

(2014) 04 MAN CK 0008
In the Manipur High Court
Case No : Writ Appeal No. 30 of 2013

The State of Manipur

APPELLANT

Vs

Potsangbam Maniratan

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Arms Act, 1959 — Section 25(1-B)
Constitution of India, 1950 — Article 163(1), 163(3), 226, 311, 311(2)
Penal Code, 1860 (IPC) — Section 121, 121-A, 212, 225-B
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (2014) LabIC 2439

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.; N. Kotiswar Singh, J

Bench : Division Bench

Advocate : R.S. Reisang, Sr. Govt. Advocate, Advocate for the Appellant; M. Hemchandra, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—The writ petitioner, respondent herein, being aggrieved by his dismissal from service by the State Government by invoking the provisions of clause (c) to the second proviso to Clause (2) of Article 311 of the Constitution vide order dated 13.6.2012, had successfully challenged the impugned dismissal order in the writ petition, W.P. (C) No. 605 of 2012, which was allowed by the learned single Judge by his judgment and order dated 22.02.2013. The State authority, being aggrieved by the judgment and order of the learned single Judge, has preferred the present writ appeal. The relevant facts in brief as stated by the writ petitioner may be stated as follows.

The petitioner, on the recommendation of a Class-II DPC, was appointed to the post of Assistant Inspector of Police on 26.02.2007. The petitioner joined service after his antecedents were scrutinized and verified by the authorities. On completion of his training, the petitioner served as Assistant Inspector of Police (ASI). While in service, because of his meritorious and gallantry acts, the petitioner was conferred many awards. The petitioner was awarded Chief

Minister's Police Medal for Gallantry and Outstanding Devotion to Duty twice in 2009 and 2011, Police Medal for Gallantry by the President of India in 2011, apart from various appreciation certificates from the Director General of Police, Border Security Force and other authorities.

Subsequently, after three years of exemplary service, the petitioner was promoted to the post of Sub-Inspector of Police on the recommendation of the DPC held on 28.9.2010 and since then, he had been discharging his duty diligently and without any complaint from any quarter. In course of service, he was detailed for various counter-terrorism operations and because of his gallantry acts, he was given various awards. In one such counter-terrorism operation conducted in March, 2012, he received a bullet injury on his right leg for which he had undergone medical treatment. To his shock and surprise, while recuperating from his bullet injury, the petitioner was served with the dismissal order in March, 2012.

2. The main contentions of the petitioner in challenging the impugned dismissal order before the learned single Judge were that the petitioner's antecedents had been scrutinized and verified by the authorities before he was allowed to join service as an Assistant Inspector of Police and there was not the slightest doubt and imputation on his character during his service career after being appointed in 2007 till he was unceremoniously dismissed from service 5 years later. It has been contended that, on the contrary, the petitioner had been discharging his duty to the best of his abilities and in fact because of the exemplary service rendered by him, the petitioner had been awarded many awards and as such, dismissing the petitioner by invoking the provisions of clause (c) to the second proviso to Clause (2) of Article 311 of the Constitution by not holding any inquiry is patently illegal in absence of any allegation against him in course of his service.

3. The petitioner also contended that the petitioner has been subjected to hostile and discriminatory treatment inasmuch as in respect of other police officers, namely, Inspector L. Sushil Singh of CID (SB) and ASI Ch. Premjit Singh against whom certain FIR cases have been registered, they were merely suspended, while picking the petitioner for dismissal from service.

4. The State respondents contested the writ petition by filing affidavit-in-opposition. In the said affidavit-in-opposition, the State authorities have given a detailed account of the association of the petitioner since the year 1998 with a banned militant organization in Manipur, namely, United National Liberation Front (UNLF). For the sake of brevity, only certain parts of the affidavit-in-opposition are mentioned herein. According to the State respondents, UNLF is one of the most powerful Meitei extremist organizations operating in the State which was established in 1964 and declared as unlawful by the Central Government in the year 1987 and it continues to be an unlawful organization. The avowed aim of the said organization is to form an independent State. To achieve their goal, they had been indulging in various illegal and violent activities. The petitioner after joining the said banned organization was said to have undergone military training

in Burma in 1998 and visited various other places in Manipur and outside the State of Manipur in connection with the activities of the said organization along with other activists of the said organization. Subsequently, the petitioner again underwent military training in the year 1999 along with other members of the said organization and on completion of his military training, was allotted No. 919 of the Manipur Peoples Army (MPA). However, sometime in February, 2000, the petitioner was permitted to go home for medical treatment as he was suffering from chest and knee pain. Later on, some time in the month of May, 2000 the petitioner was arrested by the police in connection with FIR No. 149 (5) 2000 SJM PS u/S. 10/13 UA (P) Act. Though the police had submitted the Final Report to the Court, the same is yet to be accepted by the Court. He was subsequently released on 13.9.2000 but he continued to be in association with the banned organization. Again, on 8.8.2001, the petitioner was arrested by the Assam Rifles from his home and he was handed over to Singjamei Police station and FIR No. 224 (8) 2001 SJM PS u/S. 121/121-A/212/225-B IPC, 13 UA(P) Act, 25(1-B) Arms Act and 6(IA) IWT Act was registered. According to the State respondents, the charge-sheet is likely to be submitted in connection with the said case. After the petitioner was released from the jail in connection with the said case, he was again arrested in 2003 by the Assam Rifles from his home and handed over to Singjamei Police Station and FIR No. 236(9)2003 SJM PS u/S. 10/13 UA(P) Act was registered. Even though the FR had been submitted to the Court in connection with the said case, the same is yet to be accepted by the Court.

5. It has been submitted by the State respondents that after the various prejudicial activities of the petitioner came to the knowledge of the authorities, the Director General of Police, Manipur vide letter dated 28.4.2012 proposed to the Chief Secretary, Govt. of Manipur for dismissing the petitioner from service under clause (c) to the second proviso of Clause (2) Article 311 on the ground of involvement in subversive activities by preparing an exhaustive dossier of his active involvement in the organizational set up and activities of UNLF prepared by the State CID (SB) and for consideration by the Committee of Advisors constituted for such purposes for making their recommendation to the State Government.

After the process was initiated by the Director General of Police, Manipur as stated above, the Committee of Advisors consisting of Chief Secretary, Govt. of Manipur, Director General of Police, Manipur, the Principal Secretary (Home), Govt. of Manipur, the Addl. DP, Govt. of Manipur (representing Secretary (DP), Secretary (Law), Govt. of Manipur and Assistant Director, SIB, Manipur, Imphal (representing Joint Director (SIB) examined the proposal submitted by the Home Department in its meeting held on 03.5.2012. The Committee, after due consideration and examination of records/dossiers placed before it, came to the conclusion that the petitioner willingly indulged in the activities of an organization declared unlawful which were prejudicial to the security of the State and endangered human lives and concealed facts at the time of recruitment. The Committee observed that it was considered not advisable to disclose the

allegations against him or call upon his reply thereto and accordingly, recommended the dismissal of the petitioner from service under clause (c) of the second proviso to Clause (2) of Article 311 of the Constitution of India as it was considered not expedient to hold Departmental Enquiry in the interest of the State as his prejudicial activities were affecting security of the State. The recommendation of the Committee was approved by the Home Minister as well as the Chief Minister of the State and it was placed before the Governor of the State who approved the recommendation for taking action against the petitioner as recommended by the Committee of Advisors by invoking the provisions of clause (c) of the second proviso to Clause (2) of Article 311. Accordingly, it has been submitted that the State authorities had taken action in accordance with law. It has been denied that the petitioner had been singled out for discriminatory treatment stating that though the departmental enquiry had been initiated against Ch. Premjit Singh, ASI, the same was stayed by the Hon'ble High Court and his case is different from the two cases which do not warrant invocation of Article 311(2)(c) of the Constitution of India.

6. It was, however, contended on behalf of the petitioner that there is nothing on record to come to the conclusion that the petitioner had been involved in any criminal or terrorist/subversive activities while he was serving as a Police Officer and on the contrary, was given various gallantry awards, and the exemplary service rendered by the petitioner could not be completely wiped out by any stigma of any criminal activity the petitioner was accused of indulging before his entry into service. It was also contended by the learned counsel for the petitioner that the petitioner had been already discharged from all the FIR cases lodged against him by the criminal Courts on the basis of the Final Report submitted by the police on the ground of lack of evidence. Apart from it, the petitioner has been subjected to hostile discrimination as mentioned above and accordingly urged the Court to set aside the dismissal order.

7. On the other hand, as reflected in the impugned judgment of the learned single Judge, the learned counsel for the State respondents had argued that there were sufficient incriminating materials against the petitioner and the Court cannot examine the adequacy or otherwise of the materials upon which the Governor arrived at his subjective satisfaction that it was not expedient to hold an inquiry in the interest of the security of the State. It had been contended that the power conferred under clause (c) of the second proviso to Clause (2) of Article 311 of the Constitution is in the nature of high prerogative which could not be lightly interfered with by the writ Court. It was also contended that the past criminal conduct or terrorist activities of the petitioner could be validly taken into consideration by the Governor for coming to the conclusion that his past conduct will be a threat to the security of the State as he could have been deliberately planted by the proscribed organization to continue his operation on their behalf within the police organization covertly. Relying on the decision of the Hon'ble Supreme Court in *Union of India and Another Vs. Balbir Singh and Another*, it was contended on behalf of the State respondents that subsequent

discharge of the petitioner from criminal cases will not make any difference to the impugned order on the totality of the facts disclosed. Learned counsel appearing for the State respondents had also contended that the Court cannot substitute its own satisfaction for the satisfaction arrived at by the Governor of the State.

8. Learned single Judge, after considering of the rival contentions and submissions advanced by the parties and also relying on the decision of the Hon'ble Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, observed, as mentioned in para 19 of the impugned judgment, which is reproduced herein below:

"(19) Having given my careful consideration to the submissions advanced by the learned counsel appearing for the rival parties and having perused the pleadings of the parties, it becomes clear that the sole question which falls for consideration in this writ is, whether the facts disclosed by the respondent authorities in their counter and the file produced by the learned State counsel are relevant and are not based on extraneous consideration for dispensing with inquiry against the petitioner in the interest of the security of the State for dismissing him from service?"

9. The learned single Judge after considering the provisions of Article 311(2) and decision of the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, observed that "even a cursory look at those grounds will show that the criminal activities or terrorist/subversive activities alleged to have been committed by the petitioner relate to events before his entry into service."

The learned single Judge went on to observe that the criminal cases registered against the petitioner had ended in FRs which were accepted by the jurisdictional criminal courts by discharging the petitioner from the case due to lack of evidence.

It was also observed by the learned single Judge that "no new criminal case has been registered or investigated against the petitioner for any act of commissions or omissions by him after his entry into service. On the contrary, numerous medals and rewards were awarded to the petitioner during his short tenure of three years for gallantry acts and efficiency." It was also observed that "when there has been no new case of criminal/terrorist/subversive nature lodged against him ever since he joined the police service and when numerous medals/awards were awarded to him by the State Government including the President of India and the Chief Minister of Manipur (twice) in the meantime, it is somewhat incomprehensible that his continuance in service would not be in the interest of the security of the State."

The learned single Judge, accordingly, was of the view that "his past conducts alone, without anything more, cannot be relevant for the purpose of enabling the Governor to arrive at the subjective satisfaction that in the interest of security of the State, it would not be expedient to hold inquiry."

Learned single Judge, however, also observed that "his past conduct can, nevertheless, be a relevant factor to invoke Article 311(2)(c) of the Constitution as long as it has some nexus with some allegations of criminal/terrorist/subversive activities made against him in respect of his conduct after his entry into service", and "the fact that the petitioner had been discharged from criminal cases pending against him shows that there was no prima facie case against him in respect of his past conducts to go to trial."

According to the learned single Judge, "it is a case where no new allegation of criminal/terrorist/subversive activities committed by him after his entry into service, which might have nexus with the past criminal cases alleged against him, has been made against him" till then. On the contrary, he had been given award by the State authorities in recognition of his gallantry acts in discharging of his duty and accordingly, it was "difficult to comprehend how the petitioner suddenly became a persona non grata after showering him with all conceivable awards and rewards under the sun in combating insurgents during the short span of his tenure".

It was emphasized that no new allegations of criminal misconduct, terrorist activities or otherwise, committed by him after entry into service was made against him.

10. The learned single Judge did not agree with the submission of the learned counsel for the State which was based on the decision of the Supreme Court in Union of India and Another Vs. Balbir Singh and Another, that the fact that the petitioner was subsequently discharged from criminal cases is of no consequence. The learned single Judge was of the view that the decision of the Supreme Court in Balbir Singh's case (supra) had not been properly appreciated by the counsel for the State respondents inasmuch as the totality of the materials which were before the authorities, prior to the conclusion of the criminal trial had to be considered by the authorities. The learned single Judge was of the view that the case of Balbir Singh (supra) was not applicable in the facts of the case.

The learned single Judge also did not accept the contention of the counsel for the State respondents that action could be taken against the petitioner as the petitioner had concealed the pendency of the criminal cases against him at the time of his recruitment. The learned single Judge held that concealment of facts, if proved, may constitute a ground for imposing a major penalty of dismissal or removal of a person from service or reduction in rank. But concealment as such, by any stretch of imagination, cannot be considered to be against the interest of security of the State. The learned single Judge also observed that no evidence had been placed before the Court to show that any action had been taken against the Police officer who was alleged to have given a clean chit to the petitioner while undertaking police verification on his antecedents. The learned single Judge was of the considered opinion that concealment by the petitioner of the pendency of criminal case against him is entirely irrelevant for the Governor

to arrive at his subjective satisfaction in the interest of security of the State that it is not expedient to hold enquiry against the petitioner. Accordingly, the learned single Judge was of the opinion that the impugned order cannot be sustained and is liable to be quashed and accordingly, quashed the dismissal order dated 13.06.2012 directing the State respondents to reinstate the petitioner forthwith unless they decide to hold a regular departmental inquiry against him and issue consequential orders.

11. Learned counsel of the respective parties have reiterated their contentions before us. As we proceed to examine the rival contentions of the parties and the correctness of the judgment before us, it may be apposite to refer briefly to the relevant provisions of the Article 311 and law relating to the same, as may be applicable in the present case.

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-- (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

..

Clauses (a), (b) and (c) of the second proviso to Clause (2) of Article 311 had been dealt with by the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, which has been also relied on by the learned single Judge in passing the impugned judgment, which are again reproduced for better appreciation of the issues involved.

"(140) We now turn to the last clause of the second proviso to Article 311(2), namely, clause (c). Though its exclusionary operation on the safeguards provided in Article 311(2) is the same as those of the other two clauses, it is very different in content from them. While under clause (b) the satisfaction is to be of disciplinary authority, under clause (c) it is to be of the President or the Governor of a State, as the case may be. Further, while under clause (b) the satisfaction has to be with respect to whether it is not reasonably practicable to hold the inquiry, under clause (c) it is to be with respect to whether it will not be expedient in the interest of the security of the State to hold the inquiry. Thus, in one case the test is of reasonable practicability of holding the inquiry, in the other case it is of the expediency of holding the inquiry. While clause (b) expressly requires that the reason for dispensing with the inquiry should be recorded in writing, clause (c) does not so require it, either expressly or impliedly.

(141) The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations those which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or paramilitary Forces. Disaffection in any of these Forces is likely to spread, for dissatisfied or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a para-military Force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984,

Article 33 provided as follows:

33. Power to Parliament to modify the rights conferred by this Part in their application to Forces.-- Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to insure the proper discharge of their duties and the maintenance of discipline among them.

(Emphasis supplied)

By the Constitution (Fiftieth Amendment) Act, 1984, this article was substituted. By the substituted article the scope of the Parliament's power to so restrict or abrogate the application of any of the fundamental rights" is made wider. The substituted Article 33 reads as follows:

33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc.-- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,--

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

(Emphasis supplied)

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred power upon Parliament to restrict or abrogate any of the fundamental rights in their application to them.

(142) The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to

the expediency or in expediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable, impolitic". The same dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case. Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances". It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.

(143) In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the court's power of judicial review is concerned, the court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The court equally cannot be the Judge of expediency or in expediency. Given a known situation, it is not for the court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or

Governor under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review. Relying upon the observations of Bhagwati, J., in *State of Rajasthan v. Union of India*, it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground.

(144) It was further submitted that what is required by clause (c) is that the holding of the inquiry should not be expedient in the interest of the security of the State and not the actual conduct of a Government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that in an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a Government servant in such acts) would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would.

(145) It was also submitted that the Government must produce before the court all materials upon which the satisfaction of the President or the Governor, as the case may be, was reached. So far as the advice given by the council of Ministers to the President or the Governor is concerned, this submission is negated by the express provisions of the Constitution. Article 74(2) of the Constitution provides:

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Similarly, Article 163(3) provides:

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

12. The impugned order by which the petitioner was dismissed from service is reproduced herein below:

"GOVERNMENT OF MANIPUR SECRETARIAT: HOME DEPARTMENT ORDER

Irapphal, the 13th June, 2012

No. 1/1(1)/2012-H(P): Whereas, the Governor of Manipur is satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to hold an enquiry in the case of Potsangbam Maniratan Singh, s/o. (L) Potsangbam Koireng Singh of

Haobam Marak, Ngangom Leikai, Imphal West District presently serving as Sub-Inspector of Police, Imphal West District, Manipur;

2. And whereas, the Governor of Manipur is satisfied that on the basis of the information available, the activities of Potsangbam Maniratan Singh, are such as to warrant his dismissal from service.

3. Accordingly, the Governor of Manipur hereby dismisses Potsangbam Maniratan Singh, Sub-Inspector of Police, Imphal West District from service with immediate effect.

By order & in the name of the Governor,

Sd/- (Dr. J. Suresh Babu) Principal Secretary (Home) Government of Manipur."

13. Article 311(2) ensures that no Government employee shall be dismissed/ removed or reduced in rank from service except after holding enquiry. However, certain exceptions have been carved out providing for not holding enquiry under second proviso to Article 311(2). Thus, a Government employee can be dismissed from service (a) if such a person had been convicted of a criminal charge; or (b) where for reasons to be recorded by the disciplinary authority that it is not reasonably practicable to hold such inquiry, or (c) where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such an inquiry.

We are concerned with the last exception where holding of an inquiry is held to be not expedient in the interest of security of the State. For invoking clause (c) of the second proviso to Clause (2) of Article 311, what is required is that the Governor must be satisfied "in the interest of security of the State" that "it is not expedient to hold such an inquiry". Therefore, the satisfaction of the Governor as contemplated under clause (c) of the second proviso that it is not expedient to hold enquiry is to be arrived at in the interest of the security of the State. In other words, the satisfaction as regards expediency or in expediency of holding inquiry should be relatable only to the interest of the security of the State and not to any other reason/consideration. In the present case, we have to examine whether, at the time of issuing the impugned order dated 13.06.2012 there were sufficient materials before the Governor for reaching his satisfaction that in the interest of the security of the State it was not expedient to hold such an inquiry. In other words, in expediency in holding such inquiry must be correlated to the interest of the security of the State and it cannot be on any other ground. Therefore, if there are materials on record which are prejudicial to the interest of the security of the State before the authority for arriving at the satisfaction that "it is not expedient to hold an inquiry", such satisfaction of the authority will not be subjected to judicial review, unless the same has been reached mala fide or is based on extraneous or irrelevant grounds as held by the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others,

14. The learned counsel for the State Government has made available records

relating to the issue of the dismissal order. Sufficient materials have been placed on record to show that because of involvement of the petitioner with a banned organization seeking cessation from Indian State, it would not be expedient to conduct a departmental enquiry in the interest of the security of the State. It was emphasized in the record that the magnitude of the infiltration of a member of a banned organisation in the Manipur Police was so sensitive that it would not be expedient to hold a regular departmental enquiry against him in the interest of the security of the State.

As per the contentions of the petitioner before the learned single Judge as reflected in the impugned judgment and order as well as now made before us, the dismissal order has been challenged mainly on three different grounds.

Firstly, the petitioner was allowed to join service after having his antecedent verified by the authorities concerned. At the time of verification, no prejudicial activity by the petitioner in the past was pointed out. On the contrary, he had served the police in an exemplary manner which earned him recognition and awards, medals, etc. and there has been not an iota of evidence or any allegation of any wrong doing on the part of the petitioner after he joined service. Further, the allegations against the petitioner for involvement in various FIR cases do not stand because of the submission of the Final Reports due to lack of evidence to the respective Courts by the Investigating Agency. In other words, apart from the allegations against the petitioner of activities prior to his joining the service, which have been all closed and hence not true, there is no allegation against the petitioner while in service. As such, the petitioner could not have been dismissed from service without holding an enquiry. In fact, no enquiry could have been held against the petitioner in as much as the petitioner did not commit any illegality or misconduct in course of his service which instead was full of exemplary acts on his part. He could not have been dismissed from service on the allegation that he was involved with certain criminal acts prior to his entering into service. Accordingly, it has been submitted that in-expediency in holding enquiry against the petitioner cannot be said to be in the interest of the security of the State as the petitioner was not at all involved in any criminal act which threatened or concerned the security of the State after he joined service.

Secondly, it was the contention that invoking provision of clause (c) to second proviso to Article 311(2) on the ground that the petitioner did not disclose his past activities at the time of his appointment, is not at all justifiable for, even if the petitioner had been found to have concealed material facts, such concealment is not at all relatable to the security of the State. The petitioner could still be proceeded against under the normal law and an enquiry and disciplinary action could be initiated for concealment of fact. It has been submitted that the act of concealment is different from what constitute the concealed facts.

Thirdly, the petitioner had been singled out for discriminatory treatment by dismissing him, while others who were facing criminal charges were merely

placed under suspension.

15. The learned single Judge accepted the aforesaid contentions raised by the petitioner. As mentioned above, the learned single Judge was of the view that the petitioner having been allowed to serve as a police officer after necessary verification and after having served with exemplary service records, could not have been dismissed from service without holding any enquiry as these illegal acts attributed to the petitioner relate to the past activities before he joined service and not while he was in service and it was incomprehensible that he could have committed such activities and concealment of criminal cases pending against the petitioner is entirely irrelevant for the Governor to arrive at his subjective satisfaction that in the interest of the security of the State, it is not expedient to hold enquiry. The learned single Judge had held that no evidence has been placed before the Court to show that any action has been taken against the police officer who was alleged to have given a clean chit to the petitioner.

16. Therefore, we will examine the correctness of the view taken by the learned single Judge in the context of the facts disclosed in the writ petition as well as in the records produced before us in the light of the law in this regard.

As we proceed we may keep in our mind some of the pertinent observations made by the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, as may be relevant to the present case as below.

(1) "There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine."

(2) "The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place."

(3) "The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy."

(4) "Satisfaction may be arrived at as a result of secret information received by the government about the brewing of danger to the security of the State and like matters."

(5) "There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not."

(6) "If the requisite satisfaction has been reached as a result of secret information received by the government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be

available to the Government."

(7) "The satisfaction of the President or Governor must, therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State."

(8) "In an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a Government servant in such acts would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would."

17. The quintessence of the provision of Article 311(2) 2nd Proviso, clause (c) is the subjective satisfaction about the expediency or in expediency of holding an enquiry. It is not concerned with the nature of the allegation against the employee which requires to be inquired into, which the authority seeks to avoid by invoking this provision. The allegations or alleged misconducts may or may not have any bearing on the security of the State. However, in the process of enquiry, if it involves certain facts dealing with which or disclosure of which would not be appropriate in the interest of the security of the State, then, in that event, the aforesaid provision would be attracted.

If the nature of the allegation itself clearly indicates involvement of the security of the State, in most likelihood, the inquiry itself would involve the security of the State and disclosure of some of the facts/materials may not be in the interest of the security of the State.

In the present case, the allegation against the petitioner itself directly involves security of the State and if the authority takes the view that the enquiry may involve certain aspects, disclosure of which may adversely affect and as such is not desirable in the interest of the security of the State, this Court cannot substitute such a view by way of re-appraising the materials or the evidences to hold that it may not affect the interest of the security of the State. Such a decision not to hold an enquiry, being in the realm of policy matter in the interest of the security of the State, may not be subjected to judicial review unless the same is found to be mala fide or is based on extraneous consideration as has been held by the Hon'ble Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*,

18. The learned single Judge seems to have been convinced by the submission of the petitioner that there was no allegation against the petitioner while he was in service, and all the allegations against him relate to the past before he entered service. The learned single Judge seems to have taken the view that the past activities of the petitioner without any connection with any activity while in service is irrelevant for the purpose of reaching the satisfaction by the competent authority that it is not expedient to hold an enquiry against him in the interest of the security of the State. The learned single Judge also seems to have doubted

the veracity of the allegations. It may be stated that the Court cannot examine the correctness or veracity of the allegations. The fact remains that there were certain allegations of serious nature. Merely because FRs had been submitted to the Court (in some cases not yet accepted by the Court) it cannot be said that the petitioner is totally innocent. In fact this Court cannot re-appreciate the evidentiary value of the materials on record to hold that these are not believable. In this regard, it may be stated that the authorities concerned, considering the nature of the allegation against the petitioner, had taken the view that it is not expedient to hold an enquiry. For forming such an opinion, whether it has to be based only on allegations after the petitioner had joined service and without considering the facts which pertain to the past before he joined service, is doubtful. The nature of allegations against the petitioner are of serious nature which have far reaching implications for the security of the State and it cannot be said with certainty that these past activities of the petitioner would not have any bearing on his future actions while in service qua the security of service as the petitioner was very much an integral part of the security apparatus of the State and would continue to be so if remains in service. It cannot be said that the satisfaction cannot be based only on the antecedents of a Government servant which relates to his conduct prior to the appointment of the Government servant. If the authorities considering the nature of the past activities of the petitioner take the view that continuation of his service may not be in the interest of the security of the State, we are afraid, this Court in exercise of judicial review under Article 226 could not interfere with such a view on the ground of lack of adequate or fresh materials. We cannot substitute by our own opinion on the ground that since no fresh allegations have come up against the petitioner after he joined service, he is not likely to continue in such activities. Such an approach on the part of the Court in exercise of power of judicial review may not be permissible. The Hon"ble Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, had observed that the Court cannot be a judge of the expediency or in expediency and given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. Such a satisfaction reached by the Governor under clause (c) is subjective satisfaction and would not be a fit matter for judicial review. The Hon"ble Supreme Court in the said case of *Union of India and Another Vs. Tulsiram Patel and Others*, in para No. 142 as quoted above, has observed that the interest of the security of the State may be affected by actual acts or even likelihood of such taking place and it is difficult to enumerate the various ways in which security of the State can be affected. As evident from the records of the case the authorities have taken a specific stand that considering the nature of the case, it would not be expedient to hold regular departmental enquiry against the petitioner.

It may be clarified that the case against the petitioner is not only about the misconduct of concealment of certain past criminal activities at the time of joining service but also the charge of his association with a banned organisation

in the past. Though we would entirely agree with the learned single Judge that concealment of these facts itself is not relatable to the issue of security of the State, and on this ground alone, provision of clause (c) to the second proviso to Article 311(2) may not be invocable. However, it cannot be said so in respect of other allegation of his involvement with a banned organisation. The allegation against the petitioner of involvement with the banned organisation certainly relates to the security of the State and in this proceeding we are not concerned with the correctness or otherwise or remoteness or staleness of the allegations made against the petitioner of indulging in various criminal activities imputed to him. If the authorities had the desire and competency to hold any enquiry against the petitioner in respect of the past activities of association with a banned militant organisation to adjudge the desirability of his continuation in service, obviously it would involve materials, documents, witnesses which may not be appropriate to be disclosed in the interest of the security of the State. In the records so produced before us, it has been stated that the petitioner who is a member of the State Police as spelt out on his dossier is a trained cadre of the UNLF, which have a bearing on the security of the State and his involvement is deeply rooted with many hard core leaders of UNLF. It has been also mentioned in the documents that considering the nature of allegations, it is not advisable to disclose the allegations against him or to call upon his replies thereto. Accordingly, the competent authority was of the view that it was not expedient to hold any enquiry in the interest of the security of the State. Therefore, the decision of the competent authority not to hold enquiry cannot be said to be not related to the interest of the security of the State and also cannot be said to be based on extraneous consideration or mala fide and as such, it cannot be subjected to judicial review as has been held by the Hon'ble Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, The Court cannot, merely for the reason that no allegation has been made against the petitioner of indulging in any illegal activities after he joined service, hold that no enquiry can be conducted against the petitioner for the past activities as the past activities of the petitioner do have the potential of adversely affecting the security of the State. The remoteness or otherwise of the past activities of the petitioner with the present activity of the petitioner and the security of the State cannot be examined by the Court. It cannot be said that these allegations are too remote or too insignificant to be ignored. The opinion of the authority on this aspect cannot be questioned by the Court unless mala fide or based on extraneous consideration.

19. We may also examine this issue from another perspective. Even if we uphold the contention of the petitioner that concealment of certain facts is not relatable to the security of the State and accordingly, interfere with the impugned order, nothing prevents the authorities to conduct an enquiry to determine whether his continuation in the service is desirable or not in view of his past activities. Such an inquiry would certainly touch upon aspects of the security of the State and the authority may not like to disclose certain materials/aspects relating to such an

inquiry. In that case, power of the authorities to dispense with the enquiry by invoking the provisions of clause (c) to the second proviso to Article 311 cannot be denied.

In the present case, it cannot be said that the authorities had no intention to make any enquiry into the past activities of the petitioner. Such an inquiry, if held, however would involve many aspects touching the security of the State which the authority may not like to disclose to the petitioner. Holding of such an enquiry however, can be avoided by invoking the power under clause (c) to the second proviso to Article 311(2). In fact, in order to obviate holding such an enquiry in the interest of the security of the State, the aforesaid provisions of Article 311 has been invoked and the impugned order dated 13.6.2012 was issued.

20. It has to be also noted that as per the records produced before us, the past activities of the petitioner came to be known to the authorities on inputs received subsequently. Therefore, merely because it came to the knowledge of the authorities belatedly, cannot make any difference to the nature of allegation against the petitioner, which are of serious nature and which have a direct bearing on the security of the State and has the potential to cause damage to the security of the State and any enquiry in that regard would certainly touch upon aspects of the security of the State.

It may be also noted that these two allegations, namely his past prejudicial activities associated with a banned organization, and his non-disclosure of past activities at the time of appointment, though may be distinct and separate, yet, these are to be considered together. These cannot be considered separately and independently for the purpose of examining the validity of the dismissal order. Therefore, even if the provisions of clause (c) to second proviso to clause 2 of Article 311 may not be applicable in respect of the allegation of nondisclosure of material facts, it cannot be said so in respect of the other allegation of association and involvement with the activities of a banned organization.

21. Further, lack of any departmental action against such officer, who is responsible for improper verification of the antecedents of the petitioner has no relevance to the issue as to whether it is expedient or not to hold enquiry against the petitioner in the interest of the security of the State.

22. To sum up at the risk of repetition, the allegations against the petitioner are two fold, i.e., (1) he was involved in prejudicial activities before he entered service (2) he did not disclose these facts at the time of appointment.

In the backdrop of these allegations the authorities held that it was not expedient to hold enquiry in the interest of the security of the State.

As regards the second allegation that he did not disclose these facts at the time of appointment may be totally irrelevant for the purpose of invoking clause (c) of 2nd proviso to Article 311(2). To that extent, the view of the learned single

Judge is unimpeachable.

However, the dismissal order is not based only on this allegation. The other basis is the allegation of involvement and association with a banned organization indulging in various activities prejudicial to the security of the State. This Court cannot examine whether such an allegation is correct or not unless found to be patently absurd. Moreso, when the Final Reports have not yet been accepted by the Court. The learned single Judge seems to have taken the view that all the allegations do not stand as final reports have been accepted by the Court, which is not borne by record. In such a situation, if there are materials (the correctness or adequacy of the materials being beyond judicial review) this Court cannot ignore these on the ground that these relate to the past before his entry in service and there was no allegations while in service. If the authorities are competent to make an enquiry relating to his past activities which are prejudicial to the security of the State to examine the desirability of his continuation in service, the authorities cannot be denied the power to invoke the provisions of clause (c) of 2nd Proviso to Article 311(2). The Court cannot ignore these allegations on the ground that these are of the past before his entry in service. The remoteness or otherwise or correctness or otherwise of the allegations is not relevant to the issue nor the Court can examine it unless it is too absurd or insignificant to notice. What is relevant is to see whether the authorities could hold an enquiry into his past conduct which involves activities prejudicial to the security of the State and whether such enquiry would entail disclosure of certain facts which in the interest of the security of the State are not desirable to be disclosed. If such a course of action is permissible, such a decision/subjective satisfaction will be beyond judicial review, unless found to be mala fide or without any material or based on extraneous consideration. This Court is of the view that the observation of the learned single Judge that these past activities on their own, without any reference to any recent act while the petitioner was in service cannot be acted on, is not based on any recognized principle. The observation of the learned single Judge that the petitioner had been discharged from criminal cases pending against him is not based on records as the final reports submitted by the investigating officer were yet to be accepted by the Courts. It is also to be noted that it is not the case that the State authorities were aware of his past activities and knowingly appointed him and gave him the awards.

The validity of the dismissal order has to be adjudged within the parameters as discussed above and the fact that no action has been taken against the person responsible for giving a clean chit to the petitioner is irrelevant for the purpose of deciding the validity of the order.

What we have found is that there was an opinion formed by the competent authority that it is not expedient to hold an enquiry against the petitioner. The said opinion was based on certain materials as disclosed in the record. We have also observed that the authority took the view that holding an enquiry against

the petitioner would entail disclosure of certain facts and involve dealing with certain facts/material, which may not be advisable to be disclosed in the interest of the security of the 1 State. In the present case, it is not only the allegations against the petitioner that are related to the security of the State but the very process of holding an inquiry may also adversely affect the interest of the State.

23. Accordingly, considering the materials on record and for the reasons discussed above, we are of the view that there was no irregularity or illegality in the subjective satisfaction arrived at by the competent authority that it is not expedient to hold inquiry against the petitioner in the interest of the security of the State and as such, the impugned dismissal order dated 13.06.2012 does not warrant any interference from the Court. In the result, the appeal is allowed and the impugned judgment and order of the learned single Judge dated 22.02.2013 passed in WP(C) No. 605 of 2012 is set aside and writ petition stands dismissed.

24. No order as to costs.

Laxmi Kanta Mohapatra, Actg., C.J.

25. I agree with the finding and conclusion arrived at by my brother but would like to add few more lines to the judgment.

26. The petitioner filed Writ Petition No. 605 of 2012 out of which this appeal arises challenging his dismissal from service by the State Government by invoking the provision contained in Clause (2) of Article 311 of the Constitution of India vide order dated 13.6.2012. As is evident from paragraph 5 of the judgment, before entry into service in the year 2007 petitioner had been arrested on two occasions—once in the month of May, 2000 and again on 8.8.2001 in connection with two cases which involved an offence u/S. 13 of the UA (P) Act. It was the case of the petitioner before the learned single Judge that before offering appointment to him, the State respondents had verified antecedents of the petitioner and allowed him to join service. He was appointed in the year, 2007 as an Assistant Inspector of Police and continued for 5 years till the order of dismissal was passed. During his tenure as Assistant Inspector of Police, there was no allegation with regard to his association with the banned outfit and on the other hand he had been given gallantry award during the said period. On this ground it was contended by the petitioner that invocation of Clause (c) to second proviso to Article 311(2) of the Constitution and dismissing him from service without holding any enquiry is patently illegal. It was also contended that in both the criminal cases Final Report had been submitted and therefore reference to those cases could not be made in which Final Report had already been submitted while passing the order of dismissal.

27. The petitioner does not dispute that he had been arrested twice in connection with two criminal cases registered for certain offences one of which was u/S. 13 of the UA (P) Act. It is also not in dispute that the petitioner had been offered an appointment after verification of the antecedents and he served the Department for about 5 years. The question that arises for consideration is as to whether his

past conduct prior to appointment as Sub-Inspector of Police could be taken into consideration for invoking Clause (c) to the second proviso to Article 311(2) of the Constitution dispensing with a regular departmental enquiry, *moreso*, when in both the criminal cases registered against the petitioner, Final Report had been submitted.

28. I would refer to a Constitution Bench judgment of the Apex Court in the case of *P. Balakotaiah v. Union of India & Ors* and two other Civil Appeals, reported in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, The three appellants before the Apex Court in the said judgment, had been dismissed from service under the provisions of Railways Services (Safeguarding of National Security) Rules, 1949. This Rule came into force on 14.5.1949. Rule 3 of the aforesaid Rules provides that any member of the Railway service who, in the opinion of the competent authority, is engaged in or is reasonably suspected to be engaged in subversive activities or is associated with others in subversive activities in such manner as to raise doubt about his reliability, may be compulsorily retired from service or have his service terminated by the competent authority after notice or pay in lieu of such notice.

One of the arguments advanced before the Apex Court was that the conduct of the appellants therein which formed basis of the order of termination from service had taken place prior to 14.5.1949 when 1949 Rules came into force. Therefore, such conduct could not be taken into account for the purpose of invoking Rule 3 of the said Rules and thereby giving retrospective effect to the said Rules. The question was dealt with by the Constitution Bench in paragraph 19(111) of the judgment and Court made the following observation:

"19(111) (111) It is next contended by Mr. Umrigar that the charges which were made against the appellant in Civil Appeal No. 46 of 1956 in the notice dated 6.7.1950, have reference to events which took place prior to the coming into force of the Security Rules, which was on 14.5.1949, and that the order terminating the services of the appellant based thereon is bad as giving retrospective operation to the rules, and that the same is not warranted by the terms thereof. Now, the rules provide that action can be taken under them, if the employee is engaged or is reasonably suspected to be engaged in subversive activities. Where an authority has to form an opinion that an employee is likely to be engaged in subversive activities, it can only be as a matter of inference from the course of conduct of the employee, and his antecedents must furnish the best materials for the same. The rules are clearly prospective in that action thereunder is to be taken in respect of subversive activities which either now exist or are likely to be indulged in, in future, that is to say, which are "in esse or in posse". That the materials for taking action in the latter case are drawn from the conduct of the employees prior to the enactment of the rules does not render their operation retrospective. Vide the observations of Lord Denman C.J. in *The Queen v. St. Mary, Whitechapel*, (1948) 12 QB 120 : 116 ER 811 (J); and *The Queen v. Christchurch* , 1848-12 QB 149 : 116 ER 823 at p. 825 (K). This

contention must also be rejected."

It is clear from the observation quoted above that where an authority has to form an opinion that an employee is likely to be engaged in subversive activities, it can only be as a matter of inference from the course of conduct of the employee and his antecedents must furnish the best materials for the same.

29. In the present case, the antecedents of the petitioner with regard to his involvement in two cases relating to National Security are not in dispute though it was contended that in both the cases Final Report had been submitted. In this connection, reference can also be made to another decision of the Apex Court in the case of Union of India and Another Vs. Balbir Singh and Another, The said judgment relates to the case of the Sub Inspector of Delhi Police who was posted at the residence of the then Prime Minister, Mrs. Indira Gandhi for security purposes when the unfortunate incident of assassination of Mrs. Indira Gandhi took place. On the basis of the materials received and information gathered by the Intelligence Bureau, a proposal was mooted by the Delhi police for dismissal of the service of the said employee on account of his being associated with the subversive activities affecting security of the State.

30. A Committee of Advisors looked into the allegations and placed recommendation before the Minister in the Ministry of Home Affairs. On the basis of the recommendation of the Committee of Advisors, proviso to Clause (c) to Article 311(2) of the Constitution was invoked and said employee was dismissed from service. One of the contentions before the Apex court in the said case was that the said employee was acquitted in the criminal case. The said question was dealt with by the Apex Court in paragraph 10 of the judgment and the said paragraph is quoted below:

"10. In our view, this was not a case where there was no relevant material. The Tribunal could not have substituted its own judgment for the satisfaction of the President of India. The Tribunal is under a misapprehension when it holds that if the respondent could be criminally prosecuted a Departmental Enquiry could have been held on the basis of this same material. The respondent placed reliance on the observations to this effect made by the Andhra Pradesh High Court in B. Bhaskara Reddy Vs. Government of Andhra Pradesh and Another, The Tribunal has not noted that the material which was placed by the Intelligence Bureau before the Advisory Committee and the President did not relate merely to the assassination of the Prime Minister. It related to various other activities of the respondent as well, which the authorities considered as prejudicial to the security of the State. The fact that the respondent was subsequently acquitted by this Court in the criminal trial will not make any difference to the order which was passed by the President on the totality of material which was before the authorities long prior to the conclusion of the criminal trial."

If the case is examined in the light of the ratio laid down by the Apex Court in both the above two judgments, it will be clear that even though Final Report had

been submitted in the two criminal cases registered against the petitioner prior to his appointment, the same could be taken into consideration as an antecedent and the same could also form basis for invoking Clause (c) of Second Proviso Article 311(2) of the Constitution.