
(1987) 05 DEL CK 0018

In the Delhi High Court

Case No : Criminal Writ Appeal No. 155 of 1987

S.N. Purandara

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-1987

Acts Referred:

Citation : (1987) 32 DLT 264 : (1987) ILR Delhi 427 : (1987) 2 RCR(Criminal) 507

Hon'ble Judges : R.N. Aggarwal, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : K.G. Bhagat, Rajeev Sharma and Rajender Dutt, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) This is a criminal writ petition filed by the petitioner Maj. S. N. Purandara seeking the quashing of the impugned order dated 13-3-1987 issued by respondent no. 3 the Commanding Officer, Southern Command. Mobile Signal Regiment convening General Courts-Martial as also for an order/direction in the nature of declaration declaring Sections 52(g), 63, 124 and 125 of the Army Act. 1950, as amended by Act 19 of 1955 (for short the Act) as ultra virus of the Constitution of India.

(2) Notice to show-cause was issued to the respondents on the limited question whether the General Court-Martial had been convened by an authority duly empowered to convene. The respondents put up appearance in pursuance to the show cause notice and filed counter-affidavit deposed to by Lt. Col. P. S. Rathee D.A.A.G. (Legal) H. Ors. 61 (Independent) Sub Area do 56-A.P.O. Subsequently, the learned counsel for the respondents was allowed to file a supplementary affidavit to the effect that Brig. Jagjit Singh was duly authorised by the Chief of the Army Staff as required by S. 109 of the Army Act. The respondents were also required to produce relevant records before the Court. The respondents complied with that order.

(3) Under S. 109 of the Act a General Court-martial may be convened by the Central Government or the Chief of the Army Staff or by any officer empowered in this behalf by warrant of the Chief of the Army Staff. In the supplementary counter-affidavit deposed to by Lt. Col. P. S. Rathee and filed by the respondents the authorisation by the Chief of the Army Staff is reproduced. Even the original authorisation was produced and shown to us. It reads as follows :-

"A-1 Warrant for convening General Court-Martial under the Army Act To The Officer, Not Being Under The Rank Of A Field Officer, Commanding The 61 Independent Sub AREA. In pursuance of the provisions of the Army Act, 1950 (XLVI of 1950), I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the Rules made there under, of any person under your command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial. And for so doing, this shall be as well to you as to all others whom it may concern, a sufficient warrant. Given under my hand at New Delhi this Sixth day of September 1973. sd/- General, Chief of the Army Staff sd/- Major General, Offg. Adjutant General

(4) So, reading together S. 109 of the Act and the aforesaid authorisation it would be made out that the General Court- Martial could be convened by an officer not under the rank of Field Officer and in his absence by an Officer on whom such Field Officer's command may devolve. Admittedly, Brig. Dalip Singh was the Field Officer, Commanding the 61 (Independent) Sub-Area and on account of the authorisation was entitled to convene the General Court-Martial under the Army Act. In his absence Brig. Jagjit Singh, Officer Commanding the 61 (Independent) Sub Area was covered under the aforesaid authorisation. It was pointed out during the course of arguments by Mr. Dutt learned counsel for the respondents on instructions from Lt. Col. P. S. Rathee D.A.A.G. (Legal) H. Qrs. 61 (Independent) Sub Area that Brig. Dalip Singh had been transferred and in his absence Brig. Jagjit Singh was the officer officiating commanding the 61 (Independent) Sub Area. Annexure P-2 filed in this case shows that Brig. Jagjit Singh was Officiating Commanding the 61 (Independent) Sub-Area. Brig. Jagjit Singh was, thus, fully authorised to convene the General Court-Martial. Annexure P-2 is the form of order for the assembly of the General Court-Martial under the Army Act and the perusal thereof shows that it contains the orders dated 13-3-1987 by Brig. Jagjit Singh Officiating Commanding the 61 (Independent) Sub-Area convening the General Court-Martial in respect of the petitioner for the purpose of trying him and it also gives the details of officer mentioned therein for assembling at Jodhpur on 18-3-1987 for the purpose of trying the petitioner. The officers Constituting the General Court-Martial have been named in the said order. They are the members and the senior most amongst them is to sit as Presiding Officer of the General Court-Martial. The names of waiting members are also mentioned as also the name of the Judge Advocate and the Prosecutor.

The contention is that this order is not signed by Brig. Jagjit Singh but is signed by Col. R. V. S. Ranawat. On the other hand, it was pointed out that this was the usual form of the order for the assembly of a General Court-Martial under the Army Act. The perusal of this order shows that the order is of Brig. Jagjit Singh but Col. R.V.S. Ranawat was just a Communicating Officer. The contention raised on behalf of the petitioner does not appear to have any substance.

(5) The learned counsel for the petitioner contended that sub-rules (1), (2) and (3) of Rule 37 of the Army Rules, 1954 were not complied with in this case. Rule 37 is set out below:-

"(1)An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act. and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2)He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3)The Officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(6) Regarding sub-rule (1) of Rule 37 it was contended by the learned counsel for the petitioner that before the convening of the General Court-Martial, Brig. Jagjit Singh had not satisfied himself that the charges to be tried by the General Court-Martial were for offences within the meaning of the Act and that the evidence justified a trial on those charges. He has further contended that without recording such personal satisfaction the trial by General Court-Martial could not start. Confidential record produced before us by the respondents showed that Brig. Dalip Singh had ordered the documents pertaining to the petitioner in respect of the charges to be forwarded to Deputy Judge Advocate General (for short DJAG) H.Qrs. Southern Command for pre-trial advice. Record further shows that the advice of Djag was received back with through consideration of the pre-trial evidence and advising the trial of the petitioner for the offences under Ss. 52(f) and 63 of the Army Act. Provisions covered the charges and the record further shows that Brig. Jagjit Singh agreed with the advice of Djag vide his endorsement dated 6-3-87 who then directed that the General Court-Martial be ordered to try the petitioner at the earliest. In the face of this it cannot be said that Brig. Jagjit Singh did not record his satisfaction as mandated by sub-rule (1) of Rule 37. The advice tendered by Djag was exhaustive after full consideration of the material before him in respect of pre-trial evidence in regard to the charges which according to him constituted offences within the meaning of the Act and by agreeing to the same Brig. Jagjit Singh recorded his satisfaction in regard to the existence of the aforesaid two factors contemplated by this sub-

rule by obtaining the legal advice Brig. Jagjit Singh was able to satisfy himself in a better and really effective manner. Under Regulation 458 of defense Service Regulation (Revised Edition 1962) it was even obligatory upon Brig. Jagjit Singh to refer this case to Djag of the command before trial is ordered and so there was nothing wrong if he sought advice of Djag ordering trial of the petitioner. The authorities Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, is not relevant. The further contention of the learned counsel for the petitioner that hearing ought to have been given to the petitioner by Brig. Jagjit Singh before recording his satisfaction and the omission in that regard was fatal, cannot be accepted. The authority Pandurang and Others Vs. State of Maharashtra, relied upon by the learned counsel for the petitioner has no relevance in this case.

(7) Regarding sub-rule (2) Brig. Jagjit Singh was to satisfy himself that the case was a proper one to be tried by the kind of court-martial which he proposed to convene. The record shows that Brig. jagjit Singh directed that the General Court- Martial be ordered to try the petitioner, after he agreed with the advice of DJAG. After the receipt of the advice from Djag in respect of the offences under pre-trial evidence, the direction necessarily implied his satisfaction in regard to the kind of court- martial which he proposed to convene.

ANNEXUREP-2 already referred to above shows the detailing of officers to form the court and it also shows the detailing of the waiting members of the court. This sub-rule also stands fully satisfied.

(8) Shri Bhagat had also addressed us on the other contentions raised in the petition. We are of the view that it is not necessary for us at this stage to go into those contentions. The trial is still in progress. The petitioner shall be at liberty to raise those contentions at the appropriate stage.

(9) WITH these observations the petition is dismissed.