

(2005) 08 DEL CK 0120

In the Delhi High Court

Case No : Writ Petition (C) 4088 of 2004

Air Vice Marshal J.S. Kumar (Retd.)

APPELLANT

Vs

Governing Council of Air Force Sports Complex and Another

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2003) 123 DLT 409

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : H.L. Tiku, Kamal Nizhawan and H.K. Gulathi and Yasmeet, for the Appellant; Rekha Palli, for the Respondent

Judgement

Vikramajit Sen, J.—The Respondent's decision dated 10th October, 2003 to cancel the Membership of the Petitioner to the Air Force Sports Complex/Golf Club is in issue in this petition.

2. Earlier, CW 7439/2002 had been filed which was disposed of by this Court on 8.9.2003 setting aside the impugned order dated 9.9.2001 while maintaining the suspension of the Membership of the Petitioner.

3. Thereafter, a Show Cause Notice dated 18.9.2003 has been issued to the Petitioner who filed his response thereto dated 26.9.2003. After considering this response the Respondents have passed the impugned Order dated 10.10.2003 which has been assailed by Mr. H.L. Tiku, learned Senior counsel on various grounds.

4. It has been contended on behalf of Respondents that it is always open to withdraw a privilege granted to any person. This contention cannot be accepted since a member of a Golf Club or Course does not avail of a privilege but exercises his right to use all facilities of the Club/Course for which he pays a subscription. I also find no merit in the contention of Ms. Rekha Palli, learned counsel for the Respondents, that Respondents would not be amenable to writ

jurisdiction of his Court as it would not constitute an Authority as envisaged under Article 12 of the Constitution. Invaluable Government land is being occupied and utilised by the Respondents and, Therefore, its every action should not be tainted as arbitrary and illegal. There may be no justification for permitting the user of this invaluable piece of land, in the heart of the metropolis or in cantonment areas, were it not perceived to be conducive for the well-being of our armed personnel.

5. It would be appropriate to reproduce the relevant rules of the Air Force Golf Course at this stage: Termination of Membership 8. Membership may be terminated by the Chairman/Governing Council or Managing Committee or Captain of the Course, as applicable, for any of the following reasons : -

- (a) On members request, in writing at least two weeks before the close of the month in which applied. (By the Captain).
- (b) Non-payment of dues for three successive billing periods (three months) (By Captain)
- (c) For misconduct, breach of rules or any act likely to affect the reputation of the course and/or persistent infringement of the rules and bye-laws. (By the Chairman on the recommendations of the Captain).
- (d) For not playing/practicing golf for a period of three months without intimating the Course in advance. (By Chairman).
- (e) Without assigning any reason, whatsoever at the discretion of the Chairman/Governing Council.

Reliance has been placed by the Respondents on sub-clauses (c) and (e) for termination of the Petitioner's membership. The Respondents would be well advised to reconsider the wordings of Rule 8 of Air Force Golf Course so as not to invest absolute discretionary powers with the Chairman/Governing Council. We are living and working in a legal regime which insists that every Authority, be it never so high, is not above the law. It is too late in the day to allow any person to take a decision for which no reasons need be assigned. This would render the decision arbitrary, per se. Fortunately for the Respondents, this shortcoming does not arise in the present case.

6. On the strength of Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P., Hyderabad, , it has firstly been contended that "in our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged". Reliance has also been placed on Gulab Chand Sharma Vs. H.P. Sharma etc., for this very proposition of law. These are basic tenets of law for which reference to precedents is hardly necessary. However, in this case the rules pertaining to membership do not state that only a person guilty of commission of a criminal offence is liable for the cancellation of his membership. This argument does not

appear to be relevant.

7. Secondly, Mr. Tiku, has contended that the Respondent has predicated its decision on Newspaper reports. He has drawn attention to the observations of the Hon''ble Supreme Court in State of Maharashtra Vs. Rajendra Jawanmal Gandhi, to the effect that a trial by press, electronic media or public agitation is the very antithesis of the rule of law, and that it can very often lead to a miscarriage of justice which every Judge should guard against. Learned counsel for the Respondent has, however, clarified that the Respondents have not based their case on Newspaper reports. The Respondents have acted on the position adopted by the Central Bureau of Investigation (CBI) and have taken into perspective the undeniable fact of the Petitioner having been arrested on 26.7.2001 and his immediate incarceration for almost one month. It was this fact, which prevailed on the Respondents to terminate the Membership of the Petitioner by the decision in September, 2001 and subsequently on 10.10.2003. The argument on behalf of the Petitioner is, Therefore, rejected, since the Respondents have not rested their case on press reports alone.

8. The third contention of Mr. Tiku is that the mandates of natural justice have been violated as would become evident on a reading of the second Show Cause Notice dated 18.9.2003. In doing so he has emphasised the following recital -"AND WHEREAS; on 08 Sep 01, the Governing Council of Air Force Sports Complex, after deliberation invoked provisions of Rule 8 of the Rules and Bye Laws of the Air Force Sports Complex and decided to terminate your membership due to your alleged involvement in criminal offences and corrupt practices as reported in the print media and to avoid the possibility of your interaction with other serving Air Force officers utilizing facilities of the said Sports Complex." Mr. Tiku's submission is that if the preferred view is that the Respondents have not laid their entire case on press reports, the Petitioner should have been given clear notice that the Respondents case rested on the actions of the CBI. The Show Cues Notice dated 18.9.2003 also specifically mentions the fact that on 26.7.2001 the Petitioner was taken into custody by the CBI and that the arrest was coupled with interrogation by the CBI which lasted for several days which event resulted in averse media publicity. The dictum of the Constitution Bench of the Hon''ble Supreme Court in Union of India (UOI) Vs. T.R. Varma, , to the effect that no materials should be relied on against a party without his being given an opportunity O.P. Gupta Vs. Delhi Transport Corporation, as he was fully aware of the case against him. I cannot place the expulsion of a member of a Club on the same platform as the termination of the services of a person, or his being treated acuity of an offence whilst the Trial is yet to come to a conclusion. Clubs exist for social or recreational purposes, and if there is sufficient in contradistinction to unimpeachable evidence against a member of his moral or societal irregularity, is membership may be terminated. Legal rigours may become diluted.

9. The cancellation of the Membership of a person in a Club, even though its user is not a mere privilege but is a right to be enjoyed by the member, cannot be

equated to the termination of his services or any other event of such heinous proportions. There can be no gainsaying that every decision must be taken in consonance with the principles of natural justice. A holistic reading of the Show Cause Notice dated 18.9.2003 makes it palpably clear that the Petitioner had been put to notice that Respondents were relying on his arrest and incarceration, and his custodial interrogation by the CBI for several days. Keeping the charges against the Petitioner in perspective it cannot possibly be predicated that the continuance of his Membership is not likely to affect the reputation of the Course and more importantly, the possibility of embarrassing if not compromising other serving officers. The impugned decision which concerns the suspension of the Petitioner's Membership of the Golf Course should not be viewed with such severe strictness as to vitiate on the grounds that the Confidential Report dated 31.12.2002 rendered by the CBI has been adverted to by the Respondents. The Court must also take note of fact that the Governing Council has decided, in the impugned order itself, to reconsider the Membership of the Petitioner as and when he is exonerated.

10. The facts of the case do not persuade me to exercise the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution.

11. Dismissed.