

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1525 OF 2011

1. Janardan Vasant Patil }
Age 49 years, }
Police Sub Inspector }
presently working at Byculla }
Traffic Section, Mumbai. }

2. Uday Harischandra }
Salgaonkar }
Age 49 years, }
Police Naik, at present }
working at Borivali Railway }
Police Station. }

3. Pankaj Shivaji Thorat }
Age 44 years, }
Police Naik, at present }
working at Naigaon Head }
Quarters. }

4. Mohan Baburao Todkar }
Age 54 years, }
Asst. Sub Inspector }
at present working at }
Shivaji Nagar Police Station, }
Mumbai. }

5. Raman Raghunath Mahale }
Age 40 years, at present }
working as Police Hawaldar }
Alibaug Police Head Quarters }
District Raigad. }

Petitioners

versus

1. Director General of Police }
State of Maharashtra, }
Maharashtra Rajya Police }
Mukhyalaya, Shaheed }
Bhagat Singh Marg, Colaba, }
Mumbai 400 039 }

2. State of Maharashtra }
 through advocates for the }
 State of Maharashtra. } Respondents

Mr. Arshad Shaikh with Mr. Sanjay Udeshi, Mr. Mahesh Londhe and Mr. Netaji Gawde i/b. M/s. Sanjay Udeshi and Co. for the petitioners.

Ms. Purnima Kantharia - Government Pleader with Ms. Deepali M. Patankar for respondent nos. 1 and 2.

**CORAM :- S. C. DHARMADHIKARI &
 DR. SHALINI PHANSALKAR-JOSHI, JJ.**

Reserved on 4th August, 2016

Pronounced on 16th September, 2016

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. This writ petition under Article 226 of the Constitution of India raises a question of great significance and importance. That question is whether the respondents to this writ petition were justified in rejecting the application of the petitioners before us requesting for grant of permission to form an association of police personnel for the rank of Assistant Superintendent of Police and below.

2. Though the petitioners have understood the controversy as above, there are other issues involved. That is arising out of a refusal of the then Director General of Police, vide the impugned order, to the concerned police officials to establish an association

of policemen. It is the permission to establish such association which itself is rejected. This rejection is challenged on the ground that it violates the freedom guaranteed vide Article 19 of the Constitution of India and particularly Article 19(1)(c). That right to freedom and in the subject case of forming association or union cannot be denied only on the ground that the applicants or persons seeking to establish the association are policemen. It is stated that clause 4 of Article 19 does not in any manner permit the State from refusing the permission as sought or to make any law imposing a restriction of this nature. This rejection is much beyond the parameters of clause (4) of Article 19 of the Constitution of India. The refusal is a threshold action. It is at the inception that the policemen have been prohibited from coming together and form an association. This refusal, therefore, violates the mandate of Article 14 of the Constitution of India. Equally, the refusal cannot be justified on the touchstone of Article 33 clause (b). It is urged that the restriction or abrogation is not justified even on the touchstone of the said clause of Article 33. That is because it is the prerogative of the Parliament and the Parliament alone could determine to what extent any of the rights, conferred by para 3 shall, in their application, to the members of the force charged with maintenance of public order, be restricted or abrogated. It is thus claimed that the impugned

order is, therefore, *ultra vires* this constitutional provision, wholly illegal and deserves to be quashed and set aside.

3. The above issues are raised in the backdrop of the following facts and circumstances:

4. The petitioners are citizens of India. Petitioner No. 1 is Police Sub Inspector, presently working at Byculla Traffic Station, Petitioner No. 2 is Police Naik presently working at Borivali Railway Police Station. Petitioner No. 3 is Police Naik at present working at Naigaon Police Headquarters, Petitioner No. 4 is Assistant Police Sub Inspector and is presently working at Shivaji Nagar Police Station, Mumbai and Petitioner No. 5 is Police Hawaldar at present working at Alibaug Police Headquarters.

5. Respondent No. 1 is Head of the police force in the State of Maharashtra and is responsible for the functioning and welfare of the police personnel within the State of Maharashtra. The second respondent is the State of Maharashtra.

6. The petitioners state that the police force is the backbone of any society and society's security and maintenance of law and order depends almost entirely upon the police force. As with other State employees, the police personnel are human beings and from such point of view, it is essential that their service

conditions are protected and that their welfare is not neglected. In order to maintain and increase their alertness, efficiency, integrity and morale, it is necessary that they are given the necessary facilities and that their legitimate grievances are looked into. Indeed, looking after their welfare and needs would ensure that the police personnel can perform their duties efficiently and sincerely.

7. The petitioners state that as per the provisions of the Police Forces (Restriction of Rights) Act, 1966, certain restrictions are imposed with respect to rights of police personnel to form an association and freedom of speech. The petitioners state that therefore, the petitioners cannot form an association freely without consent of and express sanction from Central government or in this case without sanction of respondent no. 1.

8. The petitioners state that in the present petition, the petitioners are concerned about the grievances of Police Sepoys, Naiks, Hawaldars, Assistant Police Sub-Inspectors including those in the Traffic Branch, C. I. D., Crime Branch etc. The petitioners state that the total number of police personnel in these categories in Mumbai are approximately 44,437 and their number in the areas of Maharashtra is about 1,62,552. Thus, there are about 2,04,798 policemen in the State of Maharashtra, which include

37230 Police Naiks, 39297 Police Hawaldars, 16940 Assistant Sub Inspectors, 9385 Police Sub Inspectors and 768 Assistant Commissioner of Police. The petitioners state that though the population and crime rate have increased substantially but there is no corresponding increase in the strength of the police personnel.

9. The petitioners state that the entire police force consisting of the above mentioned categories is without any association to represent their aspirations and legitimate grievances. Significantly, the senior police officers such as officers belonging to the I. P. S. category have their association, namely, IPS Association Maharashtra State, which takes up the cause of their welfare with the Government as and when the situation arises. It is only the lower categories mentioned above who are being denied the opportunity to form their association.

10. The petitioners state that the police personnel belonging to the aforesaid categories, for whom petitioners are seeking reliefs, had their association in the past, which was granted recognition by the Government on 9th October, 1980. The petitioners state that the permission granted to form an association pursuant to the express sanction of the Inspector General of Police imposed necessary conditions upon the said association. The petitioners

state that upon perusal of the said conditions imposed while forming of association, it is clear that the association, which was formed by the police personnel, is not association such as union registered under the Trade Union's Act or labour union engaged to agitate the grievances of employees of private organisations. The said recognition was withdrawn in the year 1983 for three months after an alleged rebellion of a few police personnel and the said withdrawal is in force even today. Thus, as on today the police personnel of the above mentioned categories i.e. weaker sections of police force have no association of their own, nor any means of peacefully ventilating their grievances in a constitutional manner consistent with the police discipline. The petitioners understand and believe that there are associations of police personnel in the States of Haryana, Karnataka, Kerala, West Bengal, Andhra Pradesh and also Railway Protection Force. The said associations have been duly recognised by the respective State Governments and are functioning in the interest of police within the four corners of law. Annexure 'D' is a copy of order dated 6th August, 1979 issued by Secretary to government of Andhra Pradesh and Annexure 'E' is a copy of an order of the Joint Director/R. P. F. Railway Board dated 17th February, 1999, *inter alia*, granting permission to form an association.

11. The petitioners state that the hierarchy in the Police Department is as follows:-

1. Director General of Police
2. Additional Director General of Police
3. Inspector General of Police/Special Inspector General of Police
4. Deputy Inspector General of Police
5. Superintendent of Police/Deputy Commissioner of Police (Selection Grade)
6. Superintendent of Police/Deputy Commissioner of Police (Junior Management Grade)
7. Additional Superintendent of Police/ Deputy Commissioner of Police (Less than 10 years of service)
8. Additional Superintendent of Police/Deputy Commissioner of Police (State Police Service)
9. Assistant Superintendent of Police
10. Deputy Superintendent of Police/SDPO
11. Assistant Commissioner of Police (A. C. P.)
12. Police Inspector (P. I.)
13. Assistant Police Inspector (A. P. I.)
14. Police Sub Inspector (P. S. I.)
15. Assistant Police Sub Inspector (A. S. I.)
16. Head Constable (H. C.)

17. Police Naik (P. N.)

18. Police Constable (P. C.)

12. It is pertinent to note that rank 1 to 10 above has their own association (IPS Officers) which looks after their difficulties and collective aspirations and/or redress their grievances.

13. The petitioners state that due to non availability of any channel to communicate their difficulties and collective aspirations and/or redress their grievances, the morale of the police personnel has become weak and most of them are working under severe stress and pressure. This is evident from the cases of police personnel going berserk as well as increasing cases of suicides. Due to substantial increase in crime rates and the resultant load on *bandobast* duties for one after another public festivals, protecting V.I.Ps and law and order problem, the workload on police force has increased without any commensurate increase in benefits and facilities and without a corresponding increase in the total number of policemen. This work pressure and tension had direct bearing on efficiency and alertness in discharge of duties by the policemen.

14. The petitioners have, thereafter, set out some of the collective grievances of the police personnel of the above

categories. It is stated that these are peculiar to the State of Maharashtra. They have been set out extensively in para 11.

15. The petitioners further state that likewise there are other legitimate collective grievances but there is no forum through which the policemen can ventilate their grievances in a peaceful and constitutional manner. The petitioners state that there are some procedures under which it is claimed by the Respondents that the problems, aspirations and grievances of the aforesaid categories of Police are solved. These procedures/ forums by which the aspirations and/or grievances are claimed to be redressed are as under :-

- (i) State Police Staff Councils.
- (ii) District Police Staff Councils.
- (iii) Orderly Rooms, Open Assembly (Darbars), Grievances Cells.

16. However, the petitioners submit that it is pertinent to mention here that all these forums are totally ineffective and have not helped redress grievances of Police personnel of lower cadre. These meetings, Darbars are held merely as formalities, wherein in front of senior-most officers of the department a constable etc. who represents himself does not get free and fair opportunity to put up his complaints. The petitioners states that they have gathered some data through an application made under

the Right To Information Act, 2005 to demonstrate as to how the aforesaid forums are redundant and unworkable.

17. The petitioners state that on 26th May 1997, one Mr. Sakharam Yadavde, a Constable sent a letter to the then Director General of Police to consider his request for grant of permission to form an association. However, the said letter was neither replied nor permission to form an association was given to the petitioners.

18. The petitioners state when despite repeated requests and reminders, respondents failed and denied permission to form an association, hence, a Writ Petition No.405 of 1997 came to be filed in this Court. The said writ petition came up for hearing before the Division Bench on 18th June, 1997. At the said hearing, the learned Advocate General appearing on behalf of the State made a statement that the request to form an association would be considered if the petitioners make an application in this regard. Upon the said assurance, the said writ petition came to be withdrawn. The Division Bench recorded the assurance of the learned Advocate General and allowed the petitioners to withdraw the writ petition.

19. The petitioners state that in view of the observations of the

Division Bench, the petitioners submitted a fresh representation on 4th August, 1997, to the Director General of Police requesting him to grant permission to form an association under Rule 8 of the Police Forces (Restriction of Rights) Rules, 1966. The said representation was signed by more than 1600 policemen employed in the State of Maharashtra. The first respondent was assured that if the permission was granted the Association will work strictly in accordance with the law and function within the parameters of the Circular No.XXI/3699 dated 9th October, 1980, issued by the first respondent. However, vide letter dated 6th November, 1997, the first respondent straight away rejected the request on the ground that he was personally looking into the grievances of the policemen and further if an association is granted permission or allowed to be formed, it may cause indiscipline among police personnel and in this regard, he invited the attention at events, which took place in the year 1982.

20. Being aggrieved by the said refusal of the first respondent and rejecting the demand/request to form a democratic association, the said Mr. Sakharam Yadawde filed the writ petition No. 420 of 1998. The petitioners state that said writ petition was admitted by this Court and came for hearing and final disposal in July, 2009.

21. By an order dated 16th July, 2009, a Division Bench of this Court disposed of the said writ petition directing the petitioners therein to submit a fresh application before the respondent / Director General of Police for permission to form an association within a period of six weeks. The Director General was directed to consider the application in accordance with law and without being influenced by the order dated 6th July, 1997, which was impugned in the writ petition and make a fresh order on that application as expeditiously as possible and, in any case, within a period of six months.

22. In pursuance of the order as noted above, several applications were made by even the Police Constables and Sepoys etc. to the respondents seeking permission to form an association. Annexures 'J' to 'M' are copies of these applications. Then, it is complained that the Police Commissioner issued a letter and suddenly, without giving sufficient time, called upon only two applicants, namely, Mohan Baburao Todkar and Raman Raghunath Mahale for a hearing on 8th January, 2010 at 11.00 a.m.

23. It is claimed that these two applicants could not properly and effectively represent the need to form association and therefore, the hearing was nothing but a formality. It is in these

circumstances that the impugned order has been passed rejecting the application on the ground that the grievances of the police personnel can be resolved adequately by the existing mechanism. That is how the conclusion to reject the application was reached in the impugned order dated 15th January, 2010, copy of which is at Annexure 'O'.

24. Aggrieved and dissatisfied with this order, the instant petition has been filed.

25. Mr. Arshad Shaikh learned counsel appearing for the petitioners submitted before us that the impugned order is wholly illegal and unconstitutional, null and void. This order not only ignores the mandate of the several provisions of the Constitution of India but brushes aside the direction of this court in the order dated 16th July, 2009 in Writ Petition No. 429 of 1998. The impugned order also violates the principles of natural justice, inasmuch as, firstly, there has been no effective opportunity of hearing prior to the refusal or rejection of the petitioners' application. Secondly, the hearing was a complete farce and formality. Thirdly, just on the eve of the hearing, the respondents could not have communicated to the petitioners that they would be allowed to be represented for the oral hearing only by two representatives and even the petitioners' representatives would

be chosen by the respondents themselves. In other words, the representation by the two representatives, allegedly of the petitioners, was thrust upon them. They were forced and coerced to accept the fact that it is a representative chosen by the respondents alone who would be heard and none else. Lastly, for that as well, sufficient time was not given. Thus, it is a case of the hearing being concluded and order passed in undue haste. The principles of equity, fairness and natural justice have also been flouted.

26. Mr. Shaikh would submit that the first respondent failed to appreciate the reasons and grounds in support of the petitioners' application for permission to form an association by members of State Police Force. Mr. Shaikh submitted that the association was to comprise the lower hierarchy of policemen, who are weak and have no bargaining power at all. Their grievances and complaints are far too serious to be ignored. Since they have been ignored for years together, now this category of policemen is up in arms against their seniors. These persons have to work by the whims and fancies of their superiors. They control their activities completely. They have assumed total control and command and therefore, the so called redressal forums and manned by these very officers and superiors would not be a real and genuine

redressal mechanism. Thus, basic constitutional guarantee and freedom is denied to the petitioners.

27. Mr. Shaikh would submit that just because a particular applicant or one of the petitioners is a policeman does not mean he ceases to be a ordinary citizen of India. The constitutional scheme does not deprive him of any of the rights to freedom and enshrined in the Constitution of India itself. The understanding of the first respondent is that once you join a disciplined force and become a part of it would mean all the restrictions automatically apply irrespective of whether they are incorporated in the law made by the Parliament. Mr. Shaikh, therefore, submits that the impugned order contains a fundamental flaw or defect of legal character. In that, it assumes that anybody who joins police force cannot enjoy any freedom under the Constitution of India. The joining by itself puts restrictions on his activities and prohibits him from indulging in some other. This approach has resulted in the first respondent not applying his mind to vital and crucial issues concerning the working conditions of the policemen at the ground level. In such circumstances and when there is no material indicating lack of discipline on the part of the applicants nor there is anything to indicate that these policemen have not properly discharged their duties their application could not have

been rejected. Thus, they are neither indisciplined nor incompetent.

28. Mr. Shaikh, however, submits that what has influenced the first respondent in passing the impugned order to a great extent is that there was an incident, which took place and popularly styled as police rebellion in Mumbai. However, barring that alleged incident, there was no material indicating the involvement of the present petitioners in any alleged riotous act. Apart therefrom, those accused of being involved in such acts were acquitted. They were directed to be reinstated in their services. Therefore, in the absence of any material on record enabling respondent no. 1 to reach this satisfaction and conclusion that grant of permission would be contrary to the discipline required to be maintained in the force and to enable proper discharge of duties of policemen, the permission could not have been refused. Mr. Shaikh has taken us through the entire petition and all its annexures. He has also taken us through the constitutional provisions. Mr. Shaikh submits that when this court passed the earlier orders on the petitions containing similar issues, it did not opine or conclude that the so called police riots were too serious for denying the permission. The 1993 riots are a thing of the past. An association may be allowed to be formed

with some conditions. The refusal could not be justified in the light of some stray incidents and of the remote past. Lastly, Mr. Shaikh would submit that the amendments to the Maharashtra Police Act, 1951 or directions of the Hon'ble Supreme Court of India in the case of *Prakash Singh and Ors. vs. Union of India and Ors.*¹ are not reasons enough to reject the permission. These directions or the steps taken thereafter have no relevance. These directions are in the nature of suggestions or guidelines. They have no bearing on the controversy at hand.

29. In support of his contentions, Mr. Shaikh has relied upon the following judgments:-

- (i) *Sengara Singh and Ors. vs. The State of Punjab and Ors.*, AIR 1984 SC 1499.
- (ii) *Narendrakumar and Ors. vs. The Union of India and Ors.*, AIR 1960 SC 430.

30. On the other hand, Ms. Kantharia learned Government Pleader submitted that the writ petition has no merit and must be dismissed. The petitioners have no right to insist on establishing an association of policemen and its recognition. She would submit that the petitioners are aware that they are part of a disciplined force. They are aware of the Police Forces (Restriction of Rights) Act, 1966. She would submit that police force includes any force in charge of the public order. The restrictions respecting right to

¹ (2006) 8 SCC 1

form association, the right to freedom of speech as set out in section 3 of this Act are clear. Therefore, to urge that the Act does not prohibit the policemen from forming an association and seeking recognition thereto would be improper and incorrect reading of the Act. That would render the Act redundant and nugatory. No interpretation, which makes such enactment meaningless or redundant, should be placed on its provisions. The restriction in this case is placed in order to serve larger public interest. Maintenance of public order is a sovereign duty. The policemen, therefore, perform a salutary function and duty. They are in-charge of maintenance of law and order and it is a regal function. In these circumstances, without express sanction of the Central Government or of the prescribed authority, no member of a police force shall 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. Therefore, no policemen can claim any right to form association and insist on recognition of any association or union.

31. Alternatively and without prejudice, she submits that the order under challenge does not suffer from any perversity or error of law apparent on the face of the record, inasmuch as it assigns cogent and satisfactory reasons in arriving at the

conclusion that the permission cannot be granted. The order recites as to how the Director General considered the application. There is no prejudice which can be said to be established and proved by the alleged restriction of representation and confining it to only two policemen. The Director General of Police has concluded that no useful purpose would be served by granting any permission. Further, what has been emphasised by Ms. Kantharia is that the writ petition is rendered infructuous. The impugned order also enumerates as to how a comprehensive redressal mechanism is created to redress the grievances and address the complaints of the policemen and particularly lower down in the hierarchy. She submits that this mechanism has been put in place as part of a statutory framework. In that regard, she invites our attention to the Maharashtra Police Act, 1951. She submits that the amendment to the same redresses all the grievances of the policemen. She relies upon section 22F(1) and (2) and submits that the Police Establishment Board No. 2 contemplated thereby has to be created. Its functions are comprehensive. Now, there is no need for any union or association. She also invites our attention to section 22Q of this Act to submit that grievances against the superiors about sanction of leave, posting, duties etc. can now be redressed by this Board. She, therefore, submits that in this mechanism, the

remedies available to such employees holding civil posts of approaching the Maharashtra Administrative Tribunal etc. are available to the policemen and they have availed of the same from time to time. In such circumstances, she would submit that the writ petition be dismissed as infructuous. It is so rendered by subsequent developments. When the permission to form an association was sought, no such mechanism was in place. Now there is a complete measure and forming part of the statute.

32. Apart therefrom, she would submit that in such matters, none can insist on an oral or personal hearing, however, that has been granted admittedly. There is no guarantee in law that hearing should be to a particular official or representative. Merely because the association was represented not by the desired employee or representative does not mean that principles of natural justice are violated. The petitioners have not established any prejudice by this alleged insistence or omission of the Director General of Police. She would submit that the order cannot be termed as arbitrary, discriminatory and perverse so as to warrant interference in writ jurisdiction. Rather writ jurisdiction is not meant to interfere with the internal working of the authorities in charge of maintenance of law and order and public order. The police force is disciplined and if those in-charge

feel that on ground of discipline and to sub-serve the larger public interest, a permission of the present nature should not be granted, then, this court cannot substitute its views with that of the authorities. It cannot interfere with their orders of the nature passed in the present petition merely on some sympathetic grounds or in its opinion, another view is possible. Therefore, she submits that the writ petition be dismissed.

33. Ms. Kantharia relied upon an order passed by this court (Nagpur Bench) on 23rd October, 2015 in the case of *Umesh Uttamrao Marodkar and Ors. vs. Director General of Police and Anr.*².

34. For properly appreciating the rival contentions, we must make a reference to the Act styled as The Police Forces (Restriction of Rights) Act, 1966. It is an Act made by the Parliament to provide for the restriction of certain rights conferred by Part III of the Constitution of India in their application to the members of the force charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Neither is the competence of the Parliament to make such a law nor the legality and validity of the same or any of its provisions is

challenged. It is common ground that by List I Union List, the Parliament can make laws as regards the entries therein. By List III, styled as Concurrent List, the Parliament as also the State can make laws, particularly concerning the matters governed by the entries therein. Therefore, it is not as if such a law cannot be made. The law is traceable to Article 33 of the Constitution of India.

35. In this backdrop, if one peruses the Act, it has only six sections.

36. Sections 2 and 3 thereto read as under:-

"2. Definitions. - In this Act, unless the context otherwise requires, -

(a) *"member of a police force" means any person appointed or enrolled under any enactment specified in the Schedule;*

(b) *"police force" includes any force charged with the maintenance of public order;*

(c) *"prescribed" means prescribed by rules made under this Act."*

3. Restrictions respecting right to form associations, freedom of speech etc. - (1) No member of a police force shall, without the express sanction of the Central Government or of the prescribed authority, -

(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 anyway with any other society, institution, association or*

organisation that is not recognised as part of the force 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 or other document except where such communication or publication is in the bona fide discharge of the duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

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 a police force 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."

37. A bare perusal of this section would reveal as to how police force is considered to be disciplined and entrusted with the maintenance of public order. The restrictions placed on them regarding right to form association, freedom of speech are couched in such language and in clear words to indicate that without the express sanction of the Central Government or of the prescribed authority, no member of police force shall 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 be a member of or be associated in any way with any other society, institution, association or organisation that is not recognised as part of the

force of which he is a member or is not of a purely social, recreational or religious nature. It is the Central Government, which has been empowered by the Explanation to decide as to whether the nature of any society, institution of association is purely social, recreational or religious, if such a question is to arise. Therefore, a bare perusal of these provisions, which have to be read harmoniously and together, would indicate that it is not open to a member of a police force to become a member of or be associated with the trade union, labour union, political association or with any class of trade unions, labour unions or political associations etc. There is a bar for his association with any of the organisations, associations etc. that are not recognised as part of the force of which he is a member or is not of a purely social, recreational or religious nature.

38. These provisions have been, in their opinion, rightly understood by the petitioners as preventing them from forming an association and of the nature contemplated by them. It is in these circumstances that they rely upon some of the sanctions, orders issued in the past and the circulars of the Inspector General of Police.

39. However, Mr. Shaikh relies upon Rules styled as Police Forces (Restriction of Rights) Rules, 1966 and the Amendment

thereto made in 1970. In particular, he relies upon Rule 8 of the Amended Rules. It reads as under :

“8. Recognition.-Members of a police belonging to the same rank desiring to form an Association make an application for the grant of recognition under clause (b) of sub-section (1) of section 3 and such application shall be in writing under the hand of a representative of such Association addressed to the Inspector General of Police who shall be the authority to grant, refuse or revoke such recognition :

Provided that before refusing or revoking recognition, the Association shall be given a reasonable opportunity of making representation against proposed action.”

A perusal of the same reveals that firstly it refers to the Act of 1966. Secondly, it refers to Section 3(1)(b) of the Act of 1966 and pertinently employs the words “make an application for grant of recognition”. Thirdly, there words and expressions are inserted with reference to the language of the Section 3(1)(b) of the Act of 1966. Lastly and importantly, it is the formation and recognition of an Association or Organisation that is not recognised as part of the force of which the applicant is a member or is not of a purely social, recreational or religious nature. Therefore, a member of a police force cannot be associated, in any manner, with a Association or Organisation which is not of the character referred above unless he obtains sanction of the

prescribed Authority. How, that application has to be made and for formation, recognition is set out in Rule 8, to whom and what the powers of the prescribed Authority are and in what manner they shall be exercised is all that can be read in this Rule. Mr. Shaikh reads it without reference to the Act and in isolation. It is well settled that a Rule cannot travel beyond the Act. It must be read subject to the Act. So read, no independent much less absolute right to form an Association of the policemen below the rank as above can be claimed. Thus, the Constitutional provisions, the Act of 1966 and the Rules thereunder make a consistent law or legislative Scheme which cannot be ignored.

40. All these enlist as to how formation of police association after the Act of 1966 was brought into force in Maharashtra State w.e.f. 15th July, 1979 would be covered by that enactment. The circulars, memos emphasise that having regard to the paramount need of maintaining conditions for proper discharge of duties by the policemen and the maintenance of the discipline amongst them, the Government also decided that certain conditions should be laid down governing the formation and working of such associations. These conditions are contained in Appendix I-C to the Circular Memo dated 9th October, 1980. Thus, there are several restrictions placed and the State Government has rightly

urged before us that the right if at all and flowing from the Act and the rules is not absolute in terms.

41. Mr. Shaikh, however, relies upon these very conditions and the model rules, which are to be found from pages 38 to 43 of the paper book. He also relies upon certain orders and which seek to regulate what is purely termed as the election or mode of succession. Mr. Shaikh has, therefore, relied upon certain permissions and orders granted in the State of Andhra Pradesh. He has also relied upon the Railway Board's permissions.

42. We are of the firm opinion that the orders passed by this court, particularly in Writ Petition No. 405 of 1997 Annexure 'F' at page 52 read as a whole do not in any manner deviate or are contrary to the above constitutional and statutory mechanism. Rather, the order, copy of which is at Annexure 'F' at pages 52 to 53 recognises the power of the Government and particularly the prescribed authority to restrict and regulate the forming of associations. All that this first order enables the petitioners therein is to make an application for recognition of the association, namely, Akhil Bhartiya Kamgar Sena and the same would be considered on merit, if made so in accordance with law.

43. The writ petition was allowed to be withdrawn and one does

not know whether at all that Kamgar Sena sought any permission.

44. Reliance is then placed on Annexures 'G', 'G-1', 'H' and 'H-1' to the writ petition, which is nothing but copy of representation dated 4th August, 1997. This application was made by individuals and whose names are to be found at pages 56 to 57 of the paper book. This application was rejected and by assigning reasons. That says that earlier some attempts were made to form an association and a request was made in that behalf. However, it was found that when efforts are made and to redress the grievances raised from time to time and at various levels, then, permission to form such an association and particularly desired in terms of this application should not be granted. It is only in the passing that the events of 1982 have been mentioned. The reasons assigned were sought to be then questioned by filing a writ petition being Writ Petition No. 420 of 1998 by the applicant Sakharam Rama Yadawade. That writ petition was decided on 16th July, 2009. This court, did not go into the legality and validity of the order dated 6th November, 1997, as the writ petition was placed for hearing and final disposal after 12 years. Rather, this court proceeded on the footing assuming that in the situation existing in the year 1997 when the order was made,

the Director General of Police was justified in making the order. The Division Bench opined that a question whether permission to form association is to be granted will have to be considered by the situation that exists presently. Therefore, liberty was granted to the petitioner in that petition to submit an application to the Director General of Police seeking permission to form an association and if such application is made to consider it expeditiously.

45. It is in these circumstances that the application dated 14th August, 2009 was filed. Rather, different staff members filed applications containing similar prayers. They cited some instances of how the members of the police force at constable level suffered at the hands of their superiors during the course of work and on duty. How these employees suffered injustice and at times injuries when mobs attacked them. These and several instances were cited to emphasise that even policemen are human beings and they have several grievances which remain unattended. They are never redressed. Policemen are aware that they are members of a disciplined force, but they cannot suffer and endlessly.

46. It is on this application that the Director General of Police was of the opinion that it would be better to hear some of these

applicants. We are in complete agreement with Ms. Kantharia that each of the applicant/petitioner or policemen could not have been heard and personally by the Director General of Police. Given his busy schedule and enormous duties and functions assigned to him, he took out some time and he indicated to these applicants that two representatives can place before him their case. That can be placed effectively. Even otherwise, he had perused all the applications and the contents of the same were known to him. He had before him the relevant and necessary records. There is absolutely no prejudice demonstrated and proved merely because the chosen representatives of the petitioners were not heard. Merely because some of them and chosen by the Director General of Police were heard and briefly by itself and without anything more does not mean any prejudice is caused. The order of the Division Bench of this court must be read in its entirety and not in part. So read, it is apparent that it grants liberty to the policemen in service to submit an application to the Director General of Police for permission to form an association and requires the Director General of Police to consider that application in accordance with law. All that is observed is that he should consider the application in the light of the situation existing and prevailing at the time when the order was passed. He should not be influenced by any earlier orders. When this was

the mandate flowing from the order of the Division Bench, we do not think that the Director General was obliged to grant a personal hearing to all the petitioners or applicants and individually. He considered the representative grievance or representative request. That request or prayer in the applications was common and concerns the plight of the policemen, is admitted. Therefore, two of them were chosen by the Director General in order to assist him in deciding that application does not mean that he had prejudged the issue or that his decision is vitiated by bias or premeditation. It cannot be termed that the proceedings before him were a farce. We do not think that Mr. Shaikh is right in contending that the impugned order is contrary to the principles of natural justice. Going by the language of the Proviso to Rule 8 all the more the petitioners or applicants could not insist on a personal hearing to all. The first respondent has adhered to its mandate by granting an opportunity of making representation against the proposed action.

47. As far as the merits are concerned, if the impugned order is perused, it is evident that it records the presence of the representatives and their submissions. As far as the grievance that the policemen on duty are attacked by members of the public,

miscreants and gundas and such instances and incidents are increasing, the Director General of Police observes that for these reasons alone would it be justified to grant the applications or permission to form an association was the query posed by him to the appearing representatives. They could not give any satisfactory answer and particularly that the situation will improve or the attacks will be reduced or political interference in their duties are concerned, will cease and stop merely because they are organised or form an association. The Director General has taken an overall view of the matter and observed that merely because such permissions are granted and associations of policemen are permitted to be formed in some States, there has been no noticeable change nor have the above incidents reduced. These observations are made by him in the context of the duties and obligations of the senior police officials towards fellow policemen particularly towards those lower in hierarchy. They would have to stand by them, support them in the event there is undue interference in their duties or that they are prevented by indisciplined and unruly mobs or members of the public from discharging their duties of maintenance of public order. It is in these circumstances that he observes that there are grievances but purely individual in nature. They pertain to the problems faced by individual employees and particularly of postings,

transfers, day to day duties, awards and special rewards. The second grievance pertains to the administrative or other matters, namely, weekly off, holidays, allowances etc. If the grievances are only of the above nature, then, considering them broadly, it would not be proper to grant permission for there is a redressal mechanism in place. One of the mechanisms is what is popularly termed as "Darbar". This monthly Darbar is held predominantly for redressing the grievances of employees. They can be raised during the course of such Darbar by individuals. The Director General is sympathetic when he observes that there are some emergent problems and issues on which expeditious decision is required to be taken. Some of them require a decision forthwith. He was agreeable to issue directions to all the concerned officials and to those reporting officers to attend to such grievances and by exhibiting the required sensitivity. They would be reminded that regular Darbars should be held. At the same, some meaningful discussion and deliberation should take place. He also opined that directions can be issued so as to place a complaint box, in which the employees concerned can put their grievances in writing. It is in the above circumstances he comes to the conclusion that by forming an association and allowing it to be formed or established, none of the issues and individual grievances, as projected, can be addressed or satisfactorily

redressed. Such individual complaints and grievances and arising from time to time can be attended to if required degree of sensitivity and urgency is demonstrated. For that, the policemen need not organise themselves. If the permission is granted, then, it would not be conducive to the paramount obligation of the policemen. Eventually, he is appointed in a disciplined force and placed in charge of maintenance of law and order. For his grievances and complaints, there is sufficient redressal mechanism already in place.

48. We do not, therefore, consider these reasons to be totally extraneous or irrelevant as is projected. The reasons and the ultimate conclusion are not influenced in any manner by any incident or police riots of 1982-83. That is not how the order will have to be read. Mr. Shaikh is not right in complaining that it is only this incident which has influenced the conclusion in the impugned order.

49. Mr. Shaikh would not like to read the order as a whole and in the backdrop of the requests which are contained in the applications. These applications were made by individuals and they were highlighting individual grievances primarily. When the Director General of Police had contents of such applications before him, then, on hearing the representatives, he found that

the mechanism presently available is sufficient and is satisfactorily working. The situation will not change or improve drastically merely because permission to form an association is granted. In these circumstances, we do not think that the conclusion can be termed as perverse or vitiated by any error of law apparent on the face of the record. The order also cannot be termed as arbitrary and discriminatory. There cannot be any malafides attributed for the application has to be made and decided by the prescribed authority.

50. We do not agree with Mr. Shaikh that the impugned order suffers from non application of mind or is vitiated to such an extent as would require interference in our jurisdiction under Article 226 of the Constitution of India. That we are dealing with police force and applications being of the above nature, we do not think that the discretionary exercise of the Director General of Police requires our interference in writ jurisdiction. We are also not in agreement with Mr. Shaikh that the association could have been allowed to be formed with conditions and restrictions. We are nobody to interfere with the wisdom of the police authorities and particularly the Director General of Police of the State of Maharashtra. If on the consideration of relevant matters, he does not deem it fit and proper to grant the permission or exercise his

discretion in favour of allowing the application and granting permission to form an association of policemen, then, we cannot substitute our views with that of the Director General of Police. Our jurisdiction is limited and restricted as well. We cannot, merely because another view is possible in these matters, overturn or reverse the order of the Director General of Police. We cannot also probe into the justification or otherwise grant these requests as contained in the applications of the petitioners. If the existing mechanism to address the complaints or redress the grievances of individual policemen, particularly at the subordinate level, in the opinion of the Director General of Police is sufficient and requires only marginal change or improvement, then, that is a view taken by an expert. That is a view taken by the in-charge and fully aware so also conversant with the problems faced by the policemen. He is also a policeman. We cannot presume that he is unsympathetic and unmoved by the plight of some of the policemen. The policemen at times risk their lives and for protection of the public. They are not rewarded or awarded, but beaten brutally and at times killed. Similarly, some insensitive, impolite and rude seniors do not treat the constabulary or middle level policemen with respect and dignity. Whenever such instances are brought to light, the State, through its Department of Home and by intervention of senior

functionaries of the police force, can be requested to take steps. Such measures are initiated and taken in accordance with law. Those guilty are brought to book. Sometimes, they are discharged from their services or transferred. Even individual policemen and when facing disciplinary action have several mechanisms in the form of appeals etc. They have also a remedy to approach the tribunal under the Administrative Tribunals Act, 1985 or approach this court in its writ jurisdiction. It is not as if individual policemen suffer silently and endlessly. It is, therefore, not proper to assume that every police constable, every police inspector is always harassed by the seniors and suffers at their hands. He is not necessarily treated mercilessly. We cannot presume that he is not extended the necessary courtesy. We cannot go by some stray or individual instances to assume that a disciplined force does not treat its members with the requisite respect, regard and dignity.

51. We are in agreement with Ms. Kantharia that the situation has improved and after the Hon'ble Supreme Court has stepped in and expedited the police reforms. One of the directions issued by the Hon'ble Supreme Court and as highlighted in the affidavit in reply is setting up of boards and grievances redressal mechanism. The State has taken due note of these recommendations in the

various reports of the Police Reforms Commission and directions of the Hon'ble Supreme Court of India. If some of the directions have not been implemented by itself and without anything more will not enable us to interfere with the impugned order.

52. With the assistance of Ms. Kantharia we have perused some of the amended provisions of Maharashtra Police Act, 1951, the entire Chapter, which is now introduced, namely, Chapter II-A and inserted by Maharashtra Police (Amendment and Continuance) Act, 2014 contains provisions regarding State Security Commission, Police Establishment Boards and Police Complaints Authorities. Our attention is invited to the functions of the Police Establishment Board No. 1 and Police Establishment Board No. 2. The Police Establishment Board No. 2 has been empowered to make proper recommendations to the competent authority concerned regarding the service conditions of police officers excluding salary and allowances and the competent authority shall normally act upon them. Sections 22E and 22F read thus:-

"22E Police Establishment Board No. 2. - (1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Board to be called the Police Establishment Board No. 2.

(2) The Police Establishment Board No. 2 shall consist of the following members namely:-

(a) Director General and Inspector General of

Police – Chairperson

- (b) *Director General, Anti-Corruption Bureau – Member*
- (c) *Commissioner of Police, Mumbai – Member*
- (d) *Additional Director General and Inspector General of Police – Member*
- (e) *Secretary or Principal Secretary, as the case may be (Appeal and Security) – Member*
- (f) *Additional Director General and Inspector General of Police (Establishment) – Member-Secretary*

Provided that, if none of the aforesaid members is from the backward Class, then the State Government shall appoint an additional member of the rank of the Additional Director General and Inspector General of Police belonging to such Class.

Explanation. - for the purposes of this sub-section, the expression “Backward Class” means the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes.

22F. Functions of Police Establishment Board No.

2. - *The Police Establishment Board No. 2 shall perform the following functions namely -*

(1) *Subject to the provisions of this Act, the Board constituted under sub-section (1) of section 22E may, make appropriate recommendations to the Competent Authority concerned, regarding the service conditions of Police Officers excluding salary and allowances. The Competent Authority shall normally act upon them.*

(2) *In particular and without prejudice to the generality of the foregoing functions, the Board may perform all or any of the following functions, namely:-*

- (a) *to decide posting and transfer of Police Officers;*
- (b) *to make appropriate recommendations to the Competent Authority concerned in respect of the grievances received by*

the Board from Police Officers regarding their promotions, disciplinary proceedings and other service matters;

(3) Notwithstanding anything contained in clauses (1) and (2), the State Government may, from time to time, give directions in public interest and administrative exigencies in respect of postings, transfers and disciplinary matters relating to the Police Officers and such directions shall be binding on the Board.

Explanation. - For the purpose of this section, the expression "Police Officer" means a Police Officer of and below the rank of the Police Inspector."

53. A bare perusal of these provisions would indicate as to how apart from these Establishment Boards, the State Government has been empowered to issue directions from time to time in public interest and administrative exigencies in respect of postings, transfers and disciplinary matters relating to the police officers and such directions shall be binding on the Board. The explanation to section 22F as reproduced above clarifies that this mechanism is created for a police officer of and below the rank of the Police Inspector. Thus, a high powered body has been established and conferred with definite powers. These powers conferred on the Board No. 2 are coupled with a duty. They must make proper recommendations to the competent authority concerned, if the matters regarding service and conditions of policemen covered by this provision are brought before them. Every complaint, whether individual or collective, should be

attempted to be redressed and appropriate recommendations be made so that the conditions of service of the policemen are improved. They should be safe, secure and feel no pressure or force while discharging their duties. Their independence should not in any manner interfered with. Even when they are harassed by superiors, more particularly the female staff, there is sufficient redressal mechanism. If the functions of these Police Establishment Boards are taken into consideration, then, they are all pervasive. In matters where there are directions required from the State, then, the State Government can always be approached and we have no doubt in our mind that the State Government will evolve a permanent mechanism so that timely directions are issued for the protection of the members of the police force. It is true that the incidents of attacks on the policemen are alarming. There is continuous threat to their life. There is reluctance by public to abide by or follow the rule of law. The members of public have now the audacity to attack policemen, who have been posted for their protection. If such incidents are increasing and the policemen feel insecure, unsafe and threatened during the course of and while discharging their duties, then, the State must realise that the law and order situation is going out of its control. The management and administration of the police force ought to be such that none

should attack a policeman on duty. Therefore, certain measures will have to be immediately taken. The seniors will have to take review of the situation at the ground level and personally try to improve the lot of these poor and unarmed policemen on duty. It is time we realise that mobs come out and attack policemen merely because they are enforcing and implementing the law. The citizens have forgotten their fundamental duties. The citizens and residents forget that every right has a corresponding duty. Therefore, a dialogue or communication channel would have to be opened with the public and they would have to be continuously educated about the need to respect policemen, especially the traffic constables or security guards on duty. These and other measures, so as to assure these policemen that they and their families will not suffer in such a situation, must be undertaken and implemented. We are sure that this order will be a reminder to the State in this regard.

54. While we say nothing more, we do not think that reliance placed by Mr. Shaikh on the judgments of the Hon'ble Supreme Court of India is well placed. Way back, in the case of *M/s. Raghubar Dayal Jai Prakash and Ors. vs. Union of India and Anr.*³, the Hon'ble Supreme Court of India had the following to observe with regard to freedom enshrined in Article 19(1)(c) of the

³ AIR 1962 SC 263

Constitution of India. The Hon'ble Supreme Court of India held as under:-

(11) Briefly stated, the argument regarding these provisions infringing the freedom to "form associations" was as follows: The Constitution guarantees to every citizen the right to form an association. The only limitation which might legally be imposed on this right to form an association is that set out in cl. (4) of [Art. 19](#), viz., bye-laws which place restrictions based on public order or morality. Where the object of the association is lawful, the citizen, through that association, and the association itself are entitled, by virtue of the guaranteed right, to freedom from legislative interference in the achievement of its object except on grounds germane to public order or morality. In other words, the freedom guaranteed should be read as extending not merely to the formation of the association as such, but to the effective functioning of the association so as to enable it to achieve its lawful objects. Unless sub-cl. (c) of cl. (1) of [Art. 19](#) were so read the freedom guaranteed would be illusory and the Court should, in construing a freedom guaranteed to the citizen, so read it, as to give him an effective right which could be used for the purpose for which the Constitution-framers intended. The further submission, which was in the nature of a corollary from the above was that the freedom guaranteed by sub-cl. (c) of cl. (1) of [Art. 19](#) carried with it a right in the association to determine its internal arrangements in the matter of selecting the personnel who shall manage it, the framing of the bye-laws and regulations which shall govern the relationship between the association and its members as also between its members without any interference by the State unless the law providing for such interference were grounded on morality or public order. In effect the submission was that the right guaranteed under sub-cl. (c) of cl. (1) of [Art. 19](#) was not merely, as its text would indicate, the right to form an association but would include the functioning of the association without any restraints not dictated by the need for preserving order or the interests of morality. On these premises it was urged that while the Constitution had guaranteed the freedom to form an association-including inter alia one for fostering or regulating forward trading, still the Central Government had taken upon themselves the right to determine the rules and bye laws under which the association could function and had, by the provisions

in Ch. III of the Act, in every way interfered in the matter of internal management and it was urged that this was violative of the right guaranteed by sub-cl. (c) of cl. (1) of Art. 19 since the restrictions in Ch. III of the Act could not be held to have been dictated, on grounds of public order or morality.

(12) We consider this argument is without force. In the first place, the restriction imposed by S. 6 of the Act is for the purpose of recognition and no association is compelled to apply to the Government for recognition under that Act. An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also. Could it be contended that there is a right in the association guaranteed by the Constitution to obtain recognition? It was not disputed before us that forward trading might sometimes assume undesirable forms and become akin to gambling which might have deleterious consequences on lawful trade and on the general public by causing violent fluctuations in prices. It would follow that the control of forward trading is a legitimate subject of legislative interference and regulation and we might add that this was not disputed before us. The manner in which this regulation is effected and the machinery employed for achieving it are matters of legislative policy which could be determined only by taking into account the Organisation of the market, the manner of trading and other relevant factors. The impugned enactment in its Ch. III proceeds on the basis that organisations of tradesmen might be entrusted with the task of regulating these transactions, so that while legitimate trade would be furthered, the evil consequences of undesirable speculation might be avoided. It was, therefore, necessary, that the instrument chosen should be subject to control so as effectively to further the policy of the scheme of regulation and that is the ratio underlying the provisions in S. 6 of the Act and those which follow it in Ch. III. In this connection it is necessary to add that the restrictions which are impugned as unconstitutional were imposed only on "recognised" associations. Parliament could well have chosen to effect the regulation directly through an official agency instead of through the

medium of a voluntary association. In such an event, neither the traders nor their associations could complain of any violation of the law. The mere fact therefore that Parliament chose to utilise the machinery of voluntary trades associations for the purpose of enforcing regulatory control could not invalidate the provision of laws which are designed to ensure effective control over the mechanism of forward trading.

(13) *So far we have dealt with the argument about sub-cl. (c) of cl. (1) of Art. 19 in relation to the trades associations under the Act. As regards the wider question argued before us regarding the scope of sub-cl. (c) of cl. (1) of Art. 19, this Court has, in [All India Bank Employees' Association v. National Industrial Tribunal](#), Civil Appeal No. 154 of 1961 : (AIR 1962 SC 171) examined the content of this "freedom of association" in the light of the other freedoms guaranteed by the other sub-clauses of cl. (1) of Art. 19, in which judgment has been rendered recently and it is therefore unnecessary to go over the ground again."*

There is all the more reason to be cautious and circumspect, when the right claimed is of formation of Association of policemen and its subsequent recognition. Any such association cannot be formed without the express consent of the prescribed Authority is thus a correct understanding of the provision. If the petitioners admit of such a legal position, then, they should not forget that they are part and parcel of a Regal and Sovereign function of the State. That must be performed at all cost and cannot be outsourced by the State. The petitioners on joining a force meant for assisting the State in maintaining law and order have to follow its discipline and strict standards. Even the Director General of

Police is expected to adhere to the above and not compromise with the same. Thus, this force is a class by itself and members thereof cannot equate themselves with the organised labour and employees ordinarily associated with industry and commercial world. In true sense of the term the superiors in the police hierarchy are not masters of those below. They cannot and are expected not to treat the subordinates as their servants. There is a Directorate of the entire force and each one of them right from the police constable to the Director General is part and parcel of the disciplined policing set-up. The superior officers must realise that the constabulary is the foundation on which the entire structure stands and if that is weakened, the whole edifice will collapse. It will come crashing down to the detriment of maintaining peace and order in the society. Hence, none of the members of this disciplined force, of which we are all proud of, should feel isolated, lonely, dejected and frustrated. Those in-charge must act swiftly to maintain and preserve the morale, unity of the force especially the constabulary.

55. Mr. Shaikh's reliance upon the judgment in the case of *Sengara Singh and Ors. vs. The State of Punjab and Ors.*⁴ is misplaced. There, the matter regarding termination of policemen by the State of Punjab was sought to be challenged, including the

4 AIR 1984 SCC 1499

action of launching criminal prosecution. A committee consisting of members of the superior rank of the police force was constituted by the State Government to review the cases of the dismissed agitators and reinstatement followed on the recommendations of the committee. Out of 1100 dismissed employees, 1000 were reinstated and rest were not. It is in these circumstances that the Hon'ble Supreme Court interfered with the orders of dismissal of such 100 remaining employees and reversed the judgment of the High Court.

56. The documents, which have been tendered also do not carry the case any further. We are not here to examine the ambit and scope of the provisions of the Act of 1966 or the contours of the freedom or right guaranteed by Article 19(1)(c) of the Constitution of India or the reasonable restrictions placed thereon by Article 19(4) thereof.

57. We are of the firm opinion that Ms. Kantharia is right in relying on the judgment of the Hon'ble Supreme Court of India in the case of *Delhi Police Non-Gazetted karmachari Sangh and Ors vs. Union of India*. The Hon'ble Supreme Court of India construed the provisions of the 1966 Act in the light of a challenge to their constitutional validity and legality. The Hon'ble Supreme Court in somehow similar situation held as under:-

“4. The appellants' case is that the Act referred to above violates Article 19(1)(c) of the Constitution of India and that the restrictions imposed by it, being arbitrary, violates Article 14 of the Constitution. The Non-Gazetted members of the Delhi Police Force wanted to form an organisation of their own and for that purpose constituted the Karmachari Union in 1966 and applied for its registration under the Trade Union Act, 1926. Initially the registration asked for was declined. Then Act 33 of 1966 was enacted. It came into force on December 2, 1966. An application for recognition was again made on December 9, 1966. Recognition was granted by the Central Government on December 12, 1966. The Non-Gazetted members of the Delhi Police Force were permitted to become members of the Sangh. On December 12, 1966, the Central Government made rules under the Act which were amended in December, 1970. The circular in question was issued under these rules. The circular attempts to derecognise the Sangh. This occasioned the filing of the writ petition.

5. Before considering the rival contentions urged before us, it would be useful to refer to the salient features of the Act to appreciate its ambit and the restrictions imposed by its provisions. The Act was enacted to delineate the restrictions imposed on the rights conferred by Para III of the Constitution, in their application to the members of the forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The Parliament obviously has this power under Article 33 of the Constitution of India. The provisions of the Act seek to place certain restrictions on members of the police force in exercise of their fundamental rights guaranteed by Article 19(1)(c) to form Association or Unions. Section 3 of the Act reads as follows :

“3(1) No member of a police force shall, without the express sanction of the Central Government or of the prescribed authority -

- (a) *be a member of, or be associated in any way with, any trade union, labour union, political association or with any class or trade unions, labour unions, or political associations; or*
- (b) *be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the force of which he is a member or is not of a purely social, recreational or religious nature ; or*
- (c) *communicate with the press or public or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.*

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 a police force 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.

Section 4 of the Act provides for penalties if section 3 is contravened by any person. Section 5 gives power to the Central Government by notification in the official gazette, to amend the schedule by including therein any other enactment relating to a force charged with the maintenance of

public order or omit therefrom any enactment already specified therein. Section 6 gives the rule-making power to the Central Government.

6. The only contention that now survives is whether the impugned statute, rules and order are violative of the rights of the appellants guaranteed under Article 19(1)(c) of the Constitution of India. This appeal could be disposed of by a short order. Appellants 2 to 7 are no longer in service. They have been dismissed. As such they do not have the necessary locus standi to sustain this petition. But the appellants' counsel submitted that the first petitioner - the Sangh, was still interested in perusing this appeal and that persuaded us to hear the appeal on merits.

7. It is true that recognition was given to the Sangh originally. Subsequently, by order dated April 1, 1971, the Sangh was derecognized. This was pursuant to the amended rules. Rule 3 provided that :

No member of the police force shall participate in, or address, any meeting or take part in any demonstration organised by any body of persons -

- (a) for the purpose of protesting against any of the provisions of the Act or these rules or any other rules made under the Act; or
- (b) for the purpose of protesting against any disciplinary action taken or proposed to be taken against him or against any other member or members of a police force; or
- (c) for any purpose connected with any matter pertaining to his remuneration or other conditions of service or his conditions of work or his living conditions, or the remuneration, other conditions of service, conditions of work or living

conditions of any other member or members of a police force :

Provided that nothing contained in clause (b) shall preclude a member of a police force from participating in a meeting convened by an association of which he is a member and which has been accorded sanction under sub-section (1) of section 3 of the Act, where such meeting is in pursuance of, or for the furtherance of, the objects of such association.

8. *The above rules were amended by a notification dated December 19, 1970, the material change for our purpose being an amendment in the proviso to clause (c) was substituted by another proviso which reads as follows :*

Provided that nothing contained in clause (c) shall preclude a member of a police force from participating in a meeting -

- (i) which is convened by an association of police officers of the same rank of which he is a member and which has been granted recognition under clause (b) of sub-section (1) of section 3 of the Act ;*
- (ii) which has been specifically provided for in the article of association of / and has been, by general or special order, permitted by the Inspector-General of Police having regard to the object of such meeting and other relevant factors; and*
- (iii) which has been convened to consider the agenda circulated to all concerned according to the relevant provisions of the articles of association, after giving intimation in advance to the Inspector-General of Police or an officer nominated by*

him.

Rule 5 was added to the Rules by virtue of which minutes had to be recorded if the meetings of a recognised association. The Inspector-General of Police could send observers by virtue of Rule 6 to such meetings. Outsiders were prohibited from attending the meetings of the association without permission of the Inspector-General of Police by Rule 7. Rules 8, 9 and 11 may also be usefully read:

8. *Recognition - Members of police force belonging to the same rank desiring to form an association may make an application for the grant of recognition under clause (b) of sub-section (1) of section 3 and such application shall be in writing under the hand of a representation of such association addressed to the Inspector-General of Police who shall be the authority to grant, refuse or revoke such recognition ;*

Provided that before refusing or revoking recognition, the Association shall be given a reasonable opportunity of making representation against the proposed action.

9. *Suspension of recognition: The Inspector General of Police may in the interests of the general public or for the maintenance of discipline in the police-force and with the prior approval of the Central Government, the State Government or as the case may be the Administrator of the Union Territory suspend the recognition granted under rule 8 for a period not exceeding three months which may be extended for a further period of three months by the Central Government, State Government or as the case may be the Administrator of the Union*

Territory so however that the total period for which such recognition may be suspended shall, not, in any case, exceed six months."

11. *Special provision regarding recognition already granted. Recognition granted prior to the commencement of the Police Forces (Restriction of Rights) Amendment Rules, 1970, to any association the articles of association of which are not in conformity with these rules shall, unless the said aridest of association are brought in conformity with the provisions of these rules within a period of thirty days, stand revoked on the expiry of the said period."*

9. *It is the change effected by the new Proviso to Rule 3(c) which has come in for attack at the hands of the appellants. Previously all non-gazetted officers of the Delhi Police Department could be members of the Sangh. Now, the amended proviso to rule 3(c) mandates that only members of the Police Force having the same rank could constitute themselves into one Association. The effect of this amended rule is that the Sangh will have to be composed of various splinter associations consisting of members holding different ranks. This according to the appellants violates not only [Article 19\(1\)\(c\)](#) which protects freedom of association, but also the provisions of the Act.*

.....

11. *The appellants' counsel Submits that recognition of the association carries with it the right to continue the association as such. It is a right flowing from the fact of recognition. To derecognise the association in effect of- fends against the freedom of association. It is urged that once the Government had granted recognition to the Sangh and approved its constitution neither*

the Parliament nor any delegated authority can take away that recognition or dictate to the association who could be its members. The right available to the members of the association at the commencement should continue as such without any hindrance.

12. Before considering the questions of law raised by the appellants' counsel with reference to the decided cases, it would be useful to bear in mind the fact that this association consists of members of Police Force who by virtue of this fact alone stands on a different footing from other associations. The Constitution of India has taken care to lay down limitations on such, associations from exercising rights under [Article 19\(1\)\(c\)](#). [Article 33](#) read with [Article 19\(4\)](#) of the Constitution offers an effective reply to the contention raised by the appellants. [Article 33](#) reads as follows:

"Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

[Article 19\(4\)](#) reads as follows:

"Nothing in sub clause (c) 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, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

13. That the Sangh and its members come within the ambit of [Article 33](#) cannot be disputed. The provisions of the Act and rules taking away or abridging the freedom of

association have been made strictly in conformity with [Article 33](#). The right under [Article 19\(1\)\(c\)](#) is not absolute. [Article 19\(4\)](#) specifically empowers the State to make any law to fetter, abridge or abrogate any of the rights under [Article 19\(1\)\(c\)](#) in the interest of public order and other considerations. Thus the attack against the Act and rules can be successfully met with reference to these two Articles as members of the Police Force, like the appellants herein, are at a less advantageous position, curtailment of whose rights under [Article 19\(1\)\(c\)](#) comes squarely within [Article 33](#) in the interest of discipline and public order. This conclusion of ours is sufficient to dispose of this appeal. However, we will deal with the submissions made before us for the completeness of the Judgment.

... ..

15. Here we have an entirely different situation since we are dealing with a group distinct in its nature and composition from others. Here we are dealing with a force that is invested with powers to maintain public order. [Article 33](#) enables Parliament to restrict or abrogate the fundamental rights in their relation to the Armed Forces including Police Force. In *Ous Kutilingal Achudan Nair & Ors. v. Union of India & Ors.*, this Court had to consider two questions; whether the employees of the defence establishment such as cooks, barbers and like civil employees were "members of the Armed Forces" and if so whether they could be validly deprived of their right to form unions in violation of [Article 19\(1\)\(c\)](#). This Court held that they fell within the category of members of the Armed Forces and that the Central Government was competent by notification to make rules restricting or curtailing their right to form associations, [Article 19\(1\)\(c\)](#) not withstanding.

16. In *Raghubar Dayal Jai Prakash v. The Union of India and Ors.*, this Court had to deal with this question in relation to the functions of an incorporated body the objects of which were,

inter alia, to regulate forward transactions in the sale and purchase of various commodities, Freedom of association is a fundamental right. It was contended that if a law regulated the recognition of an association under certain conditions subject to which alone recognition could be accorded or continued, such conditions were bad. This Court had to consider whether the freedom of association implied or involved a guaranteed right to recognition also. The contention was that if the object of an association was lawful, no restriction could be placed upon it except in the interest of public order and that freedom to form an association carried with it the right to determine its internal arrangements also. Repelling this contention this Court held that restrictions cannot be imposed by statute for the purpose of regulating control of such associations. While the right to freedom of association is fundamental, recognition of such association is not a fundamental right and the Parliament can by law regulate the working of such associations by imposing conditions and restrictions on such functions.

17. It cannot be disputed that the fundamental rights guaranteed by [Article 19\(1\)\(c\)](#) can be claimed by Government servants. A Government servant may not lose its right by joining Government service. [Article 33](#) which confers power on the Parliament to abridge or abrogate such rights in their application to the Armed Forces and other similar forces shows that such rights are available to all citizens, including Government servants. But it is, however, necessary to remember that [Article 19](#) confers fundamental rights which are not absolute but are subject to reasonable restrictions. What has happened in this case is only to impose reasonable restrictions in the interest of discipline and public order.

18. The validity of the impugned rule has to be judged keeping in mind the character of the employees we are dealing with. It is true that the rules impose a restriction on the right to form association. It virtually compels a Government

servant to withdraw his membership of the association as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government. If the association obtains recognition and continues to enjoy it, Government servants can become members of the said association; if the said association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be members of the said association. That is the plain effect of the impugned rule. These rules are protected by Articles 33 and 19(4) of the Constitution. Besides, it is settled law that the right guaranteed by [Article 19\(1\)\(c\)](#) to form associations does not involve a guaranteed right to recognition also.

19. The main grievance of the appellants is that the first appellant-Sangh when recognised, comprised of Police Officers of various ranks, the common factor being that all its members were non-gazetted police officers. This composition was changed by the impugned rules. Not only is the composition changed; the entire Sangh stood derecognised for failure to alter its constitution complying with the new rules. This attack cannot be sustained. [Section 3](#) of the Act permits the rule making authority to define any group of Police Force that can form an Association. It also gives power to prescribe the nature of activity that each such association of members can indulge in. It, therefore, follows that if rules can be framed defining this aspect, a rule can also be framed enabling the authorities to revoke or cancel recognition once accorded, if the activities offended the rules.

20. The further grievance of the appellant is that non-gazetted officers who once formed one block have been further divided with reference to ranks and that this again is an inroad into their right under [Article 19\(1\)\(c\)](#). This submission has been already met.

Besides, this classification based on ranking has its own rationale behind it. We are dealing with a Force in which discipline is the most important pre-requisite. Non-gazetted officers consist of men of all ranks; the lowest cadre and officers who are superior to them. If all the non-gazetted officers are grouped together irrespective of rank, it is bound to affect discipline. It was perhaps, realising the need to preserve discipline that the changes in the rule were effected. We are not satisfied that there has been violation of any law in doing so."

This judgment is followed in a more recent pronouncement of the Hon'ble Supreme Court. In the case of ***Union of India vs. Ex. Flt. Lt. G. S. Bajwa⁵***, the Hon'ble Court held as under :

"23. Having regard to the authorities it must be held that the provisions of the Act cannot be challenged on the ground that they infringe the fundamental right guaranteed to the respondent under Article 21 of the Constitution of India. Since the Air Force Act is a law duly enacted by Parliament in exercise of its plenary legislative jurisdiction read with Art. 33 of the Constitution of India, the same cannot be held to be invalid merely because it has the effect of restricting or abrogating the right guaranteed under Article 21 of the Constitution of India or for that reason under any of the provisions of Chapter III of the Constitution."

58. These observations also take care of the other argument of Mr. Shaikh that higher level police officers have formed their association and clubs and the State has never questioned these acts. We do not think that police clubs or membership thereof alone and by itself falls foul of the 1966 Act or the constitutional

5 AIR 2004 SC 808

Articles and provisions. Secondly, these associations are not found to be causing obstruction or interference with the proper discharge of the duties nor have been held to be affecting the discipline of the police force. If any of such instances are brought to the notice in future, we are sure that the State will take appropriate corrective action.

59. In the view that we have taken, it is not necessary to decide any wider or larger controversy, particularly whether the Division Bench order delivered at Nagpur lays down the correct law or not. We are broadly in agreement with the conclusion in that order, but for our independent reasons.

60. As a result of the above discussion, the writ petition fails. It is accordingly dismissed. Rule is discharged. There would be no order as to costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)