
(2014) 09 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4137 of 2014

N.K. Thapar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 177 PLR 727 : (2015) 3 RCR(Civil) 261

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Puneet Bali, Senior Advocate and Monika Thakur, Advocates for the Appellant; Sanjeev Sharma and Kunal Dawar, Advocates for the Respondent

Judgement

K. Kannan, J.—The petitioners No. 1 to 20 are aggrieved with a notice issued by the 3rd respondent, the Secretary of the Army Club, barring entry to civilians by notifying that only defence service personnel, ex-servicemen of the three services and officers paid out of defence estimates will be allowed to utilize the facilities in the Kharga Environmental Park and Training Area (in short "KEPTA"). This cryptic notification is reported to be in pursuance of the decision taken by the 3rd respondent acting as per the policy guidelines issued by the Army Headquarter, New Delhi and Headquarter, Western Command that the civil members and tenure members in KEPTA would come by a change regarding their status of membership who will have only "civilian golfers playing privileges only" and "tenure golfers-playing privileges only" that would require to be renewed quarterly and annually. This was in modification of the existing status when the civil members were entitled to the club house facilities and their membership which was for life had been curtailed to periodical basis of having to renew quarterly/annually. The petitioners' case has a little history that would require to be narrated before addressing the tenability or otherwise of the petitioners' claim. There was a club called the Kharga Golf Club located at the Ambala Cantonment which was managed and maintained by Sirhind Club Ambala Limited. The club could not maintain the golf course and the facilities merely out

of subscription and therefore, in a meeting held on 22.05.1973, the members had decided that the management would be taken over by the Army and all civilian members and members of the Sirhind Club Ltd. would be extended membership of the Golf Club. The civilian who had been receiving the privileges of being admitted to membership at the Golf Course and the club facilities inside were initially admitted as temporary members and thereafter confirmed them as permanent members and issued with identity cards.

2. It appears that in a scrutiny by the Comptroller and Auditor General it learnt that the officers who are actually running the club did not maintain the accounts properly. In order to bring a greater responsibility and administrative and fiscal discipline, the Army Golf Club was rechristened as Army Environmental Park and Training Area. New bye laws had been circulated and clause 13 which dealt with different types of membership had the following to say about the status of all civil membership.

"Civilian Membership

(i) No new civ membership is permitted as per Army HQ letter No. B/87893/Golf/Q3L (Policy)/14 dated 24 Jul 01.

(ii) Only those members who have been gtd membership prior to Jul 01 to continue."

The first curtailment of the admission rules was that no civilian membership was permitted after 24.07.2001. Admittedly, all the petitioners are persons who had been admitted to membership prior to that date. Their own playing rights were set forth in the same clause and that are set out as under:-

"Playing Rights. The playing rights shall be given to a member as deemed fit after screening of application by committee comprising the COS, Brig A and CE and duly approved by the Patron. The playing rights shall be governed by fwg guidelines:-

(i) Member is permitted to play on the golf course and use practice range.

(ii) Member is permitted to take part in golf events/tournaments.

(iii) Playing rights will not include the usage of club facilities.

(iv) Playing rights will not include reciprocal membership of other clubs affiliated with KEPTA.

(v) Playing rights will not include participation in tournaments org by other clubs as a member of KEPTA."

3. The petitioners who had, therefore, come by a different dispensation of the treatment had nothing immediate to complain of because this was surely to operate only to persons who aspired to become new members but such of those persons who are already members of the Army Club did not have to confront with any new limitation of their rights. Even the right of user of the club house

facilities were provided. The modification which was significant was only with reference to payment of subscription which was increased more than what it was previously. There were steep differences of subscription for civilian members and Army officers but this was not put to challenge, for, the members were satisfied that they could enjoy the facilities and they suffered no restriction on their entry and use of the facilities. The subscription fees were periodically getting increased and a face off between the establishment and the members escalated when the members were required to pay revised rates of subscription from 1st July, 2009 which was a steep increase on the existing subscriptions. A notice had been sent by one of the members to the Patron complaining of the steep hike monthly subscription on 11.08.2009 requesting for rationalization of the subscription and refund the excess amount collected by the respondents. The notice did not evoke any favourable response from the respondents but they posed fresh restriction by modifying the policy guidelines completely wiping off the status of life membership and restricting further use only to golf playing privileges and withdrawing other recreational facilities available in the club. These further restrictions brought through the notifications under Annexures P-19 and P-20 are subject of challenge in the writ petition.

4. The ground of challenge by the petitioners is that it is wholly arbitrary and unilateral. The petitioners who were already admitted to life membership could not suddenly suffer a curtailment of such a privilege. Even the restriction of use of the facilities within the club could not have been done in the manner it was notified.

5. The defence of the respondents confined to mere issues of maintainability of such a writ petition, for, the golf playing facilities are the club facilities within the defence area and do not partake any activity of a State to be amenable for a jurisdictional survey to a Court and hence incompetent. The respondents would also contend that it was the prerogative of the respondents to limit the right of entry and restrict the privileges of membership in a manner that conforms to their own directives and the petitioners could have no legal grievance to canvass for.

6. Learned Senior Counsel appearing on behalf of the respondent-State has a preliminary objection that the club activities cannot be a subject of judicial review and refers me to the decision of the Delhi High Court in *Air Vice Marshal J.S. Kumar Vs. Governing Council of Air Force and Another*, that dealt with the facilities in an Air Force Club called as AFSC that provided facilities like golf club, health club, swimming pool etc. The subject of the challenge was cancellation of membership of the club to the petitioner. The writ petition had been dismissed on the ground that it was filed against the private body not performing any public function and hence, no writ would lie. I will not allow myself to be detained on this objection, for, the impugned orders are not passed by any private individuals. The impugned orders are passed by a functionary of the State and the orders specifically reads that the status of civilian membership was being

changed as per the policy guidelines of the Army Headquarters. It will be wrong to assume that the amenability of the writ jurisdiction of the State or its functionality will be confined only to activities strictly confined to State or the sovereign function. It is invariably the actor that is more relevant than the activity. In order that an action of a State is challenged such as, in this case, the decision of the Army, it cannot be confined only to security duties along the border. The Army has civil functions that touch lives not merely of Army personnel but civilians as well. For instance, if an Army canteen is run and the contracts are given to third parties, it cannot be seen as an activity strictly falling within the national security or defence of the border but an activity of a public office all the same. If the Army supports several recreational facilities, it must be seen as necessary to keep the body and soul together and make for its best display for its skills for the essential function of the country's security needs. If the Army, therefore, runs a golf club and it is administered by officers drawn essentially from the Army and its own activities are monitored by Headquarters, then, by the fact that the decision is taken by the public officers, their decisions ought to be subject to judicial control. I will, therefore, reject the argument placed before me that the impugned orders cannot be brought for a challenge before this Court. The learned Senior Counsel also refers to me a decision of Andhra Pradesh High Court in *Father (Parish Priest) and others v. The Government of India, Ministry of Defence and others* Mil LJ 2013 (AP) 45 that held that the Army Authorities were justified in constructing a wall in between to block the road towards the Church and the school nearby and there can be no right of action complaining of obstruction of pathway since a property being Class A(1). Defence land was wholly managed and controlled by the Army authorities and there could be no judicial intervention as regards the same. This decision would apply only in a case where the property is exclusively within the control of Army and the extent of interference will, therefore, depend on the nature of property. The most crucial issue would, therefore, be whether the property is exclusively within the control of the Army that cannot allow for any civil use and that would depend on the relevant Rules governing its management.

7. The membership in a club is in the nature of a licence. The rights and duties will flow from the bye laws. If it is wholly a private club and persons acquire membership in a club subjecting themselves to its rules and regulations and if the management makes modifications of the rights, the remedy could lie in claiming damages for any withdrawal of facilities which they were assured of and for any particular loss that is occasioned to members by alteration of their own position on the basis of existing state of affairs and coming to harm by modification of the Rules. The same cannot be said of a club that is run in the property of the Army and run by persons who are either personnel employed in the Armed Forces or ex-employees. If the whole infrastructure is funded by the Army then any of its decisions shall be required to be tested on the anvil of Article 14 of the Constitution. In this case if the change in the civilian membership and their rights were curtailed, it was purported to be under the

agenda and the policy guidelines of the Army Headquarters at New Delhi and the HQ, Western Command.

8. The learned Senior Counsel for the petitioners would point out that the administration of the lands of the Army are governed by the Cantonment Land Administration Rules, 1937 and the property which is classified as Class A land, which was already reserved for specific military purpose, excluded certain categories of land. The senior counsel refers me to Chapter II of the Rules that deals with classification and transfer of land and its management. Class A land admits of further two categories Class A(1) land and Class A(2) land. Class A(1) land is the land which is actually used and occupied by the Military Authorities for the purpose of fortification, barracks, stores etc. Class A(2) land is not actually used or occupied by the Military Authorities but it is put to the use and occupation of any other purpose, except temporarily, where there exist specific military objections. These exceptions are provided under this and since the petitioner claims the golf course and facilities to come within the exception, it would become necessary to extract the whole portion dealing with the Class A land:-

"Class "A" Land - Class "A" land shall be divided by the Central Government or such authority as they may empower in this behalf, into the following sub-classes namely:-

(i) Class "A" (1) Land which is actually used or occupied by the Military Authorities, for the purpose of fortification, barracks, stores, arsenals, aerodromes, bungalows for military officers which are the property of Government, parade grounds, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in paragraphs 419, 421 and 425 of the Regulations for the Army in India and other official requirements of the Military Authorities.

Explanation - For the purposes of this rule-

(a) specific military objections shall be deemed to exist to the use or occupation of land the reservation of which is declared to be desirable by the Central Government in the interests of the discipline, health or welfare of the military forces, or the safety or defence of the cantonment and its inhabitants; and

(b) military recreation grounds mean recreation grounds the management and control of which vest exclusively in members of the military forces.

(i) Military Recreation Grounds.

(a) The definition of military recreation grounds has been deliberately framed with some strictness in order to secure the correct classification of Class "A" land and to put an end to the ambiguous position which are not strictly reserved for the use of the troops alone, but which are also open to the civil members of the community cannot properly be placed in Class "A". A race course for instance, cannot under the definition be included in Class "A" land unless not only all the

officials in whom management of the club vests are members of the Army, but also the rules of the club provide that they must be so. Where areas of land are used for the general recreation of the community or for the members, whether civil or military, of a particular club, and it is desired to retain the land for this purpose, the only correct course is for the club or other body which maintains the ground to take out a regular lease for it from the Military Estates Officer.

9. The above extracted portion and particularly, the italicized portion of text would show that race course cannot come within the definition of Class A land. Where the area of land was used for the general recreation of the members whether civil or military, Rules specified that the proper course would be to take the land on a regular lease from the military estates officers. There is dispute about even the correctness of the Rules and the learned Senior Counsel appearing on behalf of the respondents would refer me to a book released by Seth's Cantonment Laws, Law Publishers (India) Pvt. Ltd. 1st Edition 2009 that contains no exception in the matter of military recreational grounds in the italicised portion. The senior counsel would argue that the petitioner has produced some rules which have no basis.

10. I attempted to vouch for the correctness of the text of the Rules and I find that the Rules as provided by the petitioners with reference to the military recreational grounds (i.e., the italicized portion) is published and hosted by the Ministry of Defence in its website www.dgde.gov.in accessed on 12.09.2014. I cannot, therefore, accept the contention that since it is Class A land it must be taken as whole within the control of the Army and that it had the prerogative to take any decision in respect of such property without in any way calling for objections from any parties.

11. If the property cannot strictly fall within Class A land, the Rules provided that it would be appropriate that the property is taken on a regular lease from the Military Estate Officer. We have already extracted its past history in proof that records an experience of the inability of the club to support itself and the decision of its members to surrender management to the Army. It was such a decision that led to rechristening of the club as Army Environmental Park and Training Area. If the members have, therefore, literally invited the Army to take control and if the Army had decided to change the Rules, I would find that such a change can be effective only to alter the rights of members who are admitted subsequent to the date when change was made. If the property is not strictly Class A property then any withdrawal of facility to existing members who had been admitted to life time membership cannot be permitted. At least the order that is passed gives no specific reason as to why such change becomes necessary. There is no issue of any misdemeanour by any of the members. There is also not an issue of any act of vandalism or any act that could be said to be cause of concern for military to keep its own facilities and its property intact. If I find the order to be not justified, I do so not because of the view that the Army cannot make any change but the changes that have been made are not shown to

have any appropriate basis. If I have already held that action of the respondents will be amenable for appraisal under Article 14, I would find the extraordinary steps taken by them to close club facilities for members and curtail the petitioners who are life time members to annul membership unilaterally to be unjustified. The impugned orders are quashed but I would leave it to future and for better reasons to be applied before any decision is taken by the respondents that can justify its decision to alter the class of membership or withdrawal of facilities which are hitherto enjoyed by the petitioners. I make no statement about the subscription fee or its escalation, for, there is no challenge as regards the same and the adjudication is merely confined to the justification of the orders passed under Annexures P-19 and P-20. The writ petition is allowed on the above terms.