
(1993) 07 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 12236-M of 1992

J.V.Gupta, Chief Justice (Retd.)

APPELLANT

Vs

Chandigarh Administration, Chandigarh

RESPONDENT

Date of Decision : 12-07-1993

Acts Referred:

Citation : (1994) 1 RCR(Criminal) 379

Hon'ble Judges : J.B.Garg, J

Advocate : Baldev Singh, Yogesh Goel., Ashok Aggarwal, Advocates for appearing Parties

Judgement

J.B. Garg, J.

1. This petition under Section 482 of the Code of Criminal Procedure has been moved by Shri J.V. Gupta, retired Chief Justice of Punjab and Haryana High Court and Shri R.K. Mittal, Advocate of Chandigarh, challenging FIR No. 382 of 1992 registered on 15.12.1992 for offences under Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 at Police Station Central, Chandigarh.

2. It appears that it was after the demolition of structures at Ayodhya which took place on 6.12.1992 in Uttar Pradesh that the Local Administration came into action.

3. It shall be useful to reproduce English translation of the FIR (annexure P1) which is as follows :

"The Government of India vide Notification published in the Extra Ordinary Gazette on 10.12.1992 have declared Rastriya Swayam Sewak Sang as unlawful association under Section 3 of Unlawful Activities (Prevention) Act, 1967 and such Notification has been published in the major newspapers of the country. According to this notification, the membership of Rastriya Swayam Sewak Sangh, collection of donations of money and participating in its activities is an offence. A reliable informant has informed that Shri J.V. Gupta, Resident of House No. 211, Sector 18A Chandigarh, Sangh Chalak, Punjab, Shri R.K. Mittal, House No. 1526

Sector 18, Chandigarh, Nagar Chalak, Chandigarh, Shri Mangal Dass resident of House No 1017, Sector 18, Chandigarh, Shri Kheshav Niwas and Shri Krishan Kumar Baewja, residents of House No. 1017 Sector 18, Chandigarh, Shri Nand Kumar resident of House No. 1017, sector 18, Chandigarh, Shri Balbir Chand, Resident of House No. 1018, Sector 18C Chandigarh and Shri Mool Chand Premi resident of House No 2244, Sector 22C, Chandigarh continued to be member of R.S.S. in spite of ban on it and are participating in unlawful activities of the Sangh and preparing the people for propagating the R.S.S. Shri J.V. Gupta is Sangh Chalak of Punjab and he calls meeting of the Sangh at his residence. He has installed a telephone number 42410 in the office of R.S.S. at House No 1017, Sector 18, Chandigarh and this telephone is being used for the activities of Sangh. He is asking the people within the area of police station to continue with the Shakhas of the Sangh and preparing the people for such purpose. Shri R.K. Mittal, Nagar Sangh Chalak is calling the meetings of the Parcharak of different Shakhas at his house telling them to continue the Shakhas in any form and making new members and collecting donations from the different parts of the city. Shri Krishna Kumar Baweja, Shri Nand Kumar and Shri Ram Singh are the active members and live in R.S.S. office and working as Parcharak. They are asking the people to participate in the Shakhas of the R.S.S. which is known to the informant. Therefore, offence under Section 10 and 13 of the Unlawful Activities (Prevention) Act, 1967."

4. In this petition it has specifically alleged that Rashtriya Swayam Sewak Sangh referred to as R.S.S. was found in the year 1925. It has no enrollment fee nor it maintains any membership registers. The Central Government issued a Notification on 10th of December 1992 under Section 3 of the Unlawful Activities (Prevention) Act 1967 declaring the R.S.S. as an unlawful association. However, the reasons which were stated to be in writing were not given in the notification though the Notification was given an immediate effect. The above said notification issued by the Central Government is reproduced as under :

"Where the Rashtriya Swayam Sewak Sangh (hereinafter referred to as RSS) has been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion disharmony or feelings of enmity, hatred or illwill between different religious communities;

And where the RSS has been making imputations and assertions that members of certain religious communities have alien religions and cannot, therefore, be considered nationals of India, thereby causing and likely to cause disharmony or feelings of enmity or hatred or illwill between such members and other persons.

And whereas the RSS Swayam Sewak had participated in the demolition of the structure commonly known as Ram Janam Bhoomi Babri Masjid situated in Ayodhya in the State of Uttar Pradesh on the 6th December, 1992.

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 considered to be against the public interest to disclose, the Central Government is of the opinion that the Rashtriya Swayam Sewak Sangh is an unlawful association.

Now, therefore, in exercise of the powers conferred by Subsection (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, (37 of 1967) the Central Government hereby declares the Rashtriya Swayam Sewak Sangh" to be an unlawful association and directs, in exercise of the powers conferred by the provision to subsection (3) of that Section, that the 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."

5. The petitioners have alleged that the Notification of the Central Government dated 10.12.1992 published in the Gazette of India (Extraordinary) under Section 3 of the Unlawful Activities (Prevention) Act, 1967 declaring the R.S.S. as unlawful association does not contain and satisfy the test laid down in Section 3 of the Act and the aforesaid Notification is bad in law and it was not published in the manner required under Section 4 of the Act. Besides this, it has been specifically averred that the FIR does not contain any material in respect of the petitioners allegedly they begin the members of the R.S.S. for taking part of any unlawful activity or they were, making or receiving or soliciting any contributions for the purposes of the RSS; that the allegations levelled were fake without any particular instance; that the R.S.S. was of course founded in the year 1925 but it has no membership and it does not keep any membership register nor there is any enrollment fee. The petitioner No. 1 was of course assigned the duties of Punjab Prant Sangh Chalak i.e. the State President in July 1922 after he had retired as Chief Justice on 31.4.1991.

6. It has also been averred that R.S.S. is not a juristic person and it is not a registered society or organisation. The FIR now in question is an abuse of the process of law and with a view of malign and humiliate the citizens.

7. As seen above, the relief claimed in this petition is that the FIR in question and the resultant proceedings be quashed.

8. In reply filed by the Home Secretary, Chandigarh Administration, it has been averred that the Notification dated 10.12.1992 was issued by the Government of India declaring R.S.S. as an unlawful association and the Union of India should have been impleaded as a party and the writ petition was bad for nonjoinder.

It has further averred that the Main (sic) of the issuance of notification were published in the Tribune and the Indian Express newspapers dated 14.12.1992 besides the Official Gazette dated 10.12.1992; that the allegations contained in the FIR disclose the commission of offence under Sections 10 and 13 of the Act and it was wrong to allege that the FIR was fake or without any substance.

9. While bringing some additional facts on record it was also averred that the arrest of the petitioners without warrants was not with a view to humiliate them

or to deprive the petitioners of their liberty that the offences in question were cognizable and the petitioners could be arrested without warrants; that the act of declaring R.S.S. as an unlawful association has been done by the Central Government and the Notification in accordance with Section 3 of the Unlawful Activities (Prevention) Act, 1967 was also issued by the Government of India; that a reading of the FIR would not show that the offences under Sections 10 and 13 of the Act have not been committed; that the registration of the FIR with an alleged view to making the petitioners was wrong and denied.

10. The learned counsel for the petitioners has pointed out that the petitioners were residing in their respective houses mentioned in Annexure P1 and one is a retired Chief Justice and the other a practising Advocate and at the time of their arrest they were not occupied in any particular activity or doing any act much less overt act of justify the registration of the case in question. A perusal of the petition and even of the reply would show that the occurrence in question took place at Ayodhya in Uttar Pradesh and the petitioners were residing in their residential houses at Chandigarh could neither be blamed nor they had done any thing to justify the action of the local administration.

11. The Chairman of the Unlawful Activities (Prevention) Tribunal has held in his order dated 4.6.1993 that the Reshtriya Swayam Sewak Sangh association was not unlawful and the relevant Notification issued on December 10, 1992 and published in the Gazette of India; Extra Ordinary (PartII) was also held to be unlawful. Prior to that writ petition No. 1072 of 1993 Dr. Rajendra Prasad Agarwal v. Union of India was also decided against the Union of India on 18.5.1993 by the Allahabad High Court. This factual position has not been controverted. All this indisputably goes to show that the Notification in question was not lawful on 15.12.1992 at the time the present case was registered.

12. The plea raised by Shri Ashok Aggarwal learned counsel for the respondents that Union of India was a necessary party has no merit inasmuch as the petitioners have challenged the action of the respondents or in other words and executive authorities who obviously jumped upon the petitioners arbitrarily and in undue haste.

13. The conclusion is that the petition succeeds and the FIR in question dated 15.12.1992 and the proceedings which arose as a consequence thereof are hereby quashed.