IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.21440 OF 2022 (GM-RES)

BETWEEN:

NASIR PASHA
S/O. LATE MOHAMMED HASHAM,
AGED ABOUT 42 YEARS,
R/AT NO.519, 11TH CROSS,
PILLANNA GARDEN,
3RD STAGE, BENGALURU – 560 045,
(PETITIONER IS IN JC)
REPRESENTED BY HIS WIFE
ARSHIYA FATHIMA

... PETITIONER

(BY SRI JAYAKUMAR S.PATIL, ADVOCATE A/W
SRI MOHAMMED TAHIR, ADVOCATES)

AND:

UNION OF INDIA
REPRESENTED BY
THE ADDL. SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK,
NEW DELHI – 110 001.

... RESPONDENT

(BY SRI TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA A/W
SRI M.B.NARGUND, ADDITIONAL SOLICITOR GENERAL AND

SRI H.SHANTHI BHUSHAN, DEPUTY SOLICITOR GENERAL)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE DECLARATION NOTIFICATION TO THE EXTENT OF IMMEDIATE EFFECT OF IMPUGNED DECLARATION NOTIFICATION BEARING NO.CG-DL-E-28092022-239179 VIDE DTD.28.09.2022 AT ANNEXURE-A ISSUED BY THE MINISTRY OF HOME AFFAIRS (MHA) NEW DELHI.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner calls in question a declaration notification dated 28-09-2022 issued by the respondent declaring Popular Front of India ('PFI' for short) to be an unlawful organization and bringing into force the notification with immediate effect.

2. *Shorn* of unnecessary details, the facts in brief, are as follows:-

The petitioner claims to be the President of PFI organization and claims that the said organization is registered under the Karnataka Societies Registration Act, 1960. He further claims to be

working for the empowerment of down trodden section of the Society. What brings the petitioner to this Court is declaration of PFI to be an unlawful organization. The petitioner, by virtue of being a member of the organization claims to be aggrieved by the action of declaring the organization to be unlawful. Insofar as declaration of the organization to be unlawful under Section 3 of the Unlawful Activities (Prevention) Act, 1967 ('the Act' for short), the issue has been referred to the Tribunal constituted under Section 4 of the Act where it is pending consideration. What drives the petitioner to this Court, at this juncture, is the act of the respondent/Union of India in bringing the Notification of declaration of PFI with immediate effect.

3. Heard Sri Jayakumar S.Patil, learned senior counsel appearing for the petitioner and Sri Tushar Mehta, learned Solicitor General of India appearing for the respondent/Union of India.

4. The learned senior counsel for the petitioner would contend that there was no warrant to bring the notification into operation with immediate effect; there are no separate reasons recorded for the said purpose; non-recording of reasons is violative of sub-

section (3) of Section 3 of the Act; the result of bringing the notification into effect immediately results in declaration under Sections 7, 8 and 10 of the Act and, therefore, is illegal. The learned senior counsel would submit that a fundamental right under Article 19(4) of the Constitution of India cannot be taken away in a perfunctory manner without recording separate reasons for bringing into effect the Notification with immediate effect. He would place reliance upon the judgment of the Apex Court in the case of ***MOHAMMAD JAFAR v. UNION OF INDIA – 1994 Supp (2) SCC 1***.

5. On the other hand, the learned Solicitor General of India Sri Tushar Mehta would seek to refute the submissions of the learned senior counsel to contend that no reasons need be recorded. Reasons must be available in the notification itself and reasons, in fact, are available in the notification. The notification is into two parts – one declaring it to be unlawful and the other bringing it into effect immediately. Therefore, no fault can be found in the notification on both counts particularly, for bringing into effect immediately. He would place reliance upon the judgments

rendered by several High Courts in (i) ***ABDUL NAZAR v. STATE OF KERALA – 1993 SCC OnLine Ker. 343***; (ii) ***ISLAMIC RESEARCH FOUNDATION v. UNION OF INDIA – 2017 SCC OnLine Del 7489*** and (iii) ***MUHAMMAD RAISUDDIN v. UNION OF INDIA AND OTHERS – 1993 SCC OnLine Cal 122.***

6. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned Solicitor General of India and have perused the material on record. In furtherance whereof, the only issue that false for consideration is:

"Whether the Notification declaring PFI to be unlawful and bringing the notification into effect immediately violates sub-section (3) of Section 3 of the Act?

7. To consider the aforementioned issue it is germane to notice concerned provisions of the Act. Section 3 reads as follows:

> *"**3. Declaration of an association as unlawful**.—(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*
>
> *(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:*

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

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

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

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:

(a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed."

(Emphasis supplied)

Sub-section (3) of Section 3 mandates that no such notification shall have effect until the Tribunal has, by an order made under

Section 4, confirmed the declaration made therein and the order of such declaration is published in the official gazette. Therefore, under sub-section (3) of Section 3 the notification of declaration of any organization to be unlawful would come into effect only if the declaration is confirmed by the Tribunal and that confirmation is published in the official gazette. The proviso to sub-section (3) of Section 3 permits the Central Government that in the event it is of the opinion that circumstances exist which renders it necessary for the 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 have effect from the date of its publication in the official gazette. Therefore, the Central Government is empowered under the proviso to bring in any notification declaring any organization to be unlawful with immediate effect. The only rider is that there should be reasons for doing so. Section 7 of the Act reads as follows:

> "***7. Power to prohibit the use of funds of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to***

be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

> *(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.*
>
> *(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money."*
>
> *(Emphasis supplied)*

Where an association has been declared unlawful by a notification issued under Section 3 has become effective under sub-section (3), it empowers conduct of an inquiry against any person who is in custody of any moneys, securities or credits which are being used or intended to be used for the purpose of unlawful association. Section 8 of the Act reads as follows:

> ***"8. Power to notify places for the purpose of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.***
>
> ***Explanation.—For the purposes of this sub-section, "place" includes a house or building, or part thereof, or a tent or vessel.***
>
> *(2) On the issue of a notification under sub-section (1), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing-apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and foodstuffs and*

such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.

(4) The District Magistrate may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4),nand on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question."

(Emphasis supplied)

Section 8 empowers the Central Government to notify places used for the purpose of unlawful association. This again relates back to sub-section (3) of Section 3 of the Act. Section 10 of the Act reads as follows:-

> *"**10. Penalty for being member of an unlawful association, etc.**—Where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section,—*
>
> *(a) a person, who—*
> *(i) is and continues to be a member of such association; or*
> *(ii) takes part in meetings of such association; or*
> *(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or*
> *(iv) in any way assists the operations of such association,*
> *shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and*
>
> *(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—*

> *(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;*
> *(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."*

Section 10 directs penalty to be imposed when an association is declared to be unlawful by a notification under sub-section (3) of Section 3 and if a person continues to be a member of such association. Therefore, Sections 7, 8 and 10 are follow up of sub-section (3) of Section 3 of the Act, as they all hinge upon the Notification. It is, therefore, the submission of the learned senior counsel for the petitioner that separate reasons have to be recorded in writing to bring the Notification into effect immediately. But, the crux of the challenge is only to the extent that there are no reasons recorded for bringing the notification of such declaration with immediate effect. It, therefore, becomes necessary to notice the notification. The notification reads as follows:

> *"**And Whereas**, the investigations have established clear linkages between PFI and its associates or affiliates or fronts'*
>
> ***And Whereas**, Rehab India Foundation collects funds through PFI members and some of the members of the PFI are also members of Campus Front of India, Empower India Foundation, Rehab Foundation, Kerala, and the activities of Junior Front, Al India Imams Council, National Confederation of Human Rights*

Organization (NCHRO) and National Women's Front are monitored/ coordinated by the PFI leaders;

***And Whereas**, the PFI has created the above mentioned associates or affiliates or fronts with objective of enhancing its reach among different sections of the society such as youth, students, women, Imams, lawyers or weaker sections of the society with the sole objective of expanding its membership, influence and fund raising capacity.*

***And Whereas**, the above associates or affiliates or fronts have a 'Hub and Spoke' relationship with the PFI acting as the Hub and utilizing the mass outreach and fund raising capacity of its associates or affiliates or fronts for strengthening its capability for unlawful activities and these associates or affiliates or fronts function as 'roots and capillaries' through which the PFI is fed and strengthened;*

***And Whereas**, the PFI and its associates or affiliates or fronts operate openly as socio-economic educational and political organization but, they have been pursuing a secret agenda to radicalize a particular section of the society working towards undermining the concept of democracy and show sheer disrespect towards the constitutional authority and constitutional set up of the country.*

***And Whereas**, the PFI and its associates or affiliates or fronts have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty and security of the country and have the potential of disturbing public peace and communal harmony of the country and supporting militancy in the country.*

***And Whereas**, some of the PFI's founding members are the leaders of Students Islamic Movement of India (SIMI) and PFI has linkages with Jamat-ul-Mujahideen Bangaldesh (IMB), both of which are proscribed organizations;*

***And Whereas**, there had been a number of instances of international linkages of PFI with Global Terrorist Groups like Islamic State of Iraq and Syria (ISIS).*

***And Whereas**, the PFI and its associates or affiliates or fronts have been working covertly to increase radicalization of one*

community by promoting a sense of insecurity in the country, which is substantiated by the fact that the some PFI cadres have joined international terrorist organizations;

***And Whereas**, the Central Government is of the opinion that it is necessary to exercise its powers under sub-=section () of Section 3 of the Unlawful Activities (Prevention) Act, 1967, (37 of 1967) (hereinafter referred to as the Act) in view of the above stated reasons, which is substantiated by the following facts; namely,*

(i) the PFI is involved in several criminal terror cases and shows sheer disrespect towards the constitutional authority of the country and with funds and ideological support from outside it has become a major threat to internal security of the country.

(ii) investigations in various cases have revealed that the PFI and its cadres have been repeatedly engaging in violent and subversive acts. Criminal violent acts carried out by PFI include chopping off limb of a college professor, cold blooded killings of persons associated with organizations espousing other faiths, obtaining explosives to target prominent people and places and destruction of public property.

(iii) the PFI cadres have been involved in several terrorist acts and murder of several persons, including Sh.Sanjith (Kerala, November 2021), Sh. V.Ramalingam, (Tamil Nadu, 2019), Sh.Nandu, (Kerala, 2021), Sh. Abhimanyu (Kerala, 2018) Sh. Bibin (Kerala, 2017),Sh. Sharath (Karnataka, 2017), Sh.R.Rudresh (Karnataka, 2016), Sh.Praveen Pujari (Karnataka, 2016), Sh. Sasi Kumar (Tamil Nadu, 2016) and Sh.PraveenNettaru (Karnataka, 2022) and the above criminal activities and brutal murders have been carried out by PFI cadres for the sole objective of disturbing public peace and tranquility and creating reign of terror in public mind.

(iv) there had been a number of instances of international linkages of PFI with Global Terrorist Groups and some activities of the PFI have joined Islamic State of Iraq and Syria (ISIS) and participated in terror activities in Syria, Iraq and Afghanistan. Some of these PFI cadres linked to ISIS have been killed in these conflict theaters and some have

been arrested by State Police and Central Agencies and also the PFI has linkages with Jamat-ul-Mujahideen Bangladesh (JMB), a proscribed terrorist organization.

(v) *the Office bearers and cadres of the PFI along with others are conspiring and raising funds from within India and abroad through the banking channels, and the hawala, donations, etc. as part of a well-crafted criminal conspiracy, an then transferring, layering and integrating these funds through multiple accounts to project them as legitimate and eventually using these funds to carry out various criminal, unlawful and terrorist activities in India.*

(vi) *the courses of deposits on behalf of PFI with respect to its several bank accounts were not supported by the financial profiles of the account holders and the activities of PFI were not being carried out as per their declared objectives and therefore, the Income Tax Department cancelled the registration granted to PFI under Section 12A or 12AA of the Income Tax Act, 1961 (43 of 1961). The Income Tax Department also cancelled the registration granted to Rehab India Foundation under Section 12A or Section 12AA of the Income Tax Act, 1961.*

(vii) *The State Government of Uttar Pradesh, Karnataka and Gujarat have recommended to ban PFI.*

And Whereas, the PFI and its associates or affiliates or fronts have been involved in the violent terrorist activities with an intent to create a reign of terror in the country, thereby endangering the security and public order of the state, and the anti-national activities of PFI disrespect and disregard the constitutional authority and sovereignty of the state and hence an immediate and prompt action is required against the organization;

And Whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the PFI and its associates or affiliates or fronts, the PFI and its associates or affiliates or fronts, will use this opportunity to –

(i) continue its subversive activities, thereby disturbing public order and undermining the constitutional set up of the country;

(ii) encourage and enforce terror based regressive regime;

(iii) continue propagating anti-national sentiments and radicalize a particular section of society with the intention to create disaffection against the country;

(iv) aggravate activities which are detrimental to the integrity, security and sovereignty of the country;

And Whereas, the Central Government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the PFI, it is necessary to declare the PFI and its associates or affiliates or fronts to be unlawful association with immediate effect."

(Emphasis supplied)

The afore-quoted notification dated 27-09-2022 has two parts. One, the reason for declaring the organization to be unlawful and the other, to bring it into effect immediately. The reasons rendered to bring the notification with immediate effect are that the PFI and its associates or affiliates have been involved in violent terrorist activities with an intention to create a reign of terror in the country, thereby endangering the security and public order of the State and in the opinion of the Central Government, if there was no immediate curb or control on the activities, it is likely that they

would continue to disturb public order undermining the constitutional set up of the country. Therefore, in the opinion of the Government, the notification is to be brought into force with immediate effect. In the notification itself sufficient reasons are indicated for bringing into effect the notification with immediate effect. Though no separate notification is issued, it is not a case where there are no reasons recorded in writing as is necessary under the proviso to sub-section (3) of Section 3 of the Act.

8. The learned senior counsel for the petitioner seeks to rely on Article 19(4) of the Constitution of India to contend that a fundamental right under Article 19(4) cannot be taken away by a stroke of pen. This submission is again unacceptable. Article 19(4) of the Constitution of India reads as follows:

> *"19. **Protection of certain rights regarding freedom of speech, etc.**-- … ….*
>
> *(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."*

Article 19(4) mandates that nothing in Article 19(1)(c) which deals with fundamental right to form Associations and Unions shall have the effect or prevent the State from making any law imposing, in the interests of the sovereignty and integrity or public order or morality reasonable restrictions on the exercise of the said right conferred by clause (c) of Article 19(1). The purport of Article 19(4) is that the Government is empowered to impose reasonable restrictions even on the fundamental right under Article 19(1)(c) if it would harm the sovereignty, integrity, public order or morality. All that is found in the reasons recorded in the impugned notification. Therefore, it is in compliance with sub-section (3) of Section 4 of the Act *qua* the right of any organization in its freedom to establish any organization or unit under Article 19(1)(c) of the Constitution.

9. It is not that sub-section (3) of Section 3 of the Act had not fallen for consideration before the Courts of law. Two High Courts, one the Division Bench of High Court of Kerala and the other Division Bench of High Court of Calcutta, consider the purport of the proviso to sub-section (3) of Section 3 of the Act. A Division Bench

of the High Court of Kerala in the case of ***ABDUL NAZAR v. STATE OF KERALA***[1] *(supra)* has held as follows:

> *"**6. The following questions arise for consideration:***
>
> ***(1) Whether the bringing into immediate effect, Ext. P2 notification dated 10-12-1992,-issued under S. 3(1) of the Act is invalid on the ground that no reasons are stated in the notification as to why the ban should come into effect immediately?***
> *(2) Whether there is any reasonable nexus between the activities of the ISS and 10-12-1992, the date on which Ext. P2 notification was issued banning the organisation?*
> *(3) Whether there is effective dissolution of the ISS so as not to attract S. 15 of the Act?*
> *(4) Whether the sealing or the premises by the police authorities as per the further notification dated 13-12-1992 issued by the District Magistrate, Kollam, is illegal?*
> *(5) Whether the petitioner can be said to be a resident entitled to re-delivery of the property under S. 8 of the Act?*
> *(6) Whether the petitioner can claim a blanket order on the ground that the contentions made against him have to be ignored till they are actually proved?*
>
> ***7.Point No. 1: For the purpose of appreciating this point, it is necessary to refer to sub-sections (1) to (3) of S. 3, which read as follows:***
>
> ***"3. Declaration of an association as unlawful**:— (1) If the Central Government is of opinion that any association is, or has become, an unlawful association it may, by notification in the Official Gazette, declare such association to be unlawful.*

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[1] ***1993 SCC OnLine Ker. 343***

(2) Every such notification shall specifygrounds on which it issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect unt it 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 slated 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.

……."

(emphasis supplied)

8. *It is necessary to refer to Ext. P2 notification dated 10-12-1992, issued by the Central Government:*

"S. 0.899(E): Whereas I.C.S. Abdul Nazar Madani, Chairman of the Islamic Sevak Sangh (hereinafter referred to as ISS) had been giving inflammatory speeches with a view to promoting, on grounds of religion, disharmony or feelings of e???m ity, hatred or ill-will between different communities.

And whereas Shri I.C.S. Abdul Nazar Madani in a public meeting at Poonthura, District Trivandrum on the 30th June, 1992, has stated that thousands of Muslims were killed and tortured in Kashmir and authorities were not taking effective steps and Muslim women were being raped by Hindus with the support of authorities.

And whereas Sri. I.C.S. Abdul Nazar Madani, in a recorded speech for public circulation, has stated that a Muslim cannot live as a Muslim in this country and Muslim brothers should be prepared to get organised as also question the right of the people to hoist national flag in Kashmir.

And whereas the following criminal cases have been registered against Shri. I.C.S. Abdul Nazar Madani, u/s. 153A and 153B of the Penal Code, 1860:

(a) Karunagappally PS (District Kollam) Case No. 109/92 dated 20th March, 1992 u/s. 153A:

(b) Kundara PS (District Kollam) Case No. 117/92 dated 25th March, 1992 u/s. 153A;

(c) Kasba PS (???v I Calicut) Case No. 103/92 dated 21st May, 1992, u/s. 153B;

And whereas the ISS has been encouraging and aiding its followers to undertake unlawful activities within the meaning of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

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 ils possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the ISS is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of S3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) the Central Government hereby declares the 'Islamic Sevak Sangh' to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3), of that Section, that this notification shall, subject to any order that may be made under S. 4 of the said Act, have effect from the date of its publication in the Official Gazette."

(emphasis supplied)

9. It will be noticed from the preamble of the Act that the Act is intended to provide for the more effective prevention of certain unlawful activities of individuals and associations and for the matters connected therewith. S. 2(f) defines 'unlawful activity', while S. 2(g) defines 'unlawful association'. S. 3(1) permits the Central Government to declare any association as unlawful association, provided that the grounds for such declaration must be specified in the said notification as required by S. 3(2). S. 3(3) states that the notification shall not come into effect unless confirmed by the Tribunal under S. 4, except in cases where the Central Govt, is of opinion that 'for reasons

to be stated in writing' the Central Government considers that the declaration must come into effect immediately. S. 4 deals with reference to Tribunal, and S. 5 deals with the procedure before it.

10. *In the present case, it is not in dispute that the Tribunal has since been constituted at New Delhi. It has been reported in the Press that the said Tribunal has issued notices to the various banned organisations, including the ISS, in the last few days.*

11. *But the point is whether the bringing into effect of Ext:P2 notification from the date of its publication namely, 10-12-1992, is invalid. There are two answers to this point.*

12. *The first one is that notification Ext. P2 dated 10-12-1992 contains in its preamble namely, paragraphs 1 to 6, various reasons as to why the Government opinion under S. 3(1) that the ISS is an unlawful organisation. Then in the last paragraph comes the declaration under S. 3(1) declaring the ISS as unlawful association. Thereafter the later part of the last paragraph deals with the bringing into effect of the said declaration with immediate effect under S. 3(3).*

13. *In our view, the last paragraph of the notification when it starts with the words 'now, therefore' the said words are intended not only to govern the exercise of powers under S. 3(1), but also the exercise of powers under the proviso to S. 3(3) of the Act bringing the declaration into immediate effect. As noticed above, in paragraphs 1 to 6, the Central Government had given various reasons as to why it was declaring the ISS an an unlawful association under S. 3(1), and in our considered view, the same reasons in paragraphs 1 to 6 of the notification were considered by the Central Government to be sufficient for the purpose of the proviso to S. 3(3). In our opinion, the words 'now, therefore', in the last para tiraph of the notification dated 10-12-1992, and the words and directs' in the said paragraph have to be read closely and should be given their due importance. If the Central Government considers paragraphs 1 to 6 as indicating the reasons as to why the notification should be brought into immediate effect, it is not, in our opinion, necessary for the Central Government to repeat paragraphs 1 to 6 after the words 'and directs' and before the*

words 'in exercise of the power conferred by the proviso to sub-section (3)'. When this aspect of the matter was put to the learned counsel for the petitioner, he had virtually no answer.

14. If the Central Government states that certain activities of an association are unlawful and the association should be declared as such, not from a future date, when the Tribunal would confirm such a declaration, but with immediate effect, it may be, in certain circumstances, necessary for the Central Government to mention the reasons for the declaration under S. 3(1) separately, and the reasons for bringing into effect the notification immediately, again separately. Obviously such a situation may arise if both set;; of reasons are different. But where both sets of reasons either wholly or partly overlap, it may not be necessary for the Central Government to repeat in the notification issued under S. 3(I) the reasons forbringing the notification into immediate effect once again when such reasons have already been set out in the grounds for the issuance of the notification under S. 3(2). In such a latter situation, when the Central Government uses the words 'now therefore' referring to the reasons, and exercises powers under Ss. 3(1) and 3(3), such a notification cannot be challenged on the ground that no reasons have been given separately under the proviso to S. 3(3) for bringing the notification into immediate effect. This is one first reason.

15. We shall advert to the second reason as to why the bringing into Ext. P2 with immediate effect is not bad. In this context we adopt the reasons given by the learned Judges Varghese Kalliath, and Sreedharan, JJ. in their order on C.M.P. No. 30464 of 1992 in C.M.P. No. 30248 of 1992 in O.P. No. 16849 of 1992 dated 22-12-1992. That was a Writ Petition filed by Jamaat-E-Islami Hind. The learned Judges referred to the decision of the Supreme Court in Satyavir Singh v. Union of India, AIR 1986 SC 555 : (1985) 4 SCC 252, wherein in the context of second proviso (b) to Art. 311(2) the Supreme Court observed as follows:

> ***"……it is however <u>not necessary that the reasons should find a place in the final order</u> but it would be advisable to record it in the final order in order to***

> ***avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated."***
>
> **(emphasis supplied)"**

At paragraph 6, the first issue that fell for consideration was, whether there were reasons stated to bring the ban with immediate effect. The ban therein was claimed to be Islamic Seva Sangha. Therefore, what fell for consideration before the Division Bench is akin to what is now contended in the case at hand.

10. The Division Bench of Calcutta High Court in the case of ***MUHAMMAD RAISUDDIN v. UNION OF INDIA AND OTHERS***[2] *(supra)* has held as follows:

> ***"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.***

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[2] ***1993 SCC OnLine Cal 122***

> ***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 offer is no offer, 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(1993) 1 SCC 78 at 105 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.*
>
> *(emphasis supplied)"*

In the case before the Calcutta High Court the reasons were neither found in the order nor a separate order was passed. The reasons were found in the file. It was held, that would suffice. Both these judgments were rendered prior to the judgment being rendered by the Apex Court in the case of ***MOHAMMAD JAFAR***.

11. It now becomes germane to notice and consider the sheet anchor of the submission of the learned senior counsel for the petitioner - the judgment of the Apex Court in the case of ***MOHAMMAD JAFAR v. UNION OF INDIA***[3] *(supra)*. The Apex Court in the case of ***MOHAMMAD JAFAR*** has held as follows:

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[3] ***1994 Supp (2) SCC 1***

*"**7.** The impugned notification reads as follows:*

"Whereas Shri Sirajul Hasan, Amir of the Jamaat-e-Islami Hind (hereinafter referred to as JEIH) declared in a meeting at Delhi held on 27-5-1990 that the separation of Kashmir from India was inevitable;

And whereas Shri Abdul Aziz, Naib-Amir of JEIH, addressing a meeting at Malerkotla on 1-8-1991, observed that the Government of India should hold plebiscite on Kashmir;

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

It is apparent from the notification that no additional reasons have been given for declaring the JEIH as an unlawful association with immediate effect, viz., from the date of the publication of the notification. In other words, the Central Government does not give any further or added reasons for immediacy. On the contrary, it relies on the same reasons which are stated in the notification for taking immediate action under the proviso to sub-section (3) of Section 3 which prompted it to declare JEIH as unlawful under sub-

section (1) of Section 3. Before us also, it is not the case of the Union of India that it has some facts and material in its possession to declare it unlawful with immediate effect in addition to the facts and material for taking action against JEIH under sub-section (1) of Section 3. The question, therefore, is whether the Central Government has to have facts and material showing the need for immediate action under the proviso to sub-section (3) of Section 3 which are in addition to and distinct from those which are necessary for taking action under sub-section (1) of Section 3. We may here reproduce sub-sections (1), (2) and (3) of Section 3. They read as under:

> *"(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*
>
> *(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:*
>
> *Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.*
>
> *(3) No such notification shall have effect until the Tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette:*
>
> *Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under Section 4, have effect from the date of its publication in the Official Gazette."*

3. *An analysis of the aforesaid provisions shows that for the purpose of declaring an association unlawful, the Central Government has to have material on the basis of which it forms its opinion that the association is or has become unlawful. The declaration is to be made by a notification. Such a notification has to specify the grounds on which the declaration is made and also such other particulars as the Central Government may consider*

necessary. The proviso to sub-section (2) of Section 3 only enacts the usual privilege clause which entitles the Central Government not to disclose such fact as it considers to be against the public interest to disclose. The main provision of sub-section (3) then makes it clear that such a notification shall not have effect until the Tribunal after a due adjudication has confirmed the notification. As pointed out above, there is enough time-lag between the date of the issue of notification under Section 3(1) and the date of the publication of the order of the Tribunal under Section 4(4). The proviso vests the Central Government with a power to declare an organisation unlawful with immediate effect. ***This means that all its activities come to an end the moment the notification is issued under Section 3(1) even without waiting for the due adjudication of the Tribunal under Section 4. It has obviously a situation in mind which cannot brook delay and await the outcome of the adjudication. The proviso, therefore, envisages a situation which has to be remedied urgently and cannot be met except by putting an end to the activities of the organisation with immediate effect. The legislative intention to that effect is also clear otherwise. The proviso requires firstly that the Government must be of opinion (i) that circumstances exist which render it necessary for the Government to declare the association to be unlawful with immediate effect and (ii) the reasons for such declaration must be stated in writing. The language of the said proviso is different from the language of sub-section (1) of Section 3 which merely states that the Government has to be of opinion that any association is or has become an unlawful association. The very fact further that the legislature has provided a machinery in the form of the Tribunal to hold a full-fledged inquiry to adjudicate on the issue whether the notification issued under Section 3(1) should be confirmed or cancelled, shows that the legislature has no intention of banning an organisation and its activities without giving it a due opportunity to show cause and represent its case fully. It must be remembered in this connection that Article 19(1)(c) of the Constitution incorporates one of the precious freedoms of the citizens, viz., to form associations or unions. The provisions of the Act banning an organisation with immediate effect without giving it an opportunity to represent its case would be violative of the Constitution being in breach of the provisions of the said article, unless such ban has been***

covered by the exception enacted by clause (4) of the said article. It cannot be overemphasised that the invocation of the proviso to sub-section (3) of Section 3 has a drastic effect of curtailing the freedom under Article 19(1)(c) with immediate effect. If such a ban is imposed arbitrarily it would operate till at least the date of the publication of the Tribunal's order under Section 4(4). Thus the action taken under the proviso amounts to suspension of the citizens' right under Article 19(1)(c), for the period in question. Even a temporary suspension of the fundamental right, unless it is covered by the exception provided under Article 19(4), would be invalid in law. Hence it is necessary that the Central Government justifies its action under the said proviso by bringing it within the exception of Article 19(4). Thus both by the language of the said proviso as well as by the requirement of the Constitution, it is necessary for the Central Government to justify by adducing proper reasons, the immediacy by bringing it within the purview of Article 19(4) which reads as follows:

> ***"19. Protection of certain rights regarding freedom of speech, etc.—******
>
> ***(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."***

9. Article 19(4) thus requires that the immediate action contemplated by the said proviso is "in the interests of the sovereignty and integrity of India or public order or morality". The article further requires the restrictions imposed even for the said purpose, to be reasonable.

10. *The notification in question admittedly does not give any reasons for the immediate ban in exercise of the power under the proviso to Section 3(3). The reasons given as stated above are the same as are meant for imposing ban under sub-section (1) of Section 3. Those reasons, as quoted above, are (a) that Shri Sirajul Hasan, Amir of the Jamaat-e-Islami Hind declared in a meeting at*

> *Delhi held on 27-5-1990 that the separation of Kashmir from India was inevitable, (b) that Shri Abdul Aziz, Naib-Amir of JEIH, addressing a meeting at Malerkotla on 1-8-1991, observed that the Government of India should hold plebiscite on Kashmir, (c) that the JEIH has been disclaiming and questioning the sovereignty and territorial integrity of India, and (d) other facts and materials in the possession of the Central Government which it considers to be against the public interest to disclose. As regards the first two grounds, they are obviously stale -- one of 27-5-1990 and the other of 1-8-1991 and they cannot justify immediacy on 10-12-1992 when the impugned notification was issued. The language of the third ground shows that the association has been indulging in the acts stated therein publicly from its inception or at least for a long time which again negatives the need for immediate ban. As for the last ground, viz., other facts and material in the possession of the association which the Central Government considers to be against the public interest to disclose, no privilege is claimed before us, against such other facts and material. If it was claimed, the court would have looked into them and decided the question of privilege."*
>
> *(Emphasis supplied)*

At paragraph-7 the Apex Court extracts the notification and the reason for bringing it into force with immediate effect. The Apex Court finds that there are no reasons recorded in the Notification for bringing it into force with immediate effect. At paragraph-9 the Apex Court also records that Article 19(4) requires that in the interest of sovereignty, integrity or public order or morality, the State can impose reasonable restriction on such right under Article 19(1)(c). In those facts, the Apex Court held that there were no separate reasons and the right under Article 19(1)(c) could not have been taken away without recording reasons.

12. Later in the year 2017, the High Court of Delhi rendered a judgment in the case of ***ISLAMIC RESEARCH FOUNDATION v. UNION OF INDIA***[4] *(supra)* which is in post ***MOHAMMAD JAFAR*** time considering a ban of Islamic Research Foundation. The ban was brought into force with immediate effect. The notification is extracted and the notification is identical to what the impugned notification is. On referring to the notification the learned single Judge of Delhi High Court has held as follows:

> ***"12. The reason given by the Central Government in the notification for declaring the organisation as an unlawful association inter alia is that the organisation and its members, particularly, the founder and President of the said Association, Dr. Zakir Naik, has been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities and groups. Reference is also made to certain cases registered against Dr. Zakir Naik and other members of the organisation under various sections of the Act and the Penal Code, 1860, inter alia for being responsible for radicalization of some youths who are later alleged to have joined the ISIS, for promoting hatred and ill-will between different religious communities and forcible conversion of Kerala youth, who went missing and are suspected to have joined the ISIS and for making derogatory statements against Hindu gods.***
>
> ***13.*** *Further reference is made in the notification to information received by the Central Government that the statements and speeches made by Dr. Zakir Naik, the President of the organisation are objectionable and subversive in nature and that he has been extolling the known terrorists like Osama Bin*

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[4] ***2017 SCC OnLine Del 7489***

Laden and proclaiming that every Muslim should be a terrorist and claiming that if Islam had indeed wanted, eighty percent of Indian population would not have remained Hindus as they could have been converted "if we wanted" by sword, justifying the suicide bombings, posting objectionable comments against Hindu gods, claiming that Golden Temple may not be as sacred as Mecca and Medina and making other statements which are derogatory to other religions.

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

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

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

17. The record, that was made available by the Central Government, clearly shows that there is material in possession of the central government, which necessitated the declaration of the petitioner organisation as an unlawful

association with immediate effect. Not only is the material available on the record of the Central Government, the reason for exercise of powers under the proviso to section 3(3) has been additionally stated in the notification, over and above the reasons stated for exercise of powers under section 3(1) of the Act.

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

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

> *"And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts, and materials in its possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the JEIH is an unlawful association;*
>
> *Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the 'Jamaat-e-Islami Hind' to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3) of that section, that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."*

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

as unlawful with immediate effect, in addition to facts and material for taking action under section 3(1) of the Act.

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

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

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

24. *The reason stated in the notification is that the petitioner organisation and its members, particularly, the founder and President of the said Association, Dr. Zakir Naik, have been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities and groups. Reference made to the cases registered against Dr. Zakir Naik and other members of the organisation under various sections of the Act and the Penal Code, 1860 is to show that the kind of activities the members are alleged to be indulging in. The statements and speeches made by Dr. Zakir Naik, the President of the organisation are stated to be objectionable and subversive in nature and that he has been extolling the known terrorists like Osama Bin Laden and proclaiming that every Muslim should be a terrorist and claiming that if Islam had indeed wanted, eighty percent of Indian population would not have remained Hindus as they could have been converted "if we wanted" by sword, justifying the suicide bombings, posting objectionable comments against Hindu gods, claiming that Golden Temple may not be as sacred as Mecca and Medina and making other statements which are derogatory to other religions.*

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

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

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

28. Thus, it cannot be held that the impugned notification insofar as it relates to, the exercise of power under proviso to section 3(3) of the Act and the declaration of the petitioner association to be an unlawful association with immediate effect, is an arbitrary and unreasonable

> ***exercise of power. Not only is the material available on the record of the Central Government but the reasons for exercise of the said power has been disclosed in the notification. The record, that was made available for the perusal of the court, discloses material for exercise of such power. The action of the Central Government would be covered under the exception of Article 19 (4) of the Constitution of India. The immediate action appears to have been taken in the interest of sovereignty and integrity of India and public order.***
>
> *(Emphasis supplied)*

The Delhi High Court was considering an identical notification which contained identical reasons considering the judgment rendered by the Apex Court in the case of ***MOHAMMAD JAFAR***. Therefore, the common thread that runs through the judgments in the pre-***MOHAMMAD JAFAR*** time, judgment in the case of ***MOHAMMAD JAFAR*** or the judgment of the Delhi High Court in the post ***MOHAMMAD JAFAR*** time**,** is that reasons must be recorded in writing for bringing the notification which declares an organization to be unlawful with immediate effect.

13. A perusal at the notification under challenge would indicate that reasons are present in the notification itself. Article 19(1)(c) of the Constitution of India on which much emphasis is laid on is also hedged with reasonable restrictions to be imposed in

certain circumstances under Article 19(4) of the Constitution of India. Therefore, in the light of the judgment rendered by the High Court of Delhi in the case of ***ISLAMIC RESEARCH FOUNDATION*** which was considering the case of ***MOHAMMAD JAFAR*** rendered by the Apex Court and the fact that reasons are found in the impugned notification itself, I do not find any warrant that would entail interference at the hands of this Court. Any further consideration of the submissions made by the learned senior counsel for the petitioner would prejudice the proceedings before the Tribunal.

14. For the aforesaid reasons, the petition lacking in merit, is dismissed.

Sd/-
JUDGE

bkp
CT:MJ