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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C)11523/2016**

% **Date of Decision: 17th January, 2018**

FIGHT FOR HUMAN RIGHTS Petitioner

Through: Mr. K.R. Chitra, Adv.

versus

UNION OF INDIA Respondent

Through: Ms. Biji Rajesh, Advocate
for Mr. Gaurang Kanth,
CGSC.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM Nos.1938-1939/2018

1. Notice.
2. Ms. Biji Rajesh, Advocate, who is representing Mr. Gaurang Kanth, ld. CGSC, accepts notice for the respondent.
3. Having regard to the nature of the applications, ld. counsel for the parties are orally heard.
4. By way of CM No.1938/2018, the petitioner seeks condonation of delay of 27 days in filing the application for restoration (CM No.1939/2018) of the writ petition, which was dismissed in default by an order dated 20th November, 2017.
5. For the reasons stated in the application, we are satisfied that

the applicant/petitioner was prevented due to sufficient cause from being represented in this Court on 20th November, 2017.

6. Both the applications are premised on the same ground and explanation.

7. We, therefore, condone the delay of 27 days in filing the restoration application.

CM No.1938/2018 (for condonation of delay) is accordingly allowed.

8. We are of the view that the writ petition deserves to be restored to its original number, therefore the order dated 20th November, 2017, dismissing the writ petition in default is hereby recalled and the writ petition is restored to its original number.

CM No.1939/2018 (for restoration of the writ petition) is allowed.

W.P.(C) No.11523/2016

9. We have heard the ld. counsel for the parties.

10. This petition states that the Indian Army has issued the guidelines dated 8th January, 2016 directing the civilians and shopkeepers not to wear or sell combat uniforms, which are worn by the personnel of the Armed Forces.

11. Reference has been made to a news report published in the “*Times of India*” on 8th January, 2016. The petitioner claims to have made representation dated 8th March, 2016 to the respondent through online grievance registration portal bearing registration no.MDEF/E/2016/00762 maintained by it with regard to which no response has been received by the writ petitioner. On the same

issue, earlier Writ Petition (Civil) No.5997/2016 was filed in public interest, which was disposed of by an order dated 20th July, 2016 directing the respondents to treat the writ petition as a representation and after considering the issue raised therein, pass an appropriate order in accordance with law within three months from that date.

12. The present writ petition is filed in public interest and has been necessitated for the reasons that the respondent has failed to comply with the directions made by this Court in the order dated 20th July, 2016.

13. The writ petitioner has complained that the unauthorized manufacturing, stocking and selling of combat uniforms, backpacks, sleeping bags, badges and shoes etc. which are used by the personnel of the Armed Forces imperil the national security as well as the safety of the lives of the citizens of India and that all measures are required to be taken by the respondents on an urgent basis so that such illegal actions are prevented. In support of the prayers made in the writ petition, the writ petitioner has referred to the incident which took place on 2nd January, 2016 in which a heavily armed group wearing Indian Army fatigues attacked the Pathankot Air Force Station of the Western Air Command of the Indian Air Force, resulting in serious casualties.

14. Premised on the above assertions, the writ petitioner has made the following prayers:

“a) Direct the respondent to effectively enforce the guidelines issued by them on 8.01.2016, throughout the

length and breadth of the Indian Union within a limited time frame.

b) Direct the respondent to take a concrete immediate steps to prevent private enterprises, shops, individuals etc. operating in different states of India and Union Territories e.g. Punjab, Uttar Pradesh, Uttarakahnd, J&K, and Delhi etc. from unauthorizedly manufacturing, stocking and selling of Combat Uniforms, Backpacks, Sleeping Bags, Badges and Shoes etc. used by Armed Forces in India.

c) Direct the respondent to handle the whole responsibility of Manufacturing, Stocking and Selling of Combat Uniforms, Backpacks, Sleeping Bags, Badges and Shoes etc. used by Armed Forces in India with immediate effect.”

15. On record, there is an affidavit dated 15th November, 2017 filed by the respondent. Our attention is drawn therein to Section 140 of the Indian Penal Code, which makes wearing the garb or carrying token used by a soldier, soldier or airman, is an offence punishable with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. We may extract hereunder Section 140 of the IPC *in extenso* which supports the contention of the petitioner and reads as follows:

“Section 140 - Wearing garb or carrying token used by soldier, sailor or airman.—Whoever, not being a soldier, sailor or airman, in the Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine

which may extend to five hundred rupees, or with both. ”

16. The respondent has also placed before this Court the provisions of Section 6(1) of the Official Secrets Act, 1923 which also makes unauthorized use of Naval/Army/Air Force uniforms is a punishable offence. We extract hereunder the provisions of Section 6(1) of the Official Secrets Act, 1923 and reads thus:

“Section 6 – Unauthorised use of uniforms, falsification of reports, forgery, personation and false documents.

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a

person holding, or in the employment of a person holding, office under 17 [Government], or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or password, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the 18[Government], or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp, he shall be guilty of an offence under this section.”

17. On the 24th of October, 1994, the Ministry of Home Affairs, Government of India had written to the Chief Secretaries of all the States/Union Territories Administrations to the following effect:

“2. The Ministry of Defence has brought to the notice of this Ministry that a number of civilians, civil security organisations, etc. have been using service pattern uniforms, uniform articles and vehicles which are painted similar to defence duty vehicles. The ex-servicemen employed by various security agencies/private enterprises/shops have been using olive green uniforms, which is a matter of serious concern. The use of service uniforms by unauthorised

personnel/civilian is also prohibited under Section 140 of the Indian Penal Code and clause 6 of Indian Official Secrets Act, 1923 and the offence is punishable under these Acts.

3. It is, therefore, requested that appropriate measures be taken and directions issued to ensure immediate stoppage of:-

a) Open sale, stitching and use of service uniforms and uniform articles by unauthorised persons,

b) Use of a service type painted vehicles by civilians.

4. A copy of the instructions issued in this record may also kindly be enclosed to the Ministry.”

18. Reliance has also been placed by the respondent on a letter no.25013/74/98-GPA-II dated 18th January, 1999 issued by the Ministry of Home Affairs, Government of India. This communication has been addressed by the Ministry of Home Affairs to the Home Secretaries of all the State Governments/Union Territories Administrations. Referring to an earlier communication dated 8th October, 1992 on the same subject i.e. “*Unauthorised use of service pattern uniforms and painted vehicles by civilians*”, this letter notes as follows:

“xxx xxx xxx

2. Ministry of Defence have again brought to our notice that despite standing instructions, the army uniforms and accoutrements still continue to be used by various civilian security agencies and private organisations. This practice not only has an adverse

effect on Indian Army image but also has serious security implications particularly in areas affected by militancy. The use of service uniform by unauthorised personnel/civilians is also prohibited under Section 140 of IPC and Clause 6 of Indian Official Secret Act, 1923 and the offence is punishable under these acts.”

19. The official respondent has further stated that the States have been requested that appropriate measures be taken and directions issued to ensure immediate stoppage of open sale, stitching and use of service uniforms; uniform articles by unauthorised persons and use of service type painted vehicles by civilians.

20. The counter affidavit, however, contains the admission of the inadequacy of these measures, when it states that:

“7. measures taken up by the State Governments towards this end have not had much visible impact on ground. Combat uniforms with Indian Army Logo are still used by unauthorised personnel/civilian security agencies and private organizations. Apart from serious security implications for the country as a whole, this seriously undermines the Army’s efforts in countering terrorism in various affected States. It also tarnishes the image of the Army in the eyes of the Citizens and Law.”

In this communication, a reference was made to the earlier letter dated 1st April, 1986.

21. We may note that the counter affidavit does not disclose the receipt of any guidelines/instructions of the State Governments on the important issues flagged in the instant writ petition.

22. We also find that the respondent has categorically denied issuance of any guidelines issued by the Indian Army on 8th

January, 2016. The respondents have suggested that it would be the responsibility of the States/Union Territories to issue guidelines and instructions with regard to illegal manufacturing, stocking and selling of combat uniforms, backpacks, sleeping bags, badges and shoes etc. used by the Armed Forces in India as well as use of a service type painted vehicles by civilians and to take action thereon.

23. We also find that the counter affidavit does not disclose even a single incidence of initiation of action either for violation of Section 140 of the IPC or Section 6(1) of the Official Secrets Act, 1923. At the same time, there is a clear admission in the communication from the Ministry of Home Affairs as well as in the counter affidavit that illegal and unauthorized manufacturing stocking and selling of combat uniforms, backpacks, sleeping bags, badges and shoes etc. used by Armed Forces in India goes on. The matter flagged by the petitioner is undoubtedly of a serious nature.

24. The above narration would also show that despite the order dated 20th July, 2016 passed by this Court, no steps in accordance thereto appear to have been taken.

25. In view of the above, this writ petition is disposed of with a direction that the respondent shall forthwith take steps to ensure compliance with the directions made by the respondent vide communication dated 1st April, 1986 which was reiterated vide communications dated 24th October, 1994 and 18th January, 1999.

26. So far as this Court is concerned, we would have jurisdiction only on the respondent and the Govt. of NCT of Delhi.

In view thereof, it is directed as follows:

(i) A copy of this order and copies of the letters enclosed in the counter affidavit be sent to the Chief Secretary, Govt. of NCT of Delhi as well as the Commissioner of Police, Delhi, who shall take steps in accordance with directions of the Ministry of Home Affairs, Govt. of India, keeping in view the State security and public safety.

(ii) An action taken report shall be filed by the Chief Secretary, Govt. of NCT of Delhi as well as the Commissioner of Police, Delhi within a period of eight weeks from today, with an advance copy to the petitioner, through its counsel representing in this Court.

27. Writ petition is disposed of in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 17, 2018/pmc