A

RAM JETHMALANI, ETC

v.

UNION OF INDIA, ETC.

June 19, 1984

B

[E.S. VENKATARAMIAH, J.]

Constitution of India 1950, Article 32. National Security Act, 1980, Section 3 and The Supreme Court Rules 1966, Order II rule 6 and Order VII rule 4 (5).

Writ petitions assailing detention of detenu under National Security Act.—Vacation Judge hearing petitions—Important questions touching security of nation and personal liberty involved—Larger Bench hearing matter—Necessity of.

C

The petitioners in their writ petitions to this Court assailed the detention of a member of the Sikh Community under the National Security Act, 1980.

HELD: 1. These are not ordinary criminal cases involving a few individuals coming from a small locality. These are extraordinary cases involving serious questions of great public importance touching the security of the nation as well as personal liberty of a sizeable section of the community. These cases have to be dealt with differently from the usual cases which come up before this Court. [927 C—D]

D

2. In handling these cases the highest judicial talent and statesmanship are needed and hence these cases cannot just be rejected reserving liberty to the applicants to approach a Judicial Magistrate, a Sessions Judge or even the High Court. Every step taken in these cases should serve as a healing touch bringing solace to all concerned and lessening by some degree the pain and suffering through which the country and its peace—loving people have passed and are passing. These proceedings should have the effect of assuaging the outraged feelings of many who till now may not be aware of what has actually happened. [927 F—G]

E

F

3. The questions involved are too large and complex for the shoulders of a Single Judge to bear. These and other cases of like nature should be heard by at least seven learned Judges of this Court whose unquestioned judicial authority, erudition and acumen would be of great assistance in the restoration of peace in one of the States known for valour, devotion, spirit of sacrifice and sense of duty towards the country of the people residing in it.

[927 H ; 928 A]

G

4. Even if allegations of serious offences against the State may be forthcoming against the arrested persons, the Court may still consider whether it is not possible enlarge at least some of them, who may be in a repentant mood, on bail to facilitate early restoration of normalcy in the State. There may be many other things which may be done and they are within the domain of the Judges, who may hear these cases. If this Court in the end can succeed in establishing peace and harmony in the country, it would be its finest hour. [928G—H ; 929 A[

H

(Cases refferred to Larger Bench.)

ORIGINAL JURISDICTION : Writ Petition (Criminal) Nos. 920 and 934 of 1984. A

(Under article 32 of the Constitution of India)

P.R. Mridul, R.D. Agarwala and *R.N. Poddar* for the Applicant/Respondent.

Miss Rani Jethmalani, G.S. Cheema and *Shailendra Bhardwaj* for the Opp. side/petitioners. B

The Order of the Court was delivered by

VENKATARAMIAH, J. These cases are just two in number. There may be many other cases of this nature which have not yet reached this Court but may be filed shortly. These are not ordinary criminal cases involving a few individuals coming from a small locality. These are extraordinary cases involving serious questions of great public importance touching the security of the nation as well as personal liberty of a sizeable section of the community, many of whom may have been made to believe by a dominant section of society, may be wrongly, that what they were doing was right and for that reason may not have been free agents. Hence these cases have to be dealt with differently from the usual cases which come up before this Court. C D

First a word of caution. In the course of these proceedings every word uttered on either side of the Bar should be weighed before it is used. There is no room for heat and passion ; logic and reason alone should rule the debates. There should be an all round sympathy in dealing with the complex issues which may arise for determination. In handling these cases the highest judicial talent and statesmanship are needed and hence these cases cannot just be rejected reserving liberty to the applicants to approach a Judicial Magistrate, a Sessions Judge or even the High Court. Every step taken in these cases should serve as a healing touch bringing solace to all concerned and lessening by some degree the pain and suffering through which the country and its peace-loving people have passed and are passing. These proceedings should have the effect of assuaging the outraged feelings of many who till now may not be aware of what has actually happened. Any amount of time spent by the highest Court of this land on these cases would not go in vain. There is no duty more sacred than this. E F G

I, however, feel that the questions involved are too large and complex for the shoulders of a Single Judge to bear. It is my humble view that these and other cases of like nature should be heard by at least seven learned Judges of this Court whose unquestioned judicial authority, erudition and acumen would be of great H

assistance in the restoration of peace in one of our great States known for the valour, the devotion, the spirit of sacrifice and the sense of duty towards the country of the people residing in it.

May I say that there can be no compromise on the following matters, namely, unity and integrity of India, the secular and democratic form of the Indian Government and the supremacy of the Indian Constitution ? They must be upheld in any event. There cannot be any doubt about the right of the established Government to run the administration of the country. We should remember, that India is no doubt a Union of States, but the boundarie,. of the States are not unalterable. There is only one citizenship in India and that all of us—Indian citizens—belong to the whole of India and the whole of India belongs to all of us. Man-made boundaries cannot divide us. Language, religion, caste and other factors cannot be allowed to drive a wedge between one section and another. It is good to remember here what Abraham Lincoln said though in another context in 1858, 'A house divided against itself cannot stand'. The issue now before the Court involves more than the future of India. Again to quote Lincoln from what he said in the American context :

> "It presents to the whole family of man, the question whether a constitutional republic or a democracy—a government of the people, by the same people—can or cannot maintain its territorial integrity, against its own domestic foes".(1)

The above words appear to be relevant in the present Indian context too.

The unfolding of facts in these cases may make those who may have erred to realise where they have erred and how they have erred. It may help the Court to suggest solutions for rectifying the undesirable effects of such errors. Even if allegations of serious offences against the State may be forthcoming against the arrested persons, the Court may still consider whether it is not possible to enlarge at least some of them, who may be in a repentant mood, on bail to facilitate early restoration of normalcy in the State. The Court may at some stage have occasion to consider whether it

(1) (Vide ; The first message to the Congress after the fall of Fort Sumter during the American civil war).

should recommend to Parliament to pass an Act of Indemnity which may be an act of great sagacity, thus drawing the curtain on this unhappy page of the history of the Indian Republic. These may be many other things which may be done and they are within the domain of my learned Brothers who may hear these cases. If this Court in the end can succeed in establishing peace and harmony in the country, it would be its finest hour.

I, therefore, refer these cases to a larger Bench with the fond hope that our country would have no occasion in the future to face a similar situation.

These papers may be placed before the Hon'ble the Chief Justice of India for appropriate directions.

N.V.K. *Cases referred to larger bench.*