IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr) No. 94 of 2018

Abdul Wadud, S/o Ejabul Haque, R/o village-Balugram, P.O. Palas, Gachi, P.S. Radha Nagar, District-Sahebganj, Jharkhand.

....Petitioner

Versus

1. The State of Jharkhand.
2. Chief Secretary, Government of Jharkhand, Ranchi.
3. Principal Secretary, Home Department, Government of Jharkhand, Ranchi.
4. Superintendent of Police, Sahebganj.
5. Officer in charge, Ranga Police Station, Sahebganj.

.....Respondents

Coram: HON'BLE MR JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : Mr. A. Allam, Sr. Advocate

: Mr. A. Syed Abdul Kather,

: Mr. Saipan Sheikh,

: Ms.Priya Shreshtha,

: Mr. Fahad Allam,

: Ms. Nehala Sharmin, Advocates

For the Respondent-State : Mr. R.R. Mishra, G.P. II

C.A.V. On 20/07/2018 Pronounced on 27/08/2018

Heard Mr. A. Allam, learned senior counsel for the petitioner and Mr. R.R. Mishra, learned G.P. II for the respondents.

2. The petitioner in this application has prayed for the following reliefs:-

a) To quash the entire criminal case arising out of Ranga P.S.

Case No. 10 of 2018 dated 22.2.2018, corresponding to G.R. No. 123/2018, which has been registered under section 17 of the Criminal Law Amendment Act, 1908 against the petitioner and others, whereby and whereunder name of the petitioner has been mentioned as Accused No. 3 in a situation that in view of Notification of the State Government dated 21.2.2018, the Popular Front of India, of which petitioner is the State General Secretary, has been banned. So, due to follow-up action, instant FIR has been filed without any allegations of anti-social activity or unlawful activity, which could be detrimental to the interest of general public. So, without such allegations , the FIR has been registered against the petitioner and three others in view of Section 17 of the Criminal Law Amendment Act . Such allegation is alleged to have been made banning Popular Front of India. Since Section 16 of the Criminal Law Amendment Act has already been amended and deleted by the subsequent amendment, so no follow up action has been made by the State Government either under Sections 16 or 17 of the Act.

(b) Since principles of natural justice has not been followed and no material has been collected which may implicate the petitioner for the offence under the provisions of Criminal Law Amendment Act or under any other offence of India Law. So, in absence of the same, instant FIR arising out of Ranga Police Station Case No. 10/2018 may kindly be quashed.

(c) Petitioner further prays to quash the notification of the Home Department, as contained in S. No. 18/12 Aa. Su.(29)07/2009-1096, Dated 21.02.2018, as before issuing the said notification, the Principles of Natural Justice has not been followed nor the petitioner has been communicated with any ground under which either the Notification is made or the FIR has been lodged. Hence, the Notification issued pursuant to Section 16, Annexure-2(already deleted), is liable to be set aside.

3. The case of the petitioner as per the averments made in the writ

application is that Popular Front of India (hereinafter referred to as PFI) is a registered organization under the Societies Registration Act having Registration No. 226/2010 at New Delhi. The aim and object of PFI is to protect national integration, communal harmony, peace, progress and prosperity amongst the people irrespective of the community to which they belonged as also to establish social order, freedom and justice for all, to work for the welfare and progress of the weaker sections of the society, to protect dignity and life of the members of marginalized part of the society, to check the menace of casteism and communalism and to raise voice against the violation of human rights and to protect the unity and solidarity of different social groups. The objects and aims of the PFI finds place in the bye-laws of the society.

4. The writ petitioner claims that never have the members of the PFI committed any act which is detrimental to the interest of the country at large and it has always raised its voice against various atrocities committed upon the people in general.

5. It has been contended in the writ petition that the PFI had raised its voice against the leader of a political dispensation of the State but the resultant effect has been that several member of the organization have been arrested and recklessly assaulted. The members of PFI had filed a writ application before this Court being W.P.(Cr.) No. 400 of 2017 which is pending and aggrieved by the steps taken by PFI the Superintendent of Police, Pakur had fed wrong information to the Government which ultimately led to issuance of notification no. 18/12.A.R.SU.(29)/7/2009-1096 dated 21.02.1998 whereby in purported exercise of the powers conferred under Section 16 of the Criminal Law Amendment Act, 1908 PFI has been banned and it has been declared as unlawful.

6. It has also been averred that on 22.02.2018 a First Information Report was instituted by the Officer-in-Charge of Narayanpur P.S. with respect to various incriminating articles having been seized from

the office of PFI and the said articles which were seized do not point to any subversive activities having been committed by the PFI. The petitioner, who is a General Secretary of PFI of Jharkhand, has also been made an accused in the said case being Ranga P.S. Case No. 10 of 2018.

7. A press release from the office of the Chief Minister of Jharkhand also is a focal point of the PFI being aggrieved as according to it there is no material that the members of PFI were involved in unlawful and illegal activities and were influenced by the Islamic State and that it was absolutely without any basis to suspect that some members of the PFI were on the verge of going to Syria or have already gone to join the Islamic State.

8. Section 16 of the Criminal Law Amendment Act, 1908 according to the petitioner has been deleted and Section 17 of the said Act comes into operation only after the powers are vested under section 16 of the Act. The First Information Report which has been instituted in exercise of the powers under Section 17 of the Criminal Law Amendment Act, 1908 therefore deserves to be quashed.

9. It has also been averred in the writ application that the PFI is active in 14 States which includes Delhi, Rajasthan, Bihar, West Bengal, Assam, Manipur, Maharashtra, Goa, Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu and Pondicherry. The social activities of the PFI has been projected in the writ application as it clams to have played an active role in setting up flood relief camps in Uttrakhand as also distribution of various necessities in the flood affected areas of Jammu & Kashmir.

10. In the background of the case of the petitioner, which has been narrated in the preceding paragraphs, Mr. A. Allam, learned senior counsel for the petitioner has at the outset submitted that the PFI is not involved in any anti-national or unlawful activities. He submits that no incriminating circumstances or materials have been gathered

which could have led to the press release from the secretariat of the Chief Minister.

11. Learned Senior Counsel for the petitioner submits that Section 16 of the Criminal Law Amendment Act, 1908 is not in existence and even if it is assumed that Section 16 is still prevalent, no procedure has been given by way of any state amendment as in the case of some other States. Learned senior counsel while referring to Section 17 of the Criminal Law Amendment Act, 1908 has submitted that the same cannot be acted upon in isolation in absence of the prevalence of Section 16 of the Act.

12. Referring to Section 17(A), it has been stated that only after a gazette notification was issued could any action have been taken against the members of the society. Learned senior counsel has also referred to the Criminal Law Amendment Act(Act XXIII of 1932), more specifically to Section 1(3), Section 11 and Section 12. He has also referred to the Criminal Law Amendment Act, 1935 which has amended the preamble of the Criminal Law Amendment Act, 1932 by omitting the word “temporarily”. Arguing further it has been stated that in the Criminal Law Amendment Act, 1935, amendments have also been made in Section 11, 12 and 13 of Act 23 of 1932 by omitting the word “deemed to be” and “so long as in this act remains in force”. He has also referred to Section 4 of the Repealing Act, 1938 by stating that repeals means abrogating the provisions itself.

13. Learned senior counsel has also drawn the attention of the Court to the Adaptation of Laws Order 1950 by stating that the Criminal Law Amendment Act has not been adopted. Mr. Allam continuing further has referred to Article 19 (1) (c) and 19(4) of the Constitution of India and has stated that until the sovereignty and integrity of India is threatened the exception to Article 19(1) (c) i.e. Article 19(4) of the Constitution of India could not have been resorted to as nothing incriminating or damaging has been collected so as to enable the State Government to take steps in terms of Section 16 of the

Criminal Law Amendment Act, 1908 by declaring PFI as an unlawful association. It has also been submitted that by the act of the State, the fundamental right to form association or unions in terms of Article 19(1) (c) of the Constitution of India has been snatched away and the restrictions placed on PFI by exercising the exception to Article 19(1) (c) of the Constitution of India without there being any substantive basis needs to be deprecated.

14. Learned senior counsel has also submitted that the principles of audi alteram partem has not at all been followed as no show cause notice was ever given to the organization to contradict the erroneous claim of the Investigating Agencies as well as the State Government that the PFI is engaged in subversive activities detrimental to the sovereignty and integrity of India. It has also been stated that since allegations were made against the Superintendent of Police, Pakur by the members of PFI, the subsequent act of the State Government was a backlash against the organization solely at the instance of Superintendent of Police, Pakur. Mr. Allam, learned senior counsel for the petitioner while concluding his argument has stated that even in the counter affidavit the respondents have failed to bring on record any material which could lead to a conclusion that PFI was involved in anti-national activities and it has further been submitted that none of the articles which were purportedly seized from the office of the PFI or from the house of its members would substantiate the claim of the State Government and on such parameters it has been prayed that the impugned notification dated 21.2.2018 be quashed and consequent to the said quashment the First Information Report instituted against the petitioner and others being Ranga P.S. Case No. 10/2018 be also quashed and set aside.

15. Before taking note of the arguments advanced by Mr. R.R. Mishra, learned G.P.II, for the respondents, it would be necessary that the averments made in the counter affidavit be appropriately discussed. The counter affidavit reveals that the members of PFI had pasted posters in different places of Kendua Bazar and as per Government

instruction a team was constituted under the leadership of the Block Development Officer-cum-Circle Officer, Pathana. A raid was conducted in the house of an active member of PFI namely Abdul Salam and in course of raid several posters, booklets, pamphlets and banners of PFI were found which were seized. The same led to institution of Ranga P.S. Case No. 10 of 2018 dated 22.02.2018. The Superintendent of Police, Sahibganj vide Memo No. 586 dated 26.2.2018 addressed to the Officer-in-charge Ranga P.S. had directed him to pray before the learned court below to add Section 153(A) and Section 505 of the Indian Penal Code. The Investigating Officer was also directed to investigate on the relationship between Jamat-e-Mujahidin, Bangladesh and PFI. It has also been averred that the Superintendent of Police, Sahibganj had supervised Ranga P.S. Case No. 10 of 2018 and since a case was registered at Kolkata vide STF Kolkata P.S. Case No. 1/2018 against the members of Jamat-e-Mujahidin, Bangladesh wherein at the time of raid the posters of PFI were also found, the Investigating Officer was directed to bring the seizure list from STF, Kolkata. The said seizure list from STF, Kolkata was brought and appended to the Case diary of Ranga P.S. Case No. 10 of 2018 and from the seizure list it appears that one brown colour and white colour Urdu literature containing six pages of PFI were seized which according to the respondent-State shows the relationship between Jamat-e-Mujahidin, Bangladesh and PFI. It has also been averred that chargesheet in Ranga P.S. Case No. 10/2018 was submitted under sections 153(A), 505 of the Indian Penal Code and Section 17 of the Criminal Law Amendment Act.

16. It has therefore been stated in the counter affidavit that the relationship between Jamat-e-Mujahidin, Bangladesh and PFI having been established beyond any reasonable doubt and since it was conclusively proved that PFI was involved in anti-national activities the State Government had rightly taken steps in terms of Section 16 of the Criminal Law Amendment Act, 1908.

17. Mr. R.R. Mishra, learned G.P.II has submitted that Section 15 of the Criminal Law Amendment Act, 1908 defines an association as well as an unlawful association. He has submitted that Section 16 of the said Act is an enabling provision as it enables the State to declare an association illegal. Learned G.P. II further submits that Section 17 of the Act is dependent upon Section 16 and only when an association has been declared as unlawful the provisions of Section 17 comes into play. Learned G.P. II has also referred to Section 11 of the Criminal Law Amendment Act, 1932 which is with respect to amendment of Section 16 and he submits that the original structure of Section 16 of the Criminal Law Amendment Act, 1908 has remained unchanged. It has further been submitted that while exercising the powers conferred under section 16 of the Criminal Law Amendment Act the State Government is not required to issue any prior show cause notice since it is an exceptional circumstance in which the entire fabric of the country is at stake. Learned G.P. II further submits that the amendment to Section 16 of the Act of 1908 was repealed and therefore Section 16 continues to exists in its original form as it was existing when the Criminal Law Amendment Act was enacted in the year 1908. Mr. Mishra further submits that no gazette notification is required in terms of Section 16 of the 1908 Act to declare an association unlawful. He has also referred to Article 372 of the Constitution of India by stating that the Criminal Law Amendment Act, 1908 still continues to hold forte and the enabling provision has remained untouched although various amendments were subsequently carried out and repealed. Concluding his argument learned G.P. II submits that the State Government being equipped with substantive materials had rightly declared the PFI an unlawful association and therefore no interference is necessitated in the impugned notification issued by the State Government.

18. Having heard learned counsel for the respective sides, the entire records have been perused. The points for determination in this application can be summed up as follows:-

19. (a) Whether section 16 of the Criminal Law Amendment Act, 1908 is in vogue or is repealed by the subsequent enactment?. If the answer is in negative whether section 17 of the Criminal Law Amendment Act, 1908 can still be invoked?

20. (b) Whether in the event, the existence of Section 16 of the Criminal Law Amendment Act is held to be in the affirmative, could the materials collected point to a subversive and unlawful activity on the part of PFI and whether it was essential to follow the principles of natural justice prior to issuance of the impugned notification?

21. The pivotal point, which for determination in this case is as to whether Section 16 of the Criminal Law Amendment Act, 1908 is in existence or not, for which subsequent enactments amending and repealing various provisions have to be looked into.

22. The Criminal Law Amendment Act , 1908 was enacted with an object to provide for more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. An association as well as an unlawful association has been defined in Section 15 of the Act of 1908 and the same reads as follows:-

"15. Definitions._In this part

(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) "unlawful association" means an association-

(a) Which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts; or

(b) which has been declared to be unlawful by the State Government under the powers hereby conferred.

23. Section 16 in its original form reads as follows:-

"16. Power to declare association unlawful:-

If the State Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the

public peace, the State Government may, by notification in the Official Gazette, declare such association to be unlawful.

24. Section 17 of the Act of 1908 deals with penalities and the same reads as under in its original form.

(1) *Whoever is a member of an unlawful association , or takes part in meeting of*

any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2)Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting in a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

25. Vide Act (V) of 1922, certain provisions of the Criminal Law Amendment Act, 1908 was repealed. Section (3) being the repealing section is quoted herein below:-

"Sub Section (3) of Section 1 and the whole of Part I of and the Schedule to, the Indian Criminal Law Amendment Act, 1908, and so much XIV of 1905 of the First Schedule to the Devolution Act, 1920 as relates to XXXVIII of 1990 sub section (3) of Section 1 and to Sub Section (7) of Section 2 of the Indian Criminal Law Amendment Act, 1908, are hereby repealed."

26. Subsequently by Act No. XXIII of 1932, the Criminal Law Amendment Act, 1908 was amended. Sub Section (2) was added to Section 16 of the Criminal Law Amendment Act by virtue of Section 11 of the Criminal Law Amendment Act, 1932 and the same reads as under:-

"(2) The Governor General in Council , if satisfied to the like effect, may, by notification in the Gazette of India, declare an association to be an unlawful association, and thereupon such association shall be, so long as

the declaration remains in force, an unlawful association for the purposes of this Act throughout the whole of British India".

27. Therefore Section 16 in its original form was subsequently renumbered as 16 (1) by virtue of addition of sub section (2) to section 16 of the Criminal Law Amendment Act, 1908.

The Criminal Law Amendment Act 1935 amended certain provisions of the Criminal Law Amendment Act, 1932 as well as omitted certain provisions and section 6 of the Criminal Law Amendment Act, 1935 reads as follows:-

"6. Amendment of Sections 11, 12 and 13, Act XXIII of 1932:-

In sections 11, 12 and 13 of the Criminal Law Amendment Act, 1932 the words "so long as in this Act in remains in force," and the words "deemed to be", shall wherever they occur, be omitted.

28. Act No.1 of 1938 being the Repealing Act, 1938 indicated effect of repealing of amending enactment and the same reads as follows:-

"4. Where this Act repeals any enactment by which the text of any other enactment was amended by the express omission, insertion of substitution of any matter, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the commencement of this Act."

29. The schedule of the Repealing Act, 1935 reveals the extent of repeal and the same includes Sections 11, 12 , 13, 14 and 16 of the Criminal Law Amendment Act, 1932(Act XIII of 1932).

30. On account of the provisions of the Repealing Act, 1938, Sub Section (2) of Section 16 was deleted and Section 16 was renumbered as Section 16(1) of the Criminal Law Amendment Act, 1908.

31. On reading of the provisions of the Criminal Law Amendment Act , 1908 and the subsequent enactments amending and repealing various provisions would lead to a conclusion that the original form of Section 16 of the Criminal Law Amendment Act, 1908 continued to exist unfettered and untouched by any of the subsequent amendments. The reason for saying so is that Section 11 of the

Criminal Law Amendment Act , 1932(Act XXIII Act of 1932) had merely added sub section (2) to section 16 of the Original Act of 1908 and by virtue of the Repealing Act of 1938, Section 11 of the Criminal Law Amendment Act, 1932(Act of XIII of 1932) was repealed. Basically, therefore, it would mean that the Criminal Law Amendment Act, 1932 did not embrace Section 16 of the Criminal Law Amendment Act, 1908 and the Repealing Act of 1932 had confined itself to sub section (2) of Section 16 which provision was subsequently repealed. Therefore, on such context, it is concluded that Section 16 of the Criminal Law Amendment Act, 1908 remained in existence since its very inception at the time of enactment of the Criminal Law Amendment Act, 1908 and continued to wield its influence unrestricted by any subsequent enactment and therefore it was within the competence of the State Government to invoke section 16 of the Criminal Law Amendment Act while declaring the PFI as an unlawful association by virtue of the impugned Notification dated 21.2.2018. Having held that no illegality was committed by the respondents while invoking Section 16 of the Criminal Law Amendment Act, 1908, the natural corollary or the natural consequence, which follows therefore is that the State Government was well within its rights to invoke and exercise Section 17 of the Criminal Law Amendment Act , 1908.

The answer to question (a), which has been formulated since is in the affirmative, this Court now embarks to decide Issue No. (b) as formulated.

32. The factual aspects have already been dealt with but in order to ascertain as to whether the activities of PFI are subversive and anti national ,some of the factual aspects have once again to be reiterated.

33. A Press Communiqué was issued from the Secretariat of the Chief Minister dated 20.2.2018 stating therein that Popular Front of India has been declared as an unlawful association and a banned organization in terms of section 16 of the Criminal Law Amendment Act , 1908. The primary reason as disclosed in the Press

Communiqué is that some of its members had left for Syria and are working for ISIS. The said Press Communiqué was followed by a Notification bearing No. 18/12 Aa. Su.(29)07/2009-1096, Dated 21.02.2018 declaring the Popular Front of India to be an unlawful association and joining the PFI giving donation or subscription or printing of booklet or pamphlet with the said association is also unlawful. Once the impugned Notification dated 21.2.2018 was issued a case was instituted being Ranga P.S. Case No. 10 of 2018 on 22.2.2018 by which various articles including posters and banners of PFI has been seized and the FIR has been instituted in terms of Section 17 of the Criminal Law Amendment Act, 1908. Apart from certain articles, which had been recovered another feature which perhaps was incidental in declaring the PFI as an unlawful association was the recovery of posters of PFI, which were seized in connection with S.T.F., Kolkata P.S. Case No. 1 of 2018 showing a purported link between Jamat-e-Mujahidin, Bangladesh and the PFI. The material of substance of banned booklets and posters are post invocation of Section 16 of the Criminal Law Amendment Act and not pre invocation of the said provisions. It goes without saying that once an association or an organization is declared to be unlawful the materials, which may be subsequently seized would automatically lead to invocation of Section 17 of the Criminal Law Amendment Act, 1908. The question therefore would arise as to what were the material of substance which led the State Government to declare PFI an unlawful association. In this context, it would be an apt to once again refer to section 16 of the Criminal Law Amendment Act, 1908. The said provision is basically two fold. The first is an ‘opinion’ has to be formed by the State Government with respect to an association if it interferes in the administration of law or the maintenance of law and order. The second is the ‘object’ of the said association and as to whether it constitutes a danger to the public peace. An opinion is a belief and that belief has to be substantiated by reasonings which forms the core of such belief. In other words,

an opinion cannot be given blindly or blatantly but must be based on some definitive materials which would be the reason to believe that such association has an object of interference with the administration of law. The opinion and the object are therefore interlinked and intertwined and both cannot be read or considered in isolation. The Press Communiqué from the Chief Minister's Secretariat reveals about an opinion having been formed based on inputs that some members of PFI had left for Syria to join ISIS. The substance in the said Press Communiqué appears to be vague and for the said purpose, the counter affidavit filed by the State has once again been visited. The counter affidavit also provides vague statement that the seized pamphlets and literatures show that they provoke the minority community against the Nation. Infact the counter affidavit is replete with statements painting, a picture of PFI being a terror outfit without any substantive basis. Such depleted materials, which has been claimed to have been collected by the Investigating Agency are against the purport and object of Section 16 of the Criminal Law Amendment Act, 1908 to declare PFI as an unlawful association. The action of the State Government appears to be a step taken in haste and in an imprudent manner being totally oblivious to the absence of congealed materials to declare PFI as an unlawful association.

34. So far as the question of audi alteram partem as raised by the learned senior counsel for the petitioner is concerned, reference has been made to the case of *Mohammad Jafar Vs. Union of India* reported in *1994 AIR SCW 2839.* However, the case under reference is under the provisions of the Unlawful Activities Prevention Act, 1967. In section 3 of the Unlawful Activities Prevention Act, 1967, an association can be declared to be unlawful by the Central Government and every such notification generally specify such grounds on which it is issued provided that nothing in the sub section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose. Section 4 of the said Act takes care of the principles of

natural justice as once again the matter is referred to the Tribunal for the purpose of adjudicating whether or not, there is sufficient cause for declaring the association unlawful and association so affected shall be called upon to show cause. However, in Criminal Law Amendment Act, 1908, certain State Amendments have been carried out to ensure that a Tribunal is constituted to hear an appeal by any association aggrieved by a Notification issued under section 16 of the Criminal Law Amendment Act, 1908. However, no State Amendment has been carried out so far as the State of Jharkhand is concerned. The principles of natural justice therefore cannot be read into section 16 of the CLA Act, 1908 as considering the preemptive and urgent necessity, the State Government can invoke the said provision subject to the condition that it forms an opinion about an association being involved in interference with the administration of law or with the maintenance of law & order based on appropriate materials. In such circumstances, therefore, the judgement under reference is not applicable to the facts and circumstances of the present case.

35. Mr. A. Allam, learned senior counsel for the petitioner, has referred to Article 19(1) (c) of the Constitution of India and its exception being 19 (4) of the Constitution of India. It is no doubt true that Article 19(1) (c) of the Constitution of India confers upon citizens, a precious freedom of forming association or union. The Government is therefore required to justify invoking the exception to Article 19(1) (c) of the Constitution of India.

36. Adverting to the case of Mohammad Jafar (Supra)while considering the said issue, it was held as follows:-

"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 Art.19(4)"

In this connection, reference may be made to the case of Ex-Armymen's Protection Services Private Limited Vs. Union of India &

Others reported in (2014) 5 SCC 409, wherein the question which fell for consideration is whether the natural justice can be read into in a case which involves national security. The relevant findings recorded are as follows:-

> ***"15.*** *It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.*
>
> ***16.*** *What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman[9]: (AC p. 192C)*
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> *"… [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."*
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> ***17.*** *Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party".*

On consideration of the entire aspects of the case with respect to adaptation of the Principle of natural Justice is concerned, the strict interpretations or observance of the same as in a case of the present nature under the Criminal Law Amendment Act will not be a precondition for declaring an association to be unlawful. Therefore, reliance placed in the case of Md. Jafar(Supra) by the learned senior counsel for the petitioner in the facts and circumstances of the present case is misconceived.

37. Judicial review is a machinery, which has to be exercised within well-defined parameters enunciated by the courts in a catena of decisions.

In the case of Tata Cellular Vs. Union of India, reported in 1994 6 SCC 77. The duty of the Court was delineated and the scope for interference in an executive action was only when

1. *Whether a decision-making authority exceeded its*

powers?

2. *Committed an error of law,*
3. *committed a breach of the rules of natural justice,*
4. *reached a decision which no reasonable tribunal would have reached or,*
5. *abused its powers.*

The primary concern therefore is to the decision making process which assumes significance. The State has faulted on the decision making process itself. Sound reasonings and rational basis should have formed the backbone of the impugned notification. Even if in the interest of security the reasons were not mentioned the State was not prevented to apprise this Court of any substantive material, the investigating agency may have collected indicating the involvement of PFI in subversive activities. Neither has such material been brought to the notice of the Court nor the counter affidavit highlights such instance which would be supportive of the decision of the State Government for issuing the Notification dated 21.2.2018. The administration of law is paramount for the State and it has the authority to take appropriate measures if an association carries on activities which are unlawful and detrimental to public peace. However, such authority has to be exercised within the constraints enunciated in the statute itself. The provisions of section 16 of the Criminal Law Amendment Act, 1908 as has been stated above sets some precondition while declaring an association unlawful which includes formation of an opinion. To quote from the case of Barium Infra Soni Vs. Union of India reported in AIR 1993 SC 477:-

" Where the action has to be taken "is based on the opinion of the State", the existence of circumstances relevant to the formation of opinion is sine qua non. If the opinion suffers from the vice of non-application of mind or fermentation of collateral grounds or beyond the scope of statute or irrelevant and extraneous material, then that opinion can be challenged".

38. To sum up, therefore, based on the discussions made hereinabove, this Court comes to a conclusion that the State Government has failed to provide appropriate reasons which would

come within the parameters of the exception envisaged in Article19(4) of the Constitution of India and therefore the impugned notification as contained in Notification No. ***18/12 Aa. Su.(29)07/2009-1096, Dated 21.02.2018,*** is not sustainable in the eyes of law and accordingly the same is hereby quashed and set aside.

39. The FIR instituted against the petitioner and others being Ranga P.S. Case No. 10 of 2018 was a consequence to the Notification dated 21.2.2018 declaring the PFI as an unlawful association and subsequently section 153(A) and Section 504 of the Indian Penal Code has been added pursuant to the prayer made by the Investigating Officer. The fulcrum of the FIR revolves around the Notification issued under section 16 of the CLA Act, 1908 and Section 153(A) and Section 505 of the Indian Penal Code is directly related to the alleged offence under section 17 of the Criminal Law Amendment Act. Since Section 17 of the Criminal Law Amendment Act is a consequence to declaring an association unlawful under section 16 of the Criminal Law Amendment Act 1908 and since the Notification dated 21.2.2018 having already been declared by this Court as arbitrary, unreasonable and against the sanctity of law, institution of Ranga P.S. Case No. 10 of 2018 therefore would be in the scenario depicted above an illegal act since the very basis and foundation of the said case has already been quashed by this Court.

40. Accordingly, the entire criminal proceedings in connection with Ranga P.S. Case No. 10 of 2018 is hereby quashed and set aside. This application is allowed in terms of what has been stated above. Pending I.As, if any, stand disposed of.

(Rongon Mukhopadhyay,J)

Rakesh/