require to be considered and dealt with separately. The Governor-General need not have made any provision with regard to the Advocate's rights at all; it was purely discretionary with him to do so; but if any provision is made and that is found to be incomplete or ambiguous in any way, it would obviously be within his powers to make the order clear and perfect. The order of the 4th of November, 1948, was thus a supplementary order which removed the lacuna and supplied the omission in the original order. In our opinion, the Governor-General was quite within his rights in issuing an order of this description which could not but be regarded as a part of the original order. This being our view, it is unnecessary for us to consider for the purposes of this case, whether the powers conferred by Section 229 of the Government of India Act could be exercised as and when occasion arises, under Section 32(1) of the Interpretation Act, 1889, or whether any power of revocation is given to the Governor-General under Section 19(5) of the Indian Independence Act.

The result is that in our opinion this appeal fails and is dismissed.

Appeal dismissed.

Agent for the appellant: *S. P. Varma.*

Agent for the respondent: *Tarachand Brijmohanlal.*

Agent for the Intervener: *P. A. Mehta.*

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[SIR HARILAL KANIA C. J., SIR FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN and MUKHERJEA, JJ.]

Government of India Act, 1935, Sch. VII, List II, Entry No. 1 —Central Provinces and Berar Public Safety Act, 1948—Law relating to preventive detention—Validity—Detention under Act —Jurisdiction of Court to consider validity of detention— Grounds for detention—Being member of communist party.

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The words "for reasons connected with the maintenance of public order" in Entry No. 1 of List II of the Seventh Schedule to the Government of India Act, 1935, impose a limitation on the power of the Provincial Legislature to make laws with respect to preventive detention, and it is therefore open to the Court on a question of *vires* to consider whether an impugned enactment has been made with a view to prevent only such act or acts as are likely to endanger the public peace. But, when once that is established and the legislature is found to have acted within its powers, the Court is not concerned with the terms and conditions on which the executive authority has been empowered to order preventive detention as these are matters of public policy.

Rex v. *Basudeva* [1949] F.C.R. 657 referred to.

Though the responsibility for making the detention order rests on the provincial executive and the Court cannot substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction is grounded, the Court can examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of acts prejudicial to public safety and tranquillity, for satisfaction in this connection must be grounded on material which is of rationally probative value.

The absence of provisions in the Act for a review of the grounds of detention by an independent body like an Advisory council does not by itself import an obligation on the Provincial Government to hold an enquiry before issuing a detention order as the Act does not impose such an obligation on the Government.

While mere belief in, or acceptance of, any political ideology may not be a ground for detention under the Act, affiliation to a party which is alleged to be spreading a "doctrine of violence rendering life and property insecure and trying to seize power by violence" may, in certain circumstances, lead to an inference that the person concerned is likely to act in a manner prejudicial to the public safety, order or tranquillity.

APPEAL under the Abolition of Privy Council Jurisdiction Act, 1949, from the High Court of Judicature at Nagpur: Criminal Appeal No. IV of 1949.

This appeal was from an order of the High Court of Judicature at Nagpur (Hemeon and Sen JJ.) dated 28th September, 1948, in Cr. Case No. 168 of 1949 dismissing an application of the appellant under s. 491 of the Criminal Procedure Code for release from detention in pursuance of an order made under s. 2(1) of the Central Provinces Public Safety Act, 1949.

R. M. Hajarnavis for the appellant.

Sir Noshirwan Engineer (*Jindra Lal* with him) for the respondent.

1950. Jan. 20. The judgment of the Court was delivered by

PATANJALI SASTRI J.—This is an appeal from an order of the High Court of Judicature at Nagpur dismissing an application of the appellant under s. 491 of the Code of Criminal Procedure for his release from detention in pursuance of an order made by the Provincial Government under s. 2 (1) (a) of the Central Provinces and Berar Public Safety Act, 1948 (hereinafter referred to as "the Act").

The order was made on the 22nd April 1949 and, on the application of the appellant dated 5th July 1949, the Government disclosed to him on the 14th July 1949 the grounds of detention together with such particulars as, in their opinion, were sufficient to enable him to make a representation to the Government. The appellant thereafter applied to the High Court on 30th August 1949 alleging that his detention was illegal and praying for his release. He contended that s. 2 (1) (a) of the Act was *ultra vires* the Provincial Legislature and that the Provincial Government acted illegally and in excess of their powers in ordering his detention on the grounds mentioned by them. These contentions were rejected by Hemeon and Sen JJ. who heard the application.

Section 2 (1) (a) reads thus:

"2 (1) The Provincial Government if satisfied that any person is acting or is likely to act in a manner prejudicial to the public safety, order or tranquillity, or is fomenting or inciting strikes with intent to cause or prolong unrest among any group or groups of employees may, if it considers such order necessary, make an order

(a) directing that he be detained;"

It was not seriously disputed before us that the first part of the section relating to action against persons endangering public safety was within the legislative

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power conferred on the Provinces by s. 100 of the Constitution Act read with Entry No. 1 of List II of the Seventh Schedule to that Act which, among other things, includes "preventive detention for reasons connected with the maintenance of public order". But it was contended that the latter part empowering the detention of persons "fomenting or inciting strikes with intent to cause or prolong unrest among any group or groups of employees" did not fall within the ambit of that power, and reference was made to the recent decision of this Court in *Rex* v. *Basudeva* (Case No. XVIII of 1949) (1) as supporting that contention. In that case it was held that s. 3 (1) (i) of the United Provinces Prevention of Black-marketing (Temporary Powers) Act, 1947, was *ultra vires* the Provincial Legislature, as habitual black-marketing as a ground for detention was too remote in the chain of relation to maintenance of public order to fall within the purview of Entry No. 1 of List II, and the Court ruled that the connection contemplated in the Entry must be "real and proximate, not far-fetched and problematical". We consider it unnecessary for the purpose of this appeal to decide whether or not fomenting or inciting strikes with intent to cause or prolong unrest is so proximately related to the maintenance of public order as to enable a Provincial Legislature to authorise preventive detention on that ground; for, in our opinion, the grounds of detention communicated by the Government to the appellant are, for reasons to be presently indicated, such as to bring the case clearly within the first part of s. 2 (1) (a).

It was next urged that the words "for reasons connected with the maintenance of public order" in Entry No. 1 of List II postulated the existence in fact of such reasons to justify preventive detention, and that the Provincial Government could not exclude a judicial review of the sufficiency of the reasons relied on by them by stating merely that they were "satisfied" that the person whom they propose to detain was acting or was likely to act in a manner prejudicial

(1) [1949] F.C.R. 657.

to public safety, order or tranquillity. The argument ignores the distinction between legislation in exercise of the power granted under Entry No. 1 of List II and action by the executive authority in pursuance of such legislation. The relevant words in Entry No. 1 do not purport to prescribe any condition to be fulfilled before preventive detention can be ordered by a duly empowered authority. Those words impose a limitation on the power of the Provincial Legislature to make laws with respect to preventive detention, that is to say, legislation for preventive detention is authorised only if the prevention of any act or acts by means of detention was necessary or expedient in the interests of maintenance of public order. As pointed out in the decision referred to above, it is undoubtedly open to the court, on a question of *vires*, to consider whether an impugned enactment has been made with a view to prevent only such act or acts as are likely to endanger the public peace. But when once that is established and the legislature is found to have acted within its powers, the court is not concerned with the terms and conditions on which the executive authority has been empowered to order preventive detention, for these are matters of policy. In the present case s. 2 (1) (a), like most other similar enactments, authorises the detention of any person if the Provincial Government is "satisfied" that he is acting or is likely to act in a manner prejudicial to public safety, order or tranquillity. The language clearly shows that the responsibility for making a detention order rests on the provincial executive, as they alone are entrusted with the duty of maintaining public peace, and it would be a serious derogation from that responsibility if the court were to substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction was grounded.

It was said that the Act did not provide for a review of the grounds of detention by an independent body like an Advisory Council which is a familiar feature of other similar enactments, and that, therefore, the principles of natural justice required that the

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Provincial Government should give the person against whom they proposed to make a detention order the opportunity of being heard. It is true that the Act departs from the usual pattern of public safety legislation in many of the Provinces in eliminating an important safeguard against the misuse of the power of detention. But such elimination, however deplorable, cannot by itself import an obligation on the Provincial Government to hold an enquiry before issuing a detention order, which is a purely executive act, when the Act nowhere imposes such an obligation on the Government. The Court can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of acts prejudicial to public safety and tranquillity, for "satisfaction" in this connection must be grounded on material which is of rationally probative value. This brings us to the question whether the grounds put forward by the Government here are such as to satisfy that test.

The grounds communicated to the appellant stated, *inter alia*, that he was working for the Communist Party of India "which is spreading its doctrine of violence in different parts of the country, fomenting industrial strikes, causing agrarian unrest, rendering life and property insecure, and trying to seize power by violence" and that he was assisting and associating with a named prominent member of the Party who had "gone underground." It was further stated that, "from the secret information available to them, the Provincial Government are satisfied that you are likely to go underground and from there guide the various subversive activities of the Communist Party and thus act in a manner prejudicial to the public safety, order and tranquillity". It was said that, the Communist Party not having been banned in the Province, the appellant's alleged membership of that party, even if true, could not, in the absence of any allegation of acts or conduct on his part suggesting that he was acting or was likely to act in a manner prejudicial to public safety, be regarded as a ground for satisfaction under s. 2 (1) (a). We cannot accede to this contention,

While mere belief in or acceptance of any political ideology may not be a ground for detention under the Act, affiliation to a party which is alleged to be spreading its "doctrine of violence rendering life and property insecure and trying to seize power by violence" may, in certain circumstances, lead to an inference that the person concerned is *likely* to act in a manner prejudicial to the public safety, order or tranquillity. The fact that the Party had not been outlawed is immaterial, that being a matter of expediency. The allegations regarding the subversive activities of the Party made in the grounds communicated to the appellant, and later repeated in the affidavit of the Chief Secretary filed on behalf of the Provincial Government remain uncontradicted, the appellant having only stated that he was not a member of that Party and did not work for it and that he had always been a "constitutional trade unionist". It must therefore be taken, for the purposes of this case, that the said allegations are well-founded. If so, membership of that Party cannot be ruled out of consideration as material on which no satisfaction could rationally be grounded. There are also the allegations already referred to about the appellant assisting and associating with a prominent member of the Party who has "gone underground" and about the likelihood of the appellant himself going underground and from there guiding the alleged subversive activities of the Party. On these materials, which are relevant to the purpose of the Act, the Provincial Government say they are satisfied that the appellant is likely to act in a manner prejudicial to the public safety, and it is not for the Court, with its strictly limited powers of interference under s. 4 of the Act, to say that they should not be satisfied on such materials. The appeal is dismissed.

Appeal dismissed.

Agent for the appellant: *Ganpat Rai.*

Agent for the respondent: *P. A. Mehta.*