
(1996) 08 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 7594 and 7700 of 1996

Md. Salauddin and Nisar Ahmed Bhat

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 17
Hyderabad City Police Act, 1348 — Section 5, 6(2)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20A, 20A(1), 20A(2)

Citation : (1996) 2 ALD(Cri) 324 : (1996) 3 ALT 836

Hon'ble Judges : S.R. Nayak, J; M.N. Rao, J

Bench : Division Bench

Advocate : K.G. Kannabhiran, for R. Mahadevan and B. Konda Reddy, for the Appellant; Ramesh Ranganath, Govt. Pleader for Home of behalf of A.A.G., for the Respondent

Judgement

S.R. Nayak, J.—The Terrorist and Disruptive Activities (Prevention) Act, 1987, for short "the Act", was allowed to be a history by efflux of eight years time fixed under Sub-section (4) of Section 1 of the Act, but the question whether the prosecution launched against the two petitioners in these two writ petitions under the provisions of the Act is valid or not is still engaging the attention of the Court.

2. The petitioner in W.P. No. 7594 of 1996 is Accused No.8 and the petitioner in W.P. No. 7700 of 1996 is Accused No. 2 in Sessions Case No. 595 of 1994 (Crime No. 151/93) on the file of the Designated Court-cum-Metropolitan Sessions Judge, Hyderabad. The petitioner in W.P. No. 7594 of 1996 has prayed for Writ of Habeas Corpus or any other appropriate order or direction in the nature of a writ calling for the records in S.C. No. 595/94 on the file of the Designated Court-cum-Metropolitan Sessions Judge, Hyderabad declaring that the action of the respondent in invoking the provisions of the Act, Explosive Substances Act and

Sections 120B, 124A, 153A and 153B of Indian Penal Code as against the petitioner as illegal and without jurisdiction and consequently discharge and set him at liberty of the said charges under the Act and direct the Designated Court to transfer the case to ordinary criminal Court to be dealt with in accordance with law. The petitioner in W.P.No. 7700 of 1996 has prayed for a writ in the nature of Writ of Mandamus or any other writ, direction or order declaring that framing of the charges against him under the provisions of the Act in S.C. No. 595 of 1994 is null and void and consequently discharge the petitioner from the offences under the Act and to direct the Designated Court to transfer the case in S.C.No. 595 of 1994 to ordinary criminal Court for disposal in accordance with law as provided u/s 18 of the Act.

3. Since common questions of facts and that of law arise for our considerations and decision, the writ petitions were clubbed and heard together and they are being disposed of by this common judgment. Sri K.G. Kannabhiran, the learned senior counsel appeared for the petitioners and Sri Ramesh Ranganath, the learned G.P. for Home appeared on behalf of the learned Additional Advocate General and placed their submissions in support of their respective cases. The departmental file and the records in S.C. No. 595 of 1994 are secured and placed before us. Counter-affidavit is also filed on behalf of the respondent-State in both the writ petitions.

4. The facts leading to the filing of these two writ petitions be stated briefly as under:

On receipt of credible information that Kashmiri Muslim youths were indulging in terrorist and disruptive activities in Hyderabad, Sri T.V. Raju, Inspector of Police (S.I.T.) along with his staff raided RoomNo. I, Nizamia Tibbi College Hostel, Vidyanagar, Hyderabad on 10-11-1993 and arrested one Sri Gowher Ameen Meer, an agent of "Iquamiul-Muslimeen" and seized one hand-grenade and certain letters from his possession. On the basis of the information given by Sri Gowher Ameen Meer, simultaneous raids were conducted and one Sri Nisar Ahmed Bhat @ Mushtaq Bhat (Accused No. 2 - the petitioner in W.P. No. 7700/96) was arrested from Room No. 215 of New Asian Lodge, Nampally, Hyderabad and from his possession two hand-grenades, huge quantities of explosives and other materials were seized. In his confessional statement, recorded before the Panch witnesses, Sri Nisar Ahmed Bhat stated that he was acting as an agent of "Iquamiul Muslimeen" at the behest of one Hilal Baig @ Peer @ Shafeeq @ Rauf and Kursheed Ahmed Baig @ Nayeem of Jammu and Kashmir. He also stated that among others, he had sent Md. Salauddin, the petitioner in W.P. No. 7594 of 1996 to Pakistan for training. Sri T.V. Raju, the Inspector of Police (S.I.T.), lodged a complaint at 15.00 hours on 10-11-1993. In the complaint, in addition to the facts stated supra, the Inspector of Police further stated that "Iquamiul Muslimeen" was a Muslim fundamental organisation and had been planning, organising large scale violence, arson, blasting bombs, killing innocent people by using arms and ammunition and hand-grenades,

explosive substances for manufacturing bombs in pursuance of a deep rooted criminal conspiracy. A list of 16 persons was enclosed to the complaint. The Inspector stated in the complaint that the acts of the accused constitute the offences Under Sections 120B, 124A, 153A and 153B of the Indian Penal Code; Sections 3 and 5 of the Explosive Substances Act; Sections 25 and 27 of the Indian Arms Act read with Sections 436, 302 and 307 of the Indian Penal Code. In the complaint the Inspector of Police also stated that the acts of the accused also constitute offences Under Sections 3(3), 3(1), 5 and 6 of the Act and on receipt of approval of the Commissioner of Police, the provisions of the Act would be added. On receipt of the complaint, the Additional Deputy Commissioner of Police, Detective Department, Hyderabad directed the Inspector of Police, Administration to register a case and entrust the case to Sri Shaym Rao, the Inspector of Police, East Zone, Team-I.C.C.S. Hyderabad for investigation. The Inspector of Police, Administration registered the complaint in Crime No. 151/93 on 10-11-1993 Under Sections 120B, 124A, 153A and 153B IPC; Sections 3 and 5 of Explosive Substances Act; Sections 25 and 27 of the Indian Arms Act read with Sections 436, 302 and 307 IPC and handed over the case for investigation to Sri Shaym Rao. Sri Shaym Rao, the Inspector of Police submitted a letter No. Cr/151/93/E-2/L-I/93, dated 11-11-1993 to the Commissioner of Police, Hyderabad seeking prior approval of the Commissioner of Police as required under Sub-section (1) of Section 20A of the Act. A copy of the complaint lodged by Sri T.V. Raju, Inspector of Police (S.I.T.) dt. 10-11-1993 was appended to the letter. On the said letter, the Commissioner of Police made an endorsement on 11-11-1993 itself to the following effect: "Seen. Permitted." A copy of the F.I.R. was submitted to the XXI Metropolitan Magistrate, Hyderabad on 11-11-1993. On 12-11-1993 Sri Shaym Rao addressed a letter to the XXI Metropolitan Magistrate, Hyderabad informing the latter that Sections 3(3), 3(1), 4(3), 5 and 6 of the Act were added in the F.I.R. as the activities of the accused found to be Terrorist Acts and requesting that the original F.I.R. be transferred to the Metropolitan Sessions Judge, Hyderabad who is specified as the Designated Court under the Act. A copy of the said letter addressed to the XXI Metropolitan Magistrate was also submitted to the Metropolitan Sessions Judge, Hyderabad. Subsequently, on 15-11-1994 the Commissioner of Police accorded sanction to prosecute accused 1 to 7 only, for commission of offences under the Act, as required under Sub-section (2) of Section 20-A of the Act. It appears from the record that before the Commissioner accorded the sanction on 15-11-1994, the prosecution also approached the Governor, obviously under a mistake, seeking sanction u/s 20-A(2) of the Act and the Governor vide G.O.Ms. No. 747 dated 4-11-1994 accorded sanction. Charge-sheet was filed before the Designated Court on 28-11-1994 and the same was taken on file on 9-12-1994 and registered as S.C. No. 595 of 1994.

5. Sri K.G. Kannabhiran, the learned senior counsel contended that

(i) prior approval required under Sub-section (1) of Section 20-A is a threshold condition precedent to launch criminal prosecution under the Act; although the

power to accord prior approval conferred upon the prescribed police officer is a discretionary one, that power should be exercised sparingly and for valid reasons and after due application of mind to the materials placed before him; sanction of prior approval is not a routine and mechanical act; the sanctioning authority, before sanctioning approval should be satisfied that the grounds are made out for launching prosecution under the Act; in the present case the endorsement of the Commissioner of Police "Seen. Permitted" does not reflect due application of mind on the part of the Commissioner of Police and his subjective satisfaction and therefore it should be held that there was no proper prior approval under Sub-section (1) of Section 20-A;

(ii) that the competent authority to grant prior approval u/s 20-A(1) within the territory of Corporation of Hyderabad is the concerned Deputy Commissioner of Police, being equivalent in official status to that of District Superintendent of Police and in this case prior approval is sanctioned by the Commissioner of Police, Hyderabad and therefore it should be held that there is no approval accorded by the competent statutory authority;

(iii) the Fourth Metropolitan Sessions Judge, Hyderabad by his order dated 11-3-1994 in CrI.M.P. No368/94, while granting bail to some of the accused, recorded the finding that prior approval u/s 20-A(1) was not obtained; it was not open for the prosecution now to invoke the provisions of the Act; further, the same learned Judge in his order dated 13-4-1994 in CrI.M.P. No. 520/94 held that the endorsement of the Commissioner of Police dated 11-11-1993 "Seen. Permitted" does not amount to prior approval for want of due application of mind; these two orders remain unchallenged and therefore the State is bound by those findings and it is impermissible for the State to contend anything contrary to those findings and they are estopped from doing so; the learned Senior Counsel would press into service the principle of "issue estoppel" in support of his contention;

(iv) previous sanction under Sub-section (2) of Section 20-A of the Act was obtained only in respect of Accused 1 to 7 and there is no sanction under the said Sub-section as regards the Accused No. 8 (the petitioner in W.P. No. 7594/96) is concerned and therefore the Designated Court ought not to have taken cognizance of offences under the provisions of the Act against the Accused No. 8.

6. The learned Government Pleader for Home, on the other hand, submitted that "prior approval" and "previous sanction" were obtained as required under Sub-sections (1) and (2) of Section 20-A of the Act before recording the complaint under the provisions of the Act and before filing the charge-sheet respectively. The learned Government Pleader would point out that certain observations made by the learned Metropolitan Sessions Judge in his interlocutory orders dated 11-3-1994 and 13-4-1994 have no finality and those findings recorded by the learned Judge on the basis of defective appreciation of facts on record shall not come in the way of this Court recording the findings on the issues which arise for

its consideration in those writ petitions independently and on merit.

7. Section 20-A was inserted into the Act by Amendment Act 43 of 1993 and it came into force with effect from 22-5-1993. Section 20-A reads as under:

"20-A Cognizance of offence:- (1) Not with standing anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police or as the case may be, the Commissioner of Police."

8. Two prior sanctions contemplated u/s 20-A are sine qua non for recording any information about the commission of an offence and for taking cognizance of any offence. The Act was enacted in the background of escalation of terrorist activities in many parts of the country in order to combat and cope with terrorist and disruptive activities effectively providing for constitution of special Designated Courts and laying down drastic procedures, a departure from the procedure observed in the regular criminal law Courts. This special procedure in the Act tends to trench upon the ordinary, general processorial rights of the citizens and persons, but it had become necessary evil to protect the larger national and community interest. The fundamental freedoms conferred and the goals cherished by the Constitution could never be enjoyed and achieved in society besieged by anti-social and terrorist activities. At the same time, it is of paramount importance that innocent people should not be hauled up as terrorists under the Act subjecting them to rigour of hard procedure and enhanced sentences at the instance of the ordinary, field-level police officers who are entrusted with the duty of maintenance of law and order. Therefore, it appears to our mind that the purpose of the two sanctions contemplated u/s 20-A of the Act is to secure a well-considered opinion of a superior authority in the echelon of administration of the police department before a person is actually proceeded against and prosecuted before the Designated Court.

9. Section 20-A does not prescribe any particular form of sanction, but Courts usually insist on being satisfied that the sanctioning authority has applied its mind to the facts of the case before granting sanction, and that the sanction is not arbitrary and mala fide. It is well settled that the act of granting sanction is of an executive nature and not a judicial or a quasi-judicial act. It is further well settled that the satisfaction which the sanctioning authority must have before according sanction is of a subjective character and not of an objective nature. However, even subjective satisfaction of the authority should be based on objective facts and considerations germane to the decision-making. In other words, subjective satisfaction should be based on relevant considerations. If Courts find that subjective satisfaction is based on irrelevant or extraneous considerations or is tainted by mala fide, they will definitely interfere with the

subjective satisfaction.

10. Section 20-A, in terms does not mandate the sanctioning authorities to record reasons in support of their satisfaction. We do not have enactment like The Federal Administrative Procedure Act, 1946 in U.S.A. which contains an express provision in Section 8(b) requiring the administrative agencies in clear terms to give reasons for their decisions. In that country, the right to reasoned decisions also arises from the due process clause in the Constitution. A decision unaccompanied by reasons may not be a "due" decision. In India, the question of incorporating a similar provision for administrative decisions to be accompanied by reasons was considered by the Law Commission. In its Fourteenth Report on Reform in Judicial Administration, it recommended thus:

"In the case of administrative decisions provisions should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate Writs."

11. No law has, however, been enacted in pursuance of these recommendations, imposing a general duty to record the reasons for its decision by an administrative authority though the requirement to give reasons is found in some Statutes. Thus in India, in the absence of any particular statutory requirement, there is no general requirement for the administrative authorities to give reasons for their decisions. However, even in cases where the Statute does not provide for reasoned decisions, giving reasons for the decisions may be imperative and such imperativeness has necessarily to be determined with reference to and taking into account workable parameters between the claims of individual justice and administrative flexibility and expediency intended to achieve the public good.

12. The Courts have shown some flexibility in the case of administrative orders, depending upon the facts, even though the reasons were absent or scrappy. In such cases, what was insisted was that the Court had to be satisfied by looking into the records or otherwise that the Authority concerned did apply its mind to all the relevant materials. In *High School and The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, it was held that the fact that the enquiry committee did not give reasons did not mean that it did not consider all the relevant materials before it came to the conclusion that the student had used unfair means. Further, the Supreme Court in *Union of India and others Vs. E.G. Nambudiri*, held that in the absence of statutory rule or instructions requiring to record or communicate reasons, an action does not vitiate for non-recording reasons, but reasons should exist on record, and when challenged, the authority should produce evidence a liunde before the Court to justify its action. Therefore what is necessary is that after perusing the original records the Court should be satisfied that the authority did apply its mind to the facts and circumstances germane to the decision-making.

13. In the back-drop of these principles, we have to consider the first contention of Sri Kannabhiran, the learned Senior Counsel. Before we do that, we may

briefly touch upon the circumstances why Sri T.V. Raju, Inspector of Police (S.I.T.) did not lodge any complaint against the accused for commission of offences under the Act on 10-11-1993 itself though he lodged the complaint against the same accused on 10-11-1993 for commission of offences Under Sections 120B, 124A, 153A and 153B of I.P.C.; Sections 3 and 5 of Explosive Substances Act; Sections 25 and 27 of Indian Arms Act read with Sections 436, 302 and 307 of IPC. Obviously because Section 20-A(1) of the Act prohibits the recording of any information about the commission of any offence under the Act without prior approval of the Commissioner of Police and since the Inspector of Police could not obtain the approval from the Commissioner on 10-11-1993 itself, he could not validly lodge the complaint against the accused for the offences committed under the Act on 10-11-1993. However, in the complaint filed by him on 10-11-1993 under certain provisions of the other penal laws referred to above, he stated that the acts of the accused also constituted offences Under Sections 3(3) and 3(1), 5 and 6 of the Act and after obtaining approval from the Commissioner of Police, the provisions of the Act would be added. There is also no difficulty in understanding why the Inspector of Police (S.I.T.) did not defer the filing of the complaint on 10-11-1993 relating to the offences under the other penal laws so as to enable him to file a comprehensive complaint for commission of offences both under the Act and other penal laws. The Police Inspector, in the first place, could not anticipate that the Commissioner of Police would accord approval on 11-11-1993 itself, and secondly, if for any reason he did not accord approval, there was no scope for the Police Inspector to lodge the complaint against the accused for commission of offences under the Act and in this process there would have been delay in filing the complaint against the accused for commission of offences under the other penal laws. If there was any delay in filing the complaint u/s 154 of the Code of Criminal Procedure, it would have given scope for the accused to contend that the delay in filing the complaint is fatal or that atleast weakens the case of the prosecution. Further, the delay in filing the complaint would have come in the way of prompt investigation of the alleged crimes as contemplated u/s 157 of the Code of Criminal Procedure. We took to this diversion for referring to these aspects, though it is not necessary to decide the points arising in this case, because by reading the averments in para 10 of the affidavit filed in support of Writ Petition No. 7594 of 1996 we gather an impression that the petitioner therein seems to labour under an impression that the sanctions dated 11-11-1993 and 15-11-1994 were "brought into existence, as if to cover the lapses and as if there was no sanction order u/s 20-A(1) of the Act as on 11-11-1993. The original records belie the impression of the petitioners.

14. The original records placed before us disclose that Sri Shyam Rao, Inspector of Police, East Zone, Team-I, C.C.S., submitted a letter bearing No. Cr/151/93/E-2/L-1/93, dated 11-11-1993 to the Commissioner of Police, Hyderabad seeking approval to add the provisions of the Act in the F.I.R. enclosing a copy of the complaint lodged by Sri T.V. Raju, Inspector of Police (S.I.T.) on the previous day. The Commissioner of Police made an endorsement on the said letter on

11-11-1993 itself to the following effect: "Seen. Permitted". Since a copy of the complaint lodged by Sri T.V. Raju on 10-11-1993 was appended to the letter, we have no reason to suppose that the Commissioner of Police read the letter only and not the copy of the complaint. The complaint taking it on its face value, clearly discloses commission of offences under the Act. If that is so, then what is the meaning of the endorsement of the Commissioner of Police in the letter? The endorsement "Seen" in the context of the case, meant that the Commissioner perused both the letter and the copy of the complaint. There was sufficient as well as relevant materials before the Commissioner to record his subjective satisfaction about the commission of offences under the Act and for according approval under Sub-section (1) of Section 20-A. This is borne out from the original records. Therefore, it cannot be said that the sanction accorded by him is invalid merely because he did not record reasons for according the approval. Approval u/s 20-A(1) not being a judicial or quasi judicial act, it need not be based on any legal evidence nor is it legally necessary to give reasons for according approval for lodging the complaint. After perusal of the original records, we are fully satisfied that the Commissioner of Police accorded approval after due application of mind and satisfying himself that the offences under the Act were committed.

15. Now, let us advert to the second contention of the senior counsel that the Commissioner of Police, Hyderabad is not the competent authority to accord prior approval u/s 20-A(1) of the Act.

16. Sub-section (1) of Section 20-A states that notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of an offence under the Act shall be recorded by the police without the prior approval of the District Superintendent of Police. There is no reference either to the Commissioner of Police or the Deputy Commissioner of Police or the Assistant Commissioner of Police or any other police officer functioning in the Organisation of Police of Hyderabad City. Constitution of the police force for the City of Hyderabad is required to be done in accordance with the orders of the Government issued from time to time as provided u/s 4 of the Hyderabad City Police Act, 1348-F. The police force for the City of Hyderabad is accordingly established. There is no police officer who is designated as District Superintendent of Police in the Organisation of Police for the City of Hyderabad. If so, deprived of any external aid for interpretation and construing strictly as well as literally, Sub-section (1) of Section 20-A does not apply to a case where an offence under the Act is recorded within the territory of the city of Hyderabad, and therefore in such case there is no necessity to obtain the prior approval for recording commission of any offence under the provisions of the Act. The question is whether such an interpretation can be placed? Perhaps, realising the consequence of such an interpretation Sri Kannabhiran, the learned senior Counsel did not go to the extent of contending that the District Superintendent of Police alone is the competent authority to accord sanction u/s 20-A(1) of the Act. His argument is that the concerned Deputy Commissioner of Police in the

Hyderabad city police force is the competent authority because he is equal in official status to that of the District Superintendent of Police and not the Commissioner of Police who is admittedly superior officer in official status. But, construction of a statute cannot rest on the concession made by the learned senior counsel, and the Court has to construe the same independently by applying both internal and external aids and keeping in view the purpose of the statute. We propose to do that. His further argument is that when a statute entrusts a power to a specified authority, that authority alone can exercise such power, and if any other authority, whether it is superior or inferior to such specified authority, exercises that power, then the action of such unspecified authority will be ultra vires of the statute and consequently a nullity. The learned senior Counsel placed reliance on the decision of the Supreme Court in *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, . In that case the District Superintendent of Police did not give any prior approval on his own to record any information about the commission of an offence under the Act. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under the Act. In that context the Supreme Court observed that that was a case of power conferred upon one authority being really exercised by another. The Supreme Court held that if a statutory authority has been vested with jurisdiction, such authority alone had to exercise that power according to its own discretion and if the discretion exercised under the direction or in compliance with some higher authority's instructions, then it will be a case of failure to exercise discretion altogether. The Supreme Court further observed that the discretion vested in the District Superintendent of Police in that case by Section 20-A(1) of the Act was not exercised by the District Superintendent of Police at all on his own but he acted on the basis of external dictation. The law laid down by the Supreme Court in *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, is only the reiteration of the law declared in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, . Under the Bombay Police Act, 1902 the Commissioner of Police was the specified authority to grant or refuse licence for construction of cinema theatres. In exercise of that power he granted permission to the respondent for construction of a cinema theatre in Greater Bombay. But later on, he cancelled the licence at the direction of the State Government and in that context the Supreme Court held that that was a clear case of acting under dictation and that the power conferred upon the Commissioner should be exercised independently on merits.

17. In this case, it is not the case of the petitioners that the Commissioner of Police acted under dictation of anybody. Secondly, the application of the rule that when a statute confers certain power on a specified authority or agency, such authority or agency alone can exercise such power validly, and if such power is exercised by an unspecified authority or agency or person, then such action would be ultra vires of the statute, will not be applicable to the facts of this case unless we find that the Commissioner of Police of the City of Hyderabad is not the authority to accord prior approval under Sub-section (1) of Section 20-A of

the Act.

18. In construing a statute, the apparent purpose of the statute should be borne in mind and the attempt of the Court will be to advance the purpose/ object of the statute, if such a course is available within the parameters of the principles governing the interpretation of statutes. Then, what is the apparent purpose of the Act? Does it intend to exclude the offences committed by the terrorists within the City of Hyderabad from the purview of the Act? The apparent purpose of the Act is to nab, prosecute and punish the anti-socials and terrorists to uphold the Rule of Law and restore peace to the public. Sub-section (2) of Section 1 of the Act states that the Act extends to the whole of India. It cannot be gainsaid that the area comprised in the territorial jurisdiction of the City of Hyderabad is very much a part of India. Therefore, it should be held that the Act extended to the City of Hyderabad also. This declaration itself will not answer the contention raised by the senior counsel. If the Act applies to the City of Hyderabad also, then next question who is the competent authority to accord sanction under Sub-section (1) of Section 20-A still survives for decision.

19. One of the guiding Rules for interpretation, namely, *casus omissus*, put it in the nut-shell, requires that a matter which should have been, but has not been provided for in a statute cannot be supplied by the Courts, as to do so will be legislation and not construction. As pointed out above in Sub-section (1) of Section 20-A there is no reference to any of the police officers functioning in the Organisation of the city police. Although that is the position, whenever offences under the Act were committed within the jurisdiction of the city police, the Police Commissioner acted as an authority to accord sanction both under Sub-sections (1) and (2) of Section 20-A, and it seems that the contention relating to the incompetence of the Commissioner of Police to accord sanction u/s 20-A(1) was not raised and decided by this Court though number of cases relating to the commission of offences under the Act within the jurisdiction of the city police were filed in this Court. But, we cannot rest our opinion on the question now raised only on the basis of the long-drawn practice.

20. While dealing with the first contention of the learned senior counsel, I have pointed out that the purpose of the two sanctions at two stages u/s 20-A is to secure a well-considered opinion of a superior authority in the Organisation of Police. In the Organisation of the Police in the State, the District Superintendent is the Head of the Police Department within the territory of a Revenue District in whom the powers of control and supervision of the police force, subject to the orders and instructions issued by the Director General of Police and the State Government from time to time, vest. Section 5 of the Hyderabad City Police Act, 1348-F reads:-

5. Appointment and removal of Police Commissioner:

The control and supervision of the aforesaid police force shall, subject to the orders of the Government, be vested in an officer who shall be called the

Commissioner of City Police, Hyderabad for the City of Hyderabad and who may, from time to time, be appointed and removed by the Government.

The provisions of Section 5 make it clear, that in the City of Hyderabad, the Commissioner of City Police is the Head of the Police force in whom the power of control and supervision of the police force vests.

21. The above discussion establishes that (i) the Act extends to the City of Hyderabad; (ii) the purpose of the Act is to nab, prosecute and punish the persons indulging in terrorist acts anywhere within the territory of India; (iii) the Commissioner of City Police is the head of the Police force in the City of Hyderabad. Notwithstanding the existence of these three situations, should we place a construction on the provisions of Sub-section (1) of Section 20-A of the Act so as to hold that the Commissioner of City Police is not the competent authority to accord prior approval by applying literal construction? We could borrow the aid of Section 17 of the General Clauses Act, 1897. The Act being a Central Act, the provisions of Section 17 of the General Clauses Act can be used as an aid for interpretation of the provisions of the Act.

22. Section 17 reads:

"Substitution of functionaries:

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applied also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

23. Section 17, in terms, does not fully answer the riddle confronted to us. Section 17 refers to substitution of functionaries. If a functionary is constituted of a person or a body of persons, Section 17 would apply, if that functionary is replaced or substituted or if that body of persons is reconstituted. It is not that prior to 22-5-1993 on which date Section 20-A of the Act came into force, the head of the City Police was the Superintendent of Police and subsequently the post of Superintendent of Police was upgraded into the post of Commissioner of Police and the powers of control and supervision were vested in the Commissioner of City Police. If that were to be the situation, Section 17 would have answered the question completely. However, we can gather a clue from the expression,"..... the officer at present executing the functions, or that of the officer by whom the functions are commonly executed." In the context of Sub-section (1) of Section 20-A empowering the District Superintendent of Police in whom the power of control and supervision vests within the concerned Revenue District to accord prior approval, if we ask ourselves as to who is the

corresponding officer in the City Police Force in whom the power of control and supervision vests and executes them, the obvious answer would be that it is the Commissioner of City Police, keeping in mind the provisions of Section 5 of the Hyderabad City Police Act and taking the territory of Hyderabad city as a Unit, though the Commissioner of City Police is a higher authority in official status to that of Superintendent of Police. There are number of Deputy Commissioners of Police in the City Police force. Moreover, the power of control and supervision vested in them u/s 6(2) of the Hyderabad City Police Act is subject to the orders of the Commissioner of Police. Therefore the Deputy Commissioner of Police cannot be equated with the District Superintendent of Police for the purpose of construing Section 20-A(1).

24. The Courts in certain peculiar facts-situation, have departed from applying the principle of "casus omissus" to achieve the purposes of the statutes. Devlin, L.J. in *Gladstone v. Bower* (1960) 3 All.E.R. 353 held that the Court will always allow the intention of a statute to override the defects of wordings in the statute. Exceptional construction, a departure from the principle of "casus omissus" was adopted by the Courts to modify or supply the language in the statutes to meet the intention of the statutes. Maxwell on the Interpretation of Statutes (12th Edition) at page 228 states:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

25. Denning, L.J. in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All.E.R. 155 said:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written words so as to give "force and life" to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must" men do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

In a subsequent case in *Magor & St. Mellons Rural District Council v. Newport*

Corporation (1950) 2 All.E.R. 1226 Denning, L.J. observed:

"We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

26. These observations of Denning, L.J. have been cited with approval by the Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, ; *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, ; *Union of India v. Sankalchand*, AIR 1977 SC 232; *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . Krishna Iyer J., who delivered the leading majority judgment in *Bangalore Water Supply and Sewerage Board v. Rajappa*¹⁰ referred to the passage extracted above from the judgment of Denning, L.J., in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All.E.R. 155 with approbation.

27. Craies on Statute Law, 7th Edition at page 109 states:

"....; where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words."

The Supreme Court in *Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others*, observed that even a departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless and that Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective.

28. In the light of the principles governing "exceptional construction", to borrow the expression of Maxwell, and in order to see that the Act does not become ineffective in the City of Hyderabad, and to effectuate the apparent intention of the Parliament that the Act shall extend to the whole of India, the words, "prior approval of the District Superintendent of Police" occurring in Sub-section (1) of Section 20-A of the Act should, by implication, be construed to mean "prior approval of the District Superintendent of Police, or as the case may be, the Commissioner of Police", and we accordingly construe.

29. We have other weighty reason to construe so. u/s 20-A(2), the Commissioner of Police is one of the authorities to accord sanction and if we hold that Section 20-A(1) does not specify any authority to accord sanction as regards the offences committed under the Act in the City of Hyderabad, then the conferment of power on the Commissioner of Police u/s 20-A(2) will be meaningless and otiose. There is no post of Commissioner of Police outside the Corporations' areas. Statutory language should not be read in isolation, but in its context. It is well-established principle of construction that the Courts while construing a statute should endeavour to give a meaning and content to every word used in the statute unless it becomes absolutely necessary to reject the

surplus words to make the statute effective and workable, as held by the Privy Council in *Salmon v. Duncombe* (1986) AC 627 It is so because, it is always assumed that the Parliament never uses the language without meaning and unnecessarily. Having construed the provisions of Sub-section (1) of Section 20-A of the Act as indicated above, it should be held that the Commissioner of Police, Hyderabad is the competent authority to accord prior approval for recording the commission of offences under the Act within the area coming under his territorial jurisdiction.

30. The third contention of Sri K.G. Kannabhiran, the learned senior counsel is not acceptable to us. It is true that the Fourth Metropolitan Sessions Judge to whom the bail petitions Crl.M.P. No. 368/94 and Crl.M.P. No. 502/94 were made over by the learned Metropolitan Sessions Judge, Hyderabad in his orders has observed that "though the provisions of the TADA Act are applicable, there is no prior sanction of the Commissioner of Police" and that "the endorsement of the Commissioner of Police, "Seen. Permitted" dated 11-11-1993 does not amount to prior approval for want of application of mind". The order in Crl.M.P. No. 368/94 is dated 11-3-1994 whereas the order in Crl.M.P. No. 502/94 is dated 13-4-1994. These interlocutory orders were passed before the Commissioner of Police accorded sanction u/s 20-A(2) and before the charge-sheet was filed on 28-11-1994. The observations of the learned Fourth Metropolitan Sessions Judge in his order dated 11-3-1994 in Crl.M.P. No. 368/94, if we may say so, are based on the misconceived assumption that there is no prior approval of the Commissioner of Police u/s 20-A(1) of the Act. Similarly, the observation of the learned Fourth Metropolitan Sessions Judge in his order dated, 13-4-1994 in Crl.M.P.No. 502/94 is based on wrong application of law relating to the essentials of the sanction order u/s 20-A(1) of the Act. We have recorded the finding supra that the approval accorded by the Commissioner of Police u/s 20-A(1) of the Act on 11-11-1993 is valid after perusing the original records. Therefore, we are of the considered opinion that those observations of the learned Fourth Metropolitan Sessions Judge in interlocutory orders based on factual misconception shall not come in the way of the Constitutional Court recording its independent findings on the basis of the original records and merits while exercising its extraordinary original jurisdiction under Article 226 of the Constitution. To hold it otherwise will make the Article 226 power subservient to and/or controlled or conditioned by the findings/orders/judgments of the lower Tribunals and the Courts and such an interpretation cannot be placed in order to uphold the sanctity, superiority and efficacy of the powers of the Constitutional Courts under Article 226.

31. Be that as it may, the contention of the learned senior Counsel does not merit acceptance even otherwise. The learned Government Pleader for Home contended that the two orders passed by the learned Fourth Metropolitan Sessions Judge are interlocutory orders and there is no finality to such orders and therefore the observations contained therein could not be given the status of a final order or a judgment so as to bind the parties. A two-Judge Bench of the Supreme Court in *Usmanbhai Dawoodbhai Memon and Others Vs. State of*

Gujarat, while dealing with an argument that an order passed by a Designated Court for grant or refusal of bail is not an "interlocutory Order 7 within the meaning of Section 19(1) of the Act and therefore an appeal lies, held as under:

"It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time."

32. A Division Bench of the Madras High Court in *In Re: Balasundara Pavalar*, while answering the question, referred to it by Somasundaram, J. whether the Court has jurisdiction to grant bail on a second application, an earlier application for the same relief had been refused, held that-

" An order on a bail application is nothing more than an interlocutory and tentative expression of the conclusion as to whether a person should be set at large pending trial, or disposal of his appeal, and cannot be termed a judgment."

Further the Division Bench held that

"An order on a bail application does not finally determine the guilt or innocence of a person accused or convicted of an offence, and all that such an order postulates is that pending an enquiry or trial, and in the case of a convicted person, pending an appeal by him, it is not absolutely necessary that his liberty should be curtailed."

33. The words "final Order 7 have not been defined either in the General Clauses Act or in the Constitution. The Privy Council in *"Firm Ramchand Manjimal v. Firm Goverdhandas Vishandas Rathanchand* AIR 1920 P.C. 86 is held that an order refusing stay u/s 19 of the Indian Arbitration Act of 1881 was not a final order u/s 109 of the CPC as it did not finally dispose of the rights of the parties.

34. In *Mohammad Amin Brothers Ltd. v. Dominion of India* AIR 1950 SC 77 in interpreting the expression "final order" occurring in Section 205 of the Government of India Act, 1935, the Federal Court held that the expression "final order" meant an order which finally determined the points in dispute and brought the case to an end. (emphasis is supplied by us). Even the fact that the decision was on an important or a vital issue in the case was by itself held to be not sufficient to constitute it a "final order".

35. In AIR 1939 43 (Federal Court) " the Federal Court again held that an order directing rehearing of a criminal appeal could not be treated as a final order. The Madras High Court in another case in *In Re. Nijam Mohideen*, AIR 1960 Mad. 76 held that an order regarding bail was not a final order. Similar view was also expressed by the Calcutta High Court in *Sawal Ram Goenka and Another Vs. The State*, . A learned single Judge of the Kerala High Court in *K.P. Vasu and Others Vs. The State*, after referring to the afore-mentioned decisions of the Privy Council and the Federal Court held that an order refusing bail is not a final order within the contemplation of Article 134(1) of the Constitution. We are in respectful agreement with the view taken by the Madras, Calcutta and Kerala

High Courts and we are bound by the decisions of the Privy Council, the Federal Court and the Supreme Court.

36. It is well settled principle of law that any finding recorded by the Courts while dealing with interlocutory applications, whether in criminal law jurisdiction or civil law jurisdiction, will not have finality unless such finding finally and conclusively disposes of an issue. The essential requirement of a "final order" is that it should terminate the proceedings one way or the other. The two orders which are pressed into service by the learned senior Counsel are regarding bail. It is hardly necessary to state that it is open to an accused to file a series of applications for bail at different stages and in different Courts; bail may be granted or refused. Bail already granted may also be modified or cancelled. The effect of granting bail is not to set an accused free but only to release him from the custody of law. Grant or refusal of bail cannot affect determination of the question of guilty or innocence of the accused and it does not terminate the case. It also does not decide a point for decision in the case.

37. However, the learned senior Counsel would contend that the two orders made by the learned Fourth Metropolitan Sessions Judge on 11-3-1994 and 13-4-1994 in Crl.M.P. No. 368/94 and Crl.M.P. No. 502/94 respectively have the effect of discharging the accused from the charges framed under the Act and if that is so, the principle of "issue estoppel" is attracted and the prosecution is estopped from trying the accused on the same charges under the Act. The learned senior Counsel places reliance on the decision of the Constitution Bench of the Supreme Court in *Manipur Administration Vs. Thokchom, Bira Singh*, and also another decision of the Supreme Court in *Pritam Singh and Another Vs. The State of Punjab*, . I am of the considered opinion that the submission of the learned senior counsel is not well-founded and the aforementioned decisions of the Supreme Court are in no way helpful to the petitioners. *Pritam Singh's* case was based wholly on the decision of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya* 1950 AC 458. In *Sambasivam's* case the appellant- an Indian Tamil was travelling on foot in the company of two Chinese. They met a party of three Malays. A fight ensued between the two groups in the course of which one of the Chinese was killed. The Malays alleged that they had been fired on by the Chinese and that the appellant had with him a revolver which he had held out and pointed at one of them. In connection with this incident the appellant was charged with carrying a fire-arm and being in possession of ten rounds of ammunition. Two charges were framed against the appellant (1) of carrying a fire-arm, and (2) of being in possession of ammunition. He was acquitted of the second charge of being in possession of ammunition and that acquittal became final. He was, later convicted of the offence of carrying a firearm and he preferred an appeal to the Privy Council. The Privy Council allowed the appeal on the ground that the evidence of the prosecution witnesses who spoke of the revolver carried by the appellant being loaded with bullets and of the appellant carrying four more bullets in a bag was inadmissible in law. Lord Mac Dermott speaking for the Board said:

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."

The application of the aforementioned principle enunciated by the Privy Council by the Supreme Court in Pritam Singh's case (22 supra) related to the use of the recovery of a revolver from the accused to sustain his conviction of the offence of murder. Previous to the prosecution for an offence u/s 302 Indian Penal Code, the appellant Pritam Singh had been tried before the Additional Sessions Judge, Faridpur u/s 19(1) of the Indian Arms Act of an offence for possession of that revolver and had been acquitted. The Supreme Court, after extracting the observations from the Judgment of Lord Mac Dermott, pointed out that the evidence relating to the recovery of the revolver from the accused-appellant should have been excluded.

38. The Supreme Court in Manipir Administration case (21 supra) after referring to Pritam Singh's case (22 supra) said:

"We have pointed out earlier, issue estoppel does not prevent the trial of any offence as does *autre fois acquit* but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction."

The similar view was reiterated by the Supreme Court in Piara Singh Vs. The State of Punjab, and in Ravinder Singh Vs. State of Haryana, .

39. What emerges from the decisions of the Supreme Court in Pritam Singh's case (22 supra) and Mainpur Administration (21 supra) and the decision of the Privy Council in Sambasivam's case (23 supra) is that the principle of "issue estoppel" is made applicable only to those cases where a person who is acquitted of an offence by a competent Court after a lawful trial is sought to be tried again for the same offence, and the principle of "issue estoppel" does not prevent the trial of an offence as does: *autre fois acquit* but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction.

40. In the first place, the grant of bail to an accused cannot be equated with the discharge of such accused. Secondly, even assuming but not approving that the orders made by the learned Fourth Metropolitan Sessions Judge in two interlocutory bail petitions have the effect of acquitting the accused from the charges framed under the Act, even then the principle of "issue estoppel" cannot be applied because it is not a discharge after lawful trial, within the meaning of that term. In the present case charge-sheet was filed on 28-11-1994 and the two interlocutory orders in bail petitions were passed anterior to 28-11-1994.

Therefore it is beyond our comprehension to contemplate a "lawful trial", to borrow the expression used by Lord Mac Dermott in Sambasivam's case (23 supra) by the Fourth Metropolitan Sessions Judge even before the charge-sheet was filed. Therefore looking from any angle the third contention of the learned counsel does not merit our acceptance.

41. We find force in the fourth contention of the learned senior counsel. When arguments were heard in these petitions on 15-7-1996, the learned Government Pleader for Home meeting the contention that there was no proper previous sanction u/s 20-A(2) of the Act also, drew our attention to a copy of the order dated 15-11-1994 made by the Commissioner of Police-cum-Addl. District Magistrate, Hyderabad City, available at page 108 of the records of S.C. No. 595/94, and he could not produce the original of the same. Therefore, the Court directed the learned Government Pleader for Home to produce the original order dated 15-11-1994. Accordingly, at the time of further hearing on 26-7-1996 the learned Government Pleader produced the original order dated 15-11-1994 made by the Commissioner of Police under Sub-section (2) of Section 20-A of the Act. The order is extracted below:

"Proceedings of the Commissioner of Police-cum-Addl. District Magistrate. Hyderabad City.

Present: Sri H.J. Dora, IPS.

No. L O/M6/4419/94 Dated 15-11-1994 Ref. No. 1. Cr. No. I51/E-Z/T-I/93-94, dated 10-6-94.

2. G.O.Ms. No. 111, dated 14-2-79.

3. Section 39 of Indian Arms Act.

4. Section 20-A II of T.A.D.A. Act.

ORDER:

The Inspector of Police, East Zone Team I CCS. D.D. Hyderabad, placed before me material regarding Cr.No. I51/93/Under Section 120B, 124A, 153A, 153B IPC, Sections 3 and 5 of E.S. Act, Sections 25 & 27 of LA. Act r/w. (Sections) 436, 392, 307 IPC, Sections 3(3), 3(1), 4, 3, 5 & 6 of T.A.D.A. Act of Inspector, East Zone Team I, CCS. D.D. Hyderabad and sought permission to prosecute the following accused in the above mentioned case:-

S/Sri.

1. Gowher Ameen Meer s/o Mohd. Ameer Meer age 24 years r/o HiNo. 1-9-648, Vidyanagar, Hyderabad N/o Naseema Bagh, Srinagar, Kashmeer.

2. Nisar Ahmed Bhat @ Mustaq Bhat s/o Ali Mohd. Bhat age 33 years N/o Srinagar, Jammu Kashmeer R/o Room No. 215 of New Asian Lodge, Nampally.

3. Liaquath Khan s/o Sujath Khan age 20 years R/o H.No. 11-5-495 Red Hills,

Hyderabad.

4. Mohd. Shafqath Ali Siddiqui @ Shoukath s/o Mohd. Mobin Siddiqui age 45 years, R/o 8-N/2 Thopsiya Second Lane, Calcutta.

5. Shaik Mehboob Ali s/o Gulam Mustafa age 61 years r/o H.No. 16-2-840/2/2, Ameen Colony, Saidabad.

6. Farhat Khan s/o Amanullah Khan age 22 years R/o H.No. 16-3-527 Chanchalguda.

7. Lal Mohd @ Lal Babu @ Kakky s/o Mohd. Kaleem age 28 years R/o Mohalla Surkhikal P.O. Khanjar Pur District, Baghalpur Bihar State.

The Inspector of Police, East Zone Team I, C.C.S. D.D. Hyderabad has reported that during the course of investigation, the above accused found in possession of Arms and Ammunitions without any valid licence and they created terrorism with bombs and they committed offence punishable u/s 3 & 5 of Explosive Substance Act and Sections 3 & 4 of T.A.D.A. Act.

After perusing the entire file, I am satisfied that above accused committed an offence punishable u/s 27 of Indian Arms Act and Section 5 of Explosive Substance Act and Sections 3 & 5 of T.A.D.A. Act

In exercise of the powers conferred upon me vide reference 2nd, 3rd and 4th cited, I hereby accord permission to the Inspector of Police, East Zone Team I C.C.S. D.D. Hyderabad to prosecute the above accused in the above mentioned crime.

H.J. Dora, Commissioner of Police-cum- Addl. Dist. Magistrate, Hyd. City

To

The Inspector of Police, East Zone Team I, C.C.S. D.D. Copy to the Asst. Commnr. of Police, D.D. East

Zone for information. " the Dy. Commnr. of Police, D.D. for information.

//Forwarded: By Order// XX XX Jr. Administrative Officer".

42. From this order it is clear that the Commissioner of Police has accorded previous sanction to prosecute seven persons listed therein under the provisions of the Act as well as certain other provisions of the Indian Arms Act and Explosive Substances Act after recording his subjective satisfaction. The list of seven persons named therein does not include the name of the petitioner in W.P. No. 7594/96 who is arrayed as Accused No. 8 in S.C. No. 595/94 on the file of the Designated Court. In that view of the matter it should be held that there is no sanction to prosecute Md. Salauddin, the petitioner in W.P. No. 7594/96. Therefore it should be held that taking cognizance of the offences under the provisions of the Act against Md. Salauddin, should be held to be one without jurisdiction and we hold accordingly.

43. The resultant position is that there is proper sanction by the Commissioner of Police both under Sub-sections (1) and (2) of Section 20-A as regards the accused 1 to 7 are concerned. There is also proper sanction under Sub-section (1) of Section 20-A of the Act as regards the Accused No. 8 is concerned, but there is no sanction at all under Sub-section (2) of Section 20-A as regards the accused No. 8 is concerned. Therefore, it has become necessary to declare that the action of the Designated Court in taking cognizance of offences under the provisions of the Act against the accused No. 8 is one without jurisdiction and a nullity. In other words W.P. No. 7594/96 is entitled to be allowed whereas W.P. No. 7700/96 is liable to be dismissed.

44. Before we conclude, we reluctantly place on record a submission made by Sri K.G. Kannabhiran, the learned senior counsel only for the purpose that the learned senior counsel should not think that his submission made on 5-8-1996 went unnoticed by the Court. Arguments were concluded in these cases on 26-7-1996 and judgment was reserved. When we were in the process of decision-making, at the behest of the learned senior Counsel, the Bench was again constituted at 4 p.m. on 5-8-1996 to hear further submissions of the learned counsel. We accordingly heard the learned senior counsel. The learned senior counsel at the time of hearing produced before us page 3 of the Asian Age dated 2nd August, 1996 unsupported by any affidavit or memo and contended that "Ikhwan-ul-Muslimeen" is a pro-government militant group whereas in the complaint filed by Sri T.V. Raju, Inspector of Police (S.I.T.) and in the counters filed by the State in these writ petitions, the said group is wrongly described as a Muslim fundamental organisation; if that group is a pro-Government militant group, its activities can never be described as "terrorist acts" within the meaning of that expression under the Act and therefore the very foundation of the charge is misconceived. This submission is not well-founded. At page 3 of The Asian Age dated 2 August 1996 a photograph of a press conference held by Chiefs of Ikhwan-ul-Muslimeen and another pro-Government group is published. Immediately below the said photograph there is a caption which reads "Common Cause: Kuka Parrey, Chief of the Pro-Government militant group Ikhwan-ul-Muslimeen and Hilal Haider, Chief of another pro-Government group, address a press conference in Srinagar on Tuesday. A photograph by H.U. Naqash". At the right hand column of that photograph there is a write up under the caption "Editor abducted in Kashmir" supposed to be filed by a correspondent of the news paper. In the entire body of that write-up there is no mention of Ikhwan-ul-Muslimeen or Iqwanul-Muslimeen. There is a reference to one Jammu and Kashmir Ikhwan.

45. We do not find any merit in the submission of the learned counsel for many reasons. Firstly, there is nothing in the report to indicate that Ikhwan-ul-Muslimeen is also known as Iqwanul-Muslimeen. In the complaint filed by Sri T.V. Raju, Inspector of Police, (S.I.T.), the organisation is described as Iqwanul-Muslimeen. Similarly the counters also describe the organisation as Iqwanul-Muslimeen. Secondly, the press report cannot be looked into as a piece of

evidence for any purpose without corroborating evidence. Thirdly, the way it was produced before the Court on 5-8-1996 was totally opposed to the procedural requirements. Fourthly and more importantly it can be noted that a group of individuals which was pro-Government at a particular point of time and place might turn out to be anti-Government group at a subsequent point of time and place. Fifthly, a group may be pro-Government, nevertheless it is possible that some members of such group may be anti-Government. We do not wish to exhaust the reasons for not accepting the argument inasmuch as we do not find any element of relevancy in the press report which could aid us to solve the task of decision-making. Therefore, looking from any angle the press report now placed before us is in no way helpful to the petitioners to contend that the very foundation for initiating the proceedings was misconceived.

46. In the result and for the foregoing reasons we made the following

Common Order

(i) We declare that the act of the Designated Court in taking cognizance of the offences under the Act against the petitioner in W.P. No. 7594/96 (Accused No. 8 in S.C. No. 595/94) is invalid and without jurisdiction for want of previous sanction u/s 20-A(2) of the Act and the petitioner (Accused No. 8) shall be discharged from all the charges framed against him under the provisions of the Act. Writ Petition No. 7594/96 is accordingly allowed;

(ii) W.P.No. 7700/96 is dismissed.

(iii) In the facts and circumstances of these cases, the parties are directed to bear their own costs.