

Supreme Court of India

Mohammad Jafar vs Union Of India on 18 March, 1994

Equivalent citations: 1994 SCC, Supl. (2) 1 JT 1994 (2) 597

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

MOHAMMAD JAFAR

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 18/03/1994

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

MOHAN, S. (J)

CITATION:

1994 SCC Supl. (2) 1 JT 1994 (2) 597

1994 SCALE (2) 267

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAWANT, J.- The petitioner in the writ petition is the Secretary-General of Jamat-e-Islami Hind (JEIH) which is an All India organisation. Appellants in the civil appeal are the Presidents of Bihar Zone and Patna Circle of the said JEIH. On 10-12-1992, the Central Government issued a notification declaring the JEIH an unlawful association under sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the Act') and also gave immediate effect to the notification in exercise of the powers conferred by the proviso to sub-section (3) of Section 3 of the Act. The challenge in the present writ petition and the appeal has been restricted to the exercise of the powers under the proviso to sub-section (3) of Section 3. The controversy, therefore, lies in a narrow compass.

2. The scheme of the Act so far as it is relevant for our present purpose is as follows. Under sub-section (1) of Section 3 the Central Government is empowered to declare any association as unlawful, by notification in the Official Gazette, which association in its opinion is or has become

unlawful. Section 2(a) defines 'association' to mean "any combination or body of individuals". Section 2(f) defines 'unlawful activity' in relation to an individual or association to mean "any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), (i) 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; (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India". Section 2(g) defines 'unlawful association' to mean "any association (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or (ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, 1860 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity".

3. Section 3(2) requires that the notification issued under Section 3(1) shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary. The proviso to sub-section (2) of the said section states that nothing in the said sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose. Sub-section (3) of Section 3 states 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 is published in the Official Gazette. The proviso to sub-section (3) of the said section which falls for consideration before us then states as follows :

"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. Section 4 makes a provision requiring the Central Government to refer the notification declaring an association unlawful, to the Tribunal within 30 days from the date of the publication, for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful. Sub-section (2) of Section 4 requires the Tribunal on receipt of the reference to call upon such association to show cause within 30 days from the date of the service of the show-cause notice, why the association should not be declared unlawful. Sub-section (3) of Section 4 then requires the Tribunal to consider the cause, if any, shown by the association or its office-bearers or members, and to hold an inquiry in the manner specified in Section 9 of the Act and to adjudicate the issue as to whether there is sufficient cause or not for declaring the association to be unlawful, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of Section 3, and make such order as it deems fit either confirming the declaration made in the notification or cancelling the same. The order so made by the Tribunal has to be published in the Official Gazette as required by sub-section (4) of the said section.

5. The adjudicating tribunal known as the 'Unlawful Activities (Prevention) Tribunal' consisting of one person to be appointed by the Central Government is constituted as per the provisions of Section 5 of the Act. The person constituting the Tribunal has to be a Judge of the High Court. Sub-section (5) of Section 5 gives power to the Tribunal to regulate its own procedure in all matters arising out of the discharge of its functions. Sub-section (6) of the said section read with Section 9 vests the Tribunal with the power of the civil court as laid down in the Code of Civil Procedure for the purpose of holding the inquiry.

6. Section 10 visits any person who is or continues to be a member of an association which is declared unlawful or takes part in the meeting of such association or contributes or receives or solicits any contribution for the purpose of such association or in any way assists the operations of such association, with punishment of an imprisonment for a term which may extend to two years, and also with fine. Section 11 likewise imposes a penalty for dealing with the funds of such association while Section 13 imposes punishment on anyone who takes part in or commits, or advocates, abets, advises or incites the commission of any unlawful activity in any way, of such association. It is not necessary to refer to any other provision of the Act for our present purpose.

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 subsection (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 subsection (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."

8. 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 over emphasised 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.

11. Shri Tulsi, the learned Additional Solicitor General contended that the expression "for reasons to be stated in writing" did not necessarily mean that the reasons have to be stated in the notification. It is enough if the reasons are noted on the file of the case. We are unable to agree with the learned counsel. The expression "to state" is obviously different from the expression "to record". The word 'state' is defined in New Collins Concise Dictionary to mean "... 19. to declare, formally or publicly..... It is defined in Shorter Oxford English Dictionary (3rd Edn.) as "... 5. To declare in words; to represent (a matter) in all the circumstances of modification; to set out fully or in a definite form 1647. b. To specify.....

12. In Black's Law Dictionary (5th Edn.) as "To express the particulars of a thing in writing or in words; to set down or set forth in detail; to aver, allege, or declare. To set down in gross; to mention in general terms, or by way of reference; to refer". "To state" therefore, has a distinct connotation of informing the party for whom the statement is meant. No one makes a statement to himself. Hence, the Act requires that either it has to be stated in the notification or in a communication accompanying the notification or simultaneously issued with the notification or addressed to the affected association. Reasons which are "recorded" in file are not reasons which are stated for the benefit of the aggrieved party. The intention of the legislature is that the aggrieved party must know the reasons why the grave step of banning it is taken without giving it an opportunity to be heard. If the reasons are non-existent or irrelevant, the association has a right to challenge the same by showing cause against it. The fundamental right of the citizens and the associations cannot be taken away even temporarily for reasons which are not known to the individual or the association. The counter filed by the Government also states what Shri Tulsi has argued before us, viz..... there are sufficient grounds and materials in the possession of the Government and some of the reasons have been mentioned in the notification itself. It is stated that the reasons exist in the Government file. Some of these reasons, according to the counter, have been stated in the notification as well. It is further submitted that all facts and materials have been duly furnished to JEIH. They were furnished with the statements against them and they have filed their counter-affidavit before the Tribunal. The Tribunal, according to the learned counsel, will decide the matter, in due course.

13. In this connection, we may refer to CB. Gautam v. Union of India' where the case arose out of an order for compulsory purchase of immovable property under the provisions of Section 269-UD of the Income Tax Act. What fell for consideration was the expression "for reasons to be recorded in writing" used in Section 269-UD(1). The Court referred to the provisions of Section 269UD(2) which casts an obligation on the authority to cause a copy of its order under sub-section (1) to be served on the transferee. The Court, therefore, held as follows: (SCC p. 105, para 32) "It is, therefore, inconceivable that the order which is required to be served by the appropriate authority under subsection (2) would be the one which does not contain the reasons for the passing of the order or is not accompanied by the reasons recorded in writing. It may be permissible to record reasons separately but the order would be an incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party.

We are, of the view, that reasons for the order must be communicated to the affected party."

14. The present petition was filed on 13-1-1993. In the documents supplied to the petitioner and appellants before us, there is no material which makes out a case for immediate ban under the said proviso. The material is the same for the ban under Section 3(1). As stated earlier, for justification of the immediate ban under the proviso in question, 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. In this connection, it needs emphasis that the need for communication of such reasons is all the more because of the provisions of Sections 10, 11 and 13 which visit with the penalty for being members of an unlawful association, for dealing with funds of such association, and prescribes punishment for the unlawful activities of such persons, respectively.

15. We are, therefore, of the view that the Government has failed to justify the immediate ban imposed on Jamaat-e- Islami Hind under the proviso to Section 3(3) of the Act. Accordingly the part of the notification, viz., "and directs, in exercise of the powers conferred by the proviso to sub-section (3) of 1 (1993) 1 SCC 78 that section, that this notification shall.. have effect from the date of its publication in the Official Gazette", is bad in law and is struck down. We express no opinion on the validity of the rest of the notification which is the subject-matter of adjudication before the Tribunal.

16. The decision of the High Court is set aside. For the reasons stated above, the writ petition and the civil appeal are accordingly allowed with no order as to costs