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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 11 अगस्त, 2006

का.आ. 1302(अ).—केन्द्रीय सरकार ने विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं. का.आ. 191 (अ), तारीख 8 फरवरी, 2006 द्वारा स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को तारीख 8 फरवरी, 2006 को विधि विरुद्ध संगम के रूप में घोषित किया था ;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं. का.आ. 291(अ), तारीख 7 मार्च, 2006 द्वारा, तारीख 7 मार्च, 2006 को विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायमूर्ति श्री बी. एन. चतुर्वेदी थे;

केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, 8 मार्च, 2006 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी ;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना सं. का.आ. 191(अ), तारीख 8 फरवरी, 2006 में की गई घोषणा की पुष्टि करते हुए, तारीख 7 अगस्त, 2006 को एक आदेश पारित किया था ।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात् :—

[अधिकरण के आदेश के लिए अंग्रेजी पाठ देखें]

[फा. सं. 14017/9/2006-एनई-III]

बी. ए. कुटीनो, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 11th August, 2006

S.O. 1302(E).—Whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared on the 8th February, 2006, the Students Islamic Movement of India (SIMI) as an Unlawful Association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 191 (E), dated the 8th February, 2006;

And, whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 5 of the said Act constituted on the 7th March, 2006 the Unlawful Activities (Prevention) Tribunal consisting of Hon'ble Mr. Justice B. N. Chaturvedi, of the Hon'ble High Court of Delhi vide notification of Government of India in the Ministry of Home Affairs, number S.O. 291 (E), dated the 7th March, 2006;

And, whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 8th March, 2006, for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association unlawful;

And, whereas, the said Tribunal, in exercise of the powers conferred by Sub-section (3) of Section 4 of the said Act made an order on the 7th August, 2006, confirming the declaration made in the notification number S.O. 191 (E) dated the 8th February, 2006.

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

BEFORE THE JUSTICE B. N. CHATURVEDI
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL, NEW DELHI

Date of Decision : 7th of August, 2006

In Re : Banning of Students Islamic Movements of India under the Unlawful Activities (Prevention) Act, 1967.

In the matter of :—

Union of India .....Petitioner,
Through Mr. Sidharth Mridul, Senior Advocate, with Mr. Shailendra Sharma, Advocate

versus

Students Islamic Movements of India .....Respondent,
Through Mr. Trideep Pais, Advocate. with Mr. Mobin Akhtar, & Mr . H.A. Siddiqui, Advocates

Coram :

Hon'ble Mr. Justice B. N. CHATURVEDI

ORDER

B. N. Chaturvedi, J.

1. Students Islamic Movement of India (SIMI) was declared as an unlawful association vide Notification No. S.O.191(E), dated 8-2-2006 by the Central Government. The Notification reads thus:

"S.O.191(E).—Whereas, the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country.

And, whereas, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government declared the SIMI to be an unlawful association vide notification No. S.O.960 (E) dated 27-09-2001. The detailed grounds for declaring SIMI as unlawful association were given in the said notification. The Unlawful Activities (Prevention) Tribunal was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban vide Order dated 26-03-2002. As SIMI contained to be indulged in activities for which it was banned earlier a fresh ban was imposed on SIMI vide notification No. S.O. 1113 (E), dated 26-09-2003. The Unlawful Activities (Prevention) Tribunal constituted to adjudicate the ban and the ban was upheld by the Tribunal vide Order dated 23-03-2004;

And, whereas, now the Central Government is of the opinion that the activists of SIMI are still indulging themselves in the communal and anti-national activities for the reason that the organisation was banned earlier. The activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association. And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not cured and controlled immediately, it will take the opportunity to—

(i) continue their subversive activities and re-organise its activists who are still absconding;

(ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;

(iii) propagate anti-national sentiments;

(iv) escalate secessionism by supporting militancy;

And, whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to Sub-section (3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

2. A Corrigendum No. S.O. 206(E) to the aforesaid ban notification was issued and published on 13th of February, 2006 to the following effect :

"S.O. 206(E).--In the notification of the Government of India in the Ministry of Home Affairs No. S.O.191(E) dated the 8th February, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8th February, 2006, at page 3—

(i) in line 15, for the word "contained", read "continued : "

(ii) after line 24, insert the following namely :—

"Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;".

3. By a letter dated 8-3-2006, pursuant to the aforesaid notification dated 8-2-2006 read with corrigendum dated 13-2-2006, declaring the Students Islamic Movement of India (SIMI) as an unlawful association under Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), (for short 'the Act') a reference was made to this Tribunal under Section 4 (1) for adjudication whether or not there is sufficient cause for declaring the association as unlawful. Together with the said letter, copies of the

notification dated 8-2-2006 and corrigendum dated 13-2-2006 along with a resume incorporating facts constituting basis for ban were forwarded.

4. After perusal of the resume so received, a notice under Section 4. (2) of the Act was issued to Students Islamic Movement of India (SIMI) to show cause within 30 days from the date of service of notice as to why the said organisation being declared as an unlawful association be not adjudicated to be for sufficient cause. The notice accompanied by copies of notification dated 8-2-2006, corrigendum dated 13-2-2006 and resume was directed to be served on the said organisation through Secretary, at its principal office at C-151/9, Zakir Nagar, New Delhi-110025 and also at its office/s, if any, at different place/s in the States of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamilnadu, Kerala, West Bengal, Jharkhand, Assam, Bihar, National Capital Territory of Delhi and Uttar Pradesh, through local office bearer/s as well as by affixation at some conspicuous part of the office/s of the association. Notice was, in addition, directed to be served by publication in two national newspapers (one in English and one in Hindi) and also in one vernacular newspaper of the respective States where the activities of the association are being ordinarily carried on. The notice was also required to be served on the association by way of broadcast/telecast on All India Radio and Doordarshan/ DD Regional.

5. Consequent upon service of notice, the respondent-association caused its appearance on 5th of May, 2006 through S/Shri Mobin Akhtar and H.A. Siddiqui, Advocates, and, in the circumstances, service of notice was treated as sufficient.

Two weeks' time was sought on behalf of the respondent-association to file their objections. The association was, accordingly, required to file its objections on or before 18th of May, 2006. On 18th of May, 2006, however, instead of filing the objections, an application being IA.I/2006 was filed seeking extension of time to enable the respondent-association to file its objections. Though in the application a request for grant of 30 days' time from 2nd of May, 2006 to file its objections was made, keeping in view the time constraint, the learned counsel for the respondent -association, eventually agreed to file the same by 22nd of May, 2006. The objections were, thus, filed on behalf of respondent-association on 22nd of May, 2006, which were taken on record. On 18th of May, 2006 when time to file objections was extended up to 22nd of May, 2006, apart from IA. 1/2006, four more applications had been made being IAs.2-5/2006 on behalf of the respondent-association, which were directed to be posted on 22nd of May, 2006 for disposal. On 22nd of May, 2006, one more application bearing IA. No. 6/2006 was filed together with objections. All these applications being IAs. 2-6/2006 were disposed of *vide* order dated 22-5-2006.

6. Proceeding with the inquiry in order to record the statements of the witnesses who were to be produced on behalf of the Central Government by different States, sittings of the Tribunal were held at Aurangabad, Trivendrum, Chennai, Hyderabad, Bangalore, Indore and Delhi. As many as 34 witnesses, including those produced by various States, were examined on behalf of the Central Government. The witnesses so examined were allowed to make their statement in examination-in-chief on affidavits, which they did before their cross-examination on behalf of the respondent-association. The respondent-association examined two witnesses, namely, Mr. Zafrul Islam, RW-1, and Mr. Shahid Badar, RW-2, in support of its objections.

7. The notification dated 8-2-2006 read with corrigendum dated 13-2-2006 simply sets out the grounds on which the respondent-association was banned. The facts which constitute the basis for ban are set out in the reusme/background note, which was, in addition to copies of notification dated 8-2-2006 and corrigendum dated 13-2-2006, forwarded to this Tribunal along with letter of reference dated 8-3-2006.

FACTS:

8. Facts emanating from background note unfold that the Students Islamic Movement of India (SIMI) came into existence on 25th of April, 1977 as a front organisation of youth and students having faith in Jamait-e-Islamic-Hind (JEIH). In 1993, however, the respondent-organisation disassociated from Jamait-e-Islami-Hind (JEIH) and declared itself as an independent organisation. At world level, the respondent-organisation is stated to be affiliated to 'World Association of Muslim Youth (WAMY)'.

9. The stated objectives of the respondent-organisation are:

1. Governing of human life on the basis of Quran;
2. Propagation of Islam;
3. "Jehaad" (religious war) for the cause of Islam;
4. Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

10. The respondent-organisation, states the background note, aims to utilize students/youth in propagation of Islam religion and obtain support for Jehaad (for Islam). It emphasises on the formation of "Shariat" based Islamic Rule through "Islamic Inqalab". The note adds that respondent-organisation does not believe in the Nation State. It also does not believe in the Constitution or the secular order. Idol worship is regarded as a sin by it and it seeks to end such idol worship as part of its holy duty. The respondent-association, claims the background note, enjoys a sound financial position generated through donation, membership fee and financial assistance received from time to time from its supporters in Gulf Countries. The respondent-organisation, according to Note, is having contacts with Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Being a group of students and youth, states the Note, the respondent organisation is easily influenced by hard-core muslim terrorist organisations operating from Jammu & Kashmir and, thus, Hizb-ul-

Mujahideen and Lashkar-e-Toiba have successfully penetrated into the SIMI Cadres to achieve their goals.

11. The background note discloses that the respondent-organisation has its stronghold in the States of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Kerala, West Bengal, Jharkhand, Assam, Bihar and National Capital Territory of Delhi. It further discloses that the respondent-organisation is known to have launched a country-wide campaign since November, 1996 to mobilise support for the Muslims and for the 'Caliphate' (Rule of Islam). It is stated to be against Indian Nationalism and is working to replace it with the International Islamic Order. Detailing the activities of the respondent-organisation till September, 2001, the background note mentions that the respondent-organisation advocated self-determination in Kashmir and was in close touch with Kasmir militant outfits, including pro-Pak Hizb-ul-Mujahideen (HUM) and Jammu & Kashmir Liberation Front and also extended full support to Punjab extremists and Jammu & Kashmir insurgents. The respondent-organisation was, in terms of Note, involved in various militant and disruptive activities details of which find mention in para 7.(b) thereof.

12. In view of unlawful activities of the respondent-organisation, it was declared as an unlawful association *vide* Notification No. S.O. 960(E) dated 27-9-2001 under Sub-section 1 of Section 3 of the Act. Hon'ble Mr. Justice S.K. Aggarwal, a sitting Judge of the Delhi High Court, as he then was, on a reference under Section 4.(1) *vide* his order dated 26-3-2002, which was published in the Gazette of, India *vide* Notification No. S.O. 397(E) dated 9-4-2002, answered the same in affirmative finding that there was sufficient cause for banning the respondent organisation as an unlawful association. Notwithstanding the ban so imposed the respondent organisation, states the background note, continued with its unlawful activities even during the ban period of two years. Consequently, on expiry of initial ban period of two years, a fresh ban was imposed on the respondent-organisation under Section 3.(1) of the Act, *vide* a Gazette Notification No. S.O. 1113(E) dated 26-9-2003. This ban, on a reference for adjudication under Section 4.(1) of the Act, was confirmed by the Unlawful Activities (Prevention) Tribunal consisting of Hon'ble Mr. Justice R.C. Chopra, a sitting Judge of the Delhi High Court, as he then was, *vide* notification No. S.O. 499(E) dated 16-4-2004.

13. The aforesaid two bans notwithstanding, the respondent-organisation managed to keep its network alive through clandestine activities. It was found to be re-grouping its cadres and reviving the organisation through pseudonymous/front organisations, clandestine meetings and circulation of leaflets, posters and magazines. In terms of Intelligence reports related to activities of the respondent-organisation in Uttar Pradesh, Shri Shahid Badar Falahi, erstwhile President of respondent-organisation, on his release from Azamgarh jail on 7th of April, 2004 started making efforts to revive and rejuvenate SIMI cadres. With that end in view, Shri Falahi, while addressing a meeting in his native village Manchoba Kakarhatta (Azamgarh) expressed his resolve to continue his struggle for establishing Islamic Rule in India. Similarly, workshops and meetings were allegedly organised at Varanasi, Allahabad, Lucknow, Azamgarh, Bahraich and Moradabad. The Intelligence reports further revealed that Shri Rais Baig, President of Nanpara Unit of the respondent-organisation, while addressing a meeting of SIMI workers highlighted the importance of Jehad and asked the members to imbibe true Jehad spirit. The SIMI leaders, including Shahid Badar Falahi, are reported to have been touring different parts of India to motivate cadres, step up the recruitment process, raise funds and coordinate activities with other Muslim organisations. Training and motivational activities of SIMI have been going on in Maharashtra, Tamil Nadu, West Bengal, Uttar Pradesh and Kerala where drill with lathies and swords is being undertaken and training in *Judo* and *Karate* being imported. The activities of the respondent-organisation during the period May August, 2005 show that it continues to adhere to its ideological extremism, which rejects the basic tenets of the Indian Constitution, *viz.*, democracy and secularism. Imparting arms training, securing release of SIMI workers from jail, collecting funds and conducting tours to spread SIMI ideology are stated to be in pursuance of a resolve to revive the organisation and continue the struggle. According to the background note, the respondent-organisation has floated about five dozen fronts/pseudonymous organisations which find specific mention in paragraph 20 of the Note.

14. The background note says that the SIMI activists are engaged in raising funds through Zakat collections, donations from Muslims and sale of animal hides. It is added that Kunju Mohammed Pulavath (ex-President, SIMI Kerala, and Director, Karuna Foundation) and V. X. Saleem (ex-President, SIMI, Ernakulam and Director, Manas Jamait-ul-Ansar) are engaged in collecting funds and in that connection they are reported to have met the representatives of World Assembly of Muslim Youth (WAMY) and C.A.M. Basheer (absconding ex-President of SIMI) based in K.S.A. since 1993.

15. The Note proceeds to state that SIMI continues to have links with JEI-BD, a fundamentalist Muslim organisation active in Bangladesh. The leaders of JEIBD and its students wing Islamic Chhatra Shibir (ICS) regularly attend meetings of SIMI held in West Bengal. In June 2004, Abdul Karim Suja (a leader of ICS) allegedly handed over three CDs containing highly inflammatory and seditious matters designed at influencing young Muslim minds and asked for its circulation in different areas of the State.

16. In an article captioned 'National Democratic Secular State and Islamic View Point' published in February, 2004 issue of Millat-Al-Yaum, a monthly magazine stated to be published from Delhi by SIMI workers, it was mentioned that 'Secularism, is an uncivilised theory; polytheism is a curse; democracy is ineffectual and spurious and martyrdom is the goal of a Momin (true Muslim)'. It

also asserts that 'it does not matter for a Muslim whether India remains as one country or is divided into 10 pieces'. In another article published in May, 2004 issue of the same magazine alleged demerits of secularism, nationalism and democracy have been highlighted and it is asserted that these concepts are 'wrong for the Islam followers'. The article emphasises on establishment of 'system of Allah'. The magazine eulogizes "Jehad" calling it 'Scheme of God'. Highlighting duties of mujahideen, another article urges the Muslims to boycott un-Islamic decisions of courts and exhorts them for 'Jehad'. The respondent - organisation, adds the background note, apart from continuing with its old publications, has started two new monthly magazines, namely, 'Millat Al-Yaum' (Delhi) and 'Istaqlal' (Lucknow) carrying provocative articles. The activists of the respondent-organisation are alleged to be instrumental in circulating a VCD titled 'Jehad-e-Hindustan' containing clippings of Babri Masjid and speeches by Maulana Masood Azhar (Chief, Jaish-e-Mohammed). In Kerala, SIMI activists are said to have circulated a booklet titled 'Thadkira' (reminder) showing similarities between Israel and India. In West Bengal, the respondent-organisation is publishing a quarterly 'Al Murshid'. In Bihar, pamphlets captioned, 'BJP KA ASLI CHEHRA - Gujarat and 'MERI AWAZ SUNO' were found in circulation. In Tamil Nadu, SIMI is publishing a Tamil bi-monthly, 'Meelaivu' (review). In Kerala, ex-SIMI activists brought out a calendar (2005) carrying photograph signifying Islamic resistence. In April, 2005 issue of Urdu monthly magazine 'Istaqlal' brought out by hardcore SIMI elements in an article captioned 'Secularism - the Enemy of India' by one Dr. Yusuf Al-Qarzawi, it has been asserted that secularism is entirely against Islam. It claims that secularism is not possible in Islam as Government and Allah are not two different identities in Islam. According to it, there is complete contradiction between Islam and secularism as Islam provides guidelines and laws for every aspect of life from birth to death and is 'Kalma' (word) of Allah, while secularism desired that Islam should become 'faithful'. It says that secularism itself is a problem and if the same is adopted, countless problems will arise without any solution. The article describes secularism as enemy of Shariat and of the existence of Islam.

17. It is stated that the SIMI has been maintaining a significant level of activity, despite continued ban on it. The acquittal of Shahid Badar Falahi (President, SIMI) by Delhi Court, the release of SIMI activists, accused in the Ghatkopar bomb blast, subsequent repeal of POTA and the recent acquittals on 11th June, 2005 of the remaining eight SIMI activists accused in the Ghatkopar case, have boosted the morale of SIMI cadres. Hoping that the ban on SIMI will be lifted sooner than later, they have been making concerted efforts to re-group their activities/sympathisers and revive their activities. A proposal is, in the meantime, under consideration of the SIMI to raise the retirement age of its members from 30 years to 40 years and also to form a new organisation to accommodate its ex-members. The Note says that there is no change in the ideology of SIMI of achieving the objective of, 'Allah's pleasure through reconstruction of human life according to principles given by Allah and His messenger'. The ideology of the outfit considers constitutional pillars of secularism, democracy and nationalism as un-Islamic and antithetical to Quaranic teachings. SIMI's slogan 'Allah is our Lord, Mohammed is our Commander, Quaran is our Constitution, Jehad is our path and Shahadat is our desire' is indicative of its militant mindset. The respondent-organisation continues to propagate their objectives of governing of human life on the basis of Quran, propagation of Islam, Jehad for the cause of Islam and of training their cadres to mobilise support for the Caliphate (Rule of Islam) with the objective of replacing Indian nationalism with an international Islamic order. Its leaders have links with militants of J & K and JEI-BD. It continues to eulogize "Jehad" and exhorts Muslims to prepare for "Jehad".

It is stated that though no violent incident involving SIMI has been reported during 2004-05, there is no indication that the outfit has given up the path of violence. It was in view of the aforesaid activities of the respondent-organisation that the Government of India declared the respondent-organisation as an unlawful association under the provisions of the Act.

18. The respondent-association, in its objections, terms the ban as violative of Fundamental Rights of its members and contrary to the provisions of the Act. According to it, the notification suffers from the vice of lack of particulars, vagueness, staleness, obvious brazen malice and asserts that no case for ban under the provisions of the Act, is made out against it. It is pleaded that paragraphs 1 to 14 of the background note pertain to the earlier two bans and bear no relevance to the present ban. It is only paragraphs 15 to 29 of the note which are said to pertain to the present ban and can be considered by this Tribunal in the present inquiry. It is asserted that paragraphs 15-29 of the note do not make out a case for ban because the same are so bereft of particulars that the respondent-organisation is not able to respond to the same. The same do not make out any nexus between the acts alleged and the respondent-association. It is pleaded that because of Central Government deliberately withholding material facts and records, 'there has been non-compliance of the provisions of the Act and Rules, as a result prejudice is caused to the association and other affected persons while showing cause and that the principles of natural justice have been violated and, thus, the proceedings before this Tribunal stand vitiated. The Central Government, it is complained, has withheld documents on grounds of public interest and has refused to disclose the same not only to the association as also to this Tribunal. It is pleaded that without adjudication by this Tribunal on the issue of privilege or suppression of documents on grounds of alleged public interest as also in the absence of the material relied upon by the Central Government for issue of the notification, grave prejudice is caused and right to show

cause effectively is violated. It is pleaded that it is mandatory under the Act for this Tribunal to adjudicate not only the existence of the sufficient cause for declaring an association as unlawful but also to examine and adjudicate upon the circumstances of such invocation and the sufficiency/ adequacy of material forming the basis of issuance of the notification.

19. The respondent-association states that it ceased to exist as on 27th of September, 2001 when it was first banned and that it did not exist as an 'association' thereafter. It is now for the Central Government to show that the respondent -association exists as an organisation beyond first ban on 27th of September, 2001 and the subsequent ban on 27th of September, 2003. From the background note itself at para 26, it is clear that no violent incident involving SIMI members took place since the second ban on 27th of September, 2003. Further, there was a period between 27th of September, 2005 and 8th of February, 2006 when the ban was not even operative and even during that period no activity actionable under the Act or any other law, by the members/erstwhile members of SIMI was reported. It is stated that the allegations with regard to the acts by other persons made in the notification and background note do not make out any connection between those persons and the respondent -SIMI or that they acted on behalf of SIMI. It is pleaded that the notification has been issued without scrutinising the alleged material/documents and application of mind. The ban notification is pleaded to be based on background note containing false averments and concocted facts with respect to incidents that did not take place and by referring to organisations and persons as being sympathetic to the respondent-organisation or involved with it while such organisations in most cases do not exist or even if they do, they are not in any manner connected with the respondent. It is pleaded that the notification is nothing but an arbitrary and malafide act contrary to statute and in excess of the jurisdiction conferred on the Central Government under the Act. Setting out background facts, it is stated that the respondent association was established as a social, cultural and religious organisation for welfare of all persons in India (irrespective of religion, caste, economic background or region) -- its membership being open to all Indian citizens below the age of 30 years. It is claimed that the activities of respondent are a political and non communal besides being spiritual and religious. The respondent/SIMI is stated to believe in unity of God and unity of humankind. The aim of the respondent organisation, as spelt out in Article 4 of its Constitution, is to achieve Allah's pleasure through reconstruction of human life according to the guidance given by Allah and His messenger, the Prophet Mohammad. The organisational structure of SIMI/respondent is democratic and its working advisory in nature. Its activities have always been open and lawful and there is no iota of secrecy or unlawfulness in its activities. It is stated to have undertaken several programmes such as scholarships to the needy students, career guidance to students for admission in higher courses and several other social events. It has served all classes of people irrespective of caste or creed and its contribution to alleviate human sufferings have always been noteworthy. It is added that the SIMI has full faith in the Indian judiciary and is law abiding and lawful association. On 26th January, 2001, on Gujarat being ravaged by an earthquake of severe intensity, the respondent association undertook extensive social work and provided relief to the victims of the earthquake in Gujarat without discrimination between people of various religions.

20. According to the respondent, in and around the year, 2000, the previous political establishment headed by the NDA (National Democratic Alliance) which was inimical to Muslim minority organisations such as the respondent-SIMI began an insidious campaign for vilification and persecution that ended in its eventual ban. The first two bans, according to it, were as a result of this.

21. The Central Government, it is stated, while issuing the impugned notification, nowhere mentions the fresh grounds or reasons for, declaring respondent/SIMI as an unlawful association. The notification, according to the respondent, has been issued in malafide and colourable exercise of powers under the statute. The notification suffers from lack of fresh or any relevant grounds justifying the existence of sufficient cause. The grounds or causes once used to exercise powers under Section 3 of the Act while imposing ban in 2001 or 2003, could not be used again to invoke the powers under the Act. After 2003, not a single case has been registered against any erstwhile members of the respondent-association. It is denied that the respondent-association is involved in any activity which could be prejudicial to the maintenance of communal harmony, hurt the religious sentiments of other communities incite religious fervour or question the territorial integrity of the country. It also denied that there has been publication of any materials attributable to it or that its activists have made speeches as alleged. It is stated that, no doubt, the respondent/SIMI believes in Holy Quran and propagation of Islam but at the same time, the said belief cannot be construed to be destruction of nationalism or establishment of the Islamic Rule or Caliphate. It is submitted that following the Holy Quaran and/or its teachings is a Fundamental Right of citizens of this country and, thus, the respondent association and/or its members are well within their right to follow the same. As far as "Jehaad" is, concerned, "it is nothing but a war against evil and/or a war against malign desires". The respondent association denies that it emphasises on the formation of Shariat based Islamic Rule through Islamic Inqlab. It also denies that it does not believe in Nation State or in the Constitution or the secular order. As regards its views on idol worship, the respondent/SIMI follows the Holy Quran which is again neither prohibited nor barred under the law of land. It is submitted that since the ban of 2001 and 2003 and the sealing of its offices the respondent-organisation came to a standstill and there has been no generation of funds and

financial position of the organisation is not sound. Any financial assistance being provided by supporters from Gulf countries or any other country is denied. It also denies that it has any relations whatsoever with the organisations by the name of Hizb-ul-Mujahideen and Lashkar-e-Toiba or any other Muslim terrorist organisation. It is asserted that the Central Government could not rely upon alleged Intelligence reports to justify the imposition of ban without producing the same. Being involved in any sort of militant or subversive activity in any of the States in India is denied. In regard to the posters, calendar and audio cassettes, referred to in the background note, it is stated that the same cannot be looked into by this Tribunal as they do not pertain to the relevant period with which this Tribunal is concerned and as the same had been considered by the earlier Tribunals. The allegation that the members of the respondent organisation were associating themselves with other fundamentalist organisations is denied and it is added that the allegation is based on the presumption that the respondent-association is a fundamentalist organisation, which it is not. The allegation that the respondent was floating new frontal organisations and preparing handbills, CDs, Video Cassettes or mobilising Muslims on issues concerning the community is denied. The respondent specifically denied that two monthly magazines, namely, Millat-Al Yaum (Delhi) and Istaqlal (Lucknow) are being published and circulated by it. It is asserted that there can never be a change in the ideology of the respondent - association of achieving the objectives of Allah's pleasure through reconstruction of human life according to the principles given by 'Allah and His messenger' as this is in accordance with the Fundamental Rights guaranteed to every citizen under the Constitution to adopt the faith of his or her choice and to propagate the same. SIMI's slogans are in no way indicative of militant mindset as alleged. It is accordingly stated that the ban on the respondent organisation is unjustified and must be cancelled.

22. On conclusion of examination of witnesses from either side, learned counsel for respective sides, filed their written submissions and supplemented the same by advancing oral arguments.

23. In support of ban Notification dated 8.2.2006 read with corrigendum dated 13.2.2006, Shri Sidharth Mridul, learned senior counsel appearing for the Central Government, referring to the previous bans in 2001 and 2003, which were confirmed by respective Unlawful Activities (Prevention) Tribunals, argued that notwithstanding said bans the respondent-association continued to indulge in anti-national, anti-social and anti-secular activities and as inputs from Intelligence agencies indicate, it has managed to keep its network alive through clandestine activities and that it is re-grouping its cadres and reviving the organisation through pseudonymous/ front organisations, clandestine meetings, circulation of leaflets, posters, magazines and intra organisational Islamic networking, etc. He argued that the Intelligence reports also indicate that provocative articles are being published and circulated by ex-SIMI activists in different States and in order to avoid police action, the respondent-organisation has been carrying on its activities through cover/front organisations. Apart from Intelligence reports, inputs have also been received from various State Governments and Union Territories about unlawful activities of the respondent-organisation. He pointed out that there has been no change in the ideology of SIMI of achieving the objective of 'Allah's' pleasure through reconstruction of human life according to principles given by Allah and His messenger'. He added that the ideology of the outfit considers constitutional pillars of secularism , democracy and nationalism as un-Islamic and antithetical to Quaranic teachings. He submitted that the slogan, 'Allah is our Lord, Mohammed is our commander, Quaran is our Constitution, Jehad is our path and Shahadat is our desire' is indicative of respondent -organisation' s militant mindset. The banned organisation continues to propagate its objectives of governing of human life on the basis of Quran, propagation of Islam, 'Jehad' for the cause of Islam and of training their cadres to mobilise support for the Caliphate (Rule of Islam) with the objective of replacing Indian nationalism with an international Islamic order. It was submitted that the outfit continues to eulogizes 'Jehad' and extorts Muslims to be prepared for 'Jehad' and aims at achieving the objectives of replacing Indian nationalism with the International Islamic order. He pointed out that the banned organisation is in close touch with militant outfits and is supporting militancy in Punjab, Jammu & Kashmir and elsewhere. It is contended that SIMI supports claim for the secession of part of the Territory from the Union. He pleaded that the objectionable posters and literature published by SIMI are calculated to incite communal feelings and that it has been involved in communal riots and disruptive activities in various parts of the country. Shri Mridul argued that viewed in the light of Intelligence inputs regarding unlawful activities of the respondent-organisation and the criminal cases registered against its members, there was sufficient justification to impose a fresh ban on the respondent-organisation.

24. Shri Trideep Pais, learned counsel appearing for the respondent-association, on the other hand, raised multifold pleas to question the sustainability of the ban. In the first instance, he contended that the reliance of the Central Government on Intelligence reports / secret material finds no mention in the background note or the notification which shows that the same was never in contemplation of the Government when the notification was issued. He pointed out that there is no nexus between the secret material and the notification. His plea was that since the evidence adduced in support of the ban was not good enough to sustain the same, the Central Government has fallen back on the secret material in support of the ban. Referring to the Statement of Shri B.A.Coutinho, PW-34, to the effect that the secret material was sufficient to ban the respondent *de hors* other evidence produced by the Central Government, Shri Pais sought to contend that

reliance on secret material is disproportionate and amounts to a ban without hearing. He questioned the reliance by the Central Government on secret material, neither copies whereof have been supplied to the respondent-association, nor inspection thereof allowed, without claiming privilege in respect thereto in accordance with relevant provisions of the Indian Evidence Act. According to him, in order to claim privilege, the Central Government was obliged to file an affidavit indicating with respect to each one of the document as to why privilege was being claimed in respect thereto and in what manner disclosure thereof would be injurious to public interest. He maintained that unless this Tribunal decided on the privilege in respect of such secret material in favour of the Central Government, the copies thereof to the respondent-organisation could not be withheld by it. Shri Pais contended that in the absence of privilege claimed by the Central Government in respect of secret material in accordance with prescribed procedure, the same could not be taken into consideration in finding the sufficiency of cause to confirm the ban. In support of his arguments, Shri Pais referred to a part of a Chapter on Fair Hearings— General Aspect from Administrative Law (Seventh Edition) by H.W.R. Wade and C.F. Forsyth, and three decisions of the Supreme Court in "*State of Punjab* Vs. *Sodhi Sukhdev Singh*, AIR 1961 SC 493; "*Harnam Das* Vs. *State of Uttar Pradesh*", 1962 2 SCR 487 : AIR 1961 SC 1662; and "*Mohinder Singh Gill & Another* Vs. *The Chief Election Commissioner, New Delhi & Others*", AIR 1978 SC 851. Shri Pais also made a reference to an order dated 4-6-1993 passed by an Unlawful Activities (Prevention) Tribunal adjudicating ban on VHP, RSS and Bajrang Dal, where some confidential documents were relied upon by the Central Government in support of ban but the Tribunal refused to take the same into consideration in view of such confidential documents being not made available 'for scrutiny and for analysis' to the opposite counsel.

25. Shri Sidharth Mridul, appearing for the Central Government, on the other hand, maintained that by virtue of proviso to Section 3 (2) of the Act and the rules framed thereunder, the Central Government is within its rights to decline disclosure of any such material which it considers to be against the public interest to disclose: Shri Mridul, in support, relied upon a decision of Supreme Court in "*Jamat-e-Islami Hind* Vs. *Union of India*", 1995 1 SCC 428, and another decision of the Supreme Court in "*S.P. Gupta & Others* Vs. *President of India & Others*", AIR 1982 SC 149. He sought to draw a distinction on disclosure of secret material to the opposite party where such class of documents were vital to national security. In this regard, he also referred to Administrative Law by H.W.R. Wade and C.F. Forsyth at pages 571-572.

26. In Administrative Law by H.W.R. Wade and C.F. Forsyth under the head "Fair Hearings—General Aspects" at pages 531-535, based on various judicial decisions, broad principles of a fair hearing were spelt out. At page 531, under the head 'the right to know the opposing case', it says:

"A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."

" In "*Kamla Vs. Government of Malaya*", (1962) AC 322, Lord Denning is quoted to have said:

If the right to be heard is to be a real right which is worth anything, it must carry with it a right on the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them (p. 531)

At the same time, at pages 535-536, under the head "Limits to the right to see adverse evidence", it was noted:

In some administrative situations there are limits to the broad principles stated above. The court must always consider the statutory framework within which natural justice is to operate, and a limit sometimes necessarily be implied. What is essential is substantial fairness to the person adversely affected. But this may sometimes be adequately achieved by telling him the substance of the case he has to meet, without disclosing the precise evidence or the source of information. The extent of the disclosure required by natural justice may have to be weighed against the prejudice to the scheme of the Act which disclosure may involve"

27. Shri Pais particularly referred to the principle set, out at page 536, as laid down in "*Canterbury Building Society* Vs. *Baker*", (1979) 2 NSWLR 265, which says:

" ..... and if their information is so confidential that they cannot reveal it even in general terms, they should not use it."

While mentioning exceptions to the aforesaid broad principle, at page 571 under head "National Security", it is also added:

"The right to a fair hearing may have to yield to overriding considerations of national security.....

..... Since national security must be paramount natural justice must then give way.

28. In Sodhi Sukhdev Singh (supra), examining the issue relating to claim of privilege under Section 123 of the Evidence Act, where privilege was claimed in respect of documents embodying minutes of meetings of Council of Ministers and report of Public Service Commission tendered under Article 320 (3)(c) of the Constitution, per majority judgment, it was held that if the court on a preliminary inquiry held to determine the objections to production of the documents found that the document does not relate to affairs of state the claim of privilege is liable to be rejected. However, if the documents relate to affairs of state, it was to be left to the head of the department whether he should permit its production or not. In paras 15

and 16 of the majority judgement, on 'affairs of state' it was observed:

> "At the time when the Evidence Act was enacted, 'affairs of state' may have had a comparatively narrow content. Having regard to the notion about governmental functions and duties which then obtained, 'affairs of state' would have meant matters of political or administrative character relating, for instance, the national defence, public peace and security and good neighbourly relations"

29. It was further observed:

> "As the Legislature has advisedly refrained from defining the expression 'affairs of state' it would be inexpedient for judicial decisions to attempt to put the state expression into a straight jacket of a definition judicially evolved. The question as to whether any particular document or a class of documents answers the description must be determined in each case on the relevant facts and circumstances adduced before the Court."

30. In S.P. Gupta (supra), where immunity from disclosure in respect of correspondence between the Chief Justice of High Court, Chief Justice of India and the Law Minister was claimed, it was held:

> "There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or inviable in all circumstances. It is not a rule of law to be applied Mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to anyone by withholding relevant evidence. This is a balancing task which has to be performed by the court in all cases".

In the context of claim put forward on behalf of the Union of India that the correspondence between the Law Minister, the Chief Justice of Delhi High Court and the Chief Justice of India belong to a class contents of which were such that their disclosure would harm the national interest or the interest of public service and as such, such documents were entitled to immunity from disclosure, noting with approval, a decision in "The State of Uttar Pradesh Vs. Raj Narain & Others", AIR 1975 SC 865 recognising that there could be classes of documents which in the public interest required not to be disclosed, no matter what the individual documents in those classes may contain, it was laid down that the law recognises that there may be classes of documents which in the public interest should be immune from disclosure. A class consisting of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure was stated to be one such class of documents which for years has been recognised by law as entitled in the public interest to be protected from disclosure. It was held that the documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. Taking note of different classes of documents which were held to be immune from disclosure in the public interest, it was concluded:

> "It is not necessary for us for the purpose of this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contained. But it does appear that Cabinet papers, minutes of discussions of Heads of Departments and level documents relating to the inner working of the Government machine are concerned with the framing of Government policies dealing to this class which in the public interest must be regarded as protected against disclosure."

The argument advanced by Shri Pais that in the absence of a claim for privilege with respect to secret material produced for perusal of this Tribunal, such documents could not be taken into consideration for finding if there was sufficient cause for imposition of ban is based on the premise that claim for privilege or immunity from disclosure of the secret material being relied upon by the Central Government should have been made by filing proper affidavit in that respect as contemplated under Section 123 of the Indian Evidence Act.

31. The argument so raised, however, appears to be unacceptable for the simple reason that the Central Government is seeking to withhold the secret material in view of proviso to Section 3(2) of the Act and not by virtue of claim for privilege or immunity from disclosure of the contents of the confidential files by invoking Section 123 of the Indian Evidence Act. The proviso to Section 3 (2) of the Act, which by virtue of Section 48 of the Act overrides any other Law inconsistent with the provisions of the Act, does provide that the Central Government would not be required to disclose any fact which it considers to be against the public interest to disclose. Emphasising on observance of minimum requirement of natural justice while embarking on adjudication of the controversy relating to ban, the Supreme Court in Jamat-e-Islami Hind (supra) held thus:

> "...No doubt, the requirement of natural justice in the case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to Sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the Government considers against the public

interest to disclose. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show-cause against the same. Rule 3 also indicates that as far as practicable the rules of evidence laid down in the Indian Evidence Act, 1872 must be followed. A departure has to be made only when the public interest so requires. *Thus, subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice* must be followed by the Tribunal making adjudication under the Act." (Emphasis supplied)

32. The aforesaid observations of the Supreme Court in Jamat-e-Islami Hind (supra) clearly recognise that where the Central Government considers the disclosure of a particular fact/facts against the public interest, it is authorised to withhold disclosure thereof to the banned organisation. This apart, it is noteworthy that the confidential records which have been placed for perusal by this Tribunal apart from official notings eventually leading to decision for a fresh ban on respondent-organisation and issue of notification in that regard, contain inputs from different Intelligence agencies, including the concerned State Governments. The background note itself makes mention of the facts which are based on Intelligence reports. The substance of material collected through Intelligence network has, thus, already been set out in the background note. The respondent -organisation, therefore, cannot complain that it is being kept totally in dark in so far as contents of Intelligence inputs are concerned. Being related to the security of the Nation, element of secrecy inherent in Intelligence networking has to be maintained and if keeping that view in mind the Central Government decided to withhold the disclosure of contents of the confidential files from the respondent-oganisation or its counsel, minimum requirement of natural justice cannot be held to have been breached in the adjudicatory process.

Intelligence reports emanating from Central and State Intelligence agencies which have been made available for perusal of this Tribunal, are already disclosed in substance in terms of contents thereof and the respondent-association had a fair and reasonable opportunity of meeting or contradicting the facts emerging out of such reports. In the given situation, thus, it would be difficult to accept the contention of Shri Pais that non-disclosure of the contents of the confidential files to the respondent-organisation amounts to non-compliance with the minimum requirement of natural justice and that the material contained in such files cannot be taken into consideration for purpose of adjudication with respect to the ban.

33. Shri Pais further argued that it is not only on account of non-disclosure of the secret materials being relied upon by the Central Government to the respondent-organisation, even otherwise on account of vagueness of the notification and holding of Tribunal's sittings in quick succession for paucity of time, there was denial of a fair and reasonable opportunity to the respondent-organisation to effectively plead its case against the ban. In this connection, it may be noticed that the grounds of ban are specified in the notification and the facts which constituted the basis on the part of Central Government to form an opinion for a fresh ban on the respondent-organisation have been set out in the back ground note, a copy whereof was supplied to the respondent -organisation with the notice that was served on it. Of course the grounds for ban mentioned in the notification are bereft of factual content, such deficiency is made good by reference to the background Note. The notification viewed in the light of facts supplied by the background Note leaves no room to complain that the grounds still continue to suffer from lack of clarity or intelligibility and thereby incapacitating the respondent -organization in presenting an effective defence against the ban.

34. It may be noticed in the context of plea concerning paucity of time that after issue of ban notification on 8th of February, 2006 followed by a corrigendum published on 13th of February, 2006, the reference, which was required to be made within 30 days of the issue of notification, was made by the Central Government within the time so prescribed and thereafter on receipt of reference, a show-cause notice, as required under Section 4(2) of the Act had to be issued and served on the respondent-organisation. The respondent-organisation, upon service of such notice, caused its appearance through counsel on 5th of May, 2006. Reply / objections in response to show-cause notice were filed on 22nd of May, 2006 and immediately thereafter sittings of the Tribunal at different places with a view to record statements of the witnesses to be examined by the concerned State Governments on behalf of the Central Government began. Such sittings, of course, had to be held in quick succession due to shortage of time. The respondent-organisation was able to be present at every place of sitting held outside Delhi to cross-examine the witnesses produced by different States on behalf of the Central Government. On account of sittings at various places outside Delhi, no doubt, some inconvenience was caused to all concerned, including the respondent-organisation. However, as the record would indicate, on none of the occasions there was denial of a fair and reasonable opportunity of an effective hearing to the respondent-organisation and no prejudice could be held to have been caused to the banned organisation on that account. Since the reference had to be answered in any case within a period of six months, there was no way out but to expedite the hearing. At the same time, it was ensured that the respondent-organisation was not denied a fair and reasonable opportunity to defend itself against the ban.

As a matter of fact, keeping the time constraint in view, there should have been no complaint on the part of the respondent-organisation in expediting the adjudicatory process by holding sittings in quick succession. In any case, in spite of the fact that inquiry proceeded the way it did, no prejudice was occasioned to the respondent-organisation in availing a fair and reasonable opportunity of hearing and, thus, the plea that minimum requirement of natural justice has not been satisfied lacks conviction and cannot be accepted.

35. The next argument made by Shri Pais was that the present proceedings being in the nature of civil proceedings, the onus lies on the Central Government to prove that the ban imposed on the respondent-organisation was for sufficient cause. He referred to column 8148 of Parliamentary Debates on the Bill pertaining to the Act to support his contention that the present proceedings were not in the nature of an inquisitorial inquiry, as contended by Shri Mridul; appearing for the Central Government. Shri Pais further contended that the Central Government can not prove their case justifying the ban by relying on the testimony/evidence of the respondent organisation. The argument that the present proceedings were in the nature of civil proceedings and could not be termed as an inquisitorial inquiry was raised by Shri Pais in view of reliance sought to be placed by Shri Mridul on the report, related to previous ban of 2003, of the previous Unlawful Activities (Prevention) Tribunal, wherein it came to be observed that the proceedings before the Tribunal are inquisitorial in nature. Apart from the Parliamentary Debate, which Shri Pais referred to, Sub-section (3), Section 4 read with Section 9 make it evident that the procedure to be followed by the Tribunal in holding an inquiry under sub-Section 3 of Section 4, 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. Further, Sub-section (7) of Section 5 states that any proceeding before the Tribunal shall be deemed to be a judicial proceeding for the purpose specified therein and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code. There could, thus, be no reason for a contest on the point that in holding an inquiry of instant nature the Tribunal essentially acts and exercises powers necessary for adjudication, as a civil court, as contained in Code of Civil Procedure, 1908, for investigation of a claim. In regard to the plea that the onus of proving that decision for ban on respondent-organisation is based on sufficient material lies on the Central Government, Shri Mridul, as a matter of fact, raised no counter argument to dispute this legal proposition set forth by Shri Pais.

36. The ban on an organisation is, contended Shri Pais, in the nature of restriction on the Right to Freedom of Expression and Right to Form association guaranteed under Article 19(2) and Article 19(4) of the Constitution and to justify the ban there has to be sufficient material in support thereof. Relying upon a decision of Supreme Court in "*State of Madras* Vs. *V.G. Row*", 1952 (SCR) 597, Shri Pais contended that in the present case the ban on the respondent-organisation is unjustified being not supported by sufficient material in that regard. In the same context, Shri Pais also referred to the decisions in Harnam Das (supra) and "*State of UP* Vs *Lalai Singh Yadav*", 1976 Page (4) SCC 213. In the present case, the ban on the respondent organisation being under the machinery provided under the Act, on a reference, the Central Government has undoubtedly to show that the ban on the respondent-organisation was for sufficient cause.

37. Shri Pais further argued that the validity of the ban notification and the background note must be judged by the reasons mentioned therein and no fresh reasons in the form of affidavits or other materials posterior to the ban order could be allowed to supplement the same as to permit to do so would mean that an order which was bad in the beginning, by the time it comes up for adjudication gets validated by additional grounds later brought. He contended that no justification on the material which was not in contemplation of the Central Government while issuing the notification can be taken into consideration while adjudicating the present ban. Reliance was placed on decisions in Mohinder Singh Gill (supra), Lalai Singh Yadav (supra) and Harnam Das (supra).

38. The argument advanced by Shri Pais necessarily raises a question relating to the nature and scope of inquiry by this Tribunal to adjudicate upon the reference under Section 4(3) of the Act. Section 9 of the Act provides that so far as may be, the procedure laid down in the Code of Civil Procedure, 1908 for the investigation of claims has to be followed which implies that the Central Government and the banned organisation which are before the Tribunal, would be required to produce relevant materials on which they seek to rely upon in support or against the imposition of ban. An important aspect which, however, needs to be noticed is that Sub-section (3) of Section 4 apart from providing that the inquiry shall be held in the manner specified in Section 9 also says that the decision on reference is to be made by the Tribunal by holding 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.* (Emphasis supplied). The expression '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 is of vital import in determining the nature and scope of inquiry and extent of material that could be taken into consideration for confirming the declaration or cancelling the same. Two views are possible on what meaning is to be assigned to the expression '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'. One view may be that it simply empowers the Tribunal to seek informations from either side, which are necessarily of a clarificatory nature in relation to the material already placed before the Tribunal, for a letter understanding of the grounds

on which the ban notification has been issued. The other view may suggest that apart from the material which is said to have constituted the basis for confirming an opinion on the part of Central Government in issuing ban notification, the Tribunal could also collect/allow some further material as well before making its decision on the reference. If the first view is to be accepted and for making an order, either confirming the declaration or cancelling the same, the objections filed by the banned organisation and material in support thereof as also further information from any office bearer or member of the banned organisation are to be taken into account, it would necessarily lead to taking into consideration in finding sufficiency of cause for the ban such material and in that event, the Tribunal would not be confining only to the material which would have been available to the Central Government while confirming its opinion to declare an association to be unlawful. If the second view is to be accepted, the Tribunal in adjudicating the reference would also be keeping in mind the additional material collected or allowed to be brought on record by it to decide whether or not there is sufficient cause for declaring an association to be unlawful. In any case, whichever view is accepted, some additional material would necessarily become available on record which will have to be taken into consideration to decide the reference. The very fact that apart from the material produced by the Central Government, also the material brought forth by the banned organisation, besides the material available as a result of Tribunal calling for any further information from either side is before the Tribunal, in finding whether or not there is sufficient cause for declaring the association to be unlawful, the tribunal would obviously be not confining itself only to the material which was available to the Central Government at the time of issue of ban notification. In that view of the matter, to argue that the Tribunal cannot take into consideration additional material beyond what constituted the basis for opinion on the part of Central Government to ban the organisation, to find sufficiency of cause for ban, cannot be accepted. Given the nature of inquiry which the Tribunal is required to hold and the material which can constitute the basis for adjudication whether or not there is sufficient cause for declaring the association to be unlawful, reliance by learned counsel for the respondent on the decisions in the abeve referred cases, which involved a distinct set of facts and different provisions of law, would be of no assistance to advance the argument set forth by him. To the extent the Tribunal is empowered to collect further information from either party, there is a departure from procedure to be followed by a civil court under the Code of Civil Procedure, 1908 and in that sense, the Tribunal even though holding the inquiry as a civil court would appear to be vested with additional power which is not available to a civil court.

39. Another argument raised by Shri Pais was that the offences contemplated under the Act, as it can be gathered from Parliamentary Debates, are that of cession and secession only and as no crime's attracting prosecution for cession or secession, involving the respondent- organisation, has been shown for the period 27th of September, 2003 and 8th of February, 2006, the ban imposed by the Central Government could not be held justified. From Parliamentary Debates on the Unlawful Activities (Prevention) Bill, Shri Pais referred to the following part of an answer at Column 8156 by Shri Y.B. Chavan, the then Union Home Minister, in reply to the question from a Member of the House :

"SHRI Y.B. CHAVAN : I am coming to that.

This Bill is merely meant against the activities leading to cession or secession. These are the two things which are, really speaking, the threats to the integrity and the sovereignty of this country."

40. To appreciate true purport of the above extracted statement, it would be appropriate to go back to few preceding questions and statements made by the Union Home Minister in reply thereto. The debate proceeded (at columns 8155 and 8156) thus :

"SHRI MANOHARAN (Madras North) : Is the Home Minister in a mood to drop the bill ?

SHRI Y.B. CHAVAN: No, not at all.

Sir, we had occasion to discuss this Bill twice; when this Bill was discussed before it was referred to the Joint Committee, we had a full-fledged debate here, and for the last five hours we have had also the advantage and the privilege of listening to the views of many hon. Members.

I do not want to enter into any arguments. I would reply to some of the arguments that the hon. Members have made and I would, really speaking, go step by step to justify the case that I have originally made in defence of the Bill. The basic question that was raised was whether this Bill is necessary at all. That was the first position taken by some hon. Members. For that, two types of arguments were made. One was which is the Party against which this Bill is going to be used and the second aspect of the argument was that there are enough legislations or there are enough provisions in the present statute book itself which can be made use of if there is any requirement. These were the two arguments that were made.

Dealing with the first aspect, I would like to make it clear that it would be very unfair for me and to the political parties to expect definite reply from me as to the Party against which it is made. I have myself said that it is only required against those who are likely to offend under the Act. I have not particular party in mind that against 'A' party or 'B' party or 'C' party it should be made use of. We are not defining the political parties against whom it is to be used. We are defining, certainly, some undesirable activity which is to be treated as unlawful activity. As I have said, in the beginning, I would be the happiest man if there is no opportunity to make use of this law. But the necessity is there. I was rather heartened to hear Member like Acharya Kripalani and the hon. Member, Mr. Bose, who are not present now that they concede that the

conditions in the country are such that there are real threats to the integrity and the sovereignty of this country.

SHRI KANWAR LAL GUPTA: what are those threats, for instance?

SHRI Y.B. CHAVAN: Therefore, it is necessary and I am advised and also I am convinced that there is no law in the statute book today which can meet this situation.

SHRI NAMBIAR : You must give examples as to against what sort of things you visualise it.

SHRI Y.B. CHAVAN: I am coming to that. This Bill is merely meant against the activities leading to cession or secession. These are the two things which are, really speaking, the threats to the integrity and the sovereignty of this country."

41. It is notable that while moving the Bill, the Union Home Minister in support of the Bill told :

> "That the Bill was necessary because there were divisive forces in India and effective measures were necessary to counter them."

Thus, the main concern, at the time when the said Bill had to be moved, was that the Nation was faced with serious threat to its integrity and sovereignty and in a situation, where it was felt that there was no law to deal with activities leading to cession and secession it was imperative to provide for effective law to counter the unlawful activities of divisive forces which threatened the integrity and sovereignty of the country. The basic concern was obviously to protect the integrity and sovereignty of the country and it was in that context that the above quoted statement, as referred to by Shri Pais, was made by the Union Home Minister. May be that at the time when the said Bill was moved, a different kind of unlawful activities were posing threat to the integrity and sovereignty of the country, however, the fact remains that even in the present day context such threat continues to exist on account of terrorism and other kind of unlawful activities by various organisations/militant outfits. Reference to 'Cession and Secession' was particularly made in the course of debate, in the context of nature of questions the Union Home Minister was called upon to respond to. He was simply telling there was no law in the statute book to counter the unlawful activities which tended to put the integrity and sovereignty of the Nation at peril. The part of statement by Union Home Minister referred to by Sh. Pais, should not be read out of context as that is likely to lead to misconstruing the statement. Going by the definition of 'unlawful activity', as it stands in the statute, clearly, apart from activities leading to cession or secession, it also includes any action, (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India. Thus, it would not be right to contend that unlawful activity, as contemplated under the Act, can be held to have been committed only in case an action complained of intends or supports any claim to bring about the cession or secession of a part of the territory of India from the Union. Any action which disclaims questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India is also of equal concern. Whether or not the respondent organisation has been guilty of committing unlawful activities, as contemplated under the Act, is a question of fact which is obviously to be adjudicated on the basis of material available before this Tribunal.

42. As held earlier, to find whether or not there is sufficient cause for declaring the association to be unlawful, the Tribunal is not simply to confine to the material that was available before the Central Government on the date the ban was imposed on the respondent organisation, apart from taking into consideration the material produced on behalf of respondent organisation, it cannot shut out from consideration additional material which is brought to its notice regarding subsequent developments, if any, after issue of ban notification dated 8-2-2006.

43. In support of declaring the respondent association as unlawful, the Central Government, apart from relying on Intelligence reports produced for perusal, seeks to rely upon the statements of witnesses deposing before the Tribunal. 34 witnesses, in all, appeared to testify in support of the ban notification. The material produced on behalf of the Central Government, in the form of deposition by the witnesses, can be classified under three categories. One set of evidence relates to the cases which pertain to the period prior to second ban on 27th September, 2003. The other set of evidence relates to cases registered during the period 27 of September, 2003 to 8th of February, 2006 and the evidence in the third category pertains to cases which were registered after the issue of ban notification on 8th of February, 2006.

44. In terms of statement of Shri B.A.Coutinho, PW34, the evidence in regard to the cases mentioned in paras 1-14 of the background note was irrelevant for the purpose of present ban. These include cases prior to second ban on 27-9-2003. The same could have, thus, formed no basis in reaching the decision for present ban. Shri Coutinho, as he so admitted in the course of his cross-examination, was the competent authority to take the decision regarding fresh ban on the respondent organisation. He was, thus, the best person to state what material was taken into consideration by him for declaring the respondent organisation as an unlawful association to impose a ban on it. Shri Coutinho made mention of five cases in all in para 8 of his affidavit vide Ex.PW 341, involving respondent organisation, which were registered during the period 27th of September, 2003 and 8th of February, 2006. The cases so registered included : (i) Cr.No. 882/04 of PS Saifabad, (Hyderabad, Andhra Pradesh) pertaining to the planned attack on the police escort party of Naseeruddin in a bid to release him, in which one Mohd. Mujahid an activist of SIMI was killed on 31-10-2004; (ii) Cr.No. 632/2004 of Narayanaguda PS (Hyderabad, Andhra Pradesh), regarding SIMI activists who brought 49 Muslim ladies in Burkha and tried to enter into the office of Commissioner to protest against the arrest of Naseeruddin by Gujarat Police; (iii) FIR No. 618 dated 29-8-2004 of CCS PS (Hyderabad, Andhra Pradesh) Maulana Naseeruddin,

President, Tehreek-Tehfeen-e-Shaire Islamia, (TTSI) along with others was arrested on 28-8-2004 for possession of explosive material. On 29-8-2004, a group of 100 people including burkha clad ladies, organized by SIMI and TTSI, went to Office of Police Commissioner to create nuissance. 53 members were arrested vide Cr. No. 623/2004 and released on bail; (iv). Cr.No.101/2005 of Charminar PS (Hyderabad, Andhra Pradesh), where the SIMI activists along with Darsga-e-Jahad-o-Shahadat (DJS) workers forcibly broke the police cordon and burnt the effigy of US President George W.Buch, and American Flag for disgracing the Holy Quran; and (v) FIR No.40/2005 of Police Station Special Cell, New Delhi. On 5-3-2005, Hamid who came from Kamal Side was riding the motor-cycle being driven by Mohd. Shariq near Mukarba Chowk. These Laskhar-e-Toiba (L-e-T) militants were intercepted and on search 10.560 Kg. of RDX was found in their possession. Based on their information, the hide out was raided in 'Uttam Nagar where three militants of L-e-T were killed and 3 AK-47 rifles, 6 magazines, 450 detonators, 100 kg. of dynamite, one Maruti Zen Car and one satellite phone were recovered. It was also revealed that Mohd. Haroon Rashid one of the accused, was inspired to join SIMI by one Ajmal who was his classmate.

45. A FIR in LAC No.3/2006 dated 10-5-2006 registered with Anti-Terrorist Squad (ATS) Police Station Mumbai also finds mention in para 8(v) of the affidavit Expower 34/1. In this case seizure of 16 AK 47 Rifles, 3200 Live Cartridges of AK-47, 16 Magazines of AK-47 16 Magazine Pouches, 43 Kg. Explosive Substance, 50 Hand Grenades, Mobile Phone, 16 Computer Server Cabinets, Packing materials, Sumo Motor, Indica Car, Two number plates, Keys and Documents of Indica Car were recovered. The accused arrayed in the case are SIMI and Lashkar-e Toiba activists.

46. Shri Pais, particularly, argued against taking this case into consideration on the plea that the same relates to a date after imposition of ban on 8th of February, 2006. The argument in this regard, however, stands negatived for the reasons already stated. It is to be kept in view that while imposing ban on the respondent-organisation by notification dated 8-2-2006 such ban was applied with imediate effect. The offence, as reflected in FIR in LAC No.3/2006, was allegedly commited while this Tribunal was in the process of holding the inquiry with a view to adjudicated whether or not there is sufficient cause to declare the respondent-organisation as unlawful-association. Certainly, this Tribunal could not be expected to keep aside such a case out of consideration wherein the members of the respondent-organisation had allegedly been involved and was/were named as co-accused. Shri Pais, referring to the statement of Shri B.A.Coutinho, PW-35, in his cross-examination that FIR in LAC No. 3/2006 dated 10-5-2006 was not relevant as it does not pertain to period from 27th of September, 2003 to 8th of February, 2006, contended that in view of such a statement by Shri Coutinho, the said Crime LAC No. 3/2006 cannot be taken into consideration for the purpose of present adjudication. In this connection, it is also worthwhile to note that Shri Coutinho made a further statement that even though LAC No.3/2006 was not relevant for present ban as it relates to a period after 8-2-2006 but the same would be relevant to indicate the conduct of the respondent-organisation during the period 2004-2005 when no cases of violent incidents were registered/reported against it. In any case, Shri Coutinho could depose in respect of only such matters which were available for his consideration while making a decision on fresh ban. He could not have, of course, taken into consideration a crime which was allegedly committed after the date of ban. It is indeed for this tribunal alone to decide about such a case being taken into consideration for adjudication on sufficiency of cause for the ban in question.

47. Shri Coutinho, apart from mentioning the cases in para 8. (i)(ii)(iii)(iv) & (vi) in support of the respondent-organisation being declared as unlawful association, also stated that the decision was arrived at after taking into consideration the facts, circumstances, background of the base, prevailing conditions in the concerned States and the Country as a whole, and the material available, in particular, information received from various sources. Evidently, according to him, the ban on the respondent - organisation was not based simply on the cases registered against it during the period 27th of September, 2003 to 8th of February, 2006, as detailed in para 8.(i)(ii)(iii)(iv) & (vi) of his affidavit, Ex.PW-34/1. Among other materials, apart from Intelligence reports, he made mention of printed as well as visual material contained in a CD. He referred to three magazines, namely, Millat Al-Yaum'(Delhi), 'Istaqlal' (Lucknow) and 'Al. Murshid' (West Bengal) carrying objectionable articles, which I propose to advert to after dealing with the material relating to various criminal cases referred to by Sh. B.A. Coutinho, PW-34 as well as by other witnesses.

48. Before proceeding to examine the evidence relating to various criminal cases registered from time to time, which are used as part of material to support the ban, it would be appropriate to take note of certain other points raised by Shri Pais. Shri Pais argued that the criminal cases being referred to on behalf of the Central Government to justify fresh ban are being linked with the respondent-organisation on the basis of so-called confessional statements made by some of the accused with respect to being its members. Shri Pais contended that assuming, though not admitting, that such confessional statements were made by members/erstwhile members of the respondent-organisation, involvement of individual members in commission of crimes could not be taken to amount to the crimes being committed by the respondent - organisation. To lend support to his plea in this regard, Shri Pais made a reference to a reply by the then Union Home Minister during Parliamentary Debates on Unlawful Activities (Prevention) Bill. The relevant part of debate so referred reads at column 8220-8221 thus :

"SHRI INDRAJIT GUPTA: We must know the meaning of this before we give our opinion on this clause. Part (g) reads :

"Unlawful association" means any association 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."

This point has not been answered as to what is meant by members. Does it mean one member or two members? Does it mean that in an organisation if one or two members indulge in such activities, the whole association or organisation can be declared illegal? What is his reply to this?

SHRI NAMBIAR: Ten members can be planted.

SHRI Y.B.CHAVAN: When we say member, it means the generality of members, it is not one or two members, because there are organisations which take up one position officially, while their members start acting in a different way."

49. Shri Pais, relying on the above extracted reply from the then Union Home Minister, sought to contend that crimes, if any, committed by individual members could not be fastened on the respondent-organisation and such offences would not amount to be those committed by the respondent-organisation. Tenor of debate indicates that there was an air of suspicion in the minds of Members of certain political parties that the provisions contained in the Bill, which was eventually to become an Act, targeted and could perhaps be used against particular political parties simply on the basis of activities of some individual members thereof. It seems that to allay such apprehensions, the then Union Home Minister made a reply that the word 'members' occurring in definition of an 'unlawful association' meant the generality of members and not one or two members and the reason for so stating was that there are organisations which take up one position officially, while their members start acting in a different way. The reply does not necessarily imply that even where certain members of a particular organisation indulged into activities, which amounted to 'unlawful activities', in furtherance of aims and objectives or official stance taken by the organisation, the organisation concerned would still be not liable to be proceeded against. Thus, where individual members of the respondent-organisation are found to have been involved in 'unlawful activity' in furtherance of aims and objectives of the respondent organisation, it cannot escape from being held responsible for the acts of its individual members.

50. Yet another argument raised by Shri Pais was that the confessional statements, if any, made by certain accused disclosing their association with the respondent-organisation as members thereof being not admissible under Section 25 of the Indian Evidence Act, no finding against the respondent-organisation can be based on such in admissible evidence. Section 25 of the Indian Evidence Act, no doubt, makes a confessional statement made by an accused before a police officer while in his custody inadmissible but in the present context, the confessional statements made in particular cases are not sought to be used against the persons making the same in the course of a criminal trial. The Central Government is rather seeking to make use of such confessional statements against the respondent-organisation for limited purpose that the persons making the confessional statements regarding their involvement in the commission of particular crimes were its members. It may be kept in mind that confessions are a species of which admission is the genus. Though all admissions are not confessions but all confessions amount to admission. Section 25 of the Indian Evidence Act makes a confessional statement inadmissible against the person making it and the same cannot be used against such person in a criminal trial. However, the law permits to make use of such confessional statement even against the person making it, in other proceedings as admission under Section 18 of the Indian Evidence Act. Such a confessional statement can be used as admission against the person making the same or even against a third person in certain circumstances provided the person making the admission had express or implied authorisation to make a statement in that regard. As an illustration, one of the situations could be where admission by an agent, who is expressly or impliedly authorised to make the admission, can be used against his principal. The relationship between respondent-organisation and its members being akin to that of a principal and agent admission of a fact by its individual member while making a confessional statement can, thus, be used against the respondent-organisation also. Where a particular person is member of an association/ organisation, there is an implied authority from the association/organisation concerned not to keep the factum of its membership under a wrap. In this view of the matter, though a confessional statement made by an accused to a police officer while in his custody in a particular case is not admissible against the accused in the course of a criminal trial, the same can certainly be made use of against him and also against the association/organisation of which such a person is a member, as an admission under Section 18 of the Indian Evidence Act.

51. While advancing his oral arguments, apart from referring to the statement of Shri B.A.Coutinho, PW 34, Shri Sidharth Mridul, learned senior counsel, appearing for the Central Government made specific mention of depositions by Mr. Datta Sambhaji Dhawale, PW-3, Mr. Mohd.Tanveer Ahmed, PW-6, Mr. C. B. Sharma, PW-15, Mr. Sanjay Dutt, PW-16, Mr. Pravinsinh, PW-19, Mr. Girish Kumar, PW-20 and Mr. Manoj Kumar Rai, PW-24, whose testimony, according to him are relevant in adjudicating whether or not there is sufficient cause for declaring the respondent-organisation as unlawful association. His argument was that the respondent-organisation has been involved in commission of various crimes through its members, from time to time, with a view to disrupt or intended to disrupt the sovereignty and

territorial integrity of India.

52. Shri B.A.Coutinho in his affidavit, Ex. PW-34/1, referred to crime Nos. 882/04, 632/04, 618/04 and 101/05 besides two other cases being FIR No. 40/2005 PS Special Cell, New Delhi and LAC No. 3/2006 dated 10-5-2006 registered with Anti Terrorist Squad (ATS), PS Mumbai. The first four cases were registered at different police stations in Hyderabad, Andhra Pradesh.

53. One Maulana Naseeruddin, President, Tehreek Tehfeen-e-Shaire-Islamia, (TTSI) along with others was arrested on 28th of August, 2004 for unlawful possession of explosive material and a case FIR No. 618 dated 29-8-2004 was registered in that regard. To protest against his arrest, it is alleged, SIMI activists brought 49 Muslim ladies in burkha and tried to enter into the Office of Commissioner of Police. On 29th of August, 2004, a group of 100 persons, including burkha clad ladies, organized by SIMI and TTS I, went to the office of Police Commissioner to create nuisance and 53 members were arrested in that connection and a Crime No. 632/2004 was registered at PS Narayanaguda (Hyderabad, Andhra Pradesh) in that respect. According to the statement of Mohd.Tanveer Ahmed, Sub-Inspector, Saidabad Police Station, Hyderabad, Andhra Pradesh vide Ex. PW-6 /1, and PW 11 Sh. Ashok Kumar vide Ex. PW 11 /1, Maulana Naseeruddin, President, Tehreek-Tehfeen-e-Shaire-Islamia, (TTSI) was on bail in FIR No. 618 dated 29-8-2004, PS CCS, Hyderabad, Andhra Pradesh when Gujarat Police came to execute a non-bailable warrant of arrest against him. From the Statement of Shri Ashok Kumar, DSP, CID, Hyderabad, vide PW-11/1, it is gathered that Maulana Naseeruddin was arrested by the Gujarat Police in connection with murder case of Harain Pandya, ex Home Minister, Gujarat. A mob led by one Mohd. Mujahid Saleem, a SIMI activist and sympathiser of Maulana Naseeruddin attacked Gujarat Police to secure release of Maulana Naseeruddin from the custody of Gujarat Police. To ward off such attack, the police had to resort to firing resulting into death of said Mohd. Mujahid Saleem. A Crime No. 882/2004 was registered at PS Saifabad, Hyderabad in regard to the incident of attack on the Gujarat Police party and death of Mohd. Mujahid Saleem in the course of police firing. In regard to his statement that Mohd. Mujahid Saleem was a SIMI activist made by PW-6, Mohd. Tanveer Ahmed vide Ex. PW-6/1, there was no cross-examination on behalf of respondent-organisation implying thereby that the respondent-organisation did not dispute that Mohd.Mujahid Saleem was one of its active members on the relevant date. The fact that Mohd. Mujahid Saleem was leading a mob which resorted to attack on the escort party of Gujarat Police in a bid to release Maulana Naseeruddin of TTSI from their custody clearly indicates a close link of the deceased SIMI activists with TTSI. This also lends credence to the intelligence reports that the respondent-organisation has floated several front organisations to use their platform to carry out unlawful activities in furtherance of its aims and objects and that its members have been maintaining close association with such organisations operating in Hyderabad. Though such Muslim organisations are not shown to be banned ones, one gets the impression that they are found to be sympathetic towards the members of respondent-organisation.

54. The cases registered in Hyderabad, Andhra Pradesh, during the period 2004-2005 may not appear to fall in the category of 'unlawful activity' as defined under the Act, the same are indicative of the fact that despite the ban imposed on 27th of September, 2003 the respondent-organisation, through its members, continued to operate and indulged into illegal activities contrary to the claim made by Shri Shahid Badar Falahi, RW-2 that respondent-organisation ceased after 2001 ban.

55. Another case sought to be relied upon against respondent-organisation is FIR No.40/2005 dated 5-3-2005 under Sections 121, 120-A, 122,123, 120-B, IPC read with 25 Arms Act, 4/5 Explosive Substance Act and 18, 19, 20, 23 of Unlawful Activities (Prevention) (Amendment) Act, 2004, PS Special Cell, New Delhi. In terms of testimony of PW-16, Insp. Sanjay Dutt, vide Ex. PW-16-1, this was a case where on the basis of a secret information two persons, namely, Mohd. Sharik and Hamid, who worked for Laskhar-e-Toiba (L-e-T), were apprehended. On a search, two cardboard boxes were recovered from a bag which accused Hamid was carrying. Each card board contained 480 grams of RDX and the total weight of RDX so recovered was 10560 gms. Such recovery was effected in the presence of two public witnesses. The RDX so recovered was to be delivered to three other L-e-T operatives, including two Pakistani L-e-T Fidayeen living in Uttam Nagar, Delhi. On disclosure made by the said two persons, the hideout of said three operatives was raided by the police, whereupon, the L-e-T operatives opened fire and in return on police party also resorting to fire, three militants, including two Pakistani Nationals were killed. A case FIR No. 190/2005 dated 6-3-2005 under Sections 121, 121-A, 122, 123, 307, 186, 353, 120- B IPC, 4/5 Explosive Substance Act, 25/27 Arms Act, 18, 19, 20 Unlawful Activities (Prevention) Act, 2004 was registered in this regard at PS Uttam Nagar, New Delhi. 3 AK-47 rifles, 6 magazines, 450 detonators, 100 kg of dynamite, 4 hand grenades, and one satellite phone were recovered by police from the hideout. In the course of investigation, of case FIR No. 40/2005 one accused Mohd. Haroon Rashid @ Farooq was arrested. He was also working for L-e-T. In his confessional statement to the police, he disclosed that while doing his BE (Mechanical Engineering) course at Aligarh, he was inspired by one of his classmate, namely, Ajmal in 2001, to join SIMI. He further stated that he was introduced by said Ajmal to one Saleem @ Salar @ Doctor, a L-e-T operative and, thereafter, he started working for L-e-T. He further disclosed that in 2002, he along with other L-e-T operatives had been to Patna where he used to attend SIMI meetings and resolved to execute terrorist and disruptive activities in India. The statement of accused Mohd. Haroon Rashid, thus, shows that initially he was a member of the respondent organisation but later joined L-e-T. However, even after joining L-e-T, he continued to be associated with

the respondent-organisation and had been attending its meetings at Patna where it was resolved to execute terrorist and disruptive activities in India. His confessional statement clearly shows that the respondent-organisation had identity of purpose with L-e-T, a terrorist organisation and has been maintaining a close link with L-e-T.

56. The aforesaid cases related to the period 2004 2005. Subsequent to issue of present ban notification dated 8-2-2006, four more cases stand registered showing involvement of Members of the respondent-organisation in commission of various crimes mentioned therein. These cases include LAC No. 03/2006 registered with Anti Terrorist Squad (ATS) Police Station, Mumbai under Section 4/5 Explosive Substance Act, 1908 read with Sections 5, 6, 9(b) of Indian Explosive Act, 1984 read with Sections 3, 4, 25 of Indian Arms Act read with Sections 10, 13, 16, 18, 23 of Unlawful Activities (Prevention) Act, 1967; FIR 1/2006 of Anti Terrorist Squad (ATS) Police Station, Ahmedabad City, under Sections 120-B, 121,121-A, 122,123 of IPC, Section 4 of Explosive Substance Act, 1908, Sections 25 (1-A)/27/29 Arms Act and Sections 17, 18, 19, 20, 23(1), 38, 39, 40 of Unlawful Activities (Prevention) (Amendment) Act, 2004; Crime No. 2/2006 under Sections 120-B, 121, 121-A, 122, 123 of IPC, Sections 4/5 of Explosive Substance Act, 1908, and Sections 17, 18, 19, 20, 23(1), 38, 39, 40 of Unlawful Activities (Prevention) (Amendment) Act, 2004, and Crime No. 256 dated 16-4-2006 under Sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 registered at PS Kotwali of Khandwa District, Madhya Pradesh.

57. LAC No. 03/2006 was a case in which huge cache of illegal arms and ammunition and explosive substance etc. were recovered from a Sumo Jeep, which was, based on an information, intercepted by the police near Ghrushanshwar Tample, Tehsil Khultabad, District Aurangabad, on Verul-Aurangabad Road. There were three persons in that Jeep out of which one person was apprehended, who was identified to be one Mohd. Amir Shakeel Ahmed Sheikh. In the seizure, 10 AK-47 Rifles, 10 packets containing 40 Magazines, 10 packets containing 2000 live cartridges of AK-47, 10 Magazine Pouches, and 10 packets containing 30 Kg. explosive substance. A Reliance Mobile Phone, etc. were recovered from the Sumo Jeep. On interrogation, Mohd. Amir Shakeel Ahmed Sheikh disclosed that he was a member of the respondent-organisation. In addition, from ten khaki carton boxes lying in the Sumo Jeep, one AK-47 Rifle, one packet containing 4 Magazines, 1 packet containing 200 live cartridges of AK-47, 1 Magazine Pouch, and a packet containing 3 Kg. black colour sticky substance, which was later found to be explosive substance were also recovered along with a computer server cabinet. Subsequently, on further arrests being made, the accused so arrested led to recovery of one box concealed under a culvert containing computer server cabinet, 1 AK-47 Rifle, 1 packet containing 200 cartridges, 1 packet of two Magazines and one Pouch. In another wooden box, 50 live hand grenades concealed in thermocol and cotton were found. On arrest of one Afjal Khan Nabeer, an accused in the case, on his disclosure, 5 similar khaki colour cotton boxes were recovered and each one of them were found to contain five computer server cabinets in which 5 AK-47 Rifles, 5 packets of 1000 cartridges, 5 packets of 20 magazines, 3 pouches and 5 packets of 30 kg. explosive substance were concealed. In all, the recoveries so effected led to seizure of 16 AK-47 Rifles, 3200 Live Cartridges of AK-47, 62 Magazines of AK-47 Rifles, 16 Magazine Pouches, 43 Kg. Explosive Substance, 50 Hand Grenades, Mobile Phone, 16 computer server Cabinets.

58. Accused, Mohd. Amir Shakeel Ahmed Sheikh, had, on an earlier occasion also been arrested in 2001 by the Aurangabad City Chowk Police Station in LAC-II No. 3071/2001 registered under Section 10 & 13 of the Unlawful Activities (Prevention) Act, 1969 and is facing trial before concerned Aurangabad Court. In the course of investigation of the case, the police invoked the provisions of MCOC Act, 1999 and, consequently, Sections 3(1)(ii), 3(2) of MCOC Act, 1999 were added. Para 5 of Ex.PW-3/2 discloses, "that since the members of SIMI organisation along with L-e-T are continuously engaged in unlawful activities so as to promote the organised gang in promoting insurgency, therefore, provisions of MOCO Act, 1999 have been applied to the present case and chargesheet will be filed on completion of investigation.....". Accused, Mohd. Amir Shakeel Ahmed Sheikh, made a confessional statement before Shri Santosh Rastogi, Deputy Commissioner of Police, (Zone-III), Mumbai, wherein, he admitted that he was a member of the respondent-organisation and had been working for it. His confessional statement is quite revealing and shows that he had also been in touch with L-e-T operatives and had visited Jammu & Kashmir and Kathmandu to meet them. Apart from accused, Mohd. Amir Shakeel Ahmed Sheikh, his co-accused, Javed Ahmed Abdul Majid, Riaz Ahmed Mohmmad Ramzan @ Raju, and Syed Akib Syed Zafarudding, are also stated to be self confessed members of SIMI and are engaged in carrying out disruptive and anti-national activities. Accused, Javed Ahmed Abdul Majid, was arrested earlier also by Malegaon City. Police Station in LAC-II No. 3052/2001 under Section 10 of Unlawful Activities (Prevention) Act.

59. It was argued on behalf of the respondent organisation that when Mohd. Amir Shakeel Ahmed Sheikh was arrested earlier in LAC-II No. 3071/2001 under Sections 10 & 13 of Unlawful Activities (Prevention) Act, 1967, PS Aurangabad City Chowk and had made a statement claiming to be member of respondent-organisation, a denial was issued on behalf of the respondent-organisation, which was published in "Lokmat Times" on May 9, 2001, disowning him as its members. The statement from the news item in this regard, which has been placed on record by Shahid Badar Flahi, RW-2, with his affidavit *vide* Ex.RW-2/1, shows that the clarification appearing in 9th May, 2001 issue of "Lokmat Times" was based on a statement of one Mr. Asif Khan, Secretary of SIMI and it was, accordingly, contended that the confessional statement made by

accused Mohd. Amir Shakeel Ahmed Sheikh cannot form a basis to hold the respondent-organisation responsible for his activities. Issuing of a mere denial may not really be enough for the respondent-organisation to disassociate itself from its members where they are, at one point of time or the other, found to be indulging in illegal/unlawful activities, and particularly when Mohd. Amir Shakeel Ahmed Sheikh has made a statement, which is otherwise very much admissible in evidence, reiterating that he continues to be associated with the respondent - organisation.

60. In Crime Nos. 1/2006 and 2/2006 registered at Ahmedabad, Gujarat, some of the accused involved therein are claimed to have had made confessional statements admitting that they were members of the respondent - organisation. However, though PW-19, Shri Praveen Singh, and PW - 20, Shri Girish Kumar, in their respective statements on affidavit *vide* Ex. PW 19/1 and Ex. PW-20/1, made mention of confessional statements having been made by the accused, no copies of such confessional statements were filed with their affidavit or in the course of their cross-examination before this Tribunal. The charge-sheet in Crime No.1/2006 does not make mention that the accused in the case were SIMI members. Similarly, in Crime No. 2/2006, though all the four accused are claimed to have had confessed to be members of respondent-organisation, no copy of charge sheet or confessional statements of the accused were filed with the affidavits of the said witnesses. Shri Praveen Singh, PW-19, in Para 12 of his affidavit, Ex.PW-19/1, states that accused Mohd. Ali had been arrested on earlier occasion also and a case was registered against SIMI. However, copy of charge-sheet of such case or confessional statement, if any, of accused Mohd. Ali admitting himself to be the member of the respondent organisation was not filed by him, either with his affidavit or in the course of his cross-examination before the Tribunal. In the circumstances, there is no basis to find that the accused in the aforesaid two cases are members of respondent-organisation.

61. Case FIR No. 256 dated 16-4-2006 under Section 3,10 & 13 of the Act is a case where number of SIMI activists were arrested and pursuant to disclosure statements made by them, several incriminating papers pertaining to the respondent-organisation, including membership forms, Constitution of SIMI, other literature pertaining to the respondent-organisation and different issues of Magazine "Tehreek-e- Millat" and 'Tehreek' were recovered by the police at their instance. Membership receipts recovered from the accused and the literature related to SIMI, including its Constitution coupled with their activities connected with membership drive and propagation of aims and objects of SIMI etc. show their close association with the respondent-organisation. Accused M.A.Naim is shown to have made a disclosure statement that he was looking after the work of Magazine "Tehreek-e-Millat" and was getting the same published in his name. The magazine after publication used to be sent to SIMI members. He disclosed that with a view to escape any legal action, being a banned organisation, the name of the Magazine "Tehreek-e-Millat" was got changed to "Tehreek". According to accused M.A. Naim, Shahid Badar Falahi from Azamgarh and one Shri Imran Ansari from Indore used to get the magazine "Tehreek" published in his name to dispatch/distribute the same to the members of SIMI in order to keep the organisation active and alive. Accused M.A. Naim disclosed the particular Press from where he was getting the said magazine published. The copies of magazines shown to have been recovered at the instance of different accused, on perusal, appear to carry anti-national, objectionable and provocative articles aimed at hurting the religious sentiments of a particular community. The material placed on record with the affidavit of PW-24, Shri Manoj Kumar Rai, *vide* Ex. PW-24/01, sufficiently establishes close link between the 12 accused arrested in the case with the respondent-organisation and clearly indicate that they were engaged in unlawful activities in furtherance of the aim and objects of the respondent-organisation. The printed material recovered from them demonstrates that in spite of being banned the respondent-organisation has been managing to continue with its unlawful activities surreptitiously. Cross-examination of the witness yielded certain facts which appear to bear relevance in respect of certain recoveries of a particular set of documents. However, such material brought out by way of cross-examination cannot be made a basis to comment on the merits of particular recoveries as any finding by this Tribunal in that respect may tend to interfere with process of a fair trial by the court concerned.

62. On behalf of respondent-organisation, it was pleaded on the strength of statement of Shri Shahid Badar Falahi, RW-2, that the respondent-organisation was established as a social, cultural and religious organisation for general welfare of the people and had been functioning in that capacity before its ban in the year 2001. Its activities, it is added, are a political and non-communal besides being spiritual and religious and that it believes in the unity of God and unity of humankind. Shri Shahid Badar Falahi in his affidavit *vide* Ex. RW-2/1, stated that the respondent association functions within the framework of the Constitution of India and reposes absolute faith in it. He stated that though it is not admitted that any case is has/ have been registered against erstwhile members of SIMI, for the sake of argument even if any such case/s against erstwhile members exist, SIMI cannot be held responsible for actions, either of its erstwhile members or members, in their individual capacity being not in furtherance of the objectives of SIMI. According to Shri Shahid Badar Falahi, case No. 3/2006 (ATS) Mumbai registered on 9th of May, 2006 is the only case under the provisions of the Act after 2001 and the FIR in that case has no reference to SIMI. Having disowned Sheik Amir Sheikh Shakeel, accused in that case, as its member way back in the year 2001, even prior to the imposition of the first ban, the confessional statement of Sheik Amir Sheikh Shakeel carries no weight.

It is stated that other three crimes registered after ban on 8th of February, 2006, apart from the fact that the accused in such cases have no connection with SIMI, the same, in any case cannot form a basis for the ban being posterior to the notification dated 8-2-2006. In his affidavit, RW-2/1, Shri Shahid Badar Falahi, claims that in the year 2001, on a part of Gujarat being ravaged by an earthquake, SIMI workers undertook extensive social work and provided relief to the victims of the earthquake in Gujarat without discrimination between people of various religions. It is claimed that the respondent-organisation has made outstanding contribution in the field of social service and relief work and served all classes of people irrespective of their caste or creed. He further states that the respondent-organisation ceased after its ban in 2001 and there has been no activity of any kind thereafter. It was argued on behalf of the respondent-organisation that it is for the Central Government to prove that the respondent-organisation exists even after successive bans starting in the year 2001.

63. Shri Shahid Badar Falahi was subjected to extensive cross-examination to test the veracity of his statement on affidavit. Nature of his statement in the cross-examination gives an impression that he was evasive at times in giving proper answer to certain questions and also did not come out with whole truth. There appears no material to support the claim of Shri Shahid Badar Falahi that the respondent organisation is a social, cultural and religious organisation for the welfare of general public irrespective of their caste, creed or religion, or that it is a spiritual and religious body believing in oneness of God and universal brotherhood. No material has been produced, apart from bare statement of Shri Shahid Badar Falahi, that the respondent-organisation has had actually rendered any social service to the general public as claimed. On the other hand, it had rather faced ban in 2001 and 2003 apart from the present ban for being involved in unlawful activities detrimental to integrity and sovereignty of India and prejudicial to communal harmony. Though the reports of the Unlawful Activities (Prevention) Tribunals adjudicating ban on the respondent-organisation in 2001 and 2003 and findings recorded therein are not otherwise relevant as present ban has to be justified on fresh material, historical background of the respondent-orgnaisation regarding its activities in the past cannot be lost sight of in the context of its plea that it had ever since its inception been engaged only in the service of people at large without discriminating between them on the ground of religion.

64. The statement that the respondent-organisation cannot be held responsible for the actions of either its erstwhile members or members in their individual capacity, being not in furtherance of the objectives of SIMI, as a proposition of law it may sound correct. However, it does appear that in actual practice there is no class of erstwhile members as such. It is noticed that even though the Constitution of the respondent-organisation prescribes age limit of 30 years for its members, there are indications that the persons once holding membership of the respondent-association appear to continue in that capacity even beyond the age of 30 years. The case of Shri Shahid Badar Falahi itself can be cited to illustrate the point. In terms of his age as disclosed by the witness in his affidavit, Ex. RW-2/1, presently he is 35 years old. He was President of the respondent-organisation on the date when ban was imposed on it, for the first time, on 27th of September, 2001. He told in his cross-examination that he was elected as all-India President of SIMI in February, 2000 for a term of two years. Going by his present age, he would have crossed 30 years sometime in the year 2001 and if one is to go by the Constitution of the respondent-organisation, he could not have continued to be the member or office bearer of the respondent-organisation thereafter. The ground reality, however, appears to be quite different. Shri Shahid Badar Falahi in his cross-examination stated that he took upon himself to contest the present ban in spite of having ceased to be its All-India President as the show-cause notice issued by this Tribunal was served on him. Of course, a notice was served on him at his address but it was not in his individual capacity. It was a notice issued to the respondent-association, which was to be got served through its office bearers, including Shri Shahid Badar Falahi, who happened to be its All-India President at the time of its first ban in 2001. If Shri Shahid Badar Falahi had ceased to be the member of the respondent-association by virtue of having crossed the age limit of 30 years, it was not obligatory on his part to have appeared to contest the present ban on behalf of the respondent-association. Not only that he decided to contest the present ban against the respondent-association in his individual capacity, he is also found to have been at pains to issue a Press Release on behalf of it. Such Press Release is Ex. RW-2/PB of 11th of July, 2006 issued in the context of Mumbai train blasts in which he, while condemning the blasts, sought to defend SIMI cadres in view of their suspected involvement in the blasts. If he had ceased to be the All-India President and could not continue even as a member of the respondent-organisation, in what capacity did he take upon himself to issue such a Press Release? In his cross examination, Shri Shahid Badar Falahi sought to maintain that on the date of very first ban in 2001, he had been arrested and remained confined in jail until he was released on bail on 7th of April, 2004 and even after his release on bail until his date of appearance before this Tribunal in Juiy, 2006 he has been completely out of touch with SIMI cadres or its office bearers. If his such a statement is to be accepted at its face value, a person who was totally unaware of nature of activities of SIMI cadres ever since his arrest and detention in 2001, in July, 2006 how could he be sure that no SIMI member could be suspected of his involvement in the said blasts. Further, Shri Shahid Badar Falahi, in terms of his statement, is not having much of financial resources at his command and his earnings from medical practice in his village and agriculture is just sufficient to meet his personal and family expenses. He affirmed that to contest the present ban he had to seek financial help from his friends and

relatives. One really wonders if Shri Shahid Badar Falahi has ceased to have any connection with the respondent-association by virtue of his ceasing to be a member or office bearer thereof, why is he taking so much of interest in defending the respondent-organisation. From the statement of Shri Shahid Badar Falahi in the course of his cross-examination, it does appear that he continues to hold the reins of the respondent-organisation in spite of having crossed the age limit for its membership. This finding gets further support from the statement of M.A. Naim, an accused in case FIR No. 256/2006, PS Kotwali, Khandwa, wherein he had disclosed that Shri Shahid Badar Falahi was one of the persons who along with another person had arranged for publication and circulation of SIMI's magazine "Tehreek-e-Millat" by changing its name to "Tehreek" and getting the same published in his name. The magazine carrying anti-national, and provocative articles continues to be made available to the members of respondent-organisation to activate and keep the organisation alive in the face of ban imposed on it. Therefore, where a person in spite of having crossed the age of 30 years can continue to be in charge of its working, the other members could also be expected to continue with the association in the capacity of its members even beyond the age of 30 years. Therefore, the respondent-organisation cannot disown the illegal/unlawful activities of such persons who are shown to have been its members on the plea that they no longer continue to be its members. Similarly, the plea that even otherwise the respondent-organisation cannot be held responsible for the activities of its members in their individual capacity, which are not done in furtherance of its aims and objects also cannot be accepted. One cannot lose sight of the fact that the respondent-organisation carries a tag of being a terrorist organisation having been so declared vide Schedule to the Act. The declaration of respondent-organisation as a terrorist organisation implies that it has been following the path of terrorism contrary to its assertion that it is a social, cultural and religious organisation. Terrorism in any form is opposed to national interest. The confessional statements referred to earlier, made by accused that they belonged to the cadres of the respondent-organisation would clearly show that its members have been indulging in illegal/unlawful activities and committing crimes affecting integrity and sovereignty of the Nation in league with other terrorist organisations like Lashkar-e-Toiba. Thus, where the very object of the respondent-organisation is found to be commission of terrorist acts in association with the members of other terrorist-organisations, it is not open to plead that for any illegal/unlawful activity committed by its member it cannot be held responsible as involvement of its members in such activities in individual cases would obviously appear to be in furtherance of the aims and objects of respondent-organisation only.

65. Another plea advanced on behalf of respondent-organisation on the strength of statement of Shri Shahid Badar Falahi is that after the first ban in 2001 its activities have ceased and, in the circumstances, the alleged unlawful activities cannot be attributed to it. However, it is difficult to accept such a plea in view of registration of quite a good number of cases after the first ban till date, wherein members of respondent-organisation are arrayed as accused/co-accused. The materials in regard to the criminal cases pertaining to the period from 27th of September, 2001 to 27th of September, 2003 were produced before the Unlawful Activities (Prevention) Tribunal adjudicating the second ban on the respondent-organisation which were duly noticed by the Tribunal in its order dated 23-3-2004. That apart, evidence in that regard has been adduced before this Tribunal as well. The criminal cases registered after the second ban in 2003 up to 8th of February, 2006 and also the ones relating to the period after 8th of February, 2006 and evidence in respect thereto in the form of depositions of witnesses have already been noticed in the course of discussion heretofore. Though in some of the cases registered after the first ban, the accused therein are stated to have been acquitted but majority of cases are still pending trial. In the face of registration of a large number of criminal cases, from time to time, throughout after the first ban involving members of the respondent-organisation, no further evidence is required to prove that its activities have never ceased. No doubt, during the period 27th of September, 2003 to 8th of February, 2006 not many cases of criminal activity on the part of members of respondent-organisation were reported or registered, that would not imply that it ceased to operate during that period. In a scenario where the office bearers and prominent activists of the respondent-organisation were confined in jail or had absconded or gone underground, the activities of the respondent-organisation at operational level was bound to slow down. This could be the period when as compared to past not many cases of illegal/unlawful activities on the part of members of respondent-organisation were reported. Intelligence reports show that Shri Shahid Badar Falahi after his release on bail on 7th of April, 2004 started addressing meetings at his native place and other parts of UP and also started undertaking journeys to different parts of the country in a bid to regroup and rejuvenate cadres of the respondent-organisation. The fact that no cases were registered against his such activities does not necessarily mean that such activities had actually not taken place. Non-registration of cases could be attributed to lack of coordination between the concerned Intelligence agencies and the local police or indifference or insensitivity to national interest on the part of local police administration and so on. Even Shri Shahid Badar Falahi admitted in the course of his cross-examination that after his release on bail he had been to Mumbai and Kerala apart from visiting his friends and relatives. He has visited Kerala twice. However, he maintained that he visited Mumbai and Kerala in connection with treatment of his ailment on account of Spondylosis. No material is placed on record to show that his visits to Mumbai and Kerala were in connection with his medical treatment only. Taking into account that Shri Shahid Badar Falahi is found to have been actively involved in different kinds of activities aimed at keeping the

respondent -organisation alive and functional at operational level, credibility of Intelligence reports relating to his activities cannot be doubted. There is, thus, sufficient material to negate the plea raised on behalf of the respondent-association that it ceased to be active after imposition of any of the bans. Such a finding also gets support from the fact that the respondent-organisation at no point of time after the second ban applied to the Central Government for cancellation of ban on the plea that it had ceased to be involved in any sort of illegal/unlawful activity. Though Shri Shahid Badar Falahi in his statement told that on his instructions, his counsel, Shri Sidharth Luthra, had made an application for cancellation of ban, no material has been placed before the Tribunal to substantiate such statement. On behalf of the Central Government Shri Sidharth Mridul categorically told that no such application was ever made on behalf of the respondent-organisation.

66. Article 4 of the Constitution of the respondent-organisation spells out its aim. It reads thus:

" Article: 4 The aim of SIM is to achieve Allah's pleasure through reconstruction of human life according to the principles given by Allah and His messenger Sallal Lahu Alaihi Wasallam".

67. There is no denial on the part of respondent organisation that its objectives include, 1. Governing of human life on the basis of Quran; 2. Propagation of Islam; and 3. "Jehad" for the cause of Islam. It was submitted that in believing in Holy Quran and its teachings and working for propagation of Islam, there was nothing wrong or illegal. It was asserted that following the Holy Quran and its teachings is a Fundamental Right guaranteed under the Constitution of India and, thus, the respondent-organisation and/or its members are well within their right in doing so. In respect of 'Jehad', it was claimed that it meant, 'a war against evil and/or a war against malign desires'. Undoubtedly, as far as believing in Holy Quran and its teachings and propagation of Islam are concerned, no fault can be found therewith. However, the problem arises when in the name of propagation of Islam, the same is sought to be thrust upon non-Muslims by resorting to violent means or use of force in any form or terrorising the people. According to the Central Government, by exhorting its cadres for 'Jehad', the respondent-organistion has been taking recourse to violence and unlawful activities. By seeking to establish Islamic Rule or Caliphate, it was argued, the respondent-organisation is working for destruction of nationalism. It was contended that by subscribing to the ideology of achieving the objective of 'Allah's pleasure through reconstruction of human life according to principles given by Allah and His messenger', the respondent-organisation is working against the concept of secularism enshrined in the Indian Constitution. It was submitted that respondent organisation's slogan 'Allah is our Lord, Mohammed is our commander, Quran is our Constitution, 'Jehad' is our path and Shahadat is our desire' is indicative of its militant mindset and by seeking to establish Islamic rule, the respondent-organisation is working against democratic set-up of the Indian polity. The respondent does not contest the argument that 'Jehad' for the cause of Islam is one of its objectives. It is, however, sought to be made out that 'Jehad' finding mention in the Constitution of the respondent -organisation 'means nothing but a war against evil and/or a war against malign desires'. In support, reference is made to the statement of RW -1, Shri Zafrul Islam Khan, vide Ex. RW-1/1. According to him 'Jehad' is divided into greater Jihad(Al-Jihad, Al-Akber) and 'lesser Jihad' (Al-Jihad Al-Ashghar). He affirmed that the 'greater Jihad' is against one's own evils and shortcomings while the 'lesser Jihad' is trying to eradicate the evils of others which may take the form of fighting. There can be no controversy on a correct and true meaning of term 'Jihad', The problem, however, arises when a distorted meaning is assigned to it. One can understand that believing in one's own religion/faith and propagation thereof is Fundamental Right of every citizen under the Indian Constitution. However, in practising one's religion/ faith and propagating the same, respect for other religions/ faiths has to be maintained. Right to practise one's own religion/faith and propagation thereof cannot extend to forcing people of other religions/faiths to embrace such religion/faith against their free will. To adopt any unlawful or illegal means by use of criminal force to achieve the object would certainly be not in conformity with the concept of secularism. By resorting to illegal/unlawful activities in order to make people of other faith believe in Islam can in no way be justified on the plea that the members of the respondent-organisation have a Fundamental Right to propagate their religion.

68. In the context as to what meaning is actually being assigned by the respondent-organisation to the term 'Jehad', a reference to 'Oath of Allegiance for Ansar' would be revealing. In this document what is particularly referable reads thus:

"I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be."

69. This oath of allegiance for membership clearly spells out the task given out to the members. One of these is to work for establishment of Islamic system in the country and the other is that while working for this cause even if one's life was to be put at stake, the member would not hesitate in doing so. If the term 'Jehad' is to be assigned a meaning that it is a war to fight against one's own evils, there can be no occasion where a person believing in Islam would be required to sacrifice his life. In case a meaning of 'lesser Jihad' as stated by RW -1, Shri Zafrol Islam Khan, is to be assigned where it means trying to eradicate the evils of others, which may take the form of fighting, it would imply that 'lesser Jihad' permits use of force also to achieve the objective of eradicating the evils of others. But the question is, who is to decide what is 'evil'? What standard

is to be applied to determine it? If anything that is not in conformity with Islam is treated as an 'evil' 'lesser Jihad' would permit the respondent-organisation even to use force against the people of other religions/faiths to make them conduct only in a way which is in accord with Islam. This would clearly lead to a situation where non-Muslims would not be allowed to practice their own religion/faith and would be made to surrender to Islamic faith. Allowing such a course of action to hold sway would clearly be against the concept of secularism and mutual respect for each other's religion/faith essential for peaceful co-existence of people practising different set of beliefs would be giving way to a civil war like situation where people of other religions/faiths would be fighting to protect their religions identity. Any act demeaning or debasing other religions, in the name of 'Jihad', by publishing and circulating objectionable and provocative literature would be fraught with danger of engineering communal clashes, thereby causing social tension risking communal harmony. If the objective of 'Jehad' by respondent-organisation is in the sense of 'lesser Jihad' as deposed by RW-1, Shri Zafrul Islam Khan, that would clearly be in clash with basic tenet of secularism under our Constitution and cannot be allowed to go on if the integrity and sovereignty of the nation is to be ensured and preserved. Reasonable restrictions against activities of the respondent-organisation in the name of 'Jehad' which tend to cause social tensions and communal disharmony between different religious sections of the society and endanger the secular character of the polity by imposing a ban on its activities would, thus, be the only way to deal with prevailing situation.

70. The very fact that 'oath of allegiance for Ansar, (Members) obligates to strive for establishment of Islamic Rule in the country and to do all that is required to achieve such object clearly shows that the respondent-organisation does not believe in present democratic set-up and aims at replacing it by Islamic Rule. A mere denial on its part that it is not opposed to present system of political dispensation is clearly in contradiction to what its own document, namely, 'oath of allegiance for Ansar' says.

71. Two magazines, namely, Millat Al-Yaum'(Delhi) and 'Istaqlal' (Lucknow) were particularly referred to on behalf of Central Government by Shri Mridul to support the argument that the activities of the respondent-organisation are opposed to nationalism, secularism and democracy. He pointed out an article captioned 'National Democratic Secular State and Islamic View Point' appearing in February, 2004 issue of Millat-Al-Yaum, stating 'Secularism is an uncivilised theory; polytheism is a curse; democracy is ineffectual and spurious and martyrdom is the goal of a Momin (true Muslim)'. It also carries on with the assertion 'it does not matter for a Muslim whether India remains as one country or is divided into 10 pieces'. In another article appearing in May, 2004 issue of the same magazine alleged demerits of secularism, nationalism and democracy have been highlighted and it is asserted that these concepts are 'wrong for the Islam followers' . The article supports claim for establishment of 'system of Allah' and eulogizes 'Jehad' by calling it 'Scheme of God'. Highlighting the duties of mujahideen, another article urges the Muslims to boycott un-Islamic decisions of courts and exhorts them for 'Jehad'. In April 2005 issue of Urdu monthly 'Istaqlal' published from Lucknow in an article captioned 'Secularism - the Enemy of India' , it is asserted that secularism is entirely against Islam. It states that secularism is not possible in Islam as Government and Allah are not two different identities in Islam. According to the article, there is complete contradiction between Islam and secularism, as Islam provides guidelines and laws for every aspect of life from birth to death and is 'Kalma' (word) of Allah, while secularism desired that Islam should become 'faithful' . According to the Central Government both these magazines are being brought out by SIMI workers. Though there is no direct evidence in this regard and as a matter of fact there cannot be any such evidence for the reason that the respondent-organisation cannot publish such magazines in view of being under ban, going by the content and tenor of the articles, as pointed out by Shri Sidharth Mridul, there is a clear indication that it is the respondent-organisation which appears to be behind the publication of these magazines since the above referred articles simply seek to put forth and project the ideology which the respondent-organisation subscribes. The fact that the respondent is surreptitiously engaged in publication and circulation of anti-national, provocative and objectionable literature finds support from the disclosure made by accused M.A.Naim in Crime No.256/2006, wherein an old publication which used to be brought out by respondent-organisation was continued to be published and circulated to SIMI members by changing its name from "Tehreek -e-Millat" to "Tehreek" and by getting the same published in the name of accused M.A.Naim.

72. Viewed in the light of material available before this Tribunal as discussed hereinabove, it is concluded that the respondent-organisation is indulging in activities which are detrimental and prejudical to national-interest and have the potential of posing a threat to the integrity and sovereignty of the nation and also to communal harmony. I, therefore, find that there is sufficient cause for declaring the respondent-organisation as unlawful association and, thus, confirm the ban on it as imposed by the Central Govemment by notification dated 8-2-2006 read with corrigendum dated 13-2-2006. The reference stands answered accordingly.

(B.N. CHATURVEDI)
Unlawful Activities (Prevention), Tribunal

August, 7, 2006. [F. No. 14017/9/2006-NI-III]

B.A. COUTINHO, Jt. Secy.

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