

(2010) 11 MAD CK 0237

Madras High Court

Case No: Writ Petition No. 25041 of 2010 and M.P. No"s. 1 and 2 of 2010

Vijayaratnam Sivanesan
represented by his Power of
Attorney Holder Kalaiarasu

APPELLANT

Vs

The Ministry of Home Affairs
Government of India and The
Unlawful Activities (Prevention)
Tribunal

RESPONDENT

Date of Decision: Nov. 10, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 153A, 153B
- Unlawful Activities (Prevention) Act, 1967 - Section 3(1), 3(3), 4(2), 4(3), 5

Citation: (2011) 1 CTC 129

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanamw, J

Bench: Division Bench

Advocate: M. Radhakrishnan, for the Appellant; M. Ravindran, Addl. Solicitor General,
assisted by., J. Ravindran, Asst. Solicitor General, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, C.J.

In this writ petition the Petitioner has prayed for the issuance of a writ of certiorari for quashing the order dated 28.10.2010 passed by the 2nd Respondent - Tribunal rejecting the petition filed by the Petitioner under the provisions of Unlawful Activities (Prevention) Act, 1967.

2. The Petitioner's case, inter alia, as set out in the writ petition is that the Petitioner Vijayaratnam Sivanesan joined the Liberation Tigers of Tamil Eelam (in short "LTTE") in November 1983 and worked as Video Cameraman. He was arrested by the Tamil

Nadu police in Madras in 1988 along with one Mr. Sathasivam Krishnakumar @ Kiddu and 80 others. After the said arrest, the Petitioner was transferred to the Indian Army camp at Point Pedro in Sri Lanka. The Petitioner was kept there for three months, and thereafter, he was transferred to another Indian Army Camp at Kankesanthurai. It is stated by the Petitioner that after he was transferred to Indian Army Camp he was released by the Indian Army on 5th March, 1990, and since, he was released he left the LTTE in 9th March, 1990. In the year 2010, the first Respondent " Union of India issued a notification dated 17th May, 2010 u/s 3(1) and proviso to Section 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "Act") declaring LTTE as an unlawful association. The Petitioner through his alleged Power of Attorney Holder Kalaiarasu, S/o.K.A. Ramasamy filed a petition u/s 4(3) of the Act before the Tribunal for cancellation of declaration made in the notification dated 17th May, 2010. The Petitioner also filed petitions u/s 5 of the Act for the supply of copies of all the documents produced before the Tribunal during the hearing and also summoning the witnesses. The Tribunal rejected both the petitions by its impugned order dated 28.10.2010. Hence, the present writ petition.

3. Mr. M. Radhakrishnan, learned Counsel appearing for the writ Petitioner assailed the impugned order mainly on the ground that the Tribunal failed to exercise its jurisdiction by not considering the application and for not giving full hearing on the ground of paucity of time. Learned Counsel submitted that the Tribunal further committed grave error of law in questioning the genuineness of the Power of Attorney on the basis of which the petitions were filed before the Tribunal. He submitted that the Tribunal further misdirected itself in saying that the affidavit was not properly filed.

4. Mr. M. Ravindran, learned Additional Solicitor General of India submitted that in the facts of the case the Tribunal rightly rejected the petitions. According to him, admittedly, after the Petitioner was released by the Indian Army on 5th March, 1990, he left the LTTE movement on 9th March, 1990. Since, the Petitioner is not involved in the activities of the LTTE movement after 9th March, 1990 the question of entertaining his petition does not arise.

5. It has not been disputed that the Petitioner after his release by the Indian Army left the LTTE movement on 9th March, 1990. This fact has been admitted from the certificate issued by the so called International Secretariat of the LTTE stating that the Petitioner was released by the Indian Army on 5th March, 1990, and soon after his release he left the movement on 9th March, 1990. In the Power of Attorney alleged to have been executed in favour of Mr. Kalaiarasu it was reiterated that the Petitioner left the movement as far back as in 1990.

6. On a perusal of the impugned order, it reveals that the Tribunal is of the view that there was no sufficient cause for hearing the petition filed before the Tribunal through the Power of Attorney holder namely, Mr. Kalaiarasu, who has sworn

affidavit on behalf of the Petitioner Mr. Sivanesan. According to the Tribunal, there was no difficulty for swearing an affidavit by the Petitioner himself when the Power of Attorney was executed by him on 22.10.2010. We fully agree with the view taken by the Tribunal while rejecting the petition.

7. The word "association" has been defined in Section 2(a) of the Act, which means any combination or body of individuals. Section 2(f) of the Act defines the word "unlawful activity" as under:-

—"unlawful activity in relation to an individual or association, means many action taken by such individual or association(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise,

(i) which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India."

Similarly, Section 2(g) of the Act defines "unlawful association", as under:—"unlawful association means any association-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable u/s 153A or Section 153B of the Indian Penal Code (45 of 1860) or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity"

8. Section 4 of the Act inter alia provides that if any association is declared unlawful by a notification issued by the Central Government, the notification shall be referred to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful. Sub-section (2) of Section 4 confers power upon the Tribunal to call upon the association effected by notice in writing to show cause within 30 days from the date of service of notice as to why the association should not be declared unlawful.

9. In the petition filed by the Petitioner before the Tribunal through his so called Power of Attorney holder, no where it is mentioned that the Attorney is also a member of the association or in any way interested in the activities of the association.

10. It cannot be disputed that the Unlawful Activities (Prevention) Act, 1967 was enacted for the purpose of providing more effective prevention of certain unlawful activities of individuals and associations. The sole object of the Act is to provide

national integrity and to prevent any activity which is intended to disrupt the sovereignty and territorial integrity of India. Having regard to the aim and object of the aforesaid legislation, we are of the considered opinion that if any association or individual moves before the Tribunal for declaration that such association is not unlawful, the member of such association shall have to file a personal affidavit and he cannot resist the notification through the Power of Attorney holder.

11. In the facts and circumstances of the case, and also having regard to the fact that the petition filed by the Petitioner before the Tribunal through its Power of Attorney holder has rightly been rejected by the Tribunal, we do not find any strong reasons to interfere with the order of the Tribunal. The writ petition is dismissed. No costs. Consequently, the miscellaneous petitions are closed.