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

Reserved on: 25th October, 2024

Date of decision: 28th October, 2024

\+ **W.P.(CRL) 3354/2024**

MR. VISUVANATHAN RUDRAKUMARAN .....Petitioner

Through: Ms. Nitya Ramakrishnan, Sr. Adv. with Mr. Prabu Ramasubramanian, Mr. Stuti Rai, Mr. Bharathimohan, Mr. Santhosh K, Adv.

versus

THE UNION OF INDIA & ANR. .....Respondents

Through: Mr. Chetan Sharma ASG, Mr. Ripu Daman Bharadwaj CGSC, Mr. Anurag Ahluwalia CGSC, Mr. Apoorv Kurup CGSC, Mr. Balendu Shekhar CGSC, Mr. Mukul Singh CGSC, Mr. B Ramaswamy CGSC with Mr. Jay Prakash Singh, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Shubham Sharma, Mr. Abhay Singh and Ms. Hridyanshi Sharma, Advocates for MHA/UOI (M: 9818030700).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed on behalf of the Petitioner- Mr. Visuvanathan Rudrakumaran under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagrik Suraksha Sanhita ('BNSS')

challenging the impugned order dated 11th September, 2024, passed by the Unlawful Activities (Prevention) Tribunal (hereinafter "*Tribunal*"). The Tribunal was constituted *vide* Notification No. S.O. 2196 (E) dated 5th June, 2024 under Section 5(1) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter '*UAPA*') for adjudicating the declaration of the organization – '*Liberation Tigers of Tamil Eelam*' (hereinafter '*LTTE*'), as an unlawful association under Section 3(1) of the UAPA by the Central Government.

3. *Vide* the impugned order, the Tribunal has dismissed the application under Section 4(3) of UAPA filed on behalf of the Petitioner seeking impleadment in the proceedings before the Tribunal.

Factual Background:

4. The LTTE is an organization formed with the object of seeking liberation of the Tamil homeland in Sri Lanka. It is also stated that in 2009, an arms struggle took place in Sri Lanka which led to complete dismantling of the LTTE.

5. The LTTE has been declared a *'terrorist organization'* by the Government of India and was included in the First Schedule of the UAPA in terms of Section 2(m) and Section 35, thereto.

6. In addition, the Government of India in 1992 declared the LTTE as an '*unlawful association'* under Section 3(1) of the UAPA. The first notification in this regard was issued on 14th May, 1992. The said declaration was renewed every two years *vide* respective notifications under Section 3(1) of UAPA from 14th May 1992 until 11th November, 2014.[1] Thereafter, the said

[1] Further notifications under Section 3(1) of UAPA declaring LTTE as unlawful association were issued on 17th December, 1994, 3rd January, 1997, 19th January, 1999, 30th January, 2001, 24th December, 2002, 4th January, 2005, 6th January, 2007, 22nd January, 2009, and 11th February, 2012.

declaration has been renewed for 5 years *vide* notifications dated 20th November, 2014 and 14th May, 2019 (confirmed by the Tribunal *vide* order dated 6th November, 2019). Presently, *vide* notification dated 14th May, 2024, LTTE has been declared an unlawful association for a period of five years.

7. Subsequent to the said notification dated 14th May, 2024, a new Tribunal was constituted by the Central Government *vide* Notification No. S.O. 2196 (E) dated 5th June, 2024. *Vide* notice dated 14th June, 2024, the LTTE was called upon to show cause under Section 4(2) of UAPA. Objections and written statement were called for within 30 days of the said notice. The proceedings were scheduled for 23rd July, 2024.

8. In the proceedings, before the Tribunal, the Petitioner - Mr. Visuvanathan Rudrakumaran, claiming to be the Prime Minister of the Transnational Government of Tamil Eelam (hereinafter *'TGTE'*) filed his objections/ written statement dated 12th July, 2024 and also filed an application seeking impleadment on 7th August, 2024, in order to enable him to contest the ban on LTTE before the Tribunal. The said application for impleadment was rejected by the Tribunal on 11th September, 2024 *vide* the impugned order.

Background of TGTE

9. It is the case of the Petitioner that owing to the war which took place in 2009 in Sri Lanka, almost all the leaders of the LTTE were either killed, captured or exiled. The entire organization was dismantled. The sympathizers of LTTE, at that stage, felt that the cause of the Tamils in Sri Lanka ought to be continued to be agitated through peaceful means which led to the constitution of TGTE. The said TGTE is stated to be consisting of an Advisory Board of various sympathizers of LTTE and its cause. The TGTE claims to

have internationally supervised elections and also claims to have held its parliamentary sittings in the British and French Parliaments. The Petitioner is also stated to be the Prime Minister of the TGTE.

10. The case of the Petitioner is that he is an Eelam Tamil who was born in Sri Lanka and is now a permanent resident of the United States of America. He is stated to be a member of the New York State Bar and practising law before various Courts including the Circuit Court, Court of Appeals, District Court as also the Supreme Court of the United States. The Petitioner also claims that he was a legal advisor to the LTTE and had participated in the peace process held in 2009 between the LTTE and the Government of Sri Lanka which was facilitated by various foreign Governments. The TGTE claims to be the representative of more than a million Tamils who live in Sri Lanka and several other countries of the world.

11. Further, the case of TGTE is that in view of the action taken by the Government of India against the LTTE *i.e.*, declaring it an unlawful association, the effective functioning of the TGTE has been adversely affected.

Present Writ Petition

12. Accordingly, as noted above, an application was moved by TGTE seeking impleadment in the proceedings before the Tribunal adjudicating the ban on LTTE. The said application was rejected by the Tribunal *vide* order dated 11th September 2024, on the following grounds:

i. That under Section 4(3) of the UAPA the Petitioner is neither an office bearer nor a member of the LTTE.

ii. That the TGTE is a separate political endeavor representing the Tamil Eelam.

iii. That the TGTE is a different, independent and distinct organization from the LTTE.

iv. The TGTE's right, if any, to independently pursue its cause with the Government of India for revoking of the ban, would not entitle it to seek a hearing before the Tribunal in the present proceedings *qua* LTTE.

v. The mere fact that no office bearer or member of the LTTE is participating in the present proceedings would not entitle the Petitioner to participate in the same.

vi. That the Petitioner cannot seek parity with Mr. Vaiko, who has been allowed to participate in the proceedings *albeit* to a limited extent, as it is the Petitioner's stand that he is not connected with the LTTE.

vii. The Petitioner is neither a citizen nor a resident of India.

viii. That the Petitioner had earlier sought impleadment before the erstwhile Tribunal constituted *vide* notification dated 27th May, 2019 which was deciding the ban notification dated 14th May, 2019. However, the said application was dismissed by the said Tribunal on 30th October, 2019 on the ground that the Petitioner had failed to show any locus *qua* the said proceedings. Moreover, the said order merged with the final order of the said Tribunal dated 6th November, 2019. The Petitioner did not challenge either of the said orders.

13. The Tribunal, observing that the Petitioner has not made out any new grounds for impleadment, dismissed the application of the Petitioner on the above grounds.

14. Hence, the Petitioner has invoked the writ jurisdiction of this Court

challenging the impugned order of the Tribunal and seeking direction to allow the Petitioner to participate in the concerned proceedings before the Tribunal.

15. The matter was listed before this Court on 24th October, 2024, on which date the Court was informed by Ms. Nitya Ramakrishnan, ld. Sr. Counsel appearing on behalf of the Petitioner, that presently, the case before the Tribunal is proceeding *ex-parte* against LTTE, since none appears for LTTE in the said proceedings. It was also informed that the evidence is being led only by the Government of India and the State of Tamil Nadu. Further, it was pointed out by the ld. Sr. Counsel, that the application for impleadment under Order I Rule 10 of Code of Civil Procedure filed by Mr. Vaiko, the General Secretary, Marumalarchi Dravida Munnetra Kazhagam (MDMK), has been allowed by the Tribunal on 3rd September, 2024.

16. The Court, accordingly, had directed a copy of the petition be served on the ld. Counsel for the Union of India, appearing before the Tribunal. The matter was then directed to be listed on the next date *i.e.*, 25th October, 2024.

17. On 25th October, 2024, the Court was informed that the proceedings before the Tribunal are listed for final arguments on 28th October, 2024 *i.e.*, today. Accordingly, the Petitioner as also Union of India, were duly heard at length and the matter was listed for orders today.

Submissions on behalf of the Parties

18. Ms. Nitya Ramakrishnan, ld. Sr. Counsel appearing for the Petitioner has, *firstly*, relied upon the fact that the notification dated 14th May, 2024, itself refers to LTTE sympathizers living in India and abroad. The said notification also records that such LTTE leaders, operatives and supporters are inimically opposed to India's policy *qua* LTTE and action of the State machinery in curbing their activities. Since, the Petitioner is one of the

supporters/sympathizers of the LTTE, though, *sans* the violence propagated by LTTE, he ought to be given an opportunity to be heard before the Tribunal.

19. Ld. Sr. Counsel places reliance on the decision of the Supreme Court in ***Jamaat-e-Islami Hind* v. *Union of India***, **1995 (1) SCC 428,** to argue that the purpose of the Tribunal under Section 5 of UAPA would be to give judicial confirmation as to whether there was sufficient cause to support the action of the Central Government declaring an organisation as unlawful association under Section 3 of UAPA. In such an enquiry, it is argued, any credible evidence, sought to be provided by an individual irrespective of his/her citizenship, ought to be entertained by the Tribunal. It is submitted that the Petitioner is a person who is aware of the background of the LTTE, and so long as the material furnished by him is credible, the same ought not to be shut out by the Tribunal. The assessment of the credibility of material before the Tribunal is an integral part of that process, and persons like the Petitioner ought to be permitted to intervene in proceedings before the Tribunal in such cases.

20. In addition, she also relies upon the decision of the Tribunal dated 12th November, 2010 which was dealing with the notification of 14th May, 2010 declaring the LTTE as an unlawful association by the Central Government. In the said order, ld. Sr. Counsel has directed attention upon the reference to TGTE made by the Government of India to show how the TGTE itself is acknowledged by the Central Government as a grouping of the LTTE under the guise of a political body. The attention of the Court is also sought to be directed by the ld. Sr. Counsel, towards the fact that the Tribunal in the said proceedings permitted Mr. Vaiko, General Secretary, MDMK, to present their inputs, despite having rejected his application for impleadment under Order 1

Rule 10 of CPC.

21. She, further, relies upon a decision of the Madras High Court dated 1st February, 2024 in ***W.P. No. 33149/2023*** titled as ***G. Pavendhan* v. *The State,*** where the Petitioner therein was permitted to hold a meeting in Madras despite the report submitted by the P.S. Esplanade in Chennai opposing the grant of permission on the ground that in the guise of conducting the meeting, slogans will be raised hailing the LTTE.

22. It is her submission that no one is representing the LTTE currently before the Tribunal. It is also submitted that the rejection of the impleadment application on behalf of the Petitioner is contrary to the settled principles of law *qua* the Code of Civil Procedure which would apply to Tribunals constituted under Section 5 of UAPA, in terms of Sub-Section (6) thereto. Further, it is submitted that Section 9 of UAPA contemplates a procedure that would permit impleadment of a *'necessary party'* or a *'proper party'*. It is argued that, even if the Petitioner is held to not be a necessary party for the concerned proceedings before the Tribunal, he is definitely a property party in terms of the dictum of the Supreme Court in ***Mumbai International Airport Private Limited* v. *Regency Convention Centre, (2010) 7 SCC 417.***

23. On the other hand, Mr. Chetan Sharma, ld. ASG, along with Mr. Anurag Ahluwalia and Mr. Apoorv Kurup, ld. Counsels for the Respondents, have challenged the maintainability of the present petition on the ground that no appeal is provided under UAPA against the order passed by the Tribunal. As per the ld. ASG, the challenge to the ban imposed on Popular Front of India under the UAPA, is under consideration by another Co-ordinate Bench of this Court in ***W.P. (C) 15810/2023*** titled as ***Popular Front of India* v. *Union of India***, and has not been admitted as yet, though, the same was filed

almost a year earlier. He, further, submits that when issues of territorial sovereignty and integrity are involved mere sympathizers of an organization, that too a foreigner, cannot be permitted to intervene in proceedings conducted by the Tribunal under Section 4(3) of UAPA. It is submitted that the application seeking impleadment filed by the Petitioner is under Section 4(3) of UAPA, and in terms of the said provision he does not deserve to be impleaded.

24. Ms. Ramakrishnan, ld. Sr. Counsel, rebuts the aforesaid contentions of the State and submits that the inputs to the Tribunal could be from any source, not limited to those who are office bearers or members of the concerned association. It is further submitted that the stand of the TGTE is that India ought to adopt a neutral position and different political ideologies ought to be permitted to give their inputs before the Tribunal.

Analysis and Findings

25. Heard.

26. Under the UAPA, there are three types of entities that are defined:

i. Terrorist Gang [*Section 2(l)*].

ii. Terrorist Organization [*Section 2(m)*].

iii. Unlawful Association [*Section 2(p)*].

27. Under Chapter VI of UAPA, an organization which is involved in terrorism can be included in the First Schedule by the Government of India by issuing a notification in the Official Gazatte in terms of Section 35 of UAPA. If an organization is declared as a terrorist organization by the Security Council such an organization can also be added in the First Schedule. Under the Fourth Schedule of UAPA names of individuals who are declared as terrorists are notified. Commission, participation, preparation, promotion,

encouragement or any other kind of involvement in terrorism could lead to issuance of such a notification by the Government of India under Section 35 of UAPA. Any organization which is included in the First Schedule of the UAPA as a terrorist organization would be considered as such. There are various punishments which are stipulated in respect of persons who may be members of a terrorist gang or a terrorist organization.

28. The notification of an organization as an *'unlawful association'* is provided for under Chapter II of UAPA. Under the proviso to Section 3(3) of UAPA, if there are circumstances which lead the Central Government to form an opinion that an association ought to be declared as an unlawful association, then a notification would be issued in this regard. The manner in which such a notification is to be issued is prescribed in Section 3(4) of UAPA. Upon an association being notified and declared as an unlawful association, within 30 days, the respective notification has to be referred to a Tribunal for holding an inquiry into the sufficiency of the material in support of such declaration.

29. Such a Tribunal has to be headed by a High Court Judge in terms of Section 5(1) of UAPA. Further, under Section 5(4), the expenses of the Tribunal is to be borne by the Central Government. Under Section 5(5), the Tribunal has the power to regulate its own procedure. Under Section 5(6), for making an inquiry under UAPA, the Tribunal is vested with the powers of the Civil Court. The proceedings before the Tribunal are judicial proceedings for the purposes of Section 193 and 228 of the IPC, as also for Section 195 and Chapter XXVI of the CrPC, the Tribunal shall be deemed to be a Civil Court. The Tribunal also enjoys the powers to punish for contempt, etc., Section 9 of the UAPA prescribes the procedure to be followed by the Tribunal in holding any inquiry under Section 4(3) of UAPA, and the said Section reads as under:

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

30. It is noted that the UAPA does not provide for any appeal against the order of a Tribunal passed under Section 4 and as is clear from the above, a decision of the Tribunal shall be final. If, however, any forfeiture is effected of proceeds of terrorism in respect of terrorist organization under Chapter V of UAPA, such orders would be appealable under Section 28 thereto.

31. The provision of appeal against orders not covered under Section 28, is thus conspicuous by its absence under the UAPA. The maintainability of the present writ petition would have to be viewed in this context. The question to be considered is whether a writ petition would be maintainable under Article 226 and 227 of the Constitution of India challenging orders, of the Tribunal under UAPA, unrelated to forfeiture etc.,

32. The function performed by the Tribunal under the UAPA is of significant ramifications. The role of the Tribunal as discussed in ***Jamat-e-Islami Hind (supra)***, is clearly one of adjudication of the sufficiency of materials relied upon by the Government of India to form an opinion under Section 3(1) of UAPA. The Tribunal has been conferred with powers of contempt and power to take action in case false evidence is adduced before it.

The Tribunal has been vested with powers of a Civil Court. The Tribunal has to follow principles of natural justice as contemplated under Section 4(2) of UAPA that mandates issuance of a show cause notice to the association in question. The relevant observations of the Supreme Court in ***Jamat-e-Islami Hind (supra)*** is set out below:

> *"17. The reference to the Tribunal is for the purpose of adjudicating whether or not there is sufficient cause for declaring the Association unlawful. Obviously the purpose is to obtain a judicial confirmation of the existence of sufficient cause to support the action taken. The confirmation is by a sitting High Court Judge after a judicial scrutiny of the kind indicated. This being the nature of inquiry and the purpose for which it is conducted, the materials on which the adjudication is to be made with opportunity to show cause given to the Association, must be substantially in consonance with the materials required to support a judicial determination. Reference may be made at this stage to the decision in* ***State of Madras v. V.G. Row (1952) 1 SCC 410*** *on which both sides place reliance.*
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> *xxx xxx xxx*
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> *21. To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made*

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

33. In the above judgment, the Supreme Court also clearly holds that the Tribunal does not merely provide an imprimatur to the opinion of the Central Government. It has to follow a fair procedure and its actions should not be arbitrary. The scrutiny undertaken by the Tribunal is not that of a criminal trial but on the existence of sufficient cause to support the declaration of the Central Government under Section 3(1) of UAPA which is capable of judicial scrutiny. The Tribunal has a lot of flexibility to mould the requirements of procedure and even the requirements of natural justice, especially considering issues related to national security and public interest. The observations of the Supreme Court on the role of the Tribunal are set out below:

"26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the

Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. ***The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.***

27. It follows that, ordinarily, ***the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny.*** *In this context, the claim of privilege on the ground of public interest by the*

> *Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires.* ***The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself.***
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> *28. On the above construction made of the provisions of the Act, the alternative argument relating to constitutionality does not merit consideration."*

34. Thus, the Supreme Court upheld the constitutionality of the UAPA by laying down the basic principles and procedure that the Tribunal needs to follow in conducting its inquiry. In the background of the role of the Tribunal as prescribed in ***Jamat-e-Islami Hind (supra)***, it cannot be stated that a writ petition against an order of the Tribunal under UAPA cannot be maintainable before the Constitutional Courts, though the grounds of challenge against the said order would be narrow. This position is also fortified by the recent order passed by the Supreme Court in ***SLP (C) No. 25012 / 2023*** titled as ***Popular Front of India v. Union of India***, where when a challenge to the Tribunal's order was made directly to the Supreme Court under Article 136 of the Constitution of India, the Supreme Court observed as under:

> *"Delay condoned.*
> *Heard Mr. Divan, learned senior counsel for the petitioner.*

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

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

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

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

35. An appeal against the rejection by the Tribunal of the application seeking intervention filed by the Petitioner cannot, therefore, be held as being barred or as being non-maintainable before this Court. Judicial review against the order of the Tribunal would be maintainable under Art. 226/227 of the Constitution of India. The scope of such a writ petition would, however, be limited especially as these cases involve national security. The issue of judicial review in matters concerning national security, has been recently considered by the Supreme Court in ***Madhyamam Broadcasting Ltd. v. Union of India, 2023 SCC OnLine SC 366.*** In the said decision, the Supreme Court clearly holds that national security cannot be raised as a ground to bar judicial review in each and every case, but the same would be a ground to limit the extent of judicial review if the Court is convinced from the material furnished by the Government, that the matter at hand involves genuine national security concerns. The relevant observations of the Supreme Court are reproduced hereinunder:

*"93. **The issue is not whether the inference that national security concerns are involved is judicially reviewable. It is rather on the standard of proof that is required to be discharged by the State to prove that national security concerns are involved.** It is necessary that we understand the meaning and implications of the term national security before embarking on an analysis of the issue. This Court has held that it is not possible to define national security in strict terms. National security has numerous facets, a few of which are recognised under Article 19(2) of the Constitution. In **Ex-Armymen's Protection Services (supra)**, a two-Judge Bench of this Court observed that the phrase national security would include factors like 'socio-political stability, territorial integrity, economic stability and strength, ecological balance cultural cohesiveness and external peace. Justice Patanjali Sastri writing for the majority in **Romesh Thappar v. State of Madras** demarcated the fields of 'public order' and 'security of state' as they find place in Article 19 of the Constitution. This Court held that the expression 'security of the state' was defined to include a 'distinct category of those offences against public order which aim at undermining the security of the State or overthrowing it'. In **Ram Manohar Lohia v. State of Bihar**, Justice M Hidayatullah (as the learned Chief Justice then was) distinguished the expressions 'security of State', 'law and order', and 'public disorder'. He observed that disorders affecting the security of State are more aggravated than disorders that affect public order and law and order:*

> *55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting*

"security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

94. *Thus, the expression national security does not have a fixed meaning. While courts have attempted to conceptually distinguish national security from public order, it is impossible (and perhaps unwise) to lay down a text-book definition of the expression which can help the courts decide if the factual situation is covered within the meaning of the phrase. The phrase derives its meaning from the context. It is not sufficient for the State to identify its purpose in broad conceptual terms such as national security and public order. Rather, it is imperative for the State to prove through the submission of cogent material that non-disclosure is in the interest of national security. It is the Court's duty to assess if there is sufficient material for forming such an opinion. A claim cannot be made out of thin air without material backing for such a conclusion. The Court must determine if the State makes the claim in a bona fide manner. The Court must assess the validity of the claim of purpose by determining (i) whether there is material to*

conclude that the nondisclosure of the information is in the interest of national security; and (ii) whether a reasonable prudent person would arrive at the same conclusion based on the material. ***The reasonable prudent person standard which is one of the lowest standards to test the reasonableness of an action is used to test national security claims by courts across jurisdictions because of their deferential perception towards such claims***. ***This is because courts recognise that the State is best placed to decide if the interest of national security would be served. The court allows due deference to the State to form its opinion but reviews the opinion on limited grounds of whether there is nexus between the material and the conclusion. The Court cannot second-guess the judgment of the State that the purpose identified would violate India's national security. It is the executive wing and not the judicial wing that has the knowledge of India's geo-political relationships to assess if an action is in the interest of India's national security***.*"*

36. In ***Madhyamam (supra)***, the earlier decision of the Supreme Court in ***Manohar Lal Sharma v. Union of India, 2021 SCC OnLine SC 985***, was considered, and the parameters of judicial review in matters concerning national security were laid down as extracted above.

37. In the present case, the writ petition is not challenging any administrative action or executive action but assails the order of a Tribunal, duly headed by a sitting Judge of the High Court, as per the provisions of UAPA. In such a petition, again, the scope of challenge would be limited. The Supreme Court in ***Rajendra Diwan v. Pradeep Kumar Ranibala, (2019) 20 SCC 143,*** has observed:

"*85.* *The power of superintendence conferred by*

Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. ***When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised "in the cloak of an appeal in disguise".***

86. ***In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record****. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case.* ***The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law.***

87. *In L. Chandra Kumar [****L. Chandra Kumar v. Union of India, (1997) 3 SCC 261****] the Supreme Court in effect held that the power of the High Court under Articles 226/227 of the Constitution, being an inviolable basic feature of the Constitution such power cannot be abrogated by statutory enactment or for that matter even by Constitutional amendment.* ***L. Chandra Kumar cannot be construed to enlarge the***

jurisdiction of the High Court under Articles 226 and 227 of the Constitution, to enable it to exercise appellate powers.*"*

38. As can be seen from the above, in a writ petition as the present one, unless there is perversity, arbitrariness or unreasonableness, interference is not justified. The question, that then arises is, whether the impugned order of the Tribunal deserves to be interfered with as sought for by the Petitioner.

39. Section 4 of UAPA is clear to the effect that the inquiry by the Tribunal is to be conducted after issuance of a show cause notice to the association. Such a cause can be shown by either the association, its office bearers or the members thereof. Section 4 of UAPA reads as under:

> ***"4. Reference to Tribunal.*** *– (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.*
>
> *(2)* ***On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.***
>
> *(3)* ***After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9*** *and after calling for such further information as it may consider*

necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette."

40. In the present case, the application for impleadment filed by the Petitioner clearly states the following:

i) That the LTTE, as on date, does not have any organizational structure, offices, officers, assets, headquarter or any other characteristics, in effect therefore, the LTTE does not exist;

ii) That the TGTE claims to be a trans-national government of the Tamil Eelam and has persons involved in it beyond those who were even LTTE members. The TGTE is not the LTTE;

iii) The TGTE does not subscribe to all the ideologies of LTTE;

iv) TGTE espouses an independent Tamil Eelam using non-violence and diplomacy;

41. TGTE is, thus, not the association which has been declared as an unlawful association by the notification dated 14th May, 2024. The Petitioner and the TGTE could be sympathizers of the LTTE and nothing more.

42. It is observed that in the notification dated 14th May, 2024, the reference to LTTE's sympathizers is in the context of setting out the reasons why there

is a need for LTTE to be declared as an *unlawful association* and how the said sympathizers, followers and supporters of LTTE could impinge upon India's security and integrity. It is reiterated that the law does not contemplate issuance of notice to sympathizers or supporters. It only contemplates issuance of notice to the association or its office bearers or its members under Section 4(3).

43. It is also noted that the Petitioner had earlier also filed an application for impleadment on 30th October, 2011 before the Tribunal adjudicating upon the notification dated 14th May, 2019 which was dismissed on the ground of locus. The relevant portion of the said order dated 30th October, 2011 passed by the then Tribunal is set out below:

> *"The applicant in para 6 of the application has admitted in clear terms, as follows:*
>
> > *"6.* ***Upon taking up this responsibility, the Applicant has acted throughout as an independent person and has taken on the formation of the TGTE as an entirely independent political endeavour, one which has not subsequently been in any way connected to the LTTE****."*
>
> *The notification dated 14.05.2019 issued by the Central Government has declared the LTTE as an Unlawful Association under the Unlawful Activities (Prevention) Act, 1967 for the reason that the LTTE is carrying on destructive activities prejudicial to the integrity and sovereignty of India and adopt a policy inimical to India which continues to pose a great threat to the security of Indian national.*
>
> *In view of the above background, the applicant has failed to establish a case to participate in the present*

proceedings which particularly pertains to LTTE. ***The LTTE has been declared as an Unlawful Association under the Unlawful Activities (Prevention) Act, 1967 with which the applicant/TGTE has no connection****.*

Accordingly, the application being devoid of any merit, is hereby dismissed."

44. The Petitioner has placed reliance on the order dated 12th November, 2010 of the Tribunal considering the notification dated 14th May, 2010 declaring the LTTE as unlawful association, wherein the intervention of Mr. Vaiko, General Secretary of MDMK, was permitted by the Tribunal and he was allowed to present his inputs in the respective proceedings. In the said order, the Tribunal has recorded as under:

"10. […]
Mr. Vaiko has categorically denied that he is a member of the LTTE. He contends that he sympathizes with the Organization's aspirations and deprecates its ban, which impacts various innocent boys and girls. He also argues that since the stand of the Central Government is that LTTE has been completely decimated, there cannot be any participation on its behalf. Therefore, he may be allowed to participate in the inquiry and place relevant facts before the Tribunal.

I am of the opinion that the Act provides for an opportunity to respond only to the subject Association/Organisation or its Office Bearers or Members. The language of Section 4(3) of the Act is categorical. The Act specifically provides for the remedy which can be availed of by any person affected by the Notification which are before the District Judge or the Central Government.

Reliance placed on Order I Rule 10 of the CPC by the Applicant, in my view, is misplaced as the Act states under Section 9 that the procedure applicable in the Inquiry to be conducted by the Tribunal is that provided under the Code of Criminal Procedure, 1973 which does not provide for impleadment of parties who are not directly involved. Moreover, the Applicant has failed to disclose any material ground or grievance caused to him by this Inquiry that would make him proper or necessary party.

*I have carefully perused the pronouncement in Jamaat-E-Islami already referred to above. The Hon'ble Supreme Court has pointedly articulated the need of the Tribunal to act in a judicial manner, since otherwise it may be perceived as a mere rubber stamp of the Government. Their Lordships have observed that in order to "satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy." **Accordingly, I do not rule out the possibility of permitting a person who enjoys credibility to address arguments to present a point of view different to the Government. Even so, Mr. Vaiko has no right to be impleaded as a party**.*

Impleadment Application is, therefore, rejected.

xxx xxx xxx

*46. **The Tribunal had allowed some of sympathizers/supporters of the ideology of LTTE to present their submissions on the Notification, even though their impleadment has been rejected**. Mr. Vaiko, General Secretary, Marumalarchi Dravida Munnetra Kazhagam, Mr N.Chandrashekharan, Advocate for Mr. Pazha Nedumaran, President,*

Tamilar Desiya Iyakkam and Mr. M. Radhakrishnan, Advocate for Prisoners Rights Forum where, therefore, allowed to present their views after the learned ASG had placed all relevant facts and material in support of the ban.

47. Mr. Vaiko has taken pains to state that - "Tamil Nadu is part and parcel of this great country, India", He vociferously argued that the notion of a Tamil homeland, viz. "Tamil. Eelam", for which the LTTE is fighting in Sri Lanka, does not include separation of any part or territory of India. He has submitted that the, LTTE has never been a threat to the national and sovereignty of India. For this, he placed reliance on the speeches delivered by Late Prabhakaran and other prominent leaders of the LTTE on "Martyrs Day". He also emphasized on the fact that the proposed map of the "Tamil Eelam" in the background of the dais from which said speeches were delivered only included Northern and Eastern provinces of Sri Lanka and no part of Indian Territory. He also argued that the Central Government is only relying on extraneous materials and suspicion theories which are not substantial enough to justify the ban on the LTTE. He also argued that threat to VVIP security cannot be a ground to impose the ban under Section 3 of the Act."

As per the above order, Mr. Vaiko was not impleaded as a party but was merely permitted to intervene and address submissions before the Tribunal.

45. The Petitioner cannot be equated with Mr. Vaiko or other persons mentioned above, who were permitted to intervened by the Tribunal. All the said persons are based out of India and are citizens of India. They are subject to jurisdiction of Indian Courts and Indian law. The Petitioner's case is

distinct from the said persons, as the Petitioner is admittedly a permanent resident of United States of America and is not bound by the laws of India. The Tribunal which is holding hearings currently is a Tribunal purely constituted under Indian law *i.e.*, the UAPA. The powers of the Tribunal include powers of contempt, punishment for false evidence and all such similar powers as exercised by Civil and Criminal Courts in the country as contemplated under Sections 5 and 9 of UAPA.

46. While there can be no doubt that the Tribunal is fully empowered to deal with application for impleadment under Order I Rule 10 of CPC, it cannot be held that impleadment or intervention has to be permitted in all cases. The Petitioner was the same person who had sought intervention earlier in 2019, as mentioned above, whose application was rejected on the ground of locus by the concerned Tribunal and the said order was not challenged by the Petitioner. The said order would be a binding precedent, considering that the Petitioner in the present case is the same. The organization in respect of which the Tribunal was then constituted is also the same. Even if a fresh look is to be taken by the present Tribunal, sufficient reasons have been given by the Tribunal in the impugned order for not entertaining the application for impleadment of the Petitioner.

47. This Court is of the view that it is not to substitute its opinion with that of the Tribunal, so long as the Tribunal's order is not perverse or arbitrary, the same does not warrant interference, especially, considering the contours of the jurisdiction exercised by this Court under Article 226 and 227 of the Constitution of India.

48. Matters which concern the security and integrity of the country are those in which judicial review ought to be exercised with utmost caution. The

Petitioner claims to be the Prime Minister of a trans-national government of Tamil Eelam and the impact of allowing such a person to intervene in these proceedings under the UAPA, that too when he is admittedly not a member of the LTTE or an office bearer of the LTTE, is far reaching, as the stand of the Petitioner could have broader implications on policy issues and relations with other nations, which are not to be determined either by the Tribunal or by this Court.

49. The fact that the state of Tamil Nadu as also other sympathizers of the LTTE based out of India are already being heard by the Tribunal, by way of interventions, shows that the basic principles of fairness and natural justice are being duly followed by the Tribunal. Under these circumstances, this Court is of the opinion that the order of the Tribunal does not require to be interfered with.

50. It is also noted that the challenge to the impugned order is also at a belated stage, since the proceedings are now at the stage of final arguments. The impugned order of the Tribunal was passed on 11th September, 2024 and the present writ petition has been filed, after clearing objections, on 16th October, 2024. The order of the Tribunal dated 7th October, 2024 reads as under:

> *"9. The Union of India is directed to ensure that the recording of the evidence and arguments are completed on or before 28.10.2024 keeping in view the deadline of 14.11.2024.*
>
> *10. List for examination of the witness of MHA on 24.10.2024.*
>
> *11.* ***List for arguments on 28.10.2024****."*

51. As is clear from the above, the matter is listed today *i.e.*, on 28th October, 2024, for final hearing. Thus, even on the ground of delay, this Court is not inclined to interfere with the impugned order of the Tribunal.

52. The writ petition is accordingly dismissed. Needless to add that if the Petitioner has any other remedies in law the same are left open to be availed of. Such proceedings would not be influenced by the observations in the present order, which is confined to the prayer for impleadment made before the Tribunal.

53. The present writ petition and all pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

OCTOBER 28, 2024
dj/Rahul/ks/ms