
(1971) 08 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 603 of 1968

Gopal Lal Swarnkar

APPELLANT

Vs

Director of NCC and Others

RESPONDENT

Date of Decision : 11-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) WLN 687

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—As this writ petition fails on one of the two preliminary objections of the learned Counsel for the respondents, it is not necessary to state all the facts.

2. It will be sufficient to say that while the petitioner was serving as lecturer in commerce in Shri Kalyan College, Sikar, the President granted him a commission in the National Cadet Corps as 2nd Lieutenant, in the Senior Division (Army Wing), with effect from March 30, 1966, by order Ex 2. He was posted in the same college, in the 10/19 NCC Coy, which was thereafter designated as 3/19 NCC Coy. He was transferred to S.B. Dugar College, Sardar Shahar by order (Ex. 8) of the Director of Education dated July 29, 1967. A copy of the order was sent to Director, NCC, Rajasthan, Jaipur. The petitioner took over charge as Lecturer in Commerce in S.B. Dugar College, Sardar Shahar on August 17, 1967 and was allowed to work as Company Commander in the 2nd Rajasthan Indep. Coy. NCC., as that post was lying vacant While the petitioner was working as Coy. Commander, order ex, 9 dated October 7, 1967 was issued by the Officer Commanding, 2nd Rajasthan Indep. Coy. NCC., Sardar Shahar, to the Principal of S.B. Dugar College, Sardar Shahar, informing him that according to letter No. 0021/A dated September 30, 1967 of NCC. GHQ, Pilani, "2/Lt. G.L. Swarnkar will not be absorbed as NCC Officer against the vacancy of your college." The

principal was asked to obtain fresh applications to fill the vacant NCC post. A copy of the order was endorsed to the petitioner. He filed a representation to the Commander, NCC, Group Head Quarters, Pilani, but it was rejected by letter Ex. 10 dated November 6, 1967. It was intimated in the letter that the representation had been examined by the Director, NCC, Directorate, Rajasthan, Jaipur, who did not consider the petitioner suitable for absorption against the vacancy in Sardar Shahar. The petitioner thereupon made representation Ex. 11 to Director NCC, Rajasthan, Jaipur, on November 14, 1967, and ultimately sent representation Ex. 12 to the Director General, NCC, New Delhi, on December 29, 1967. It was however intimated by the NCC Directorate, Rajasthan Jaipur, by letter Ex. 13 dated April 9, 1968, that the petitioner's representation had been rejected on October 30, 1967 and that the Director General, NCC, Ministry of Defence, New Delhi, had been apprised of the facts of his case with reference to his representation to the Director General. This continued to be the position until the petitioner filed the present writ petition under Article 226 of the Constitution on July 30, 1968.

3. The petitioner was however transferred from S.B. Dugar College, Sardar Shahar, to Government College, Deedwana, in March, 1970, and then to R.L. Saharia College, Kaladera, in July, 1970. He therefore amended his writ petition to bring out the subsequent developments of his case and contended that there was a vacancy in the NCC at Kaladera where he could be absorbed.

4. The respondents filed a reply to the writ petition on October 3, 1968 and supplemented it by a reply dated July 14, 1971 in order to meet the additional contentions of the petitioner. It will be sufficient to say that the respondents specifically took the plea that the petitioner ceased to be a commissioned officer as soon as he was transferred from Shri Kalyan College, Sikar, to S.B. Dugar College, Sardar Shahar because only Shri Kalyan College, Sikar, was attached to the 19 Rajasthan Battalion NCC, Sikar. It was contended that the petitioner could have been attached to the 2nd Raj. Indep Coy. NCC Sardar Shahar only by an order of the Director General of the National Cadet Corps under Rule 24 of the National Cadet Corps Rules, 1918, hereinafter referred to as "the Rules." It was urged that as no such order was passed by the Director General, the petitioner could not be deemed to have continued as an officer of the NCC from the date of his transfer from Shri Kalyan College Sikar, because of the provisions of Rule 26 of the Rules. It was pleaded that the petitioner would be deemed to have been "de-commissioned" under Rule 28 read with Rule 24 of the Rules on the date when he was transferred from Shri Kalyan College, Sikar. It was also pleaded that as he had not been kept on a supernumerary list under Rule 26 (4aa), he ceased to hold to the commission and that that would operate as his "discharge" from the NCC under Rule 28. Then it was pleaded that the Central Government was a necessary party to the case and that as it had not been made a party, the writ petition was liable to be dismissed for that reason also.

5. The above facts are sufficient for an examination of the two preliminary

objections of learned Deputy Government Advocate

6. The first preliminary objection is that the petitioner did not make a demand for justice after his transfer from S.B. Dugar College, Sardar Shahar to Deedwana, and thereafter to Kaladera, and it could not be said that the demand was met with a refusal so as to fulfil an essential prerequisite for the filing of a petition for the issue of a writ of mandamus. The objection has to be examined with reference to the facts and circumstances of the case.

7. It will be recalled that the petitioner made a representation to Director NCC, Rajasthan, Jaipur, but it was rejected by letter Ex. 10 dated November 6, 1967 on the ground that the Directorate had examined the representation but did not consider the petitioner suitable for absorption against the existing vacancy in S.B. Dugar College, Sardar Shahar. The petitioner again made representation Ex. 11 dated November 14, 1967 to Director NCC, Rajasthan, Jaipur, and followed this up by representation Ex. 12 dated December 29, 1967 to Director General NCC, New Delhi. He was however informed by letter Ex. 13 dated April 9, 1968 that his representation had been carefully examined and rejected by the Directorate, and that the facts of his case had been intimated to the Director General also. In these facts and circumstances, it would have been an idle formality for the petitioner to make a further demand for justice when, he was transferred to Deedwana in March, 1970 and to Kaladera in July 1970 during the pendency of his petition. I am fortified in this view by the decision in Ashraf Ali Khan and Others Vs. State of West Bengal and Others, where it has been held that if it appears from the facts of the case that the respondents are already aware of the illegality charged against them, and they are pursuing it as of a set purpose, it would be a useless formality to make another demand for justice. Reference may also be made in Gadadhar Ghosh Vs. State of West Bengal, where it has been held that it is not necessary to make a demand when the opposite party is determined to pursue its decision and the demand would be a mere idle ceremony. I do not therefore find any force in the first preliminary objection the learned Counsel for the respondents.

8. Mr. Mathur has however raised the other objection that the Director General, NCC, New Delhi, and the Union of India were necessary parties to the petition and that it cannot be said to have been properly constituted in their absence and should be dismissed altogether. He has placed reliance on Makhan Lal Chakraborty Vs. S.K. Chatterjee and Others, , Bijai Narain Singh and Others Vs. State of Uttar Pradesh, and Ram Niwas Gupta and Others Vs. State of Haryana and Another, in support of his argument. On the other hand Mr. Rastogi has argued that the impugned order related to the nonabsorption of the petitioner and that it did not therefore concern the Director General of the NCC or the Union of India so that it was not necessary to seek any relief against them or to join them as party-respondents to the petition. The learned Counsel has placed reliance on Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, for the argument that the powers of this Court under Article 226 of

the Constitution are wide enough to reach injustice where ever it is found, and cannot be circumscribed on the basis of a technical plea regarding nonjoinder of those who are not directly concerned with the controversy. He has further placed reliance on A. A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, , Hiranmoy Bhattacharjee and Anr. v. State of Assam and Anr. AIR 1954 Gau 226 , The Jupiter General Insurance Co. Ltd. Vs. Rajagopalan and Another, and Indian Quarter Master's Union and Others Vs. P.R. Dutt and Another, .

9. On a perusal of the record it appears that the objection regarding non-joinder of parties can be appreciated only if the correct nature of the order which was conveyed by letter Ex. 9 dated October 7, 1967 is examined. As has been stated, the petitioner was informed by that letter that a decision had been taken that he ""will not be absorbed" as an officer of the NCC against the vacancy in S.B. Dugar College Sardar Shahar.

10. Now a perusal of the Rules shows that they do not, in terms, provide for absorption of an officer on his transfer from one college to another. After examining the scheme of the National Cadet Corps Act and the Rules it appears to me that if an officer of the NCC. is transferred to a college having vacancy in any (sic) to absorb him, he will be absorbed there, but if there is no vacancy, he "shall be placed on a supernumerary list in accordance with the provision of Rule (4aa) of Rule 26 of the Rules. In the present case, a decision was taken not to absorb the petitioner even though there was a vacancy in S.B. Dugar College, Sardar Shahar, against which he could be absorbed Moreover, no decision was taken to place him on a supernumerary list under Rule 26 (4aa) of the Rules In such circumstances I have no doubt that, in fact and substance, the authorities concerned had reached the conclusion that the petitioner's services were no longer required in the NCC A cross-reference of Clause (c) of sub Rule (2) of Rule 28 of the Rules shows that this was a valid ground for discharge. In fact and substance, therefore, the order of petitioner's non-absorption was an order for his discharge under Rule 28(2)(c).

11. The respondents have in fact admitted in their reply that this was so, and I have made a reference already to their averments stating that the petitioner ceased to be a commissioned officer under Rule 28 of the Rules from the date of his transfer from Shri Kalyan College, Sikar, to S.B. Dugar College, Sardar Shahar, and that he was there by discharged under Rule 28 of the Rules

12. It has next to be examined that as to who was competent to take such a decision under the law. A perusal of Rule 29 of the Rules shows that the authority competent to authorise the discharge of an officer was the Ministry of Defence, Government of India. This appears to be the reason whether a certain person was a necessary party in a proceeding: (1) that there must be a right to some relief against such party in respect of the matter involved in the proceedings in question, and (2) it should not be possible to pass an effective decree in the absence of such party. These are simple and workable tests for examining the preliminary objection of Mr. Mathur.

13. I have already given my reasons for taking the view that the petitioner was really discharged from NCC. It is not in dispute before me that the order of discharge could only be made Under Rule 29(1) of Rules by Ministry of Defence Govt. of India, or under its delegated authority by the Director General of the NCC. The petitioner could therefore legitimately claim a relief only against those authorities, and not against those junior officers who have been made respondents to the petition. Then there is the further fact that in the absence of the Union of India or the Director General as party respondent it will not be possible for this Court to pass an effective order inasmuch as they will not be bound by any relief that may be granted by the court against the junior officers. Moreover it will avoid further litigation if the writ petition is dismissed on the ground that the necessary parties have not been arrayed as respondents.

14. As has been stated, the respondents specifically pleaded in their reply dated October 3, 1968 that the impugned order was an order of discharge and that the writ petition was liable to be dismissed. The petitioner therefore knew some three years ago what the real nature of the order was, but he did not care to rectify the defect. If he suffers, therefore, because of the second preliminary objection of learned Deputy Government Advocate, he has only to thank himself for it.

15. I may refer to an ancillary argument of Mr. Rastogi that the petitioner is, at any rate, (sic) to some honorarium for the short period during which he functioned as an officer of the NCC in S.B. Dugar College, Sardar Shahar, but for which he was not paid his dues. I find however, that the petitioner has not made a demand for that portion of his honorarium, and there is no reason to think that it will be refused if a claim is made for it and it is found to be admissible under the Rules. Moreover, there is nothing in the petition to show which authority or Government was liable to pay the honorarium, so that I am unable to examine the question of its payment in the absence of the necessary information. If, for instance, the liability is that of the Union of India, it is not possible for me to undertake an examination of the claim in the absence of the Union of India.

16. I have gone through the cases cited by Mr. Rastogi but they are of no avail to the petitioner. It cannot be doubted, as has been held in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur* and *Another*, that this Court has extensive powers to reach injustice where it exists and to grant the relief to meet the requirements of the case, but that can be of no avail in a case like the present where the petition must fail on account of non-joinder of a necessary party. *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, was entirely different for there the authorised official performed the various functions assigned to him on his own initiative and in the exercise of his jurisdiction. *Hiranmoy Bhattacharjee's case* AIR 1954 Assam 226 was also different for it related to a State employee whose claim for relief had to be adjudged on the basis of a circular letter of the Chief Secretary of the State Government. As the State was a party to the proceedings, that was quite enough for purposes of that

case. Jupiter The Jupiter General Insurance Co. Ltd. Vs. Rajagopalan and Another, cannot really avail the petitioner for it upholds the view that the court has to look to the fulfillment of its orders from the respondents. It cannot therefore justify the argument of Mr. Rastogi regarding the non-joinder of the necessary parties in the present case. So far as Indian Quarter Master's case (sic) is concerned, it will be enough to say that it was a different case altogether where it could not justifiably be contended that the Union of India was a necessary party.

17. In the result, as there is force in the second preliminary objection of Mr. Mathur regarding the non joinder of a necessary party the writ petition fails and is dismissed. In the circumstances of the case, however, the parties are left to bear their own costs.