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POLITICAL TRIALS

THE STATE v NAIDOO

Mr Mooroogiah Naidoo was found guilty in the Supreme Court Pietermaritzburg recently on two counts of contravening the Suppression of Communism Act, one count of defeating the course of justice and one of possessing a banned book. He was sentenced to a total of five years' imprisonment and a fine of R20 or two months.

He was allowed bail of R4000 pending the outcome of an application for leave to appeal.

Mr Naidoo was sentenced to two years each on the two charges under the Suppression of Communism Act, which alleged that he was a member of the South African Communist Party and that he took part in its activities.

The sentences were to run concurrently.

He was sentenced to three years' imprisonment on the charge of defeating the course of justice, which alleged that Mr Naidoo, with Mr Abram Fischer and others, helped Mr Basil Weaich to escape from South Africa while he was on bail pending the outcome of an appeal against a conviction.

The fourth count, which Mr Justice Harcourt described as 'an offence of a fairly technical character', was of possessing a banned book, Mao Tse Tung's 'Guerilla Warfare'. Mr Naidoo was fined on this count.

In his judgement Mr Justice Harcourt outlined the charges against Mr Naidoo (see Contact September 1966) and dealt with the categories of witnesses who had given evidence at the trial. A number of witnesses were

accomplices, and he pointed out the dangers in regarding their evidence.

Mr Justice Harcourt said that an accomplice was not merely a witness equipped to tell lies and possibly incriminate the accused, but was also, by reason of his complicity, in a position to convince the court that the lies were the truth.

A second category of witness, although not specifically an accomplice, could be held as a 'near accomplice', the Judge said. These were the members of unlawful organisations.

'The Court has applied the same anxious care and careful scrutiny to their evidence as we would have to the evidence of accomplices'.

Mr Justice Harcourt said that 'considerable significance' should be attached to the failure of the defence to call Mrs Phyllis Naidoo, Mr Naidoo's wife, as a witness. He felt Mrs Naidoo's evidence would have been extremely relevant in some cases.

The Court felt that, to an extent, inference should be drawn against Mr Naidoo because of the failure of Mrs Naidoo to give evidence. But the Court did not accept that her evidence would have assisted the State.

Earlier in the trial Mr Naidoo had declined to give the oath at the commencement of his evidence and had given an affirmation instead. This affirmation is accepted in the court as an alternative to the oath.

When asked if it was against his principles to give evidence against saboteurs, Mr Naidoo said he did not want to give evidence of a political nature. He considered that sabotage was of a political nature in South Africa. He understood why people took part in sabotage, but he condemned such activities.

Mr Naidoo said he blamed the Government because there were no means for certain people to put their grievances forward.

In answer to a question about his visit behind the iron curtain, Mr Naidoo said that he could not remember who had approached him to make the trip. He said he had received a letter from NUSAS, and that four people had gone as observers.

Mr Naidoo said he could not remember their names, but one had come from Johannesburg and the others from Cape Town. There was one woman in the party. With

the exception of himself all were Whites, said Mr Naidoo.

When handed a 'programme' of the Communist Party, Mr Naidoo said he agreed with the democratic ideas expressed in the booklet, but disagreed with the idea of a vigilant dictatorship necessary to bring this about.

Questioned by Mr Rees, for the State, Mr Naidoo admitted that he had visited Warsaw and Prague. He said he went because of a desire to see something on the other side of the iron curtain.

Mr Naidoo said that the Natal Indian Congress was willing to co-operate with any body which was opposed to racial discrimination,including the Liberal Party and the Black Sash.

When asked to explain what he meant by a real democracy, Mr Naidoo said that there was a political system in this country known as democracy which in reality was an oligarchy.

A fear of bannings was given as a reason for the maintained secrecy regarding venues of Natal Indian Congress meetings.

Mr Naidoo also alleged persecution of people who opposed the Government 'in their policy of baasskap and apartheid'.

He said that Natal Indian Congress offices had been searched by the Security Police. Admitting that some of the top executives were well-known, Mr Naidoo said that those not well-known were anxious to keep their identity a secret.

The object of the Congress was to avoid bannings of certain members and to postpone the bannings of others. There was the fear that the Security Police were watching the meetings.

When asked by Mr Rees why he had refused to give a statement to the police, Mr Naidoo replied that he did not wish to be thought of as an informer.

Mr Rees then asked Mr Naidoo what the information was which he had at his disposal that he thought the police might want. Mr Naidoo said that if he had answered questions of a political nature it could have led to the banning of certain people.

He denied that he was a member of the Communist Party or that he had ever assisted persons to escape from the country. He said he had no skill, no money and no knowledge that would enable him to get people out of the country.

He knew the Security Police were observing him. He said he had seen people

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watching him, and that members of the Security Police had been to see him while he was visiting other people and had asked him his business.

The Judge referred to decisions made to kill those who gave State evidence.

Mr Naidoo said he had heard of threats of harm after evidence had been given.

Mr Harcourt: If you had been released from detention would people not have said you had talked in order to get your release?

Mr Naidoo: That may be so.

Questioned by defence counsel, Mr I. Mahomed, on sabotage as a means of changing the Government's policy, Mr Naidoo said the Government pursued a rigid racial policy, but it was sensitive to criticism and did take positive steps to improve the lot of all races.

Mr Naidoo said he advocated representation and non-violent forms of protest to achieve any aims the people may have.

The Judge refused a defence application to call Mr David Ernst as a witness on the grounds that the evidence he might give would not warrant it.

Mr Mbeki, a witness for the defence serving a term of imprisonment on Robben Island for political offences, said that Mr Naidoo was well known to him as 'M.D.'. When asked by defence counsel if 'M.D.' would not be a code name, Mr Mbeki replied that it would not - 'All the Bantu in Durban know him as M.D.,' he said.

A former leading South African Communist, Mr Petrus Beyleveld, who gave evidence for the State in the trial of Mr Abram Fischer, gave evidence for the Defence.

When asked if he knew the accused, Mr Beyleveld said that his face appeared familiar, but he had not met him before.

Mr Beyleveld told the court that the African National Congress and the Indian Congress were jealous of each other's autonomy and would resist any interference from the Communist Party. The Communist Party, however, looked for recruits from among members of the Congresses.

The Defence closed its case with the evidence of Mr N.T. Naicker.

Mr Naicker, who has been banned under the Suppression of Communism Act, told the court that he was not in favour of Communism. He said that Umkonto we Sizwe (Spear of the Nation) had only been discussed by the Indian Congress as an important politi-

cal development.

Mr Rees, for the State, referred to a report of the South African United Front Overseas. Mr Naicker said he knew of the report. He said that the Natal Indian Congress did not support the United Front, but expected the Front to support it.

The report mentioned support for a move to bring Communist China into the United Nations and thereby help to solve the dispute between India and China.

Reading from the report, Mr Rees said that it referred to the Indian march into Goa as a victory for the people of India.

When asked if this was not an act of violence which had been condoned by bodies such as the Natal Indian Congress, Mr Naicker said that they did not necessarily agree with the method of violence used to bring about the change in Goa.

The report also said that the conference rejoiced with the Algerian people in their victory over the French.

Mr Naicker said that here again, although they rejoiced, they did not condone the methods employed by the Algerians.

Asked about Mr Oliver Campbell, former Pietermaritzburg attorney, Mr Naicker said that he was a member of the ANC before it was a banned organisation. He thought Mr Campbell had later gone to London.

The State had relied on the fact that Mr Naidoo was a communist to prove his guilt under charges of sabotage, contraventions of the Suppression of Communism Act and defeating the course of justice, it was alleged in court.

Mr I. Mahomed, for Mr Naidoo, said when argument for the defence started that the fact that three witnesses said they had seen Mr Naidoo at separate meetings where he acted as a member of the district committee of the Communist Party, was not necessarily corroborative evidence implicating the accused.

He said that because they did not see Mr Naidoo at the same meetings they did not corroborate each other's evidence.

Mr Justice Harcourt said: 'But if more than one witness says he was a member of the district committee of the Communist Party, is that not corroborative?'

Earlier, Mr C. Rees, for the State, submitted that Mr Naidoo's failure to call his wife as a defence witness 'must count against the accused'.

Mr I. Mahomed asked the court to reject the evidence of a witness, Mr Jethro Ndhlovu, who stated that Mr Naidoo had been a member of the district committee of the Communist Party.

He said: 'Not only must Jethro's evidence be rejected, but the court must consider whether it is false and whether it is deliberately false.'

Mr Ndhlovu alleged in his evidence that Mr Naidoo had sent him to Johannesburg to report on Umkonto we Sizwe (Spear of the Nation). Mr Mahomed asked why Mr Naidoo, who was not a member of Umkonto we Sizwe, should send Mr Ndhlovu, who at that time was also not a member, to Johannesburg to report on the organisation.

'Mr Ndhlovu's own story is that all he knew of Umkonto's activities at that time was what he had read in the newspapers.'

After judgement had been given Mr Mahomed applied for leave to appeal. Mr C. Rees informed the court that he intended to oppose the application.

Mr Naidoo admitted two previous convictions for political offences.

Mr Naidoo was found not guilty on two other counts of defeating the course of justice. He had pleaded not guilty to all the charges.

Regarding the charge of sabotage, Mr Justice Harcourt said Mr Naidoo's guilt had not been proved beyond reasonable doubt. He said he rejected the evidence of the State's key witness on this charge, Mr Jethro Ndhlovu, whose testimony had been 'unsatisfactory, improbable, contradictory and insufficiently confirmed or corroborated'.

Mr Justice Harcourt sat with two assessors, Mr P.C. Tweedie and Mr G. Beattie. Mr C. Rees and Mr S.J. Engelbrecht appeared for the State. Mr Mahomed, instructed by Seedat, Pillay and Goga, appeared for Mr Naidoo.

(1)

STATE v CINDI

A banned man, Mr Edmund Cindi of Third Street, Benoni Bantu Township, was jailed for five days when he was convicted in the Regional Court, Benoni, recently for contravening his banning order by visiting an African township other than that to which he is confined.

Mr Cindi said that on October 2 he took a child by car to Daveyton at her mother's urgent request.

(2)

(cont. on page 9)

Longview by ALAN PATON

AGAIN RHODESIA

No issue has ever cut so deeply into South African politics as has Rhodesia. No issue has ever found so many White South Africans on one side and so few on the other. The reason for this is plain - most White South Africans see in the survival of White Rhodesia a guarantee for some time at least of their own, and they feel a mounting hostility to those of their White fellows who are moved by other considerations at such a time of crisis.

My view of the future is grave, as it has been ever since Mr Smith made his UDI. At that time it seemed to me that the régimes of Southern Africa were settling down in some kind of equilibrium, a kind of log-jam, and that Mr Smith was the man who shifted the one log which would begin a movement, imperceptible at first, so that many would be deceived, but growing and growing until it reached a tempo which might well be beyond control. What is more, that is what Mr Wilson came to tell Mr Smith in the days before UDI.

Why did Mr Smith do it? Because the alternative appeared to him to be more dreadful, that alternative being greater and greater participation of Africans in government, leading to the feared majority rule. We may therefore assume that Mr Smith felt himself to be in a desperate situation, and was therefore prepared to take inordinate risks.

Mr Wilson was also in a desperate situation. He had no wish to bring the Rhodesian economy down in ruins, but he could not afford to let Mr Smith get away with it, because that would have been the end of British influence in Africa and the end of the Commonwealth. He had a further difficulty to

contend with, the possibility that S.A., by ignoring the call for sanctions, would nullify their effect, posing to the British Government in its present economic plight the terrible question as to whether sanctions should be extended to S.A. also.

The U.S. is also in a difficult, though not a desperate situation. Their Government is facing the question, evaded for so long - in which way is the spread of communist influence best halted, by supporting anti-communist white supremacy, or by supporting non-aligned and therefore to some extent unpredictable African countries? It would appear that the U.S. is beginning to take the second course, but it is also probable that powerful American interests will oppose this.

And what about our own country? Our Government is in my opinion in a difficult situation which might become dangerous. The question is, what is in the best interests of South Africa? To participate in sanctions and topple Mr Smith, or to refrain from sanctions and have them applied to ourselves? And, what is more, if sanctions topple Mr Smith, does that prove, or does it not, that they could topple our Government also? Will Mr Vorster decide to risk the application of sanctions to ourselves? No one knows the answer to that. The Government is peddling the high line that trade is not a weapon of war, but the fact is that it would become a weapon of war tomorrow if the Government thought it expedient.

Why should all these grave situations be cropping up in so many different places? The answer is that this really _is_ the end of the colonial age, and that when something is ending finally, there is no possible compromise between opposing forces.

Is our country, South Africa, like Rhodesia, or is it different, something _sui generis_? I think there are reasons for believing that it is _sui generis_, but it too will be exposed to the same forces that are now directed against Rhodesia, and these forces are not confined, as some people suppose, to the Afro-Asian bloc. Dr Verwoerd foresaw this, and he discarded baasskap, and propounded the doctrine of separate development.

The only alternative to the separate development policy is that of the common society. I see no possibility of the gradual advance advocated by the Progressives. White South Africa

will make no concessions until it has to, and then it will have to concede the common society. This common society will not be achieved by parliamentary means (how we argued about that in bygone days!). It will be achieved by forces many of which will be outside our control. But even though that may be so, Liberals will have an important part to play. In my opinion it is only liberal forces that will be able to prevent the degeneration of a rich common society into a poverty-stricken community. I believe it can be done, if only because we are something <u>sui generis</u>.

Meanwhile, Liberals can be expected to suffer yet more for their views. Staying out of the laager is not going to be funny. At this Christmastide and the beginning of a new year, I wish them all courage. The heralds of a new age are never popular, but it is their job to herald what is coming. Good luck to them all!

(cont. from page 6)

<u>STATE v SIPAYILE</u>

Mr Moses Sipayile was recently acquitted at the Cape Town Supreme Court on a charge of murdering a Langa African who was said to be 'one of Kaiser Matanzima's men'.

The presiding judge said that identification of Mr Sipayile by two accomplices who gave evidence was unreliable.

Mr Sipayile was alleged to have been a member of a gang of eight who attacked Mr Mawonga Fakela with pangas on October 25, 1963. Mr Fakela, who was waiting at a bus-stop, received at least ten wounds in the head, all of which could have caused his death.

Mr Sipayile denied being a member of the gang, saying he had spent the night at home.

Mr D. van Reenen appeared for the State and Mr J. le F. Pienaar appeared <u>pro Deo</u> for Mr Sipayile. (3)

<u>STATE v MANGQANGWANA AND OTHERS</u>

A Langa man, Mr Mpolose Mangqangwana, was sentenced to 18 years' imprisonment in the Cape Town Criminal Sessions recently for sabotage.

Mr Mangqangwana appeared with Mr Moshekile Beleni,

on three charges under the Suppression of Communism Act.

The State alleged that they conspired with 107 others to overthrow the Government by acts of violence, including guerrilla warfare, and that they incited nine men to train for guerrilla warfare and sabotage.

Mr Beleni was found not guilty on this charge and was discharged.

Both men were found guilty on a charge of taking part in Poqo activities and on a charge of being office bearers of the unlawful organisation. Both were sentenced to five years. Mr Mangqangwana's sentence is to run concurrently with the sentence of 18 years.

Evidence was given during the trial that there was a plot to derail the Blue Train in a tunnel in the Hex River Mountains. (See Contact October, 1966)

Mr D. van Reenen appeared for the State. Mr J.B. de R. van Gend and Mr M. Seligson appeared pro Deo for the men.

(4)

KHAN v the STATE

The Judge President of the Cape (Mr Justice Beyers) recently refused to grant a writ of habeas corpus on Mr Dawood Khan, a Cape Town city councillor who is being held under the 180-day detention clause.

The judge said that the warrant was legal because the Attorney-General had satisfied himself that there was a likelihood that at some future stage Mr Khan would be giving evidence of a material nature in proceedings which could be described as criminal.

The Attorney-General need only satisfy himself, the judge added. The court was not in a position to make that decision.

Mr Seligson, for the defence, had contended that the Attorney-General had to be sure that a person had been arrested or charged in connection with an offence mentioned in the schedule of the Criminal Code before he could issue a warrant for his detention in terms of the 180-day clause.

Mr G.C. Steyl (for the Attorney-General), however, submitted that it was sufficient if there was serious intent on the part of the State that a prosecution would be instituted.

The Attorney-General admitted, in papers before the court, that he did not know if anyone had been ar-

rested in connection with the offences for which Mr Khan was considered a material witness.

Earlier, papers were placed before the court in which Brig. W.C.E. Prinsloo, of the Pretoria police, deputy chief of the C.I.D., said Mr Khan was being held in connection with the forging and issuing of birth certificates, identity cards and passports on a country-wide basis.

'The police have sufficient information that the nature and extent are such that they deserve the serious attention of the police and have become a question of public interest', he said.

'The scope and aims of these activities are not limited to forgery and uttering of documents, but are far wider.'

There were so many people in the small court room when the hearing began that the Judge President moved to a larger court. The bigger court room was also filled with spectators, many of whom had to stand.

Mr Seligson was instructed by Fuller, De Klerk and Osler. Mr Steyl (instructed by the Deputy State Attorney) appeared for the Attorney-General and the Divisional Commissioner of the Cape Town Police. (5)

STATE v BETO AND OTHERS

On November 9, Messrs Simon Beto, Nelson Mahlabahaba, Gilbert Nyalasa, and Samson Mini, were each sentenced to five years' imprisonment when they appeared on three counts before Mr S. C. Snyman in Humansdorp.

They were found guilty of contributing to and soliciting funds for the A.N.C. (three years), allowing the use of their homes for A.N.C. meetings (one year), and taking part in the activities of the A.N.C. (one year).

All the accused were previously sentenced to terms of imprisonment from 2½ - 3 years, when they appeared in Graaff-Reinet in March, 1964. At that month-long trial they appeared with 14 others (one a woman) and were convicted of being members of the A.N.C. (6)

STATE v MATINKINCA AND OTHERS

On November 18, Messrs Alan Matinkinca, Albert Dibela, William Frans, and Richard Tokwe, were each sentenced to four years' imprisonment in Humansdorp for being members and/or carrying on the activities of the A.N.C.

They were originally convicted in Graaff-Reinet in September 1964. (7)

STATE v MAZIZA AND OTHERS

On December 2, Messrs Allison Maziza, William Kane, and Daniel Mooi were convicted on one count - of allowing their homes to be used for A.N.C. meetings - and were sentenced to 15 months' imprisonment. They were convicted originally in September, 1964. (8)

STATE v DEVU

On December 5, Mr Anderson Devu was sentenced to four years' imprisonment when he was convicted on two counts of being a member and of taking part in the activities of the A.N.C. He was originally convicted in Graaff-Reinet in September, 1964 when he was sentenced to 3½ years' imprisonment. (9)

STATE v CARNESON and MALINDI

Mr Fred Carneson refused to plead when he appeared in the Cape Town Regional Court recently on three charges under the Suppression of Communism Act.

Messrs Carneson and Malindi were charged with contravening banning orders served on them by communicating with each other in June and November, 1965.

Mr Carneson refused to plead on the grounds that he had already been found guilty and sentenced for the same offences in the Cape Town Supreme Court.

Mr Malindi pleaded not guilty.

Mr A. Swersky (for Mr Carneson) then led evidence with regard to Mr Carneson's claim.

Mr G.C. Bredenhann, a member of the staff of the Supreme Court, handed in a copy of the proceedings of the State v Carneson.

Mr Swersky called Maj. D.T. Rousseau, the head of the Security Police, Cape Town, who said that he had been the investigating officer in the Supreme Court case.

Mr Carneson had been sentenced to five years and nine months' imprisonment.

He said that Mr Carneson had never been charged with the three contraventions of his banning order.

Mr Swersky then argued that as Mr Carneson had been found guilty of collecting subscriptions from Mr Malindi, it was obvious that there must have been communication. He quoted cases in support of his contention.

After Mr Swersky had made his submission, Mr P. Sieberhagen, for the State, asked for an adjournment; he said

he wanted to consult with the senior State prosecutor.

After the adjournment the magistrate ordered that Mr Carneson would have to plead.

Mr Carneson then pleaded not guilty to all charges.

Detective Sergeant P. du Guid of the Cape Town Security Police told the court that on a morning in June last year he hid in some bushes on the mountain side near Camps Bay Drive.

He saw Mr Carneson arrive in a green car and walk up to a tree. Mr Malindi arrived soon afterwards.

'He walked up to Mr Carneson and they began to talk to one another. I couldn't hear what they were saying.

'Mr Malindi handed an envelope to Mr Carneson and Mr Carneson handed back something he took out of his pocket.'

The sergeant told the court that on another occasion he and another Security Police member followed Mr Carneson from his home in Belmont Avenue, Oranjezicht. Mr Carneson drove to Camps Bay where he again met Mr Malindi, near Camps Bay Drive.

At the end of the trial Mr Carneson was found not guilty. The magistrate said that according to a record from the Supreme Court handed in as evidence, Mr Carneson had already pleaded guilty to certain charges and that the charge brought against him in the present case amounted to splitting charges.

Mr Malindi was found guilty on all three charges and gaoled for three months.

He pleaded in mitigation that he had spent almost a year in gaol under the 90- and 180-day clauses - 'for nothing'.

Mr G.F. Grimbeek appeared for the State, Mr L. Weinkove (instructed by Frank, Bernadt and Joffe) appeared for Mr Malindi and Mr A. Swersky (and associates) for Mr Carneson.

(10)

STATE v MXAKALO

Miss Kate Mxakalo, of Rockville, Moroka, was recently convicted in the Johannesburg Regional Court for contravening a section of the Suppression of Communism Act.

She pleaded guilty to having unlawfully entered Molola Township on June 9 this year. She is prohibited from entering any location or township other than Moroka.

She was sentenced to 12 months' imprisonment, all but 14 days of which were suspended for three years.

Miss Mxakalo said she had heard that her friend, Mr

Gordon Bako, had been killed in an accident, and had gone to Molola to check on this. Mr Bako appeared as a witness and confirmed her statement.

(11)

STATE v MATHEBULA

The Judge President of the Natal Supreme Court, Pietermaritzburg, decided recently that Mrs Rosina Manase Mathebula, who had been invited by the public to take the chair at a public meeting organised by a banned organisation, the Federation of South African Women, had not contravened the Suppression of Communism Act by so doing.

But he held that when she collected donations from the public for the banned organisation she had contravened the Act.

Mrs Mathebula was found guilty in the Durban Magistrate's Court on two counts of contravening the Suppression of Communism Act on April 18 of this year.

She was sentenced to eight months' imprisonment on each count, half of which was suspended.

He said that Mrs Mathebula had only appealed against one of her convictions, which was taking the chair at the meeting and accepting donations to the organisation.

The judge decided that taking the chair was not a contravention of the Act and the fact that Mrs Mathebula should have been found not guilty on that section must materially affect the sentence.

He said that unfortunately the record of the proceedings had not been available until October 10. Mrs Mathebula had been in jail for seven months and ten days.

In all the circumstances, the Judge President said that it appeared that the Supreme Court, while confirming the conviction, must alter the sentence to one of six months and ten days, three months to be suspended for three years, which would mean that Mrs Mathebula would be released immediately.

The Judge President said that the meeting was a public one and Mrs Mathebula in acting as chairman was not performing any work for the organisation. She was not a member and not a servant. She was acting as a representative of the general public.

Mr Acting Justice Leon concurred.

(12)

STATE v NAICKER

Dr G.M. Naicker appealed in the Supreme Court, Pietermaritzburg, recently against

the convictions and sentences imposed on him in the Regional Court, Durban, in August of this year.

There were two convictions against him. The first was that being a banned person he had wrongly and unlawfully attended a social gathering at his house at 189 Percy Osborne Road, Durban, at which persons also had social intercourse with one another.

For this he was sentenced to imprisonment for two months.

The second charge as framed was that Dr Naicker, being a banned person, had changed his address without notifying the police. On this charge Dr Naicker was found guilty and sentenced to imprisonment for a year, all but four days of which was suspended for three years. (See Contact October, 1966)

In his argument, Mr Combrink, for the State, said the legislature did not intend to include the members of a man's family in the persons he was banned from having social intercourse with.

Mr Combrink said that to give the Minister power to ban relatives was to make inroads into the lives of people and this was wrong.

But the Judge-President said the legislature had made inroads on the lives of people. The Judge-President maintained that the legislature had not given the Minister power to allow him to exclude relatives of the people banned from having social intercourse with a banned man.

If Mr Combrink persisted that the legislature had excluded a banned man's relatives he must say that the position would be so absurd that the legislature would not intend to do such a thing. Mr Combrink said that was what he meant.

The Judge-President said his personal intention at present was to say that the Minister had intended to prohibit all social gatherings from a banned man.

Mr Acting Justice Leon said the court could only imply what the legislature intended when there was ambiguity. Mr Combrink said there was no ambiguity.

The Judge-President said the original Act did not give power to the Minister of making any exception.

When dealing with the sentence on the first charge Mr Acting Justice Leon asked whether it would not have been proper for the magistrate to have suspended all or part of the sentence.

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The Judge-President pointed out that Dr Naicker was a first offender in his banning of 11 years.

In reply to Mr Combrink's argument, Mr Andrew Wilson, who appeared for Dr Naicker, said that if the gathering attended by Dr Naicker was covered by the Act, then family gatherings were also covered.

Judgement was reserved.

(13)

STATE v AITCHISON

Mr John Aitchison, a banned theological student, was sentenced to one year's imprisonment in Pietermaritzburg recently for contravening his banning order by failing to report to the police.

All except four days of his sentence was suspended conditionally for three years.

(14)

STATE v DIYA AND OTHERS

Eight men were acquitted in the Durban Regional Court recently of charges of conspiring to murder, and of contraventions of the Suppression of Communism Act.

The eight men were alleged to have conspired with another man, Mr Nimrod Dhlamini, to murder Dr D.E. Martens and Mr W.N. Pemberton, who are in charge of a sugar farm owned by Reynolds Brothers Limited at Esperanza, and to kill members of the South African Police.

An alternative charge was that they conspired to join the banned organisation, Poqo, collect money, buy weapons, then ask Mr Martens and Mr Pemberton for increased wages

If their wages were not increased, they would murder the two men, kill other Whites, Indians and policemen.

The men were alleged to have contravened the Suppression of Communism Act by conspiring to join Poqo. All eight pleaded not guilty.

(15)

DEFENCE AND AID FUND v STATE

The Appeal Court recently dismissed the appeal by the South African Defence and Aid Fund and its chairman, Dr Raymond Hoffenberg, against the refusal of the Cape Supreme Court to set aside Proclamation 77 of 1966.

This proclamation declared the Defence and Aid Fund to be an unlawful organisation.

The Appeal Court also dismissed an appeal by the Fund and Dr Hoffenberg that the Minister of Justice be ordered to produce all documents relating to the appointment by him of a committee in terms of Section 17 of the Suppression of Communism Act to prepare a factual report

in connection with the activities of the Defence and Aid Fund.

The appeal was dismissed by a majority of three of five judges.

The validity of the proclamation in question had been attacked on the ground that the appellants had not prior to the issue of the proclamation been afforded any opportunity of being heard in its defence.

Counsel for the appellants had conceded that the words 'without notice to the organisation concerned' in section 2 sub-section 2 of the Suppression of Communism Act of 1950, effectively excluded any right on the part of the appellant fund to be heard at the stage at any rate when the State President finally dealt with the matter, but contended that the words cited were wholly insufficient to exclude the implied right of the organisation concerned to be heard at one of the preceding stages envisaged by Section 17 of the Act.

After examining at great length the relevant provisions of the Act and considering the decisions of the courts on analogous sections in other Acts of Parliament, Mr Justice D.H. Botha, who wrote the main judgement of the court, said it seemed to him that it was only by the exercise by the State President of his powers under section 2 sub-section 2 of the Act that an organisation's rights were in law prejudicially affected.

Were it not for the words 'without notice to the organisation concerned' the appellant would have been entitled to an opportunity of controverting the prejudicial allegations against it before the issue of the proclamation. (See <u>Contact</u> October 1966)

(16)

<u>STATE v MABUSO AND OTHERS</u>

The Pan-Africanist Congress had been active in both the maximum security and open sections of the Baviaanspoort Prison, said Mr Acting Justice Nicholas in the Supreme Court, Pretoria, recently.

He confirmed the conviction of 13 convicts who had been convicted under the Suppression of Communism Act.

All 13 had been sentenced in the Pretoria Regional Court to three years' imprisonment, but Mr Acting Justice Nicholas reduced the sentences on four of the appellants to 18 months.

The trial court was told of a plan by the Pan-Africanists in Baviaanspoort

to murder the warders, seize their weapons, and then to murder the wives of officials living in the vicinity of the prison.

The armed prisoners were where they could make contact with other units of the PAC and engage the Whites in Pretoria in fighting.

Long-term prisoners giving evidence for the State, told the trial court of meetings held in cells between April 8, 1965 and October 15,1965.

They told the court of convicts being sworn in as members of the PAC and the formation of a task force to do the fighting.

One convict, the court was told, had written an unlawful book called 'The African Federal Chambers of Economics' in the prison.

Mr Acting Justice Nicholas said that the PAC aimed at the overthrow of the State, and the Baviaanspoort section of the organisation aimed at the murder of the prison officers and their wives.

From the nature and type of the organisation it had been necessary for the court to impose heavy penalties.

The contradictions argued in regard to the evidence of the State witnesses, had thrown no real doubt on their reliability as witnesses, and the magistrate had been justified in taking as evidence tape recordings made by the Security Police in the cells.

The appeal was dismissed in regard to Messrs Ephraim Mabuso, Philomon Moekers, Duncan Mhlongo, Raymond Motlaung, Matthews Timba, George Mbonombe, Stanley Mbata, Melvin Sisheva and Gideon Nunwana.

Sentences of three years were reduced to 18 months' imprisonment on Messrs Robert Gumele, Johannes Molebatse, Bethuel Kuswayo and Albert Mabaso. (17)

STATE v KOBOKA AND OTHERS

Nine men were sentenced to death at the Cape Town Criminal Sessions recently.

Sent to the gallows for their complicity in the Poqo murder of a Wellington shopkeeper in September, 1962, the condemned men left the dock singing a Poqo song, accompanied by other men in the public gallery.

The men were Messrs Baden Koboka, Edward Sikundla, Jonas Mzondi, Nicolas Hans, MacDonald Mgweba, Maqadaza Magushe, Goduka Gelem, Livingstone Fatyela and Msimasi Tyobeka.

Messrs Sontshaka and Mandindi were acquitted.

Virtually all the men were already serving sentences for their part in the 1963 Paarl riots.

Evidence at previous hearings was that the men were members of the banned Poqo organisation, and that they conspired with others to murder and rob Mr Berger, a shopkeeper, on September 22,1962.

That night they and other men entered Mr Berger's shop wearing coats and caps. Mr Berger was cut down with blows from a panga and shots from a pistol.

With Mr Berger dead, evidence was led that they helped themselves to money from the till and goods in the shop before leaving.

Another witness said that at the Poqo meeting preceding the attack, the men went through a strange rite in which they washed themselves with water that contained 'medicine'.

After convicting nine of the 11 men the judge said that he was unable to find extenuating circumstances.

Mr M.M. Beukes appeared for the State. Mr S. Selikowitz, Mr E. Tabachnik and Mr G. Visagie represented the men *pro Deo*.

(18)

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