
(2015) 11 AHC CK 0058
In the Allahabad High Court
Case No : Writ - C No. 18086 of 2014

Morning Walkers Association and Others	APPELLANT
Vs	
Allahabad Cantonment Board	RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Cantonments Act, 2006 — Section 1(3), 2(zza), 258, 3, 360
Constitution of India, 1950 — Article 14, 19, 19(1)(d), 19(5), 21

Citation : (2015) 11 ADJ 579 : (2016) 114 ALR 791 : (2016) 1 AWC 220

Hon'ble Judges : Amreshwar Pratap Sahi and V.K. Birla, JJ.

Bench : Division Bench

Advocate : Abu Bakht, for the Appellant; Prashant Mathur and Satish Kumar Rai, for the Respondent

Final Decision : Allowed

Judgement

1. This petition has been filed by a collective group of individuals describing themselves as the Morning Walkers Association through Sri Promod Kumar Jain, a Senior Counsel of the High Court accompanied by a couple of Senior Counsels, Sri W.H. Khan and Sri V.M. Zaidi and with the support of Sri G.S. Hajela another counsel of this Court. Sri Ram Chandra Gupta is the petitioner No. 6. They are all residents of adjoining localities in the vicinity of New Cantonment at Allahabad. They submit that they are regular morning and evening walkers on the roads that fall inside the New Cantonment area including the roads that are accessible to the public, particularly Cariappa Road, Ponappa Road and Lawrence Road.
2. Their morning walks were interrupted by checkings carried out by armed soldiers of the Indian Army at the entry point and crossings of such roads with an insistence to obtain a requisite pass from the military authorities. This sparked off the controversy in February, 2014.
3. On enquiry, the petitioners allege that for the purpose of commuting on such roads an application for issuance of a temporary pass to a civilian has to be moved and pass obtained, the format whereof is Annexure - 1 to the writ

petition. The petitioners were orally informed that an amount of Rs. 150/- has to be paid as a fee for the said pass.

4. They contend that the morning and evening walkers in the locality of the Cantonment area are all respectable citizens of the city including Hon''ble Judges of the High Court, Advocates, Academicians, Businessmen and practically people from all walks of life that comprise of male and female population both. The roads that are being used for the said purpose have been open to the public at large, particularly Cariappa Road, Ponappa Road, Ashoka Road, Hastings Road, Auckland Road and other connecting roads that crisscross the roads in the Cantt Area. The said roads are also linked with the other areas and merely because these roads are linked with roads within the Cantt Area does not change their nature as public utility roads so as to impose such commuting restrictions that are now sought to be imposed by the respondents by insisting commutation on issuance of passes. It is this routine daily pilgrimage that has come under a military scanner that forms the factual matrix giving rise to the issues involved in the present petition.

5. Learned Senior Counsel for the petitioners Sri Ravi Kiran Jain is right when he submits that a walk for a human being is as essential as a swim for a fish and a flight for a bird. It is natural, as a human being is physically designed, by nature, to negotiate distances. It is his elixir of life. Walking, as an exercise and as a means of adventure, is natural to man and the present petitioners have come forward to protect such natural behavior, asserting it as a right, calling upon the court to instruct the respondents not to interrupt their morning walks on streets open to the public within the cantonment limits of the New Cantt. Allahabad by policing, as it offends their lawful right to traverse and commute freely on the grounds of violation of the rights of freedom in its various dimensions enshrined under Part - III of the Constitution of India.

6. Sri Jain, learned Senior Counsel then invited the attention of the Court to Article 19(1)(d) of the Constitution of India and also cited the division bench judgment of the Karnataka High Court in the case of Nitin G. Khot Vs. Station Commandant, Belgaum, Writ Petition No. 3549 of 1997 decided on 23rd January, 1998. A copy of the said judgment has been placed before us to contend that this issue has been decided and the ratio of the said decision is clearly attracted on the facts of the present case to construe that the said restrictions which are sought to be imposed are unreasonable as they tend to close down such roads of the Cantonment for commutation including morning and evening walks.

7. He has further invited the attention of the Court to the order dated 24th August, 1998 in Special Leave to Appeal No. 8218 of 1998 whereby the Apex Court dismissed the Special Leave Petition filed by the military authorities challenging the aforesaid decision of the Karnataka High Court.

8. To further buttress his submissions Sri Jain has fundamentally questioned not only the said restrictions being imposed as without authority but also as

unconstitutional and for that he has referred to the constitutional provisions leading to the judgment of the Apex Court in the case of Naga People's Movement of Human Rights Vs. Union of India (UOI), .

9. He therefore submits that neither the roads can be shutout for such commutation and even otherwise the same being a street as defined under Section 2(zza) of the Cantonment Act 2006, any attempt for such closure is invalid through indirect methods by the respondent - military authorities. He submits that such prohibition cannot be imposed except by the procedure prescribed under the 2006 Cantonment Act and which powers cannot be assumed by the military authorities exclusively to themselves by attempting policing and prohibiting commutation to the disadvantage of the public at large for no valid purpose. The contention therefore is that such unreasonable fetters which are not backed up by any law for the time being in force, by imposition of military authority, should not be permitted in the manner as sought to be imposed by the respondents.

10. The respondents filed a short counter affidavit asserting their authority to do so and also have tried to justify their action that this was being done in order to secure military interest as well as it would also protect the citizens at large so that security is not compromised in any manner. This was necessary to facilitate movements with the minimum of inconvenience. They have taken a particular plea with regard to three roads, namely Cariappa Road, Ponappa Road and Rajiv Gandhi Road (Lawrence Road) that these roads are exclusively within the control of the military authorities as such land is classified as A-1 Defence Land under the Cantonment Land Administration Rules 1937.

11. They have also in their affidavit indicated the duties of a Station Commander that includes taking action in the case of any disturbance in consultation with the local authorities as well as a host of other military activities as indicated therein. The affidavit also refers to an antiquated rule for the acquisition, custody, relinquishment etc. of military lands in India (ACR Rules 1944) to urge that roads which are under the immediate control of the Army include "Imperial Military Roads" and for that the said rules still hold the field, on the strength whereof, military authorities are justified in imposing such restrictions.

12. The respondents have also relied on the judgment of the Delhi High Court dated 28th May, 2003 in Traders Welfare Association Vs. Union of India and others to contend that wherever there is a security concern, the areas exclusively used for armed forces can be cordoned off from the general public. Another judgment that has been relied on is that in the case of Dr. G.S. Ahluwalia Vs. Union of India and others by the Madhya Pradesh High Court in Writ Petition No. 4271 of 2007 where in the name of security, the installation of an iron gate subject to checking for security has been upheld. Another judgment of the Andhra Pradesh High Court in the case of Father (Parish Priest) Holy Family Church and others Vs. Government of India and others in PIL No. 361 of 2012 decided on 26.11.2012 has been relied upon to contend that the category of

Class - A(1) Defence Land which has a military road, is not within the exclusive right of the public to commute moreso when the public already has alternative connections to the areas through which commutation is sought.

13. The hearing of this case was postponed on two occasions on account of certain other matters that were being heard including a PIL No. 4519 of 2011 that came to be decided on 14th August, 2014 by a division bench of this court in relation to the restrictions imposed by prohibiting commutation on another road known as Newa Road within the same Cantonment at Allahabad. The closure of the said road to the public was found to be justified on the ground that the road was being exclusively used for an approach to a sensitive military installation namely an arsenal and target firing training area, and therefore when an alternative road is available to the affected residents connecting the said road via another road, then the closure would be justified. It was further indicated by the respondents therein that as a temporary measure a road passing through Class - A(1) Land would be made available till the construction of the military installations are completed. This judgment has also been relied on by the respondent in their support.

14. Apart from this, the learned ASGI, Sri Ashok Mehta, Sri Gyan Prakash and Sri Satish Rai for the respondents have brought to our notice the decision of the Ministry of Defence communicated through Letter dated 27th January, 2015 to urge that in view of the provisions of Section 258 a street as defined under Section 2(zza) can be permanently closed only by the Cantonment Board for security reasons alone upon following the procedure as indicated therein and therefore in order to avoid any inconvenience such steps should be taken only after following the said procedure and obtaining statutory approval.

15. Thus the contention of the respondents is as indicated in Paragraph 26 of their counter affidavit that no road as referred to in the writ petition has been shutoff completely and instead only security measures are being undertaken. In Paragraph 32, they have come up with a case that no fee shall be charged for entry passes and no police verification shall be insisted upon as provided for in the proforma.

16. Sri Rai learned counsel for the Central Government has passed on a copy of the letter of the Defence Ministry dated 6th October, 2008 indicating the category of passes that are to be issued for defence installations.

17. It is in the aforesaid background that we had adjourned the delivery of judgment and then again listed the case for further hearing and upon conclusion of the arguments that the judgment was again reserved by us.

18. Before we deal with the statutory provisions under the Cantonment Act 2006 and the Cantonment Land Administration Rules 1937, it would be appropriate to refer to a brief constitutional history and also the objects and reasons that were discussed and are mentioned when the Cantonment Act 2006 was revisited by the Parliament and amended through Act No. 41 of 2006.

19. After gaining independence and while framing the Constitution the longest debate that occupied the constituent assembly was the Chapter on fundamental rights enshrined under Part - III of the Constitution including Article 19(1)(d) of the Constitution with which we are presently concerned.

20. Matters of public liberty and reasonable restrictions, the community interest of individual and State interests were debated at length but for the purpose of their interpretation and to spell out the importance of such rights one has to necessarily refer to the period of emergency that was imposed in an around 1975 with the advent of certain constitutional amendments that came to be challenged in several cases before the Apex Court that defined and reiterated such fundamental rights being protected against unreasonable laws that attempted to hit at the roots of the basic principles of democracy. Matters went so far so as to take away the power of the High Court to issue prerogative writs while considering validity of laws by the Centre. The infamous 46 Amendment Act 1976 introduce Section 39 whereby the Constitution was amended adding Article 226-A which read as follows:-

"226-A. Constitutional validity of Central laws not to be considered in proceedings under Article 226 . -Notwithstanding anything in Article 226 , the High Court shall not consider the constitutional validity of any Central law in any proceedings under that article."

21. The parliament swiftly, after the political scenario changed by a revolutionary open public franchise mandate, demolished such unworthy laws and repealed the same by omitting the above through Section 8(2) of the 43rd Amendment Act 1977 that reads as follows:

[Section 8(2) provides. "(2) Any proceedings pending before a High Court under Article 226 of the Constitution immediately before the commencement of this Act may be dealt with by the High Court as if the said Article 226-A had been omitted with effect on and from the 1st day of February, 1977."]

22. The question involved herein is the protection of the fundamental rights guaranteed under Article 14 , 19(1)(d) read with Article 19(5) and Article 21 of the Constitution of India. The same are extracted hereinunder for reference:-

"Article 14 . Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19 . Protection of certain rights regarding freedom of speech, etc: (1) All citizens shall have the right-

(d). to move freely throughout the territory of India.

Article 19(5) . Nothing in [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general

public or for the protection of the interests of any Scheduled Tribe.

Article 21 . Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

23. The constitution very carefully engrafts the legislative territories between the Parliament and the State Legislatures captioned under Part XI, Chapter-I (Distribution of Legislature, powers - Article 245 to 255). Article 246 of the Constitution prescribes the matters enumerated in List I in the 7th Schedule to be within the exclusive domain of Parliament. Similarly the State Legislature has the exclusive powers under List II of the same schedule to legislate laws subject to List I and List III thereof. The joint obligation, namely what can be described as the common areas of distribution of legislative powers between the Parliament and the State legislatures, is provided for under List III, the concurrent list. The residuary powers of parliament are under Article 248 and to make laws on the request of the States under Article 249 . The emergency powers of Parliament to legislate on State matters is contained in Article 250 . The other articles of Chapter I of Part XI also carve out definitions of specific areas of Legislation and the priority of a legislation to prevail in matters of inconsistency of laws. Thus the competence of the Union Parliament and State legislatures is defined as above.

24. The State legislatures have been, subject to the laws falling within the competence of the Parliament, have been given exclusive authority to legislate laws on the subject of Public Order (List-II Entry-1) and Police - including railway and village police, subject to the provisions of Entry 2-A of List - I. Thus Public order and policing is clearly a State subject matter. A cantonment area as defined under Section 3 of Cantonments Act 2006, is also subject to such laws with some exceptions vis-a-vis the members and establishment of exclusive armed forces. However the Parliament can make laws extending the powers and jurisdiction of police forces to any other State subject to the limitations contained in Entry 80 of List - I. The overriding power of the Parliament in respect of policing under Entry 2 of List II (State list, is the deployment of armed forces of the Union in aid of the civil power of the State as per Entry 2-A of List - I (Union List). This exception and its fall outs, as well as the extent of the competence of the Union Government to make such laws and their enforceability have been dealt with in detail in the judgment of the Apex Court in the case of Naga People's Movement of Human Rights Vs. Union of India (UOI), that has been relied on by the petitioners. Policing and Public Order are thus within the exclusive civil powers of the State but the Centre to aid such civil power has been authorized under the Constitution to frame laws as explained above.

25. A little bit of Constitutional history post independence may be referred to in this context. After the repeal of Article 259 way back in 1956 through the 7th Amendment Act, the 42nd Amendment of 1976 within its sweep also granted the Union Government powers to deploy armed forces to deal with any grave situation of law and order in any State through Article 257-A quoted hereinafter:-

"[Article 257-A . Assistance to States by deployment of armed forces or other forces of the Union]"

26. This provision was again by a prudent and wide Act of Parliament namely the 44th Amendment Act 1978, repealed. The parliament therefore twice in the past had intervened and prevented any laws to continue giving formal powers to the Armed Forces from entering into the realm of law and order, that touches also public order and policing. This is no adjudication on any such issue but legislative powers remain limited within the area of competence of the Union Parliament as noted above.

27. The power of the parliament to frame laws about the constitution and regulation of Cantonments is provided for under Entry 3 of List - I as follows:-

List - I Entry - 3. Delimitation of cantonment areas, local self-government in such areas, the constitution and power within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

28. Cantonments were earlier governed by the Cantonments Act 1924 and its allied laws. The 1924 Act came to be repealed under Section 360 of the Cantonments Act 2006 published in the gazette on 14.9.2006 that came into force w.e.f. 18.12.2006 as per Section 1(3) thereof. The objects and reasons that were spelt out at the time of presentation of the Bill introducing the New Act are as follows:-

"THE CANTONMENTS ACT, 2006 (41 OF 2006)

[13th September, 2006]

An act to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratization, improvement of their financial base to make provisions for development activities and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

Statement of Objects and Reasons. - The Cantonments Act, 1924 (2 of 1924) makes provisions relating to the administration of cantonments. As cantonments are Central territories under the Constitution, the civil bodies functioning in these areas are not covered under State municipal laws.

2. In view of the present day, aspirations and needs of the people residing in cantonment areas and in order to bring in modern municipal management procedures/techniques in such areas, it is proposed to enact a new legislation by replacing the Cantonments Act, 1924 to provide for - (i) greater democratization; (ii) reservation of seats in Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes; (iii) better financial management;(iv) extension of centrally sponsored development schemes to such areas; (v) management of

defence lands and their audit etc.

3. The new legislation has been modified with a view to re-enact the existing Act in the context of Seventy-Fourth Constitutional Amendment and to provide for better urban management in cantonment as recommended by the Standing Committee of Parliament on Defence and the Action Taken Note of the Government on their recommendations. Broadly, the proposed modifications could be categorized as under:-

(i) Greater Democratisation. - The Bill envisages enhanced representation for elected members to make proper balance between the elected and nominated one. Reservation of seats in the Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes would also fall in this category. In this proposed Bill, parity has been brought between the official and elected members of the Board and with this, the number of elected members would increase. The enhanced representation for elected members will cater for increased civil population in the cantonment areas.

(ii) Land Management;- Over the years, the defence land ownership has increased to 17.31 lakh acres out of which about 2 lakh acres of such lands are situated within 62 notified cantonment being managed under the existing Act. There is no statute to cover the management of about 15 lakh acres of defence lands lying outside the cantonments. As on date, these defence lands are regulated by executive instructions (not covered under any statute), issued by the Central Government from time-to-time through Acquisition, Custody, Relinquishment, etc. of Military Lands in India (ACR) Rules, 1944, which are non-statutory in nature.

The Management of Cantonment Board properties and the defence lands outside the Cantonments is different from each other in a sense that the former is covered under the existing Act and the Cantonment Property Rules, 1925 made thereafter, whereas, there is no such legislation or rules for the latter. The Standing Committee of Parliament (12th Lok Sabha) recommended that provisions may be made in the Cantonments Act itself regarding management of defence lands, their records, consolidation of earlier policies and land audit.

Statutory provisions have accordingly made and a new Chapter on management of defence lands has been added in the Bill. The provisions contained in this chapter will, inter alia, enable the Central Government to notify the defence lands, consolidate land management policies and records in regard to defence lands, carry out land audits to detect abuse if any, nonutilisation and sub-optimal utilization of lands.

[*Received the assent of the President on 13.9.2006 and published in the Gazette of India, Ext., Pt. II, S. 1, dated 14.9.2006.]

The Standing Committee of Parliament has also recommended making legal provisions to tackle encroachments on defence lands situated all over the

country. Accordingly, the problem of encroachment is not proposed to be tackled through the provisions contained in Clauses 239, 248, 249, 253 and 257 of the proposed Bill. This would be in addition to the powers available to the Government under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(iii) Development impetus;- In addition, provisions have been made which would give necessary impetus to development activities. To keep pace with recent developments, provisions have also been made for developmental and welfare activities like (town planning, old age homes, houses for disabled and working women hostels, rain water harvesting, nonconventional energy and other miscellaneous developmental activities which are important to sustain the environment and taking steps for social development.

(iv) Resource Generation - Provisions have been incorporated in the new Bill to streamline financial administration, improve finance base and change the tax mechanism keeping in view the needs of modern municipal administration. Provisions have also been made for a Cantonment Development Fund in which, any sum received from Government or an individual or association (by way of gift or deposit) or from centrally sponsored scheme, may be credited.

The Standing Committee of Parliament (12th Lok Sabha) had also made a recommendation for extension of centrally sponsored development schemes in cantonments for uniform development of States. Provisions in clauses 10 and 108 of the Bill have therefore been made making every Board a "deemed municipality" for the purpose of Article 243-O(e) of the Constitution. This would enable the Cantonment Boards to avail benefits and advantages of centrally sponsored schemes for social and economic development as are presently available to other municipalities in various States.

Under Article 285 of the Constitution, the properties of Central Government are exempted from all taxes imposed by local authorities in the States. Representations were received that for the services rendered by the local bodies and the financial implications involved, some payment in the form of service charges may be made to them. Consequently, the Central Government issued certain executive orders making provision for payment of service charges to local bodies since 1954.

There is no specific statutory provisions to give legal backing to the said decision/orders made by the Government in this regard from time-to-time. It is, therefore, proposed to make a provision in the Bill for payments to be made to the Cantonment Boards for service charge by the Central and the State Governments, after ascertaining the same.

4. The Bill seeks to achieve the above objectives."

29. The aforesaid recital of objects and reasons in the bill which received the assent of the President in Clause 3(ii) as highlighted above does indicate the

1944 Rules which have been relied upon by the respondents are non-statutory in nature.

30. Having given this background the real grievance of the petitioners is about dignified morning or evening walks being undertaken by them in the New Cantt area in a respectable way and not under any shadow of toting guns.

31. Walking with dignity is a respectful way of enjoying this freedom. Brisk walking is a suggested healthy exercise. Thomas Jefferson, the famous American President, responsible for the drafting of the U.S. Constitution with the ideals of freedom enshrined in his "writings" said, "walking is the best possible exercise. Habituate yourself to walk very far." Accompanied morning and evening walks are at times a close knit family routine outing. It also serves as a forum for dialogues and discussions with exchange of views in a friend's company. Many problems that are a cause of deep concern or mental worry get resolved during morning and evening walks and one gets also acquainted with people and ideas. Maitland describes this as the motto of the philosophic tramp "Solvitur Ambulando" (it is solved by walking).

32. To look at a citizen of this country on a morning or evening stroll on a street with unwarranted suspicion is tinkering with his constitutional liberties and therefore the rule of law needs to be observed when it comes to any reasonable restrictions being imposed to curtail such liberty in the name of State interest. Freedom guaranteed in the post-independence republican constitutional era is aimed at removing all unreasonable State - imposed sovereign fetters that existed in a colonial regime to promote alien rule interests. The people of India have given unto themselves a constitution with fundamental rights that are inalienable subject only to reasonable restrictions to the law made by the legislature. They are therefore to be governed now, not by the command of a monarch, but by the rule of law. There is a temptation to understand such freedoms in one's own individual interest, but this may reflect a general collective interest when it comes to a cause relating to normal public life. This then becomes a debate of public interest as against exclusive State interest. A restriction applied in an unreasonable way gives rise to protests, as in the present case, to a call before the courts.

33. To begin with, the first issue is with regard to the status of such roads which is being claimed by the respondents to be exclusively "Imperial military roads" as per the 1944 Rules relied upon by the respondents. We may observe that there is no scope for any capitulation of any road being "Imperial" in nature after India became independent and adopted a Republican Constitution. It is for this reason that while introducing the bill for the new Act in Parliament the 1944 Rules were not acknowledged to be having a statutory force in the objects and reasons. Nonetheless merely because a road which has been constructed over a land that came to be classified as Class A(1) land would not take away its status of a street as defined under Section 2(zza) of the 2006 Act. The streets which have been mentioned in the writ petition are connected with the pure civilian

areas directly adjacent to such roads, namely the High Court, Bungalow of Judges and also civilian occupants of bungalows within the cantonment including residential areas. Thus these streets and roads are an access to civilians as well who reside within the cantonment. This is necessary to emphasize as the respondents themselves have not disputed this position but they contend that since there are military establishments as well on these roads, they intend to impose restrictions.

34. We have no doubt that any military installation which is exclusive for military purpose, for example the Sub-Area Headquarters or the Residences of military officials, are not open to the public at large for free entry, but streets which are being used by the public as well including civilians within the cantonment and outside, are not even proposed to be completely shut down by the respondents themselves. The petitioners therefore for a morning and evening walk on such streets are not required to seek entries through a pass or on such roads which are also of public utility, for which there is no authorization either under the 2006 Act or the Rules framed thereunder. The respondents have been unable to show any such law or rule requiring morning and evening walkers to obtain passes. What the respondents have come forward appears to be a letter issued by the Ministry of Defence dated 6th October, 2008, that is extracted hereinunder:-

No. 23(26)/2008/D (GS-III) GOVERNMENT OF INDIA MINISTRY OF DEFENCE
^^^

New Delhi - 110 011, dated 6th October, 2008

To

The Chief of Army Staff

The Chief of Naval Staff

The Chief of Air Staff

Subject: Passes for the Defence Installations.

Sir,

In supercession of the orders contained in this Ministry's letter No. PC-19201/2/GSI(b)(v)/2719/I/D(GS.III) dated 24-10-1977, I am directed to say that the President is pleased to approve the adoption of the following procedure in regard to the provisions of identity documents for civilians associated with Defence areas.

2. Following identity document will be issued to civilian personnel in the form of IAFZ 3049, 3049A, 3050 and 3052:-

(a) IAFZ 3049 - This will be issued to all Gazetted officers working in a unit located within the perimeter of Defence establishment.

(b) I AFZ 3049A - This will be issued to all non-gazetted officers and other

employees of the Government who are working in a unit located within the perimeter of Defence establishment.

(c) IAFZ - 3050 - This is a temporary pass that may be issued to Government employees who are entitled for 3049/3049A pending delay.

(d) IAFZ - 3052 - Casual Visitors will be issued with a temporary pass on the form IAFZ - 3052 valid for the day of issue only.

(e) For all other personnel such as dependant family members of defence personnel/defence civilians, servants, contractors, vendors, shopkeepers, labours etc. suitable passes, for specified periods of validity as convenient, may be designed with colour codes for classification, and implemented by the authorities delegated by Military Commanders of the Area or Station irrespective of services.

3. Authority for Issue of Passes. Various passes mentioned at para 2 above shall be issued by the designated Security Officer/Authority and shall be valid for the concerned Station/Area only, Area Commanders shall, nominate Security Officers within their area of responsibility. However, Commanding Officers of respective units may issue special passes in respect of areas where restricted entry of personnel is required owing to the sensitiveness, with the approval of Area Commander.

4. The documents mentioned at para 2 above are identity documents and do not entitle the holder to enter any establishment.

5. On transfer from one station to another, the identity document will be surrendered to the issuing authority at new station. The issuing authority at new station will, in turn, issue a new pass and destroy the previous one under intimation to the old station of the individual for completion of their records.

6. Cost of Photographs. The cost of photographs required for identity passes in respect of the employees, their families and dependents will be borne by the individuals concerned.

7. Replacement. Permanent passes will be replaced in the following cases:-

(a) when worn out by normal wear and tear.

(b) when more than two alterations become necessary.

(c) when there is a change in the facial appearance of the holder.

(d) when there is a change in the name of the holder.

(e) when lost.

(f) On expiry of validity due to transfer from one station to another.

8. A permanent pass will be considered as worn out by normal wear and tear on completion of five years of its issue. A duplication fee of Rs. 20/- will be charged for any replacement that becomes necessary within this period due to damage of

pass under circumstances beyond one's control.

9. Labourers will be issued tokens and their records will be maintained by concerned unit and contractor.

10. Loss of Passes. The loss of any pass should be immediately reported to the officer commanding/security officer of the unit/establishment, explaining the circumstances under which it occurred to enable him to issue a new pass. Report of the loss should be supported with a report lodged with the Police Station. Duplication fees of 20/- will be charged in addition to the cost of photographs. Additionally, a fine of Rs. 100/-, 150/-, 200/- will be charged towards First, Second and Third loss respectively apart from the normal disciplinary action.

11. Duplication fees towards loss of tokens by labours will be based on actual cost of manufacture of Rs. 20/- whichever is higher. Fine towards loss of each pass/token by Contractors, vendors, shopkeepers and labours may be implemented by pass issuing authority as considered suitable however the same should not exceed Rs. 500/-.

12. Expenditures incurred towards printing of passes and manufacture of tokens may be met from Public funds. Detailed orders including fines, duplication fees etc. are to be issued by respective authorities issuing passes.

13. Further amplifying orders may be issued by service Headquarters, as required.

14. This letter with the concurrence of the Ministry of Defence/Finance/GS vide Dy. No. 2194/GS/2008 dated 16th September, 2008.

Yours faithfully,

(JAI RAJ) Under Secretary to the Government of India

Copy to:

- The Controller General of Defence Accounts*
- Director of Audit Defence Service
- All Controllers of Defence Accounts*
- All the Senior Dy. Directors of Audit, D.S.
- CGS/MI Directorate/GS I (b)(ii)
- Security Officer, Ministry of Defence
- Ministry of Defence (Coord)
- Section D(Est-I), D(Civ), D(Coord), D(FY) to take action regarding ordinance Factories.
- CG (Admin)

*(Copies signed in Ink - to be sent to all the Controllers of Defence Accounts)

Copy also to:

D(Air-II); D(Navy); Air Hqrs., (Dte of Int); Navy (Int.) and DGMI/MI-11"

35. The aforesaid letter has been handed down by the learned counsel for the respondents which indicates that passes are required for the purpose indicated therein vis-a-vis the defence installations. The said letter does not indicate that a person who is either a civilian resident of the cantonment or is a morning or evening walker like the petitioners is also required to get a pass for such commutation over a street that is constructed over Class A(1) land and is undisputedly a road also open to use for civilians. The said letter dated 6th October, 2008 therefore cannot be imposed upon the petitioners as they are not demanding a pass for entering into a defence installation. The said letter clearly indicates that whenever a civilian wants to enter into a defence installation, he may be required to obtain a pass in a manner prescribed therein but the present is not a case that in any way can be said to be governed by the said letter. Thus the insistence of obtaining a pass by the petitioners for going on a morning or evening walk does not appeal to reason and is an unreasonable imposition which is not supported by any provision of law.

36. The next comes the issue of the status of the road on which insistence is being made by the respondents relying on the decisions that have been cited on their behalf to contend that if the road is exclusively over Class A-1 land, then such restrictions can be imposed. Our task has become easier with the handing down of the communication about the decision taken by the Ministry of Defence dated 7th January, 2015 that is extracted hereinunder:-

"No. 4(2)/2015-D(Q&C) Govt. of India Ministry of Defence

New Delhi, dated the 7th January, 2015

To,

1. The Chief of Army Staff,

Army Headquarters, New Delhi

2. The Chief of Naval Staff,

Naval Headquarters, New Delhi

3. The Chief of Air Staff,

Air Headquarters, New Delhi

4. The Directorate General, Defence Estates

New Delhi

Subject: Closure of Roads in Cantonments

Sir,

It has been brought to the notice of the Ministry of Defence that public roads in Cantonments are being closed by the Local Military Authorities without any statutory authority to do so and without following the procedure prescribed to Section 258 of the Cantonments Act, 2006. Under the said Section 258 , a street, as defined under section 2(zza) of the said Act, can be permanently closed only by a Cantonment Board for security reasons alone after:

(c) giving a public notice inviting objections and suggestions from the general public; and

(d) obtaining prior permission of the GoC-In-C or the Principal Director of the Command.

2. The matter has been considered in the Ministry of Defence and it has been decided that no public road, outside Unit Lines, in a Cantonment shall be closed by any authority, other than a Cantonment Board, for any reasons other than security, and without following the procedure laid down under section 258 of the Cantonments Act, 2006. If in the opinion of LMA, any road needs to be closed for security reasons, it will approach the local Cantonment Board to set the process in motion as required under section 258 of the Cantonments Act, 2006.

3. Henceforth, it will be the responsibility of the GoC-In-C and Principal Director Defence Estates of the Command to ensure that no road in a Cantonment, outside Unit Lines, is closed arbitrarily or on grounds other than security or without following the procedure as prescribed under the said section 258 . While deciding matters pertaining to closure of roads, the competent authority shall objectively weigh the security considerations and the inconvenience that may be caused to general public. Where it becomes unavoidable to close a road, efforts should be made to provide an alternative road before enforcing the closure order.

4. It has further been decided that roads already closed without following the procedure as delineated in the Cantonments Act, 2006 should be opened forthwith, and closed again, if such closure is required, after following the laid down procedure and obtaining the statutory approval.

5. The DG DE and Services Headquarters shall ensure compliance of the aforesaid directions. They will also submit a compliance report with regard to para 4 above to the Ministry of Defence within 30 days from the issue of this letter.

Yours faithfully,

(Nitin Chayando) Director (L&C)"

37. In the present case no such decision has been taken or brought to our notice by the respondents under the procedure laid down under Section 258 of the 2006 Act. It is not in dispute that the roads in question are not streets within the meaning of Section 2(zza) of the 2006 Act. Consequently, the Defence Ministry

itself appears to be aware of such insistence coming to their notice that have been causing public inconvenience and was sought to be dealt with through the aforesaid clarification. Apart from this, even if any such decision under Section 258 is arrived at, its validity or otherwise would still be a matter of legal debate as it directly involves the usage of a street by the public as defined under Section 2(zza) of the 2006 Act. It is also clear from a reading of the said letter that any such attempt is subject to objections being taken by the public at large and would not be a matter of imposition of any military executive orders but would rather be governed by the due process of the 2006 Act.

38. It is here that we would like to clarify that none of the judgments that have been relied upon by the respondents have dealt with the issue of morning and evening walkers as involved in the present case and have applied the law as was to be understood on the facts of those cases. In particular we would like to mention that the decision of this court dated 14th August, 2014 in PIL No. 4519 of 2011 exclusively was concerned with an approach road to a sensitive military installation of an arsenal and a target training area and keeping this fact in view that the said decision was rendered indicating that closure of road for general public was in the security interest of the armed forces. The facts of this case are clearly distinguishable where the roads in issue are accessible to the civilians public and which according to the counter affidavit filed by the respondents the same has not been shut down completely. There is yet another judgment which deserves mention at this stage which the court has come across by a learned Single Judge of this Court in Second Appeal No. 420 of 2006. The right claimed therein was also of passage over a road in the cantonment limits of District Bareilly that arose out of a suit file in a representative capacity. The defendant Defence Department took a plea that there was an alternative road available and even otherwise the road in dispute therein was the internal road of the Jat Regiment Centre, also constructed over Class A(1) land and maintained by the Military Engineering Services. On such facts it was found the administrative control of the military authorities to prevent encroachment was available. The dispute therein was the control over the land between the military authorities and military estate officers and it was held that such a land which was not a public road and was meant for a military establishment, particularly the Unit of the Jat Regimental Centre, the suit was dismissed and the second appellate court also did not find any substantial question of law involved for interference. It is on this ground that the judgment of the Karnataka High Court in the case of Nitin G. Khot (supra) was found to be not applicable on the facts of that case.

39. The aforesaid judgment is clearly distinguishable on facts and even otherwise the said judgment of the learned Single Judge on legal issues, particularly the definition of the word "street" under Section 2(zza) read with the power of closure of a street under Section 258 of the 2006 Act neither appears to have been raised or considered. The said judgment is also not on the provisions of the Cantonments Act 2006. Thus the aforesaid judgment also does not come to the aid of the respondents.

40. Apart from this as indicated hereinabove the powers to police are nowhere provided under the 2006 Act allowing any such measure that is sought to be imposed against morning and evening walkers in the present case. It is not the case of the respondents in their counter affidavit that any of the petitioners have violated any law or that commutation on such streets or roads would be violation of any law if they are used by the public for morning and evening walks or commutation.

41. The present case becomes more distinguishable as in the past also the attempts made to shutdown roads by installation of iron gates and installation of cattle catchers was being attempted. The respondents have relied on the judgment in the case of G.S. Ahluwalia (supra) to support their contentions. In this regard, it would be useful to refer to the counter affidavits filed by the respondents in Writ Petition (PIL) No. 51777 of 2010, Jani Babu Sonkar Vs. Union of India and others. Two counter affidavits were filed therein, one on behalf of the Cantonment Board Allahabad and the other on behalf of the Defence Ministry sworn by Col. G.P.S. Kaushik working as Adm. Commandant, Station Cell, Headquarters MP, C & A Sub Area Allahabad.

42. In the counter affidavit filed on behalf of Cantonment Board through Smt. Bhawana Singh, the then Chief Executive Officer, Section 258 was clearly relied upon by the Cantonment Board in relation to closure of streets which has now been indicated in the present case through the communication of the Ministry of Defence dated 7th January, 2015 extracted hereinabove. In Paragraph 6 of the said counter affidavit it has been asserted that certain Schools, Hospitals and the residential civil areas are maintained by the Cantonment Board for the benefit of the residents and employees residing within the cantonment limits who normally uses the roads maintained by the army authorities including that situate over Class A(1) land. In Paragraph 7 of the said counter affidavit it has been stated that five schools exist in the New Cantt. Area of Allahabad with which we are presently concerned and a regular hospital is also maintained by the cantonment board to cater a large number of civilian population who reside in R.A. Bazar, Triveni Vihar Colony, Ganga Vihar Colony and other colonies and all the roads connected with the cantonment areas are used by the residents with the other part of the city of Allahabad connected to the municipal limits.

43. Another revelation made in the said counter affidavit in Paragraph 10 thereof is that on the basis of a census which was carried out that an approximate 60% of the population was civilian within the cantonment area.

44. Apart from this, the counter affidavit filed on behalf of the Ministry of Defence and the military authorities referred to hereinabove in PIL No. 51777 of 2010 reasserts the maintenance of Lawrence Road (Rajiv Gandhi Road) as an internal cantonment road existing on Class A(1) Land maintained by the Military Engineering Services which connects army units, army and civilian defence residential areas with a small pocket of cantonment civil notified area, R.A. Bazar. It has been asserted in Paragraph 15 of the said counter affidavit that

neither the setting up of cattle traps or digging on the roads had impeded any kind of free passage to the public, School Children or similarly situate persons. In Paragraph 18 it has been asserted that the main Rajiv Gandhi Road is open to all kind of traffic. The counter affidavit also asserts security concerns but at the same time Paragraphs 25 and 26 are worth quoting:-

Para 25. That during day time all the gates are open and absolutely no restrictions have been imposed on any kind of movement. Due to increased security threat during night time gates only on Rajiv Gandhi Road and at one end of Ponappa Road are being closed between 10 p.m. to 6 p.m. It will be appreciated that after 10 p.m. little or no movement takes place on these roads, as Schools, Banks, Offices, market places close down by this time.

Para 26. That to allow entry and exit to the New Cantonment area all other roads namely Cariappa Road, Ashoka Road, Nyay Marg, Akbar Road, and south end of Ponappa Road are open during night allowing absolutely free access to New Cantt. Area including access to Military and Cantonment General Hospital.

45. The said petition in which the aforesaid counter affidavit had been filed was a public interest litigation objecting to impediment of traffic and setting up of iron gates and cattle traps by the military authorities. For this, the justification given in the counter affidavit was that cattle traps were being laid in order to avoid stray cattle being huddled within cantonment limits. It also acknowledges the existence of the High Court and the Judges Colony in an absolutely close proximity of the said New Cantt. Area.

46. Learned counsel for the petitioners has also orally indicated and which fact does not appear to be disputed that the very gates of the residence of Hon'ble the Chief Justice opens directly in front of Ponappa Road which is one of the roads presently involved and the access to the Judges Colony in Shambhu Barracks is also via Cariappa Road.

47. From the aforesaid facts it is clear that the respondents have not intended to create obstructions or restrictions, then it is not understood as to on what basis an insistence is being made by the respondents on the petitioners to obtain passes for morning and evening walks. In this regard, it is worth quoting Paragraph 9 of the counter affidavit sworn by Col. Kaushik in Writ Petition (PIL) No. 51777 of 2010, referred to hereinabove, which is as follows:-

"Para 9. That Cantonment road are the only place in the Allahabad where not only the Cantonment residents but also large number of residents from all over the Allahabad town come for morning and evening walks. Presence of stray cattle and road littered with cattle dung, urine and nauseating odour denies residents of Allahabad of such an opportunity besides posing serious health risks."

48. Thus the very passage and convenience of morning and evening walkers within the cantonment area is acknowledged by the respondents themselves.

49. The aforesaid stand taken in the above mentioned public interest litigation by

the respondents themselves leaves no room for doubt that the petitioners are not unwelcome on the streets in question as morning and evening walkers. In such a situation, imposing a condition for obtaining passes is neither a legal requirement under any law as discussed hereinabove nor does it appear to be in conformity with the rights protected and guaranteed under Article 19(1)(d) of the Constitution of India. There is no discernible rational nexus for asking morning and evening walkers to obtain a military pass for commuting on a street as involved presently in the case.

50. The aforesaid discussion is also necessary for any action to be taken in future as public convenience cannot be overlooked. A person suffering from any immediate serious ailment like a heart-attack at midnight, would not obviously be asked to wait upon to obtain a pass for commuting on a road if he resides in the vicinity to reach the hospital. This is just one practical aspect of the matter and there are many such shades which require consideration including other public conveniences.

51. It is for all the aforesaid reasons that we hold that the petitioners are right in their submission that they do not require to be imposed with a condition of obtaining a pass from the military authorities in the background and purpose aforesaid. We also are of the opinion that in case the Cantonment Board proceeds to take any steps in future in the light of the letter dated 7th January, 2015, it may inform to the public at large and particularly to institutions like the High Court before taking up any such measures for discussion so that the point of view of public convenience may not be left unheeded in any of its dimension. The respondents are therefore directed to act accordingly.

52. The writ petition stands allowed with the aforesaid directions and observations.