# Dr. Rajendra Prasad Agarwal Vs Union of India and another

**Court:** Allahabad High Court

**Date of Decision:** May 18, 1993

**Acts Referred:** Constitution of India, 1950 â€" Article 14, 19, 19(1), 21, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 14B
Evidence Act, 1872 â€" Section 124, 23
General Clauses Act, 1897 â€" Section 21
Income Tax Act, 1961 â€" Section 127(1)
Mineral Concession Rules, 1960 â€" Rule 55
Official Languages Act, 1963 â€" Section 5
Penal Code, 1860 (IPC) â€" Section 153A, 153B
Unlawful Activities (Prevention) Act, 1967 â€" Section 3, 3(1), 5, 6, 6(2)

**Citation:** AIR 1993 All 258

**Hon'ble Judges:** D.P.S. Chauhan, J; Anshuman Singh, J

**Bench:** Division Bench

**Advocate:** Ashok Mehta and V.K.S. Chaudhary, for the Appellant;

## Judgement

@JUDGMENTTAG-ORDER

1. Present case, as it appears, i an outcome of erosion while history was on a changing course, which is led to issuance of proclamation under Art.

356 of the Constitution of India (for brevity hereinafter referred to as ""the Constitution"") vide Notification No. G.S.R. 912 dated December 6,

1992 (published in Gazette of India (Extraordinary) (part II) dated Dec. 6,1992) bringing the State of Uttar Pradesh under President Rule and

banning the organisations, inter alia, the Rashtriya Swayam Sewak Sangh (for brevity hereinafter referred to as ""the RSS"") by declaring it unlawful

vide composite Notification No. S. O. 901(E) dated December 10, 1992 (published in the Gazette of India (extraordinary) dated December 10,

1992 under sub-sec. (1) as well as the proviso to sub-sec. (3) of S. 3 of the Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) (for

brevity hereinafter referred to as ""the Act"") which reads as :--

Whereas the Rashtriya Swayam Sewak Sangh (hereinafter referred to as ""RSS"") has been encouraging and aiding its followers to promote or

attempt to promote, on grounds of religion disharmony or feelings of enmity haired or ill-will between different religious communities;

And where as the RSS has been making imputations and assertions that members of certain religious communities have alien religions and cannot,

therefore, be considered nationals of India, thereby causing and likely to caused disharmony or feelings of enmity or hearted or ill-will between

such members and other persons;

And whereas the RSS Swayam Sewaks had participated in the demolition of the structure commonly known as Ram Janama Bhoomi-Babri

Masjid situated in Ayodhya in the State of Uttar Pradesh on the 6th December, 1992;

And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts and materials in its possession

which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the Rashtriya

Swayamsewak Sangh is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-sec. (1) of S. 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the

Central Government hereby declares the ""Rashtriya Swayam Sewak Sangh"" to be an unlawful association and direct, in exercise of the powers

conferred by the proviso to sub-sec. (3) of that section, that the notification, shall subject to any order that may be made under S. 4 of the said

Act, have effect from the date of its publication in the official gazette.

No. 11/14034/2(iv)/92-15(DVJ)

T. N. Srivastava, Jt. Secretary

2. The application for interim relief, which is for consideration contains the following prayers :

a) for staying the operation or enforcement of the impugned notification No. S.O. 90l(E) dated 10-12-1992 declaring Rashtriya Swayam Sewak

Sangh (RSS) to be an unlawful association.

b) for directing that the locks wherever they have been put on the alleged ""Karyalas"" or ""Ashrams"" of RSS be removed as there is no authority

under the law for the same and the State by itself and through its subordinate be restrained from interfering with the persons residing therein.

3. Heard the learned counsel for the petitioner Sri V. K. S. Chaudhary, the Senior Advocate assisted by Sri Ashok Mehta, Advocate and Sri S.

S. Bhatnagar, the Advocate General, U. P. appearing for the Central Government assisted by Sri U. N. Sharma, the Senior Standing Counsel for

the Union of India and Sri P. P. Srivastava, Special counsel appearing for the State of U. P.

4. Learned counsel for the petitioner did not dilate on the second prayer and in regard to the first prayer, he confined himself within self-

circumscribed limit by limiting the reach of his submissions to the later part of the impeached notification.

5. Learned counsel appearing for Central Government, at the out-set raised following objections regarding maintainability of the claim of the

petitioner for interim relief;

one the petition not being on behalf of the RSS, the unlawful association, the petitioner in his individual capacity, as one of the member of the RSS,

is not entitled to seek interim relief and, the other for the interim relief of the nature, the forum for redress, in case petitioner feels aggrieved, is

available to him before the Central Government under S. 6 of the Act as well as before the Unlawful Activities (Prevention) Tribunal (for brevity

hereinafter referred to as ""the Tribunal) under S. 4 of the Act.

The objections being of preliminary nature, are considered first as the grant of interim relief is very much integrated to their determination.

6. The first objection is whether the petitioner, who is an individual member of the RSS, has locus standi for seeking interim relief of the nature

pressed for, when the petition is not by or on behalf of the RSS, the unlawful association. In this connection, learned counsel submitted that it is the

RSS, the unlawful association, whose, right, if any, is put in jeopardy could be entitled to claim interim relief and not the petitioner, whose

individuality qua the RSS does not exist.

The question for filing petition by the RSS would arise only if it is a juristic or artificial person clothed with personality. According to the learned

counsel for the petitioner, it is an organisation, founded in the year 1925 and adopted a written constitution on 1-8-1949, of Swayamsewaks, who

are male Hindu of 18 years or above, subscribing to its aims and objects and conforming to its discipline and associates themselves with the

activities of Shakha. It is not a society registered under the Societies Registration Act, 1860 or a body corporate constituted by or under any

statute.

In the case of The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, Supreme Court had the

occasion to answer the question whether the Board of trustees, which was originally registered under the Societies Registration Act, 1869 and new

Board of Trustees, which was incorporated by an Act of the legislature called the Tibbia College Act, 1952 by which the old Board was dissolved

and new Board was constituted were corporations. The Court held that the old Board was not, but the new Board was, even the society

registered under the Societies Registration Act, was not held as a corporation.

Thus, an organisation, society or association of persons, not clothed with personality or status stands on a footing different than that of an

organisation, society or association of individuals which is clothed with personality owing to its incorporation or registration by or under a statute

and not only the voluntary nature of the association of the members remains but also the individuality qua the Organisation, the society and

association remains retained. In the absence of corporate or otherwise status of the RSS its members retain their individuality qua it and are entitled

to claim the interim relief as they are affected adversely from the later part of the impeached notification, which affects ""their freedom as well as

liberty. The objection is, thus, overruled.

7. The second objection pertains to the availability of alternative forum for interim relief, relating to the validity of the later part of the impeached

notification, before the Central Government under S. 6 of the Act as well as before the Tribunal under S. 4 of the Act.

So far as S. 6 of the Act, which is as extracted, is concerned, it provides for the life of the notification issued under sub-sec. (I) of S. 3 of the Act.

6.(1) subject to the provisions of sub-sec. (2), a Notification issued under S. 3 shall, if the declaration made therein is confirmed by the Tribunal

by an order made under S. 4, remain in force for a period of two years from date on which the notification becomes effective.

(2) Notwithstanding anything contained in sub-sec. (1), the Central Government may, either on its motion or on the application of any person

aggrieved, at any time, cancel the notification issued under S. 3, whether or not the declaration made therein, has been con-firmed by the Tribunal.

Learned counsel relying on sub-sec. (2) of S. 6 of the Act submitted that the Central Government has the power to cancel, at any time, the

notification issued under S. 3 of the Act either on its own motion or on the application of any other person aggrieved and the words ""whether or

not the declaration made therein has been confirmed by the Tribunal"" have reference to the word ""Notification"" issued under S. 3, whether the

same is under sub-sec. (1) or under proviso to sub-sec. (3) of S. 3 of the Act (for brevity hereinafter referred to as ""the proviso""). The submission

is sans merit. The words ""whether or not"" cannot be stretched to mean whether the notification under S. 3 requires confirmation from the Tribunal

or not. The words ""whether or not"" in the said sub-sec. (2) specify stage for the cancellation, which could be done at any time, but during the

currency of the life of the Notification. Sections of the Act, ex facie, provides for one Notification issued under sub-sec. (1) thereof which

hereinafter to be referred to as ""the Notification"".

Further the Central Government, while exercising power under the proviso directing the Notification to have effect prior to its confirmation by the

Tribunal, is obliged to form an opinion, which (such direction) could be interfered with, only, if there has been metamorphosis in the situation and

not on the basis that the direction under the proviso for giving effect the Notification suffers from any error of law or is arbitrary of mala fide. In

fact, it is not an adjudicatory forum for the purpose of determination that the formation of the opinion under the proviso or direction made

thereunder was bad in law or not. Apart from this; even otherwise, it cannot be held to be the forum for redress, on the basis of principle ""that it is

not the person, who holds the opinion but it is the opinion which holds the person.

We, thus are of the opinion that the petitioner has no forum for redress before the Central Government under sub-sec. (2) of S. 6 of the Act. The

second limb of the objection is about availability of forum for seeking interim relief before the Tribunal, it has no merit as S. 4, which is as extracted

below, provides for a reference to the Tribunal and the scope of which is limited to the adjudication of the declaration under the Notification

whether or not there is sufficient cause for declaring the RSS as unlawful association. It is not for adjudicating the legality or otherwise of the

direction issued under the proviso. According to the learned counsel the words ""it shall decide whether or not there is sufficient cause for declaring

the association to be unlawful"", as used in sub-sec. (3) of S. 4 of the Act are of I wider amplitude so to include in its fold the direction issued under

the proviso. It is not so, as it is the Notification issued under sub-sec. (1) of S. 3 which is referred to the Tribunal and not the declaration issued

under the proviso. The authority of the Tribunal is circumscribed and the words, as relied on by the learned counsel, are of limited amplitude not

including in its fold the legality of otherwise of the declaration made under the proviso.

4.(1) Where any association has been declared unlawful by a notification issued under sub-sec. (1) of the S. 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- sec. (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 enquiry in the

manner specified in S. 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-

bearers 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-sec. (1) of S. 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-sec. (3) shall be published in the official gazette.

Learned counsel for the petitioner, while questioning the legality of the later part of the impeached notification has put forward his case that since

under the proviso the power given to the Central Government is the controlled power exercisable only under exceptional and emergent

circumstances warranting the notification, the effect whereof being automatic and as there could not be interregnum was arrested by legislative

mandate under sub-sec. (3) for the duration the same gets confirmation from the Tribunal under S. 4 of the Act, for having effect before

confirmation by the Tribunal, but since it has failed to satisfy the mandatory requirement of law, the later part of the impeached notification is bad.

The submission so advanced hinges on the interpretation of the proviso where for acts, if any, have only peripheral relevance.

Learned counsel for the petitioner, while developing his arguments, submitted that the conditions precedent for exercise of power under the

proviso, which are sine qua non, are twofold. One the formation of opinion regarding existence of circumstances rendering it necessary for the

Government to declare the association unlawful with immediate effect and the other about direction for bringing in effect of the notification for

reasons to be stated in writing therein in the direction under the proviso but the later part of the impeached notification has been formed for reasons

for directing the notification to have effect, have been stated in writing.

8-9. Before dilating on the controversy it is apt to have S. 3 of the Act, which reads as :

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 S. 4, confirmed the declaration made therein and the order

is published in the official gazette.

Provided that if the Central Government is of the 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 S. 4. have effect from the date of its publication in the official gazette.

(4) Every such notification shall, in addition to its publication is 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 affecting 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 drums 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 manner as may be prescribed.

(Underlining by us)

10. On analysing the scheme under S. 3 of the Act, we find that under sub-sec. (1) of S. 3 of the Act, the formation of opinion by the Central

Government in respect of an association that it is or has become unlawful is the condition precedent, which is sine qua non, for declaring it to be

unlawful by issuance of notification in the official gazette containing grounds as well as facts. Likewise the formation of opinion under the proviso in

respect of existence of circumstances rendering it necessary for the Central Government to declare the association to be unlawful with immediate

effect is the conditions precedent and the sine qua non for lifting the legislative veil under sub-sec. (3) bringing in abeyance the notification for the

duration the same gets confirmed by the Tribunal. The words ""if the Central Government is of opinion"" are same both in sub-sec. (1) of S. 3 and in

the proviso. The formation of opinion under sub-sec. (1) of S. 3 of the Act is made obligatory as the exercise of power under it has the effect of

the fundamental rights of the members of the association guaranteed under Arts. 19(l)(c) and 21 of the Constitution. The notification declaring an

association as unlawful is kept in abeyance for the same consideration by process of legislative mandate contained in sub-sec. (3) for the duration

the same gets confirmed from the Tribunal and it is done, so, obviously, in the anxiety that the fundamental rights of the citizens may not lightly be

jeopardised. Thus, the proviso, which gives ridered power to the Central Government by placing dual conditions, as a measure of safety valves, so

to provide protection from arbitrary exercise of power while encroaching upon the fundamental rights of the members of the association, has

mandated the Central Government for forming opinion first regarding existence of circumstances rendering it necessary for it to declare an

association to be unlawful with immediate effect. It aims at preservation of fundamental rights till the confirmation of the notification, declaring the

association as unlawful, by the Tribunal. Formation of such opinion under the proviso is mandatory. The bare perusal of the impeached notification,

which is composite -- one and referable to two separate powers one under sub-sec. (1) of S. 3 and the other under the proviso, and also

severable, indicates that the earlier part contains recital to the effect ""that the Central Government is of the opinion that the Rashtriya Swayam

Sewak Sangh is an unlawful association"" whereas the later part of the notification referable to the power under the proviso does not contain the

recital of the nature to the effect ""that the Central Government is of the opinion that the circumstances exist rendering it necessary for the

Government to declare the association as unlawful with immediate effect,"" though the language regarding formation of opinion, as used, under the

two provisions is the same. Learned counsel for the petitioner submitted that such a lapse, prima facie, makes one to think that under the proviso

no opinion is formed by the Central Government regarding existence of emergency circumstances rendering it necessary for the Government for

declaring an association unlawful with immediate effect despite the legislative mandate under the main enactment of the sub-section (3).

Learned counsel for the Central Government, on being called upon to explain the discrepancy, found not offer any satisfactory explanation except

justifying the action on the plea that the recital of the words to the effect, ""that the Central Government is of the opinion that the circumstances exist

rendering it necessary for the Government to declare the Rashtriya Swayam Sewak Sangh as unlawful association with immediate effect"" is not

necessary in the impeached notification, which not to render the later part of the notification either defective, non-operative, or non est inasmuch as

according to him, the formation of opinion is implicit in such a notification, which is a composite one and the same could be traced out from the

Governmental records. He, without claiming any privilege as to the record of the Government, relying on the decision of Supreme Court in The

Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, further submitted that for satisfying the requirement of law under

the proviso regarding formation of opinion, the record of the Government containing opinion based on objective material could be looked into. The

requirement of law is that the formation of opinion, which is sine qua non for exercise of power, must be demonstrable from the notification and for

the purpose of objectivity of the material Government record could be looked into. Though, the Government record, in this connection, was

showed to the Court, but in the back ground of the fact that the later part of the impeached notification is silent about the formation of opinion, we

do not consider it apt to express any opinion either way at the stage of consideration of prayer for interim relief without there being statement in the

counter-affidavit of the Central Government on the record of this case stating in unequivocal terms that the opinion was formed by the Central

Government in accordance with the rules of business, which was based on cogent and objective material demonstrable from the record and non-

mention of it in the impeached notification is a casual omission. In such circumstances, as are in the present case, it is open to the Central

Government to establish (1) that the opinion was formed by the Central Government after applying mind in accordance with law and (2) the

opinion was formed on objective material, which was apt and sufficient. In view of it, we do not proceed to consider the point of invalidity of the

later part of the impeached notification, which is severable, on the ground of non-formation of opinion as one of the conditions precedent for

exercise of power under the proviso.

11. The second limb of attack impeaching the validity of the later part of the impeached notification is non-compliance of the mandatory

requirement of law under the later part of the proviso.

12. One line of argument, as is adopted, is that there has been violation of general rule, which says ""when the law directs certain thing to be done in

a certain way that thing shall either be done in that manner or not done at all"". According to the learned counsel for the petitioner, the proviso has

provided manner that the direction for bringing the notification in effect in spite of mandate under the main clause, could be made by stating the

reasons in writing and in the present case the manner provided for issue of direction having not been followed, the entire later part of the

impeached notification becomes bad and he, in support of his submission, placed reliance on the following decisions :--

i) (1875) 1 Ch D 426 (Taylor v. Taylor)

ii) AIR 1936 253 (Privy Council)

iii) Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., .

There are catena of other cases on the principle relied on, but it is not necessary to catalogue them as so far as the general principle is concerned,

there is no question of variance. The real question for consideration is whether such general rule is attracted in the context of the controversy in the

present case and the reply hinges on the determination as to whether the later part of the proviso, for the purpose of making declaration, provided

for any manner or mode for bringing the notification of declaration of the RSS as an unlawful association in effect. In this connection we have to

bank upon the language of the later part of the proviso. The relevant words for the purpose in the proviso are : ""it may, for reasons to be stated in

writing, declare"" and the word ""for"" in the context has got much relevancy whereupon hinges the answer. The word ""for"" cannot be attributed to

prescribe any mode or manner for issuance of direction. Instead of it if there would have been the words ""it may, by stating reasons in writing,

direct"" then it could have conveyed the sense of prescribing mode or manner for issuance of direction. Thus, the user of the word ""for"" or ""by

makes much difference. On having look on the provision contained in sub-sec. (1) we find that the word ""by"" is used and the language is ""it may,

by notification in the official gazette, declare"". Here it is the manner which is provided, as the answer to the question as to how the association to be

declared unlawful is that it can be done only by notification in the official gazette. The position does not appear to be so under the proviso. The

answer to the question as to how direction to be issued for bringing the notification in effect is not by stating reasons in writing. In view of this, the

submission as made by the learned counsel for the petitioner fails.

13. The objection as raised by the learned counsel for the Central Government, in the context of the submission as advanced by the learned

counsel for the petitioner that the later part of the impeached notification is bad as it fails to satisfy the mandatory requirement of law under the later

part of the proviso regarding stating of the reasons in writing in the order directing the notification for having effect, is whether under the later part

of the proviso there is any such requirement regarding publication of the order, directing the notification to have effect, in the official gazette as the

controversy regarding compulsion for spelling out the reasons for the direction would very much hinge on it. If there is statutory requirement

regarding publication of direction in the official gazette then the question would arise for ""consideration whether the spelling out of the reasons in the

order directing the notification to have effect would be necessary and if it is found to be so then what would be the effect of non-spelling out the

reasons in the said order though the same way be there in the official record.

Parties are not at variance on the proposition that the requirement, if found so, for stating the reasons in writing in the order, directing the

notification to have effect, would be meaningful if the same is statutorily required to be published in the official gazette. The question is whether

there is any such requirement regarding publication of the order in the official gazette under the later part of the proviso and, if it is so, then what is

the nature of the proviso as to its directory or mandatory character qua the requirement thereunder.

According to the learned counsel for the Central Government there is no such statutory requirement under the later part of the proviso regarding

publication of the order,directing the notification to have effect, in the official gazette under the proviso. Before dilating on the question the learned

counsel was asked for justifying his submission by explaining the publication of the direction under the proviso, in the official gazette as is evident

from the impeached notification. He tried to explain the publication of the order in the impeached notification by taking shelter of S. 21 of the

General Clauses Act, 1897(Act No. 10 of 1897) for brevity hereinafter referred to as ""the General Clauses Act""), which is. as extracted;

Power to issue, to include power to add to amend, vary or rescind, notification, orders rules or bye-laws where, by any Central Act or

Regulation, a power to issue notifications orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner

and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind any notification, orders rule or bye-laws so issued.

He submitted that the order directing the notification to have effect, prior to its confirmation by the Tribunal, issued under the later part of the

proviso, in essence, had the effect of adding to the notification. The argument has no merit and deserves to be rejected straightway. The notification

is about the declaration of the RSS as an unlawful association and the effect whereof, was arrested by legislative mandate contained under sub-sec.

(3) ""directing the notification not to have effect until confirmed by the Tribunal. The direction, as issued, under the later part of the proviso neither

adds to nor amends or varies the notification in any manner. If, in fact, it could be said, has the effect of variation of the legislative mandate

contained in sub-sec. (3), may be temporarily. The notification does not contain any such recital in itself that it would not have effect until confirmed

by the Tribunal. In view of this, we are of the opinion that the provision of S. 21 of the General Clauses Act has no applicability here in the context

of the controversy and the publication of the order directing the notification to have effect issued under the later part of the proviso has not been

done as suggested by learned counsel for the Central Government.

14. Next an unsuccessful, attempt to justify the publication of the direction issued under the later part of the proviso in the Official Gazette, is made

by submitting that the publication was made in the Official Gazette not because of any statutory requirement under the proviso but because of there

having developed a joint requirement owing to formation of opinion under sub-sec. (1) regarding the character of the RSS that it has become an

unlawful association as well as formation of opinion under the proviso regarding existence of such circumstances of emergent nature which

rendered it necessary Tor the Central Government to declare the RSS to be unlawful, with immediate effect, which led to publication in the Official

Gazette and further if there was no joint, simultaneous and composite act in the matter of formation of opinion there was no requirement of the

publication of the direction, as contemplated under the proviso, in the Official Gazette. A close scrutiny of the proviso discloses that under sub-sec.

(1) the formation of the opinion is confined to the fact as to whether any association is or has become unlawful. It is after formation of the opinion

that the declaration is made by notification in the Official Gazette declaring the association to be unlawful. The words ""in the Official Gazette"" in

sub-sec. (1) are purposely used as the General Clauses Act does not define the word ""notification"" as has been defined under the U.P. General

Clauses Act, which means a notification published in the Official Gazette under sub-sec. (1) declaring the RSS as an unlawful association. There

could not be any direction under the proviso for the notification to have effect unless there exists notification issued under sub-sec. (1) declaring the

association to be an unlawful association and it is thereafter that as opinion is to be formed for declaring the association as unlawful, with immediate

effect, as the declaration made under sub-sec. (1) came in abeyance by legislative mandate under sub-sec. (3). However, the argument was

attempted to be strengthened by relying on the, decision of the Supreme Court in S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others,

that the proviso is an independent sub-section. Court, as per material contained in paras 26, 35, 36 and 42 propounded :--

A proviso may have three separate functions, normally, a proviso is meant to be an exception to something within the main enactment or to qualify

something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart

from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must

be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso

is intended to limit the enactment provision so as to except something which would have otherwise been. within it or in some measure to modify the

enacting clause, sometimes a proviso may be embedded in the main proviso and becomes an integral part of it so as to amount to a substantive

provision itself.

To sum up, a proviso may serve four different purposes :

(1) qualifying, or excepting certain provisions from the main enactment.

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to

make the enactment workable;

(3) it may be so embedded in the ActItself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive

enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory

provision.

Whether the proviso construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision as a proviso.

Under the main clause sub-sec. (3) the effect of the notification under sub-sec. (1) is kept in abeyance by Legislature till its confirmation by the

Tribunal and publication thereof in the Official Gazette. The proviso carves out a power for the Central Government by means of legislature

enactment for meeting the situation of emergent nature without waiting for confirmation of the notification by the Tribunal by lifting the veil under the

main enactment. In the proviso itself the word ""direct"" would mean that the notification, subject to any order that may be made under sub-section

(4), to have effect from the date of its publication in the Official Gazette.

If it is assumed, as argued, that the notification is joint under sub-section (1) and the proviso is an independent clause even then it by virtue of sub-

sec. (3) could not have effect prior to its confirmation by the Tribunal by an order under sub-sec. (4) as, in fact, it would be a notification under

sub-sec. (1) and not under the proviso. In the proviso the word ""notification"" refuses to the notification issued under sub-sec. (1) and does not

speak for any other notification. We are, thus, of the opinion that there is no joint requirement of publication of the formation of opinion by

notification in the Official Gazette under sub-sec. (1) and the proviso. Even otherwise to hold contrary would amount to divorce its completely

form the provision to which it stands as a proviso. In the case relied on by the learned counsel, it is also observed that the proviso cannot be torn

apart from the main enactment and it cannot be used to nullify and set at naught the real object to the main enactment.

15. Now the question, which comes up for consideration is to find out whether the proviso provides for publication of the order directing the

notification to have effect, in the Official Gazette. In the context it is apt to reproduce the proviso at the costs of repetition :

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 S. 4, have effect from the date of its publication in the Official Gazette.

If the word ""its"" as finds place in the later part of the proviso would mean to qualify the word ""notification"", as is submitted by learned counsel for

the Central Government, then it carries us nowhere as it would amount to republication of that which was already published under sub-sec. (1). It

cannot be attributed to serve any purpose under the Act and would lead to absurdity. If the word ""its"" is made to qualify the word ""declare"" as is

submitted by learned counsel for the petitioner, it carries sense and the interpretation becomes purpose oriented as what is required to be

published is the order directing the notification to have effect from the date of its publication so to enable the public in general and the affected

persons in particular to know that the association has become an unlawful association from a date prior to the confirmation of its declaration issued

under sub-sec. (1) by the Tribunal so that they may direct themselves in a manner which may not saddle them with any liability of committing any

offence inviting prosecution or punishment under the Act. Apart from this since the freedom and liberty of the citizens are affected and those whose

freedom and liberty is affected, are entitled to know about it before hand and where for the publication of the order, directing the notification to

have effect, in the Official Gazette is necessary. Such an interpretation makes sense with the context and it is preferred being context oriented

satisfying the principle of context requirement. We, are thus of the opinion that the word ""its"" qualifies the word ""declare"" and it is this declaration

which needs to be published in the Official Gazette and comes in effect from the date of its publication in the Official Gazette.

16. In connection with the second limb of the argument, as advanced by the learned counsel for the petitioner that the second condition precedent

for exercise of power, under the proviso, by the Central Government for directing the notification to have effect, is that it could be done by stating

reasons in writing for the direction so issued which, not having been satisfied renders the later part of the impeached notification bad, the following

question crops up for considerations-

Whether the condition contained in the later part of the proviso relating to the stating of the reasons in writing in the order declaring the notification

to have immediate effect, is mandatory and, if so, its effect?

Learned counsel for the petitioner submitted that the requirement of the proviso for stating reasons in writing in the order or direction, directing the

notification to have effect from the date of its publication in the Official Gazette, is mandatory, but this mandatory requirement of law not having

been complied with renders the direction, which effects adversely the fundamental rights of the citizens, invalid. Learned counsel for the Central

Government submitted that it is not necessary for reasons to find place in the notification and the same could be traced out from the Government

record and in this connection he submitted that requirement of stating the reasons in writing in the direction under the proviso is not mandatory and

its no observance not to effect the direction adversely. The submission has no substance. S. 3 of the Act which aims at violation of the fundamental

rights of the citizens has provided a procedure, prescribing condition for exercise of power which is the procedure established by law. The proviso

gives emergency power to the Central Government for bringing in effect the notification declaring the RSS to be an unlawful association under sub-

sec. (1) prior to its confirmation by the Tribunal. The main clause of sub-sec. (3) prohibits the declaration under sub-sec. (1) from having effect till

its confirmation by the Tribunal and if the condition, as contained in the later part of the proviso, relating to statement of reasons in writing in the

direction, is held directory then it would mean to allow the Central Government for bringing in effect the notification freely despite the legislative

mandate to the contrary under the main enactment, which prohibits the notification from having effect till its confirmation by the Tribunal. Such an

interpretation holding the requirement of stating the reasons in writing in the order directing the notification to have effect as directory would be to

attribute an intention to the legislature for giving by one hand and taking such another. In this connection reliance was placed on a case of Supreme

Court Tahsildar Singh and Another Vs. The State of Uttar Pradesh, where the Court observed :

Unless the words are clear the Court should not so construe the proviso as to attribute the intention of the legislature to give by one hand and to

take with other. To put in other words sincere attempts should be made to reconcile the enacting clause of the proviso and to avoid repugnancy

between the two.

A reference was also made about the Supreme Court case Vishesh Kumar Vs. Shanti Prasad, wherein the Court observed :

The proviso cannot be permitted by construction to defeat the basic intent.

Under the later part of the proviso, the use of the words ""it may"" indicates that a discretion is given to the Central Government for directing the

notification to have effect after it has formed opinion regarding existence of circumstances rendering it necessary to declare the association unlawful

with immediate effect but since discretionary powers to be exercised not arbitrarily or for an unauthorised purpose, the legislature has regulated it

by rendering with the mandatory condition, making the same sine qua non by using the words ""for reasons to be stated in writing"". -Further,

Supreme Court in Jagir Singh Vs. Ranbir Singh and Another, observed : ""It is well known principle of law that the provisions of an Act of

Parliament shall not be evaded by shift on contrivance"". To hold the provision directory would amount to permit disobedience to law and its

evasion, which is not permissible. We are, thus, of the opinion that under the later part of the proviso the requirement of stating reasons in writing is

mandatory.

17. Now comes the main question, whether under the later part of the proviso, it is necessary to state the reasons in writing in the order, directing

the notification to have effect and if it is found to be so then what would be the effect of non-compliance of the requirement under the proviso. So

far as the factual position of the later part of the impeached notification is concerned, it is clear that it does not contain reasons in writing for

directing the notification to have effect prior to its confirmation by the Tribunal.

During the course of argument in reply to specific query made us from the learned Advocate General about the stand of the Central Government

regarding proviso to S. 3. Mr. Bhatnagar was very much emphatic in asserting that it is not necessary to spell out reasons or circumstances in the

notification but it should be stated somewhere else i.e. the record of the Government, not only in the oral submission but also in the counter-

affidavit filed on behalf of the Union of India, where the same stand has been taken in paragraph No. 5(f) of the counter-affidavit. The relevant

portion is as extracted below :

While sub-sec. (2) of S. 3 expressly requires that the notification shall specify the grounds on which it is issued, is significant variance in the

language used in the proviso to sub-sec. (3) which only requires reasons to be stated in writing. Upon a plain interpretation, such reasons are not

required to be compulsorily stated in writing in the body of the notification issued under S. 3(1) of the Act, but in an appropriate case, it shall be

sufficient compliance of law if reasons exist on the concerned files or records.

In paragraph 8(b) of the petition, which is as extracted below, specific case pleaded is :

Further absolutely no reasons have been given as required by the proviso to S. 3(3) of the Act. The wordings of S. 3(2) and the proviso to S.

3(3) of the Act show that the ""grounds"" and ""other particulars"" are something different from ""reasons"" for immediate application of the notification.

and this para, in the counter-affidavit is replied as :

That the contents of paragraphs Nos. 8 and 9 of the writ petition are argumentative in nature. Sufficient legal reply has been given in the preceding

paragraphs. The other legal arguments shall be made at the stage of hearing before this Hon''ble Court.

It has also not been canvassed before us on behalf of the Central Government that the opinion formed for declaration of an association as unlawful

under S. 3, sub-clause (1) of the Act is the opinion for issuing notification under sub-clause (3) also. Mr. Bhatnagar, learned counsel appearing for

the Union of India, has canvassed before us in a very lengthy argument stretched for days together that proviso to sub-sec. (3) of S. 3 does not

require any statement of reasons or circumstances for issuing notification under S. 3, sub-sec. (3). We have given our thoughtful consideration to

the submissions, but we find ourselves completely unable to accept the position that the reasons and the circumstances not to be stated in the

notification but the requirement of proviso will be fulfilled if the reasons shall be recorded in the records of the file.

18. It was submitted that under the proviso it is not the requirement of law that the reasons to be stated in writing in the order directing the

notification to have effect and according to him, the words ""reasons to be stated in writing"" means that they must find place in the Government

record and need not be spelled out to the public or the members of the association declared as unlawful. In this view of the matter, the proviso

needs to be analysed for finding out the policy of the Act and the intention of the legislature. Though the proviso is as exception to sub-sec. (3), but

contains the condition as a safeguard and part of fair play, obviously, because the legislature did not intend to authorise abuse.

However, in the context of the controversy learned counsel for the Union of India placed reliance on the order of the Bombay High Court passed

in the Writ Petition Nos. 7953 of 1992 with 7899 of 1992 dated 28-1-1993. The said petition pertains the challenge to the declaration of the RSS

and Vishwa Hindu Parishad as unlawful association and the question for determination was, ""whether in the absence of the reasons being set forth

in the impugned notification dated 10-12-1992 for giving immediate effect to the said notification or at any rate in the absence of the said reason

being communicated to the banned organisation, in question, the immediate effect given to the said notification is legal and valid."" in the said case

also from the side of the Central Government stand taken was that it is not necessary to set forth the reasons in the said impeached notification

itself and there is sufficient compliance of the proviso to sub-sec. (3) of the Act, if the reasons are recorded in the files of the Government.

In the case relied on a privilege under Ss. 23 and 124 of the Evidence Act was claimed. We, after going through the order, find that the same is of

no avail as the words ""for the reasons to be stated in writing"" as contained in the later part of the proviso, were not interpreted. Court merely

observed that ""as regards, the claim about the privilege it is to certain extent inter-linked with the above question of interpretation of word ""stated

used in the proviso of sub-sec. (3) of S. 3 of the Act, because if the said order implies the reasons to be communicated, there is no question of

claiming any privilege about the same. However, still the question would remain whether the privilege can be claimed with regard the decision

making process about the reasons forgiving immediate effect, as contained in the noting, minutes etc. In the file of the Executive Government, which

is a privilege specifically provided for under S. 124 of the Evidence Act. Court while observing on that aspect said, that although there is prima

facie force in the contention raised on behalf of the petitioners as required the interpretation of the proviso to sub-sec. (3) of the Act, the question

needs to be settled at after hearing the elaborate arguments at the stage of final hearing considering the scheme, objection and purpose of the said

proviso. In the said case, no decision either way was taken on the pretext of privilege under S. 124 of the Evidence Act. In the present petition no

such privilege under S. 124 of the Evidence Act has been claimed.

The second case, in the context relied on is the judgment of the Division Bench in O.P. Nd. 17028/92-BT.A.Abdul Nazarv. State of Kerala

(dated 19-1-1993)* which related to Islamic Sewak Sangh (for brevity referred te as the ISS) wherein one of the question for consideration was

whether bringing into the immediate effect, Ext. P-2 notification dated 10-12-1992, issued under S. 3(1) of the Act is invalid on the ground that

no reasons are stated in the notification as to why the ban should come into effect immediately.""? The notification dated 10-12-1992, impeached in

the said petition, related to the ISS, is as extracted herein :--

S.O. 899(E) whereas Shri I. C. S. Abdul Nazar Madani, Chairman of the Islamic Sewak Sangh (hereinafter referred to as ISS) had been giving

inflammatory speeches with a view to promoting on grounds of religion, disharmony of feelings of enmity hatred or ill-will between different

communities.

And whereas Shri I.C.S. Abdul Nazar Madani, in a public meeting at Poonthura district Trivandrum on the 30th June, 1992 has stated that

thousands of Muslims were killed and tortured in Kashmir and authorities were not taking effective steps and Muslim women were being raped by

Hindus with the support of authorities.

And whereas Sri I.C.S. Abdul Nazar Madani, in a record speech for public circulation, has stated that a Muslim cannot live as a Muslim in this

country and Muslim brothers should be prepared to get organised as also question the right of the people to hoist national flag in Kashmir.

And whereas the following criminal (sic) have been registered against Sri I.C.S. Abdul Nazar Madani under Ss. 153A and 153B of the Indian

Pneal Code (45 of 1860)

(a) Karangapally P.S. (Distt. Kollam) case No. 109/92 dated 20th March, 1992 under S. 153A;

(b) Kundaram I.S. (District Kollam) case No. 117/92 dated 28th March, 1992, under S. 153A;

(c) Kasba P.S. (District Calicut) case No. 103/92 dated 21st May, 1992 u/S. 153B.

And whereas the I.C.S. has been encouraging and aiding its followers to undertake unlawful activities within the meaning of the Unlawful Activities

(Prevention) Act, 1967 (37 of 1967).

And whereas for all or any of the grounds set out in the preceding paragraphs as also on the basis of other facts and materials in its possession

which the Central Government consider to be against the public interest to disclose the Central Government is of the opinion that the ISS is an

unlawful association.

Now, therefore, in exercise of the powers conferred by sub-sec. (2) of S. 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) the

Central Government hereby declares ""the Islamic Sewak Sangh"" to be an unlawful association and directs, in exercise of the power conferred by

the proviso to sub-sec. (3) of that section, that this notification shall, subject to any order that may be made under S. 4 of the Act have effect from

the date of its publication in the Official Gazette.

The aforesaid notification was a composite notification under sub-sec. (1) and the proviso containing the composite grounds on which the

notification under sub-sec. (1) was issued, which were taken by the Court as reasons, which were required to be stated under the proviso without

expressing any view whether it was necessary or not to state reasons in writing, in the order directing the notification to have effect. In the said case

Court observed as :

If the Central Government states that the certain activities of the association are unlawful and the association should be declared as such, not from

a future date, when the Tribunal would confirm such a declaration, but with immediate effect, it may be, in certain circumstances, necessary for the

Gpvenment to mention reasons for the declaration under S. 3(1) separately, and the reasons for bringing into effect the notification immediately,

again separately Obviously, such a situation may arise if both sets of reasons, which are different.

But where both sets of reasons either wholly or partly overlap, it may not be necessary for the Central Government to repeat in the notification

issued under S. 3(1), the reason for bringing the notification into immediate effect once again, when''such reasons have already been set out in the

grounds for the issuance of the notification under S. 3(2). In such a later situation, where the Central Government uses the words now, therefore,

""referring to the reasons and exercising powers under Ss. 3(1) and 3(3) such a notification cannot be challenged on the ground that no reasons

have been given separately, under the proviso to S. 3 for bringing the notification into immediate effect.

(Underlying by us)

One thing is clear here that if reasons under sub-sec. (1) and the later part of proviso are different then they necessarily need to be mentioned

separately i.e. one regarding declaration of an association as unlawful under sub-sec. (1) and the other supporting the declaration under the

proviso.

In the present case no such plea is put forward that both sets of reasons either wholly or partly are same or overlap. So far as the above reasoning

is concerned, the same is not attracted in the present case, as the grounds set out in the notification under sub-sec.(1) even otherwise could not be

read as reasons for order directing the notification to have effect under the later part of the proviso. It is also not the case of the Central

Government that the grounds mentioned in the notification under sub-sec. (1) are the reasons'' for the orders under the proviso directing the

notification to have effect. However, the two words i.e. ""grounds"" and ""reasons"" have different meanings and can notation. The case of Central

Government itself is that the reasons for the direction under the proviso directing the notification to have effect are there in the Government records.

In view of this, the above case is of no assistance to the learned counsel for the Central Government, but it certainly, to some extent lends support

to the arguments as advanced by the learned counsel for the petitioner.

Further the decision in the aforesaid case was also founded on the reasoning contained in the Supreme Court''s case in Satyavir Singh and Others

Vs. Union of India (UOI) and Others, which is as extracted (para 63) :--

.....It is, however, not necessary that the reason should find place in the final order, but it would be advisable to record it in the final order in order

to avoid an allegation that the reason was not recorded in writing before passing of final order, but was subsequently fabricated.....

The case of Satyavir Singh and Others Vs. Union of India (UOI) and Others, and the reasoning therein are of no help in the present case, where

the question of deprivation of fundamental right of the citizens is involved. The said case related to interpretation of Cl. (b) of the second proviso to

sub-Art. (2) to Art. 311 of the Constitution, which reads as :-- (para 21)

where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that

authority in writing, it is not reasonably practicable to hold such enquiry.

The interpretation was given by the Supreme Court in the context of the phrase ""for some reasons, to be recorded by that authority in writing,"" but

here in the present petition the phrase involved for interpretation is ""for reasons, to be stated in writing, direct."" The law has provided strict

safeguards, while permitting the Central Government to interfere with the fundamental rights and it needs to be interpreted strictly so to advance the

purpose of preservation of fundamental rights.

In the case Satyavir Singh and Others Vs. Union of India (UOI) and Others, which is as extracted, relates to action under, Art. 311 of the

Constitution requiring recording of some reason under Cl. (b) of second proviso to sub-Art. (2) of Art. 311 for dispensation of enquiry which was

condition precedent. It was only a constitutional obligation not relating to preservation of the fundamental right or rights of the citizens, but is for

plugging practical difficulty of the nature such as the person is not available for enquiry and it is in such a situation that the recording of some

reason, dispensing enquiry, is made imperative, but it does not provide for stating reasons as it would be seen that in the words ""record"" and ""state

there is marked difference.

The recording of the reason for dispending with the enquiry is a condition precedent to the application of Cl. (b) of the second proviso. This is a

constitutional obligation and if such reason is not recorded in writing the order dispending with the enquiry and orders of penalty following

thereupon, would both be void and unconstitutional. It is, however, not necessary that the reason should find place in the final order, but it would

be advisable to record it in the final order in order to avoid the allegation that the reason was riot recorded in writing before passing the final order,

but was subsequently fabricated.

In the present case, the legislature has placed ample safeguards under S. 3 of the Act for preservation of liberty and freedom of the persons and

protecting them from becoming victim of arbitrary and capricious exercise of power. The legislature while enacting the Act did not trust the

Executive Government and conditioned its powers; under the proviso by placing safeguards for its exercise in emergent and exceptional

circumstances to filter out its exercise in arbitrary, and capricious manner for the considerations -- political or otherwise not germane to the

purpose of the Act. S. 3 permits the exercise of power by Central Government impinging upon the fundamental rights casting obligation for

specifying the grounds and such other particular as may be considered necessary in the notification issued declaring the association as an unlawful

association under sub-sec. (1) and only exception is in favour of the facts, which are considered against the public interest and the declaration not

to have effect till its confirmation by the Tribunal manned by a High Court Judge. Apart from this, the legislature while entrusting the powers to the

Executive Government did not stop there, but proceeded further to ensure the safeguards, while permitting it to proceed in the exceptional

circumstances of emergent nature at a stage prior to confirmation of the notification by the Tribunal effecting deprivation of fundamental rights on

the principle that no interest is higher than public interest but the interference was authorised by putting obligatory conditions; one regarding the

formation of the opinion that the circumstances exist rendering it necessary to declare the association to be unlawful with immediate effect and the

other regarding stating of the reasons in the order directing the notification to have effect from the date of publication of the direction in the Official

Gazette.

The third case in the sequence relied on by the learned counsel for the Central Government is the order dated 22-12-1992 in C.M.P. No.

30464/92 with C.M.P. No. 30248/92 and in O.P.; No. 16849/92-E to an association known as ""Jamaet-E-Islami Hind"" declared unlawful by the

Central Government in purported exercise of power under the proviso and was filed at a stage when no Tribunal under S. 5 of the Act was

constituted. In this case, Court considered the proviso and said ""that it is true that no reasons are stated for attracting the proviso to sub-sec. (3) of

S. 3 of the Act. In Ext. P-3 notification it has to be noted that in sub-sec. (2) of S. 3 the legislature having already stated that the notification shall

specify the grounds on which it is issued. So the grounds for declaring an association as unlawful should be specified in the notification itself. At the

same time, the legislature by provides to sub-sec. (2) made it clear that the Central Government need not disclose any fact, which it considers to

be against the public interest to disclose when it comes to the question of stating reasons for the purpose of giving immediate effect to the

notification, the language used is not identical but totally different. It is not stated where the reasons should be recorded. The only thing that it

requires reasons and it has to be in writing.

In this case also Court relied on the same decision of the Supreme Court in Satyavir Singh and Others Vs. Union of India (UOI) and Others,

saying of course, reasons or circumstances should exist and when once it has said that those reasons have to be recorded, recording should not

necessarily be in the order, but it can be in the files are sufficient compliance of the conditionally of the proviso to sub-sec. (3) of S. 3. The case of

Satyabir Singh (supra) for the reasons already stated is of no relevance in the context of controversy in the present petition.

The fourth case, in the sequence relied on, is the judgment of the Patna High Court dated 2-3-93 in C.W.J.C. No. 477 of 1993* (Ahmad Ali

Akhtar v. Union of India), wherein the order dated 10-12-1992 declaring Jammat-E- Islami Hind ""JEIH"" as an unlawful association, was the

subject-matter of the challenge, inter alia, on the ground of unconstitutionality of the Act. It is not relevant so far as the consideration of the aspect

of the matter as are involved in the present case are concerned. However, in the said case Court took view that it is not necessary to set out in the

notification justification for issuance of the notification under S. 3(1) or for recording of reasons in the direction under proviso to sub- sec. (3) of S.

3, which, if challenged, could be justified through the counter-affidavit of the Government, against this judgment, an appeal, after grant of the

special leave is pending in the Supreme Court and the discussion made therein is subject-matter of scrutiny.

The proviso, without any ambiguity, expressly mentioned the words ""it may, for the reasons to be stated in writing, direct that the notification shall,

subject to any order that may be made under S. 4, have effect from the date of its publication in the Official Gazette ""The reasons are to be stated

in the order directing the notification to have effect and gives no scope, for introducing to it the interpretation to the effect that these words meant

for recording of the reason in writing in the record of the Central Government and not in the order directing the notification to have effect and it is

based on the maxim ""Expressum Facit a Cessarie Tacitum"", which means that when there is expressly mention of certain things then anything

mentioned is not excluded.

The fifth case in the sequence, relied on, is the order of the Calcutta High Court in F.M.A.T. No. 225 of 1993 Muhammad Raisuddin v. Union of

India dated 7-4-1993 relating to the declaration of Jamat-e-Islami Hind (JEIH) as unlawful association vide composite notification No. S. O. 898

(E) dated 10-12-1992, referable to two distinct powers under sub-section (1) of the proviso. The interim relief was refused relying other

reasonings in T.A. Abdul Nazar v. State of Kerala (O.P. No. 10028 of 1992-B) decided on 19th January, 1993* in which case Court observed:

The relevant Notification in the Kerala case was also couched in similar frame and fashion wherein only one set of reasons was specified both for

declaring the Association unlawful u/s 3(1) of the Act and also for bringing the same into immediate operation u/s 3(3) of the Act without stating the

reasons again separately for bringing the same into immediate operation. We respectfully agree with the Kerala decision.

The order in the Calcutta High Court case, has no applicability to the present case as the context of the controversy involved is different. Calcutta

High Court did not rely on the three Judge Bench decision of Patna High Court in Ahmad AH Akhtar v. Union of India, (C.W.J.C. No. 477 of

1993) dated 2nd March, 1993 (reported in 1993 (1) Pat LJ R 664) and observed :--

We have not, and this we say with respect, been able to derive much assistance from the Patna decision on the question before us. The decision is

no doubt in favour of the respon- dents but the reasons are not clearly discernible.

In connection with the submission on behalf of the Central Government the Calcutta High Court relying on the decision in a case of Satyavir Singh

and Others Vs. Union of India (UOI) and Others, stated that though the reasons have got to be stated the same need not be communicated to the

party affected. The Court observed:

The provisions of the second proviso of Art. 311(2), which fell for consideration in Satyavir"s case (supra) contain the expression ""recorded in

writing"" while the expression in Section 3(3) of the present Act in question is ""for reasons to be stated in writing"". We are inclined to think that the

very expression ""stated""would convey the idea of being stated to the person concerned which may not be implied in the expression ""recorded"".

Further the decision in C.B. Gautam Vs. Union of India and Others, is of a much larger Bench than that of in Satyavir Singh and Others Vs. Union

of India (UOI) and Others, and if it was necessary for us to decide the question we would have had to be governed by the decision in C.B.

Guatam"". The Court further" observed as :

Not that the reasons must always be incorporated in the order itself, though it would be very much advisable to do so. It may be permissible to

state or record the reasons separately, but the order would be incomplete unless either reasons are incorporated therein or are served separately

along with the order on the affected party. As non-communicated offer is no offer, a non-communicated order is also no order unless the relevant

law expressly dispenses with communication to the party aggrieved.

In C.B. Gautam Vs. Union of India and Others, Court propounded the following purpose about the requirement of recording of the reasons:

(1) that the ""party aggrieved"" in the proceeding before acquires knowledge of the reasons and, in a proceeding before the High Court or the

Supreme Court (since there is no right of appeal or revision) it has an opportunity to demonstrate that the reasons which persuaded the authority to

pass an order adverse to his interest were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by

the quasi-judicial or the executive authority invested with judicial powers.

19-20. After process of filteration now the residue for determination remains to find out the difference between the phrase ""reasons to be

recorded"" and ""reasons to be stated"".

The proviso contains a safeguards for preserving sanctity of the fundamental rights relating to liberty and freedom and as such it has to be read as

mandatory in nature, and needs to be construed strictly so to ensure satisfaction of condition, which are sine qua non for exercising the power and

for bringing into effect the notification by issuing direction containing the reasons in writing which has to be published in the official Gazette. The

learned counsel for the petitioner submitted that the procedural safeguards have to be held as mandatory and the requirement of recording of the

reasons in writing in the order directing the notification to have effect need to be held mandatory. Non-compliance of the mandatory requirement

regarding reasons to be stated in writing in the order directing the notification to have effect, would be characterised as something relating to the

procedural ultra vires.

In Smt. Ujjan Bai v. State of U.P. AIR 1962 SC 1621 Court considered the class of cases which have some time been characterised as cases of

procedural ultra vires and observed as ""when the statute prescribes a manner of forum in which the duty is to be performed or a power exercised it

seldom, lays down, what will be legal consequences of failure to observe its prescription. The Courts must, therefore, formulate their own criteria

for determining whether the procedural rules are recorded to be mandatory in which case the disobedience will render void or voidable what has

been done or as directory in which case dis-obedience will be treated as mere, irregularity, not affecting the validity of what has been done. A

quasi judicial authority is under an obligation to act judicially.

In the present case statute has prescribed the safeguards against exercise of the power under the proviso by the Central Government and it has to

be exercised by satisfying the sine qua non requirement as, the exercise of power is directed against the fundamental rights, such a power cannot

be held to be directory, but has to be held as mandatory. The proviso, without any ambiguity, expressly mentions the words ""it may, for reasons, to

be stated in writing, direct, that the notification shall, subject to any order that may be passed u/s 4, have effect from the date of its publication in

the official Gazette.

21. It is settled position that the reasons are link between the material on which certain conclusions are based and the actual conclusions. They

disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal the

rational nexus between the facts considered and conclusion reached. Only in this way, can opinion or decision recorded to be shown to be the

manifestly just and reasoned. The reason must exist on the file even if the law does not require them to be stated. In this connection, a reference

may be had to the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, wherein Court while interpreting the words

without assigning any cause"" held ""that it is not equated with"", ""without existence of any cause"". It merely means that the reasons for which

termination is made need not to be assigned or communicated to the appointee and the Court relied on the case of Kumari Shrilekha Vidyarthi and

Others Vs. State of U.P. and Others, wherein the Court said that the expression ""without assigning any reason"" implies that the decision has to be

communicated, but the reasons for decision have not to be stated, but the reason must, exist otherwise, the decision would be arbitrary. Here it

becomes clear from the phrase in the judgment ""but reasons for decision have not to be stated"" that the word ""stated"" means stated in the order or

decision.

In Union of India and others Vs. E.G. Nambudiri, Court held ""where an administrative authority is required to act judicially; it is under an

obligation to record reasons, but every administrative authority is not under the legal obligation to record the reason for decision, although it is

desirable to record reason to avoid any suspicion, where a statute requires an authority, though acting administratively, to record the reasons, it is

mandatory for the authority to pass speaking order and in the absence of the reason, the order would be rendered illegal. Right to reason is an

undispensable part of the sound System of judicial review as under our Constitution the decision is subject to judicial review, if it affects the right of

a citizen. It is, therefore, desirable that the reason should be stated. Here the word ""stated"" indicates stated in the decision and not otherwise.

In Management of M/s. Nenelty Bharat Engineering Co. Ltd. v. State of Bihar (1990) 1 UJ (SC) 500 (paras 7-8), Court held that when once a

decision is taken to transfer a pending case then the requirement of giving reasons becomes mandatory. In the case of Associated Electrical

Industries (India) Private Ltd., Calcutta Vs. Its Workmen, Gajendragadkar, J. (as he then was) speaking for the Court observed that the

requirement about the statement of reasons to be recorded must be complied with both in substance and in letter.

In the case of Hochtief Gammon Vs. State of Orissa and Others, the Court held as (at p. 2232, para 10) :--

Needless to say that the courts in India which function under written constitution which confers fundamental rights on citizens have exercised far

greater powers than those exercised by Court in England where there is no written constitution and there are no fundamental rights. Therefore, the

decision of the Courts of England as regards powers of Courts ""surveillance"" as Lord Pearce calls it or control which the judiciary have over the

executive as Lord Upjohn put it indicates at least the minimum limit to which the Courts in this country would be prepared to go in considering the,

validity of order of the Government or. Its officer. In that sense the decision of the House of Lords and Padfield v. Minister of Agriculture,

Fisheries and Food, 1968 AC 997, is a land mark in the history of the. exercise by Courts of their power of surveillance."" and

The executive have to reach their decision by taking into account relevant consideration they should not refuse to consider the relevant matter nor

should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law only such a decision

will be lawful. The Courts have power to see that the executive acts lawfully. It is no answer to exercise of that power to say that the executive

acted bona fide nor that, they have bestowed painstaking consideration they cannot avoid scrutiny by courts by failing to give reason. If they give

reason and they are not apt reasons Court can direct them to reconsider the matter in the light of the relevant matter, though the propriety

adequacy or satisfactory character of those reasons may not be open to judicial scrutiny even if the executive considers it inexpedient to exercise

their powers, they are stated their reasons and there should be material to show that they have considered all the relevant facts."" "

22. Lord Denning, on duty to give reasons in Breen v. A. E. U. (1971) 2 QB 175, observed as ""duty to give reason is a fundamental of good

administration. He further mentioned that the Court, in absence of the reasons for decision by a Minister, may assume that there was no good

reason and quash the decision. Lloyd in his famous treatise ""Introduction to Jurisprudence"" has described the giving of reasons as of the essence of

a judicial decision. It is a part of rule of fairness. It is rooted in the maxim that justice should not only be done, but seem to be done. Article 51 of

the European Convention of Human Rights requires the Court itself to give reasons for its decisions. It is implicit in the right to fair trial (see F. G.

Jacobs, The European Convention on Human Rights).

In our country, the law in this field has made a march in the same direction. In fact, it has made far greater strides than that has been made in

English law. In Travancore Rayon Ltd. Vs. Union of India (UOI), Shah, J. observed as follows (at p. 866) :--

When judicial power is exercised by an authority normally performing executive or administrative functions the Supreme Court insists upon

disclosure of reasons in support of the order on two grounds, one that the party aggrieved in a proceeding before the High Court or Supreme

Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous, the other, that the

obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

A great leap forward in this branch of law was witnessed in the The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of

India (UOI) and Another, when Hon''ble BhagwatiJ. propounded the law thus (at p. 1789) :

If the courts of law are to be replaced by administrative authorities and tribunals, with the proliferation of administrative law, it is essential that

administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give

sufficiently dear and explicit reasons in support of the orders made by them"".

He went on to say that ""the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of

natural justice which/must inform every quasi-judicial process and this rule mupt be observed in its proper spirit and mere pretence of compliance

with it would not satisfy the requirement of law.

Krishna Iyer, J. picked up the threads. He gave a farther thrust. In Organo Chemical Industries v. Union of India AIR 1979. SC 1803. In his

inimitable style, he spoke thus (at p. 1806, para 8) :

This court has impressed the requirements of natural justice on such jurisdictions and one such desideratum is spelling out reasons for the order

made, in other words, a speaking order. The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

While examining the scope of the power of the Provident Fund Commissioner to impose damages under S. 14B of the Employees'' Provident

Fund and Miscellaneous Provisions Act. He further observed :

The constitutionality of the power, rested on the anvil of Articles 14 and 19, necessitates this prescription. Such a guarantee ensures rational action

by the officer, because the reasons imply relevant reasons, not capricious ink arid the need for cogency rivets the officer mind to the partinent

material on record. Moreover, once reasons are set down; the order readily exposes itself to the writ jurisdiction of the court Under Article 226 of

the Constitution of India so that perversity, illiteracy, extraneous influence, mala fides and other blatant infirmities straight get caught and corrected.

This view was approved in Rama Varma Bharathan Thampuram Vs. State of Kerala and Others, and Bombay Oil Industries Pvt. Ltd. Vs. Union

of India (UOI) and Others, As Flick has stated in his celebrated work ''Natural Justice'', giving of reasons serves fourfold purpose :--

(a) it provides considerable assurance that the decision will be getter as a result of its being properly thought out.

(b) it will enable a person who has a right to appeal to determine whether he has good grounds for an appeal and it will inform him of the case he

will have to meet if does decide to appeal.

(c) It will make a tribunal more amenable , to the supervisory jurisdiction of the courts, it will further ensure that a tribunal acts within its powers.

(d) Reasoned opinions will encourage public confidence in the administrative process.

In our country, we may judge the plenitude of a power vis-a-vis, giving of reasons with reference to Articles 14, 19 and 21. Having thus laid out

the canvas, we may examine the impugned order with reference to the far reaching consequences the exercise of power it may, in Rustom

Cavasjee Cooper Vs. Union of India (UOI), the Supreme Court observed that the validity of an exercise of power may be judged in the context of

its impact on exercise of other fundamental rights by a citizen.

23. The banning of an organisation has a muzzling effect on various fundamental rights of a citizen. It tends to cripple the freedom to form

association, freedom to assemble reachably freedom of speech and expression etc. The repercussions are pervasive and deep. Under the normal

procedure envisaged under the Act, an order banning an organisation comes into effect only when the Tribunal constituted under the Act examines

it. The power to affect citizen fundamental rights providing for preventive measures or damages for wrong doings is quasi judicial in character even

if exercised by executive echelons. The procedure is, thus quasi-judicial. Justice is participatory. The order has to be a reasoned one. The

aforesaid procedures inspires public confidence. It accords with the requirements of reasonableness and fairness. But an order passed by the

Executive under the garb of ""immediacy"" under the proviso throws overboard the aforesaid judicial procedure. Such exercise of power, as already

seen, is fraught with very serious and ominous consequences. It instantaneously imperils liberty of individuals, who are member of such

organisations. It also endangers exercise of other fundamental rights as contained in Article 19 of the Constitution.

24. It is, therefore axiomatic that such an order has to spell the reasons on the face of it. Otherwise, the Courts will have to group in dark to find

out the reasons. Such being the plenitude of power, a non-speaking order cannot at all be brooked.

Learned counsel for the Central Government made a vain attempt to draw a distinction between stating the reasons and recording the reasons. We

are afraid the argument could find acceptability. the obligation for giving reasons is cast in clear and explicit terms.

In our opinion, such a course is not permissible. Since reasons have to be stated. They have to appear on the face of the order. The Court will not

launch a fishing and roving expedition to fathom reasons. Vivian Bose, J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, observed as

follows :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or for what was in his mind, or what he intended to do. Public orders made by public authorities are meant to

have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with

reference to the language used in the order itself. Order are not like old wine becoming better as they grow older.

These observations were quoted with approval by Krishna Iyar, J. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner,

New Delhi and Others, In Smt. Sheela Wanti v. State Transport Authority U.P. the Supreme Court observed.

May be there is truth in the facts stated in the counter-affidavit but what is important is as to whether the statutory body when it actually re-

classified the route had given thoughts to the three criteria mentioned in the rule subsequent affidavits incorporating materials in compliance with the

statute cannot make use for the fatal omission at the inception when the classification was made.

25. So the position comes where there is no such statutory requirement by user of the words ""reasons to be stated in writing"" the file noting to

contain the reasons otherwise the action would become arbitrary when the statute uses the words ""reasons to belated in writing"" then the reason

must be contained in the notification or order, as the case may be, as the purpose is to communicate the reasons to the persons, who are adversely

affected by such action. In this connection, learned counsel for the petitioner placed reliance on following passage from the case of Dwarkadas

Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, [""every action of the executive authority must be subject to rule of law and must

be informed by reasons.

26. The legislature acts by keeping in consideration the principle of law judicially propounded. The abuse of power is inevitable, if uncontrolled

power is conferred. If the Government department is given a blank cheque, the day will certainly come when they will over draw. Thus the

limitations on the exercise of power are put on the principle that the unridered, uncontrolled or unlimited power will put an end to rule of law. On

the said principle the Parliament ""did not give blank cheque to the Central Government to appropriate while exercising the power u/s 3 of the Act.

The powers, which are given by Parliament to the public authority are given to them as it whereupon the trust that it is not for the personal benefit

of the Ministers or official concerned, but for the benefit of the public that of course is assumed upon which the Parliament may grant such power

at all, though the statute needs not to say so. Since it is general ''principle (like the principle of natural justice), which the Court can take for grant. It

follows that every power conferred on the public authority is conferred upon the condition that it will be used only for good and sufficient reason in

the public interest. If the reasons are irrelevant, un-designable or based upon the mistake of law or facts, then the power is being exercised out side

the area within which legislature intended that it should be conferred and Our old friend the Doctorine of ultra vires is enough to establish the

illegality.

27. In Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, the argument was that since the reasons were

communicated to the assessee in the notice for filing objection and it is, therefore, manifest that the reasons given in the show cause notice can be

read as part of the impugned order, although there is no mention of any reason therein, as such, the Court did not accept the submission. Court

also did not accept the submission that the reasons are recorded in the file, although these are not communicated to the assessee fully meet the

requirement u/s 127(1) of the Income Tax Act and the Court held the requirement of reasons u/s 127(1) as mandatory direction under the law and

non-communication thereof is saved by showing that the reasons exist in the file, although not communicated to the assessee. In the case of

Pragdas Umar Vaishya v. Union of India, 1967 MP LJ 868 (SC)Court held that under Rule 55 of the Mineral Concession Rules, 1960, the

Central Government in disposing of the review application must record its reasons and communicate these reasons to the parties affected thereby.

It was further held that the reasons could not be gathered from the noting of the Central Government. Recording and disclosing of the reasons is

not a mere formality. When the law requires reasons to be recorded in a particular order affecting prejudicially the interest of any person, who can

challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of

omission to communicate the reasons is not expiated.

In the case of The State of Uttar Pradesh Vs. Lalai Singh Yadav,

When the section says that you must state the grounds it is no answer to say that they need not be stated because they are implied. You do not

state a thing when you are expressively silent about it. To state is to declare or to set forth, especially in a precise, formal or authoritative manner to

say (something) specially in an emphatic way; to assert (Random House Dictionary). The conclusion is inescapable that a formal authoritative

setting forth of the grounds is statutory mandatory. If you laze and omit the law visits the order with voidness.

The wages of neglect is invalidity going by the text of the code. These considerations are magnified in importance when we regard the changeover

from the Raj to the Republic and the higher value assigned to the great rights of the people. Where there is statutory duty to speak, silence is lethal

sin for a good reason disclosed by the scheme of the faciculus of sections.

In (1984) 2 All ER 481, at page 486, (R. v. Secretary of State) the treaty of European Economic Community required reasons to be furnished for

deportation. The reasons existed on the file, they were well known to the deportee and his advocate had conceded to it; yet the recommendation

regarding deportee was struck down.

28. In the present case we are very much concerned with the interpretation of the words ""for the reasons to be stated in writing"" and whether the

direction under the later part of the proviso to be coupled with the reasons in writing for making a direction. The word in the proviso ""it may, for

the reasons to be stated in writing, declare"" arouse curiosity as to where the reasons to be stated in writing, it is not the mode but is requirement of

the law and part of the procedure established by law. The words ""it may, for reasons to be stated, declare"" would have conveyed complete

meaning, but for the use of additional word ""writing"" some meaning has to be given as it is settled proposition of law that the legislature do not use

superfluous words and in view of it the user of word ""writing"" cannot be ignored. It can convey meaning or can be interpreted to mean the reasons

to be stated in writing for the direction. The dictionary meaning of the word ""stated"" itself is ""express particular in writing"". If the words ""reasons in

writing"" were not there even then the proviso would not have made any difference as per the argument of the learned counsel for the Central

Government. According to him, the reasons to be stated in the record of the Government and not in the order relating to the direction under the

proviso. The dictionary may be taken help to find out the meaning of the words ""record"" and ""state"" or ""record"" or ""stated"". From Blacks Law

Dictionary, where the word ""record"" (verb) to mean ""commit to writing"", ""make an official note"" and the word ""state (verb)"" means ""to express the

particulars in writing or in words, to set down or set forth in detail. In Random House Dictionary the word ""state""means ""to declare"", ""to set forth"".

These words ""for the reasons to be stated"", thus may mean ""for the reasons to be declared"". In Websters III New International Dictionary the

word ""stated"" to mean ""set down explicitly."" Thus the word ""for the reasons to be stated"" may mean ""for the reasons set down explicit"" and the

words ""for the reasons to be stated in writing"" may mean ""for the reasons to be set down explicitly in writing. Thus the word ""writing"" has to be

interpreted to mean"" ""writing in the order issuing direction to the notification to have effect"". The word ""for"" used in the Phrase ""for reasons to be

stated in writing"" also need to be interpreted. It is a conjunction -and shows effect of an (sic) the effect is reasons to be stated. Stated means

uttered a fact, opinion or principle. The Central Government is not a sentient being and it can only act by writing i.e. by written order, written

direction of notification and there can be no such thing as oral direction.

29. The Hindi translation of the Act was also published under the authority of the President, which is deemed to be authoritative text thereof in

Hindi under clause (a) of sub-section (1) of Section 5 of the Official Languages Act, 1963 (Act No. XIX of 1963), the Hindi text of the proviso is

as extratted below :--

^^ijUrq ;fn dsfUnz; ljdkj dh ;g jk gka fd ,slh ifjfLFkfr;ksa fo/keku gS ftlesa ml ljdkj ds fy, fdlh laxe dks rkRdkfyd izHkko fof/k fo:) ?kksf""kr djuk

vko";d gks tkrk gS rks og ,sls dj.kks ls ftUgs fyf[kr :i esa dfFkr fd;k tk;sxk] funs"k ns ldsxh fd vf/klwpuk fdlh ,sls vkns"k ds v/;k/khu jgrs gq, tks

/kkjk 4 ds v/khu fd;k tk,s] "kkldh; jkti= esa mlds izdk"ku dh rkjh[k ls izHkkoh gksxh**

Both Hindi and English version of the proviso are the authorised version. The word in Hindi version also makes the above interpretation beyond air

"doubts that the word ""it"" qualified the word ""direcf"and also the phrase ""for the reasons stated to be in writing, direct"" of which Hindi equivalent is

rks og ,sls dkj.kksa ls ftUgs fyf[kr :i ls fd;k tk;sxk funsZ"k gS A

clearly means the reasons to be stated in writing in the direction.

30. We are, thus, clearly of the opinion that under later part of the proviso, the, sine qua non condition is that the reasons must find place in the

order directing the notification under sub-section (1) to have effect, which are to be published in the official Gazette and any storage of reasons in

the Government record would not satisfy the mandatory requirement under the proviso.We find the later part of the impeached Notification fails to.

satisfy the mandatory requirement of law and held it to be bad.

31. In the light of what have been observed heretofore, we hereby suspend the operation of the later part of the impeached notification No.S.O.

901(E) dated JO-12-1992 (Published in the Gazette of India (Extraordinary)) of the same date, which is severable and contains the direction

under the proviso to sub-section (3) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 directing the Notification declaring the RSS as

an unlawful association under sub-section (1) to have effect from the date of its publication in the Gazette till the time the declaration under sub-

section (1) is confirmed by the Unlawful Activities (Prevention) Tribunal by order, and is duly published in the Official Gazette.

As a consequence of this order the Rash-triya Swayam Sewak Sangh is not an unlawful association, till declaration made under sub-clause (1) by

the Central Government is not confirmed by ""Unlawful Activities (Prevention) Tribunal"" constituted u/s 5 of the Act.

32. Order accordingly.