SUPREME COURT OF INDIA

Hussein Ghadially @ M.H.G.A. Shaikh

Vs.

State of Gujarat

Crl.A.No.92 of 2009

(T.S.Thakur and C.Nagappan JJ.)

18.07.2014

JUDGMENT

T.S. THAKUR, J.

1. Common questions of law arise for consideration in these appeals which were heard together and shall stand disposed of by this common order. The appeals arise out of two separate judgments delivered by the Designated Court at Surat both dated 4th October, 2008 whereby the Designated Court has while acquitting some of the accused persons convicted the rest and sentenced them to imprisonment for different periods ranging between 10 to 20 years. In Criminal (TADA) case No.41 of 1995 disposed of with Criminal (TADA) case No.1 of 2000 arising out of C.R. No.70 of 1993 relevant to Criminal Appeals No.92 of 2009 and 658 of 2009, the Designated Court has convicted the appellants in those appeals while respondents in Criminal Appeal No.305 of 2009 filed by the State of Gujarat against the very same judgment have been acquitted. In Criminal Appeals No.432-33 of 2009 the State has sought enhancement of the sentence awarded to those convicted by the Trial Court.

2. In Criminal (TADA) case No.59 of 1995 and 2 of 2000 arising out of C.R. No.32 of 1993 the Designated Court has similarly convicted some of the accused persons who are (appellants before us in Criminal Appeals No.110 of 2009 and 659 of 2009). The State has also assailed in the appeals filed by it the judgment of the Trial Court and sought enhancement of the sentence awarded to those convicted by it in Criminal

3. The facts giving rise to the registration of I.C.Rs. No.32 and 70 of 1993 at Varccha and Surat Railway Police Stations in the State of Gujarat respectively leading to the arrest of those accused of committing the offences and their eventual conviction by the Trial Court have been set out at great length by the said Court below in the two judgments and orders impugned before us. We need not, therefore, recapitulate the entire factual backdrop in which the appellants were tried, found guilty and sentenced except to the extent it is absolutely necessary to do so. Suffice it to say that the two blasts one at Mini Hira Bazar, Varccha Road, Surat and the other at Platform 1, Surat Railway Station took place on 28th January, 1993 and 22nd April, 1993 respectively. In the incident that took place at Mini Hira Bazar, Varccha Road, one minor girl barely 8 years old lost her life while as many as 11 others were injured. The second incident at the Surat Railway Station relevant to ICR No.70 of 1993 left as many as 38 persons injured, some of them grievously. The prosecution case is that the genesis of the two incidents mentioned above lay in the demolition of the Babri Masjid on 6th December, 1992 at Ayodhaya which had led to wide-spread communal riots in several parts of the country. These riots took place even in the city of Surat causing damage to life and property to the Muslim community. With a view to giving relief to those affected by such riots a Relief Camp at Ranitalao area in the city of Surat was set up mainly by the accused persons including Hussein Ghadially, Iqbal Wadiwala, Mohammad Surti, Hanif Tiger and others. A makeshift office adjacent to the relief camp provided to the accused persons space to hold their meetings.

4. The prosecution alleges that on account of riots and damage suffered by the Muslims, the accused persons nurtured a feeling that the Government and the police will not be able to protect their community. The prosecution further case is that in order to protect the members of the Muslim community and also to retaliate against the majority community the accused persons initially decided to collect firearms, swords, spears, iron rods, country made bombs and gelatin bombs etc. and to distribute the same to those who had converged in the relief camp. It was also decided to import firearms, bombs etc. from Abdul Latif, a notorious gangster of Ahmedabad who was known to accused No.1 Hussain Ghadially. Abdul Latif was then in Dubai but later arrested and produced before the Designated Court. He was killed in a police encounter during the trial.

5. According to prosecution appellant-Hussein Ghadially and his wife alongwith Iqbal Wadiwala (A-2) went to Ahmedabad in Maruti Van No. GJ 5A 5178 driven by one Bhupat Makwana. In order to carry arms and ammunition including AK 47 rifles, cartridges and bomb etc. a concealed compartment was created in the Maruti Van that was owned by appellant-Iqbal Wadiwala. The arms and ammunition supplied by Abdul Latif (since deceased) were then placed in the secret chamber of the vehicle and transported to Surat. The prosecution alleges that the arms and ammunition to be used were kept at different places for use to wreak vengeance against the majority community. The blasts that took place on 28th January, 1993 at Mini Hira Bazar, Varccha Road, Surat and at Surat Railway Station on 22nd April, 1993 were, according to the prosecution, the culmination of the conspiracy hatched by the accused and the efforts made by them including their active participation in the sordid sequence leading up to grievous injuries to several persons including the killing of an innocent child.

6. The prosecution further alleges that investigation into the crime by the Surat Railway Police did not lead to the apprehension of the real culprits. This forced the Director General of Police of the State of Gujarat to constitute an Action Group for inquiry and investigation into the crime. In the course of investigation by the Action Group, one Mushtaq Patel was apprehended on 12th March, 1995 in connection with a case registered in Umra Police Station under the Arms Act. In the course of interrogation the said Mushtaq Patel revealed information relating to the bomb blast at Platform No.1 at Surat Railway Station. This gave the Action Group a break that led to a series of arrest of persons responsible for the blasts and recovery of arms and ammunition comprising as many as 6 foreign grenades, 2 AK 47 rifles and 199 live cartridges. The arrest of accused persons and the seizure of arms and ammunition in turn led to invocation of provisions of Terrorists and Disruptive Activities (Prevention) Act by orders passed by the Additional Commissioner of Police, G Division, Surat city and/or by the State Government.

7. Confessional statements of the accused persons were after the application of the provisions of the said Act recorded by the Additional Commissioner of Police and separate chargesheet in both FIRs filed before the Designated Court in which accused Yusuf Dadu was shown as absconding. Yusuf Dadu was subsequently apprehended and a supplementary chargesheet in both the cases filed against him which came to be numbered as TADA cases No.1 and 2 of 2000 in relation to the two incidents

aforementioned. Before the Designated Court the accused persons pleaded not guilty and claimed a trial.

8. At the trial the prosecution examined as many as 120 witnesses in TADA case No. 41 of 1995 with 1 of 2000 and 105 witnesses in TADA case No. 59 of 1995 with 2 of 2000. The accused did not lead any defence. The Trial Court eventually found some of the accused persons guilty while some others were acquitted giving them the benefit of doubt. Those found guilty were sentenced to imprisonment ranging between 10 to 20 years details whereof may be summarised as under:

|S. |Appella|Accused|Conviction by |Maximum |Conviction by |Maximum | |No. |nt/Accu|-Appeal|Designated Court |Sentence |Designated Court |Sentence | | |sed |No. |in TADA Case no. |awarded by |in TADA Case no. |awarded by | | | | |41/1995 and |Designated |59/1995 and 2/2000|Designated | | | | |1/2000 arising |Court in |arising out of |Court in TADA| | | |out of C.R. No. |TADA Case |C.R. No. 32/1993 |Case no. | | | | |70/1993 |no. 41/1995|(Mini Hira Bazar) |59/1995 and | | | | |(Railway Station)|and 1/2000 | |2/2000 | |1 |Husein |92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |Ghadial|2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |ly A1 |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | | |of 2009|307, 326, 325 and| |120B IPC, s. | | | | | |324 r/w 120B IPC,| |3,4,5 of Explosive| | | | |s. 3,4,5 of | |Substances Act and| | | | |Explosive | |25(1) A of Arms | | | | |Substances Act | |Act. | | | | |and 25(1) A of | | | | | | | |Arms Act. | | | | |2 |Iqbal |92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |Wadiwal|2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |a A2 |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | | |of 2009|307, 326, 325 and| |120B IPC, s. 3,4,5| | | | |324 r/w 120B IPC,| |of Explosive | | | | |s. 3,4,5 of | |Substances Act and| | | | |Explosive | |25(1) A of Arms | | | | |Substances Act | |Act. | | | | |and 25(1) A of | | | | | | | |Arms Act. | | | | |3 |Mohamma|92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |d Gulam|2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |@ |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | |Mohamma|of 2009|307, 326, 325 and| |120B IPC, s. 3,4,5| | | |d Surti| |324 r/w 120B IPC,| |of Explosive | | | | |s. 3,4,5 of | |Substances Act and| | | |A3 | |Explosive | |25(1) A of Arms | | | | |Substances Act | |Act. | | | | |and 25(1) A of | | | | | | | |Arms Act. | | | | |4 |Mustaq |92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |Ibrahim|2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |Patel |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | |A4 |of 2009|307, 326,

325 and| |120B IPC, s. 3,4,5| | | | |324 r/w 120B IPC,| |of Explosive | | | | |s. 3,4,5 of | |Substances Act and| | | | |Explosive | |25(1) A & 25(1)AA | | | | | |Substances Act | |of Arms Act. | | | | |and 25(1) A & | | | | | | |25(1)AA of Arms | | | | | | | |Act. | | | | |5 |Salim |92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |Chawal/|2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |Manjro |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | |A5 |of 2009|307, 326, 325 and| |120B IPC, s. 3,4,5| | | | |324 r/w 120B IPC,| |of Explosive | | | | |s. 3(b) of | |Substances Act and| | | | |Explosive | |25(1) A &25(1)AA | | | | | |Substances Act | |of Arms Act. | | | | |and 25 and 27 of | | | | | | |Arms Act. | | | |6 |Ahzaz |92 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|20 years RI | | |Ahmed |2009 |TADA r/w 120B | |r/w 120B IPC, 5 of| | | |Patel |and 110|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | |A6 |of 2009|307, 326, 325 and| |120B IPC, s. 3(B) | | | | |324 r/w 120B IPC,| |of Explosive | | | | |s. 3(b) of | |Substances Act and| | | | |Explosive | |25 & 27 of Arms | | | | |Substances Act | |Act. | | | | |and 25 & 27 of | | | | | | |Arms Act. | | | |7 |Aziz |110 of |Acquitted |___ |S. 201 R/W 120B |10 years RI | | |Ibrahim|2009 |A7 | |IPC | | | |Patel | | | |A8 | | |8 |Mehmood|110 of |Acquitted |___ |s. 3(3) of TADA |10 years RI | | |@ Baba |2009 |A8 | |r/w s. 120B IPC, | | | |Ibrahim| | |S. 5 of TADA, s. 5| | | |Master | | | |of Explosives | | | | | | |Substances Act, | | | | | | |25(1)A of Arms Act| | | | | | |A10 | | |9 |Fazal |110 of |Acquitted |___ |s. 3(3) of TADA |10 years RI | | |Dawood |2009 |A9 | |r/w s. 120B IPC, | | | |Nagori | | | |S. 5 of TADA, s. 5| | | | | | |of Explosives | | | | | | |Substances Act, | | | | | | |25(1)A of Arms Act| | | | | | |A11 | | |10 |Saeed |110 of |Acquitted |___ |s. 3(3) of TADA |10 years RI | | |Naadi @|2009 |A10 | |r/w s. 120B IPC, | | | |Abdul | | | |S. 5 of TADA, s. 5| | | |Saeed | | | |of Explosives | | | |Abdul | | | |Substances Act, | | | |Mazid | | | |25(1)A of Arms Act| | | |Navdiwa| | | |A12 | | | |la | | | | | | |11 |Baba @ |110 of | | |S. 6 of TADA r/w |10 years RI | | |Abdul |2009 | | |s. 120B IPC | | | |Khalik | | | |A9 | | | |Ali | | | | | | | |Mohamma| | | | | | |d | | | | | | | |Shaikh | | | | | | |12 |Yusuf |658 of |s. 3(2)(ii) of |10 years RI|s. 3(2)(i) of TADA|LI for 20 | | |Dadu @ |2009 |TADA r/w 120B | |r/w 120B IPC, 5 of|years | | |Yusuf @|and 659|IPC, 5 of TADA, | |TADA, s. 302 r/w | | | |Yaasin |of 2009|307, 326, 325 and| |120B IPC, s. 3(b) | | | |@ | |324 r/w 120B IPC,| |& 5 of Explosive | | | |Abdulla| |s. 3(b) & 5 of | |Substances Act and| | | |Gulam | |Explosive | |25(1) A of Arms | | | |husen | |Substances Act | |Act. | | | |Nalband| |r/w s. 120B IPC | | | | | | | |and 25(1) A of | | | | | | | |Arms Act. | | | | | | | |A11 | | | |

9. Appearing for the appellants Mr. Sushil Kumar, learned Senior Counsel, strenuously argued that the trial and conviction of the appellants for offences with which they were charged is vitiated for breach of the mandatory provisions of Section 20-A (1) of The Terrorist and Disruptive Activities Act (TADA). That provision it was contended required approval of the District Superintendent of Police for recording of any information about the commission of an offence punishable under the said Act. No such approval was, however, either sought from or granted by the District Superintendent of police concerned. Approval for recording of the information was instead obtained from the Additional Chief Secretary, Home Department, Government of Gujarat who had no power to grant the same under the Act. So also the purported approval from the Additional Police Commissioner, Surat was of no legal effect as the power to grant such approval vested only in the District Superintendent of Police and could not be exercised by the Additional Commissioner of Police or anyone holding an equivalent rank. The power to grant approval being a sina qua non for recording of any information about the commission of any offence under the Act, absence of such approval was according to Mr. Sushil Kumar sufficient by itself to vitiate any trial that was held in breach of the said provision. Reliance in support of that submission was placed by Mr. Kumar upon several decisions of this Court including one in Aniruddhsinhji Jadeja & Anr. v. State of Gujarat (1995) 5 SCC 302 to which we shall presently turn. It was contended that the conviction and sentence of the appellants ought to be set aside not only because the provision of Section 20-A (1) is mandatory but also because the power to grant approval for recording of information about the commission of an offence under the Act could be exercised only by the authority concerned under such provision and by nobody else. The designated authority could not, contended Mr. Kumar abdicate the exercise of power in favour of any other authority, no matter such other authority was higher in rank to the designated authority. It was also contended that if the law prescribes a particular procedure for doing a particular thing then any such thing could be done only in the manner prescribed or not at all. Inasmuch as the procedure prescribed by law which required the approval of the competent authority to grant approval for recording the information had not been followed, the trial and conviction of the appellants in breach of a mandatory provision was legally unsustainable.

10. Mr. Yashank Adhyaru, learned Counsel for the State of Gujarat, on the other hand, contended that there was in the present cases no requirement of prior approval for recording information about the commission of offences under TADA inasmuch as the

first information reports about the two incidents were registered on 28th January, 1993 and 22nd April, 1993 whereas Section 20-A (1) was inserted in the Act subsequently on 22nd May, 1993. Alternatively it was contended by the learned counsel that the approvals granted by the Government and the Additional Police Commissioner were valid and substantially complied with the requirements prescribed under Section 20-A (1).

11. Before we deal with the contentions urged at the bar we need to sail smooth on the facts relevant to the registration of the two FIRs. The first case relevant to the blast at Mini Hira Bazar, Varaccha Road, led to registration of C.R. No.32 of 1993 not only for commission of offences under the IPC and Explosive Substances Act but also under TADA. Almost one year after the registration of the FIR, on 24th January, 1994 the Police Commissioner, Surat instructed Varaccha Police Station to remove the TADA provision from C.R. No.32 of 1993. These instructions came in the wake of a decision taken by the TADA Review Committee in its meeting held on 24th January, 1994. The instructions were carried out and TADA offences deleted from the two cases in hand. Subsequent to the deletion of TADA from C.R. No.32 of 1993, a request was made by P.C. Pandey Police Commissioner, Surat to the Home Department, Government of Gujarat for re-application of the provisions of TADA. The Police Commissioner pointed out that a Russian made hand grenade was used in the blast. Approval for re-application of TADA provisions was pursuant to the said request granted by the Additional Chief Secretary, Home Department, Government of Gujarat on 12th May, 1995 and intimated to the Additional Commissioner of Police, Surat. In his letter dated 8th May, 1995, the Police Commissioner, Surat City sought approval for reintroduction of TADA provisions in the following words:

> In the offence registered at Varacha Police Station, explosion was done by a Russian made grenade which was revealed when accused were arrested in Surat Railway P.St. O. Reg. No.I 60/93. Hence it is required that in Varacha Police Station I O.Reg. No. 32/93 sections of 302, 307, 324, 326, 120(B) of I.P.C. and Sections 3,4,5 of Explosives Substances Act and Sections 3 and 5 of Tada Act are required to be added. Hence sanction to add Sections of Tada may be given.
>
> Yours faithfully,
>
> (P.C.Pande)

Police Commissioner

Surat City

12. Approval dated 12-05-1995 granted by the Additional Chief Secretary, Home Department was pursuant to the above request communicated to the Police Commissioner, Surat City in the following words:

To

Police Commissioner

Surat City,

Surat

Subject: Varacha P.St.I.O.Reg.No.32/93 Sanction of Tada

Sir,

This is to inform you with respect to above subject regarding your fax message No. RB/100/1995 dt. 8.5.95 in the case registered at Varacha P.St.(First) O.Reg. No.32/93:-

Additional Chief Secretary, Home Department has given sanction to apply the Sections of Tada.

Yours faithfully,

Sd/- Illegible

(R.B.Thakkar)

Section Officer

Home Department (Special)

13. Insofar as the second blast that took place on Platform No.1 Surat Railway Station on 22nd April, 1993 is concerned, C.R. No.70 of 1993 registered in connection therewith was not only under the provisions of the IPC and the Explosives Substances Act but also under Sections 3 and 7 of TADA. The TADA provisions were, however, subsequently removed in this case also pursuant to the decision taken by the Government on the basis of the TADA Review Committee recommendations and the deletion intimated to the competent Court at Surat. On 12th April, 1995, however, Additional Police Commissioner Range 2, Surat City approved the re-introduction of Sections 3(1), 3 (2), 3(3), 3(4) and 5 of TADA Act to C.R. No.70 of 1993 registered in connection with the said blast. The addition was accordingly made by the investigating officer and intimated to the designated Judge appointed under the TADA. This is evident from the following passage appearing in the letter dated 13th April, 1995 addressed by the investigating officer to the designated Court:

K.C. Parmar, P.S.I. of Action Group hereby reports that:-

Section 3(1)(2)(3)(4) and Section 5 of TADA Act have been added in Surat Railway P.St. O.Reg. No. I 70/93 u/sec 307, 326, 324, 427, 120B of IPC and U/sec 3,5,7 of Explosive Substances Act. According to the new provisions of TADA Act, sanction of Additional Police Commissioner Range-2 Surat City has been obtained which is enclosed herewith the case papers.

Hence this is to inform you that Sections 3(1)(2)(3)(4) and Section 5 of TADA Act have been added in this offence which please note.

Date: 14.4.95 Sd/ - Illegible

(K.C.Parmar)

P.S.Inspector

Action Group, Surat City

14. What is interesting is that even after the provisions of TADA had already been

introduced with the approval of the Additional Police Commissioner, Range 2, Surat City, the Government appears to have been approached for grant of approval for introduction of the TADA in C.R. No.70 of 1993 which approval was granted by the Additional Chief Secretary, Home Department and conveyed to the designated court by the Assistant Police Commissioner, G Division, Surat City in terms of his letter dated 12th May, 1995. The relevant portion of the letter conveys the Additional Chief Secretary, Home Department approval for introduction of the TADA. It reads as under:

> K.K. Chudasma (I.O) Assistant Police Commissioner Surat City G Division reports that:-
>
> Sanction of Additional Chief Secretary Home Department has been received vide Fax Message No./ V2/ATK/2893/2768 Home Department, Block No.2, Sardar Bhavan, Sachivalaya, Gandhinagar dt. 15.4.95 has been received with the signature of Section Officer Home Department (Special) for application of Sections of TADA Act in Surat Railway Police Station I.O. Reg. No.70/93 registered u/sec 307, 326, 324, 427, 120(B) of IPC and u/sec. 3, 4, 5 of Explosive Substances Act. Sanction letter Fax message is enclosed along with the case papers which please note.
>
> Date:12.5.95 Sd/Illegible
>
> Received Copy (K.K. Chaudasma)
>
> Sd/- Illegible Assistant Police Commissioner
>
> Jr. Clerk G. Division, Surat City

15. It is in the light of the above evident that in C.R.No.32 of 1993 approval for recording of information regarding commission of offences under the TADA came directly from the Home Department of the Government of Gujarat. In C.R. No.70 of 1993 relating to the second blast that took place at Surat Railway Station, the State Government and the Additional Police Commissioner, Surat city approved the application of the provisions of TADA.

16. What falls for determination is whether these approvals can be said to be sufficient

compliance with the provisions of Section 20-A of TADA that reads as under:-

> 20-A Cognizance of offence.
>
> Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
>
> No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.

17. A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the Police without the prior approval of the District Superintendent of Police. The question is whether the power of approval vested in the District Superintendent of Police could be exercised by either the Government or the Additional Police Commissioner, Surat in the instant case. Our answer to that question is in the negative. The reasons are not far to seek. We say so firstly because the statute vests the grant approval in an authority specifically designated for the purpose. That being so, no one except the authority so designated, can exercise that power. Permitting exercise of the power by any other authority whether superior or inferior to the authority designated by the Statute will have the effect of re-writing the provision and defeating the legislature purpose behind the same - a course that is legally impermissible. In Joint Action Committee of Air Line Pilots Association of India (ALPAI) and Ors. V. Director General of Civil Aviation and Ors. (2011) 5 SCC 435, this Court declared that even senior officials cannot provide any guidelines or direction to the authority under the statute to act in a particular manner.

18. Secondly, because exercise of the power vested in the District Superintendent of Police under Section 20-A (1) would involve application of mind by the officer concerned to the material placed before him on the basis whereof, alone a decision whether or not information regarding commission of an offence under TADA should be recorded can be taken. Exercise of the power granting or refusing approval under Section 20-A (1) in its very nature casts a duty upon the officer concerned to evaluate

the information and determine having regard to all attendant circumstances whether or not a case for invoking the provisions of TADA is made out. Exercise of that power by anyone other than the designated authority viz. the District Superintendent of Police would amount to such other authority clutching at the jurisdiction of the designated officer, no matter such officer or authority purporting to exercise that power is superior in rank and position to the officer authorised by law to take the decision.

19. Thirdly, because if the Statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in Taylor v. Taylor (1876) 1 Ch. D426 and adopted later by the Judicial Committee in Nazir Ahmed v. King Emperor AIR 1936 PC 253 and by this Court in a series of judgments including those in Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh v. Singhara Singh and Ors. AIR 1964 SC 358, Chandra Kishore Jha v. Mahavir Prasad & Ors. 1999 (8) SC 266, Dhananjaya Reddy v. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. V. Essar Power Ltld. 2008 (4) SCC 755. The principle stated in the above decisions applies to the cases at hand not because there is any specific procedure that is prescribed by the Statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such approval might as well not have been enacted.

20. In Anirudhsinhji & Anr. v. State of Gujarat (1995) 5 SCC 302 relied upon by Mr. Sushil Kumar, this Court was dealing with a fact situation where a case was registered initially under the Arms Act. The District Superintendent of Police had instead of giving approval for recording information himself made a report to the Additional Chief Secretary asking for permission to proceed under TADA. The Deputy Director General and Additional Director General of Police also sent fax messages to the Chief Secretary requesting him to grant permission to proceed under TADA. It was on that basis that the Additional Chief Secretary, Home Department gave sanction/consent to proceed under the provisions of TADA. The question that fell for consideration before this Court was whether Section 20-A (1) was violated and, if so, whether the prosecution of the accused in that case was legally valid. Repelling the contention that the approval was valid this Court observed:

> 11. The case against the appellants originally was registered on 19-3-1995

> under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all.

21. This Court relied upon the decision in Commissioner of Police v. Gordhandas Bhanji AIR 1952 SC 16 where the Commissioner of Police had at the behest of the State Government cancelled the permission granted for construction of a cinema in Greater Bombay. The order passed by the Commissioner was quashed on the ground that the authorities concerned had vested the power to cancel in the Commissioner alone who was bound to exercise the same himself and bring to bear on the matter his own independent and unfettered judgment instead of acting at the instance of, any other party. This Court borrowed support for that view from the following passage by Wade and Forsyth in ˜Administrative Law, 7th Edition Page Nos.358-359 under the heading ˜SURRENDER ABDICTION, DICTATION and sub- heading power in the wrong hands:

> Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them....
>
> Ministers and their departments have several times fallen foul of the same rule,

no doubt equally to their surprise...

22. Anirudhsinhji (supra) was followed in Manohar Lall (dead) by Lrs. V. Ugrasen (dead) by Lrs. and Ors. (2010) 11 SCC 557 where the question that fell for consideration was whether the State Government, exercising revisional power under U.P. Urban Planning and Development Act, 1973, could take up the task of a lower statutory authority. Relying upon the view taken in Anirudhsinhji case (supra) this Court observed:

23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.

23. That Section 20-A (1) is mandatory is also no longer res integra having been settled by this Court in Rangku Dutta @ Ranjan Kumar Dutta v. State of Assam (2011) 6 SCC 358. This Court in that case held that since the provision was couched in negative terms, the same is mandatory in nature no matter the statute does not provide any penalty for disobedience. This Court observed:

> 18. It is obvious that Section 20-A(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression No after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh Principles of Statutory Interpretation, 12th Edn.

24. Relying upon Ahmad Umar Saeed Sheikh v. State of U.P. (1996) 11 SCC 61, this Court has in Ashrafkhan @ Babu Munnekhan Pathan and Anr. v. State of Maharashtra (2012) 11 SCC 606 not only held that the approval given by the Chief Secretary (Home Department) of the State Government was not a sufficient compliance with Section 20-A (1) but also that the difficulty arising out of it was not curable under Section 465 of the Code. This Court observed:

> 34. Section 465 of the Code, which falls in Chapter 35, covers cases triable by a Court of Session also. Hence, the prosecution can take shelter behind Section 465 of the Code. But Section 465 of the Code shall not be a panacea for all error, omission or irregularity. Omission to grant prior approval for registration of the case under TADA by the Superintendent of Police is not the kind of omission which is covered under Section 465 of the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects.

25. This Court also rejected the argument that grant of sanction in terms of Section 20-A(2) of the Act rendered the infirmity in the approval under Section 20-A(1) inconsequential. This Court held that the two provisions operate in different and distinct stages and that both the requirements have to be complied with for a successful prosecution. The following passage is in this regard apposite:

> 37. Both operate in different and distinct stages and, therefore, for successful prosecution both the requirements have to be complied with. We have not come across any principle nor are we inclined to lay down that in a case in which different safeguards have been provided at different stages, the adherence to the last safeguard would only be relevant and breach of other safeguards shall have no bearing on the trial. Therefore, we reject the contention of the State that the accused cannot assail their conviction on the ground of absence of approval under Section 20-A(1) of TADA by the Deputy Commissioner, when the Commissioner of Police had granted sanction under Section 20-A(2) of TADA.

26. In two subsequent decisions rendered by this Court in Mohd. Iqbal M. Shaikh & Ors. v. The State of Maharashtra (1998) 4 SCC 494 and Manjit Singh @ Mange CBI, through its SP: (2011) 11 SCC 578 a slightly liberal view has been taken but having regard to the fact that Anirudhsinhji case (supra) was decided by a three-Judge Bench of this Court, we do not see any compelling reason to depart from the ratio of that decision especially when the view taken in that decision proceeds on sound and well settled legal principles to which we have briefly adverted in the earlier part of this judgment.

27. The upshot of the above discussion, therefore, is that the requirement of a mandatory statutory provision having been violated, the trial and conviction of the

petitioners for offences under the TADA must be held to have been vitiated on that account. The argument that the first information report regarding the two incidents had been registered before the introduction of Section 20-A (1) in the statute book making approval of the competent authority unnecessary has not impressed us. It is true that the two incidents had taken place and cases registered regarding the same under TADA before Section 20-A (1) came on the statute book, but the fact remains that the provisions of TADA were removed from the reports pursuant to the recommendations of the Review Committee. By the time fresh evidence came to light requiring re-introduction of the provisions of the Act approval for recording information regarding commission of offences under TADA, had become necessary. The fact that such approval was considered necessary even by the investigating agency and was prayed for, only shows that the authorities were aware of the requirement of law and had consciously attempted to comply with the said requirement no matter by applying for such approval to an authority not competent to grant the same.

28. Mr. Yashank Adhyaru next argued that even if the provisions of TADA were not available against the appellants the prosecution could still succeed in sustaining the conviction of the appellants under IPC and the Explosive Substances Act. That would indeed be so, provided there is enough evidence on record to support that course of action. When called upon to show evidence that could warrant conviction of the appellants independent of provisions of TADA and the confessional statements of the accused allegedly recorded under the said provisions, Mr. Yashank Adhyaru fairly conceded that while there may be evidence regarding recovery of some of the weapons the same would not by itself be sufficient to justify the conviction of the appellants. Even otherwise the recovery of the weapons is also not satisfactorily proved by cogent and reliable evidence. Such being the position, we have no manner of doubt left that the conviction of the appellants cannot be sustained.

29. We accordingly allow Criminal Appeals No.92 of 2009, 110 of 2009 and 658-659 of 2009 and set aside the orders of conviction passed against the appellants who shall be released from custody forthwith unless required in any other case. Criminal Appeals No.303-304 of 2009, 305 of 2009 and 432- 433 of 2009 filed by the State of Gujarat shall, however, stand dismissed.