

Ous Kutilingal Achudan Nair and Others

Vs

Union of India and Others

Civil Appeal No. 1821 of 1974

(M. H. Geg, R. S. Sarkaria, P. N. Shinghal JJ)

20.11.1975

JUDGMENT

SARKARIA, J. -

1. This is an appeal by special leave against a judgment of the High Court of Andhra Pradesh.
2. The appellants are office-bearers of the civil employees unions in the various ventures of the defence establishments of Secunderabad and Hyderabad. They filed a writ petition in the High court to impugn the authority of the Commandants (respondents Nos. 2 and 3 herein) in declaring the unions, represented by the appellants as unlawful associations.
3. The Registrar of Trade Unions had issued certificates of registration to the four union represented by the appellants between 1954 and 1970. The General Secretary of Class IV Civil Employees Union, Belaram, Secunderabad was informed, per letter dated May 12, 1971, by the Under Secretary of the Government of India, Ministry of Defence that their unions could not be granted recognition as these employees being in the training establishments, were not entitled to form, unions. The disciplinary action be not taken against them for forming this unlawful association.
4. The main ground taken in the petition was that the impugned action was violative of their fundamental right to form associations or unions conferred by Article 19(1)(c) of the Constitution.
5. In their reply-affidavit, the respondents averred that the civilian non-combatants in the defence establishments were governed by the Army Act and were duly prohibited by Rules framed thereunder from joining or forming a trade union; that the associations in question were formed in breach of that prohibition, and were therefore, validly declared illegal.
6. The learned Judge of the High Court, who tried the petition, held that the right of the appellants to form associations given by Articles 19(1)(c) of the Constitution, had been lawfully taken away. He accordingly dismissed the petition.
7. The appellants carried an appeal to the appellate Bench of the High Court. The Bench dismissed the appeal holding that the impugned action was no without jurisdiction.
8. The main contention of Mr. K. R. Nambiyar, appearing for the appellants is that the members of the unions represented by the appellants, though attached to the defence establishments, are 'civilians', designated as "non-combatants unenrolled". They include cooks, chowkidars, laskars, barbers, carpenters, mechanics, bootmakers, tailors, etc. They are governed by the Civil Service

Regulations for purposes of discipline, leave, pay, etc. and are also eligible to serve upto the age of 60 years unlike that of the members of the armed forces. In view of these admitted facts proceeds the argument, these categories of civilian employees, attached to the defence establishments, could not be validly called "members of the armed forces" covered by Article 33 of the Constitution. The points sought to be made out are, that the members of the appellants unions are not subject to the Army Act as they do not fall under any of the categories enumerated in sub-clauses (a) to (i) of Section 2(1) of the Army Act, 1950, and that the impugned notifications are ultra vires the Army Act and are struck Articles 19(1)(c) and 33 of the Constitution.

9. For reasons that follow, the contentions must be repelled.

10. Article 33 of the Constitution provides an exception to the preceding articles in Part III including Article 19 (1)(c). By Articles 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.

11. 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 Articles 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.

12. The members of the unions represented by the appellants obviously 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 Regulation, 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).

13. Rule 19(ii) of the Army Rules, 1954, imposes a restriction on the fundamental rights in these terms :

No persons subject to the Act shall without the express sanction of the Central Government :

#(i) \* \* \* \*##

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

14. In exercise of its powers under Section 4 of the Defence of India Act, the Government of India has by notification dated February 11, 1972, provided that all persons not being members of the armed forces of the Union, who are attached to or employed with or following the regular army shall be subject to the military law. The Army Act, 1950, has also been made applicable to them. By another notification dated February 23, 1972, issued under Rule 79 of the Army Rules, civilian

employees of the training establishments and military hospitals have been taken out of the purview of the Industrial Disputes Act.

15. Section 9 of the Army Act further empowers the Central Government to declare by notification, persons not covered by sub-section (i) of Section 3 also as persons on active service.

16. In view of these notifications issued under Section 4 of the Defence of India Act and the Army Rules, the appellants can no longer claim any fundamental right under Article 19(1) (c) of the Constitution.

17. The appeal fails and is dismissed. There will be no order as to costs.

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