IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH 2018

PRESENT

R

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

WRIT APPEAL NO.2213/2017
C/W
WRIT APPEALS NO.2214-2217/2017 (GM-RES)

IN WRIT APPEAL NO.2213/2017:

BETWEEN:

UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF HOME AFFAIRS
INTERNAL SECURITY-I DIVISION
NORTH BLOCK, NEW DELHI-110 001 ...APPELLANT

(BY SRI PRABHULING K. NAVADGI, ASG FOR
SRI JAYAKARA SHETTY H, CGC)

AND:

1. ASIM SHARIFF
S/O LATE ANWER
AGED ABOUT 40 YEARS
R/AT NO.6/1, 1ST MAIN
S.K.GARDEN, BENSON TOWN
BANGALORE-46

2. STATE BY COMMERCIAL STREET
POLICE STATION, REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING
BANGALORE-560 001

3. SUPERINTENDENT OF POLICE
NATIONAL INVESTIGATION AGENCY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
BEGUMPET, HYDERABAD
TELANGANA-500 016 …RESPONDENTS

(BY SRI MOHAMMED TAHIR, ADVOCATE FOR R1;
SRI V.SREENIDHI, AGA FOR R2;
SRI P.PRASANNA KUMAR, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITION NO.6005/2017 DATED 21/03/2017.

IN WRIT APPEALS NO.2214-2217/2017:

BETWEEN:

UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF HOME AFFAIRS
INTERNAL SECURITY-I DIVISION
NORTH BLOCK
NEW DELHI- 110 001 ...APPELLANT

(BY SRI PRABHULING K. NAVADGI, ASG FOR
SRI JAYAKARA SHETTY H, CGC)

AND:

1. IRFAN PASHA
S/O LATE ABDUL MAJEED
REPRESENTED BY HIS WIFE RUHI NAAZ
AGED ABOUT 23 YEARS
W/O IRFAN PASHA
RESIDING AT NO.827, 4TH CROSS
OPPOSITE INDIAN MEDICAL
GOVINDPURA MAIN ROAD
ARABIC COLLEGE POST
BANGALORE-560 045

2. WASEEM AHMED
S/O MOHAMED NASSERULLA
AGED ABOUT 30 YEARS
REPRESENTED BY HIS WIFE SURAIYA SULTANA
AGED ABOUT 24 YEARS
W/O WASEEM AHMED
RESIDING AT NO.1209, B-32
BDA FLATS, AUSTIN TOWN
BANGALORE-560 047

3. MOHAMED SADIQ @ MAZHAR
S/O LATE MOHAMED YUSUFF
AGED ABOUT 35 YEARS
REPRESENTED BY HIS WIFE ZABIA TABASSUM
AGED ABOUT 21 YEARS
RESIDING AT NO.21, 4TH CROSS
RAJAPUTRA PETE, HOSKOTE
BANGALORE-562 114

4. MOHAMMED MUJEEB ULLA @ MOULLA
S/O LATE SHAIKH AMEERJAN
AGED ABOUT 45 YEARS
REPRESENTED BY HIS WIFE
BASEERUNISSA
AGED ABOUT 37 YEARS
RESIDING AT NO.66, 5TH MAIN, 5TH CROSS
GANGA NAGAR, R.T.NAGAR POST
BANGALORE-560 032

5. STATE BY COMMERCIAL STREET
POLICE STATION, REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING
BANGALORE-560 001

6. SUPERINTENDENT OF POLICE
NATIONAL INVESTIGATION AGENCY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
BEGUMPET, HYDERABAD
TELANGANA-500 016 …RESPONDENTS

(BY SRI M.S.SHYAMSUNDAR, ADVOCATE FOR R1 TO R4;
SRI V.SREENIDHI, AGA FOR R5;
SRI P.PRASANNA KUMAR, ADVOCATE FOR R6)

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITIONS NO.7267-7270/2017 DATED 21/03/17.

THESE WRIT APPEALS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.01.2018, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, ***P.S.DINESH KUMAR J.,*** PRONOUNCED THE FOLLOWING:-

J U D G M E N T

1. These appeals raise an important question touching upon 'doctrine of separation of powers' and 'scope of judicial review'.

2. Ministry of Home Affairs, Government of India, passed an order directing the National Investigation Agency ('NIA' for short), to investigate a case involving offences punishable under the Indian Penal Code and Unlawful Activities (Prevention) Act, 1967 ('UA Act' for short). Accused challenged Home Ministry's Order in Writ Petitions before this Court. The Hon'ble Single Judge, allowed the Writ Petitions and set aside Home Ministry's Order.

3. Feeling aggrieved, Union of India, have filed these two Writ Appeals, challenging common order dated 21.03.2017 passed by the Hon'ble Single Judge in W.Ps.No.7267-7270/2017 connected with W.P.No.6005/2017, allowing the

petitions in part and setting aside order dated 07.12.2016 passed by the Ministry of Home Affairs directing investigation by the National Investigation Agency.

4. For the sake of convenience, parties shall be referred to as per their status in the writ petitions.

5. Relevant facts of the case are, on 16.10.2016, a First Information Report (FIR), was registered in Crime No.124/2016 with the Commercial Street Police Station, Bengaluru, for offences punishable under Sections 302 and 34 IPC. During investigation, police arrested accused No.1 to 4. Based on their statements, accused No.5 was arrested.

6. On 05.11.2016, police filed an application before the learned Magistrate to include Sections 15, 16, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 ('UA Act' for short) and the learned Magistrate accepted the prayer.

7. By an order dated 07.12.2016, the Ministry of Home Affairs, Government of India, exercising power under Section 6(5) and Section 8 of National Investigation Agency

Act ('NIA Act' for short) directed the Superintendent of Police, NIA, Hyderabad to register the case and take up investigation. Accordingly, an FIR bearing No.RC-04/2016-17 was filed by the NIA.

8. Feeling aggrieved, petitioners presented two writ petitions with following prayers:

(i) to set aside the order dated 05.11.2016 passed by the learned Magistrate permitting to add Sections 15, 16, 17, 18 and 20 of UA Act in the FIR registered as Crime No.124/2016;

(ii) to quash Notification No.11011/33-2016-IS-IV passed by the Ministry of Home Affairs;

(iii) to quash FIR and RC-04/2016-17 registered by NIA for offences punishable under Sections 109, 120B, 201, 150, 153A, 302 read with 34 IPC and Sections 15, 16, 17, 18 and 20 of UA Act; and

(iv) to set aside the order dated 24.1.2017 passed by the Special Court extending minimum investigation period to 180 days.

9. The main grounds urged by the petitioners in support of their writ petitions are:

- that one of the petitioners is the District President of a Social organization called 'Popular Front of India';
- that petitioners are not involved in any anti-social or anti-national activities;
- that inclusion of offences under the UA Act, has maligned the image of the organization; and
- that NIA is meant for investigation of offences affecting sovereignty, security and integrity of India. Therefore, assigning the instant case of a murder to the said Agency amounts to arbitrary exercise of executive power.

10. The Hon'ble Single Judge, by the order impugned, has set aside order dated 07.12.2016 passed by the Ministry of Home Affairs and directed continuance of investigation by the State Police.

11. The Hon'ble Single Judge, rejected the prayer to set aside order dated 05.11.2016 passed by the learned Magistrate permitting inclusion of offences under the UA Act and the prayer to set aside order dated 24.1.2017 passed

by the learned Sessions Judge extending the investigation period to 180 days.

12. We have heard Shri Prabhuling K. Navadgi, learned Additional Solicitor General for the Union of India, Shri P.Prasanna Kumar for the National Investigation Agency, Shri V.Sreenidhi for the State Government and Shri M.S.Shyamsundar and Shri Mohammed Tahir for the petitioners-accused.

13. Shri Prabhuling K. Navadgi, learned Additional Solicitor General, principally urged that, all actions taken by the executive with regard to national security are matters of policy and do not involve any question of law and therefore cannot be subject matter of judicial review.

14. Adverting to the facts, he submitted:

- that, Central Government had received information about registration of Crime No.124/2016 in Commercial Street Police Station, Bengaluru for offences punishable under Sections 302 read with 34 of IPC;

- that, by a communication dated 24.11.2016, the Commissioner of Police, Bengaluru City,

informed the National Investigating Agency about Crime No.124/2016 and inclusion of Sections 15, 16, 17, 18 and 20 of the UA Act and Sections 109, 150, 153A, 120B, 201 IPC and Sections 3 & 27 of the Arms Act, 1957 by the State Police.

15. Having regard to the gravity of the offence, Central Government were of the opinion that the 'scheduled offences' were required to be investigated by the National Investigation Agency. Accordingly, Central Government, *suo motu,* directed the NIA to take up the investigation.

16. Shri Navadgi, further submitted that, an offences under the UA Act, are scheduled offences under the NIA Act. Sections 15, 16, 17, 18 and 20 of UA Act were included by the State Police. The NIA Act confers power upon the Central Government to direct the Agency to investigate into the matter either *suo motu* or upon a report received from the State Government.

17. Shri Navadgi, further submitted that, National Security is a matter of prime importance and concern. Scheduled Offences are required to be investigated thoroughly to ensure that offenders brought to justice. He

strongly urged that, it is the prerogative of the executive to choose the investigating agency and the scope of judicial review of Executive's decision is very limited. He argued that, the decision rendered by the Hon'ble Single Judge is unsustainable in law as it amounts to substitution of Executive's opinion by the Court.

18. He further submitted that, the Central Government had placed two sealed covers containing sensitive information of this case before the Hon'ble Single Judge. He prayed that, this Bench may also peruse the material placed to satisfy itself with regard to the decision taken by the Central Government.

19. Shri Navadgi, placing reliance on two authorities concluded his arguments with a prayer to set aside the order passed by the Hon'ble Single Judge.

20. Shri P. Prasanna Kumar, appearing for NIA and Shri V.Sreenidhi, appearing for State Police, argued in similar lines and supported the order passed by the Central Government.

21. Shri M.S.Shyamsundar, at the outset, submitted that, these Writ Appeals are not maintainable as the order passed by the Hon'ble Single Judge is in exercise of Section 482 of Code of Criminal Procedure, 1973 also. In support of this argument, he placed reliance on paragraph No.45 of the Judgment of Hon'ble Supreme Court in the case of Ram Kishan Fauji v. State of Haryana and Ors, reported in 2017 (5) SCC 533.

22. Shri Shyamsundar, further submitted that, the Central Government has abused its Executive Power in invoking provisions of the NIA Act. He argued that, the alleged incident is nothing more than an offence punishable under Section 302 of the Indian Penal Code. The Central Government have admitted in their statement of objections filed before the Hon'ble Single Judge that, the First Information Report indicated that, on 16.10.2016, whilst the Complainant along with his friends Rudresh, Harikrishna and Kumar were chatting in front of Srinivasa Medical Stores, Kamaraja Road, Shivajinagar, at about 12.40 p.m, two unknown persons came on a motor cycle from Commercial Street side and the pillion rider attacked and

assaulted Rudresh, grievously on the right side of his neck with a 'machete' and the accused fled from the scene. The alleged weapon used was a conventional one. Therefore, there were no circumstances to label the incident as a 'terrorist act'.

23. He further contended that, the 'Popular Front of India', of which, one of the petitioners (Asim Shariff) is the District President, is a Social Organization registered under the Society's Registration Act. To achieve the objectives of the organization, only constitutional and democratic ways are employed by the members of the Institution. The organization, vehemently opposed the divisive agenda of communal forces and thus invites the irk of such divisive forces, which indulge in defaming petitioners' organization.

24. He further submitted that, inclusion of provisions of UA Act, is an attempt to malign the image of the organization. The scope and object of the said UA Act is to deal with terrorists defined under Section 15, when such acts are done by 'banned organizations'. The 'Popular Front

of India', is not a banned organization and therefore, inclusion of offences under the UA Act, was unwarranted.

25. He further submitted that, the National Investigation Agency is established to investigate into such matters, which involve sovereignty, security and integrity of India. The offences punishable under Sections 302 and 34 IPC, mentioned in the FIR, could have been dealt by the Local Police. Central Government has blown up the incident out of proportion and directed the NIA to investigate the matter. Hence, this is a case of arbitrary exercise of executive power. With these submissions, he prayed for dismissal of writ appeals.

26. We have carefully considered submissions made on behalf of Union of India, State Government, NIA and Writ Petitioners. We have also perused the records contained in the two sealed covers submitted by the learned Additional Solicitor General.

27. In the conspectus of the facts recorded hereinabove, the question that arises for our consideration is:

"Whether a Court can interfere with the Executive's choice of Investigating Agency in Criminal Investigation?

28. Indisputably, FIR discloses offences punishable under Sections 302 and 34 IPC. On 5.11.2016, the Assistant Commissioner of Police, K.R.Puram, Bengaluru, moved an application before the 43rd Additional Chief Metropolitan Magistrate, Bengaluru, with a prayer to include Sections 15, 16, 17, 18 and 20 of UA Act. It is stated in the said application that, the leaders of 'People Front of India' Organization were targeting Hindu Leaders and indulging in criminal activities, such as, murder, attempt to murder and striking terror among general public in Bengaluru, Mysuru, Mangaluru and other Cities in the State. Such criminal activities are resulting in hostility among Hindu and Muslim Communities. During the course of investigation, it transpired that, petitioners had committed offences under the UA Act.

29. The Commissioner of Police, vide letter dated 24.11.2016, conveyed inclusion of offences under the UA Act to the National Investigation Agency.

30. Offences under Unlawful Activities Act are 'scheduled offences' under the NIA Act. Investigation of scheduled offences by the National Investigation Agency is provided in Chapter–III of the NIA Act. Section 6 confers power upon the Central Government to direct investigation of scheduled offences by the NIA. Section 6 of the NIA Act reads as follows:-

> **"6. Investigation of Scheduled Offences**.- (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.
>
> (2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.
>
> (3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.
>
> (4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

> (5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, ***suo motu***, direct the Agency to investigate the said offence.
>
> (6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.
>
> (7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation."
>
> (emphasis supplied)

31. As could be seen from the above extracted Section, discretion is conferred by the Parliament upon the Central Government under sub-Section 5 of Section 6 of NIA Act, to *suo motu* direct investigation of an offence by the Agency, if in the opinion of the Central Government, the offence committed is a scheduled offence.

32. Therefore, the question, which needs to be considered is, whether the opinion of the Central Government is based on the material on record. If the decision by the Central Government, is based on proper appreciation of material on record, the same cannot be interfered with, by this Court in

exercise of power of judicial review under Articles 226 and 227 of the Constitution of India.

33. We have carefully examined the original file of the Home Ministry, placed for our perusal in sealed covers by the learned Additional Solicitor General. The proceedings recorded therein, clearly indicate that the Home Ministry had received information that, one of the accused was a senior leader of 'Popular Front of India'. The Home Ministry sought information from the State Government. The State Government did not send any report. However, in the meanwhile, the Commissioner of Police, conveyed to the NIA that offences under UA Act were included, after obtaining permission from the Jurisdictional Magistrate. In the circumstances, the Home Ministry have passed the order, directing investigation by the NIA. We may record that, the matter was considered at various levels of the Home Ministry and finally placed for consideration of the Minister of State (Home), as also the Union Home Minister.

34. The Hon'ble Single Judge, has set aside Home Ministry's Order by recording thus:

> "34. Though in the objection statement it is contended that the Central Government had called upon the State Government by letter dated 18.11.2016 to furnish information regarding the alleged offence, there is nothing to show that in response thereto, the State Government has supplied any information or produced any documents for consideration of the Central Government, which again goes to show that, the contention taken up by the Central Government that, it has based its decision on the report submitted by the State Government is false. ……."
>
> (emphasis supplied)

35. We may record that, the Central Government, in their Statement of Objections, have stated thus:

> "4. The Central Government vide letter dated 18.11.2016, requested the Government of Karnataka to furnish information about the case FIR No.124/2016 in accordance with Section 6(2) of the NIA Act, 2008. The Commissioner of Police, Bengaluru City, vide his Letter No.Addl.CP/CRM/CC/14416 dated 24.11.2016 confirmed invocation of section 15, 16, 17, 18 and 20 of the UAPA in this case. The copy of communication dated 24.11.2016 is produced herewith as annexure R-1. Based on the report of the Government of Karnataka and the information received from other sources, the Central Government was of the opinion that scheduled offences has been committed and keeping in view, the gravity of the offence, the Central Government directed the NIA in accordance with section 6(5) of the NIA Act, 2008 who take up the investigation of the said case."

36. A careful and harmonious reading of the Statement of Objections filed by the Central Government in juxtaposition with the file notings, leads to an inference that, though the State Government had not sent any report to the Central

Government, the communication sent by the Commissioner of Police, was on the file of the Home Ministry and the same was considered. We may further record that, the Home Ministry's notings clearly refers to the communication sent by the Commissioner of Police. In the circumstances, we find no error in Central Government invoking *suo motu* power. As a corollary, the view taken by the Hon'ble Single Judge, amounts to substitution of Executive's opinion and therefore, not sustainable.

37. We may now deal with the authorities relied upon by the learned Additional Solicitor General.

38. In the case of *Ex-Armymen's Protection Services Private Limited v. Union of India and Others* reported in *(2014) 5 SCC 409,* while dealing with the aspect of principles of natural justice, the Hon'ble Supreme Court has quoted with approval several authorities including the decisions rendered by the House of Lords and Privy Council. The relevant paragraphs read as follows:-

> **"12.** In *Council of Civil Service Unions* v. *Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] the House of Lords had an occasion to consider the question. At AC p. 402 C-D, it has been held as follows:

"… *The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security*."

(emphasis supplied)

13. The Privy Council in *Zamora* [(1916) 2 AC 77 (PC)] , held as follows at AC p. 107:

"… *Those who are responsible for the national security must be the sole Judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public*."

(emphasis supplied)

14. According to Lord Cross in *Crompton Alfred Amusement Machines* v. *Customs and Excise Commissioners (No. 2)* [1974 AC 405 : (1973) 3 WLR 268 : (1973) 2 All ER 1169 (HL)] : (AC p. 434 F-G)

"… In a case where the considerations for and against disclosure appear to be fairly evenly balanced the courts should, I think, uphold a claim to privilege on the grounds of public interest and trust to the head of the department concerned to do whatever he can to mitigate the ill effects of non-disclosure."

15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in *Secy. of State for Home Deptt.* v. *Rehman* [(2003) 1 AC 153 : (2001) 3 WLR 877 : (2002) 1 All ER 122 (HL)] : (AC p. 192C)

"… [in the matter] **of national security is not a question of law**. **It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to**

> **whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."**
> (emphasis supplied)

39. In the case of Central Bureau of Investigation and Another v. Rajesh Gandhi and Another reported in (1996) 11 SCC 253, the Hon'ble Supreme Court, has held as follows:

> "**8.** There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. **The accused cannot have a say in who should investigate the offences he is charged with.** We also fail to see any provision of law for recording reasons for such a decision.
> (emphasis supplied)

40. With regard to the plea of maintainability of these appeals raised by the learned Counsel for the Writ Petitioners, we may record that, petitioners have filed the Writ Petitions invoking Articles 226 and 227 of the Constitution of India. It is true that, petitioners have also added Section 482 Cr.P.C. The entire format of petitions is in consonance with the format of a 'Writ Petition'. The Registry has also rightly classified them as Writ Petitions-[General Miscellaneous – Res].

41. It is important to note that, what was under challenge before the Hon'ble Single Judge, was the decision of the Home Ministry. Quoting Lord Hoffman's view, the Hon'ble Supreme Court of India, in the case of *Ex-Armymen's Protection Services Private Limited* supra, has held that, National Security is not a question of law, but a matter of Executive's Judgment and policy.

42. It is also fairly well-settled that, doctrine of separation of power does not permit transgression of jurisdictions between the Legislature, the Executive and the Judiciary. We may hasten to add that, the Executive's decision may be called in question seeking judicial review. But judicial review is permissible strictly within well-defined parameters. We may usefully quote, the following summary of 'separation of powers' doctrine under the Constitution as recorded by the Hon'ble Supreme Court of India in the case of *T.N. v. State of Kerala* reported in (2014) 12 SCC 696.

> **"126.1.** Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are

> apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs—legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers."

43. So far as the scope of the judicial review is concerned, we may quote following passages from the decision of the Hon'ble Supreme Court in the case of *Heinz India (P) Ltd. v. State of U.P., reported in (2012) 5 SCC 443:*

> **61.** The above principles have been accepted even by this Court in a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has been extensively examined and the principles applicable clearly enunciated.
>
> **62.** In *Tata Cellular* v. *Union of India* [(1994) 6 SCC 651] this Court identified the grounds of judicial review of administrative action in the following words: (SCC pp. 677-78, para 77)
>
> "*77*. The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> (*1*) Whether a decision-making authority exceeded its powers?
>
> (*2*) committed an error of law,
>
> (*3*) committed a breach of the rules of natural justice,
>
> (*4*) reached a decision which no reasonable tribunal would have reached or,
>
> (*5*) abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an

administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness.

(*iii*) Procedural impropriety."

63. Reference may also be made to the decision of this Court in *State of Punjab* v. *Gurdial Singh* [(1980) 2 SCC 471] where Krishna Iyer, J. noticed the limitations of judicial review and declared that the power vested in the superior courts ought to be exercised with great circumspection and that interference may be permissible only where the exercise of the power seems to have been vitiated or is otherwise void on well-established grounds. The Court observed: (SCC p. 475, para 8)

"*8*. … The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock jawed save where the power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset."

64. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the decision-making process. (See *Chief Constable of the North Wales Police* v. *Evans*[(1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL)] .) As a matter of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the court are observed, the courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power.

65. Frankfurter, J.'s note of caution in *Trop* v. *Dulles* [2 L Ed 2d 630 : 356 US 86 (1958)] is in this regard apposite when he said: (L Ed p. 653)

"… All power is, in Madison's phrase, 'of an encroaching nature'. … Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint."

> **66.** That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. (See *Union of India* v. *S.B. Vohra* [(2004) 2 SCC 150 : 2004 SCC (L&S) 363] , *Shri Sitaram Sugar Co. Ltd.* v. *Union of India*[(1990) 3 SCC 223] and *Thansingh Nathmal* v. *Supdt. of Taxes* [AIR 1964 SC 1419].)"

44. We may summarise that, Home Ministry, based on the communication by the Commissioner of Police, had on its record, inclusion of offences under UA Act in Crime No.124/2016. Though requested, the State Government did not send their report. Notings in the Ministry's file indicate that, it had sufficient material to notice that 'scheduled offences' were included in the case. The file has received consideration at various levels in the Ministry as also from Minister of State and the Union Home Minister. When the Home Ministry's order is examined by applying the parameters mentioned in the judgment of the Hon'ble Supreme Court in the case of *Heinz India (P) Ltd.,* supra, it would lead to an irresistible inference that, the exercise of power by the Home Ministry does not suffer from any legal

infirmity. We say so, because, Legislature has conferred upon the Executive, the power to direct NIA to take up investigation. Facts on record of the Ministry's file do not indicate that, the decision making process is faulty in any manner.

45. We may now deal with the objections raised by the Writ Petitioners with regard to maintainability of these appeals. Shri Shyamsunder, relied upon paragraph No.45 of the judgment of the Hon'ble Supreme Court in the case of *Ram Kishan Fauji supra*, to contend that intra-court appeals are not maintainable. Paragraph No.45, reads as follows:

> "**45.** The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought**. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent**. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in *Hari Vishnu Kamath* [*Hari Vishnu Kamath* v. *Ahmad Ishaque*, AIR 1955 SC 233] does not render any assistance to the argument advanced by the learned counsel for the respondent State.
>
> (emphasis supplied)

46. In these appeals, Union of India are aggrieved by the decision of the Hon'ble Single Judge, setting aside Home Ministry's Order. Challenge to the Executive's decision, in our view, cannot be brought within the purview of 'anything connected with the criminal jurisdiction'. Therefore, in our view, the ratio laid down in the said decision does not apply to the facts of this case, as no criminal proceedings are adjudicated in the Writ Petitions.

47. Further, Section 4 of the Karnataka High Court Act, 1961, provides for an appeal from an order passed by the Hon'ble Single Judge before a Bench consisting of two other Judges of the High Court. This aspect was considered by a Full Bench of this Court in the case of *M/s.Ritz Hotels (Mysore) Limited v. State of Karnataka and Others reported 1996 (7) Kar. L. J. 600 (FB),* wherein, it is held as follows:

> "In the instance case also, the writ petition was filed both under Articles 226 and 227 of the Constitution. A perusal of the pleadings and the judgment of the learned Single Judge clearly indicated that in fact and substance the petition was under Article 226 of the Constitution. After referring to the various provisions of law and the judgments as noted herein above, we are of the opinion that the Division Bench in *Kalpana Theatre's* case, supra, was not justified in holding that no appeal against an order passed by the Single Judge in a proceeding arising out of a petition filed under Article 227 of the Constitution was maintainable. The scope of Section 4 of the Act in the context of the other provisions of law and particularly the amendment made by

> Amendment Act 12 of 1973 is admittedly wider than letters patent or the Acts of the other States which were referred to or relied upon by the Division Bench in *Kalpana Theatre's* case, supra. In our opinion, the law laid down in *Kalpana Theatre's* case, supra, being contrary to the settled position of law is liable to be overruled. **We hold that an appeal against an order passed by a Single Judge in a proceeding arising out of a petition filed under Articles 226, 227 and 228 of the Constitution of India is maintainable**. The reference is answered accordingly."
>
> (emphasis supplied)

48. Having perused the pleadings contained in the Writ Petition, the classification made by the Registry and the Order passed by the Hon'ble Single Judge, we are of the view that, the Writ Petitions were filed invoking Article 226 of the Constitution of India and they were adjudicated as such. Therefore, we hold that these Writ Appeals are maintainable.

49. In view of above discussion, we are of the considered view that, the impugned order passed by the Hon'ble Single Judge, so far as it relates to setting aside the order dated 07.02.2016 passed by the Ministry of Home Affairs, directing the National Investigation Agency to investigate the offences in Crime No.124/2016 of Commercial Street Police Station, is unsustainable in law. Hence, these appeals eminently deserve to be allowed.

50. Resultantly, we pass the following:

ORDER

(i) Appeals are ***allowed***.

(ii) Common order dated 21.03.2017 passed by the Hon'ble Single Judge in W.Ps.No.7267-7270/2017 connected with W.P.No.6005/2017, so far as it relates to setting aside the order dated 07.02.2016 passed by the Ministry of Home Affairs, directing the NIA to investigate the offences in Crime No.124/2016 of Commercial Street Police Station, is ***set aside;***

(iii) W.Ps.No.7267-7270/2017 connected with W.P.No.6005/2017 are ***dismissed***;

In view of disposal of writ appeals, all pending interlocutory applications do not survive for consideration and are accordingly ***disposed of.***

We make no order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

cp*