Gopal Upadhyaya And Ors. vs Union Of India (Uoi) And Ors. on 4 December, 1986

Equivalent citations: AIR1987SC413, 1987LABLC236, (1995)IIILLJ465SC, 1986(2)SCALE998, 1986SUPP(1)SCC501, 1986(2)SLJ998(SC), 1987(1)UJ51(SC), AIR 1987 SUPREME COURT 413, (1987) 54 FACLR 75

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Bench: O. Chinnappa Reddy, V. Khalid

JUDGMENT

O. Chinnappa Reddy, J.

1. The Army Medical Corps Civilian Employees Union, Lucknow was registered on January 27, 1964 with the Registrar of Trade Unions, Uttar Pradesh under the provisions of the Indian Trade Unions Act. The members of the Union are carpenters, tailors, bootmakers, gardeners, sweepers, cooks, messengers etc. who may be compendiously described as 'Camp-followers' of the Army. The registration of the Trade Union was cancelled on January 6, 1978 by the Registrar of Trade Unions on the ground that such registration had ceased to be valid in view of the decision of the Supreme Court in Civil Appeal No. 1821 of 1974. It was said that the registration was initially granted under a mistake and it was therefore, cancelled. This order of cancellation of registration of the Union is challenged in these petitions under Article 32 of the Constitution.

2. The submission of Shri Anil Kumar Gupta, learned Counsel for the petitioners is that the members of the Union who are civilian employees of the Army Medical Corps are not subject to the Army Act and the rules made thereunder and Article 33 of the Constitution has no application to them. It is not disputed that if the members of the Union are subject to the Army Act and the rules made thereunder, the Union cannot be validly registered. Sri Gupta submits that unless the members 6f the Union are brought within the compass of Section 2(1)(i) of the Army Act, it is riot possible to hold them subject to the Army Act. Section 2(1)(i) refers to "Persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army." The question there-fore, is whether these 'Camp-followers' fall within Section 2(1)(i) and are subject to the Army Act and the rules made thereunder. Shri Gupta argues that they are not, unless they are 'on active service, in camp, on the march or any frontier post specified by Central Government in this behalf.' On the other hand the learned Additional Solicitor General urges that in order to fall within Section 2(1)(i), it is not necessary that the Camp-followers should themselves be 'on active service, in camp, on the

march or at any frontier post' but that it is enough if they can be required to follow or accompany armed personnel who are 'on active service, in camp, on the march or at any frontier post'. It is unnecessary for us to consider the merits of the submissions since the question is no longer res integra. It is concluded by the decision of a (near) Constitution bench consisting of A.N. Ray, CJ., Beg, Sarkaria, Shinghal, J.J. in Ous Kutilingal Aclmdan Nair v. Union of India and Ors. . The question in that case pertained to the 'formation of Unions of "non-combatants Un-enrolled" consisting of cooks, chowkidars, larkers, batbers, carpenters, mechanics, boot-makers, tailors etc. Dealing with the contention that they were not subject to Army Act and therefore, their freedom of association guaranteed by Article 19(1)(c) of the Constitution could be curtailed, the Court said, Article 33 of the Constitution provides an exception to the preceding Articles in Part III including Article 19(1)(c). By Article 33, Parliament is empowered to enact law determining to what extent any of the rights conferred by Part III shall, in their application, to the members of the Armed Forces or Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

In enacting the Army Act, 1950, in so far as it restricts or abrogates any of the fundamental rights of the members of the Armed Forces, Parliament derives its competence from Article 33 of the Constitution. Section 2(1) of the Act enumerates the persons who are subject to the operation of this Act, According to Sub-clause (i) of this section, persons governed by the Act, include "persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post, specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion: of the regular army.

The members of the Unions represented by the appellants fall within this category. It is their duty to follow or accompany the Armed personnel on active service, or in camp or on the march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the Armed Forces. They answer the description of the "members of the Armed Forces" within the contemplation of Article 33. Consequently, by virtue of Section 21 of the Army Act, the Central Government was competent by notification to make rules restricting or curtailing their fundamental rights under Article 19(1)(c).

3. The decision appears to be conclusive.

4. The learned Counsel however invites our attention to the Judgments of the learned single Judge and the Division bench of High Court which were confirmed by Supreme Court in that case and urges that the real question there was whether the Fundamental Right guaranteed by Article 19(1)(c) of the Constitution could be claimed in view of the notifications issued under Section 4 of the Defence of India Act and the Army rules. We are unable to appreciate this submission. When a question is answered expressly or by necessary implication we 4 cannot ignore the answer by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. That is not our understanding of the Law of precedents. What the judges expressly decided or what they must be considered to have decided by necessary implication by 4 reference to the facts stated by the Judges themselves are what constitute precedents. We cannot traverse beyond the judgment, ignoring what has been said in the judgment.

We have therefore, no option but to dismiss the writ petition.