

(2017) 03 DEL CK 0062

In the Delhi High Court

Case No : W.P.(C) No. 264 of 2017 and CM No. 1254 of 2017

Islamic Research Foundation

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 19, Article 21
Unlawful Activities (Prevention) Act, 1967 — Section 2(f), Section 2(g), Section 3(1),
Section 3(3)

Citation : (2017) 239 DLT 71 : (2017) 162 DRJ 538 : (2017) 2 RCRCriminal 379

Hon'ble Judges : Sanjeev Sachdeva, J.

Bench : Single Bench

Advocate : Sanjay Jain, ASG with Ravi Prakash, CGSC, Farman Ali, Ms. Rajul Jain, Ms. Ruchi Jain and Vignaraj Pasayat, Advocates, for the Respondents; D.C. Mathur, Sr. Advocate with Satish Tamta, Hari Haran and Dhruv Tamta, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J. - The Petitioner (Islamic Research Foundation) seeks setting aside of the notification dated 17th November, 2016, bearing No. S.O. 3460 (E) issued by the Ministry of Home Affairs (hereinafter referred to as the Notification) and a declaration that the ban imposed by the notification is ultra vires Articles 14, 19 & 21 of the Constitution of India.

2. The impugned Notification has been issued by the Ministry of Home Affairs in exercise of powers under section 3(1) and 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the Act), thereby declaring the petitioner organisation/association as an unlawful association and the declaration is to come into force with immediate effect.

3. Mr. Dinesh Mathur, learned Senior Counsel appearing for the petitioner at the outset submitted that though the petition impugns the entire notification, the petitioner restricts the challenge to the exercise of powers under the proviso to

Section 3(3) of the Act, imposing the ban with immediate effect. Thus, this court is not concerned with the legality and validity of the said Notification to the extent it declares the petitioner organisation/association as an unlawful association.

4. Learned Senior counsel for the petitioner submitted that there are no circumstances mentioned in the Notification, which justify the exercise of powers for imposition of ban with immediate effect. He submitted that the reasons for issuance of the notification and imposition of ban with immediate effect are the same, which is impermissible. Reliance was placed on the decision of the Supreme Court in *Mohammad Jafar v. Union of India* 1994 Supp (2) SCC 1.

5. Learned Senior Counsel for the petitioner submitted that speeches and FIRs based on which the ban has been imposed constitute stale material and such material could not have been used to impose the ban with immediate effect. He further submitted that there is nothing stated in the notification with regard to the organisation and the allegations in the notifications are vis-a-vis its president, members and employees. It is submitted that the notification is also based on incorrect facts in as much as it states that Dr Zakir Naik has been chargesheeted, whereas no such charge sheet has been filed till date.

6. Per contra, Mr. Sanjay Jain, learned Additional Solicitor General, submitted that the said notification does not suffer from any legal or constitutional infirmity. It is submitted that there is sufficient material and reasons in support of the issuance of the notification. It is submitted that the Central Government was satisfied that circumstances exist which rendered it necessary for the Government to declare the petitioner association to be an unlawful association with immediate effect. He submitted that the reasons are stated in the notification itself. He further submitted that this court in exercise of jurisdiction under Article 226 has to only ascertain that there is satisfaction of the Central Government of such circumstances and that the same is reflected in the notification. He submitted that this Court cannot go into the adequacy or sufficiency of the reasons.

7. Learned ASG further submitted that law does not require that declaration of an association as unlawful and the declaration with immediate effect have to be by two separate notifications. He submitted that it is sufficient that the notification spells out circumstances, which necessitated the exercise of powers under the proviso to section 3(3) of the Act. Reliance is placed on the decision of the High Court of Andhra Pradesh at Hyderabad in *Deendar Anjuman v. Government of India* 2002 Cri LJ 710.

8. The relevant records with regard to the issuance of the said notification were produced in court in a sealed cover. It was contended that the contents of the files could not be disclosed as it would be against the public interest to do so and was exempt from such disclosure under proviso to section 3(2) of the Act. The files were perused and returned.

9. As noticed herein above, the petitioner has restricted the challenge to the exercise of powers under proviso to section 3(3) of the Act i.e. declaration of the petitioner association to be an unlawful association with immediate effect. This Petition is thus not concerned with the legality and validity of the notification under section 3(1) of the Act to the extent it declares the petitioner organisation/ association as an unlawful association.

10. Let us examine some of the relevant provision of the Act, which are as under:

"2. Definitions:- In this Act, unless the context otherwise requires,-

(a) `association" means any combination or body of individuals;

(f) `unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

(g) `unlawful association" means any association-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, 1860 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity.

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.

3. Declaration of an association as unlawful.

(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government, may consider necessary: Provided that nothing in this sub-section shall require the Central Government to

disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under Section 4, have effect from the date of its publication in the Official Gazette.

(4) *****"

11. It would be necessary to refer to the Impugned Notification dated 17.11.2016. The Notification reads as under:

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 17th November, 2016

S.O. 3460(E).---WHEREAS, the Islamic Research Foundation (hereinafter referred to as the IRF) is registered with the office of the Charity" Commissioner, vide registration no. B-1409-Mumbai dated the 21st December, 1990 and having its registered office at Masalawala Building, 2nd Floor, 56 Tandel Street (North), Dangri, Mumbai-400009 and another office at 195/213, S.V.P. Road, Dangri, Mumbai-9;

AND WHEREAS, the IRF and its members, particularly, the founder and President of the said Association, Dr. Zakir Naik, has been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities and groups;

AND WHEREAS, the Central Government has received information that the following cases have been registered against Dr. Zakir Naik and other members of the IRF:-

(a) Nagpada Police Station, Mumbai has registered a case CR No. 271116, under sections 10, 13 and 38 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) against Arshi Qureshi, an employee of IRF and Others on 6th August, 2016 on the basis of a complaint of Abdul Majeed, Father of Ashfaq Majeed, one of the missing youth from Kerala, who has apparently joined Islamic State of Iraq and Syria (ISIS). In the complaint, Abdul Majeed alleged that Arshi Qureshi of IRF was responsible for radicalization of Ashfaq, which led the later to join ISIS;

(b) Palrivattam Police Station in Kerala has registered a case, CR No. 1017116 dated 16.07.2016, under sections 153 A, 34 of Indian Penal Code (IPC), and Section 13 of U AP A against Arshi Qureshi, resident of Navi Mumbai, an

employee of IRF. The Kerala Police arrested Arshi Qureshi in this case in July, 2016 for his role in promoting hatred and ill-will between different religious communities and forcible conversion of Kerala youth, who went missing and are suspected to have joined the ISIS;

(c) Sawantwadi Police Station of Sindhudurg District registered a case, CR No. 73112, under sections 117, 153 A, 295 A, 298 and 34 of the IPC against Dr. Zakir Naik, the President of IRF, for making derogatory statements against Hindu gods and he has been chargesheeted in 2014;

(d) Vengurla Police Station of District Sindhudurg registered a case CR No. 51112 dated 25.10.2012 under sections 153 A, 295 A and 298 of the IPC against Dr. Zakir Naik for making derogatory statements against Hindu gods and he has been chargesheeted in 2014;

(e) Kurla Police Station of Mumbai registered a case CR No. 44/2013 dated 23.02.2013 under sections 153 A, 295 A, 505(2) of the IPC and 66 A of the Information Technology Act, 2002 against Dr. Zakir Naik for making derogatory statements against Hindu gods;

AND WHEREAS, the Central Government has received information that the statements and speeches made by Dr. Zakir Naik, the President of IRF are objectionable and subversive in nature as he has been extolling the known terrorists like Osama Bin Laden, proclaiming that "every Muslim should be a terrorist and claiming that if Islam had indeed wanted, eighty percent of Indian population would not have remained Hindus as they could have been converted "if we wanted" by sword, justifying the suicide bombings, posting objectionable comments against Hindu gods, claiming that Golden Temple may not be as sacred as Mecca and Medina and making other statements which are derogatory to other religions;

AND WHEREAS, through such speeches and statements, Dr. Zakir Naik has been promoting enmity and hatred between different religious groups and inspiring muslim youths and terrorists in India and abroad to commit terrorist acts, thus attracting punishment under Section 153 A of the IPC;

AND WHEREAS, such divisive ideology is against India's pluralistic and secular social fabric and it may be viewed as causing disaffection against India and thereby making it an unlawful activity;

AND WHEREAS, statements of some terrorists arrested in the terrorist attack incidents or arrested ISIS sympathisers revealed that they were inspired by the fundamentalist statements of Dr. Zakir Naik, clearly indicating the subversive nature of his preachings and speeches;

AND WHEREAS, the Central Government is of the opinion that the aforesaid activities of the IRF and its President Dr Zakir Naik are highly inflammatory in nature and prejudicial to the maintenance of harmony between various religious groups and communities and if urgent steps are not taken there is every

possibility of many youth being motivated and radicalized to commit terrorist acts leading to promoting enmity between different religious groups;

AND WHEREAS, the Central Government, having regard to the above circumstances, is of the firm opinion that it is necessary to declare the Islamic Research Foundation (IRF) as an unlawful association with immediate effect. NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Islamic Research Foundation to be an unlawful association; AND WHEREAS, the Central Government, having regard to the above circumstances, is of the opinion that it is necessary to declare the Islamic Research Foundation as an unlawful association with immediate effect; and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F. No. 11034117/20 16-IS- VI]

SUDHIR KUMAR SAXENA, Jt. Secy."

12. The reason given by the Central Government in the notification for declaring the organisation as an unlawful association inter alia is that the organisation and its members, particularly, the founder and President of the said Association, Dr. Zakir Naik, has been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities and groups. Reference is also made to certain cases registered against Dr Zakir Naik and other members of the organisation under various sections of the Act and the Indian Penal Code, inter alia for being responsible for radicalization of some youths who are later alleged to have joined the ISIS, for promoting hatred and ill-will between different religious communities and forcible conversion of Kerala youth, who went missing and are suspected to have joined the ISIS and for making derogatory statements against Hindu gods.

13. Further reference is made in the notification to information received by the Central Government that the statements and speeches made by Dr. Zakir Naik, the President of the organisation are objectionable and subversive in nature and that he has been extolling the known terrorists like Osama Bin Laden and proclaiming that every Muslim should be a terrorist and claiming that if Islam had indeed wanted, eighty percent of Indian population would not have remained Hindus as they could have been converted "if we wanted" by sword, justifying the suicide bombings, posting objectionable comments against Hindu gods, claiming that Golden Temple may not be as sacred as Mecca and Medina and making other statements which are derogatory to other religions.

14. It is further noticed in the notification that by his speeches and statements,

Dr. Zakir Naik has been promoting enmity and hatred between different religious groups and inspiring muslim youths and terrorists in India and abroad to commit terrorist acts and that such divisive ideology is against India's pluralistic and secular social fabric and it could be viewed as causing disaffection against India and thereby making it an unlawful activity. Reference is also made to statements of some terrorists arrested in the terrorist attack incidents or arrested ISIS sympathisers which have revealed that they were inspired by the fundamentalist statements of Dr. Zakir Naik, which was indicative of the subversive nature of his preachings and speeches.

15. In addition to the reasons, as noticed above, given for declaring the organisation as an unlawful association, the notification also records that the aforesaid activities of the organisation and its President Dr Zakir Naik are highly inflammatory in nature and prejudicial to the maintenance of harmony between various religious groups and communities and if urgent steps were not taken there was every possibility of many youth being motivated and radicalized to commit terrorist acts leading to promoting enmity between different religious groups.

16. Thus, the contention of the learned senior counsel for the petitioner that the reasons for declaration as an unlawful association and making the declaration applicable with immediate effect are the same, is unsubstantiated. As noticed above, the Notification does give additional reasons for making the declaration applicable with immediate effect.

17. The record, that was made available by the Central Government, clearly shows that there is material in possession of the central government, which necessitated the declaration of the petitioner organisation as an unlawful association with immediate effect. Not only is the material available on the record of the Central Government, the reason for exercise of powers under the proviso to section 3(3) has been additionally stated in the notification, over and above the reasons stated for exercise of powers under section 3(1) of the Act.

18. The Notification records that the necessity for exercise of powers under the proviso to section 3(3) of declaring the organisation as an unlawful association with immediate effect, is that if urgent steps were not taken many more youths could be motivated and radicalized to commit terrorist acts leading to promoting enmity between different religious groups.

19. In Mohammad Jafar (*supra*), the notification impugned therein, *inter alia*, recorded as under:

"And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts, and materials in its possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the JEIH is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section

3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the 'Jamaat-e-Islami Hind' to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3) of that section, that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

20. On reading of the notification in issue in Mohammad Jafar (supra), the Supreme Court was of the view that no additional reasons had been given by the Central Government for declaration as an unlawful association with immediate effect. Even before the Supreme Court, the case of the government was not that it had some facts or material in its possession to declare the association as unlawful with immediate effect, in addition to facts and material for taking action under section 3(1) of the Act.

21. The Supreme Court in Mohammad Jafar (supra) thus held that for justification of the immediate ban under proviso to section 3(3), something distinct and different, which calls for the urgent step, has to be in possession of the Central Government and the same has to be communicated to the Association.

22. In contra-distinction, in the impugned notification, as noticed above the additional reason is specifically stated. The impugned notification, in my view, satisfies the test laid down by Supreme Court in Mohammad Jafar (supra).

23. The contention of learned Senior Counsel for the petitioner that the ban has been imposed based on stale material and that there is nothing stated in the notification with regard to the organisation and the allegations are vis-a-vis its president, members and employees and that the notification is based on incorrect facts, in my view is unsubstantiated.

24. The reason stated in the notification is that the petitioner organisation and its members, particularly, the founder and President of the said Association, Dr. Zakir Naik, have been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities and groups. Reference made to the cases registered against Dr Zakir Naik and other members of the organisation under various sections of the Act and the Indian Penal Code is to show that the kind of activities the members are alleged to be indulging in. The statements and speeches made by Dr. Zakir Naik, the President of the organisation are stated to be objectionable and subversive in nature and that he has been extolling the known terrorists like Osama Bin Laden and proclaiming that every Muslim should be a terrorist and claiming that if Islam had indeed wanted, eighty percent of Indian population would not have remained Hindus as they could have been converted "if we wanted" by sword, justifying the suicide bombings, posting objectionable comments against Hindu gods, claiming that Golden Temple may not be as sacred as Mecca and Medina and making other statements which are

derogatory to other religions.

25. Dr. Zakir Naik, by his speeches and statements, is stated to have been promoting enmity and hatred between different religious groups and inspiring muslim youths and terrorists in India and abroad to commit terrorist acts. Material is stated to contain statements of some terrorists arrested in the terrorist attack incidents or arrested ISIS sympathisers which have revealed that they were inspired by the fundamentalist statements of Dr. Zakir Naik, which was indicative of the subversive nature of his preachings and speeches. In addition, the notification records that the activities of the organisation and its President Dr Zakir Naik are highly inflammatory in nature and prejudicial to the maintenance of harmony between various religious groups and communities and there is every possibility of many youth being motivated and radicalized to commit terrorist acts leading to promoting enmity between different religious groups.

26. An "unlawful association" has been defined by Section 2(g) of the Act to mean an association which, inter alia, encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity. "Unlawful activity" has been defined under section 2(f) of the Act to means any action taken which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India .

27. The activities which the petitioner organisation and its president and members are alleged to have indulged in, would clearly come within the purview of "unlawful activity" and since the petitioner organisation and its members are alleged to have been indulging in the said activities it would come within the definition of "unlawful association".

28. Thus, it cannot be held that the impugned notification insofar as it relates to, the exercise of power under proviso to section 3(3) of the Act and the declaration of the petitioner association to be an unlawful association with immediate effect, is an arbitrary and unreasonable exercise of power. Not only is the material available on the record of the Central Government but the reasons for exercise of the said power have been disclosed in the notification. The record, that was made available for the perusal of the court, discloses material for exercise of such power. The action of the Central Government would be covered under the exception of Article 19 (4) of the Constitution of India. The immediate action appears to have been taken in the interest of sovereignty and integrity of India and public order.

29. In view of the above, I find no merit in the petition. The Writ Petition is accordingly dismissed leaving the parties to bear their own costs.

30. Needless to state that nothing stated herein would have any bearing on the

proceedings pending before the Unlawful Activities (Prevention) Tribunal, which shall be free to decide the reference, without being influenced by anything stated herein.