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necessitate a retrial, is one that ought to be put forward at the earliest stage and at any rate at the time of the regular appeal in the High Court. This cannot be entertained for the first time in an appeal on special leave.

For all the above reasons this appeal is dismissed.

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LAWRENCE JOACHIM JOSEPH D'SOUZA
v.
THE STATE OF BOMBAY.

[S. R. DAS, C.J., JAGANNADHADAS, VENKATARAMA AYYAR, B. P. SINHA and JAFER IMAM JJ.]

Preventive Detention—Espionage activity—Grounds whether vague—Vagueness due to non-disclosure of facts in public interest—Whether vitiates order—Claim of privilege—When should be communicated—Mala fides.

Appellant was detained under s. 3(1)(a)(i) of the Preventive Detention Act, Act IV of 1950 on the grounds that with the financial help given by the Portuguese authorities he was carrying on espionage on their behalf with the help of underground workers and that he was also collecting intelligence about the security arrangements on the border area and was making such intelligence available to the Portuguese authorities. Appellant made no application to the Government for further particulars.

Held, that in these circumstances and having regard to the fact that what is alleged is espionage activity, the grounds could not be considered to be vague.

In answer to the objection in the writ application before the High Court that the grounds were not specific and that no particular of the alleged activities of the appellant were given the Under Secretary to the Government in his affidavit claimed privilege under Art. 22(6) of the Constitution.

Held, that the right of the detenue to be furnished particulars is subject to the limitation under Art. 22(6). Hence even if the grounds are vague due to the reason that facts cannot be disclosed in the public interest, the order of detention cannot be challenged on the ground of such vagueness.

The necessity of communicating the decision to claim privilege under Art. 22(6) would arise only when the detenue asks for parti-

culars. In the absence of any such request by the detenue, the non-communication of the decision cannot be held to have hampered his constitutional right to make his representation.

Mala fides must be made out against the detaining authority and not against the police. The contention of *mala fides* is untenable in the present case having regard to the nature of the grounds and to the nature of the activities imputed to the appellant.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 126 of 1955.

Appeal by special leave from the judgment and order dated the 9th August 1955 of the Bombay High Court in Criminal Application No. 726 of 1955.

M. R. Parpia, J. B. Dadachanji and *S. N. Andley*, for the appellant.

M. C. Setalvad, Attorney-General for India, B. Sen and *R. H. Dhebar*, for the respondent.

1956. April 24. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an appeal by special leave against the judgment of the High Court of Bombay dismissing an application made to it under article 226 of the Constitution. These proceedings relate to the validity of an order of detention passed by the Government of Bombay on the 8th June, 1955, against the appellant before us, who is an Advocate of the High Court of Bombay having a standing of about thirty years. He was in the Indian Air Force as an emergency Commissioned Officer between 1943 to 1948 and thereafter on extension for another four years until he attained the age of 55. It appears that he was also interested in journalism and in public affairs. On his own showing, he was concerned over the political future of Goa and "was opposed to any attempts at intimidation of Indian residents of Goan origin by other political groups and has freely expressed these views in his journalistic articles". He was arrested on the 9th June, 1955, and is in detention since then under the impugned order, which runs as follows:

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"No. P. D. A. 1555A.
Political and Services Department,
Secretariat,
Bombay, 8th June, 1955.

ORDER.

Whereas the Government of Bombay is satisfied with respect to the person known as Shri Lawrence Joachim Joseph DeSouza of Bombay, that with a view to preventing him from acting in any manner prejudicial to the relations of India with the Portuguese Government and to the Security of India, it is necessary to make the following Order:—

Now, therefore, in exercise of the powers conferred by sub-clause (1) of clause (a) of sub-section (1) of section 3 of the Preventive Detention Act, 1950 (Act IV of 1950) the Government of Bomby is pleased to direct that Shri Lawrence Joachim Joseph DeSouza of Bombay, be detained.

By Order and in the name
of the Governor of Bombay.

Under Secretary to the
Government of Bombay.
Political and Services
Department".

In pursuance of section 7 of the Preventive Detention Act, 1950 (Act IV of 1950) (hereinafter referred to as the Act) the grounds of detention, also dated the 8th June, 1955, was served on him along with the order of detention. The validity of the order is challenged on the following contentions.

1. The order of detention was *mala fide*. It was passed for the ulterior purpose of preventing his freedom of speech and freedom of professional activity in the sphere of Goan affairs by reason of his known views in this behalf.

2. The detaining authority, in exercising its power, failed to apply its mind to the existence or otherwise of the legitimate objects of detention.

3. The grounds of detention are vague.

4. The claim of State that no particulars of the grounds could be furnished in public interest is unsustainable and in any case *mala fide*.

The last two have been urged before us not only as independent points but as reinforcing the first two.

The challenge to the validity of the order based on the attack of *mala fides* and non-application of the mind of the detaining authority, have been urged before us with great insistence. We have been taken elaborately into what is claimed to be the relevant previous background of events. This part of the argument raises, what ultimately are questions of fact which have been fully considered by the High Court. It is, therefore, enough to state, in its broad outlines, the background, which is alleged as follows:

(1)(a) There was a sudden search by the police on the 24th August, 1954, at the appellant's place for alleged possession of illicit liquor which, in fact, was not found. But under the guise thereof the police seized and carried away a mass of documents, papers and printed material of the appellant as also a typewriter belonging to him.

(b) On the same day, a search was carried out by the police also at his residence at Mahim but nothing was found.

(c) Immediately following the searches, the appellant was taken into illegal police custody and interrogated, and physically assaulted, and threatened. The above high-handed action of the police, by way of search and seizure, was the subject matter of challenge by the appellant by means of a writ application in the High Court in which the police officers concerned filed affidavits virtually admitting the appellant's allegations relating to seizure of papers, etc. The State itself could not support the said high-handedness. As a result, the High Court directed on the 3rd November, 1954, the return forthwith of all the papers and articles seized. Notwithstanding that order, the materials so illegally seized were returned only on or about the 21st January, 1955.

(2) When one Joaquim Carlos, a Portuguese soldier

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attached to Goan forces, was arrested on a charge of entering Indian territory without the requisite authority, the appellant rendered professional assistance to him and obtained an order of release on bail from the Chief Presidency Magistrate, Bombay, which was foiled by the police by removing him away to Sawantwadi before the requisite sureties could be obtained at Bombay. The trial was hurried through and the said Carlos was convicted. But on appeal, filed by the appellant, before the Sessions Judge, the conviction was set aside and retrial ordered. These events happened between February to April, 1955.

(3) Between April, 1955 to June, 1955, there occurred certain incidents which were inspired and instigated by the members of the Goan Action Committee who were agitating against Portuguese hold over Goa. There was a raid on certain pro-Portuguese presses by some private persons, in the course of which heavy damage was caused. There was also an assault on himself (appellant) by a gang of persons of whom some were employees of the Goan Action Committee. In respect of these two incidents private complaints had been filed by or on behalf of the affected persons. The attitude and behaviour of the police in respect of these complaints were clearly indicative of their being in league with the Goan Action Committee.

The appellant's counsel strongly urged that the *bona fides* of the detaining authority is to be judged with reference to the above background of events and that viewed in that light the vagueness of the grounds and the belated claim of privilege under article 22(6) of the Constitution strengthen his contention. He also relied on what are urged as being certain discrepancies in the affidavits of the Under-Secretary and the Chief Secretary filed in the High Court in these proceedings. It is strongly urged that the order of detention was made without any real application of mind by the detaining authority, that the authority acted merely at the instance of the police who were in league with the Goan Action Committee, and that the police procured the detention

order for the purpose of suppressing the freedom of the appellant, to ventilate his point of view on the Goan politics and to take up professionally the cause of persons in the position of Carlos. We have been taken through all the material relating to the above allegations and have given our consideration to the same. It is enough to say that we are unable to see any reason for disagreeing with the conclusion of the High Court to the effect that the material is not enough to make out that the detaining authority was acting otherwise than *bona fide*. We also agree with the view of the High Court that, what has got to be made out is not the want of *bona fides* on the part of the police, but want of *bona fides*, as well as the non-application of mind, on the part of the detaining authority, viz. the Government, which for this purpose must be taken to be different from the police. It is also clear that the allegation of non-application of mind by the detaining authority is without any basis, in view of the affidavit of the Chief Secretary.

The further points that remain for consideration are those which relate to the complaint of vagueness of the grounds furnished and the alleged unsustainable claim for non-disclosure under article 22(6) of the Constitution on behalf of the detaining authority, to get over the alleged vagueness. To appreciate the points thus raised, it is necessary to have an idea of the grounds of detention as furnished. They are to be found from the relevant communication to the detenue which is as follows:

"In pursuance of section 7 of the Preventive Detention Act, 1950 (Act IV of 1950) you are hereby informed that the grounds on which a detention order has been made against you, by the Government of Bombay under sub-clause (i) of clause (a) of subsection (1) of section 3 of the said Act are that: With the financial help given by the Portuguese authorities you are carrying on espionage on behalf of the Portuguese Government with the help of underground workers. You are also collecting intelligence about the security arrangements on the border area and you make such intelligence available to the Portu-

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guese authorities. These activities which are being carried on by you with the object of causing further deterioration in the relations between the Portuguese Government and the Indian Government over the question of Goan National Movement, are prejudicial to the security of India and to the relations of India with Portugal.

2. If you wish to make a representation against the order under which you are detained, you should address it to the Government of Bombay and forward it through the Superintendent, Arthur Road Prison, Bombay.

3. You are also informed that you have a right to claim a personal hearing before the Advisory Board and that you should communicate to Government of Bombay as soon as possible your intention of exercising or not exercising that right".

The objection by the appellant relating to this is contained in paragraph 15(g) of his application before the High Court. It is as follows:

"The grounds are not specific and no particulars of the activities alleged to have been carried on by the petitioner are given, viz. the particulars such as the length of period for which the petitioner is alleged to have carried on the so-called espionage activities or the details of financial aid alleged to have been received by the petitioner from the Portuguese authorities or the names of any of the so-called underground workers alleged to be aiding the petitioner or any details of intelligence alleged to have been collected by the petitioner or made available by him to the Portuguese Government".

The answer thereto of the Under-Secretary to the Government of Bombay is in paragraph 12 of his affidavit dated the 25th July, 1955, and is as follows:

"With reference to paragraph 15, clause (g), I submit that it is not necessary to mention particulars of the espionage activities carried on by the petitioner or the details of the financial aid received by him or the names of the persons aiding the said petitioner. It is not in public interest to disclose these details; nor is it necessary to mention these matters to afford

the petitioner reasonable opportunity to make a representation".

Now the question as to whether the grounds furnished are vague or not, is ultimately a question that has to be determined on a consideration of the circumstances of each case, as was pointed out by this court in *the State of Bombay* v. *Atma Ram Sridhar Vaidya*(1) in the following passage:

"The contention that the grounds are vague requires some clarification. ..... If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. ..... If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague".

In the present case, the detenue has been intimated why, in the opinion of the Government the activities of the appellant are considered prejudicial to the security of India and to the relations of India with Portugal. They are the following:

1. With the financial help given by the Portuguese authorities, he is carrying on espionage on behalf of the Portuguese Government with the help of underground workers.

2. He is collecting intelligence about the security arrangements on the border area and making such intelligence available to the Portuguese authorities.

3. He is carrying on these activities with the object of causing further deterioration in the relations between the Portuguese Government and the Indian Government over the question of the Goan National Movement.

It is true that these allegations are not as precise and specific as might have been desired. But having regard to the nature of the alleged activities of the appellant, it is not unlikely that no more could be gathered or furnished. In this context it is relevant

(1) [1951] S.C.R. 167, 184.

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to notice that the appellant himself does not appear to have felt that the grounds furnished were so vague as to hamper him in his right to make a representation under article 22(5) and section 7 of the Act. It does not appear that he applied to the Government to be supplied with particulars of the grounds furnished to him. Such a right to call for particulars has been recognised in the case in *the State of Bombay* v. *Atma Ram Sridhar Vaidya*(1) as flowing from his constitutional right to be afforded a reasonable opportunity to make a representation to the Board. In that case it has been stated that "if the grounds are not sufficient to enable the detenue to make a representation, the detenue.....if he likes, may ask for particulars which would enable him to make the representation". The fact that he had made no such application for particulars is, therefore, a circumstance which may well be taken into consideration, in deciding whether the grounds can be considered to be vague. In the circumstances and having regard to the fact that what is alleged is espionage activity at a time when relations between the two Governments on the affairs of Goa were somewhat delicate, we are inclined to think, with the High Court, that the grounds cannot be considered to be vague.

Assuming however that the grounds furnished in this case are open to the challenge of vagueness, the further question which arises is whether the validity of the order of detention can be sustained by reason of the claim, in public interest, of non-disclosure of facts made by the Under-Secretary to the Government of Bombay by means of his affidavit filed in the High Court. Now it has been held in *Atma Ram Sridhar Vaidya's case*(1) by the majority of the Court, that the constitutional right of a detenue under article 22(5) comprises two distinct components.

1. The right to be furnished grounds of detention as soon as may be; and

2. The right to be afforded the earliest opportunity of making a representation against his detention

(1) [1951] S.C.R. 167, 184.

which implies, the right to be furnished adequate particulars of the grounds of detention, to enable a proper representation being made.

These rights involve corresponding obligations on the part of the detaining authority. It follows that the authority is under a constitutional obligation to furnish reasonably definite grounds, as well as adequate particulars then and there, or shortly thereafter. But the right of the detenue to be furnished particulars, is subject to the limitation under article 22(6) whereby disclosure of facts considered to be against public interest cannot be required. It is however to be observed that under article 22(6) the facts which cannot be required to be disclosed are those "which *such authority* considers to be against public interest to disclose". Hence it follows that both the obligation to furnish particulars and the duty to consider whether the disclosure of any facts involved therein is against public interest, are vested in the detaining authority, not in any other. It was accordingly attempted to be argued in the High Court that the claim of non-disclosure made in the affidavit of the Under-Secretary indicated a decision for non-disclosure, by the Under-Secretary himself and that too at the time of filing the affidavit. On this assumption it was contended that the claim for non-disclosure was invalid. The High Court, however, on a consideration of the material, felt satisfied that what was stated in the affidavit related to the decision of the detaining authority itself, taken at the time. The learned Judges expressed their conclusion as follows:

"There is nothing in the affidavit of Mr. Bambawala to suggest that it is now that the detaining authority is claiming privilege or applying its mind to the question of privilege. ..... The meaning is clear that at no time it was in public interest to disclose the details referred to in the particular paragraph of the affidavit and there is nothing to suggest that this question was not considered by the detaining authority at the time when the grounds were furnished".

No argument has been addressed to us how this con-

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clusion is incorrect. But what has been urged before us is that the decision not to disclose the facts as well as the ambit of the non-disclosure must be clearly communicated to the detenue at the time when the grounds are furnished. It is urged that if the detenue is furnished information, at least to that extent, it will enable him to present to the Advisory Board his difficulties in making a proper representation and to convey to it a request for obtaining the requisite particulars from the State under section 10 of the Act for their own information and consideration. We are unable to imply any such obligation under article 22(5) and (6). The necessity for such a communication would arise only if the detenue, feeling the grounds to be vague, asks for particulars. An obligation to communicate the decision not to disclose facts considered prejudicial to public interest may well be implied in such a situation. But in the absence of any such request by the detenue, the non-communication of the decision cannot be held to have hampered his constitutional right of representation and an obligation to communicate cannot be implied in these circumstances. In the present case there is no merit in this contention. If the appellant had exercised his right to ask for particulars, at the time, from the detaining authority, there can be no doubt that he would have been furnished then the very information which has been supplied in paragraph 12 of the Under-Secretary's affidavit in answer to para 15(g) of the appellant's petition, both of which have been already set out above.

A faint suggestion has been made in the course of the arguments before us that the decision not to disclose particulars is *mala fide* and that such *mala fides* has to be imputed in a case where *no* particulars are *at all* furnished. It is suggested that the power not to disclose facts considered against public interest cannot be so exercised as to nullify the constitutional right of the detenue for being afforded a proper opportunity of representation. Such a contention as to the *mala fide* exercise of the power is untenable in the present case having regard to the nature of the

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grounds on which the detention is based and the nature of activities imputed therein to the appellant. It is unnecessary, therefore, to deal in this case with a theoretical contention as to whether or not article 22(6) of the Constitution overrides the constitutional right to be furnished particulars under article 22(5) to the extent of denying *all* particulars and leaving the grounds absolutely vague.

All the contentions raised before us fail and this appeal is dismissed.

CH. TIKA RAMJI & OTHERS, ETC.

v.

THE STATE OF UTTAR PRADESH & OTHERS.

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[S. R. DAS, C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and JAFER IMAM JJ.]

Sugarcane, Regulation of Supply and Purchase of—Act passed by State Legislature and notifications issued thereunder by the State Government—Constitutional validity—If repugnant to Parliamentary Acts and notifications made thereunder—If violative of fundamental rights—Parliament's power of repeal—Delegation of such power, if permissible—U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act XXIV of 1953), ss. 15, 16—U.P. Sugarcane Regulation of Supply and Purchase Order, 1954—Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) as amended by Act XXVI of 1953, ss. 18-G, 15, 16—Essential Commodities Act, 1955 (Act X of 1955), s. 16(1)(b)—Sugarcane Control Order, 1955, cl. 7(1)—Constitution of India, Arts. 14, 19(1)(c), (f) and (g), 31, 301, 304, 254.

The petitioners challenged the constitutional validity of the U.P. Sugarcane (Regulation of Supply and Purchase) Act of 1953, and two notifications issued by the State Government on September 27, 1954 and November 9, 1955, the former under sub-sec. 1(a) read with sub-sec. 2(b) of s. 16 of the impugned Act providing that where not less than three-fourths of the canegrowers within the area of operation of a Canegrowers' Co-operative Society were members thereof, the occupier of the factory to which that area is assigned should not purchase or enter into an agreement to purchase cane except through that society and the latter under s. 15 of the Act assigning to different sugarcane factories specified cane-purchasing centres for supply to them of sugarcane for the crushing season of 1955-56. They contended that the impugned Act was *ultra vires* the