

intelligence Bureau Employees

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Court : Supreme Court of India

Decided On : Apr-24-1996

Reported in : (1997)11SCC348

Judge : S.C. Agrawal and; G.T. Nanavati, JJ.

Acts : Constitution Of India - Articles 32, 14, 19, 33; [Societies Registration Act, 1860](#) - Section 3

Appeal No. : Writ Petitions (C) Nos. 1117-1119 of 1980

Appellant : intelligence Bureau Employees

Respondent : Union of India (Uoi) and anr.

Judgement :

S.C. Agrawal and; G.T. Nanavati, JJ.

1. These writ petitions filed under Article 32 of the Constitution relate to functioning of the Intelligence Bureau Employees' Association (hereinafter referred to as "the petitioner Association"), a society registered under the [Societies Registration Act, 1860](#). The petitioner Association is claimed to be an association of the employees working in the Intelligence Bureau (for short "IB") of the Government of India. It was registered as a society on 23-6-1979. On 3-5-1980 the Joint Director of IB issued a circular memorandum wherein it was stated that the Government has now made it clear that in a security organisation like the IB there is no scope for an

employees' association and, in this context it was mentioned that attempts were being made to vitiate the generally satisfactory personnel relationship which has existed within the organisation and that communications addressed to senior officers, not excluding the Head of the organisation, were often couched in intemperate language verging on abuse and that this displayed highly indisciplined conduct not befitting members of an organisation like the IB. In the said circular it was, however, stated that the grievances of the employees would be the basic concern of all members of the organisation though the primary responsibility for this would vest in the Administration and a special responsibility would also be cast on the staff councils which would have to function in a representative manner and form an essential adjunct of the Grievances Redressal machinery of the organisation. By this writ petition the petitioners are seeking to challenge the validity of the said circular memorandum on the ground that it is violative of the fundamental rights of the petitioners guaranteed under Articles 14 and 19 of the Constitution.

2. During the pendency of the writ petition, Article 33 of the Constitution has been amended by the Constitution (Fiftieth Amendment) Act, 1984 which received the assent of the President of India on 11-9-1984. As a result of the said amendment Article 33 has been substituted by the following provision:

“33. Power of Parliament to modify the rights conferred by this Part in their application etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”

3. Under the unamended Article 33 the rights conferred by Part III could be restricted or abrogated by a law made by Parliament in respect of members of the Armed Forces and members of Forces charged with maintenance of public order. As a result of the fiftieth amendment the scope of the provision has been enlarged and persons employed in any bureau or other organisation established by the State for the purpose of intelligence or counter-intelligence, which could include the IB, and persons employed in or in connection with the telecommunication system set up for the purpose of any force, bureau or organisation referred to in the preceding clauses have been brought within the ambit of Article 33. The said amendment in the Constitution was followed by the Intelligence Organisations (Restriction of Rights) Act, 1985, Act No. 58 of 1985, which received the assent of the President of India on 6-9-1985. Section 3 of the said Act makes the following provisions:

“3. (1) No member of an Intelligence Organisation shall,—

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with, or raise funds for, or hold office in, or function in any other manner for, any other society, institution, association or organisation that is not recognised by the Central Government as part of the Intelligence Organisation of which he is a member or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter, pamphlet, poster or other document except with the prior permission of the head of the Intelligence Organisation; or

(d) except for purposes of official duty, contact or communication with any person or any matter relating to functioning, structure, personnel or organisational affairs

of the Intelligence Organisation of which he is a member;

(e) use the name of the Intelligence Organisation of which he is a member for purposes not authorised by the head of the Intelligence Organisation or in any other manner except for purposes relating to the official work and functioning of the Organisation itself.

Explanation.—If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(2) No member of an Intelligence Organisation, shall participate in, or address, any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed.”

4. We have heard Shri Rawal who is appearing as a counsel for the petitioner Association and is appearing in his personal capacity as Petitioner 2. Shri Rawal has sought to challenge the validity of the fiftieth amendment in the Constitution but he has not been able to show how the said amendment which enlarges the scope of Article 33 so as to include persons engaged in activities connected with the activities of the Armed Forces and Forces charged with the maintenance of public order referred to in the unamended Article 33 is destructive of the basic structure of the Constitution so as to transgress the limitations placed on the amending power under Article 368 of the Constitution. The only contention that was urged by Shri Raval was that the fiftieth amendment is discriminatory in nature inasmuch as it takes away the rights that were enjoyed by the members of the petitioner Association without giving them anything in return. Merely because as a result of the impugned amendment the members of the petitioner Association can be deprived of their rights under Part III of the Constitution does not mean that the amendment is destructive of the basic structure of the Constitution. We are, therefore, unable to accept the contention urged by Shri Raval assailing the validity of Article 33 as amended by the fiftieth amendment.

5. Shri Rawal has not been able to show any infirmity in Act No. 58 of 1985 which has been enacted under the provisions of Article 33 as amended once the said amendment in Article 33 is found to be valid. A perusal of the provisions of Section 3 of the said Act shows that there is no complete prohibition in respect of employees of an Intelligence Organisation becoming a member of an association. The prohibition is only in respect of associations specified in clause (a) of sub-section (1) of Section 3, i.e., trade unions, labour unions, political associations or with any class of trade unions, labour unions or political associations. Under clause (b) of sub-section (1) it is permissible to form associations which are purely social, recreational or religious in nature. It is also permissible to form any other association or organisation provided it is so recognised by the Central Government. It is thus open to the petitioner Association, if it so chooses, to move the Central Government for recognition and if it fulfils the requirements laid down by the Central Government for such recognition, the said request shall be given due consideration by the Central Government.

6. It would thus appear that after the amendment of Article 33 by the fiftieth amendment and enactment of Act No. 58 of 1985 the circular memorandum has lost its significance and no purpose would be served by going into the validity of the same. The writ petitions have, therefore, become infructuous and are accordingly dismissed as having become infructuous. No orders as to costs.

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