
(2015) 03 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : CWPIL No. 4 of 2015

Court on its Own Motion

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Constitution of India, 1950 — Article 19(d), 21

Citation : (2015) 03 SHI CK 0027

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Lovneesh Kanwar as Amicus Curiae, for the Appellant; Ashok Sharma, Assistant Solicitor General of India, Advocates for the Respondent

Judgement

1. The Union of India has moved this application for recalling the order dated 18.2.2015, whereby this Court after taking suo motu cognizance of the news item, which appeared in the daily edition of The Indian Express under caption "Army barriers restrict movement in Nahan villages, locals irked", proceeded to pass the following order:--

"Notice. Mr. Mandeep Chandel, Advocate and Mr. M.A. Khan, Additional Advocate General, waive service of notice on behalf of the Union of India and State of Himachal Pradesh, respectively. They pray for and are permitted to file reply within eight weeks.

2. Mr. Lovneesh Kanwar, Advocate is appointed as amicus curiae.

3. The Court has taken suo motu cognizance of the news item, which appeared in the daily edition of The Indian Express under caption "Army barriers restrict movement in Nahan villages, locals irked". In the news item, the difficulties faced by the following villages have been highlighted:

1. Jabbal Ka Bag,

2. Jalapari, Ramkundi,

3. Simbalwala, Rodawali,
4. Ladli,
5. Gadaghar-Kyari,
6. Simbal-Dhar-Kyari,
7. Gobi dhar,
8. Vikram,
9. Kaithal,
10. Manjauli, Kotli,
11. Gadpail
12. and Bangaon.

4. The grievance of the residents of these villages, in a nutshell, is that the Army authorities are not permitting them to reach their villages. The Army Authorities have put up barrier and are insisting on the production of identity cards from all the villagers. The Army Authorities have also raised objections to the construction of road under Pradhan Mantri Gram Sadak Yojana (PMGSY), when barely a 500 metre stretch was left to be completed to provide proper road connectivity to the villages. The Army authorities are not permitting even to transport construction material required for use under various Government schemes. The villagers are also not permitted by the Army officials to use the road in extreme medical emergencies. The villagers have made several representations to the higher authorities for the redressal of their grievance.

5. The villagers have a fundamental right under Articles 19(d) and 21 of the Constitution of India to use the road to reach their villages. There is no alternative road/path available to the villagers to reach the above mentioned villages. They are put to undue harassment by the Army authorities. The security of the Army installation is of paramount importance but the villagers have also right to use the road to reach their villages. The Army authorities cannot be callous and insensitive to the problems faced by the villagers. The road, which is under construction, as noticed herein above, ought to have been permitted to be completed in larger public interest.

6. The villagers can not be deprived of their human right to have access to their villages. However, in order to ensure that the security of the Army installations is maintained, the Army authorities may have more surveillance and, if necessary, may increase the frequency of patrolling to check antecedents of antisocial elements using the road.

7. Accordingly, in the interest of justice, the following mandatory directions are issued:

(i) The Army authorities are directed to remove the barrier forthwith till the issues raised in the petition are resolved finally to the satisfaction of all the stakeholders.

(ii) The Army authorities are directed to give free access to the villagers to reach the following villages; i.e. Jabbal Ka Bag, Jalapari, Ramkundi, Simbalwala, Rodawali, Ladli, Gadaghar-Kyari, Simbal-Dhar-Kyari, Gobi dhar, Vikram, Kaithal, Manjauli, Kotli, Gadpail and Bangaon.

(iii) The Army authorities are directed not to obstruct the construction of the road under Pradhan Mantri Gram Sadak Yojana (PMGSY).

(iv) The Army authorities are directed to permit the transportation of the construction material required for use under various Government schemes.

(v) The Deputy Commissioner, Sirmaur at Nahan, is directed to demarcate the land to resolve the issue once for all. The Army authorities are directed to cooperate with the Deputy Commissioner, towards the demarcation of the land. The demarcation shall be carried out within a period of three months and the copy thereof shall be filed alongwith the reply.

(vi) The Deputy Commissioner, Sirmaur at Nahan Superintendent of Police, Sirmaur at Nahan and Army Commander of the area are directed to hold a meeting on 2.3.2015, by sitting together to sort out the matter in larger public interest in complete bonhomie. The meeting shall be held at 12.00 noon in the office of Deputy Commissioner, Sirmaur. The Deputy Commissioner, Sirmaur is directed to record the proceedings of the meeting. The outcome of the meeting to be convened on 2.3.2015 shall be placed on record on the personal affidavit of the Deputy Commissioner, Sirmaur.

8. The copy of paper book be supplied to Mr. Mandeep Chandel vice Mr. Ashok Sharma, A.S.G.I., Mr. M.A. Khan, Addl. A.G. and Mr. Loveneesh Kanwar, Amicus Curiae.

9. The Court places on record its appreciation of the endeavour made by The Indian Express to highlight this sensitive issue of the villagers. Copy Dasti."

2. It has been averred that the news item which led to the passing of aforesaid order was motivated, as the demarcation was in progress and some of the encroachers were also facing proceedings for having encroached upon the Army land and in order to protect themselves, they were running a smear campaign against the Army. The Army Authorities had placed the barriers, keeping in view the security concerns and these barriers had been erected and were in place for decades together. It is further alleged that in the recent past the authorities have strengthened the network of security keeping in view the latest inputs and therefore, the Army was required to take all steps in order to safeguard its and National interest. In fact, the continuance of the interim order may jeopardize the entire security and make it convenient to the anti National and anti social elements to achieve their designs.

3. During the course of hearing the applicant placed before us certain highly confidential reports, the contents whereof obviously cannot be divulged, but then the same not only strengthen and buttress the averments made in the application, but also lends credence to the same.

4. From the documents annexed with the application, more particularly maps, it is apparent that the area in question is of strategic importance having military station, school etc. etc. There can be no gainsaying that the security of the State or any part thereof is of paramount importance and under no circumstance can the same be compromised.

5. Individual privileges, protection or inconvenience must yield in favour of larger public interest, especially when the concern is that of security of the State. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus reipublicae suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community.

6. Taking into consideration the entirety of the facts and circumstances, more particularly the larger public interest and security of State, we feel that the direction No. 7(i), whereby the Army Authorities were directed to remove the barriers forthwith deserves to be vacated and is ordered accordingly.

7. However, it is made clear that the Army Authorities shall not cause any undue let, hindrance or obstruction in the movement of the general public, their goods and their vehicles and further ensure that no unnecessary inconvenience is caused to the general public in their day to day activity.

8. To oversee and monitor the implementation of this order, we direct the District Magistrate, Sirmour to hold fortnightly meeting with the Army Authorities, elected representatives of the villages and even members of the general public.

9. Additional District Magistrate, Sirmour, who is present in person states that the demarcation of the land is underway and is likely to complete within two months and with this many issues are likely to be solved.

10. Let the District Magistrate file status report on or before the next date of hearing.

List on 22.6.2015.