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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on: 28.08.2025
Order pronounced on: 13.10.2025

\+ W.P.(C) 15810/2023 & CM APPLs. 63600/2023, 63681/2023 & 31646/2025

POPULAR FRONT OF INDIA ..... Petitioner

Through: Mr. Satyakam, Adv. with Mr.Talha Abdul Rahman, Mr.Shaikh Saipam, Mr.Arif Hussain, Mr. A. Nowfal, Mr.Sudhanshu Tewari, Mr.Sanu Muhammad and Mr. Mansoor Ali, Advs.

versus

UNION OF INDIA ..... Respondent

Through: Mr. S.V. Raju, ASG and Ms. Sonia Mathur, Sr.Adv. with Mr.Rakesh Kumar, CGSC, Mr.Annam Venkatesh, Ms.Sairica Raju, Mr.Ankit Bhatia, Ms. Manasi Sridhar, Mr.Labh Mishra, Ms.Shubhi Bhardwaj, Mr.Sunil, Mr.Hitarth Raja, Mr.Shounik Chowdary, Ms. Aditi Andley and Mr.Aryansh Shukla, Advs. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% 13.10.2025

1. This petition under Article 226 of the Constitution of India has been instituted by the petitioner seeking a writ of certiorari setting aside the order dated 21.03.2023 passed by Unlawful Activities (Prevention) Tribunal [hereinafter referred to as the **'Tribunal'**] constituted under Section 5 of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred to as the **'Act'**], whereby the notification dated 27.09.2022 issued by the Ministry of Home Affairs, Government of India, declaring the petitioner or its associates or affiliates or fronts as an "unlawful association", within the meaning of Section 2(1)(p) of the Act. The said declaration has been made by the Ministry of Home Affairs, Government of India in exercise of its power vested in it under Section 3 of the Act.

2. At the outset, learned counsel representing the respondent/Union of India, Sh. S.V. Raju, learned Additional Solicitor General of India, has raised a preliminary issue regarding the maintainability of the writ petition under Article 226 as also under Article 227 of the Constitution of India.

3. It has been argued by Sh. S.V. Raju that since the Tribunal is a civil court presided over by a sitting Judge of High Court as constituted under Section 5 of the Act, procedure whereof is governed by the Code of Civil Procedure, 1908, the Tribunal will be deemed to be a civil court and further that Tribunal exercises judicial functions and therefore a petition under Article 226 of the Constitution of India does not lie against the order of the Tribunal.

4. In support of his submission, Sh. S.V. Raju has placed reliance on the following judgments: -

[a] **Naresh Shridhar Mirajkar v. State of Maharashtra,** ***1966 SCC Online SC 10.***

[b] **Radhey Shyam & Anr. v. Chhabi Nath & Ors.,** ***2015 (5) SCC 423.***

[c] **Municipal Corporation of Greater Mumbai & Ors. v. Vivek V. Gawade & Ors,** ***2024 SCC Online SC 372.***

5. It is the case set up by Sh. S.V. Raju on behalf of the respondent that since a judicial order/decision cannot violate fundamental rights guaranteed under the Constitution, and therefore, writ of certiorari will not be maintainable against such an order/decision. Reliance in this regard has primarily been placed by Sh. S.V. Raju on **Naresh Shridhar Mirajkar (*supra*).**

6. Sh. S.V. Raju has further argued that the present petition has not been filed under Article 227 of the Constitution of India, and therefore, the petition cannot be entertained under Article 227 of the Constitution of India. He has contended that the provisions of Article 227 of the Constitution of India will not be attracted in the instant case for the reason that power available to a High Court under Article 227 of the Constitution of India is the supervisory jurisdiction which implies that such power can be exercised only against an authority lower in rank and since the Tribunal is presided over by a sitting Judge of a High Court and is vested with same judicial stature as that of the High Court itself, therefore, it cannot be said to be inferior to the High Court so as to fall within its supervisory jurisdiction under Article 227 of the Constitution of India.

7. Elaborating further, Sh. S.V. Raju has stated that the jurisdiction under Article 227 of the Constitution of India being supervisory in nature is limited and cannot be resorted to as an appellate jurisdiction to set aside a validly passed order and further that mere a wrong decision is not enough to invoke Article 227 of the Constitution of India unless a jurisdictional infirmity is made out in the procedure adopted by an inferior Court or Tribunal.

8. On the aforesaid counts, it has been submitted on behalf of the respondent that the instant petition is not maintainable either under Article 226 or Article 227 of the Constitution of India.

9. Learned counsel for the petitioner, however, has vehemently refuted the submissions made by Sh. S.V. Raju regarding maintainability of the petition and has submitted that the issue being raised on behalf of the respondent in respect of maintainability of the petition is no more *res integra* and stands settled by a Division Bench judgment of this Court in **Visuvanathan Rudrakumaran v. Union of India, 2024 SCC Online Delhi 7512**.

10. He has drawn our attention to an order passed on 06.11.2023 by Hon'ble Supreme Court in SLP (C) No. 25012/2023, which was filed by the petitioner challenging the order which is under challenge herein passed by the Tribunal. By the said order dated 06.11.2023, the Hon'ble Supreme Court has observed that the petitioner had approached the Hon'ble Supreme Court seeking to invoke its jurisdiction under Article 136 of the Constitution of India against the order passed by the Tribunal, and that the constitutional

writ jurisdiction of the High Court ought to be the Forum to which the petitioner should have approached first. The Hon'ble Supreme Court accordingly dismissed the petition, giving liberty to the petitioner to approach the High Court having jurisdiction over the subject matter with appropriate applications as may be permissible under law. The order dated 06.11.2023 passed by the Hon'ble Supreme Court in SLP (C) No. SLP (C) No. 25012/2023 is extracted hereunder: -

"ITEM NO.36 COURT NO.6 SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 26236/2023

(Arising out of impugned final judgment and order(s) dated 21-03-2023 in NSO No.4559(E)/2022 dated 27.09.2022 & NSO No.4758(E)/2022 dated 06.10.2022 & letter No.14017/10/2022-NI-MFO dated 26.10.2022 passed by the Unlawful Activities (Prevention) Tribunal, High Court of Delhi, at New Delhi)

POPULAR FRONT OF INDIA *Petitioner(s)*

VERSUS

UNION OF INDIA *Respondent(s)*

(IA No.206341/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.206342/2023-EXEMPTION FROM FILING O.T. and IA No.206340/2023-C/DELAY IN REFILING / CURING THE DEFECTS)

Date : 06-11-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Mr. Adit S. Pujari, Adv.
Mr. Adit Deshmukh, Adv.
Mr. A.Nowfal, Adv.

Mr. Abdul Shukoor Mundambra, Adv.
Mr. Shaikh Saipan Dastgir, Adv.
Mr. Arpith Jacob Varaprasad, Adv.
Mr. Maitreya Subramaniam, Adv.
Mr. Shaurya Mittal, Adv.
Mr. Mantika Vohra, Adv.
Ms. Pallavi Chatterjee, Adv.
Mr. Shereef K.a., Adv.
Mr. Sheikh Moulali Basha, Adv.
Mr. P. A. Noor Muhamed, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Heard Mr. Divan, learned senior counsel for the petitioner.

The petitioner has approached this Court seeking to invoke our jurisdiction under Article 136 of the Constitution of India against order(s) passed by the Unlawful Activities (Prevention) Tribunal, New Delhi constituted under the Unlawful Activities (Prevention) Act, 1967.

In our opinion, the constitutional writ jurisdiction of the High Court ought to be the forum to which the petitioner should have approached first.

We, accordingly, dismiss this petition(s) giving liberty to the petitioner to approach the High Court having jurisdiction over the subject-matter with appropriate application as may permissible under the law.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI) *(VIDYA NEGI)*
COURT MASTER (SH) *ASSISTANT REGISTRAR"*

11. He has, thus, submitted that in view of the aforesaid liberty granted by the Hon'ble Supreme Court *vide* order dated 06.11.2023, the submission on

behalf of the respondent that the instant petition is not maintainable is untenable. Further submission on behalf of the petitioner in support of maintainability of the petition is that once the Hon'ble Supreme Court relegated the petitioner to invoke the constitutional writ jurisdiction of this Court, holding that the instant writ petition is not maintainable will render the petitioner remediless, and therefore, the submission made on behalf of the respondent, if accepted, goes against the basic tenets of rule of law. In this regard, reliance has been placed by the learned counsel for the petitioner on the judgment of the Division Bench of this Court rendered on 15.03.2022 in ***Wing Commander Shyam Naithani v. Union of India and other connected matters,*** **[*W.P. (C) 6483/2021 and connected matters*] decided on 15th March, 2022.**

12. The next submission made by the learned counsel for the petitioner is that in ***Sangram Singh v. Election Tribunal, Kota & Anr., 1955 (2) SCR 1***, it has been held that jurisdiction of High Court under Article 226 of the Constitution of India, entitles the High Court to examine as to whether the Tribunals have acted illegally and these powers cannot be ousted even by a statute. Reference in this regard has also been made by learned counsel for the petitioner on ***L. Chandra Kumar vs. Union of India & Ors., 1997 (3) SCC 261***, wherein it has been held that judicial review is a facet of the basic structure of the Constitution of India and power of judicial review of High Courts and Supreme Court cannot be taken away. Learned counsel has further stated that the proposition laid down in **L. Chandra Kumar** ***(supra)*** has been reiterated in ***Rojer Mathew v. South Indian Bank Ltd. & Ors., 2020 (6) SCC 1***.

13. In reply to the submission that the Presiding Officer of the Tribunal is a sitting High Court Judge and therefore this Court cannot exercise its jurisdiction under Article 226/227 of the Constitution of India, the learned counsel for the petitioner has drawn our attention to the constitution of Armed Forces Tribunal under Section 6 of the Armed Forces Tribunal Act, 2007 and therefore, his submission is that merely because the Tribunal is presided over by a High Court Judge will not oust this Court's jurisdiction of judicially reviewing an order passed by the Tribunal.

14. It has also been contended by the learned counsel for the petitioner that the judgment in ***Municipal Corporation of Greater Mumbai (supra)*** is not applicable and relevant to the present case as the provisions considered in the said judgment were substantially different from the provisions of the Act whereunder the Tribunal has been constituted.

15. Learned counsel for the petitioner has also relied upon the judgments in the case of (i) ***State of A.P. v. K. Mohanlal, 1998 (5) SCC 468,*** (ii) ***Associated Cement Companies Limited v. P.N. Sharma, 1965 (2) SCR 366*** **and** (iii) ***Special Courts Bill, 1978, In Re,*** **1979 (1) SCC 380.**

16. In response, learned counsel representing the respondent has reiterated his submissions and has argued that the judgment of this Court in ***Visuvanathan Rudrakumaran (supra)*** is *per incuriam* as the same does not consider the judgments in ***Naresh Shridhar Mirajkar (supra), Municipal Corporation of Greater Mumbai (supra), Radhey Shyam (supra)***. In support of this submission, learned counsel for the respondent has relied upon the following judgments:

[a] Sundeep Kumar Bafna v. State of Maharashtra & Anr., ***(2014) 16 SCC 623.***

[b] Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors., ***(2011) 1 SCC 694.***

[c] Shah Faesal v. Union of India, ***(2020) 4 SCC 1.***

[d] Municipal Corporation of Delhi v. Gurnam Kaur, ***(1989) 1 SCC 101.***

[e] State of U.P. v. Synthetics & Chemicals Ltd., ***(1991) 4 SCC 139.***

[f] Arnit Das v. State of Bihar, ***(2020) 5 SCC 488.***

[g] Bilkis Yakub Rasool v. Union of India, (2024) 5 SCC 481.

17. We have given our conscious consideration to the issue regarding maintainability of the instant petition under Article 226/227 of the Constitution of India and have also examined carefully the judgments cited on behalf of the competing parties in support of their respective cases.

18. Before adverting to the respective submissions advanced by the learned counsel for the parties, we may notice certain provisions of the Act which are relevant for the purposes of determination of the issue regarding maintainability of the instant petition before this Court.

19. Section 2(1)(c) defines “Code” to mean the Code of Criminal Procedure, 1973. Section 2(1)(o) defines “Unlawful Activity” to mean any action taken by an individual or association which is intended or supports

any claim to bring about the cession of a part of the territory of India or secession of a part of territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession or which disclaims, questions, disrupts or intends to disrupt the sovereignty and territorial integrity of India or which causes or intends to cause disaffection against India. Section 2(1)(p) contains the definition of "unlawful association", according to which any association which has for its object any unlawful activity or which encourages or aids a person to indulge in any unlawful activity or of which the members undertake such activity or which has for its object any activity 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. Section 2(1)(c), 2(1)(o) and 2(1)(p) are extracted herein below:

> *"Section 2(1)(c) –"Code" means the Code of Criminal Procedure, 1973 (2 of 1974)"*
>
> *"Section 2(1)(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;"*
>
> *"Section 2(1)(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;"*

20. Section 3 of the Act empowers the Central Government to declare an association as "unlawful association" if it is of the opinion that any association is or has become unlawful association. Such a declaration is to be made by notification in the official gazette. Sub-section 2 of Section 3 of the Act further provides that no such notification shall have effect until the Tribunal, by an order, confirms the declaration made therein and the order is published in the official gazette. The proviso appended to sub-section (3) of section 3 of the Act also provides that in case the Central Government forms an opinion that circumstances exist which require the government to declare an association to be unlawful with immediate effect, it may direct that notification have effect from the date of its publication in the official gazette, which however is subject to any order that may be made under Section 4 by the Tribunal. Section 3 of the Act is extracted herein below: -

> *"**3. Declaration of an association as unlawful.**—(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*
> *(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:*
> *Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.*

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

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

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

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

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

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

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

21. Section 4 of the Act is also relevant to be extracted here which reads as under:

*"4. **Reference to Tribunal**.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.*

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry 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 any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.*
>
> *(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette."*

22. Section 5 of the Act provides for the constitution of "Unlawful Activities (Prevention) Tribunal" which is to consist of one person to be appointed by the Central Government. The proviso appended to Section 5(1) of the Act provides that no person shall be appointed unless he is a Judge of a High Court. Sub-section (5) of Section 5 of the Act provides that the Tribunal shall have power to regulate its own procedure, subject to the provisions of Section 9 of the Act. As per sub-section (6) of Section 5 of the Act, the Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for the purpose of making an inquiry under the Act in respect of [i] summoning and enforcing the attendance of any witness and examining him, [ii] discovery and production of any document or other material as evidence, [iii] taking of evidence on affidavits, [4] requisition any public record from a court or office and [5] issuing any commission for examination of witnesses. Section 5 of the Act is also extracted hereunder: -

> *"**5. Tribunal.**—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[* *].”*

23. Section 7 of the Act provides that proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code, 1860 and further that it shall be deemed to be a civil court for the purpose of Section 195 of the Code of Criminal Procedure, 1973. Section 7 of the Act reads as under: -

*"**7. Power to prohibit the use of funds of an unlawful association**.—(1) Where an association has been declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).*

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

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

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

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any

investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money."

24. Section 9 of the Act provides that the procedure to be followed by the Tribunal while holding an inquiry under Section 4(3) of the Act shall, so far as may be, be the procedure laid down in the Code of Criminal Procedure, 1973, for investigation of claims, and the decision of the Tribunal shall be final. Section 9 of the Act is extracted herein below: -

*"**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 a 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."*

25. What we notice from the scheme of the Act is that any declaration made by the Central Government under Section 3 of the Act will not have effect until the same is confirmed by the Tribunal by passing an order which is to be published in the Official Gazette. The proviso appended to sub-section (3) of Section 3 of the Act permits the Central Government to declare an association to be unlawful with immediate effect for reasons to be recorded in writing; however, even such declaration of notification taking immediate effect is subject to any order that may be made under Section 4 of the Act by the Tribunal.

26. Accordingly, in both the situations, namely, [i] where the Central Government does not order that notification declaring an association to be unlawful association shall have immediate effect, and [ii] where it orders that such declaration will have effect immediately; on its publication in the Official Gazette, the declaration so made is subject to order of confirmation which may be passed by the Tribunal.

27. We may also notice that in terms of the provisions contained in Section 9 of the Act, the decision of the Tribunal is final.

28. We may also note that once a notification is issued under Section 3(1) of the Act by the Central Government declaring an association to be unlawful, it is under statutory obligation that such notification shall be referred to the Tribunal for the purposes of adjudicating whether or not there is sufficient cause for declaring the association to be unlawful, within 30 days from the date of publication of the notification under Section 3(1) of the Act. The Tribunal, on receipt of the reference under Section 4(1), has been mandated to call upon the association concerned to show cause why the association should not be declared unlawful. Sub-section (3) of Section 4 of the Act provides for holding an inquiry by the Tribunal and also permits the Tribunal to call for such information as may be considered necessary from the Central Government or from any office bearer or member of the association. The Tribunal, thereafter, decides whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is also permitted to make such order as it may deem fit, either confirming the declaration made by the Central Government in the notification under Section 3(1) of the Act or cancelling the same.

29. From the scheme of the Act, as noticed above, what can be inferred is that the Tribunal constituted under Section 5 of the Act, though is vested with the powers as are vested in a civil court under the Code of Civil Procedure, 1908 for certain matters enumerated in Section 5(6) of the Act, however, the functions assigned to the Tribunal cannot be equated with the functions of a civil court.

30. In our opinion, the function and the role assigned to the Tribunal under Section 4 of the Act is to decide the reference made to it by the Central Government by opining as to whether or not there exists sufficient cause for declaring the association as unlawful. As a matter of fact, the role assigned to the Tribunal is not to decide the *lis* between the parties in the sense a *lis* is decided by a civil court; rather, the function of the Tribunal is, in a way, to confirm the declaration made by the Central Government under Section 3(1) of the Act.

31. We may also notice that under sub-section (5) of Section 5 of the Act, the Tribunal has 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 holds its sittings. Sub-section (6) of Section 5 of the Act does not provide that the Tribunal will have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908. The said provision confers on the Tribunal powers vested in a civil court under the Code of Civil Procedure, 1908, only in relation to certain matters like summoning and enforcing attendance of witnesses, examining them, discovery and production of documents, taking of evidence on affidavits, requisitioning public record and issuing commission for examination of witnesses. Thus, it cannot be said

that the Tribunal is vested with all the powers as are vested in a civil court under the Code of Civil Procedure, 1908. Sub-section (6) of Section 5 of the Act has to be read with sub-section (5), according to which the Tribunal has the power to regulate its own procedure, whereas the procedure to be followed by a civil court has to be strictly in terms of the provisions of the Code of Civil Procedure, 1908.

32. No doubt, under Section 5(7) of the Act, the proceedings before the Tribunal are deemed to be judicial proceedings and the Tribunal is deemed to be a civil court but such proceedings are judicial proceedings only within the meaning of Section 193 and 228 of the Indian Penal Code, 1860 and the Tribunal is to be treated as civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, alone.

33. At this juncture, we may also notice that Section 193 of the Indian Penal Code, 1860, provides for punishment for false evidence, and accordingly, if anyone is found to lead false evidence, it may entail punishment in terms of Section 193 of the Indian Penal Code, 1860. Section 228 of the Indian Penal Code, 1860, provides for punishment to a person who insults or causes any interruption to any public servant while such public servant is sitting in any stage of judicial proceedings. Accordingly, if the proceedings before the Tribunal are treated to be the judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code, 1860, that would only mean that offences defined in Section 193 and 228 of the Indian Penal Code, 1860, if committed, in the face of the Tribunal, shall be punishable. As far as Section 195 of the Code of Criminal Procedure, 1973 is concerned, the same provides for prosecution of contempt of lawful

authority of a public servant and for references against public justice and for offences relating to documents given in evidence and therefore, if sub-section (7) of Section 5 of the Act states that the Tribunal shall be deemed to be a civil court for the purpose of Section 195 of the Code of Criminal Procedure, 1973, that would only mean that the Tribunal, in terms of Section 195 of the Code of Criminal Procedure, 1973, will be entitled to lodge a complaint in terms of the requirement of Section 195 of the Code of Criminal Procedure, 1973 in relation to the offences punishable under Section 172 to 188 of the Indian Penal Code, 1860 or in relation to the offences punishable under Section 193 to 196, 199, 200, 205 to 211 and 228 of the Indian Penal Code, 1860 in a situation where offences are found to have been committed in relation to the proceedings before the Tribunal. Sub-section (7) of Section 5 of the Act also provides that the Tribunal shall be deemed to be a civil court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973, which concerns itself with the provisions as to offences affecting the administration of justice. Thus, though sub-section (6) and (7) of Section 5 of the Act make applicable certain provisions of the Code of Civil Procedure, 1908, Indian Penal Code, 1860 and Code of Criminal Procedure, 1973, to the Tribunal and the proceedings drawn before it, the same would, in our opinion, not be sufficient to term the Tribunal as a civil court, where the provisions of the Code of Civil Procedure, 1908 are applied in totality with full force.

34. So far as the judgments relied upon by the learned counsel for the respondent in ***Naresh Shridhar Mirajkar (supra), Radhey Shyam (supra)*** and ***Municipal Corporation of Greater Mumbai (supra)*** are concerned,

there cannot be any quarrel as to the legal preposition propounded by the Hon'ble Supreme Court that a writ of certiorari under Article 226 of the Constitution of India will not be available against the orders passed by the civil court. However, we need to distinguish the Tribunal from the civil court for the reasons discussed above, which are summarised as under: -

a. The function assigned to the Tribunal under Section 4 of the Act cannot be said to the akin to the function which are assigned and discharged by a civil court for the reason that primary role assigned to the Tribunal under the scheme of the Act is to confirm the notification declaring an association to be unlawful association under Section 3(1) of the Act by the Central Government.

b. The declaration made by the Central Government under Section 3(1) of the Act does not become final merely on its notification in the official gazette in the sense that sub-section (3) of Section 3 of the Act provides that such declaration shall not have effect until the Tribunal, by an order made under Section 4 of the Act, confirms such declaration. It is also to be noticed that in a situation where the Central Government directs that the notification of declaration under Section 3(1) of the Act shall take effect immediately on the date of its publication in the official gazette, such notification is also subject to any order that may be made under Section 4 by the Tribunal.

c. In both the situations, namely, [a] where the Central Government directs the notification issued under Section 3(1) of the Act to take immediate effect and [b] where no such direction is issued, it is

mandatory for the Central Government to refer the notification issued under Section 3(1) of the Act to the Tribunal for adjudicating as to whether there is sufficient cause for declaring an association unlawful or not. Section 9 of the Act attaches finality to the order passed by the Tribunal. Thus, the scheme contained in Section 3(1), 3(3), read with Section 4 and 9 of the Act, leads us to observe that any declaration made by the Central Government under Section 3(1) attains finality only on confirmation of such notification by the Tribunal under Section 4 of the Act. In this view, we express our opinion that functions assigned to the Tribunal under Section 4 of the Act cannot be said to be similar or akin to the functions assigned to a civil court under ordinary civil law.

d. Under the Act, the Tribunal does not decide a *lis* between the parties, though it discharges adjudicatory function as per the requirement of Section 4 of the Act, in the sense a *lis* is brought before and decided by the civil court under ordinary civil laws.

35. In view of the aforesaid discussion, we are unable to agree with the submissions made by the learned counsel for the respondent that this Court will not have jurisdiction to issue a writ of certiorari sought against the order passed by the Tribunal confirming the declaration made under Section 3(1) of the Act by the Central Government.

36. It is also to be noticed that in a case where an organization in respect of which a notification of declaration under Section 3(1) of the Act has been issued that has been later confirmed by the Tribunal under Section 4 of the

Act, if challenge is made to the order of the Tribunal, such challenge would also amount to challenge to the declaration made by the Government of India under Section 3(1) of the Act declaring the association as unlawful association. It will, thus, be anomalous to hold that jurisdiction of this Court under Article 226 of the Constitution of India will not be available for issuing a writ of certiorari against the order of the Tribunal, though it will be available against the action of the Central Government taken by declaring an association to be unlawful under Section 3(1) of the Act.

37. There is yet another reason why we are unable to agree with the submissions made by the learned counsel for the respondent, and the reasons emanate from the orders of the Hon'ble Supreme Court passed on 06.11.2023 in SLP (C) No. 25012/2023, which was filed by the petitioner herein challenging the order of the Tribunal, which has been assailed in this petition. Hon'ble Supreme Court, while declining to entertain the SLP under Article 136 of the Constitution of India, expressed its opinion that the constitutional writ jurisdiction of the High Court ought to be approached by the petitioner first. The said observation made by the Hon'ble Supreme Court is in the following words: -

> *"In our opinion, the constitutional writ jurisdiction of the High Court ought to be the forum to which the petitioner should have approached first."*

38. In view of the aforesaid, we have no hesitation to hold that the instant petition is maintainable under Article 226 of the Constitution of India.

39. We need not go into the argument raised by learned counsel for the respondent that the Division Bench judgment of this Court in ***Visuvanathan***

Rudrakumaran (supra) is *per incurium* as we have given our own reasons to hold that this petition wherein challenge has been made to the order of the Tribunal is maintainable under Article 226 of the Constitution of India.

40. As far as the submission made by the learned counsel for the respondent that the petition against the order of the Tribunal will not be maintainable under Article 227 of the Constitution of India, we may only observe that the Tribunal cannot be termed to be an entity over which this Court can exercise superintendence in terms of Article 227 of the Constitution of India, for the simple reason that the Tribunal is presided over by a sitting High Court Judge and that in terms of Section 5(5) of the Act, the Tribunal has the powers to regulate its own procedure in all matters including the place or places where it may hold its sittings. It would mean that if a Hon'ble Judge of this Court at Delhi is appointed as Presiding Officer of the Tribunal, the place of sittings of the Tribunals can also be determined by the Presiding Officer even outside the territorial jurisdiction of this Court which is confined to territory of Delhi.

41. Article 227 of the Constitution of India gives power of superintendence by the High Court over all Courts and Tribunals which exist within the territories in relation to which the High Court exercises jurisdiction. If the Tribunal is empowered to hold its sitting outside the territories of Delhi, holding that this Court will have the power of superintendence under Article 227 of the Constitution of India, will be nothing but a fallacy.

42. Thus, we hold that the petition against the order passed by the Tribunal is not maintainable under Article 227 of the Constitution of India.

43. In view of the aforesaid, we hold that this Court has jurisdiction to entertain and maintain a petition under Article 226 of the Constitution of India against the order of the Tribunal passed under Section 4 of the Act. We, thus, hold the instant petition to be maintainable.

44. Issue notice to the respondent, on whose behalf Sh. S.V. Raju and his associates have put in an appearance and accepted notice.

45. Let the counter affidavit be filed by the respondent within a period of 06 weeks. Two weeks' time shall be available to the petitioner to file the rejoinder, if any.

46. List on 20.01.2026.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

OCTOBER 13, 2025
"shailndra"