan v. *State of West Bengal*, W.P. No. 252 of 1972 dated 31-10-1972, relied on.

Sampat Prakash v. *State of J. & K.*, [1969] 3 S. C. R. 574, distinguished.

If the grounds are relevant and germane to the object of the Maintenance of Internal Security Act, then merely because the objectionable activities covered thereby also attract the provisions of Chapter VIII of the Cr. P.C., the preventive detention cannot for that reason alone be considered to be *mala fide* provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act. [273C]

A *Sahib Singh Duggal* v. *Union of India*, [1966] 1 S.C.R. 313, *Mohammed Salem Khan* v. *C. C. Bose*, A.I.R. 1972 S.C. 2256, *Boriahan Gorey* v. *State of West Bengal*, A.I.R. 1972 S.C. 2256, relied on.

Merely because a person concerned has been served with a fresh detention order while in custody, that service cannot invalidate the order of detention. Although the past conduct, activities and antecedent history B should be proximate in point of time and should have rational connection with the necessity for detention, what period of past activity should be considered is within the discretion of the detaining authority. [275C-H]

Ujagar Singh v. *State of Punjab*, [1952] S.C.R. 757, *Makhan Singh Tarsikka* v. *State of Punjab*, A.I.R. 1964 S.C. 1120 and *Rameshwar Shaw* v. *District Magistrate Burdwan*, [1964] 4 S.C.R. 921, referred to. C

Hadibandhu Das v. *The District Magistrate, Cuttack*, [1969] 1 S.C.R. 227 and *Kshetra Gogoi* v. *State of Assam*, [1970] 2 S.C.R. 517, held inapplicable.

ORIGINAL JURISDICTION : Writ Petitions Nos. 469 and 470 of 1972.

D Petitions under Article 32 of the Constitution of India for the enforcement of fundamental rights.

Bashir Ahmad, K. L. Hathi, Manzar Ul-Islam and *P. C. Kapur*, for the petitioners.

B. D. Sharma and *R. N. Sachthey*, for respondent No. 1.

E *D. P. Uniyal* and *O. P. Rana*, for respondents Nos. 2 to 6 (in W.P. No. 469) and for respondent Nos. 223 (in W.P. No. 470).

The Judgment of the Court was delivered by

DUA, J. These two petitions under Art. 32 of the Constitution for writs in the nature of *habeas corpus* (Masood Alam v. Union F of India & ors. W.P. no. 469 of 1972 and Abdul Bari Kairanvi v. Union of India W.P. No. 470 of 1972), have been heard together and are being disposed of by a common judgment.

Writ Petition No. 469 of 1972 :

In writ petition no. 469 of 1972 we made a short order on G December 20, 1972 directing the release of Masood Alam unless he was required in some other case, reserving our reasons for his release to be given later. We now proceed to deal with the arguments advanced on his behalf and give our reasons for our decision.

Masood Alam, detenu-petitioner, was arrested on June 15, H 1972 pursuant to an order of detention dated June 14, 1972. No copy of that order is produced on the record. It is, however, not disputed that the said order was made by the District Magistrate under s. 3(1)(a)(i) and (ii) of the Maintenance of Internal

Security Act, 1971 (Act no. 26 of 1971) (hereinafter called the Act). The grounds of detention signed by the District Magistrate, Aligarh were served on the petitioner on June 17, 1972, pursuant to s. 8 of the Act. Those grounds read :— A

"(1) That you have been exciting communal feelings amongst Muslims and feeling of disaffection towards the Government of India and of hatred to other communities. You have also been advocating use of force by Muslims in India to secure withdrawal of the A.M.U. (Amendment) Bill, 1971—now an Act. These actions, which are a threat to security of the State and the maintenance of public order, find support from the following instances :— B C

(i) that you are organiser at Aligarh of Youth Majlis a para-military organisation which imparts training to Muslims in the use of lathi, swords and knives, etc. You are member of Al Jehad, an international Islamic movement. You are Naib Amir Ala Youth Majlis, U.P. D

(ii) You went to participate in Youth Majlis training camp at Varanasi. You were trained in the use of knife and demonstrated the same at a function of the Youth Majlis held in Mohalla Tantanpara, Aligarh. E

(iii) You participated in a meeting addressed by Shri Afaq Ahmed, Organiser, Youth Majlis, U.P.

(iv) On 12-7-1971 you stressed upon members of Youth Majlis to organise branches of Youth Majlis in each Mohalla. You went to Allahabad to participate in the Youth Majlis Camp organised there from 23 to 26-6-71 and were made Naib Ala, U.P. F

(v) You attended the meeting held at your residence on 29-10-71 wherein training programme of Youth Majlis in use of knife and aiming by air gun was discussed. G

(vi) You attended a private meeting of Muslim Majlis on 11-1-1971 at the residence of Dr. Hanif in Mohalla Rasalganj, Aligarh. You disclosed there that the Youth Majlis was fully prepared to meet any situation on communal basis and pleaded for funds for Youth Majlis. H

A 2. That you have extra territorial loyalties and are, therefore, a threat to security of India which is evidenced from the following instances :—

(a) You visited Pakistan and returned from there on 29-4-1971 and participated in a meeting addressed by Shri Afaq Ahmad, Organiser Youth B Majlis, U.P. In this meeting you disclosed that you had developed many contacts in Pakistan and that people there had given you enough money for the help of Muslims in Aligarh.

(b) You on 16-7-1971 along with Abdul Bari Qairanvi and Mohammad Obed were noticed C criticising Government of India's policy towards Bangla Desh and accused Government of India and Indian Press of carrying on a false propaganda.

(c) You attended a meeting on 20-10-1971 held at D your residence wherein Abdul Bari Qairanvi asked the volunteers to remain vigilant and prepared in view of Indo-Pak armies facing each other to meet the situation which might result therefrom. . . . ."

The Government, it appears, did not accord its approval of the E petitioner's detention as required by s. 3(3) of the Act. According to para 22 of the Writ Petition, the contents of which are not controverted, as expressly stated in para 12 of the counter affidavit, on June 26, 1972 at about 12 noon the following order was served on the petitioner :—

"Sub : Release under Maintenance of Internal F Security Act on 25-6-1972 at 23.50 hrs. under D.M. Aligarh Order dated 25-6-1972.

You are hereby informed that you are released on 25-6-1972 at 23.50 hrs. *vide* D.M. Aligarh Order dated 25-6-1972 on account of non-receipt of approval from State Government but you were detained in Jail G as under trial under Rules 107/117, Cr. P.C. You may inform your relations or lawyer if you want to arrange your bail.

Sd/-
Superintendent,
H Distt. Jail, Aligarh."

A fresh order of detention was also passed on June 25, 1972. This order was made by the Governor of U.P. under s. 3(1) of

the Act and was served on the petitioner on June 26, 1972 at about 3.30 p.m. It reads :

> "Whereas the Governor of Uttar Pradesh is satisfied with respect to Sri Masood Alam son of late Sri Baboo Ayoob resident of Mohalla Bani Israilan, Aligarh City, that with a view to preventing him from acting in any manner prejudicial to the security of the State and the maintenance of public order, it is necessary so to order :—
>
> NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of section 3 of the Maintenance of Internal Security Act, 1971 (no. 26 of 1971), the Governor is hereby pleased to direct that the said Sri Masood Alam shall be detained under sub-clause (ii) of clause (a) of sub-section (1) of sub-section (3) of the said Act in the District Jail, Aligarh in the custody of the Superintendent of the said Jail.
>
> By order of the Governor,
> Sd/-
> R. K. KAUL
> Special Secretary".

On behalf of the petitioner both the aforesaid orders of detention are assailed before us. The first contention pressed by Mr. Bashir Ahmad, appearing for the petitioner relates to the earlier order of detention. He has tried to assail that order with the object of showing *mala fides* of the detaining authority in making the second order. In this connection it is noteworthy that according to the return of the State of Uttar Pradesh as averred in para 27(r) of the counter-affidavit of Shri R. K. Kaul, Special Secretary, "the petitioner was arrested on 15th June 1972 under section 107/117/151, Cr. P.C. and the order of detention was also served on him by the District Magistrate on the same date. Orders for his release were issued by the District Magistrate under the Maintenance of Internal Security Act but he continued to be in Jail under the above sections of the Cr. P.C." The order of release mentioned in this para has reference to the order dated June 25, 1972 when the petitioner was supposed to have been released from his detention because of non-approval of his detention by the State Government. Mr. Bashir Ahmad the counsel for the detenu has contended that the grounds of detention dated June 17, 1972 served on the petitioner under s. 8 of the Act only suggest a threat to the security of the State and the maintenance of public order and that this does not mean that the petitioner was likely to act in the near future in a manner prejudicial to the security of State and maintenance of public order. This conten-

A tion ignores para 3 of the grounds in which it is clearly stated that the District Magistrate was satisfied that the petitioner was likely to act in a manner prejudicial to the security of India, security of the State and maintenance of public order and that with a view to preventing him from so acting, it was necessary to detain him. The submission that the use of the word 'likely' in this para only B brings the petitioner's case within the purview of the provisions of Chapter VIII (Security Proceedings) of the Criminal Procedure Code thereby justifying only proceedings under s. 107 of the Code and that an order of detention in such circumstances is an abuse and misuse of the provisions of the Act has only to be stated to be rejected. If the grounds are relevant and germane to the object of the Act then merely because the objectionable activities covered C thereby also attract the provisions of Ch. VIII, Cr. P.C. the preventive detention cannot for that reason alone be considered to be *mala fide* provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act : see *Sahib Singh Duggal* v. *Union of India*(1), *Mohammad Salem Khan* v. *C. C. Bose*(2) and *Borjahan Gorey* v. *The State of West* D *Bengal*(3). The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depends on subjective satisfaction of the detaining authority. It is designed to prevent the mischief from being committed by depriving its suspected author of the necessary facility for carrying out his nefarious purpose. This jurisdiction is thus essentially different from that of judicial E trials for the commission of offences and also from preventive security proceedings in criminal courts, both of which proceed on objective consideration of the necessary facts for judicial determination by courts of law and justice functioning according to the prescribed procedure. Merely because such jurisdiction of courts can also be validly invoked does not by itself exclude the juris- F diction of preventive detention under the Act. The earlier order, therefore, cannot be described to be either illegal or *mala fide* on this ground. Although the petitioner's present detention is founded on the order dated June 25, 1972 the earlier order was challenged with the sole object of showing that the present detention is also *mala fide* because the authorities are determined to keep the petitioner in custody irrespective of the existence or non-existence G of valid grounds. We are not impressed by this submission and are unable to hold that the circumstances in which the earlier order was made in any way suggest *mala fides* on the part of the detaining authority in making the second order.

Regarding the second order also it has been suggested that there is no imminent likelihood of the petitioner acting in a pre- H judicial manner and that his detention is thus an abuse or misuse

(1) [1966] 1 S.C.R. 313. (2) A.I.R. 1972 S.C. 1760.
(3) A.I.R. 1972 S.C. 2256.

of the power of detention conferred by the Act. The scheme of our Constitution with respect to the fundamental right of personal liberty and the protection guaranteed against arrest and detention of the individual is intended to be real and effective, says the counsel, and adds that preventive detention of a person for any reason short of imminent likelihood of his acting in a prejudicial manner must be considered to be an invasion of this right. Our constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. But the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedoms and personal liberty are designed to grow and flourish. The larger interests of our multireligious nation as a whole and the cause of preserving and securing to every person the guaranteed freedoms peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardise the rightful freedoms of the rest of the society. These restrictions within the constitutional limits have to be truly effective. If the detaining authority is of opinion on grounds which are germane and relevant, that it is necessary to detain a person from acting prejudicially as contemplated by s. 3 of the Act then it is not for this Court to consider objectively how imminent is the likelihood of the detenu indulging in these activities. This submission is thus unacceptable.

The next point urged is that the petitioner had been served with the order of detention dated June 25, 1972 when he was in jail and that such service is invalid rendering the petitioner's detention void. This submission is generally unacceptable. There is no legal bar in serving an order of detention on a person who is in jail custody if he is likely to be released soon thereafter and there is relevant material on which the detaining authority is satisfied that if free, the person concerned is likely to indulge in activities prejudicial to the security of the State or maintenance of public order. The decision in *Makhan Singh Tarsikka* v. *State of Punjab*(1) does not lay down the broad proposition canvassed. In that case which dealt with the Defence of India Rules it was observed that r. 30(1)(b) of these Rules postulates an order only where it is shown that but for the imposition of the detention, the person concerned would be able to carry out prejudicial activity of the character specified in r. 30(1). On plain construction of that sub-rule it was held that an order permitted by it could be served on a person who would be free otherwise to carry out his prejudicial activities and such a freedom could not be predicated of Makhan Singh Tarsikka, petitioner in that case. It is noteworthy that the Court after referring with approval to its earlier

(1) A.I.R. 1964 S.C. 1120.

A decision in *Rameshwar Shaw* v. *District Magistrate, Burdwan*[1] observed :

> "Besides when a person is in jail custody and criminal proceedings are pending against him, the appropriate authority may in a given case take the view that the criminal proceedings may end very soon and may
B terminate in his acquittal. In such a case it would be open to the appropriate authority to make an order of detention if the requisite conditions of the rule or the section are specified and served on the person concerned if and after he is acquitted in the said criminal proceedings".

C No doubt, this decision does suggest that the order of detention can be served on the person concerned if and after he is acquitted in the said criminal proceedings but in our view merely because the person concerned has been served while in custody when it is expected that he would soon be released that service cannot invalidate the order of detention. The real hurdle in making an
D order of detention against a person already in custody is based on the view that is futile to keep a person in dual custody under two different orders but this objection cannot hold good if the earlier custody is without doubt likely to cease very soon and the detention order is made merely with the object of rendering it operative when the previous custody is about to cease. It has also
E been pointed out that the grounds relate to a period more than a year prior to the order of detention. This according to the submission also renders the order *mala fide*. In our opinion, this contention is without merit. It has to be borne in mind that it is always the past conduct, activities or the antecedent history of a person which the detaining authority takes into account in mak-
F ing a detention order. No doubt the past conduct, activities or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary but it is for the detaining authority who has to arrive at a subjective satisfaction in considering the past activities and coming to his conclusion if on the the basis of those activities he is satisfied that the activities of the
G person concerned are such that he is likely to indulge in prejudicial activities necessitating his detention. As observed in *Ujjagar Singh* v. *State of Punjab*[2] it is largely from prior events or past conduct and antecedent history of a person showing tendencies or inclinations of a person concerned that an inference can be drawn whether he is likely even in the future to act in a manner
H prejudicial to the public order. If the authority is satisfied that in view of the past conduct of the person there is need for deten-

(1) [1964] 4 S.C.R. 921. (2) [1952] S.C.R. 757.

tion then it could not be said that the order of detention is not justified. A

The next point raised on behalf of the petitioner is that the earlier order of detention was either revoked or had expired with the result that unless the present detention pursuant to the order dated June 25, 1972 is passed on fresh facts arising after the expiry or revocation of the earlier order it must be held to be invalid. In support of this submission reliance has been placed on s. 14 of the Act which reads : B

"14(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 a detention order may, at any time, be revoked or modified— C

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 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. D

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made". E

Support has also been sought from *Hadibandhu Das* v. *The District Magistrate, Cuttack*(1) which was a case under the Preventive Detention Act (IV of 1950). The language of s. 13(2) of that Act is identical with that of s. 14(2) reproduced above. This decision was followed in *Kshetra Gogoi* v. *State of Assam*(2) also a case under Act 4 of 1950. In our opinion, this submission does possess merit and deserves to be accepted. Section 14 speaks of revocation or expiry of a detention order. The principle underlying this section has its roots in the vital importance attached to the fundamental right of personal liberty guaranteed by our Constitution. The Act fixes the maximum period of detention to be 12 months from the date of the detention with the proviso that the appropriate Government can revoke or modify the detention order at any earlier time : s. 13. It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of F G H

(1) [1969] 1 S.C.R. 227. (2) [1970] 2 S.C.R. 517.

A making a fresh order operative soon after the expiry of the period of detention, as also to minimise resort to detention orders that s. 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made. The power of preventive detention being an extra-
B ordinary power intended to be exercised only in extraordinary emergent circumstances the legislative scheme of ss. 13 and 14 of the Act suggests that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond the maximum period fixed. In the present case it is not urged and indeed it is
C not possible to urge that after the actual expiry of the original order of detention made by the District Magistrate which could only last for 12 days in the absence of its approval by the State Government, any fresh facts could arise for sustaining the fresh order of detention. The submission on behalf of the State that the petitioner's activities are so highly communal and prone to encourage violent communal activities that it was considered
D absolutely necessary to detain him in the interest of security of the State and maintenance of public order cannot prevail in face of the statutory restrictions and the guaranteed constitutional right which is available to all persons. The rule of law reigns supreme in this Republic and no person on the soil of free India can be deprived of his personal liberty without the authority of law. As
E observed by this Court in *Manu Bhushan Roy Prodhan* v. *State of West Bengal*(1) :

> "....The Act encroaches on the highly cherished right of personal liberty by conferring on the executive extraordinary power to detain persons without trial by coming to subjective decisions. The detaining authority
F in exercising this power must act strictly within the limitations this Act places on its power so that the guarantee of personal liberty is not imperilled beyond what the Constitution and the law strictly provide. The limited right of redress conferred on the detenu under the law deserves to be construed with permissible liberality with
G the provisions of the Act and the constitutional guarantee."

On behalf of the respondent reference was also made to *Sampat Prakash* v. *State of Jammu & Kashmir* (2) dealing with detention under J. & K. Preventive Detention Act (J. & K. Act 13 of 1964). Though in that Act there is a similar provision [s. 14-
H (2) of that Act] in the judgment there is no reference to that section and it appears that no question similar to the one raised

(1) W.I. No. 252 of 1972 decided on October 31, 1972.
(2) [1969] 3 S.C.R. 574.

before us was urged and adjudicated upon there. We have, therefore, no option but to order the petitioner's release which we did on December 20, 1972. As the detention order is being quashed on this ground we do not consider it necessary to express any opinion on the point that the detention order is vitiated because some of the grounds on which it is based, though not of unessential nature, are vague.

Writ Petition No. 470 *of* 1972 :

Abdul Bari Kairanvi, petitioner in this writ petition, an associate of Masood Alam (Petitioner in W.P. No. 469 of 1972) both in the Youth Majlis and Muslim Majlis, was arrested on June 3, 1972 when he had organised in the City of Aligarh a procession in defiance of the order issued under s. 144, Cr. P.C. The general atmosphere of communal tension prevailing in that city ultimately culminated in the unfortunate communal riots on June 5, 1972. The arrest was made under s. 188, I.P.C. and he was actually produced before the Additional District Magistrate on the very day of his arrest. On June 14, 1972 an order was made by the District Magistrate for the petitioner's detention under s. 3(1)(a)-(i) and (ii) of the Act as amended by the Defence of India Act 42 of 1971. The grounds of his detention which were duly served on him under s. 8 of the Act read as under :—

> "1. That you are a member of the Executive of the Muslim Majlis. You are also an active member of Youth Majlis. The Youth Majlis is being trained in the use of lathis, swords and knives as a fully militant organisation. You contribute and raise funds to illegally arm the organisation. You visited Pakistan in November, 1971 for arranging the transfer of funds collected by Shri Masood Alam in Pakistan to Aligarh for use by Youth Majlis for training volunteers in the use of arms and knives etc. You collected Rs. 700 for Youth Majlis from Varanasi, Pratapgarh and other places.
>
> 2. That you have extra territorial loyalties and are therefore a threat to security of India which is evident from the following instances :—
>
> (a) That you on 1-4-1971 listened to Pakistan Radio and propagated Pak policy towards Bangla Desh among the Muslims. You also propagated that India engineered the trouble.
>
> (b) On 19-10-71 you participated in private meeting of commanders of Youth Majlis wherein you delivered a short speech that India and Pakistan army were facing each other on the border and

A there was a great panic on the Indian side of the border. You also advised the commanders of the Youth Majlis to remain vigilant and prepared for any situation that might develop as a result of clash between India and Pakistan forces. You criticised India for allegedly meddling into the private affairs of Pakistan. You pointed out to them that Bengalees had been taught a lesson and the Hindus in India would also share a similar fate if Pakistan forces invaded. You accused police and army of favouring Hindus and stressed upon the commanders of Youth Majlis to remain prepared.

(c) That you visited Pakistan in November, 1971 and returned from there on 30-11-1971 and propagated that concentration of Pak army in Lahore sector was quite heavy and that real war would be fought in the sector.

(d) That you on 10-12-1971 briefed volunteers of Youth Majlis that local Jan Sangh workers were trying to tease the Muslims by making unbecoming remarks against Pakistan.

3. That you have been exciting communal feelings among the Muslims in India and contributing to the communal disturbances in the Aligarh City which is evident from the following instances :—

(a) That you on 15-10-71 attended the Executive Committee meeting of Youth Majlis at Jama Masjid Upor Kot, Aligarh where you demanded that A.M.U. (Amendment) Bill should guarantee minority character of the University.

(b) That you on 10-3-1972 in your speech in a gathering of about one thousand Muslims at Jama Masjid in Upor Kot Aligarh City alleged that the enemies of Islam had a tradition to make efforts to wipe out Islamic religion and culture and at the present time also these enemies of Islam were trying to become aggressive. You warned that in case the Muslims culture was wiped out the Muslims will also be exterminated. You alleged that there was systematic attempt to abolish Urdu. You exhorted the Muslims to be united and firm.

(c) That on 19-5-1972 after a meeting at Jama Masjid Upor Kot, Aligarh you distributed a

pamphlet captioned "Muslim University ki mot ka Akhiri marhela. Ek Jan aur ek Awazbankar usko bachyiye" issued in your name and the names of Dr. Ahsan Ahmad and others. In the meeting in your short speech you pointed out that action, if delayed, would fail to achieve any result even by any amount of sacrifice of blood-shed. You also remarked "Hamari kom hamesha se talwar key saye me pali hai" and as such no sacrifice was too grave for this occasion.

(d) That on 25-5-72 along with Dr. Ahsan Ahmad attended a meeting of about 25 persons at the residence of Abdul Jalil where Dr. Ahsan Ahmad briefed the participants on the agitation, formation of action Committee and collection of funds in connection with the agitation against A.M.U. (Amendment) Bill, 1972.

4. In view of the above-mentioned grounds I am satisfied that you are likely to act in a manner prejudicial to the security of India, security of State and maintenance of public order and with a view to preventing you from acting in a manner prejudicial to the security of India, security of State and maintenance of public order it is necessary to detain you."

His detention was duly reported to the State Government on June 18, 1972 and the State Government gave its approval on June 25, 1972 which was duly reported to the Government of India on June 29, 1972. His case was sent to the Advisory Board on July 13, 1972 and the Board conveyed its decision on August 18/21, 1972. His detention was confirmed on August 30, 1972. The petitioner had made his representation on July 15/24, 1972 through the District Magistrate who forwarded it to the Government on July 29, 1972. The Government considered the representation on August 2, 1972 and the decision of the Government was duly conveyed to him on August 5, 1972.

According to the petitioner's counsel Mr. Bashir Ahmed, the grounds on which the petitioner's detention has been ordered are irrelevant and, therefore, the detention is void. Emphasis is laid on the submission that the Youth Majlis and the Muslim Majlis are both organisations which do not advocate communal conflict or disharmony and the object of both of them is social service of the society. It is added that the Youth Majlis is a purely social organisation which is dedicated to the cause of the oppressed and the depressed and its membership is open to all persons irrespective of their community or religious creed. In support of this

A contention the counsel sought to refer to the printed constitution of the organisation in Urdu which was not permitted, not being on the record and not being relevant to the limited scope of enquiry in the present proceedings. In our opinion none of the grounds on which the petitioner's detention has been ordered can be said to be irrelevant. The facts stated in the grounds have to
B be accepted as correct and it is not open to this Court to enquire into their truth like a court of appeal. Writ proceedings cannot be treated as an appeal in disguise. And then it has to be borne in mind that it was in November, 1971 that the petitioner is said to have gone to Pakistan (it is asserted in the grounds that he visited Pakistan in November, 1971, and collected funds in that
C country for the purpose of carrying on the activities of the Youth Majlis in India), and he returned on November 30, 1971, just three days before the actual war between India and Pakistan began. Judicial notice under s. 57 of the Indian Evidence Act can be taken of the fact that the war between India and Pakistan actually began on December 3, 1971 lasting for about a fortnight. The petitioner has admitted his visit to Pakistan in November,
D 1971, the reason given by him being that he had gone there to see his ailing relations without mentioning either their names and addresses or the relationship. According to the grounds, the petitioner has extra-territorial loyalties manifested by his anti-Indian and pro-Pakistan activities and also by inciting communal feelings amongst the Muslims during the period of tension
E and conflict between India and Pakistan on the question of Bangla Desh. The grounds further disclose, *inter alia,* (i) that the Youth Majlis engages in training Muslims in India in the use of lathis, swords and knives, and (ii) that the petitioner advised the commanders of the Youth Majlis in October, 1971 to be vigilant and remain prepared for any situation that might develop as a result
F of clash between India and Pakistan forces, at the same time suggesting invasion of India by Pakistan forces. An attempt has undoubtedly been made on behalf of the petitioner to show that the grounds on which the District Magistrate felt satisfied are non-existent but as observed earlier it is not open to this Court to review and over-ride the subjective opinion of the District Magistrate by going into the truth or otherwise of the facts accepted by
G him. The facts contained in the grounds reproduced earlier seem to us to be clearly relevant for the purpose of forming an opinion that they endanger both maintenance of public order and security of the State. It is undeniable that hostility amongst the citizens founded on differences in religious faiths is a deadly poison for healthy existence and progress of a secular, egalitarian society like
H ours. And when violence is advocated and injected in such hostility, it is idle to suggest that such activities cannot fall within the mischief designed to be prevented by the Act. In our country patriotism is not communal or religious and the Constitution

guarantees equal freedom to all religious faiths without recognising the superior status of any particular religion. There is absolutely no discrimination on the basis of religion and indeed in this Republic every citizen irrespective of his religious faith can aspire to the highest office, if otherwise qualified. Here people professing numerous different religious faiths and ideologies live in perfect harmony with equal rights guaranteed by the Constitution. Articles 25 to 28 and Art. 30 in Part III accord to the Right to Freedom of Religion and the Right of Minorities to Establish and Administer Educational Institutions, the status of fundamental rights which can be enforced in the highest courts in this country by appropriate means. Whenever, therefore, an attempt is made to disturb the peaceful, tolerant and harmonious life of the society by appealing to or inciting and inflaming religious passions and prejudices and by fanning morbid fanaticism it must necessarily tend to disturb the even tempo of the life of the society as a whole thereby prejudicially threatening the maintenance of public order. When such a climate in communal disharmony is engendered for stimulating anti-Indian and pro-Pakistan feelings during the period of extreme tension between the two countries then it must also tend to seriously prejudice the maintenance of security of the State. Our attention has been drawn to the pamphlet Annexure A to the writ petition for the purpose of fortifying the argument that the agitation with respect to the Muslim University at Aligarh in which the petitioner had undeniably taken part was a non-violent movement. We do not think it is possible on the basis of this document to decline to accept the opinion of the District Magistrate who had sufficient material about the activities of the petitioner and of the organisations to which he himself professes to belong. This pamphlet which merely announced a meeting to be held on May 22, 1972 is, therefore, of little consequence.

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The contention that the petitioner is a Muslim theologist highly qualified in Muslim theology, assuming it to be true, is also unhelpful to the petitioner as the impugned order is made on the basis of his activities which are considered clearly prejudicial to the maintenance of public order and security of State. His learning as a theologist is wholly immaterial. It neither places him above the law nor does it displace or detract from the opinion of the District Magistrate with respect to his activities and their effect. On the contrary it has to be borne in mind that when a person professing to be learned in religious theology encourages defiance of law in the name of religion then ignorant and credulous people are more likely to be misled and swayed by religious passions and sentiments. Such activities naturally have greater potentiality for prejudicially threatening the maintenance of public order.

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A According to the writ petition the petitioner is an active member of the Muslim Majlis and also a member of the Youth Majlis. He was arrested while defying the order promulgated under s. 144, Cr. P.C. This had been preceded by the various prejudicial activities in the month of May, 1972 as stated in the grounds of detention and was followed two days later by communal clashes. This agitation was carried on in connection with a bill relating to the Aligarh Muslim University ignoring that the legal position in respect of this University had been authoritatively settled by this Court as far back as October, 1967 in *S. Azeez Basha* v. *Union of India*(1). These activities clearly bring the petitioner's case within s. 3 of the Act, being calculated to incite communal violence.

It has then been contended that some of the grounds of detention conveyed to the petitioner are vague and, therefore, the order of detention is liable to be struck down as invalid. Reference has in this connection been made to the last two lines of ground no. 1 relating to the collection of Rs. 700/- for Youth Majlis and to grounds nos. 2 and 3. The argument is wholly misconceived. If the last two lines are read, as they should be, along with the remaining contents of ground no. 1 it cannot be said that the petitioner was unable to tender his explanation with respect to the allegation contained therein. Quite clearly, the exact point of time and the people from whom small amounts were collected could not possibly be stated with precision. Grounds nos. 2 and 3, as is clear, contain precise details in the various clauses enumerated therein. According to ground no. 2 the petitioner has extra-territorial loyalties and, therefore, he is a threat to security of India and this conclusion is arrived at on the basis of the intances stated in cls. (a) to (d) which are precise and definite. Similarly, ground no. 3 says that the petitioner has been exciting communal feelings among the Muslims in India and contributing to communal disturbances in Aligarh city and this conclusion is based on instances stated in cls. (a) to (d) which are precise and definite. The instances under both these grounds are relevant and germane to the object which is sought to be achieved by s. 3 of the Act for the purpose of detaining persons who are likely to act in a manner prejudicial to the security of the State or maintenance of public order. The

(1) [1968] 1 S.C.R. 833.

decisions relied upon on behalf of the petitioner reported in *Dwarka Dass Bhatia* v. *The State of Jammu & Kashmir*(1) and *Pushkar Mukherjee & Ors.* v. *The State of West Bengal*(2) are, on the facts and circumstances of this case, of no assistance to him.

This writ petition accordingly fails and is dismissed.

S.B.W.

Petition dismissed.

(1) [1956] S.C.R. 948.

(2) [1969] 2 S.C.R. 635.