

(2005) 09 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8184 of 2005

B. Krishan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Advocates Act, 1961 — Section 8
Cantonments Act, 1924 — Section 10, 13, 13(1), 13(7), 14
Constitution of India, 1950 — Article 14, 21, 226

Citation : (2005) 09 DEL CK 0074

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Rajesh Gupta, for the Appellant; Suresh Kait, Yunus Malik and H. Srinivasan Rao, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—This writ petition has been filed by the petitioner impugning the jurisdiction of the Central Government to retrospectively extend the term of the Cantonment Board Authority u/s 14 of The Cantonments Act, 1924 after expiry of the period for which the Board was constituted and the appointment of a civilian member u/s 14(1)(c) to the Cantonment Board, Secunderabad on the ground that the same is without consultation with the concerned Officer Commanding-in-Chief.

2. The undisputed facts giving rise to the present writ petition briefly stated are set out hereafter.

3. The Cantonments Act, 1924 (Hereafter referred to "Act") governs the administration of a cantonment. The Cantonment Board is envisaged for several cantonments u/s 10 of the enactment. The relevant provision of the statute necessary for adjudication of the present case are set out hereafter:

"14. Power to vary constitution of Boards in special circumstances--

(1) Notwithstanding anything contained in Section 13, if the Central Government is satisfied--

(a) That, by reason of military operations, it is necessary, or

(b) that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.

(2) Upon the making of a declaration under Sub-section (1), the Board in the cantonment shall consist of the following members, namely--

(a) the Officer Commanding the station;

(b) one military officer nominated by name by the Officer Commanding the station by order in writing;

(c) one member, not being a person in the service of the Government, nominated by the Central Government in consultation with the Officer Commanding-in-chief, the Command.

(3) Every nomination of a member of a Board constituted under this section, and every vacancy in the membership thereof, shall be notified by the (Central Government) in the Official Gazette.

(4) The term of office of a Board constituted by a declaration under Subsection (1) shall not ordinarily extend beyond one year:

Provided that the Central Government may from time-to-time, by a like declaration, extend the term of office of such a Board by any person not exceeding one year at a time:

Provided also that the Central Government shall forthwith direct that the term of office of such a Board shall cease if, in the opinion of the Central Government, the reasons stated in the declaration whereby such Board was constituted, or its term of office was extended, have ceased to exist.

(5) When the term of office of a Board constituted under this Section has expired or ceased, the Board shall be replaced by the former Board which, but for the declaration under Sub-section (1), would have continued to hold office or, if the term of office of such former Board has expired, by a Board constituted u/s 13.

15. Term of office of members.--(1) Save as otherwise provided in this Section, the term of office of a member of a Board shall be (five years) and shall commence from the date of the notification of his election or nomination under Sub-Section (7) of Section 13, or from the date on which the vacancy has occurred in which he is elected or nominated, whichever date is later:

Provided that the Central Government may, when satisfied that it is necessary in

order to avoid administrative difficulty, extend the term of office of all the elected members of a Board by such period, not exceeding one year, as it thinks fit:

Provided further that a member whose term of office has been so extended, shall cease to hold office on the date of the notification of the election of his successor under Sub-section (7) of Section 13.

4. The Secunderabad Cantonment has a population exceeding 10,000. Thus, by virtue of Section 13(1)(i) of the said Act, this Cantonment is a Class-I Cantonment. The statutory term of the last elected Cantonment Board expired in the year 2000. The admitted position is that ever since no Board has been constituted by elections.

5. On 28th February, 2003, by virtue of the power conferred u/s 14(1) of the said Act, the Central Government constituted a varied board u/s 14(1) of the Act. It is noteworthy that the statute envisages provision of a civilian member in the varied board for the purpose of protection of the interest of civilians residing in the cantonment area.

6. The constitution of this Board was impugned by WP (C) No. 4369/2004 filed by one Shri N. Rajeshwar in this Court. This writ petition was filed on the averments that the Board constituted by the Central Government did not consist of any civilian member and hence was vocative of the provisions of the statute as well as Articles 14 and 21 of the Constitution of India. Vide an order made on 9th January, 2004, this writ petition was disposed of on a submission made on behalf of Union of India that the process for nomination of a civilian member in terms of Section 14(2)(c) of the Cantonment Act has already commenced and that the same was expected to be completed within a period of six weeks. The writ petition was disposed of with the direction to the Central Government to nominate the civilian member in terms of Section 14(2)(c) within a period of six weeks,

7. This Court has specifically noticed the date of expiry of the existing Board on 29th February, 2004 and it had been directed that in case a fresh varied Board is constituted, the Central Government would ensure compliance with the provisions of Section 14(2)(c) of the Cantonment Act, 1924 while Constituting the Board.

8. It has been pointed out that the respondents failed to comply with the time stipulation and a contempt petition being CCP No. 236/2004 was filed by the writ petitioner.

9. In the meantime, on an application for extension of time filed by the Union of India being CM No. 4996/2004 in the WP (C) No. 4369/2004, time for making the nomination was extended till 25th July, 2004.

10. It appears that the Central Government issued a notification dated 27th July, 2004 nominating Shri J. Pratap as the civilian member of the Secunderabad Cantonment Board. This nomination was contended to be contrary to the

mandatory provisions of Section 14(2)(c) of the Act and was challenged by the present petitioner in WP (C) No. 13355/2004 entitled B. Krishna v. UOI and Ors. vide a detailed judgment passed on 25th October, 2004, the writ petition was allowed. Placing reliance on pronouncement of the Apex Court in Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others, ; Chandramouleshwar Prasad Vs. The Patna High Court and Others, and Gauhati High Court and Another Vs. Kuladhar Phukan and Another, , the Court held as follows:

"14. The position, which emerges from the aforesaid is that the process of consultation requires at least a discussion and expression of views on a particular matter. The consultation has to be meaningful, effective and conscious. There is neither any conference nor any impact of the mind of the persona designata. There had to be a basis for the final decision and the ultimate object has to be achieved. There must prior consultation and absence of the same will make the decision ultra vires, invalid and/or void.

15. Both learned Counsel for the respondents have, however, sought to emphasise the fact that there has been consultation. However, I find from the record that the same is not correct. Even assuming for the sake of argument that the contention of learned Counsel for respondent No. 1 is correct that the recommendations need not be mandatory, the least that is required is a consultation on that issue and the expression of views of the different persons involved in the process of decision making. The noting in the file clearly shows that name of respondent No. 3 was not even discussed at the stage when the recommendation was made for the nomination in question. The name only cropped up only on account of the local Member of Parliament recommending his name. Even at that stage, there has been no reference back to the persona designata for expression of his views on the name which was brought into consideration at such a late stage.

16. An important aspect to be considered is that this consultation is not administrative in nature, but legislative in character. The matter pertains to administration of the Cantonment areas and the representation of a Civilian on the Board, which administers the area. Since there is a role of the Army in the Cantonment area, the Legislature in its wisdom has specifically provided that the Civilian Member should be nominated by the Central Government, but in consultation with the Officer Commanding-in-chief, the Command. Thus, more weightage has to be given to the recommendation of the persona designata and if at all the decision has to be overrule, the same should be for cogent reason. There is total absence of any such reasons and the most important aspect is that there is no consultation whatsoever insofar as the appointment/nomination of respondent No. 3 is concerned. The appointment/nomination of respondent No. 3 is, thus, in teeth of Section and cannot be sustained."

11. The period to make the nomination in terms of the aforesaid directions was extended vide order dated 17th December, 2004 passed on an application filed

by the Central government being CM No. 14646/2003 up to 15th January, 2005.

The respondent No. 1 failed to adhere even to the extended time which necessitated filing of the contempt case being CCP (C) No. 151/2005. Notice was issued to the respondent vide orders dated 18th February, 2005. However, the respondent appeared in this notice and made a statement to the effect that Shri J. Pratap stood nominated as civilian member of the Secunderabad Cantonment Board and the contempt petition was disposed of on this statement.

12. It appears that Shri J. Pratap (respondent No. 3 herein) had opposed WP (C) No. 13355/2004 by filing a counter affidavit on the averments that he had fabricated record and deposed false affidavit. A contempt case (CRL No. 4 of 2005) was filed against Shri J. Pratap in which notice has been issued by the Division Bench.

13. The petitioner has pointed out that Shri J. Pratap, respondent No. 3 herein, filed WP (C) No. 4696/2005 in this Court on the purported plea of involvement of public interest in the matters in issue. Mr. J. Pratap prayed that he should be nominated as a civilian member to the Secunderabad Board. This writ petition was dismissed by the Division Bench vide an order dated 16th March, 2005. The petitioner has contended that after the expiry of the term of the varied Board on 2nd March, 2005, it ceased to exist. After its expiry, the Director General, defense Estate called for three panel names from the cantonment officers, Secunderabad Cantonment Board for being nominated as Civilian Officers. Such communication was received by the Cantonment Officer only on 4th March, 2005 and the panel names were sent by the Cantonment Officer to the Central Government only on the 15th March, 2005.

14. The petitioner submits that thereafter the Central Government issued a notification bearing No. SRO No. 5(E) dated 6th April, 2005 extending the term of the Secunderabad Cantonment Board with retrospective effect from 3rd March, 2005 for a period of six months. It is pointed out that Shri J. Pratap has been nominated as a civilian member of the extended varied Board vide a letter dated 21st April, 2005 issued by the Principal Director, defense Estate, Southern Command and that he has taken oath of his office and is discharging duties as such civilian member of the Board. The petitioner has impugned the retrospective extension of the Board on the ground that the same is without jurisdiction. It has been contended that the term having expired, there was no Board whatsoever in existence after the 2nd March, 2005 and, as such, there is no question of extension of term of such Board u/s 14 of the Act or elsewhere. According to the petitioner, the term of the Board could have been extended only during its currency and that it could not be legally revived with retrospective effect. Reliance has been placed on the pronouncement of the Apex Court reported at Babu Verghese and Others Vs. Bar Council of Kerala and Others, in this behalf.

15. So far as the nomination of the respondent No. 3 is concerned, it is

contended that the petitioner has made allegations stating that the respondent No. 3 was not an apt candidate for representing the civilian population of the Cantonment. The petitioner has referred to the antecedents of the respondent No. 3 to challenge his eligibility. It has been contended that the nomination of the respondent No. 3 was back door without the statutorily mandated recommendation and consultation with the Officer Commanding-in-chief of the Command. The petitioner also contends that the respondent No. 3 does not have the confidence and faith amongst the people and officers of the Cantonment and that he has no concern with the welfare of the cantonment.

16. The respondents have filed counter affidavits and vehemently opposed the writ petition. Respondent No. 1, placing reliance on its records, has contended that the nomination of the respondent No. 3 was legal and valid and that there was no bar upon the retrospective extension of the tenure of Varied Cantonment Board. It has been submitted that so far as the requisite consultation u/s 14(2) (c) of the Cantonment Act is concerned, the Ministry of defense had sent six proposed names for appointment as the Civilian Member to the GOC-in-C of the Southern Command. A letter dated 15th December, 2004 was received from the GOC-in-C. In this communication, Commandant-in-Chief of the Command had recommended the name of Shri J. Pratap. Thereafter, vide a letter dated 13th January, 2005, the Ministry of defense sent three more names to the General Officer Commandant-in-Chief. Out of these three names, the Commandant-in-chief of the Command recommended two names namely Mr. Dr. V. Madan Mohan Reddy and Shri D. Narsingh Rao vide its letter dated 10th February, 2005.

It is contended that the Ministry had, Therefore, three names which had been recommended by the Commandant-in-chief of the Command. Out of these names, in terms of Section 14(2)(c), one member was required to be nominated as the civilian member by the Central Government. The concerned Minister selected the name of Shri J. Pratap, respondent No. 3 from these three names and made the recommendation to this effect on the 26th February, 2005. It is contended that it was in this situation that the notification dated 1st March, 2005 was issued nominating the name of respondent No. 3 Shri J. Pratap as the civilian member of the Cantonment Board.

17. Placing reliance on the provision of Section 14(4), it is contended on behalf of the respondent No. 1 that the term of the office of the Board, constituted by issuance of declaration under Sub-section 1 of Section 14 of the Act, can be extended for a period of one year. It is contended that by the notification dated 6th April, 2005 issued by the Central Government, such period has been extended by only six months and hence the petitioner can raise no legally tenable grievance to the issuance of notification.

18. Respondent No. 3 has challenged the petitioner's locus and has contended that no rights of the petitioner are effected by either the notification dated 1st March, 2005 nominating the respondent No. 3 or by the notification dated 6th April, 2005. It is further pointed out that the term of 51 Boards has been

extended by issuance of the notification dated 6th April, 2005. Adverting to prayer III in the writ petition, it is contended that the petitioner has made a general prayer against the entire notification without impleading all the 51 Boards whose extension has been impugned.

It has further been urged that no part of the cause of action has arisen or accrued in Delhi and as such, jurisdiction of this Court is barred in view of the law laid down by the Apex Court reported at *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*,

The respondent No. 3 lastly submitted that in a writ petition No. 11010/ 2005 entitled *T. Ratnakar v. UOI* filed before the High Court of Judicature of Andhra Pradesh at Hyderabad virus of Section 14 of the Cantonment Act, 1924 has been impugned. The writ petitioner in this petition has also sought suspension of the notification dated 6th April, 2005. In this writ petition, the interim order of stay made on 3rd May, 2005 stands vacated by the High Court vide its order dated 17th May, 2005. It is contended that on grounds of judicial impropriety, a sustentative writ petition making a challenge was pending before the Court of competent jurisdiction, and Therefore the present writ petition is misconceived and ought not to be entertained.

19. Detailed submissions have been addressed by all the parties before this Court. So far as the objection to the territorial jurisdiction of this Court to entertain the present writ petition is concerned, it is to be noticed that two earlier writ petitions were filed and entertained before this Court. The same included writ petition (C) No. 4369/2004 by the *Shri N. Verghese v. UOI*. This writ petition was disposed of vide an order passed on 19th January, 2004 directing the nomination of a civilian member in terms of Section 14(2)(c) within a period of six weeks from the date of the order. Extension of the period granted by the Court was sought by the respondent/UOI by filing an application in this Court. This application was granted vide an order made on 6th July, 2005.

Thereafter, upon nomination being made by the Central Government on 27th July, 2004, the same was challenged in WP (C) No. 13355/2004 filed by the present petitioner. No objection to the territorial jurisdiction was taken. The nomination made by the Central Government was quashed and the writ petition was allowed by the detailed judgment dated 25th October, 2004.

20. There is no dispute before me to the effect that u/s 14(2)(c) of the Cantonments Act, 1924, nomination of the civilian member has to be by the Central Government in consultation with the Officer Commanding-in-Chief of the Command. In this case, the Central Government has indicated that the General Officer Commanding-in-chief of the Southern Command at Hyderabad recommended names for consideration to the Central Government at Delhi. The nomination of the respondent No. 3 has been effected by the respondent No. 1 at Delhi and that the notification has been issued from Delhi.

Therefore, the decision which has been impugned before this Court has been

taken at Delhi.

21. In the judgment reported at Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, the Apex Court held that the territorial jurisdiction to entertain and adjudicate upon a writ petition would depend upon on the place of accrual of the cause of action. It was held that cause of action implies a right to sue and that the material facts which are imperative for the suitor to allege and prove constitute the cause of action. This expression has been judicially interpreted to mean such facts which would be necessary for a plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. The Court held that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree are the material facts which expression is also under his integral facts.

Clause 2 of Article 226 of the Constitution of India was relied upon which reads as follows:

"2. The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

22. It was held by the Apex Court that the mere service of a notice or issuance of fax messages would not give rise to cause of action unless such service or issuance was integral part of the cause of action. Facts pleaded in the writ petition must have an nexus on the basis of which a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

It was, Therefore, held by the Apex Court as follows:

"19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefore.

20. A distinction between a legislation and executive action should be borne in mind while determining the said question.

21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ Court, it is well settled, would not determine a constitutional question in a vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situated having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniences."

23. In the instant case, the admitted position by the respondent No. 3 is that the nomination has been made in Delhi. The entire records relating to this nomination and the consultation process involved prior to issuance of notification are available at Delhi. There is no dispute that the order nominating the civilian member has been made at Delhi. Even the order extending the term of the varied board has been made at Delhi. The Notifications dated 1st April, 2005 and 6th April, 2005 have been issued at Delhi. In view of the principles laid down in the *Kusum Ingots and Alloys Ltd. (supra)* it cannot be disputed that part of cause of action has arisen at Delhi. Even on principles of forum convenience, I am unable to agree with the respondents that this Court does not have territorial jurisdiction to entertain and adjudicate upon the instant matter.

I, Therefore, held that the present writ petition before this Court is maintainable.

24. I find that this Court in the judgment dated 25th October, 2004 rendered in *B. Krishan Vs. Union of India (UOI) and Others, WP (C) No. 13355/2004* set aside the nomination of the respondent No. 3 as the original records which were produced by the respondent No. 1 showed that:

"(8) The original records were called for from respondent No. 1, which show that the GOC-in-C had recommended the name of Dr. V. Madan Mohan Reddy. Two other names were also considered, but the name of the petitioner was not one of the names, which was considered or discussed for such nomination. The Joint Secretary by a note dated 9.7.2004 recommended that the original

recommendation of the GOC-in-C (Southern Command) be accepted. At that stage, there were certain recommendations received from a Member of Parliament. The decision was taken by the defense Minister on 18.7.2004. For the first time, the name of respondent No. 3 has cropped up in that decision and the noting shows that the only basis for the same is the recommendation made by the local Member of Parliament."

In these circumstances, it was held that there was no consultation with the persona designata. Consequently, the nomination of the respondent No. 3 was held to be contrary to the provisions of the Act and was struck down.

25. The expression "consultation" has been considered in several pronouncements of the Apex Court noticed in this judgment. It has been held that the consultation requires the persons to make their respective points of view known to the other or others and to discuss and examine the relevant merits of the views. If one authority makes a proposal to the other who has a counter proposal and which is not communicated to the proposer, the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. Consultation is required to be meaningful, effective and conscious consultation and implies a conference of two or more persons or meeting of two or more minds in respect of a topic in order to enable them to evolve a correct or at least satisfactory solution.

The word "consult" as defined in the Law Lexicon which states that such a consultation may take place on a conference table or through correspondence. The form is not material but the substance is important.

26. Respondent No. 1 was directed to produce the original records before this Court in support of the submissions which were addressed and have been noticed hereinabove. I find that GOC and C sent a letter bearing No. 100444/ (L)(PC) dated 15th December, 2004 which reads as follows:

Tele : 2742 Headquarters

Southern Command

Pune-411001

100444/Q(L)(PC) 15 Dec 2004

Smt Veena Maitra, IDES

Director General defense Estates

Ministry of defense

West Block IV

RK Puram, New Delhi-110066

NOMINATION OF CIVILIAN MEMBER TO CANDONMENT BOARD SECUNDERABAD

1. Reference your letter No. 29/Gen/Elect/C.DE.02/Vol II dated 01 Dec., 2004
2. I have been directed to inform you that General Officer Commanding-in-chief, Southern Command has recommended that Shri J Pratap may please be nominated as civilian member in varied Cantonment Board of Secunderabad Cantonment.
3. President Cantonment Board Secunderabad has been consulted.
4. Bio-data/willingness of Shri J Pratap for being nominated to the Cantonment Board is enclosed.

(Parvinder Singh)

Brig

Brig OL

for GOC-in-C"

27. While this recommendation was pending consideration with the Ministry, proposals in respect of three other persons were received. Accordingly, vide a letter dated 17th January, 2005, the same were forwarded to the General Officer Commandant-in-Chief, Southern Command to obtain his views. This communication reads as follows:

"MINISTRY OF defense

D(W&C)

Subject: Writ petition (Civil) No. 13355 of 2004 filed by Shri B. Kishan v. UOI and Ors. in the Delhi High Court.

....

Reference MOD ID Note 14(25)/2001-D(Q&C)-Vol III dated 30.11.04 on the above mentioned subject.

2. Proposals have been received for nomination of the following persons to Secunderabad Cantonment Board (copies enclosed):

(a) Smt. E. Manjula Reddy

(b) Shri Muppidi Gopal

(c) Shri D. Narsingh Rao

DGDE may forward the proposals to GOC-in-Chief, Southern Command, and obtain his view and recommendations within a week's time and furnish the same to this Ministry, to consider further action.

Encl: As stated.

(Anjani Kumar)

Director (Works)"

28. The GOC-in-C caused a communication dated 10th February, 2005 to be addressed to the Ministry of defense, recommending two out of three names which could be considered for nomination as a civilian member in the following terms:

"Tele : 2742 Headquarters

Southern Command

Pune-411001

100444/Q(L)(PC) Feb-05

Shri CR Mohapatra, IDES

Officiating Director General defense Estates

Ministry of defense

West Block IV

RK Puram, New Delhi -110 066.

NOMINATION OF CIVILIAN MEMBER TO CANTONMENT BOARD SECUNDERABAD

1. Reference your letter No. 29/Gen/Election/C/DE/02 Vol II dated 28 Jan., 2005.
2. I have been directed to inform you that General Officer Commanding-in-chief, Southern Command has recommended that Shrimati E Manjula Reddy and Shri D Narsingh Rao may be considered for nomination as civilian member in varied Cantonment Board of Secunderabad Cantonment.
3. President Cantonment Board Secunderabad has been consulted.

(Parvinder Singh)

Brig

Brig OL

for GOC-in-C"

29. The name of the respondent No. 3 was recommended for nomination as a civilian member on the 1st January, 2005 and was pending consideration before the Central Government.

30. In these circumstances three names pending with it which were recommended by the General Officer Commanding-in-Chief of the Southern Command were put up with the respondent No. 1 After consideration of the pending names, the name of the respondent No. 3 was recommended for nomination as a civilian member on the varied Cantonment Board recorded on 26th February, 2005 and notification in this behalf was issued on the 1st March,

2005.

31. I find that there is a material difference in the recommendation which was placed before this Court in WP (C) No. 13355 of 2004 and the present case. The General Officer Commanding of the Southern Command has been taken into confidence.

32. The respondents effected consultation by correspondence. The names which were received by the Central Government were forwarded to the General Officer Commanding-in-Chief who, after consideration of the several names, sent its recommendations to the Central Government. There was no issues with the recommendations and it was out of the three names which had been recommended by the General Officer of Commanding in Chief that the respondents made the effective nomination of the civilian member.

33. This was not the position in the earlier case. There is no submission before me that the recommendation of the GOC had lapsed. I am Therefore unable to agree with learned Counsel for the petitioner that there was no consultation as required u/s 14(2)(c) with the GOC-in-C of the Command.

The challenge to the notification dated 1st April, 2005 Therefore must fail.

34. The other challenge made in the writ petition relates to the extension of term of the varied Secunderabad Cantonment Board on the ground that the term of the Board had expired on 2nd March, 2005 and the Board ceased to legally exist thereafter. It has been urged that upon expiry of the term of the Board it ceased to exist and there could be no revival of a dead Board after the expiry of the term and that the notification dated 6th April, 2005 retrospectively, extending the term of the Secunderabad Cantonment Board is contrary to law.

35. I have noticed the provisions of Section 14 of the Cantonments Act, 1924 which empowers the Central Government to vary the constitution of the Board in special circumstances. The statute mandates that if the Central Government is satisfied that by reason of military operations or that for the administration of the cantonment it is desirable, it may vary the constitution of the Board in any cantonment. This variation can be effected only by declaration to that effect by notification in the Official Gazette.

36. The term of the office of such a Board constituted by issuance of declaration under Sub-section (1) of Section 14 is prescribed u/s 14(4). This restricts the tenure of office of a varied Board to one year ordinarily. By virtue of the proviso thereto, it is provided that the Central Government may from time-to-time, by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time.

37. The statute envisages a situation where the conditions in which the Board was constituted, ceased to exist. Upon such eventuality, the statute mandates that the Central Government shall forthwith direct that the term of the office of such a Board shall cease.

38. As per Section 14(5), upon expiry or cessation of the term of office of a varied Board constituted u/s 14, it is mandated that it shall be replaced by the former Board which, but for the declaration under Sub-section (1), would have continued to hold office. It further mandates that if the term of office of such former Board has expired, then the varied Board shall be replaced by a Board constituted u/s 13.

39. A close reading of the scheme of the statute shows that it does not permit extension of a Board after its term has expired or ceased. On the contrary, Section 14(5) mandates that upon expiry of a term of office of a varied Board constituted u/s 14, such Board shall be replaced by the former Board or by a Board constituted u/s 13.

40. Therefore, there can be no manner of doubt that upon expiry of the period of one year after making of the declaration under Sub-section (1) of Section 14, or the extended period of extension being made by a like declaration effected by publication in the Official Gazette, the office of the former Board would stand restored. In the event of its term having expired, it can only be replaced by Board constituted in accordance with Section 13 of the Cantonments Act, 1924.

41. My attention has been drawn to the pronouncement of the Apex Court in (*supra*) entitled *Babu Verghese and Ors. v. Bar Council of Kerala and Ors.* wherein the Court was concerned with the question of validity of extension granted by the Bar Council of India to existing members of the Kerala Bar Council under the proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by the Kerala Bar Council during the extended term. It was contended before the Apex Court that the extension granted by the Bar Council of India was not valid and, Therefore, Kerala Bar Council had no jurisdiction to hold elections during the extended term.

42. In the case before the Apex Court, the term of the Kerala Bar Council was to expired on 27th January, 1997. On 31st December, 1996, the Kerala Bar Council requested the Bar Council of India to grant extension for six months under the proviso to Section 8. The Bar Council of India did not hold any meeting before 27th January, 1997 for granting any extension. However, on 13th January, 1997, the Chairman of the Bar Council of India got a draft resolution circulated to eight members for seeking their recommendation as to whether or not the proposed extension should be granted. Only four members sent their opinion before 27th January, 1997 while the other four members sent it after this date. It was only in the meeting held on 8th February, 1997 that the Bar Council of India formerly extended the term of the Kerala Bar Council for six months. During this extended period, the Kerala Bar Council held the elections.

43. The Court held that extension of the tenure had to be granted before the expiry of the original term so as to maintain continuity of the term. On expiry of the term, the members would cease to be the members of the Council and would not continue in office until the publication of the result of the election of the

successor. In the case before the Apex Court, the process for the extension was initiated prior to the expiry of the term. However, the same was not completed and the requirement of the Rule 6 which provided for extension was not completed prior to the expiry of the tenure. The process required by the statute not having completed during the currency of term, the Court came to the conclusion that it could not have been held that the term of the State Bar Council had been extended before the expiry of the term. Rejecting a contention raised by the respondents folding that even factum of the process having been initiated prior to expiry of term, would not confer legality to the extension as it would not relate back to the date of the circulation of the proposal.

44. The principles laid down in the pronouncement of the Apex Court applies on all fours to the instant case. The respondents effected the nomination and constituted the varied Board after having sought repeated extensions from this Court in *B. Krishan Vs. Union of India (UOI) and Others*, There is no dispute that the term of the varied Board expired on the 2nd March, 2005. By such date, no declaration had been made which was gazetted in the Official Gazette prior to its expiry. Admittedly, the term has been extended vide a declaration made which has been published in the Official Gazette only on 6th April, 2005 whereby the term of the Hyderabad Cantonment Board has been extended retrospectively w.e.f. 3rd March, 2005. Such a course of action is not permissible by statute. The varied Board ceased to legally exist on 2nd March, 2005 and by operation of statute, the original Board which was varied, would stand restored after this date. In case its tenure had also lapsed, the respondent could constitute a Board only in compliance with Section 13 of the statute.

For these reasons, retrospective extension of a Board cannot be effected. A Board which ceased to legally exist cannot be validly revived with retrospective effect.

45. In *Babu Verghese and Ors. v. Bar Council of Kerala and Ors.* (supra), the Apex Court has specifically affirmed the principle that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. In this behalf, the Court observed as follows:

"The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under--

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all".

This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of U.P.* And again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law."

I also find that this Court had noticed that the term of a Board is statutorily prescribed and also the manner in which the varied Board has to be constituted in its judgment dated 25th October, 2004 in WP (C) No. 13355/2004.

46. Considering the circumstances in which the Central Government was compelled to invoke the provisions of Section 14 of the Cantonments Act, 1924, the Court noticed thus;

"It may be noticed that there is a background to the issue of nomination arising from the fact that Cantonment Boards were functioning without the appointment of a Civilian Member and WP (C) No. 4369/2003 was filed aggrieved by such non-appointment/ non-nomination, which was decided on 9.1.2004. The said writ petition was disposed of in view of the fact that the Counsel for Union of India therein submitted that the process of nomination of a Civilian member u/s 14(2) (c) of the said Act had already commenced and was expected to be completed within a period of six weeks from the date of the Order. The provisions of Section 14 had to be invoked in view of the fact that the term of the Board, which had been constituted u/s 13 of the said Act, had expired on 29.2.2003. This expiry date refers to even the extended period of time of the Board of one year as Section 15 of the Act envisages the life of the Board for five years with proviso for one year extension of elected members."

47. I find that vide the notification dated 6th April, 2005, the respondents have extended the term of 51 Boards under Sections 14(1) and (4) of the Cantonments Act, 1924 for a period of six months w.e.f. 3rd March, 2005 or till constitution of the Boards u/s 13 of the Cantonments Act, 1924. Before me only the extension of the Secunderabad Cantonment Board has been challenged. No fact situation with regard to other Boards has been placed before me.

48. For the foregoing reasons, the writ petition to the extent that challenge is laid to the notification dated 1st April, 2005, is hereby rejected. However, the notification dated 6th April, 2005 extending the term of the varied Secunderabad Cantonment Board constituted u/s 14 of the Cantonments Act, 1924 is hereby quashed.

49. I also hereby issue a writ of mandamus directing the respondents to take appropriate action for constitution of the Cantonment Board in accordance with the Cantonment Board Act, 1924.

This writ petition is allowed to the above extent with costs of Rs. 5,000/-