DELHI POLICE NON-GAZETTED KARMCHARI SANGH & ORS.

v.

UNION OF INDIA & ORS.

NOVEMBER 20, 1986

[V. KHALID AND G.L. OZA, J.J.]

Constitution of India, 1950, Article 19(1)(c) and 33—Right to form an association by the members of the Police force—Non-gazetted Karmachari Sangh was granted recognition on 12.12.1986 after the coming into effect of the Police Forces (Restriction of Rights) Act No. 33 of 1966—The Police Forces (Restriction of Rights) Rules 1966 were made on the same date which was amended by Amendment Rules, 1970—The Association was derecognised in terms of Rule 11 of the Amended Rules by circular dated 1.4.1971—Whether the Act, the Rules as amended and the circular dated 1.4.1971 are ultra vires the Constitution and opposed to Article 19(1)(c).

The non-gazetted members of the Delhi Police Force wanted to form an association of their own and for that purpose constituted the Karmachari Union in 1966 and applied for its registration under the Trade Union Act, 1926 and this was refused. After the coming into effect from 2.12.1966 of the Police Force (Restriction of Rights) Act, 33 of 1966 another, application for recognition was again made on 9.12.1966 which was granted on 12.12.1966. The non-gazetted members of the Delhi Police Force were permitted to become members of the Sangh. The Police Force (Restriction of Rights) Rules, 1966 made by the Central Government on 12.12.1966 were amended by the Amendment Rules of 1970. Rule 11 thereof provides for revocation of the recognition granted to an association, if the said associations articles are not in conformity with the Rules or are not brought in conformity with the provisions of the amended Rules within a period of 30 days. Since the Articles of Association of the appellant Sangh contained a number of provisions not in conformity with the rules and since the Sangh failed to bring the same in conformity, by a circular dated 1.4.1971 the recognition granted was revoked. The appellants, therefore, filed a writ petition before the Delhi High Court challenging the constitutional validity of the Act, Rules and the impugned circular. The writ petition having been rejected the appellants have come by way of special leave.

Dismissing the appeal, the Court,

HELD: 1.1 The Police Force (Restriction of Rights) Act (33 of) 1966, the Police Force (Restriction of Rights) Rules 1966 (as amended by the 1970 Rules) and the circular dated 1.4.1971 are all constitutionally valid. They do not offend the provisions of Articles 14 and 19(1)(c) of the Constitution. [350 C, 355 E-F]

1.2 The right under Article 19(1)(c) is not absolute. Article 19(4) specifically empowers the State to make any law to fetter, abridge or abrogate any of the rights under Article 19(1)(c) in the interest of public order and other considerations. While the right to freedom of association is fundamental, recognition of such association is not a fundamental rights and the Parliament can by law regulate the working of such associations by imposing conditions and restrictions on such functions. [355 E, 356 F]

1.3 The fundamental rights guaranteed by Article 19(1)(c) can be claimed by Government servants. A government servant may not lose his right by joining government service. Article 33 which confers power on the Parliament to abridge or abrogate such rights in their application to the Armed Forces and other similar forces shows that such rights are available to all citizens, including government servants. What has happened in this case is only to impose reasonable restrictions in the interest of discipline and public order. [356 G-H]

1.4 Rule 11 read with Rule 3(c) of the Amended Police Force (Restriction of Rights) Rules, 1966 has to be judged keeping in mind the character of the employees to whom it applies. It is true that the rules impose a restriction on the right to form association. It virtually compels a government servant to withdraw his membership of the association as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the government. If the association obtains recognition and continues to enjoy it, government servants can become members of the said association, if the said association does not secure recognition from the government or recognition granted to it is withdrawn, government servants must cease to be members of the said association. That is the plain effect of the impugned rule. These rules are protected by Articles 33 and 19(4) of the Constitution. Besides, it is settled law that the right guaranteed by Article 19(1)(c) to form associations does not involve a guaranteed right to recognition also. [357 A-C]

1.5 Section 3 of the Police Force (Restriction of Rights) Act permits the rule making authority to define any group of Police Force that can form an Association. It also gives power to prescribe the nature of activity that each such association of members can indulge in. It, therefore, follows that if rules can be

framed defining this aspect, a rule can also be framed enabling the authorities to revoke or cancel recognition once accorded, if the activities offended the rules. Besides the classification based on ranking has its own rationale behind it. The Court is dealing with a Force in which discipline is the most important pre-requisite. Non-gazetted officers consist of men of all ranks; the lowest cadre and officers who are superior to them. If all the non-gazetted officers are grouped together irrespective of rank, it is bound to affect discipline. It was perhaps, realising the need to preserve discipline that the changes in the rule were effected. [357E, G]

Damyanti Naranga v. The Union of India & Ors., [1971] 3 SCR 840; Ous Kutilingal Achudan Nair & Ors., v. Union of India & Ors., [1976] 2 SCR 769; and Raghubar Dayal Jai Prakash v. The Union of India & Ors., [1962] 3 SCR 547 followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 222 (N) of 1973.

From the Judgment and Order dated 13.3.1972 of the Delhi High Court in Civil Writ No. 731 of 1971.

M.K. Dua, Aman Vachher and S.K. Mehta for the Appellants.

B. Datta, Additional Solicitor General, G.D. Gupta and Mr. C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

KHALID, J. 1. This appeal by certificate is directed against the Judgment of a Division Bench of the Delhi High Court, in C.W. No. 731 of 1971. The prayer in the Writ Petition is for the issuance of an appropriate writ, order or direction declaring (a) the Police Forces (Restriction of Rights) Act No. 33 of 1966 (for short the Act) as ultra vires the Constitution,

(b) the Police Forces (Restriction of Rights) Rules, 1966 and Police Forces (Restriction of Rights) Amendment Rules, 1970 (for short the Rules) as ultra vires of Act 33 of 1966 and the Constitution of India,

(c) that the Circular dated 1st April, 1971 as invalid, illegal, ultra vires, null and void and (d) for a declaration that the Delhi Police Non Gazetted Karmchari Sangh, petitioner No. 1 in the Writ Petition, is a legally and validly constituted service organisation.

2. The first appellant is the Non-Gazetted Karmachari Sangh (for short the 'Sangh') and the appellant Nos. 2 to 7, its members. The High Court dismissed the petition holding that the challenge was not sustainable and that neither the Act nor the Rules violated any provisions of the Constitution.

The High Court dealt at length with the preliminary objections that a challenge based on the violation of any fundamental right was not permissible in view of the emergency declared by the President of India, in December, 1977. This need not detain us now in this Judgment.

3. The appellants' case is that the Act referred above violates Article 19(1)(c) of the Constitution of India and that the restrictions imposed by it, being arbitrary, violates Article 14 of the Constitution. The Non-Gazetted members of the Delhi Police Force wanted to form an organisation of their own and for that purpose constituted the Karmachari Union in 1966 and applied for its registration under the Trade Union Act, 1926. Initially the registration asked for was declined. Then Act 33 of 1966 was enacted. It came into force on 2nd December, 1966. An application for recognition was again made on 9th December, 1966. Recognition was granted by the Central Government on 12th December, 1966. The Non-Gazetted members of the Delhi Police Force were permitted to become members of the Sangh. On 12th December, 1966, the Central Government made rules under the Act which were amended in December, 1970. The Circular in question was issued under these rules. The Circular attempts to derecognise the Sangh. This occassioned the filing of the writ petition.

4. Before considering the rival contentions urged before us, it would be useful to refer to the salient features of the Act to appreciate its ambit and the restrictions imposed by its provisions. The Act was enacted to delineate the restrictions imposed of the rights conferred by part III of the Constitution, in their application to the members of the forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The Parliament obviously has this power under Article 33 of the Constitution of India. The provisions of the Act seek to place certain restrictions on members of the police force in exercise of their fundamental rights guaranteed by Article 19(1)(c) to form Association or Unions. Section 3 of the Act reads as follows:

> "3(1) No member of a police force shall without the express sanction of the Central Government or of the prescribed authority— (a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political

associations; or (b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the force of which he is a member or is not of a purely social, recretional or religious nature; or (c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recretional or religious nature under clause (b) of this subsection, the decision of the Central Government thereon shall be final.

(2) No member of a police force shall participate in or address, any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed."

Section 4 of the Act provides for penalties if Section 3 is contravened by any person. Section 5 gives power to the Central Government by notification in the official gazette, to amend the schedule by including therein any other enactment relating to a force charged with the maintenance of public order or omit therefrom any enactment already specified therein. Section 6 gives the rule making power to the Central Government.

5. The only contention that now survives is whether the impugned statute, rules and orders are violative of the rights of the appellants guaranteed under Article 19(1)(c) of the Constitution of India. This appeal could be disposed of by a short Order. Appellants No. 2 to 7 are no longer in service. They have been dismissed. As such they do not have the necessary locus standi to sustain this petition. But the appellants' counsel submitted that the first petitioner—the Sangh, was still interested in pursuing this appeal and that persuaded us to hear the appeal on merits.

6. It is true that recognition was given to the Sangh originally. Subsequently by order dated 1st April, 1971, the Sangh was derecognized. This was pursuant to the amended rules. Rule 3 provided that "no member of the police forces shall participate in, or address, any meeting or take part in any demonstration organised by any body of persons (a) for the purpose of protesting against any of the provisions of the Act or these rules or any other

A rules made under the Act; or (b) for the purpose of protesting against any disciplinary action taken proposed to be taken against him or against any other member of a police force; or (c) for any purpose connected with any matter pertaining to his remuneration or other conditions of service or his condition of work or living condition, or the remuneration, other conditions, of any other member or members of a police force.

B

"Provided that nothing contained in clause(c) shall preclude a member of a police force from participating in a meeting convened by an association of which he is a member and which has been accorded sanction under sub-section (1) of section 3 of the Act, where such meeting is in pursuance of or for the furtherance of, the objects of such association."

C

The above rules were amended by a notification dated 19th December, 1970 the material change for our purpose being an amendment in the proviso to clause (c) of rule 3. The original proviso to clause(c) was substituted by another proviso which reads as follows:

D

"Provided that nothing contained in clause (c) shall preclude a member of a police force from participating in a meeting—(i) which is convened by an association of police-officers of the *the same rank of which he is a member and which has been granted recognition under clause (b) of sub-section (1) of section 3* of the Act;

E

(ii) which has been specifically provided for in the articles of association or/and has been, by general or special order, permitted by the Inspector General of Police having regard to the object of such meeting and other relevant factors; and

F

(iv) which has been convened to consider the agenda circulated to all concerned according to the relevant provisions of the articles of association, after giving intimation in advance to the Inspector General of Police or an officer nominated by him." (Emphasis supplied).

G

Rule 5 was added to the Rules by virtue of which minutes had to be recorded of the meetings of a recognised association. The Inspector General of Police could send observers by virtue of rule 6 to such meetings. Outsiders were prohibited from attending the meetings of the association without permission of the Inspector General of Police by Rule 7. Rules 8, 9 & 11 may also be usefully read:

H

"8. Recognition: Members of police force belonging to the same rank desiring to form an association may make an application for the grant of recognition under clause (b) of sub-section (1) of section 3 and such application shall be in writing under the hand of a representation of such association addressed to the Inspector General of Police who shall be the authority to grant, refuse or revoke such recognition; A B

Provided that before refusing or revoking recognition, the Association shall be given a reasonable opportunity of making representation against the proposed action."

"9. Suspension of recognition: The Inspector General of Police may in the interests of the general public or for the maintenance of discipline in the police-force and with the prior approval of the Central Government, the State Government or as the case may be the Administrator of the Union Territory suspend the recognition granted under rule 8 for a period not exceeding three months which may be extended for a further period of three months by the Central Government, State Government or as the case may be the Administrator of the Union Territory so however that the total period for which such recognition may be suspended shall, not, in any case, exceed six months." C D

"11. Special provision regarding recognition already granted: E

Recognition granted prior to the commencement of the Police Forces (Restriction of Rights) Amendment Rules, 1970, to any association the articles of association of which are not in conformity with these rules shall, unless the said articles of association are brought in conformity with the provisions of these rules within a period of thirty days, stand revoked on the expiry of the said period." F

7. It is the change effected by the new Proviso to Rule 3(c) which has come in for attack at the hands of the appellants. Previously all non-gazetted officers of the Delhi Police Department could be members of the Sangh. Now, the amended proviso to rule 3(c) mandates that only members of the Police Force having the same rank could constitute themselves into one Association. The effect of this amended rule is that the Sangh will have to be composed of various splinter associations consisting of members holding different ranks. This according to the appellants violates not only Article 19(1)(c) which protects freedom of association, but also the provisions of the Act. G H

A The immediate provocation for filing the writ petition was the Circular by which the recognition granted to the Sangh was revoked. The operative part of the Circular reads as follows:

> "Rule 11 of the Police Force (Restriction of Rights) Amendment Rules, 1970 published vide extraordinary Gazette of India notification No. GSR-2049 dated 19-12-70 lays down that recognition granted prior to the commencement of these rules, to any association the articles of which are not in conformity with these rules shall unless the articles are brought in conformity with the provisions of these rules within a period of 30 days, stand revoked on the expiry of the said period.
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> 2. Whereas the Constitution of the Delhi Police Non-Gazetted Karmchari Sangh which was granted recognition vide Government of India, Ministry of Home Affairs letter No.8/70/66-P.I., dated 12-12-66 and which contains a number of provisions not in conformity with the above rules, the recognition already granted to the Delhi Police Non-Gazetted Karmachari Sangh, stands revoked.
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> 3. This may be brought to the notice of all ranks.
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> 4. A copy of this circular may be published in the Delhi Police Gazette."

The appellants' counsel submits that recognition of the association carries with it the right to continue the association as such. It is a right flowing from the fact of recognition. To derecognise the association in effect offends against the freedom of association. It is urged that once the Government had granted recognition to the Sangh and approved its constitution neither the Parliament nor any delegated authority can take away that recognition or dictate to the association who could be its members. The right available to the members of the association at the commencement should continue as such without any hindrance.

8. Before considering the questions of law raised by the appellants' counsel with reference to the decided cases, it would be useful to bear in mind the fact that this association consists of members of Police Force who by virtue of this fact alone stands on a different footing from other associations. The Constitution of India has taken care to lay down limitations on such associations from exercising rights under Article 19(1)(c). Article 33 read with

Article 19(4) of the Constitution offers an effective reply to the contention raised by the appellants. Article 33 reads as follows:

> "Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abroagated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Article 19(4) reads as follws:

> "Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

That the Sangh and its members come within the ambit of Article 33 cannot be disputed. The provisions of the Act and rules taking away or abridging the freedom of association have been made strictly in conformity with Article 33. The right under Article 19(1)(c) is not absolute. Article 19(4) specifically empowers the State to make any law to fetter, abridge or abrogate any of the rights under Article 19(1)(c) in the interest of public order and other considerations. Thus the attack against the Act and rules can be successfully met with reference to these two Articles as members of the Police Force, like the appellants herein, are at a less advantageous position, curtailment of whose rights under Article 19(1)(c) comes squarely within Article 33 in the interest of discipline and public order. This conclusion of ours is sufficient to dispose of this appeal. However, we will deal with the submissions made before us for the completeness of the Judgment.

9. The scope of Article 19(1)(c) came up for consideration before this Court in *Damyanti Naranga* v. *The Union of India & Ors.*, [1971] 3 SCR 840. The question related to the Hindi Sahitya Sammelan, a Society registered under the Societies Registration Act, 1860. The Parliament enacted the Hindi Sahitya Sammelan Act under which outsiders were permitted to become members of the Sammelan without the volition of the original members. This was challenged and this Court held that any law altering the composition of the Association compulsorily will be a breach of the right to form the association because it violated the composite right of forming an association and the right to continue it as the original members desired it.

10. Here we have an entirely different situation since we are dealing with a group distinct in its nature and composition from others. Here we are dealing with a force that is invested with powers to maintain public order. Article 33 enables Parliament to restrict or abrogate the fundamental rights in their relation to the Armed Forces including Police Force. In *Ous Kutilingal Achudan Nair & Ors.*, v. *Union India & Ors.*, [1976] 2 SCR 769 this Court had to consider two questions; whether the employees of the defence establishment such as cooks, barbers and like civil employees were "members of the Armed Forces" and if so whether they could be validly deprived of their right to form unions in violation of Article 19(1)(c). This Court held that they fell within the category of members of the Armed Forces and that the Central Government was competent by notification to make rules restricting or curtailing their right to form associations, Article 19(1)(c) not withstanding.

11. In *Raghubar Dayal Jai Prakash* v. *The Union of India and Ors.*, [1962] 3 SCR 547. this Court had to deal with this question in relation to the functions of an incorporated body the objects of which were, interalia, to regulate forward transactions in the sale and purchase of various commodities, Freedom of association is a fundamental right. It was contended that if a law regulated the recognition of an association under certain conditions subject to which alone recognition could be accorded or continued, such conditions were bad. This Court had to consider whether the freedom of association implied or involved a guaranteed right to recognition also. The contention was that if the object of an association was lawful, no restriction could be placed upon it except in the interest of public order and that freedom to form an association carried with it the right to determine its internal arrangements also. Repelling this contention this Court held that restrictions cannot be imposed by statute for the purpose of regulating control of such associations. While the right to freedom of association is fundamental, recognition of such association is not a fundamental right and the Parliament can by law regulate the working of such associations by imposing conditions and restrictions on such functions.

12. It cannot be disputed that the fundamental rights guaranteed by Article 19(1)(c) can be claimed by Government servants. A Government servant may not lose its right by joining Government service. Article 33 which confers power on the Parliament to abridge or abrogate such rights in their application to the Armed Forces and other similar forces shows that such rights are available to all citizens, including Government servants. But it is, however, necessary to remember that Article 19 confers fundamental rights which are not absolute but are subject to reasonable restrictions. What has happened in this case is only to impose reasonable restrictions in the interest of discipline and public order.

13. The validity of the impugned rule has to be judged keeping in mind the character of the employees we are dealing with. It is true that the rules impose a restriction on the right to form association. It virtually compels a Government servant to withdraw his membership of the associaion as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government. If the association affairs recognition and continues to enjoy it, Government servants can become members of the said association; if the said association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be members of the said association. That is the plain effect of the impugned rule. These rules are protected by Articles 33 and 19(4) of the Constitution. Besides, it is settled law that the right guaranteed by Article 19(1)(c) to form associations does not involve a guaranteed right to recognition also.

14. The main grievance of the appellants is that the first appellant—Sangh when recognised, comprised of Police Officers of various ranks, the common factor being that all its members were non-gazetted police officers. This composition was changed by the impugned rules. Not only is the composition changed; the entire Sangh stood derecognised for failure to alter its constitution complying with the new rules. This attack cannot be sustained. Section 3 of the Act permits the rule making authority to define any group of Police Force that can form an Association. It also gives power to prescribe the nature of activity that each such association of members can indulge in. It, therefore, follows that if rules can be framed defining this aspect, a rule can also be framed enabling the authorities to revoked or cancel recognition once accorded, if the activities offended the rules.

15. The further grievance of the appellant is that non-gazetted officers who once formed one block have been further divided with reference to ranks and that this again is an inroad into their right under Article 19(1)(c). This submission has been already met. Besides, this classification based on ranking has its own rationale behind it. We are dealing with a Force in which discipline is the most important pre-requisite. Non-gazetted officers consist of men of all ranks; the lowest cadre and officers who are superior to them. If all the non-gazetted officers are grouped together irrespective of rank, it is bound to affect discipline. It was perhaps, realising the need to preserve discipline that the changes in the rule were effected. We are not satisfied that there has been violation of any law in doing so.

A On a careful consideration of the questions involved in this appeal, we hold that the High Court was right in its decision. We accordingly dismiss the appeal.

S.R. Appeal dismissed.

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