

(1993) 04 CAL CK 0047
In the Calcutta High Court
Case No : F.M.A.T. No. 225 of 1993

Muhammad Raisuddin

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 311(2)

Income Tax Act, 1961 — Section 296

Unlawful Activities (Prevention) Act, 1967 — Section 3, 3(1), 3(3), 4

Citation : AIR 1993 Cal 262

Hon'ble Judges : A.M. Bhattacharjee, C.J.; Nisith Kumar Batabyal, J

Bench : Division Bench

Advocate : Mr. Arun Prokash Chatterjee and Mr. Haseen Shahidullah Ashrafi, for the Appellant; Mr. Dipankar Gupta, Solicitor General, Mr. Gopal Law, Mr. S.K. Kundu, Mrs. Arati Dutta, Mr. S.C. Ukil and Mrs. Chhabi Roy (Das), for the Respondent

Judgement

A.M. Bhattacharjee, C.J.—By a Notification issued under the provisions of S. 3 of the Unlawful Activities (Prevention) Act, 1967 Jammāt-e-Islami Hind (hereinafter referred to as JEIH) has been declared to be an Unlawful Association and it has been further directed that the Notification shall have effect from the date of its publication in the Official Gazette being 10th December, 1992. The petitioner, professing to be the President of JEIH, has challenged the said Notification by a petition under Art. 226 of the Constitution and the learned trial Judge has directed the parties concerned to file affidavits, but has, by a speaking order, declined to issue any interlocutory interdiction. The petitioner having felt aggrieved by the non-issuance of any interlocutory order by the learned trial Judge has moved us in appeal.

2. Mr. Arun Prakash Chatterjee, the learned Senior Counsel, appearing for the petitioner/appellant, has made it clear that since the writ petition is awaiting disposal by the trial Court, he does not, in this appeal before us, challenge the legality, propriety or otherwise of the Notification declaring JEIH to be an

Unlawful Association," but has confined his argument only against the legality of the Notification so far as it directs its immediate operation under S. 3(3) of the aforesaid Act before the Notification is confirmed under S. 4 of the Act.

3. The impugned Notification is reproduced hereinbelow :--

"NOTIFICATION New Delhi, the 10th December, 1992.

S.O. 898(E)-- Whereas Shri Sirajul Hasan, Amir of the Jammat-e-Islami Hind (hereinafter referred to as JEIH) declared in a meeting at Delhi held on the 27th May, 1990, that the separation of Kashmir from India was inevitable;

And whereas Shri Abdul Aziz, Naib-Amir of JEIH addressing a meeting at Malerkotla on the 1st August, 1991, observed that the Government of India should hold plebiscite on Kashmir ;

And whereas JEIH has been declaring and questioning the sovereignty and territorial integrity of India;

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-sec. (1) of S. 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Jammat-e-Islami Hind to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-sec. (3) of that section, that this notification shall, subject to any order that may be made under S. 4 of the said Act, have effect from the date of its publication in the Official Gazette.

(No. II/ 14034/2(1)/92-IS(DV)/ T.N. SRIVASTAVA, Jt. Secy."

4. It is not disputed that the aforesaid Notification under S. 3 of the Act has not yet been confirmed by the Tribunal under S. 4. S. 3(3) of the Act reads as hereunder :

"(3) No such notification shall have effect until the Tribunal has, by an order made under S. 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 S. 4, have effect from the date of its publication in the Official Gazette."

5. The provisions are clear. While the body of the sub-section mandates that no Notification shall have effect until the Tribunal has confirmed the declaration made therein under S. 4, the Proviso provides that immediate and pre-

confirmation effect may be given if the Central Government "for reasons to be stated in writing" so directs on being of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful "with immediate effect". Mr. Chatterjee has urged that in the impugned Notification, as quoted hereinabove, no reason has been stated for the opinion of the Central Government that immediate effect of the Notification was necessary on any ground, even though reasons may have been stated for declaring the association unlawful.

6. Not that the reasons must always be incorporated in the order itself, though it would be very much advisable to do so. It may be permissible to state or record the reasons separately, but the order would be incomplete unless either reasons are incorporated therein or are served separately along with the order on the affected party. As non-communicated order is no order, a non-communicated order is also no order unless the relevant law expressly dispenses with communication to the party aggrieved. This is obviously clear on principle. But the decision of the five-Judge Bench of the Supreme Court in *C.B. Gautam Vs. Union of India and Others*, is also a clear authority for such proposition arrived at on a construction of the analogous provisions of S. 269-UD of the Income Tax Act:

7. The learned Solicitor General of India, Mr. Dipankar Gupta, appearing for the Union of India has, however, urged relying on the decision of a three-Bench Judge of the Supreme Court in *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, that though the reasons have got to be stated, the same need not be communicated to the party affected. The provisions of the second proviso of Art. 311(2), which fell for consideration in *Satyavir's* case (*supra*) contain the expression "recorded in writing", while the expression in S. 3(3) of the present Act in question is "for reasons to be stated in writing". We are inclined to think that the very expression "stated" would convey the idea of being stated to the person concerned which may not be implied in the expression "recorded". Further the decision in *C. B. Gautam* (*supra*) is of a much large Bench than that of in *Satyavir* (*supra*) and if it was necessary for us to decide the question we would have had to be governed by the decision in *C. B. Gautam*.

8. But we, however, need not decide the question whether an order would be bad, incomplete or ineffective unless the reasons therefore are communicated to the party; affected as we are inclined to hold, on a proper and meaningful reading of the impugned Notification, that reasons for bringing the Notification into immediate operation are also stated therein. A perusal of the impugned Notification has convinced us that the reasons which have been specified for declaring JEIH as unlawful association are also the reasons for which the Central Government has thought it fit to bring the impugned Notification into immediate effect. The expression "Now, Therefore" in the last paragraph of the Notification amply demonstrates that the reasons stated in the preceding paragraphs are reasons not only for declaring JEIH as an unlawful association but are also reasons for bringing the Notification into: immediate operation. It is true that the

reasons for bringing the impugned Notification into immediate operation have not been catalogued separately in a formal frame. But it is substance that counts and must take precedence over a formal chanting. This was precisely the argument advanced by Mr. Ukil, the learned Government Pleader, appearing for the State and also the argument advanced by the learned Solicitor General in addition to his other argument that reasons were not required to be communicated.

9. Learned Solicitor General has drawn our attention to a three-Bench decision of the Patna High Court in Ahmad AH Aktar v. Union of India, C.W.J.C. No. 477 of 1993 disposed of on 2nd March, 1993 and also to a Division Bench decision of the Kerala High Court in T. A. Abdul Nazar v. State of Kerala, O.P. No. 17028 of 1992-B decided on 19th January, 1993.

10. We have not, and this we say with respect, been able to derive much assistance from the Patna decision on the question before us. The decision is no doubt in favour of the respondents but the reasons are not clearly discernible. The Kerala decision is also very much in favour of the respondents where a similar Notification under the Unlawful Activities (Prevention) Act, 1967 in respect of one "Islamic Sevak Sangha", brought into immediate operation pending confirmation thereof under S. 4 of the Act, was upheld. The relevant Notification in the Kerala case was. also couched in similar frame and fashion wherein only one set of reasons specified both for declaring the association unlawful under S. 3(1) of the Act and also for bringing the same into immediate operation under S. 3(3) of the Act without stating the reasons again separately for bringing the same into immediate operation. We respectfully agree with the Kerala decision.

11. Mr. Chatterjee has, however, strenuously urged that the fundamental right under Art. 19(1)(c) of the Constitution of an association or union must not be interfered with by such a unilateral fiat of the Central Government before its legality is tested by or before a Judicial authority. As already noted, Mr. Chatterjee has not, at this stage before us, challenged the legality or propriety of the Notification declaring JEIH as unlawful since the main writ petition challenging the said Notification is awaiting disposal in the trial Court. In view of such stand taken by Mr. Chatterjee for the present, we also do not express any opinion whatsoever as to the merits of the writ petition and leave all these questions open for proper decision by the trial Court. At this stage, therefore, for the purpose of this appeal before us, we have nothing before us to hold that the Notification declaring JEIH as unlawful or otherwise is illegal or invalid. Once it is held, though only for the purpose of the present appeal, that the security and the integrity of India are threatened or questioned, no individual fundamental right may be allowed to show its head and may have to duck for the time being. All that I know, that is the attitude which the English Courts have consistently taken whenever the security or safety of their country was in jeopardy. We, however, hasten to put it on record that nothing stated by us herein shall be construed as any expression on our part on the merits of the writ petition and we make it

further clear that the petitioner shall be entitled to challenge the legality and propriety of the impugned Notification declaring JEIH as unlawful in the trial Court on all such grounds as may be available to it under the law.

12. For the reasons stated above, we find no reason to interfere with the impugned order and we, therefore, dismiss the appeal and obviously without any order as to costs.

Nisith Kumar Batabyal, J.

13. I agree.

14. Appeal dismissed.