IN THE HIGH COURT OF MADHYA PRADESH
AT Indore
BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI GAJENDRA SINGH

ON THE 25th OF JULY, 2024

WRIT PETITION No. 24208 of 2023

SHRI PURUSHOTTAM GUPTA
Versus
UNION OF INDIA AND OTHERS

Appearance:
Shri Manish Nair, learned counsel for the petitioner.
Shri Himanshu Joshi , Dy. Solicitor General for the respondent/Union of India.
Shri Aniket Naik, Dy. Advocate General for the respondent/State.

Reserved on : 11.07.2024
Pronounced on : 25.07.2024

ORDER

Per*: *Justice Sushrut Arvind Dharmadhikari

With the consent of parties, matter is heard finally.

The petitioner in the instant petition has challenged the constitutional validity, legality and propriety of sub-rule 12 , 12A and 13 of Rule 5 of the Central Civil Service (Conduct) Rules, 1964('CCS Rules" hereinafter) as the same are wholly unconstitutional and ultra vires to the Constitution.

2. The petitioner has claimed for the following reliefs:

> "*(A) This Hon'ble Court be pleased issue a writ of certiorri or any othe writ, order or direction in the nature of certiorari to call upon the record and proceedings culminating into the issuance of the Impugned Office Memorandum being (i) MHA OM No. 3/10/)S)/66-Est. (B) dated 30.11.1966; (ii) MHA OM No. 7/4/70-Est.(B), dated 25.07.1970 and (iii) DP & AR OM No. 15014/3/(S)/80-Estt. (B), dated 28.10.1980 and after going through the validity proprietary and correctness thereof be pleased to quash and set aside the same and hold sub rule 12, 12A and 13 of Rule 5 of the CCS(Conduct), 1965 as being ultra vires to the extent that includes the Rashtriya Swayamsevak Sangh;*
>
> *(B) This Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent no.1 to forthwith withdraw and recall the impunged Office Memorandums being (i) MHA OM No. 3/10/)S)/66-Est. (B) dated 30.11.1966; (ii) MHA OM No. 7/4/70-Est.(B), dated 25.07/1970 and (iii) DP & AR OM No. 15014/3/ (S)/80-Estt. (B), dated 28.10.1980 to the extent that includes the Rashtriya Swayamsevak Sangh;*
>
> *(C) The instant petition may be allowed and sub rule 12, 12A and 13 of Rule 5 of the CCS(Conduct), 1964 effected by way of Memorandums of 1966, 1970 and 1980 as above may kindly be declared Arbitrary, Unlawful and therefore Ultra Vires being in conflict with Article 14,15,and 16(1) of the Constitution of India.*
>
> *(D) Pass any other further orders this Hon'ble Court may deem fit and necessary, in the interest of justice and good faith."*

3. When the matter was taken up for hearing, counsel for R1 (UOI), Mr. Himanshu Joshi drew Court's attention to the affidavit filed on behalf of Union of India through Under-Secretary, Department of Personnel and Training (DoPT), Mr. Rajesh Sharma stating *vide* Para 4, which reads as follows :

> "*The Government has reviewed the instructions issued vide OM No.3/10 (S)/ 66-Estt.(B) dated 30.11.1966, OM No. 7/4/70-Est.(B) dated 25.07.1970 and OM No. 15014/3(S)/ 80-Estt. (B) dated 28.10.1980 and it has been decided to remove the mention of Rashtriya Swayamsevak Sangh (R.S.S.) from the said impugned OMs. A copy of the OM No. 34013/ 1(S)/ 2016-Estt (B) dated 09.07.2024 is enclosed as Annexure, with the issue of the OM dated 09.07.2024, the relief prayed for has been addressed and petition does not survive. The petition may therefore kindly be disposed of."*

4. In support of the affidavit, OM dated 09.07.2024 issued by the Central Government has been filed, which reads thus :

> "*The undersigned is directed to refer to the OM No.3/10(S)/66-Estt. (B) dated 30.11.1966, OM No. 7/4/70-Est. (B) dated 25.07.1970 and OM No. 15014/3(S)/80- Estt. (B) dated 28.10.1980 on the above subject.*
>
> *2. The aforesaid instructions have been reviewed and it has been decided to remove the mention of Rashtriya Swayamsevak Sangh (R.S.S) from the impugned OMs dated 30.11.1966, 25.07.1970 and 28.10.1980."*

5. Ideally, we would have disposed of the writ petition as having rendered infructuous and academic, post the filing of the affidavit dated 10.07.2024. However, since the issues raised in the present petition have national ramifications, especially pertaining to one of the largest voluntary non-governmental organisations, *viz*. Rashtriya Swayamsevak Sangh (for brevity 'RSS'), therefore before parting with the matter, this Court finds condign to make certain observations. These observations are necessary to ensure that any coveted voluntary organisation, working in public and national interest is not crucified again through executive instructions/ OMs at the whims and fancies of the Government of the day, in the manner in which the RSS has been so treated for last almost 5 decades.

6. When the matter was taken up last on **06.05.2024**, this Court passed the following order :

> "*4. The petitioner is a retired central government employee who intends to join the Rashtriya Swayamsevak Sangh (in short 'RSS') as an active member in the remaining years of his life. He intends to be integrally involved in the social, cultural and religious activities undertaken by the RSS. However, the impugned office memorandums issued by the MHA are an impediment for the petitioner to gratify his*

desires at the dusk of his life. In view of the aforesaid background, it becomes imperative for the Court to call upon and enquire from the respondent No.1/ Union of India objectively worded answers to some of the compelling questions emanating from the present petition.

5. *Despite the repeated opportunities granted, reply having not been filed by the respondent No.1/ UOI as observed above, this Court is left with no option but to direct the presence of Senior Officers of the respondent No.1 for enabling efficacious adjudication of the dispute at hand. As has been held recently by the Apex Court in the case of State of West Bengal vs. Ganesh Roy, Criminal Appeal No. 5351-5352 of 2024 dated 22.04.2024 that, appearance of government officers at the first instance must be directed through video conferencing. The Apex Court relied upon the Standard Operating Procedure (SOP) previously prescribed in the case of State of Uttar Pradesh & Ors. vs. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors., 2024 SCC Online SC 14. Therefore, prior to passing orders of personal physical presence of the concerned officers of respondent No. 1/ UOI, in consonance to the judgement of the Apex Court in case of State of West Bengal (supra), the personal virtual appearance of Secretaries/ Additional Secretaries through video conferencing must be exhorted to as a necessity.*

6. *Therefore, at this stage we pass the following directions in the present matter :*

(1) The respondent No. 1/ Union of India through its Secretary/ Additional Secretary, MHA and DoPT both, shall file a detailed parawise reply/ counter affidavit to

the present petition within a period of 15 days from today as also their stand on the broad questions raised in the petition, along with necessary supporting documents and material, if any.

(2) If by the next date of hearing, the reply/ counter affidavit is not filed, then the concerned authorised Secretaries/ Additional Secretaries of the MHA and DoPT, Union of India both shall remain present virtually ***(through video conference) at 10:15 am on 22.05.2024*** *to explain their inability in filing the reply/ counter affidavit to the present petition. If it is found that no sufficient justification for non-filing of the reply/ counter affidavit is forthcoming, then the Court may be constrained to pass order directing the physical presence of the concerned officers personally on a date fixed by the Court".*

7. Thereafter when the matter was listed on **22.05.2024**, the Union of India was represented through learned Solicitor General of India, Mr. Tushar Mehta along with Mr. Manoj Kumar Dwivedi and Mr. Praveen Vashista, Additional Secretaries on behalf of the UOI. It was informed by the learned Solicitor General that the Central Government is in the process of reviewing the circulars under challenge and that a formal adjudication may not be required at all. In view thereof the matter was therefore adjourned .

8. While the Central Government is well competent and within its powers to issue or withdraw any *OM* governing the conduct of lakhs of its employees employed across the country, however the circulars/ OMs that affect the fundamental rights of its employees throughout the nation, specially the rights guaranteed under Article 19(1)(g), must always be viewed with utmost caution with the magnifying lens of judicial review. Before undertaking any discussion, the subject matter of the **3 notifications assailed in the present petition, *viz* dated 30.11.1966, 25.07.1970 and 28.10.1980** may briefly be peeped into by the Court to comprehend the seriousness of the restrictions imposed therein

on its employees by the Central Government. **They run as follows:**

OM dated 30.11.1966 :

"*As certain doubts have been raised about government's policy with respect to the membership of and participation in the activities of the Rashtriya Swayamsevak Sangh and the Jamaat-e-Islami by government servants, it is clarified that government have always held the activities of these two organisations to be of such a nature that participation in them by government servants would attract the provisions of sub-rule (1) of Rule 5 of the Central Civil Services Conduct) Rules, 164. Any government servant, who is a member of or is otherwise associated with the aforesaid organisations with their activities is liable to disciplinary action."*

***

OM dated 07.04.1970 :

"*The undersigned is directed to refer to this Ministry's D.M. No.3/10(S)/G6-Est.B dated 30.11.1966, on the above 'subject (copy enclosed for ready reference) and to request that -*

a) the provisions thereof may be brought to the notice of all Govt. servants again; and

b) action should invariably be initiated against any Govt. servant who comes to notice for violation of the instructions referred to above".

***

OM dated 28.10.1980 :

"*The undersigned is directed to invite the attention of the Ministry of Finance, etc. to the provisions of sub-rule (1) of the Central Civil Services (Conduct) Rules, 1964 under which "no Government servant shall be a member of, or be otherwise*

associated with, any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity". Attention of the various Ministries is also drawn to this Ministry's O.M. No. 3/ 10(S)/ 66-Estt. (B) dated the 30th November, 1966 wherein it was clarified that the Government have always held the activities of both the Rashtriya Swayam Sevak Sangh and the Jamaat-e-Islami to be of such a nature that participation in them by Government servants would attract the provisions of sub-rule (1) of the Central Civil Services (Conduct) Rules, 1964 and that, any Government servant, who is a member of or is otherwise associated with the aforesaid organisations or with their activities, is liable to disciplinary action".

In the context of the current situation in the country, the need to ensure a secular out-look on the part of government servants is all the more important. The need to eradicate communal feelings and communal bias cannot be over-emphasised.

No notice should be taken by government and its officers, local bodies, State-aided institutions of petitions or representations on communal basis, and no patronage whatsoever should be extended to any communal organisation."

9. The question therefore arises is, on what study or basis, activities of RSS organisation as a whole were treated in the decades of 1960s and 70s as communal or anti-secular; what was the empirical report, statistical survey or material, that led the then government of the day to arrive at an objective satisfaction that involvement of Central Government employees with the RSS & host of its activities (social, political, health, disaster management support, religious and educational) would precipitate communal

feelings and communal bias in the whole community; what was the basis to arrive at the satisfaction, that involvement of any employee in the aforementioned activities of RSS (even post retirement, after demitting the office) would be indulging in a conduct that may treated as *'anti-secular'*. The Court in the absence of any Reply filed by the Union of India to the said effect (despite being inquired again and again) is compelled to believe and presumed that ***perhaps there was never any material, study, survey or report at the relevant point of time on the basis of which the ruling dispensation arrived at a satisfaction that involvement and engagement of central government employees even with the apolitical/non political activities of RSS must be banned for maintaining the communal fabric and secular character of the country***. On 5 different dates during the hearing of the present petition, this Court questioned the basis of issuance of the impugned circulars/ OMs that handcuffed the freedom of lakhs of Central Government employees of the country for almost five decades from the 1960s till 2024. These restrictions *prima facie* falling foul of cherished freedoms under Article 19(1) would have continued unabated further, but for the institution of the present writ petition on behalf of the petitioner, who himself is a retired employee, but was clutched and restricted from joining RSS even after his superannuation owing to impugned OM's.

10. Therefore, three questions arose in our mind when confronted with the Affidavit and the circular/OM dated 09.07.2024 filed on behalf of the UOI before this Court, that liberated RSS from the list of '*don't join'* organisations overnight after 5 decades, permitting government servants to join RSS whilst in service or after retirement from their employment. These three questions are as follows :

a. What was the material, and the compelling survey/ study that constrained the Central Government to include RSS in the list of banned organisations, which the Central Government employees were restrained from joining. Whether actually the said material existed or it was merely issued on the mere *ipse dixit* of the erstwhile government of the day simply to crush an organisation not stated opposed to its ideology.

b. Whether the necessity of continuing RSS in the list of such '*don't*

join' organisations ***was actually reviewed periodically and the desirability examined frequently*** to retain such prohibition for all the Central government. It is a trite law that a prohibition or a restriction cannot remain operative forever till eternity, but must always be reviewed and examined with the changing times & the expansive interpretations of freedoms under our Constitution.

c. If the answer of the above two questions is in the affirmative, *viz.* that RSS had been included in the list of '*don't join'* organisations on the basis of certain material and study/ survey, then whether it's overnight deletion from the list of banned organisations by the Central Government has been preceded by any fresh material, data or a survey compelling it to be removed overnight from the list of '*don't join'* organisations.

11. If said survey, study or evidence has been collected as mentioned above *vide point c.)* prior to deleting the name of RSS from the said list of '*don't join'* organisations, then indubitably, if in future it is to be pushed back in the same compartment of '*don't join'* organisations, then much more weighty considerations and compelling reasons supported by objective material, data and study would be necessary to be undertaken as a precondition by any successive government. Meaning thereby that picking, choosing RSS to be moved in and out; back and forth from the list of '*don't join'* organisations cannot be done mechanically overnight, but must be preceded by deep thought, intensive thinking at the highest level of the Government. Only in a situation of a compelling national security and public interests, that it may be placed back in the said list. Otherwise if any subsequent executive action/ decision attempts to restore it back mechanically, then it will plainly play foul of Articles 14 and 19 of the Constitution of India of the concerned employee, who has emotional and ideological alignment with the RSS.

12. We say so for reasons many, more than one. *Firstly,* it's a matter of general knowledge in public domain that today RSS is the only nationally established self driven voluntary organisation outside the governmental bureaucratic hierarchy, which has highest membership drawn from all the districts and talukas of the country participating actively in

religious, social, educational, health and many apolitical activities, under its umbrella, which have no pertinence to political activities of RSS. *Secondly,* the realm of activities undertaken by the host of subsidiary organisations under the larger umbrella of RSS are multiple other than political activities, having no correlation with active politics. These apolitical activities may be undertaken by the volunteers purely out of community service, without political ambitions or goals constituting the comrade on the field. Thus majority of the activities of RSS today are not at all related to the political sphere, but span over many other multiple areas of social engagement. Illustratively, '**Rashtriya Seva Bharti' (RSB)** which a registered public trust, with the aim to organise a peer group with nationalist thoughts & patriotic sentiments under one umbrella; to give them training, exposure in the field of education, health, self reliance and other social activities. RSB is working throughout the country through 45 representative organisations, that is Seva Bharti and 1200 other affiliated Trusts and NGOs. A banyan tree network established on a pan India level across the country, with lakhs of volunteers drawn from all the States serving selflessly. Can RSB be treated as a '*political organisation'*, voluntary participation in which be banned, insofar its educational, health and social activities are concerned; would the bar of '*don't join'* organisation extend to all the 1000+ affiliated trusts and NGOs working under its large umbrella; would the Central Government employees be guilty of misconduct, if they participate in the educational and social pursuits of RSB; these are some of the burning questions, which the Rule making authority ought to be extremely cautious and conscious of, before putting RSS or its subsidiary trusts and organisations blanketly in the hit list of '*don't join'* organisations.

13. Another example of RSS undertaking apolitical activities is of undertaking educational activities at the pan India level through chain of '**Saraswati Shishu Mandirs' (for brevity 'SSM')** where lakhs of students from impoverished backgrounds receive primary and higher secondary education either free or at minimal affordable costs. Again **SSMs have** no political stripes being the educational arm of the larger RSS organisation. There are people in our country who intend to be associated actively only with the educational venture of SSMs under the larger flag of RSS towards sharing their knowledge wealth & treasure with the poor children of the society, bereft of any political ideologies or goals.

14. Another example of the social and philanthropic facet of RSS, its field volunteers

actively engage in large scale rehabilitation, resettlement, and disaster management support programs, especially the flood relief support being provided nowadays in many States. Even this social and philanthropic wing of RSS may not identify itself with its political face, but concerns only with the philanthropic face of the organisation.

15. The upshot of the above discussion is ***that membership of RSS per se may not aim at or drive oneself always to the involvement in the political activities of the organisation, much less being engaged in communal or anti-national or anti-secular activities***. This fine distinction had perhaps been glossed over when the impugned OMs were issued by the Central Government 45 to 50 years back.

16. The State born under the Constitution has duties towards every individual under its control, which in turn arms the latter with certain rights. The rights and duties emanate from the trilogy of Articles 14, 19 and 21 of the Constitution, having been unravelled by the Courts from time to time. They are ever expanding, being a part of a grand canopy to enforce rule of law. In fact Part III is a kaleidoscope of rights and restrictions, in which each of them individually (*viz* Article 14, 19 and 21) is a mirror reflection of the laudable principles of freedom blended with equality. **Some of the *do's and don'ts* for the State or its instrumentalities/ agencies towards its subjects/ citizens may be safely culled out from various decisions of the Supreme Court for ready reference :**

a. State to eschew arbitrariness and follow principles of fair play, reasonability and natural justice whilst dealing with its subject, including those employed or associated with it.
b. Nothing should be done by the State which gives an appearance of bias, preconceived prejudice, affection, ill will and nepotism.
c. Decisions of the State must be informed by reason based on reasonable, relevant and rational considerations and that it must act in public and national interest.
d. The actions of the State must be bona fide, clean and honest, and must always withstand the tests of proportionality and rationality.

17. In the above context, the decisions of the Supreme Court rendered in the matter of ***Haji T.M. Hassan Rawther v. Kerala Financial Corporation*** **(1988) 1 SCC 166; AIR**

1988 SC 157 : *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay* (1989) 3 SCC 293; AIR 1989 SC 1642 : *Mahabir Auto Store v. Indian Oil Corporation*, JT 1990 (1) SC 363; AIR 1990 SC 1031 : *Jaswant Singh v. State of Punjab* (1991) 1 SCC 362; AIR 1991 SC 385 are pertinent to deduce the above duties and responsibilities on the part of the State.

18. Issuance of executive instructions/ OMs by the UOI spelling out what and what doesn't constitute misconduct, under Rule 5 is a facet of exercise of administrative discretion vested and delegated upon it as the executive arm of the Centre. Through such administrative discretion, the Central Government is well empowered to spell out the shades of '**what constitutes misconduct'**. In ***Suman Gupta v. State of Jammu and Kashmir* reported in (1983) 4 SCC 339; AIR 1983 SC 1235**, the Hon'ble Supreme Court while explaining as to how administrative discretion should be exercised, Vide Para No. 6, held as follows:

> "*The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason-relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting is valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India reported in (1978) 1 SCC 248; 1978 AIR 597 has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.*

***

> *We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether."*

19. Similarly, in ***Sant Raj v. O.P. Singla*** **reported in (1985) 2 SCC 349; AIR 1985 SC 617**, the Supreme Court held that, "*whenever, it is said that something has to be done, within the discretion of the authority, then that something has to be done,* ***according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law****. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful"*. Again in ***Fasih Chaudhary v. Director General, Doordarshan*** **reported in (1989) 1 SCC 89; AIR 1989 SC 157**, the Supreme Court went a step ahead to hold that the exercise of discretion should be legitimate, fair and without any aversion, malice or affection. Nothing should be done which may lend the impression of favouritism or nepotism.

20. The coalesce of the aforequoted judgements is that whilst spelling out '**misconduct' under Rule 5 of the CCS Rules, 1964**, the Central Government cannot behave as '***be all and above all'***. The discretion to classify any organisation as a '*don't join'* organisation for Central Government employees must therefore be clearly informed by rules of reasons, fair play and justice, not according to subjective opinions of those in power, it should be guided by law and not humour or preconceived prejudice against such nationally & internationally famed organisation. **Therefore, once the government has decided and taken a conscious decision to review and remove the name of RSS from the litany of banned organisations, then its continuation shouldn't be dependent only on the**

vagaries, mercy & pleasure of the government of the day.

21. It is a trite law that fundamental rights, especially the rights guaranteed under Articles 14 & 19 cannot be altered by way of executive instructions or circulars or OMs. They can be altered only by way of '**a law'** duly enacted and falling within the four corners of **Article 13(3)(a) of the Constitution of India**, which reads thus :

> '***13. Laws inconsistent with or in derogation of the fundamental rights -***
>
> *(3) In this article, unless the context otherwise requires,-*
>
> *(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;'*

22. Not multiplying the precedents on the point, but recently the Supreme Court in the matter of ***Pharmacy Council of India v Rajiv College of Pharmacy,*** **(2023) 3 SCC 502** had an occasion to examine the constitutionality of certain OMs issued by the Pharmacy Council of India, which placed a complete moratorium on opening of new Pharmacy Colleges in the country. The said OMs were assailed principally on the ground that being executive instructions, they had no authority to impair fundamental rights of the private unaided institutions intending to open pharmacy colleges as a fundamental right guaranteed under Article 19(1)(g). The Supreme Court whilst quashing the said OMs unconditionally issued by the Pharmacy Council made it luminescently clear that fundamental rights cannot be impinged upon through executive instructions. ***Vide*** **Paras 42, 54 & 55,** it was observed thus :

> "*42. The question is directly answered by this Court in State of Bihar v. Project Uchcha Vidya, Sikshak Sangh in para 69, which reads thus: (SCC p. 574)*
>
> *"69. The right to manage an institution is also a right to property. In view of a decision of an eleven-judge Bench of this Court in T.M.A. Pai Foundation v. State of Karnataka establishment and management of an educational institution has been held to be a part of fundamental right being a right of occupation as*

envisaged under Article 19(1)(g) of the Constitution. A citizen cannot be deprived of the said right except in accordance with law. ***The requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. Such a law, it is trite, must be one enacted by the legislature.***"

****

54. Shri Maninder Singh further relied on the judgment of the Division Bench of the Bombay High Court, Aurangabad Bench, in Sayali Charitable Trust's College of Pharmacy, ***However, since we have held that the right to establish an educational institution is a fundamental right under Article 19(1)(g) of the Constitution of India and reasonable restrictions on such a right can be imposed only by a law and not by an execution instruction,*** *we are of the view that the Division Bench of the Bombay High Court, Aurangabad Bench, in the said case does not lay down the correct position of law. In our view, the view taken by the High Courts of Karnataka, Delhi and Chhattisgarh lays down the correct position of law.*

55. Since we have held that the Resolutions/communications dated 17-7-2019 and 9-9-2019 of the Central Council of the 6 appellant PCL, ***which are in the nature of executive instructions, could not impose restrictions on the fundamental right to establish educational institutions under Article 19(1)(g) of the Constitution of India, we do not find it necessary to consider the submissions advanced on other issues. We find that the Resolutions/communications dated***

17-7-2019 and 9-9-2019 of the Central Council of the appellant PCI are liable to be struck down on this short ground."

23. Without multiplying the authorities on the above point, the coalesce of the above discussion is voluntary membership of a national & internationally famed organisation like RSS, ***for activities other than political in nature***, ***like religious, social, philanthropic, educational*** cannot be proscribed through executive instructions. They ought to have been done only through duly enacted law if the necessity was felt for doing so, preferably through amendments to the Conduct rules itself.

24. The moratorium on joining RSS must preferably by way of the Conduct rules only and not through executive framed Official Memorandums, as it results in infringement of precious fundamental rights of not only the Central Government employees as the citizens of the country, but also members and office bearers of the organisation serving the country as part of RSS. 'OMs do not constitute a 'law' issued under Article 13(3)(a) of the Constitution of India, more so when they are issued on a piece of paper by the subordinate officers of the Central Government purportedly in the name of the sovereign.

25. In view of the above, therefore even though the Central Government during the pendency of present writ petition has chosen to review and remove the name of RSS from the list of '*don't join'* organisations, we hold that any such exercise of proposing and restoring its name back in the of '*don't join'* list ever in future must be preceded by a profound thought process, intensive deliberations at the highest levels of the rule making authority, backed by persuasive data, compelling evidence and material as to why RSS as an umbrella organisation along with all its subsidiary organisations need to be banned from participation by any of the Central Government employee. Other than political, ***why***

its religious, social, educational, health related community services also invite a similar treatment be also delved deep into, before holding the same to be a facet of misconduct under Rule 5 of the CCS Rules, 1964.

26. If any such decision is taken by the Government sans persuasive data, compelling evidence and material of restoring the status of RSS and other organizations in future amongst the '*don't join'* organisations, it would always be susceptible and vulnerable to constitutional challenge. Besides such data & material must also possess rational nexus with the purpose to be subserved, *viz* checking misconduct by Central Government employees whilst on government rolls.

27. ***The issuance of the OMs painting the whole universe of even the apolitical activities of RSS as communal, anti-secular and against national interest is a decision having drastic consequences, not only for the organisation, but also everybody aspiring to associate with it with the noble interest of rendering community & public service***. Any executive or legislative decision infringing upon fundamental rights must always be backed by cogent data, evidence and material justifying imposition of the restrictions chosen by the government to be clamped down upon its subjects/ citizens. Reference in this respect can be made to the judgments of ***Malik Mazhar Sultan and Anr. v U.P. Public Service Commission and Ors. 2023 SCC Online SC 1225; AIR 2006 SC 345, Kailash Chand Sharma & Ors. v State of Rajasthan & Ors. (2002) 6 SCC 562, State of Maharashtra and Ors. v. Indian Hotels and Restaurants Assn. and Ors. (2013) 8 SCC 519; AIR 2013 SC 2582, Nidamarti Mahesh Kumar v State of Maharashtra (1986) 2 SCC 534; AIR 1986 SC 1362.***

28. The Court also laments the fact that it took almost five decades for the Central

Government to realise its mistake; to acknowledge that an internationally renowned organisation like RSS was wrongly placed amongst the banned organisations of the country and that its removal therefrom is quintessential. Aspirations of many central government employees of serving the countries in many ways, therefore got diminished in these five decades because of this ban, which got removed only when it was brought to the notice of this Court *vide* the present proceedings.

29. In the fitness of things, therefore we direct the **Department of Personnel and Training and Ministry of Home Affairs, GOI** to display publicly on the **Home Page of its Official Website** the contents and copy of the circular /OM dated 9th July, 2024 as filed in the present petition. This is to ensure public knowledge and information about the issuance of the said circular/ OM. Besides the above, within 15 days of the judgement of this Court, the circular /OM dated 9th July, 2024 is also directed to be transmitted to all the departments and undertakings of the Central Government across India.

30. With the above directions, the present Writ Petition is disposed of.

(S.A. Dharmadhikari)
Judge

(Gajendra Singh)
Judge

sh/-

SEHAR HASEEN

Digitally signed by SEHAR HASEEN
DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENCH INDORE, ou=BENCH AT INDORE, 2.5.4.20=900ec6fc757798eaeb3df7a32860bd3298415a4d1c2d9143621f2568c8f274da, postalCode=452001, st=Madhya Pradesh, serialNumber=E7D8BA955B262C04B841325 1CE7F86F087D8A610C57F1559C08BF6C6F5DD40D4, cn=SEHAR HASEEN
Date: 2024.07.25 17:19:13 +05'30'