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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 23 सितम्बर, 2024

का.आ. 4168(अ).—केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 15 मार्च, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1414 (अ), तारीख 15 मार्च, 2024 (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) के द्वारा जम्मू एवं कश्मीर पीपुल्स फ्रीडम लीग (जेकेपीएफएल) को विधिविरुद्ध संगम के रूप में घोषित किया था;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 5 अप्रैल, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1629 (अ), तारीख 5 अप्रैल, 2024 के द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय की न्यायाधीश न्यायमूर्ति नीना बंसल कृष्णा थीं;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या जम्मू एवं कश्मीर पीपुल्स फ्रीडम लीग (जेकेपीएफएल) को विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 12 अप्रैल, 2024 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए तारीख 4 सितम्बर, 2024 को एक आदेश पारित किया था;

अत:, अब, केंद्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में, उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात्:-

“

---: अधिकरण का आदेश अंग्रेजी भाग में छपा है :---

(न्यायमूर्ति नीना बंसल कृष्णा)

विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण”

[फा. सं. 14017/55/2024/एन.आई.-एम.एफ.ओ.]

अभिजीत सिन्हा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 23rd September, 2024

S.O. 4168(E).—Whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the said Act), declared the Jammu and Kashmir Peoples Freedom League (JKPFL) as an unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1414(E), dated the 15th March, 2024 (hereinafter referred to as the said notification) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 15th March, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 read with sub-section (1) of section 4 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Justice Neena Bansal Krishna, Judge, High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1629(E), dated the 5th April, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 5th April, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on 12th April, 2024 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Jammu and Kashmir Peoples Freedom League (JKPFL) as an unlawful association;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, passed an order on 4th September, 2024, confirming the declaration made in the said notification;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely: -

"UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL,

HIGH COURT OF DELHI, NEW DELHI.

Date of Decision: 4th September, 2024

IN THE MATTER OF:

Gazette Notification no. S.O. 1414 (E) dated 15th March, 2024 declaring the ***Jammu and Kashmir Peoples Freedom League*** (JKPFL) as an unlawful association under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF :

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967 made to this Tribunal by the Government of India through the Ministry of Home Affairs vide Gazette Notification no. S.O. 1629 (E) dated 05th April, 2024.

Present : Dr. Ajay Gulati, Registrar, Unlawful Activities (Prevention) Tribunal.

Ms. Aishwarya Bhati (Addl. Solicitor General) along with Mr. Amit Prasad, Mr. Rajat Nair, Ms. Poornima Singh, Ms. Manisha Chava and Mr. Abhijeet Singh, ld. Counsels for the Union of India.

Mr. Parth Awasthi and Ms. Deepika Gupta, ld. Counsels for Union Territory of Jammu & Kshmir.

Mr. Antariksh Singh Rathore, Asstt. Commandant and Mr. Sameer Shukla, Asstt. Section Officer, Ministry of Home Affairs.

Mr. Arjun Chopra, Law Researcher.

CORAM:

HON'BLE Ms. JUSTICE NEENA BANSAL KRISHNA

ORDER

1. This order answers Reference under *section* 4(3) read with *section* 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the '**Act**' or '**UA(P)A**', for short) made to this Tribunal which has been constituted *vide* Gazette Notification no. S.O. 1629 (E) dt. 05th April, 2024, under Section 5(1) of the Act, by the Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring the Jammu and Kashmir Peoples Freedom League (**'JKPFL'** in short) as an "unlawful association".

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) no. S.O. 1414(E) dated 15th March, 2024 in exercise of the powers conferred under *section* 3(1) of the UA(P) Act and declared JKPFL to be an "unlawful association". A copy of the said notification has been sent to this Tribunal, as contemplated under Rule 5(i) of the Unlawful Activities (Prevention) Rules, 1968 ("**UA(P) Rules**" in short). The said notification dated 15th March, 2024 reads as under:

> *"**S.O. 1414(E)**-Whereas, the Jammu and Kashmir Peoples Freedom League (hereinafter referred to as the JKPFL) chaired by Mohammad Farooq Shah @ Farooq Rehmani is indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, and security of the country;*
>
> *And, whereas, members of the JKPFL have remained involved in supporting terrorist activities and anti-India propaganda for fuelling secessionism in Jammu and Kashmir;*
>
> *And, whereas, the leaders and members of the JKPFL have been involved in mobilizing fund for perpetrating unlawful activities, including supporting secessionist, separatist and terrorist activities in Jammu and Kashmir;*
>
> *And, whereas, the JKPFL and its members by their activities show sheer disrespect towards the constitutional authority and constitutional set up of the country;*
>
> *And, whereas, JKPFL is involved in promoting, aiding and abetting secession of Jammu and Kashmir from India by involving in anti-national and subversive activities; sowing seeds of dis-affection amongst people; exhorting people to destabilize law and order; encouraging the use of arms to separate Jammu and Kashmir from the Union of India and promoting hatred against established Government;*
>
> *And, whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the Jammu and Kashmir Peoples Freedom League (JKPFL), it will use this opportunity to –*
>
> *(i) continue with the anti-national activities which are detrimental to the territorial integrity, security and sovereignty of the country;*
>
> *(ii) continue advocating the secession of Jammu and Kashmir from the Union of India while disputing its accession to the Union of India; and*
>
> *(iii) continue propagating false narrative and anti-national sentiments among the people of Jammu and Kashmir with the intention to cause disaffection against India and disrupt public order;*
>
> *And, whereas, the Central Government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the Jammu and Kashmir Peoples Freedom League (JKPFL), it is necessary to declare the Jammu and Kashmir Peoples Freedom League (JKPFL) as an 'unlawful association' with immediate effect;*
>
> *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 Jammu and Kashmir Peoples Freedom League (JKPFL) as an unlawful association;*
>
> *The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the Jammu and Kashmir Peoples Freedom League (JKPFL) as an 'unlawful association' with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the said Act, the Central Government hereby directs*

that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette."

3. As can be seen, the notification also enumerates the reasons/ circumstances, as contemplated under *proviso* to Section 3(3) of the Act, for declaring the said association as unlawful, with immediate effect.

II. THE BACKGROUND NOTE

4. Along with the reference to this Tribunal under Section 4 of the UA(P)A, the Central Government has submitted before this Tribunal a Background Note, as is contemplated under Rule 5 (ii) of the UA(P) Rules, 1968.

5. The Background Note states that Jammu and Kashmir Peoples Freedom League (JKPFL), a Pakistan supported separatist organisation, was formed in April, 2003 by Mohammad Farooq Shah @ Farooq Rehmani, who was earlier associated with proscribed unlawful association Jamaat-e-lslami, Jammu and Kashmir (Jel) and separatist organisation 'Jammu and Kashmir Peoples League' formed by one Nazir Ahmed Wani.

6. In 1989, Farooq Rehmani crossed over to Pakistan and had been carrying out separatist activities from Pakistan. In 1992, Jammu and Kashmir Peoples League (JKPL) faced a split into Rehmani and Sheikh Aziz factions. *AI-Fatha Force* was the terrorist wing of *Rehmani* faction of JKPL. On 22nd April, 2023, he renamed his faction Jammu and Kashmir Peoples League (Rehmani) as Jammu and Kashmir Peoples Freedom League and became its chairman.

7. The Note further highlights that since its inception, JKPFL continues to further secessionist activities in Jammu and Kashmir through its Chairman Mohammad Farooq Shah sitting in Pakistan and activities/ foot soldiers operating in Jammu and Kashmir. JKPFL remains a constant under current threat in pushing its secessionist agenda in Jammu and Kashmir and radicalizing the youth towards secessionist and terrorist activities. JKPFL in effect, supplemented the activities of Jammu and Kashmir People League (JKPL); however under a different banner i.e. JKPFL with its headquarters in Pakistan.

8. Objective of JKPFL has been to separate Jammu and Kashmir from India. It has supported the Pakistani agenda of generating feeling of hatred and disaffection against the country, to achieve the bigger goal of amputating Jammu and Kashmir from India. With active backing of Pakistan, the outfit promotes secessionist, separatist, and terror activities to separate Kashmir from India.

9. The activists / members of JKPFL are glorifying terrorists, have provided background support to terrorist organizations, propagated false narrative among the masses, boycotted elections as well as incited youth for violent activities.

10. **Further, as per the Background Note, present Leadership / Executive Members of JKPFL are as under:**

Sl. No.	Name	Designation	Address
1.	Farooq Ahmed Shah @ Farooq Rehmani S/o Abdul Ahad Shah	Chairman	Onagam, Bandpora, at present in Pakistan Occupied Kashmir (POK)
2.	Mohammad Ramzan Khan @ Altaf s/o Gulam Nabi Khan	Chairman, Kashmir Chapter	Khanpora, Gundpora, Bandipora, J & K
3.	Dr. Atta-ur-Rehman Tantray s/o Abdul Salam Tantray	Member	Bandibagh, Budgam

11. Further as per the Background Note, JKPFL along with other separatists fanned the sentiments of the people against the Government over Amarnath Land Row in 2008 through their misinformation campaign and by spreading false information which resulted in Amarnath Land Row agitation causing large scale violence and damage to the public and private properties. *Muzaffarabad Chalo* call was given by a co-ordination committee, in which JKPFL played a pivotal role in coordinating, facilitating, organizing and addressing mobs across the valley, when the people of Jammu and Kashmir were appealed to march to Muzaffarabad, the capital of Pakistan-occupied-Kashmir. In the subsequent Law and Order situation, few

civilians including separatist leader Sheikh Aziz died which further escalated the street violence. A total of around 449 stone pelting incidents on Security Forces were reported, in which 53 civilians died and 522 got injured. Besides 170 Police / Security Forces personal were also injured. JKPFL actively nurtured and financed the stone pelters who were lured into continuing violent protests and other anti-national activities.

12. In order to give massive thrust to Pakistani agenda in sustaining its terrorist and secessionist ecosystem in Jammu and Kashmir, separatist outfits in a calculated manner portrayed the death of two ladies in *Shopian* in the year 2009 by describing it as rape and murder perpetrated by the security forces. The entire design was to create a false narrative against the Central Government and its law enforcement agencies, so as to generate hatred and disaffection against India amongst general masses. JKPFL played significant role in issuing *Hartal* and *Shopian Chalo* calls which resulted in intense law and order issues.

13. Death of some stone pelting youth in Kashmir valley, during handling of law and order in the year 2010, was exploited by the separatist to accelerate momentum to their 'Quit Kashmir' campaign. JKPFL played a pivotal role in instigating youth to continue and fuel up mass unrest by brazenly issuing various protest calendars which resulted in long drawn protests during the year. The trouble in the State was fomented by elements who were sponsored / aided and patronized by JKPFL led by Farooq Rehmani. A total of around 2794 stone pelting incidents were reported in which 112 civilians lost their lives, 1047 got injured while 01 police personal attained martyrdom and around 5188 police/ Security Forces personnel got injured in these incidents.

14. As per the background note, JKPFL, after the killing of Burhan Wani in 2016 and acting on the instructions of Pakistan's ISI, exploited the situation intensely and actively provoked, incited and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti-India pot boiling, announced *hartal* calls and issued protest calendars which resulted in the death of 86 persons and injuries to 8932 civilians. 2 police *jawans* were martyred and about 8370 police / Security Forces also got injured in these riots.

Criminal Cases against JKPFL activists

15. The Background Note mentions the complicity of JKPFL cadres in criminal and anti-national activities as is evident from the criminal cases that stand registered against them. Cases have been registered against the JKPFL and its activists under various provisions of law including the Unlawful Activities (Prevention) Act and other substantive offences. The cases registered against the JKPFL activists / members provide clinching evidence regarding their involvement in various unlawful activities. A list of cases registered by the Jammu and Kashmir Police against members / activists of JKPFL is given as under :

S. No	Case FIR No.	Brief of the case	Name of accused in FIR
1.	FIR no. 195/2011 u/s 13 UA(P)A, PS & District-Bandipore	On 03.09.2011 PS Bandipore got a reliable input to the effect that some persons affiliated with the Hurriyat among whom, some were residing in the jurisdiction of P.S. Bandipore, and some outsiders were propagating national and separatist sentiments prejudicial to the integrity and security of the state.	Mohammad Ramzan Khan
2.	FIR. no. 33/2022 u/s 122 IPC, 2/3 E&IMCO Act, 18, 20, 38, UA(P)A, PS and District - Bandipore	14 accused persons ex-filtrated to Pakistan for subversive training of Arms and Ammunition. They were trained at different camps under the guidance of Syed Salahuddin, Hafiz Mohad Syed etc. They helped terrorists to cross over the LOC and reach Bandipore.	Farooq Ahmad Shah @ Rehmani r/o Bandipore and 13 Others

Consequently, keeping in view the unlawful activities of JKPFL, the Central Govt. decided to declare the said organization as an unlawful association under the UA(P)A, 1967.

III. STATUTORY PROVISIONS.

16. The relevant statutory proceedings in regard to the present Reference proceedings are discussed as under:

Section 2 (o) and (p) of the UA(P)A, read as follows:

"2. ***Definitions.*** *– (1) In this Act, unless the context otherwise requires,-*

(o) "unlawful activity", in relation to an individual or association, means 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; or

(ii) Which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) Which causes or is intended to cause disaffection against India;

(p) "unlawful association" means 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 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii), shall apply to the State of Jammu and Kashmir".

17. Section 2(o) of the Act defines '*unlawful activity'*. It means "*any action taken*" by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to "*action taken*" with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Clause (ii) refers to "*action taken*" which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to "*action taken*" which causes or is intended to cause disaffection against India.

18. Unlawful association has been defined in *section* 2(p) of the Act and consists of two parts: (i) and (ii). Part (i) refers to unlawful activity defined in *section* 2(o) and encompasses associations which have the object that encourage or even aid persons to undertake the said activity. The last part of Part (i) widens the definition of the term "*unlawful association*" to include an association of which members undertake unlawful activity. In a way, therefore, the association is vicariously liable and can be regarded as an unlawful association if members of an association undertake unlawful activity.

19. *Section* 2(p)(ii) does not refer to unlawful activities defined in *section* 2(o) of the Act, but refers to Sections 153A and 153B of the Indian Penal Code, 1860 (IPC for short). An association which encourages or aids or the object of which is to encourage or aid persons to undertake activities punishable under Section 153A or 153B is an unlawful association. "*Object*" for which an association is formed can in many cases be in writing but encouragement and aid to persons to undertake activities under Sections 153A and 153B may be oral or in writing. The last part of Section 2(p)(ii) widens and expands the scope of the term "*unlawful association*", when it stipulates that an association of which members undertake activities which

are punishable under Section 153A or 153B of the IPC, is an unlawful association. An association, therefore, can become an unlawful association if its members undertake any activity covered by Section 153A or 153B of the IPC.

IV. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

20. The nature of the proceedings before this Tribunal and the scope of inquiry in the present proceedings have been laid down by the Supreme Court in ***Jamaat-e-Islami Hind vs. Union of India*** (1995) 1 SCC 428 in the specific context of the provisions of the UA(P)A, 1967. The proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra). This *lis* has to be decided by objectively examining which version is more acceptable and credible. In this regard, reference may be made to the following observations in ***Jamaat-e-Islami Hind*** (supra):

> *"30. The allegations made by the Central Government against the Association - Jamaat-E-Islami Hind - were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute "unlawful activity" within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained."*

21. The present Tribunal, constituted under the UA(P)A, has been vested with certain powers and the procedure to be adopted by it under *section* 5 read with *section* 9 of the said Act, which are reproduced as under:

> *"5.* ***Tribunal****. (1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court.*
>
> *(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.*

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office ;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (5 of 1898)."

***"9. Procedure to be followed in the disposal of applications under this Act**.–Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final."*

22. Further, under *section* 4(1) of Act, the Central Government refers the Notification (issued under *section* 3(1) of the Act) to the Tribunal for "*adjudicating*" whether or not there is "*sufficient cause*" for declaring the association unlawful. *Section* 4(2) requires issuance of notice on the association affected to show-cause as to why should the 'association' not be declared as unlawful? *Section* 4(3) mandates an inquiry in the manner specified in *section* 9 after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under *section* 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the UA(P)A in ***Jamaat-e-Islami Hind*** (supra), it was held by the Supreme Court as under:

"11…. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context."

23. On the question of confidential information that is sought to be withheld, the Hon'ble Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest

enables the Tribunal to test the credibility of confidential information for objectively deciding the Reference. It was emphasized that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information gathered for various reasons may require confidentiality. Disclosure, it was held, can jeopardize criminal cases which have pending investigation or are on trial.

24. On the question of nature and type of evidence which can be relied upon by the Tribunal, the Supreme Court referred to *Rule* 3 of UA(P) Rules, 1968. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, "*as far as practicable*", the rules of evidence laid down in the *Indian Evidence* Act. In this regard, reference can be made to the following observations in ***Jamaat-e-Islami Hind*** (supra):

> *"22. …The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.*
>
> *23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer [408 US 471: 33 L Ed 2d 484 (1972)] the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)*
>
> > *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."*
>
> *xxx xxx xxx*
>
> *26. ……The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."*

25. Before assessing the credibility of material and analyzing evidence adduced, it is apposite to take note of sections 25, 26 and 27 of the *Indian Evidence Act*, as well as sections 161 and 162 of the *Code of Criminal Procedure*, 1973. The same are reproduced hereunder:

Indian Evidence Act, 1872

25. Confession to police-officer not to be proved*.—No confession made to a police-officer, shall be proved as against a person accused of any offence.*

26. Confession by accused while in custody of police not to be proved against him.*—No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate , shall be proved as against such person.*

Explanation.—*In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 6 *** or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).*

27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

Code of Criminal Procedure, 1973

"161. Examination of witnesses by police*.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 3 section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

162. Statements to police not to be signed: Use of statements in evidence.—*(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.*—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise*

relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

26. As per *sections* 25 and 26 of the *Evidence Act*, confessions made to a police officer or while in custody shall not be proved against a person accused of any offense during the trial of that offense. As per *section* 162 of the Cr.P.C., no statement made by any person to a police officer in the course of an investigation under Chapter XII (which includes Section 161 Cr.P.C.) can be used, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. However, these sections do not prohibit the use of such statements in proceedings where the accused is not being tried for the specific offense in question, or in civil proceedings or ancillary proceedings.

27. The Supreme Court in ***Mahesh Kumar v. State of Rajasthan***, 1990 Supp SCC 541 (2), noted the possible use of statement made to the police by the accused persons for being used as evidence against the accused in an "*enquiry*" although inadmissible as evidence against them at the trial for the offence with which they were charged. Relevant extract of the said judgment is as under:

"3. In Queen Empress v. Tribhovan Manekchand a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in Pohlu v. Emperor where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in Dhanraj Baldeokishan v. State and the Mysore High Court in Veerabhadrappa v. Govinda."

28. The Supreme Court in ***Khatri (IV) v. State of Bihar***, (1981) 2 SCC 493 with reference to the bar under *section* 162 of the Cr.P.C viz. against use in evidence of statement made before a police officer in the course of investigation, held, the same would not apply where court calls for such statement in a civil proceeding provided the statement is otherwise relevant under the *Evidence Act*, 1872. Relevant extract of the said judgment is as under:

"3. *Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines "inquiry" to mean "every inquiry, other than a trial conducted under this Code by a Magistrate or court". Clause (a) of Section 2 gives the definition of "investigation" and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf". Section 4 provides:*

"4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Penal Code, 1860 or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chapter XII dealing with the powers of the police to investigate into offences. That section, so far as material, reads as under:

"162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as

hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made". If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in Tahsildar Singh v. State of U.P., it is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence". This Court, in Tahsildar Singh case approved the following observations of Braund, J. in Emperor v. Aftab Mohd. Khan:

"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths"

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in Baliram Tikaram Marathe v. Emperor that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in Malakala Surya Rao v. G. Janakamma. The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence

Act. It is obvious, therefore, that even a statement made before, a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

29. With reference to police diaries and Section 172 of the Cr.P.C., the Supreme Court in ***Khatri*** (supra) held as under:

"...These reports are clearly relevant under Section 35 of the Indian Evidence Act which reads as follows:

> *"35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."*

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC p. 667) "made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent". This Court in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal. So also in Jagdat v. Sheopal, Wazirhasan, J. held that the result of an inquiry by a Kanungo under Section 202 of the Code of Criminal Procedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Raj where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, insofar as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edwards Limited v. State of W.B. that official correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but

it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated February 16, 1981 we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981 it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on January 27, 1981. All these reports including the report submitted on December 9, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the court in deciding the question at issue between the parties."

30. The Supreme Court in ***Vinay D. Nagar v. State of Rajasthan***, (2008) 5 SCC 597, again held that bar of Section 162 of the Cr.P.C. is with regard to the admissibility of the statement recorded of a person by the police officer under Section 161 Cr.P.C. and by virtue of Section 162 Cr.P.C. would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The relevant extract of the said decision is as under:

"14. On account of Section 162 CrPC, a statement made by any person to a police officer in the course of investigation under Chapter XII, if reduced into writing, will not be signed by the person making it, nor such statement recorded or any part thereof be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Such statement may be used by an accused and with the permission of the court by the prosecution to contradict the witness whose statement was recorded by the police in the manner provided under Section 145 of the Evidence Act and can also be used for re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. Bar of Section 162 CrPC of proving the statement recorded by the police officer of any person during investigation however shall not apply to any statement falling within the provision of Clause (1) of Section 32 of the Evidence Act, nor shall it affect Section 27 of the Evidence Act. Bar of Section 162 CrPC is in regard to the admissibility of the statement recorded of a person by the police officer under Section 161 CrPC and by virtue of Section 162 CrPC would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

15. In Khatri (IV) v. State of Bihar this Court has held that Section 162 CrPC bars the use of any statement made before the police officer in the course of an investigation under Chapter XII, whether recorded in the police diary or otherwise. However, by the express terms of Section 162, this bar is applicable only where such statement is sought to be used "at any inquiry or trial" in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted."

31. After examining the aforementioned provisions, as well as the legal principles established in a catena of judgments, and considering that the inquiry before this Tribunal does not entail adjudicating the guilt of the accused but rather assessing the adequacy of material before the Central Government to designate JKPFL as an unlawful association, the statement of witnesses record by the police officers, the statements made by the accused before police officers, along with the lists of items seized and seizure memos, are deemed admissible before this Tribunal. They can be utilized to ascertain the sufficiency of material before the Central Government for making the declaration under *section* 3(1) of the UA(P)A.

V. PROCEDURE FOLLOWED BY THIS TRIBUNAL

32. Consequently, upon due consideration of the aforesaid Notification no. S.O. 1629(E) dated 05th April, 2024 and Notification no. S.O. 1414(E) dated 15th March, 2024, this Tribunal held a preliminary hearing on 16.04.2024, whereupon on a consideration of the material placed on record by the Central Government, notice under *section* 4(2) of the UA(P) Act was issued to the JKPFL/its office bearers, leaders etc. to show cause, within a period of 30 days, as to why JKPFL ought not to be declared as an unlawful association. The notices issued were given due publicity as is required under *section* 3(4) of the UA(P) Act.

33. The Gazette Notification dated 15.03.2024 was also published in two National Newspapers (all India Edition), out of which one was in English while the other was in Hindi. The said notification was also published in two local newspapers out of which one was in vernacular language and the other was in English, both having wide circulation in Kashmir where the activities of the JKPFL were or are believed to be ordinarily carried out. The method of affixation and proclamation by beating of drums, as well as loudspeakers, was also adopted.

34. The notice issued by the Tribunal along with the Gazette Notification dated 15.03.2024 was displayed on the notice boards of the Deputy Commissioner/ District Magistrate/Tehsildar of Kashmir Zone where the activities of the association were or are believed to be ordinarily carried on. Help of All-India Radio and Electronic Media of the Kashmir Division was also taken. Announcements were made through Radio / Electronic Media at prime time.

35. Apart from the above, notice was also issued to the Union Territory of Jammu and Kashmir through its Chief Secretary.

36. The Registrar attached to the Tribunal was directed to ensure the compliance of the service of notice issued to the JKPFL in the manner indicated. The Registrar was directed to file an independent report in that behalf before the next date of hearing i.e. 20.05.2024.

37. Accordingly, the Union Territory of Jammu and Kashmir filed its affidavit of service dt. 18.05.2024, affirming that service had been effected as directed by the Tribunal. The Registrar, vide his report dated 18.05.2024, also confirmed service of notice issued by the Tribunal.

38. On 20.5.2024, this Tribunal having satisfied itself that service had been effected on JKPFL/its leaders/office bearers etc. as per the directions contained in the order dated 16.04.2024, coupled with the fact that no appearance was entered into by or on behalf of JKPFL, was constrained to proceed further with the inquiry without the participation of the concerned association.

39. In order to afford an opportunity to both the Central Govt. and the Union Territory of Jammu and Kashmir to lead evidence in support of the respective averments, allegations and grounds set out in the Notification dt. 15.03.2024, as also to give another opportunity to JKPFL to rebut the material placed on record by the Central Govt. and the Union Territory of Jammu and Kashmir, by the same order *i.e.* order dated 20.05.2024, proceedings of the Tribunal were scheduled for 20.06.2024, 21.06.2024 and 24.06.2024 at Srinagar with consent of the counsels appearing for the UOI and the Union Territory of Jammu and Kashmir, for recording of evidence. Accordingly, a public notice was issued for the hearings at Srinagar, which were to take place in the premises of High Court of Jammu & Kashmir, and Ladakh. However, prior to the proceedings to be held in Srinagar, further proceedings were directed to be held in High Court of Delhi for necessary directions, on 05.06.2024.

40. On 05.06.2024, ld. Counsel for Central Government sought some more time for filing affidavits in evidence and time was granted to file the affidavits before the next date of hearing. On that day also, no appearance was put in on behalf of the organization. On the same day, directions were also given to the Central Government to file a list of witnesses. The proceedings were further adjourned to 13.06.2024, to be held in High Court of Delhi, for compliance. On 13.06.2024, learned Counsel appearing on behalf of Union of India and Union Territory of Jammu and Kashmir informed the Tribunal that affidavit by way of evidence of the witness from the Union Territory of Jammu & Kashmir shall be filed by 15.06.2024. Further, it was also submitted that the list of witnesses which has been filed may be read as having two witnesses only *i.e.* one from Union Territory of Jammu and Kashmir and the other from Ministry of Home Affairs, Government of India.

41. On 20.06.2024, proceedings of the Tribunal were held at Srinagar, in the premises of High Court of J&K and Ladakh. Statement of the following witness was recorded at Srinagar on 20.06.2024:

S. No.	**Name of Witness**	**Details of Affidavit along with date**	**Affidavits kept in File no.**
1.	Sh. Shafat Mohd., DSP, HQ. Bandipura, Kashmir	Ex. PW-1/A dated 11.06.2024	File – Vol. IV Affidavit from pages 1 to 9; and exhibits from pages 10 to 57

42. It needs a highlight that for the Tribunal's proceedings at Srinagar, Union of India was directed to ensure that any interested party/person who desires to appear physically before the Tribunal on any of the dates scheduled for hearing, should be duly assisted for the said purpose. For the said purpose, ASI Mohd. Niyaz ARP: Q51324/XI-SEC was deputed at Srinagar, in the High Court premises, for facilitating the appearance of any interested party who desired to appear before this Tribunal, on all three dates.

43. It also needs a highlight that for the hearings of the Tribunal at Srinagar, no one appeared to attend or join the Tribunal proceedings from or on behalf of JKPFL, or from the general public. On 20.06.2024, proceedings were adjourned to 24.06.2024 for directions.

44. Vide order dt. 24.06.2024 passed in Srinagar, further proceedings were directed to be held at High Court of Delhi, on 03.07.2024 on which date ld. Counsel for the UOI informed the Tribunal that affidavit in evidence of the witness from MHA, GOI, on behalf of the Union of India has been filed with the Registrar of the Tribunal on 01.07.2024. The proceedings were thereafter adjourned further to 15.07.2024 for which date the said witness from the Ministry of Home Affairs, Govt. of India was directed to be present for recording of his deposition.

45. Accordingly, on 15.07.2024, statement of the following witness on behalf of the Union of India was recorded:

S. No	Name of Witness	Details of Affidavit along with date	Affidavits kept in File no.
2.	Mr. Rajesh Kumar Gupta Director (Counter Terrorism), GOI, Ministry of Home Affairs, New Delhi	Ex. PW-2/A dated 01.07.2024	File – Vol. IV Affidavit from pages 1 to 7; and exhibits from pages 8 to 25 along with documents/ confidential material in a sealed cover

No other witness was examined on behalf of the Union of India and the evidence was concluded.

VI. NON-APPEARANCE/NO REPLY ON BEHALF OF THE JKPFL IN THESE PROCEEDINGS

46. Despite service of statutory notice upon JKPFL, its offices and leaders, the concerned association has not entered appearance to contest the notification under Section 3(1) of the UA(P)A. Despite opportunities afforded, no reply has been filed on behalf of the concerned association, as contemplated under *section* 4(2) of the Act. This Tribunal has also not received any intimation from any interested party seeking to depose before this Tribunal.

47. Ample opportunity has been afforded by this Tribunal to the concerned association/ its office bearers to appear before this Tribunal and give their written version/ adduce evidence, in opposition to the factual version of the Central government as regards the activities of the concerned association. Apart from effecting service on the association and its office bearers in the manner aforesaid, this Tribunal even held public hearing/s in Srinagar to enable members of the concerned association and/ or members of the public, to participate in the proceedings of the Tribunal. However, the association or any of its office bearers did not avail the said opportunity.

48. This Tribunal is conscious that despite non-appearance of the concerned organization, the Tribunal is still required to make an "*objective determination*" as mandated in the judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra). The credibility of the material/evidence placed on record by the Central Government is still required to be tested. It needs a highlight that the Hon'ble Supreme Court has cautioned that the procedure to be adopted must achieve this purpose and must not be reduced to mere acceptance of the "*ipse dixit of the Central Government*".

49. Thus, notwithstanding the non-appearance on behalf of the concerned association, this Tribunal is required to independently assess the credibility of the material / evidence placed on record by the Central Government, and on that basis, come to a conclusion as to whether or not there is sufficient cause for declaring the association as unlawful.

VII. EVIDENCE ADDUCED BEFORE THE TRIBUNAL

PW-1

50. **Mr. Shafat Mohammad** (**PW-1**) tendered his affidavit as **Ex. PW 1/A** and deposed that he is currently posted as Deputy Superintendent of Police, Bandipora, Kashmir and is the supervisory officer of the cases bearing FIR no. 195/2011 and FIR no. 33/2022. *Witness* stated that in the course of discharge of duties as a supervisory officer, he had gone through the records of the case files of FIR No. 195/2011 and 33/2022. Witness further stated that he had been duly authorized by the competent authority to depose before this Tribunal. The said authorisation was relied upon by PW 1 as **Ex. PW 1/A-1**.

51. PW-1 deposed that the Central Government in exercise of its powers under sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1414(E) published in the Gazette of India, Extraordinary, on 15th March, 2024, has declared the Jammu and Kashmir Peoples Freedom League (JKPFL), as an *'unlawful association'*. *Witness* further deposed that he had read the brief Background Note on JKPFL prepared by the Central Government and had gone through the details of cases registered against the said organization and its leaders, and based on the same he could testify that JKPFL and its leaders were involved in the secessionist activities.

52. PW-1 further deposed that it is borne out from the records of the cases, other materials available in police stations and on the basis of the knowledge gathered by him during the course of his service that JKPFL is a separatist and secessionist organization which was formed in the year 2003 by a separatist leader Mohammad Farooq Shah @ Farooq Rehmani who had also been member of the Proscribed Organizations Jammat-E-Islami (JEI) and 'Jammu and Kashmir Peoples League'. *Witness* further deposed that it was also borne out from the records that in 1989, Farooq Rehmani crossed over to Pakistan and had been carrying out separatist activities from Pakistan. In 1992, Jammu and Kashmir Peoples League (JKPL) faced split into Rehmani and Sheikh Aziz factions. *Al-Fatha Force* was the terrorist wing of Rehmani faction of JKPL. On 22nd April, 2023, Rehmani renamed his faction as Jammu and Kashmir Peoples Freedom League (Rehmani) and became its chairman with its headquarters in Pakistan. PW 1 *testified* that it is borne out from records that the main objective of JKPFL has been to carry out anti-India propaganda for secession of Jammu and Kashmir from the Union of India and to radicalize the youth into secessionist and terrorist activities. *Witness* further stated that JKPFL and its members had been involved in anti-national activities and had also given '*Muzaffarabad Chalo*' call and incited people of Jammu & Kashmir to cross the border, causing law-and-order problem in the erstwhile State of Jammu & Kashmir which resulted in various separate violent acts. JKPFL is still continuing with its agenda in the UT of Jammu & Kashmir and is backed by Pakistan and other terrorist and separatist organizations.

53. PW-1 also deposed that as per the records, most prominent faces of JKPFL are (i) **Farooq Ahmad Shah @ Farooq Rehmani (Chairman)**, (ii) **Mohammad Ramzan Khan @ Altaf (Chairman, Kashmir Chapter) and** (iii) **Dr. Atta-ur-Rehman Tantray (Member)** all of whom set a narrative of portraying a negative image of the Indian Army and Govt. administration in the minds of the youth of Kashmir.

FIR No. 195/2011:

54. PW-1 further testified that on 03.09.2011, reliable information was received at PS Bandipore that persons associated with the banned organization are instigating the general public for pelting stones on police and security forces with an intent to cause threat to the unity, integrity and sovereignty of the Union of India. It was also disclosed that the said persons have also delivered a speech inciting hatred in the hearts and minds of the general public which was detrimental for the internal security of the State. *Witness* stated that leading to the said incident, **FIR No. 195/2011** was registered on 03.09.2011 at PS Bandipore u/s 13 of the UA(P) Act. A true copy of **FIR No. 195/2011** in vernacular along with its true English translation was relied upon by PW 1 as **Ex. PW 1/1**.

55. PW-1 deposed that the investigation of the case was conducted during which the accused was arrested and interrogated who admitted his involvement in the commission of the offence and involvement of other persons also who were leaders of the *Hurriyat* conference and hence, his disclosure statement was recorded. *Witness* further stated that statements of witnesses were also recorded in whose presence disclosure was made and who also corroborated the veracity of the information. Based on the incriminating material collected against the accused person, Chargesheet bearing *Challan* No. 77/2017 was filed before the concerned court on 04.07.2017, trial of which is still pending. A true copy of the chargesheet no. 77/2017 filed in FIR No. 195/2011, in vernacular, along with its true English translation has been relied

upon by PW 1 as **Ex. PW 1/2**. True copies of the statements of witnesses recorded under section 161 Cr.P.C during the course of investigation were relied upon by PW 1 as **Ex. PW 1/3** to **Ex. PW 1/10**. Disclosure memo of Mohd. Ramzan was relied upon as **Ex. PW 1/11**.

FIR No. 33 of 2022:

56. PW-1 deposed that on 26.02.2022, an information was received at PS Bandipore through reliable sources that 14 persons who have been named as accused in the above FIR, have ex-filtrated to Pakistan Occupied Kashmir (POK) for obtaining training in illegal arms/ ammunitions for causing threat to the territorial integrity and sovereignty of the nation. *Witness* also disclosed that the said accused had joined different terrorist training camps under the command and control of Syed Salaudin, Mohd. Hafiz, Azhar Masood etc. and after obtaining training, they had infiltrated to Kashmir from different places falling within jurisdiction of this Police Station and are carrying out terrorist activities. *Witness* further stated that leading to the said incident, **FIR no. 33/2022** was registered on 26.02.2022 at PS Bandipore u/s 2/3 of EMICO Act, u/s 121 of IPC *and* u/s 18, 20 & 39 of UA (P) Act. A true copy of **FIR no. 33/2022** in vernacular along with its true English translation was relied upon by PW 1 as **Ex. PW 1/12**.

57. PW-1 further deposed that the investigation of the case was conducted and statement of various family members of the accused terrorists were recorded who admitted the involvement of accused persons in the terrorist activities and have also corroborated the veracity of the information received with regard to them on the basis of which aforesaid FIR was registered. *Witness* stated that during investigation, search had been conducted into the forest areas and wherefrom in one of the hideouts of the accused persons, various material was seized vide separate seizure memos. True copies of the seizure memos prepared during investigation of FIR no. 33 of 2022 in vernacular along with their true English translations were relied upon by PW 1 as **Ex. PW 1/13 and Ex. PW 1/14**. True copies of the statements of witnesses recorded under section 161 Cr.P.C during investigation were relied upon as **Ex. PW 1/15** to **Ex. PW 1/19**.

58. PW-1 further testified that the case is still under investigation as the accused persons are still absconding and as per the latest information, they have ex-filtrated to POK. However, search for the said accused persons is being conducted. An English translation of the case diary highlighting the status of the investigation conducted till date was relied upon as **Ex. PW 1/20**.

59. PW-1 also deposed that from the knowledge acquired by him during the course of service and the records of the cases, it is manifest that JKPFL and its leaders and members have been:

a) incessantly encouraging and advocating secession of the territory of Jammu and Kashmir from the Indian dominion;

b) incessantly inciting separatist groups, on religious lines to destabilize the Government of India;

c) indulging in acts of commission and omissions which are part of the above FIR's which are intended to disrupt the territorial integrity of India and have been aimed at inciting individuals and groups of local Muslim community to bring about cession of lawful constitutional authority of Government of India in the territory of Jammu and Kashmir;

d) spearheading/conspiring/ masterminding/ facilitating/escalating secessionist movement and unlawful activities inside the country and especially in the Kashmir valley; ***and***

e) exploited the situation in the valley intensely and actively provoked, incited and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti-India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in the injuries and death of several civilians, police and Security Forces.

60. PW-1 further deposed that sufficient material has been brought on record which manifests that JKPFL, its leaders and members of the said organization who had support from across the border, have been actively and continuously supporting the separatist and banned organizations and have been openly inciting the people to bring about a secession of Jammu and Kashmir from the Union of India. *Witness* affirmed further that it is also established that the activities of JKPFL are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of JKPFL are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Opportunity for cross-examination was given but not availed in view of non-appearance on behalf of JKPFL.

PW-2

61. **Mr. Rajesh Kumar Gupta** (**PW-2**) tendered his affidavit as **Ex.PW-2/A** and deposed that he is posted as Director (Counter Terrorism) in the Government of India, Ministry of Home Affairs, New Delhi, and has been duly authorized by the Ministry of Home Affairs to depose before this Tribunal. A photocopy of the relevant office noting vide which he was authorized to depose was relied upon as **Ex. PW-2/A-1**[1]. PW 2 deposed that he has been dealing with all the relevant files/records concerning JKPFL in his official capacity. *Witness* stated that the notification no. S.O. 1414 (E) dated 15th March, 2024, issued by the Central Government is based on the information and material received from the central intelligence agency and Criminal Investigation Department of Government of Union Territory of Jammu and Kashmir, with regard to the unlawful activities of the Jammu and Kashmir Peoples Freedom League (JKPFL). On the basis of information received from the intelligence and investigation agencies of the Central Government and the UT of J&K regarding unlawful activities of JKPFL, a note was prepared for the consideration of the Cabinet Committee on Security, as is reflected in the official records. PW 2 further deposed that thereafter, the Cabinet Committee on Security took the decision and approved the proposal contained in the above note, in its meeting held on 13th March, 2024. Accordingly, the declaration concerning JKPFL being an 'unlawful association' was made and published vide notification dated 15th March, 2024, bearing no. S.O. 1414 (E). A copy of the said notification published in the official gazette dated 15.03.2024 has been relied upon by PW 2 as **Ex. PW 2/1.**

62. PW-2 testified that in terms of sub-section (1) of Section 5 read with sub-section (1) of the Section 4 of Unlawful Activities (Prevention) Act, 1967 and vide notification dated 5th April, 2024, bearing no. S. O. 1629 (E), this Tribunal was constituted and a Background Note was submitted to this Tribunal vide letter dated 12th April, 2024 in terms of Rule 5 of the Unlawful Activities (Prevention) Rules 1968, based upon the material/ information as contained in the concerned file. Copy of the said Background Note concerning JKPFL, supplied vide letter dt. 12.04.2024 addressed to the Registrar of the Tribunal, was relied upon by the Witness as **Ex. PW 2/2.** *Witness* further testified that the cases registered by the Jammu and Kashmir Police throw light on the unlawful, subversive and secessionist activities of the chairman and members of JKPFL.

63. PW-2 deposed that the officer concerned of the Union Territory of Jammu and Kashmir has filed his affidavit before this Tribunal in respect of cases registered in the UT of Jammu and Kashmir against the chairman and members of JKPFL under various provisions of law including the Unlawful Activities (Prevention) Act, 1967, Indian Penal Code, 1860 etc. *Witness* further deposed that the concerned witness has already adduced evidence during the course of proceedings before this Tribunal in support of the declaration as contained in Notification no. S.O. 1414 (E) dated 15th March, 2024 which clearly establishes that JKPFL is continuously indulging in unlawful activities which pose a serious threat to the internal security of the country. *Witness* stated that in addition to the above adduced evidence, various intelligence inputs show that JKPFL is continuing its unlawful activities which are prejudicial to the security of the country. *Witness* further affirmed that inputs received from central intelligence agency clearly bring out that the JKPFL is indulging in activities for separation of Jammu and Kashmir from the Union of India and considering all these facts, circumstances and evidence adduced before this Tribunal, JKPFL has been banned under the UA(P)A, 1967 which ban may be affirmed by this Tribunal. PW-2 further deposed that the banning of JKPFL is necessary in the interest of national security, sovereignty and territorial integrity of India since the chairman and members of the JKPFL have been indulging in radicalizing, brainwashing and indoctrinating the minds of Kashmiri youth through provocative speeches for separation of Jammu and Kashmir from Union of India.

64. PW-2 submitted the duly indexed original file in a sealed cover containing above mentioned central intelligence reports/inputs for the perusal of this Tribunal and the same was, subject to the claim of privilege raised by the Central Govt. in respect thereof u/s 123 of *Indian Evidence* Act 1872 *read with* Rule 3(2) and *proviso* to Rule 5 of Unlawful Activities (Prevention) Rules of 1968, was taken on record as **Ex.**

[1] The original file containing the noting was submitted by the Witness in a sealed cover for which privilege was claimed.

PW 2/3. In regard to the claim for privilege, PW-2 deposed that the contents of Ex. PW 2/3 are confidential in nature and the same cannot be made available to the banned association or to any third party as the Government considers it against the public interest to disclose the same either to the banned association or to any third-party *inter-alia* in terms of the provisions of the Unlawful Activities (Prevention) Rules, 1968. PW-2 further deposed that the documents for which claim of privilege is being sought cannot be supplied as a public document as dissemination of the same to public at large may impede/impeach the ongoing investigations/prosecutions against the banned organization or its members and can also entail cross border national security concerns. Therefore, the said documents can be verified by the Tribunal only.

65. PW-2 further deposed that from the cogent and irrefutable evidence which has emerged till now, it is clear that JKPFL is continuously encouraging veiled armed terrorist activities and is openly advocating and inciting people to bring about a secession of a part of the territory of India from the Union, and the activities of JKPFL are aimed at causing disaffection, disloyalty and dis-harmony by promoting feeling of enmity and hatred against the lawful government, and accordingly, the members of JKPFL are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of India.

66. PW-2 further deposed that on the basis of material adduced for the consideration of this Tribunal, it is evident that if the JKPFL is not banned, the activists and sympathizers of JKPFL will pose a serious threat to the communal harmony, internal security & integrity of the country. PW-2 concluded his testimony by deposing that in view of the submissions, the declaration made by the Central Government vide Notification no. S. O. 1414(E) dated 15th March, 2024 be upheld in the national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance on behalf of JKPFL.

No other witness was examined on behalf of the Union of India. The matter was thereafter posted for 27.07.2024 for addressing final submissions on behalf of the Union of India.

VIII. SUBMISSIONS ON BEHALF OF THE UOI

67. On 27.07.2024, ld. Additional Solicitor General for the Union of India, put forth submissions on the merits of the Notification dt. 15.03.2024 as also on the claim for privilege for the documents, which had been submitted by PW 2 in a sealed cover. In regard to the claim for privilege, ld. Additional S.G. referred to *section* 123 of the Evidence Act read with *Rule* 3(2) of the UAP Rules, 1968, which are reproduced as under:

Indian Evidence Act, 1872

*"**123. Evidence as to affairs of State** – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."*

The Unlawful Activities (Prevention) Rules, 1968

"3. Tribunal and District Judge to follow rules of evidence.-

(1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,-

(a) Make such books of account or other documents a part of the records of the proceedings before it; or

(b) Allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."

68. Ld. Addl. Solicitor General submitted that the claim of privilege by the Union of India for the documents placed in sealed cover is made as the documents are of such a nature that the non-disclosure of which would be in the interest of the public. It was submitted that this concept of public interest is taken into account even in the criminal proceedings qua the accused, whereas in juxtaposition, the present matter stands at a much higher pedestal and involves the issue of sovereignty and integrity of the country. Ld. Addl. SG submitted that in the cases concerning national security, sovereignty and integrity, the Tribunal has to interpret and analyze the material differently as the decisions taken by the Central Government in such manner are based on highly sensitive information and inputs; and the effects of such decisions are not confined to the boundaries of the nation.

69. To support her submission, ld. Addl. SG has relied upon the judgment delivered in a case of preventive detention i.e. ***Raj Kumar Singh vs. State of Bihar*** (1986) 4 SCC 407 wherein the Supreme Court, *inter alia*, held as under:

"The executive authority is not the sole judge of what is required for national security or public order. But the court cannot substitute its decision if the executive authority or the appropriate authority acts on proper materials and reasonably and rationally comes to that conclusion even though a conclusion with which the court might not be in agreement. It is not for the court to put itself in the position of the detaining authority and to satisfy itself that untested facts reveal a path of crime provided these facts are relevant. See in this connection the observations of O. Chinnappa Reddy, J. in Vijay Narain Singh case [(1984) 3 SCC 14: 1984 SCC (Cri) 361: AIR 1984 SC 1334: (1984) 3 SCR 435] at p. 440 and 441. (SCC p. 19, para 1) 346. Similarly, in the case of Union of India vs. Rajasthan High Court, (2017) 2 SCC 59;: 2016 SCC Online SC 1468, it was held that it was not for the court in the exercise of its power of judicial review to suggest a policy which it considered fit. The formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond legitimate domain of judicial review. Formulation of such a policy is based on information and inputs which are not available to the court. The court is not an expert in such matters. Judicial review is concerned with the legality of executive action and the court can interfere only where there is a breach of law or a violation of the Constitution."

70. The ld. Addl. SG has also placed reliance upon the judgment delivered in ***Ex-Armymen's Protection Services (P) Ltd. v. Union of India,*** (2014) 5 SCC 409, wherein it has been inter alia held as under:

"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."

71. The ld. Addl. SG further submitted that the UA(P)A and the *Rules* framed thereunder provide for a mechanism to claim privilege and withhold certain facts/documents to seek non-disclosure of the same. The ld. Addl. SG then placed reliance on the judgment delivered in ***Jamaat-e-Islami Hind*** (supra), wherein the Hon'ble Supreme Court has held as under:

"19. ...the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of acts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the Government considers against the public interest to disclose…

20…

21. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest.

22....in such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense.

23…

24. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken."

72. The ld. Addl. SG also relied on the judgment delivered in ***People's Union for Civil Liberties vs. Union of India,*** (2004) 2 SCC 476, where it was, *inter alia*, held as under:

"69. The legislative policy behind the aforementioned provisions is no longer res integra. The State must have the prerogative of preventing evidence being given on matters that would be contrary to public interest.

70. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:

(1) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and

(2) whether disclosure of the contents of the document would be against public interest?

71. When any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. The claim of immunity and privilege has to be based on public interest.

72. The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can be found in Section 162. Under Section 162 a person summoned to produce a document is bound to bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court‖. It further says that the court, if it deems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility

73. In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."

73. The ld. Addl. SG, thus, submitted that from a bare reading of the aforesaid judgment of the Supreme Court, it is clear that an enquiry contemplated under the UA(P)A gives a right to the government to claim privilege of sensitive documents in public interest/national interest which right has been duly upheld by the Supreme Court; and that in the present case, the documents for which claim of privilege, by

their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

74. The ld. Addl. SG further submitted that the document forms part of the evidence collected by the intelligence agencies which pertains to secessionist and unlawful activities of the JKPFL and those associated with it and the said documents are confidential and secret in nature and the same can be verified by the Tribunal only. The learned ASG further submitted that the nature of material placed in the sealed cover by the Central Government is in the form of intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. The learned ASG submitted that the material filed by the Central Government contains the note then put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the notification was issued besides intelligence inputs and correspondence in relation thereto. Hence, the claim of privilege of the documents by the Central Government is in accordance with law and the documents submitted in sealed cover are not required to be disclosed in the public interest.

75. Learned Addl. SG further submitted that the sealed cover documents form a part of the evidence which *dehors* being part of the evidence of the present proceeding, are of a confidential nature, disclosure of which would be contrary, not only to the public interest but also to national interest. In the same breath, the ld. Addl. SG submitted that *privilege* for the said documents is claimed based on the nature of documents which impinge upon national security. The disclosure of these documents to the other side would jeopardize not only the interest and safety of certain individuals but would also compromise national security.

76. Learned Addl. SG has also placed reliance in this regard on the following judgments of the Hon'ble Supreme Court:-

(a) S.P. Gupta Vs. Union of India (1981) Supp SCC 87

(b) Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370

77. Learned Addl. SG has submitted that with regard to the claim of privilege for non-disclosure of sealed documents, the Supreme Court in ***S.P. Gupta*** (supra), has held as under:

> *"73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the non-disclosure would thwart the administration of justice by keeping back from the court a material document. There are two aspects of public interest clashing with each other out of which the court has to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer [(1968) AC 910, 952, 973, 979, 987, 993 : (1968) 1 All ER 874 (HL)] :*
>
> > *"It is universally recognized that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved."*

78. Learned Addl. SG, therefore, submitted that the rigors of ***S.P Gupta*** (supra) for claiming privilege have to be read in context of the provisions of UA(P)A and the Rules framed thereunder which provide that document, disclosure whereof may not be in the public interest, be not disclosed. She further submitted that the UA(P) Rules, as quoted above, start with a *non obstante* clause and thus an inbuilt mechanism has been provided under the UA(P)A and the Rules framed thereunder. Accordingly, the Tribunal is mandated to grant privilege forbidding disclosure where the claim of the Government is that the disclosure of such documents could affect the larger public interest of the nation by jeopardizing the safety and sovereignty of the country and also finds that the public interest outweighs the interest of the association/members/office bearers.

79. Learned Addl. SG submitted that the claim of confidentiality has to satisfy the test of character of the document and if on an objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document.

80. The ld. Addl. SG submitted that the statement of objects and reasons of the UA(P)A itself underlines the purpose of the enactment to provide for a more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. She submitted that the statute empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form an association and incidentally a restriction on the freedom of speech and expression, to assemble peacefully and with arms. Learned Addl. SG submitted that further, *section* 48 of the UA(P)A itself provides that the provisions of the UA(P)A and the *Rules* made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act giving it a clear over-riding position.

81. The ld. Addl. SG also submitted that the decision of the previous Tribunals constituted under Section 4 of the UA(P)A, in which the claim of privilege by the Central Government had been allowed holding that the same satisfied the requirement of Section 123 of the *Evidence Act*, are binding on this Tribunal in view of the provisions of *section* 5(7) of the UA(P)A which provide that the proceedings before this Tribunal are judicial proceedings and, therefore, reliance has been placed on the Extraordinary Gazette Notification bearing no CG-DL-E-27032023-244721 published in Part II—Section 3—Sub-section (ii) having no. 1382 dated Monday, March 27, 2023/CHAITRA 6, 1945 whereby, Tribunal comprising of Hon'ble Mr Justice Dinesh Kumar Sharma, Judge, Delhi High Court, in exercise of the powers conferred by *sub-section* (3) of section 4 of the said Act, passed an order on the 21st March, 2023, confirming the declaration vide Notification no. S.O. 4559 (E) dt. 27.9.2022 made by the Central Government declaring the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala as being unlawful. In view of the aforesaid position, the ld. Addl. SG submitted that the Central Government respectfully claims privilege on the documents contained in the sealed cover, as mentioned in the affidavit filed by PW 2.

82. Addressing submissions on the sufficiency of the reasons and basis for declaring JKPFL as an unlawful association vide notification no. S.O. 1414 (E) dt. 15.03.2024, ld. Addl. SG submitted that the exception to the freedom of speech and expression, and to form associations and union, under Article 19(1) of the Constitution of India, was inserted in the form of "sovereignty and integrity of India" in Article 19(2) and 19(4), after the National Integration Council appointed a Committee on National Integration and Regionalization. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Learned Addl. SG submitted that pursuant to the acceptance of recommendations of the Committee, the Constitutional Sixteenth Amendment) Act, 1963 was enacted to impose reasonable restrictions in the interests of the sovereignty and integrity of India. Further, in order to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament. The main objective of the Unlawful Activities (Prevention) Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India. Learned Addl. SG further submitted that after Independence, Parliament has passed many laws to regulate national security and in order to protect sovereignty of India. The UA(P)A, 1967 is an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and other matters connected therewith.

83. Learned Addl. SG further submitted that to achieve the aforesaid purpose of tackling the menace of activities inimical to the sovereignty and integrity of India, the legislature in its wisdom decided to create two species of the offence i.e.

i. Unlawful Activity & Unlawful Association [S-2(o) r/w Chapter 2 & 3 (Sections 3-14)]; and

ii. Terrorist Act & Terrorist Organization [S-2 (k), (i), (m) r/w Chapter 4-6 (Sections 15-40)].

Learned Addl. SG submitted that the growing threat of terrorism posed immediate harm to the lives of the Indian citizens and the security of the State led to the enactments of special deterrent laws from time to time. Learned Addl. SG also submitted that notably, the repeal of the Prevention of Terrorist Activities Act, 2002 entailed an absence of a legal framework to address the menace of terrorism. Accordingly, as a consequence, the UA(P)A was amended to include a definition of the term *'terrorism'* and to give substantive powers to the Indian State to address the same. The amendments made therein were made also keeping in mind India's commitments under the Security Council Resolution dated 28th September, 2001, which enjoined to fight both terrorism as well as terror funding, which was to be treated as a genus of terrorism. The amendments were in furtherance of the global fight against terrorism.

84. In view of the aforesaid, learned Addl. SG submitted that it is evident that the provisions of UA(P)A have been enacted by the Parliament which had the legislative competence to enact the same and that once it is clear that the Parliament had the legislative competence to enact the law, there is a presumption of constitutionality in favour of the statute. It is further submitted that there is always presumption of constitutional validity of the statute and it is presumed that the Legislature understands the needs of the people. Learned Addl. SG submitted that an organization can be banned solely based on the opinion of the Central Government and, therefore, the challenge to Chapter II of UA(P)A has already been repelled by the Hon'ble Supreme Court in *paras* 84 -92 of ***Arup Bhuyan v. State of Assam*** (2023) 8 SCC 745. In *para* 90 of this judgment, the Hon'ble Supreme Court held as under:

> *"90. Thus from the aforesaid it can be seen that before any organization is declared unlawful a detailed procedure is required to be followed including the wide publicity and even the right to a member of such association to represent before the Tribunal. As observed hereinabove the notification issued by the Central Government declaring a particular association unlawful, the same is subject to inquiry and approval by the Tribunal as per Section 4. Once that is done and despite that a person who is a member of such unlawful association continues to be a member of such unlawful association then he has to face the consequences and is subjected to the penal provisions as provided under Section 10 more particularly Section 10(a)(i) of the UAPA, 1967."*

85. Learned Addl. SG submitted that from the aforesaid discussion of the Supreme Court, it is clear that an organization can be banned solely on the basis of the opinion of the Central Government and through the process duly established by the law enacted by the Parliament. On the aspect of *standard of proof* required for the present proceedings, learned Addl. SG submitted that the proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and the matter has to be decided by objectively examining which version is more acceptable and credible. In this regard, learned Addl. SG has referred to the observation made in para 30 of ***Jamaat-e-Islami Hind*** (supra). Learned Addl. SG also argued that the procedure to be followed by the Tribunals can be read from the law enacted under the Administrative Tribunals Act, 1985. Learned Addl. SG then submitted that similarly the Tribunal established under the UA(P)A has been bestowed with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act.

86. Learned Addl. SG has also submitted that as per the mandate of *section* 4 of the UA(P)A, the jurisdiction of this Tribunal is to adjudicate whether or not there is sufficient cause available with the Central Government to ban the organization in question. Ld. Addl. SG further submitted that any procedural irregularities or defects in material adduced before this Tribunal are to be tested by the concerned trial court within the parameters of the relevant *Evidence Act, 1872* and other relevant laws. Learned Addl. SG also submitted that the jurisdiction of this Tribunal is to satisfy itself whether these documents can be relied upon to ascertain '*sufficiency of cause*' and whether the agencies responsible for the enforcement of law and order could or could not have ignored the same for recommending suitable action under the UA(P)A.

87. Learned Addl. SG further submitted that for the purpose of assessing the sufficiency of the cause, this Tribunal has to holistically look into the entire materials / incidents and if the material / incidents are relatable acts of commission of '*unlawful activity'*, '*secession'* or '*cession of a part of the territory of India*', on the anvil of preponderance of probability, then the ban is justified and is required to be confirmed. Learned Addl. SG submitted that the Central Government has led cogent material and evidence to demonstrate that there was sufficient material available with the Central Government to form an opinion that JKPFL and its associates were indulging in unlawful activities. Learned Addl. SG submitted that the law does not require that the cases which should form the basis of opinion formed by the Central Government should be proximate to the date of the decision *or* there should be 'X' number of cases to prove an association to be an unlawful association; and that even one case may be sufficient to arrive at a conclusion. Learned Addl. SG has submitted that the delay in the investigation will have no bearing in the present proceedings as the degree of evidence required before this Tribunal and the adjudication thereon is to be based on the principles of preponderance of probabilities. As regards the hostile environment prevailing in the territory of Jammu & Kashmir creating hurdles in conclusion of cases against the separatist and militants, the learned Addl. SG submitted that as has been stated in the testimony of witness, the delay in the investigation and trial has occurred due to extremely hostile environment which prevailed in the erstwhile State of Jammu and Kashmir. Learned Addl. SG submitted that from 1989 to 2016 the situation in the erstwhile State of Jammu and Kashmir remained volatile and disturbed due to the circumstances created by terrorist groups camouflaged as Separatist Groups/Political Parties or self-styled political leaders who instigated and provoked the general public at large against the lawfully established governments with the help of foreign state and non-state actors having interests inimical to the interest of the country. Learned Addl. SG has submitted that these facts have been referred to in the concurring opinion of Justice Sanjay Kishan Kaul in para-31 and Epilogue recorded in para 113-135 in the judgment ***Re: Article 370 of the Constitution***, reported in 2023 INSC 1058 : 2023 SCC Online SC 1647.

88. Learned Addl. SG submitted that the separatist leaders and their activists had created such terror in the minds of public that the general public, which even did not support their cause, feared to oppose them or to report to the police against various incidents and even feared to depose or give evidence against the said separatist leaders, thus, leading to a non-cooperative atmosphere for the police investigating agencies in the cases registered against the said separatist organizations or its leaders. Learned Addl. SG also submitted that the investigation was further slowed thereafter due to COVID which had brought all the routine activities to a standstill and a complete lockdown in the entire nation was imposed. Hence, the investigation in the cases registered against the JKPFL in the State of Jammu & Kashmir could not be processed at the pace it should have been.

89. Learned Addl. SG has further submitted that the evidence adduced by the Central Government has not been refuted on any ground whatsoever, and as such, in view of non-rebuttal of the evidence adduced by the Central Government by any member / erstwhile member of JKPFL opposing the ban, the Notification no. S.O. 1414 (E) published in the Gazette of India, Extraordinary, dated 15th March, 2024, declaring the Jammu and Kashmir Peoples Freedom League (JKPFL) as an '*unlawful association'* under sub-Section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 is liable to be confirmed.

X. ANALYSIS AND CONCLUSION

90. The Tribunal shall first deal with the claim of privilege raised by the Union of India in view of the fact that the documents submitted in a sealed cover by PW 2 have a great bearing on the fundamental question as to whether the Central Govt. had sufficient basis/ reasons to declare JKPFL as an unlawful association *vide* Notification no. 1414 (E) dt. 15th March 2024. The issue regarding claim of privilege by the Central Government in respect of the documents, disclosure whereof is injurious to public interest, is specifically envisaged in the UA(P) Rules, 1968. Rule 3 of the said UA(P) Rules, is in the following terms:

> ***"3. Tribunal and District Judge to follow rules of evidence****.—(1) In holding an enquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of Section 7 or sub-section (8) of Section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).*
>
> *(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other*

documents are claimed by that Government to be a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not, --

(a) make such books of account or other documents a part of the records of the proceedings before it; or

(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."

91. It can be seen that the *Rule* 3 (2) starts with a *non-obstante* clause providing that notwithstanding anything contained in the *Indian Evidence Act*, 1872, where any books of account or other documents are sought to be produced by the Central Government and these documents are claimed to be of a confidential nature, then the Tribunal shall not make such documents a part of the records of the proceedings before it or allow inspection of or grant a copy of the same to any person other than the parties to the proceedings before it.

92. *Rule* 5 of the UA(P) Rules which provides for the documents which should accompany a reference to the Tribunal *i.e.* a copy of the notification and all facts on which grounds specified in the notification are based, further provides that nothing in the said Rule shall require the Central Government to disclose any fact to the Tribunal which it considers against public interest to disclose. The said rule is in the following terms:

*"5. **Documents which should accompany a reference to the Tribunal.** – Every reference made to the Tribunal under sub-section (1) of Section 4 shall be accompanied by –*

(i) a copy of the notification made under sub-section (1) of Section 3, and

(ii) all the facts on which the grounds specified in the said notification are based:

Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose."

93. The aforementioned provisions and the requirement of maintaining confidentiality of certain documents specifically came to be considered by the Hon'ble Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), wherein it was held as under:

"22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

> *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."*

24. In Paul Ivan Birzon v. Edward S. King placing reliance on Morrissey, while dealing with a similar situation, when confidential information had to be acted on, it was indicated that the credibility issue could be resolved by the Board retaining confidentiality of the information but assessing the credibility itself, and a modified procedure was indicated as under:

> *"... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....*
>
> *We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.*
>
> *Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."*

25. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken.

26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere

imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself."

94. The High Court of Andhra Pradesh in ***Deendar Anjuman v. Government of India,*** 2001 SCC OnLine AP 663 after applying the test laid down in ***Jamaat-e-Islami Hind*** (supra), upheld the ban imposed and further held that the entire material available on record itself need not be published or made available to the aggrieved person but what is required is disclosure of reasons and the grounds. Relevant extract of the said judgment is as under:

"19. The expression "for reasons to be stated in writing" did not necessarily mean that the entire material available on record itself is to be published or made available to the aggrieved person. What is required is disclosure of reasons. The grounds must be disclosed. The notification issued under sub-section (1) of Section 3 alone is required to be referred to the Tribunal "for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful." The Tribunal after such reference is required to issue notice to the affected association to show cause, why the association should not be declared unlawful. The Tribunal is required to hold an enquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from the association and then decide whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is require "to adjudicate whether or not there is sufficient cause for declaring the association unlawful." As held by the Supreme Court in Jamaat-e-Islami Hind v. Union of India, the Tribunal is required to weigh the material on which the notification under sub-section (1) of Sec. 3 is issued by the Central Government after taking into account the cause shown by the Association in reply to the notice issued to it and by taking into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the action to be unlawful. The Tribunal is required to objectively determine the points in controversy. The Supreme Court further held that subject to non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. The Tribunal is entitled to ascertain the credibility of conflicting evidence relating to the points in controversy. It is observed by the Supreme Court:

> *"To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal*

contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence of material in respect of which the Central Government claims non-disclosure on the ground of public interest."

20. It is, therefore, evident that disclosure of all the facts and material available on record subject to the claim of any privilege in this regard by the Central Government is only after the reference of the notification issued under sub-section (1) of Section 3 of the Act to the Tribunal for the purpose of adjudication whether or not there is sufficient cause for declaring the association unlawful. The material available on record may have to be revealed to the association or its members. In a case wherever any privilege is claimed, the Tribunal has to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. Therefore, there is no requirement to disclose the material itself and publish the same in the notification or provide to the association along with the notification issued in exercise of the power under proviso to sub-section (3) of Section 3 declaring the association to be unlawful with immediate effect. The requirement is disclosure of additional reasons and grounds and not the material. The notification issued in exercise of the power under proviso to sub-sec. (3) of Section 3 cannot be set aside on the ground that the material relied upon for stating the reasons is not communicated to the association concerned declaring it to be an unlawful association with immediate effect. Such notification would become vulnerable only when the reasons are not notified: The record should contain the reasons in writing and the same is required to be revealed and published in the notification or communicated to the association concerned. Such reasons are required to be distinct and different and cannot be the same for imposing ban under Section 3 of the Act. The reasons are required to be communicated but not the entire material. Disclosure of the material is only after reference of the notification issued under Section 3 of the Act to the Tribunal."

95. The legal position which thus emerges can be succinctly put in the following terms:

i. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder contemplates maintenance of confidentiality whenever required in public interest;

ii. The Tribunal can look into the confidential material without the same being disclosed to the association or its office-bearers, for the purpose of assessing the credibility of the information and satisfying itself that the same is reliable;

iii. The Tribunal can devise a suitable procedure for itself for examining and testing the credibility of such material;

iv. The requirement of natural justice can be suitably modified by the Tribunal in the manner it considers appropriate for the purpose of assessing/examining the confidential material/documents, and arriving at a conclusion based on a perusal thereof.

96. Further, the rigors prescribed by the Hon'ble Supreme Court in the case of ***S.P. Gupta*** (supra) have to be read in the context of the provisions of the UA(P)A and the *Rules* framed thereunder. In particular, it needs to be borne in mind that Rule 3(1) of the UA(P) Rules, 1968 expressly provides that in holding any inquiry under Sub-Section (3) of Section 4 of the UA(P)A, the Tribunal shall follow "*as far as practicable*", the rules of evidence laid down in the *Indian Evidence Act*. Thus, the rigors that have been contemplated in the context of Section 123 of the *Indian Evidence* Act, cannot *ipso-facto* be made applicable to these proceedings. The legislative intent in making the provisions of the *Evidence Act* applicable only "*as far as practicable*" is evident from the nature of these proceedings. The proceedings before this Tribunal do not contemplate a full-fledged trial; rather the proceedings are in the nature of an "*inquiry*" as referred to in section 4(3) of the UA(P)A.

97. The present proceedings are time-bound and as laid down by the Hon'ble Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), an appropriate procedure has to be devised/tailored by this Tribunal for the purpose of its inquiry. As such, any claim seeking privilege has to be assessed in terms of the in-built mechanism as provided under the UA(P)A and the Rules framed thereunder and the Tribunal is mandated to grant privilege from disclosure where it finds that the disclosure would be against/injurious to public interest. Thus, the nature of the documents has to be assessed by the Tribunal to see whether it contains any sensitive information, disclosure of which would be against public interest.

98. On perusal of the documents submitted by the Central Government in a sealed cover, it is found that the same contains intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, notes/memos prepared by the investigating and intelligence agencies, information revealed on investigation including information as to the clandestine nature of the activities of the concerned association and its office-bearers and linkage of the association and its office-bearers with separatist/terror organizations and individuals outside of India.

99. This Tribunal finds from the perusal of the sealed cover documents that the disclosure of these documents would be detrimental to the larger public interest and security of the State. One of the documents which is contained in the sealed cover, is a note prepared for consideration of the Cabinet Committee on Security, which contains sensitive information about activities of the Association and its inimical impact on national security. Clearly, the nature of these documents is such that it would be in public interest and in the interest of the security of the State to maintain confidentiality as regard thereto. It is also to be noted that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW - 2) to be based on a specific approval/direction of the Union Home Secretary (Head of the Department). The said position is also borne out from the relevant official/noting files shared with this Tribunal. In the circumstances, this Tribunal allows the claim for privilege in respect of the documents submitted in a sealed cover by the concerned witness from the Ministry of Home Affairs. Consequently, the Tribunal has proceeded to peruse the said documents, as contemplated in the Judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and to assess the credibility thereof and the implications flowing therefrom for the purpose of the present inquiry.

100. *Adverting now* to the aspect of sufficiency of material for declaring JKPFL as an unlawful association, on the basis of the material placed on record and the evidence adduced by the Central Government, this Tribunal finds sufficient cause for declaring the Jammu and Kashmir Peoples Freedom League ('JKPFL') as an unlawful association, for the reasons contained in the following *paras*.

101. The notification dated 15th March, 2024 issued under Section 3(1) of the Act *inter alia* mentions that *(i)* the members of the JKPFL have been at the fore-front of the secessionist activities in Jammu and Kashmir; *(ii)* the leaders or members of the JKPFL have scant respect towards the constitutional authority and constitutional set-up of the country; *(iii)* JKPFL and its leaders or members, particularly, its Chairman Farooq Rehmani, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country; *(iv)* there are linkages between JKPFL with banned terrorist organizations; and *(v)* JKPFL and its cadres have been involved in fund mobilisation for carrying terrorist and unlawful activities aimed at the sovereignty and integrity of India.

102. The above grounds/justification cited in the notification issued under *section* 3(1) of the UA(P) Act is borne out from the extensive evidence adduced by the Central Government. The said evidence can be broadly categorized into 2 categories:

i. Evidence adduced by a senior police officer from the Union Territory of Jammu and Kashmir; *and*

ii. Evidence in the form of documents/material submitted in a sealed cover before this Tribunal.

<u>Evidence adduced by officer from the Union Territory of Jammu and Kashmir</u>

103. A senior police officer from the Union Territory of Jammu and Kashmir (PW1) has deposed as regards the litany of incidents involving JKPFL. The same clearly brings out that the concerned association and its chief protagonist Farooq Rehmani has been relentlessly indulging in "*unlawful activities*". The incidents with regard to which sufficiently weighty evidence has been adduced, *inter alia* involves:

i. raising anti-India and pro-Pakistan slogans (evidence of PW-1);

ii. carrying out terrorist acts in Jammu & Kashmir (evidence of PW-1);

iii. undermining the sovereignty and territorial integrity of India (evidence of PW-1),

iv. instigating the general public intending to cause disaffection against India (evidence of PW-1)

104. On a cumulative consideration of the various incidents/activities which are subject matters of the various FIR's with regard to which the aforesaid evidence has been led, it is evident that JKPFL has been indulging in "unlawful activities" and has posed a grave threat to the law and order situation in Jammu and Kashmir since the last several decades. Although it is true that the trial and investigation respectively in the FIRs (with regard to which PW-1 has deposed) has been protracted, learned Addl. SG has sought to emphasise that the same was on account of hostile environment prevailing in Jammu and Kashmir over a long period of time. However, what is of relevance to this Tribunal is the clear pattern that is discernible as regards the nature of activities of the concerned association and its office bearers. The pattern of conduct is to incessantly encourage secession of Jammu and Kashmir, questioning or seeking to disrupt the sovereignty and territorial integrity of India, inciting the people of Jammu and Kashmir to take resort to violence ***and*** to disrupt peace in the region of Jammu and Kashmir. These activities continued unabated for a long period of time and it is only in the last few years (in the aftermath of the Jammu & Kashmir Re-organisation Act, 2019) that there has been a lull in the activities of the JKPFL, as is evident from the reduced instances of violence/disruption of law and order.

105. This Tribunal also takes note of the fact that the senior police officer from the UT of Jammu and Kashmir, who has deposed before this Tribunal as PW 1, during the course of his examination, strenuously emphasized on his own personal knowledge derived during the course of discharge of his official functions that JKPFL and its leaders and members have been:

iii. incessantly encouraging and advocating claims for secession of Jammu and Kashmir from the Union of India and have been inciting the local population;

iv. promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;

v. tacitly and tactically supporting militancy and incitement of violence in the territory of Jammu and Kashmir on religious lines and have sought to escalate the separatist movement.

106. The compelling testimony of the senior police officer from Jammu and Kashmir cannot be disregarded. More importantly, the aforesaid evidence remains unrebutted by the concerned association/ its office bearers. At every stage of these proceedings, a right was afforded to the concerned association/its members and any other interested party in the matter to appear before this Tribunal and cross-examine the concerned officers who have deposed before this Tribunal, *or* to adduce its own evidence in rebuttal. However, the said opportunity has not been availed.

Evidence in the form of documents/material submitted in a sealed cover before this Tribunal

107. As noted hereinabove, the documents submitted by PW 2 who has deposed on behalf of the Central Government, *inter alia*, includes reports of intelligence agencies, the note prepared for the Cabinet Committee on Security setting out the entire background of JKPFL and its activities based on the information collated by the intelligence agencies and also bringing out linkage of JKPFL with cross-border agencies/establishments, and inputs received from the Criminal Investigation Department, Jammu and Kashmir.

108. A perusal of the said documents has brought out in vivid detail the terrorist and secessionist activities of JKPFL in close coordination with inimical elements in Pakistan. The systematic attempts to promote secession of Jammu and Kashmir from the territory of India, to undermine the sovereignty of India, to incite the local populace and to promote violence have been brought out in the said material/documents.

CONCLUSION

109. From the elaborate material/evidence placed on record in these proceedings, this Tribunal finds that there is ample justification to declare JKPFL as an unlawful association under the UA(P)A. Moreover,

given the nature of activities of the association, the Central Government was justified in taking recourse to the *proviso* to section 3(3) of the UA(P)A. As noticed hereinabove, the activities of the concerned association have had a deleterious effect on maintenance of law and order in the region of Jammu and Kashmir continuously over the last so many years. The modicum of stability that has come about after 2019 (as is evident from the reduced number of unconducive incidents) cannot be allowed to be jeopardized on account of continuing activities of the concerned association. In the framework of the Indian Constitution and the UA(P)A, there is no space for an association like the JKPFL which openly propagates secessionism, avowedly expresses dis-allegiance to the Constitution of India, and undermines the territorial integrity and sovereignty of India.

110. Thus, this Tribunal having followed the procedure laid down in the Unlawful Activities Prevention Act, 1967 and its *Rules* and having independently and objectively appreciated and evaluated the material and evidence on record, is of the firm and considered view that there is sufficient cause for declaring JKPFL as an unlawful association under *section* 3(1) of the UA(P)A, 1967, vide the notification dated 15th March, 2024. Thus, an order is passed under *section* 4 (3) of the UA(P)A, 1967 confirming the declaration made in the notification bearing no. S.O. 1414 (E) published in the official gazette on 15th March, 2024 issued under *section* 3 (1) of the Unlawful Activities (Prevention) Act, 1967.

(JUSTICE NEENA BANSAL KRISHNA)

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

September 4th, 2024."

[F. No. 14017/55/2024-NI-MFO]

ABHIJIT SINHA, Jt. Secy.

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