

Lt. Col. M. L. Kohli

Vs

Union of India and Others

Writ Petition No. 548 of 1974, Criminal Appeal No. 192 of 1974 and S.L.P. (Civil) No. 2760 of 1974

(P. K. Goswami, V. R. Krishna Iyer, R. S. Sarkaria JJ )

16.01.1975

JUDGMENT

KRISHNA IYER, J. -

1. The petitioner challenges the constitutionality of the Army Act with specific reference to certain provisions, particularly Section 123, and according to him, Section 33 does not cover ex-servicemen who are not serving members of the defence forces. Mr. Mahajan, appearing for the petitioner, argues that his client falls in this category and therefore cannot be tried by court materials. As the case proceeded, Counsel chose to pray for permission to withdraw the three cases. We permit him to withdraw them.

2. Independently of the petitioner withdrawing the proceedings instituted by him in this Court, the Additional Solicitor-General, appearing for the Union of India, states, at the suggestion of the Court, that his client may not have any objection to making two ameliorative gestures : firstly, acting within the ambit of Regulation 392(k) of the Defence Services Regulations the concerned military authority may be inclined to direct that the petitioner be not kept in custody or close arrest, subject to reasonable conditions invite custody being taken of the person of the petitioner). He will be enlarged on this basis. Secondly, he submitted that according to his instructions, the petitioner is already being defended by an advocate, (the denial of which right was stated to be a serious grievance by Mr. Mahajan). Assuming that there is no lawyer of his own choice defending him at the moment, Counsel for the State has no objection to the petitioner appointing one of his own within two weeks from today. This is no special concession outside the Army Rules because, even under the existing Rules, there is a discretion for the concerned authority to permit defence through an advocate. Thus the harsher grievances alleged by the petitioner are happily resolved. With these observations, we permit the petitioner in Writ Petition No. 548 of 1974 and Special Leave Petition (Civil) No. 2760 of 1974 and appellant in Criminal Appeal No. 192 of 1974 to withdraw all the proceedings.

3. The interim orders passed previously will stand vacated.

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