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

Judgment reserved on: 18.09.2025
Judgment pronounced on: 09.12.2025

\+ W.P.(C) 4233/2022
DEEPAK KUMAR .....Petitioner
Through: Mr. Chirayu Jain, Adv.

versus

DIRECTORATE OF CIVIL DEFENCE,
GOVERNMENTOF NCT OF DELHI & ANR.....Respondents
Through: Mr. Kavindra Kumar Gill, SPC
Mrs. Avnish Ahlawat, SC with Mr. N.K. Singh, Adv.

\+ W.P.(C) 16081/2023
FARUK KHAN .....Petitioner
Through: Mr. Chirayu Jain, Adv.

versus

DIRECTORATE OF CIVIL DEFENCE
GOVT OF NCT OF DELHI AND ANR .....Respondents
Through: Mr. Niraj Kumar, Sr. Central Govt. Counsel with Mr. Chaitanya Kumar, Adv.
Mrs. Avnish Ahlawat, SC with Mr. N.K. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 09.12.2025

OM PRAKASH SHUKLA, J.

1. Both the writ petitions have been filed under Article 226 of the Constitution of India challenging the *vires* of Section 6(2) and Section 14(1) of the Civil Defence Act, 1968[1] on the ground of non-justiciability of an order of dismissal under Section 6(2) of the Act, presumably since the same cannot be challenged in any court of law by the operation of Section 14(1) of the Act, thereby, purportedly enforcing an absolute bar on judicial review.

2. The common background of both writ petitions is that the petitioners served as Civil Defence Volunteers/ Members[2] on voluntary and honorary basis in the Civil Defence Corps[3]. The petitioners herein are aggrieved by their dismissal from service or "call-out duty". They are present before this Court seeking, *inter alia*, reinstatement of service and damages for the loss of duty allowance with effect from the date of discharge.

3. The petitioner in W.P.(C) No. 4233 of 2022, seeks setting aside of impugned orders of dismissal and rejection of his appeal thereof dated 30.04.2020 and 28.10.2020 respectively. Further, as far as the petitioner in W.P.(C) No. 16081 of 2023 is concerned, he has assailed the following impugned orders: (i) the initial dismissal order dated 23.03.2020, (ii) the order dated 28.10.2020, rejecting the appeal preferred, allegedly, without citing reasons, and (iii) the order dated 07.08.2023, whereby Respondent No. 1, in pursuance of the order of

[1] "the Act", hereinafter
[2] "CDV", hereinafter
[3] "CDC" hereon

this Court in previous round of litigation, re-considered the appeal and upheld the initial dismissal of the petitioner.

4. Their common grievance pertains to their dismissal from service/call-out duty under Section 6(2) of the said Act, i.e., dismissal *simpliciter*, without assigning any reasons or awarding them a chance to be heard. They are further aggrieved by the alleged absolute bar created by virtue of Section 6(2) operating with Section 14(1) of the Act, i.e., thereby, preventing them from availing any judicial remedy.

5. The controversy which falls for adjudication before the Court in both writ petitions is essentially the same, hence, we deem it apposite to dispose of both petitions by this common judgment. Nonetheless, as both petitions are grounded in their own distinct factual backdrop, it is appropriate at this juncture to advert to them separately.

FACTUAL MATRIX

W.P. (C) No. 4233 of 2022

6. As far as the petitioner in W.P.(C) No. 4233 of 2022 is concerned, he claims to be a member/volunteer of the CDC. He had joined the CDC on 28.07.2017 bearing enrolment no. 177/3082. The petitioner seems to have served for approximately two years on "call-out duty" before his dismissal under Section 6(2) of the Act *vide* impugned order dated 30.04.2020 issued by the Office of Respondent No. 1.

7. It is the case of the petitioner that in February-April of 2020, owing to his ill-health, he had sought leave *vide* representation dated 19.03.2020 to the Tehsildar, Rohini, along with supporting medical documents. However, *vide* office order dated 14.04.2020 passed by the Office of the Deputy Commissioner (Northwest), Kanjhawala, the petitioner was deployed on COVID-19 duty to assist officers in the issuance of Passes/E-Passes for certain class of persons and vehicles who were allowed movement during lockdown, which the petitioner could not join, purportedly, due to his medical condition. The petitioner thereafter sent a representation dated 19.04.2020 to the Sub-Divisional Magistrate[4], Rohini, reiterating his ill-health and inability to join the duty assigned. However, once again, *vide* order dated 21.04.2020 issued by the Office of District Magistrate[5], Northwest, the petitioner was deployed at the Quarantine Centre, EWS flats, DUSIB, Sultanpuri, New Delhi for the morning shift from 6 a.m. to 2 p.m. On the same day, the petitioner had yet again sent a representation to the learned DM, Northwest, reiterating his health condition and consequent inability to join duty.

8. It is the case of the petitioner that, despite the abovementioned representations, he was dismissed from membership on 30.04.2020 (**"first impugned order"**) by Respondent No. 1 under Section 6(2) of the Act, allegedly "*on account of his inability to resume duty"*, along with the direction to deposit his membership certificate, identity card and other related documents in the District Civil Office, Northwest,

[4] "SDM" hereon
[5] "DM" hereon

Kanjhawala, Delhi upon such dismissal. However, the said order did not stipulate any reasons for such dismissal.

9. Aggrieved by the aforesaid dismissal, the petitioner had filed an appeal under Section 7 of the Act on 18.05.2020 before the learned DM/Controller Civil Defence, Northwest District and the learned SDM, Rohini, Northwest. In the said appeal, he cited health reasons for non-joining of duty and stated that he came to resume service on 30.04.2020 but was issued the dismissal order on the same day. He further stated that he was the sole breadwinner of his family and was reliant on the income from his duty as a CDV.

10. Since no decision for the abovementioned appeal followed, the petitioner submitted further representations to the learned DM/Controller of Civil Defence on 17.07.2020 requesting that his appeal be considered. The petitioner, then filed another appeal before the Divisional Commissioner (Revenue) on 20.07.2020, seeking reinstatement. Meanwhile, it is also stated that Respondent No. 1 had sent a communication dated 22.09.2020 to the learned DM seeking information on the status of petitioner's appeal. Thereafter, in response, it was stated by the petitioner that the appeal was preferred on 20.07.2020 i.e., after 81 days from discharge on 30.04.2020, and was rejected as barred by limitation under Section 7 of the Act, which prescribes a thirty-day limitation to file an appeal from the date of dismissal.

11. Be that as it may, the appeal came to be rejected *vide* an order dated 28.10.2020 (**"second impugned order"**). The petitioner contended that no reasons were furnished nor was he given an opportunity to be heard. Thereafter, it is made out from the record that the petitioner filed a complaint on the Public Grievance Portal on 04.03.2021 alleging that he was dismissed without notice and without furnishing any reasons thereof, the said complaint was closed on 20.05.2021 with the remark that the petitioner would be notified when a vacancy arises. A subsequent grievance was filed on 02.08.2021 which was closed on the same day directing the petitioner to visit the office of Respondent No. 1 with relevant documents.

12. In the light of the above circumstances, the petitioner seeks intervention of this Court on the grounds that his dismissal was not *simpliciter per se* but was, in effect, stigmatic in nature and violative of principles of natural justice.

W.P. (C) No. 16081 of 2023

13. As far as the petitioner in W.P.(C) No. 16081 of 2023 is concerned, the present petition appears to be a second round of litigation. The petitioner herein, became a member of the CDC in 2014, having enrolment no. 178/2644 under Respondent No. 1 and served on "call-out" duty for five years in the District Office, Civil Defence, Northwest District, Delhi. The petitioner was also the Secretary of a Non-Governmental Organisation by the name and style

of 'Jai Santoshi Maa Educational Social Welfare Association'[6] situated in Kirari, Delhi. It is the case of the petitioner that in March 2020, while he was deployed at the COVID-19 Centre at Sultanpuri, he came to be dismissed from service under Section 6(2) of the Act *vide* impugned order dated 23.03.2020 (**"first impugned order"**) without attributing any reasons.

14. Following his dismissal, the petitioner allegedly sought reasons for the same and was orally informed by the Deputy Collector Civil Defence/SDM, Rohini, that on 23.03.2020, FIR No. 0114/2020 was lodged against two executives of the JSM NGO, one Deepak Kumar and one Rishi Pal, under Section 188 of Indian Penal Code, 1860[7]. Since the petitioner was the Secretary of the said NGO, continual of his service would have been undesirable for the CDC. The allegations made out in the said FIR were that the accused persons were making and selling local face masks during lockdown which did not constitute essential services/commodities.

15. Aggrieved by his dismissal, the petitioner filed an appeal under Section 7 of the Act before the learned DM/Controller Civil Defence on 18.04.2020 (stamped on 21.04.2020), contending that he was discharged without furnishing grounds of such dismissal and that his family depended on him. He further stated that he was not mentioned in the FIR and was on CDC duty at the relevant time. While the said appeal was pending, he filed another appeal before the learned Divisional Commissioner (Revenue) on 01.06.2020, seeking

[6] "JSM NGO" hereon
[7] "IPC" hereon

reinstatement, and also preferred an appeal before the Hon'ble Lieutenant Governor[8] of Delhi on 08.09.2020 on similar grounds.

16. The appeal filed under Section 7 of the Act was decided against the petitioner on 28.10.2020 ("**second impugned order"**) by the Office of Directorate of Civil Defence, purportedly, without stipulating any reasons and, as alleged, without giving him an opportunity to be heard. Subsequently, the petitioner sought a RTI (Right to Information) application regarding the rejection of his appeal. In the RTI reply dated 23.12.2020, it was stated that the appeal dated 01.06.2020 before the learned Divisional Commissioner (Revenue), was dismissed on grounds of limitation i.e., it was dismissed as time-barred because it was filed 70 days post the dismissal dated 23.03.2020 i.e., beyond the 30-day limit under Section 7 of the Act.

17. Aggrieved by the aforesaid dismissal, the petitioner had filed W.P.(C) No. 11292 of 2021 on 27.09.2021 (first round of litigation), wherein *vide* an order dated 28.04.2023, the said writ petition was disposed of with the observation of this Court that the appellate authority acted in ignorance of the directions of the Hon'ble Supreme Court for relaxation of limitation period during COVID-19. Thus, this Court, in the facts of the said case, directed the appellate authority to decide the appeal of the petitioner afresh within 8 weeks after affording him an opportunity to be heard.

[8] "LG" hereon

18. According to the petitioner, since the appellate authority did not take any action in pursuance of the abovementioned order of this Court; the petitioner sent a representation on 22.05.2023 to the learned DM/Controller of Civil Defence, requesting that his appeal be decided as per the direction of this Court. The petitioner, contended in the said appeal that his dismissal was due to the FIR having been lodged against 2 members of the NGO where he was Secretary, although he was neither named in the said FIR, nor was he present at the relevant time, since he was on CDC duty.

19. In any case, the appeal came to be rejected *vide* impugned order dated 07.08.2023 ("**third impugned order")**, upholding the earlier dismissal order dated 23.03.2020, purportedly without affording a hearing to the petitioner. The said appeal under Section 6(2) of the Act was rejected citing an inquiry before the learned SDM wherein the petitioner was allegedly found to be involved "in an act of production and selling of illegal face masks in collaboration with NGO named JSM".

20. Aggrieved by their dismissals under Section 6(2) of the Act and subsequent rejection of appeal under Section 7 of the Act, the petitioners have preferred the present writ petitions respectively before this Court seeking appropriate relief(s).

SUBMISSIONS ON BEHALF OF PETITIONERS

21. Mr. Chirayu Jain, learned Counsel for the petitioners, submitted that their respective dismissals were unjust since notice was not issued to them, nor were the reasons for dismissal furnished to them and hence, their right to a fair hearing was violated, thereby being violative of principles of natural justice.

22. The learned Counsel for the petitioner in W.P. (C) No. 4233 of 2022 argued that the appeal under Section 7 was initially filed on 18.05.2020, which was well within the 30-day limitation period prescribed under the said provision and hence, was not time-barred. In support, the learned Counsel placed reliance on the representation dated 22.09.2020 preferred by Respondent No. 1 seeking appraisal on the status of the said appeal dated 18.05.2020, which, according to the learned Counsel, amounts to acknowledging/admitting the existence of the said appeal to be filed within the period of limitation.

23. The learned Counsel for the petitioner in W.P. (C) No. 16081 of 2023 submitted that the petitioner had been in continuous service since 2014 and, that the honorarium earned from the call-out duty as a CDV was his only source of income during COVID-19. It was contended that his dismissal solely rested on his position as the Secretary of JSM NGO, which was identified in the FIR along with two other executives of the NGO. However, the petitioner was not named in the said FIR, and no direct role was attributed to him. Moreover, it was pointed that such engagement/service does not fall

under the disqualified services stipulated under Section 5(2) of the Act. Therefore, holding an office in JSM NGO does not render the petitioner ineligible to serve as a CDV. It was also emphasised that the learned Magistrate did not take cognizance of the FIR since an offence under Section 188 of the IPC mandates an accompanying written complaint from the concerned public servant i.e., Hon'ble LG of Delhi in this case, to enable a Court to take cognizance, which was absent. It was also submitted by the learned Counsel that impugned orders dated 23.03.2020 and 07.08.2023 were non-speaking orders and cryptic; the latter did not disclose necessary facts to ascertain the involvement of the petitioner or attribute a specific role to him. Further, he was not afforded a proper hearing or an opportunity to peruse the material against him, hence, the said orders were violative of principles of natural justice.

24. It was further urged that the petitioner neither committed any misconduct nor did he engage in any act rendering his service in the CDC undesirable. Further, it was submitted that the appeal under Section 7 of the Act was initially filed on 18.04.2020 (stamped on 21.04.2020) i.e., well-within the limitation period of thirty days from the date of dismissal i.e., 23.03.2020 in that case.

COGNATE SUBMISSIONS ON BEHALF OF THE PETITIONERS CONCERNING THE CHALLENGE TO *VIRES*

25. It was submitted that dismissals under Section 6(2) were permissible only in cases not covered by Section 6(1) of the Act. It was urged that although it has been portrayed by the Respondents that

the petitioners have been dismissed under Section 6(1) of the Act, however in its actual sense, the petitioners were dismissed on grounds of misconduct as defined in Standing Order No. 01/2019 dated 13.02.2019, which includes disobeying lawful orders of superiors under Clause 4(iii) of the Order, which ought to fall under Section 6(1) of the Act. It was submitted that indiscipline also comes within the meaning of "misconduct" by placing reliance on ***Davinder Singh v. State of Punjab***[9]**.** Hence, the learned Counsel submitted that the dismissal of petitioners constituted a stigmatic dismissal in substance under Section 6(1) of the Act, but it was guised as a dismissal *simpliciter* under Section 6(2) of the Act to circumvent the procedure of inquiry and the opportunity to be heard as mandated under Section 6(1) of the Act.

26. The learned Counsel underscored that the failure to hold due inquiry before the dismissal of petitioners was untenable in law. Reliance was placed on paragraphs 31 & 32 of the decision in ***Jarnail Singh v State of Punjab***[10], wherein the Court criticised the practice of cloaking punitive dismissals as *simpliciter* dismissals without providing a reasonable opportunity of hearing. Further reliance was placed upon ***V.P. Ahuja v State of Punjab***[11], wherein the Court set aside the dismissal order holding that it was *ex facie* stigmatic in nature.

27. The learned Counsel apprised the Court as to how dismissal under Section 6(2) of the Act, in itself, constituted a stigmatic

[9] Para 25; (2010) 13 SCC 88
[10] (1986) 3 SCC 277
[11] (2000) 3 SCC 239

dismissal. It was argued that a CDV so dismissed would be ineligible for re-appointment in the CDC. In reliance, the learned Counsel cited Regulation No. 4 of the Civil Defence Regulations of 1968[12], read with the appended 'Form A', which mandates a CDV to appear for an interview and complete the said Form to qualify for appointment in the CDC; Serial No. 13 of the Form obliges candidates to disclose any previous experience in the CDC along with details.

28. By placing reliance on ***AK Kraipak v. Union of India[13], Board of High School and Intermediate Education v. Kumari Chitra Srivastava[14], Board of High School and Intermediate Education v. Ghanshyam Das Gupta[15] and State of Orissa v. Binapeni Dei[16],*** the learned Counsel emphasised the need of fairness in procedure and reiterated that since the petitioners were not afforded any opportunity to be heard, principles of natural justice were violated and their fundamental rights were undermined.

29. The learned Counsel highlighted the issue that though the CDVs were volunteers, still they were deployed to perform the duties of regular/permanent employees. In support, the learned Counsel for the petitioner placed on record the responses to the RTI applications which stipulated the numbers of CDVs deployed to work in the offices of DMs across Delhi. The counsel points to Section 19 of the Act which deems CDVs as public servants, along with Regulations 4, 8 &

[12] "CDR", hereinafter
[13] **1969 (2) SCC 262**
[14] **1970 (1) SCC 121**
[15] **AIR 1962 SC 1110**
[16] **AIR 1967 SC 1269**

13 of the CDR, stipulating the eligibility and conditions of service, and the Statement of Objects and Reasons for the 2009 Amendment which identifies civil defence as an "integral part of the defence of the country". The learned Counsel urged that as per paragraphs 26, 29 & 30 of ***Davinder Singh*** (supra), even volunteers cannot be discharged summarily and must be afforded due opportunity to be heard.

30. The learned Counsel placed reliance on ***Suraj Prasad Tewari v. Zila Commandant, Home Guards***[17], ***Rajendra Singh v. Staff Officer Commandant General***[18] and submitted that the petitioners were entitled to protection under Article 311 of the Constitution of India. Further reliance was placed on ***Didar Singh v. UT, Chandigarh***[19], ***V. Sadasiva v. State of A.P.***[20], ***Hemant Kumar v. State (NCT of Delhi)***[21], to submit that even volunteers have rights against arbitrary dismissal.

31. The learned Counsel urged that the issue regarding constitutional validity of Section 14(1) of the Act is squarely covered by the decision in ***Ram Chandar v. District Magistrate of Aligrah & Ors.***[22], wherein a similar provision barring the jurisdiction of courts was dealt with. Further, it was submitted by the learned Counsel that Section 6(2) of the Act is violative of various provisions of the Constitution of India including Articles 14 and 16. The learned Counsel underscored that the right to practice any profession/occupation under Article 19(1)(g) and the right to

[17] **1998 SCC OnLine All 977**
[18] **2019 SCC OnLine All 3636**
[19] **2020 SCC OnLine P&H 251**
[20] **(2021) 1 HCC (AP) 612**
[21] **2023 SCC OnLine Del 5141**
[22] **1951 SCC OnLine All 24**

livelihood, being a fundamental facet of right to life under Article 21 of the Constitution of India, were adversely affected.

32. It was strongly urged that Section 6(2) read with Section 14(1) of the Act were unconstitutional as they created an absolute bar on seeking any judicial remedy before any court against any order passed under the Act, i.e., a dismissal order under Section 6(2) in the present case. It was argued that such absolute bar violates the core principle of the rule of law. It was highlighted that judicial review is a part of the basic structure of the Constitution of India. The learned Counsel submitted that Section 6(2) grants unchecked powers to the relevant authority by permitting dismissals without assigning any reasons or hearing the affected party, thereby, violating the basic principle of *audi alterem partem*. Further, the provision does not lay down any parameter(s) to determine when would the continuation of service of a CDV be rendered undesirable. It was also argued that Respondent No. 1 was circumventing Section 6(1), which mandates an inquiry and hearing, by disguising it as dismissal *simpliciter* under Section 6(2) wherein such procedural safeguards are not required, hence, depriving the petitioners of the same.

SUBMISSIONS ON BEHALF OF RESPONDENTS

SUBMISSIONS BY RESPONDENT NO. 1 (GOVERNMENT OF NCT OF DELHI) IN W.P.(C) NO. 4233 OF 2022

33. *Per contra*, the learned Counsel for Respondent No. 1, opposed the prayers sought by the petitioner and maintained that the dismissal

of the petitioner was under Section 6(2) of the Act. It was also contended that the appeal was rightfully rejected since it was preferred on 20.07.2020, i.e., 81 days post the date of dismissal, thereby was filed in violation of the 30-day limitation period stipulated under Section 7 of the Act. The learned Counsel urged that the petitioner did not make out any potent grounds to substantiate violation of their fundamental rights. The learned Counsel submitted that the dismissal of the petitioner was *simpliciter* in nature under Section 6(2) of the Act, as evident from the initial dismissal order dated 30.04.2020 and the subsequent appellate order dated 28.10.2020. However, during the course of arguments, it was admitted by the learned Counsel before this Court, that the dismissal of the petitioner was on account of non-joining of COVID-19 duty; thereby, amounting to a stigmatic dismissal in substance.

SUBMISSIONS BY RESPONDENT NO. 1 IN W.P.(C) NO. 16081 OF 2023

34. The learned Counsel for Respondent No. 1 submitted that the petitioner was discharged *simpliciter* under Section 6(2) of the Act *vide* order dated 23.03.2020, which was upheld in the appellate order dated 28.10.2020. Aggrieved, the petitioner instituted WP(C) No. 11292/2021 (first round of litigation) which came to be disposed of by this Court without delving into merits on 28.04.2023 with a direction to the concerned authority to decide the appeal after granting an opportunity of hearing to the petitioner. Thereafter, in compliance of said order, the impugned appellate order dated 07.08.2023 was passed, duly considering the contentions raised in appeal.

COGNATE SUBMISSIONS OF REPSONDENT NO. 1 IN BOTH WRIT PETITIONS RELATING TO *VIRES*

35. The learned Counsel placed reliance on Section 14 of the Act, contending that the Act laid the framework for statutory appeal under Section 7 and hence, it was a complete Code in itself. It was contended that Section 14 is constitutional as it is only a saving clause and acts as a valid restriction on assailing an order passed under the ambit of the Act in any Court.

36. It was submitted that the Act was formulated post the Indo-China war of 1962 to minimise the loss of life, maintain continuity in production etc., hence, such complete control pertaining to appeals, penalties, especially dismissal under Section 6(2) without furnishing reasons, was envisaged to prevent delays in vital situations. It was urged that Sections 6(2) and 14(1) are in consonance with the object of the Act, which is a special legislation aimed at public safety and security.

37. It was submitted by the learned Counsel that powers under Section 6(2) are not unbridled but are guided by the object of the Act, thereby, conforming to Articles 14, 19 and 21 of the Constitution of India. It was pointed out by the learned Counsel that the Hon'ble Supreme Court held that in spheres of national security and civil protection, it is lawful for the Parliament or the State legislatures to delegate rule-making powers to the Executive as long as they are guided by the principles laid down with such power.

38. It was further submitted that Section 6(2) of the Act does not act as an absolute restriction from future enrolment in the CDC, rather, it is merely a dismissal. Therefore, it does not restrict the right to practice any profession under Article 19(1)(g) of the Constitution of India.

39. It was pointed out by the learned Counsel that reinstatement of the petitioner was not feasible in light of the Circular dated 31.10.2023. By virtue of said Circular, Respondent No. 1 had ended the call-out duty of all CDVs in the departments of the Government of National Capital Territory of Delhi[23] since there remained no disaster management/hostile attack, which is the sole object of the Act, i.e., to safeguard the people of India from hostile attacks and unforeseen disasters.

40. The learned Counsel submitted that the petitioner was not engaged in permanent employment, rather he was a volunteer and was called on duty as per exigencies, i.e., for disaster management and/or hostile attacks. Hence, membership in the CDC was not a "profession" or a means of "livelihood" to constitute violations of Article 19(1)(g) or Article 21 of the Constitution of India. Reliance was placed on Clause 7 of the Standing Order No. 01/2022 dated 16.03.2022 which stipulated that no CDV is to serve in the same place for more than a year and rotational basis should be adopted to give opportunity to as many CDVs as possible. Further, it was submitted that Clause clarified that the duty shall not be construed to be of permanent nature or as a source of livelihood. The learned Counsel drew a parallel with the

[23] "GNCTD" hereon

view of the Apex Court on Home Guards, which is a similar volunteer organisation, wherein the Hon'ble Court reiterated that it was not a source of employment. Reliance was placed on ***Mansukh Lal Rawal & Ors. v. Union of India & Ors.***[24]***, Jiban Krishna Mondal & Ors. v. State of West Bengal & Ors.***[25] and ***Grah Rakshak, Home Guards Welfare Association v. State of Himachal Pradesh. & Ors.***[26]**,** to reiterate that the Home Guards is only a volunteer body and does not constitute employment in the ordinary course. The learned Counsel submitted that in ***Rajesh Mishra v. GNCTD***[27]**,** while reaffirming the voluntary nature of Home Guards, it was further held that the Home Guards organisation/body did not create a master-servant relationship between the Government and the members. Additionally, in ***State of Manipur v. Moirangninthou Singh***[28]**,** it was held that Home Guards, being a voluntary organisation, could not be equated with other organisations such as the civil police, the army or paramilitary organisations. Further reliance was placed on ***S.K. Mukherjee v. Union of India***[29] and ***Anand v. GNCTD & Ors.***[30]**,** to highlight the voluntary nature of CDVs. The learned Counsel also relied on ***State of Gujarat & Ors. v. Akshay Amrutlal Thakkar***[31] to argue that there were no civil consequences in cases of discharge of a volunteer. In the said decision, dismissal *simpliciter* of a volunteer was permitted since the services rendered were on honorary basis. Further, it was also submitted that the Hon'ble Supreme Court had appreciated that CDC

[24] **1999 (50) DRJ (DB)**
[25] **(2015) 12 SCC 74**
[26] **(2015) 6 SCC 247**
[27] **2002 SCC OnLine Del 483**
[28] **(2007) 10 SCC 544**
[29] **1994 (5) SCC 498**
[30] **2023 SCC OnLine Del 2998**
[31] **(2006) 2 SCC 309**

is not an industry and that CDVs are not workmen under Section 2(s) of the Industrial Disputes Act, 1947, rather it is only a volunteer organisation wherein civilians/citizens can enrol themselves for a period of three years as per the Act.

41. It was vehemently argued that a statute cannot be struck down merely on allegations of arbitrariness and that the petitioners had failed to cogently establish violation of specific fundamental right(s). Reliance was placed on ***State of A.P. v. McDowell & Co.***[32]**,** wherein it was held that an Act could only be struck down on two grounds i.e., either due to lack of legislative competence or violation of fundamental rights. The learned Counsel maintained that Section 6(2) and Section 14(1) of the Act were constitutionally valid since the Act was enacted by the Parliament in its legislative competence, and the provisions of the Act were aligned with the object of the Act i.e., to tackle hostile attacks or disasters that demand expeditious measures. It was highlighted that procedural delay in such situations could compromise public safety or undermine the very object of the Act.

42. Lastly, the learned Counsel submitted that the decision relied upon by the petitioners in ***Davinder Singh*** (supra) was distinguishable on facts and hence, was not applicable in the present case since both dismissal orders were *simpliciter* in nature.

[32] **(1996) 3 SCC 709**

COGNATE SUBMISSIONS OF RESPONDENT NO. 2 (UNION OF INDIA) IN BOTH WRIT PETITIONS

43. The learned Counsel for Respondent No. 2 reiterated the submissions of Respondent No. 1, stating that service in the CDC is voluntary and honorary nature under Regulation No. 8 of the CDR, coupled with the fact that CDVs are paid duty allowance/honorarium as and when called on duty. It was submitted that equating honorarium to livelihood or the services of CDVs to other governmental services is misplaced. It was also submitted that since there is no 'livelihood', there is no question of any violation of Article 21 of the Constitution of India.

44. It was further submitted that Regulation No. 3 of CDR prescribed the eligibility criteria to be appointed as a CDV and Section 5(2) of the CDR carved out the exemptions explicitly. Therefore, it was submitted, that these provisions do not impose any arbitrary restriction on the right to freely practice any profession under Article 19(1)(g) of the Constitution of India. Further, the learned Counsel urged that Sections 6(2) and 14(1) of the Act and the procedures therein were deliberately framed to provide speedy process in situations of hostile attack and/or other disasters. It was also argued that Section 6 of the Act duly empowered the competent authority to dismiss CDVs by way of stigmatic dismissal or dismissal *simpliciter*, depending upon the circumstances.

REASONING AND ANALYSIS

45. We have carefully heard the submissions of the learned Counsels and perused the material on record. Having bestowed our earnest consideration to the *lis*, we find that, what weighs before this Court are the following considerations:

(i) Whether the dismissal of petitioners herein amounted to stigmatic dismissal in substance, and if so, is it legally sustainable in the light of constitutional guarantees enshrined under Articles 14, 19(1)(g) and 21 of the Constitution of India?

(ii) Whether the rejection of the respective appeals preferred by the petitioners under Section 7 of the Act violated the principles of natural justice?

(iii) Whether the exercise of power under Section 6(2) of the Act, i.e., permitting summary dismissal without assigning any reasons to the affected party, tenable in law?

(iv) Whether Section 14(1) of the Act, by ousting the jurisdiction of a Court, creates an absolute bar against availing judicial remedy against any order passed under the Act? Whether such exclusion can be sustained in law?

(v) In the light of voluntary and honorary nature of service rendered by CDVs, what, if any, relief(s) can the petitioners be

entitled to? Whether the petitioners can claim reinstatement or honorarium/duty allowance?

46. This Court issued notice on 11.04.2023 and on 20.05.2025, both parties were directed to file their respective written submissions, and the writ petitions were listed for final disposal thereafter.

THE SCOPE OF THE CIVIL DEFENCE ACT OF 1968

47. Before embarking on the journey to decide the issues raised in the present writ petitions, this Court deems it fit to shed some light on the Act and its background at the threshold. Pertinently, the Act was brought into force to address the exigencies arising from hostile attacks or other unforeseen disasters. Section 2(a) of the Act defines 'civil defence' in broad terms as follows:

> *""**civil defence**" includes any measures, not amounting to actual combat, for affording protection to any person, property, place or thing in India or any part of the territory thereof against any hostile attack, whether from air, land, sea or other places, or, for depriving any such attack of the whole or part of its effect, whether such measures are taken before, during, at or after the time of such attack [or any measure taken for the purpose of disaster management, before, during, at, or after any disaster."*

48. Further, the CDC was constituted under Section 4 of the Act, as follows:

> *"4. The State Government may constitute, for any area within the State, a body of persons to be called the Civil Defence Corps (hereinafter referred to as the "Corps") and may appoint a person, not being, in its opinion, below the rank of a District Magistrate (to be known as the "Controller") to command such Corps."*

49. It may be safely inferred that the Act aims to ensure preparedness and provide immediate relief during emergencies, whether arising out of war-like situations or disasters such as the recent COVID-19 pandemic. The CDVs play a pivotal role in such challenging times. The Act, read conjointly with the CDR and Civil Defence Rules, provides the statutory framework for the enrolment, deployment, dismissal, tenure etc., of CDVs in aid of civil administration.

50. The service of CDVs is voluntary and honorary in nature as per the Act, which is in stark difference to the "service" being rendered as we understand in terms of Article 311 of Constitution of India. Further, the Act itself clarifies that the remuneration, if any, is confined to an honorarium or "duty allowance" when CDVs are formally called upon for duty. It is pertinent to clarify at this stage that the appointment of CDVs is not against any cadre post under the Union or State Government but is only restricted to voluntary service. It is further stipulated in the CDR that only if the Central Government permits, can the appointment of a CDV be designated as a "paid appointment", thereby diverging from the general voluntary nature of enrolment. Regulation No. 8 stipulates the same as follows:

> ***"8. Conditions of Service.-*** *(1) The members of the Corps shall ordinarily serve in a* ***voluntary and honorary*** *capacity; Provided that the State Government may, by order, authorize payment of duty allowance (at such scales as may be prescribed by it from time to time in consultation with the Central Government) to a member of the Corps when called on duty. (2) Notwithstanding anything contained in clause (1), the Central Government may declare any appointment or class of appointments as paid appointments. A*

> *person appointed on the basis of payment shall be entitled to such conditions of service as regards pay, leave and other benefits as the State Government may, by order, prescribe."*
>
> (emphasis supplied)

51. Further, to appreciate the nature and background of the role of a CDV, useful guidance may be drawn from Clause 7, titled "Transparency" of the Standing Order No. 01/2022 which prescribes the "Standard Operating Procedure on Call Out of Civil Defence Volunteers". It is reproduced as follows:

> *"A Civil Defence member should not be allowed to serve on the same place for a period of more than 01 year for the sake of healthy environment & transparency. Efforts should be made to replace old civil defence volunteers on the Call Out Duty by newly selected ones to give opportunity to different members.* ***The paid call out duty, in civil defence, should not be considered as a duty of permanent nature and a means of livelihood****."*
>
> (emphasis supplied)

52. Thus, as per the CDR, a candidate may apply to be appointed as a CDV, provided, he or she satisfies the initial eligibility criteria and successfully undergo the screening process. Regulation No. 5A stipulates a tenure for three years for a CDV, which may be extended in future more than once, for terms of three years each.

53. Section 6 of the Act governs the dismissal of CDVs. Sub-section (1) pertains to stigmatic dismissals, i.e., where the competent authority finds a CDV guilty of misconduct or deems their service unsatisfactory. The provision mandates that such dismissal must be preceded by an inquiry wherein the concerned CDV would be given due opportunity of hearing. In contrast, sub-section (2) pertains to dismissal *simpliciter,* whereby the continued presence of a CDV may

be found "undesirable" and hence, such CDV may be dismissed without assigning any reasons thereof.

ANALYSIS OF THE NATURE OF DISMISSAL ORDERS OF THE PETITIONERS

54. Before dissecting the impugned dismissal orders, we deem it appropriate to take a closer look at Section 6(2) of the Act. It stipulates that a CDV may be dismissed if their "continued presence" "is found undesirable", in which case the authority is permitted to summarily dismiss such CDV without assigning any reason. The word "undesirable" herein could be either attributed to the service provided by the said CDV which would constitute a stigma, or a negative finding against such CDV, or it could be attributed to any restriction related to the continuation of his service, in which case, it would not amount to stigmatic dismissal. The former connotation, although modelled on the line of Section 6(2), actually falls under Section 6(1) of the Act and the latter falls within the parameter of Section 6(2) of the Act.

55. At the outset, we turn to the decision of the Hon'ble Supreme Court in ***Mathew P. Thomas v Kerala State Civil Supply Corpn. Ltd.***[33], at paragraph 11, the Hon'ble Court highlighted the distinction between dismissal *simpliciter* and stigmatic or punitive dismissal and the steps to be undertaken by a Court in order to determine the true nature of a dismissal; the excerpt is as follows:

[33] **(2003) 3 SCC 263**

> *"From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct.* ***In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer.*** *In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct."*
>
> (emphasis supplied)

56. Further, the Apex Court held in ***Prithipal Singh v State of Punjab***[34] and reiterated in ***State of Punjab v Avtar Singh***[35] that even in cases wherein the dismissal order seems innocuous, such order should be subjected to scrutiny and if stigma is found, the Court must lift the veil to ascertain or reasonably infer whether such stigmatic findings constituted the basis/foundation of the dismissal. If found in the

[34] **(2002) 10 SCC 133**
[35] **(2008) 7 SCC 405**

affirmative, it would render the dismissal *simpliciter* as stigmatic and then necessarily an opportunity of hearing must be afforded before passing any order. In ***Jarnail Singh*** (supra), it was held that the mere form of the order is not a determinative factor to hold the order as *simpliciter,* rather, the substance of the order must be examined including the surrounding circumstances and the basis/foundation of the order; it was observed:

> *"…In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the court in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency, or not…"*

57. In view of the above, we find it difficult of subscribe to the contention raised by the learned Counsel for Respondent No. 1 that the dismissal of petitioners in both writ petitions was not stigmatic. We take note of Clause 4(iii) of the Standing Order No. 01 of 2019 dated 13.02.2019, wherein "misconduct" includes disobeying lawful orders of superior officers. However, at the same time, we are mindful that punishment of the same could fall under either Section 6(1) or 6(2) of the Act as stipulated in the aforesaid Standing Order.

58. This Court finds assistance from the views taken in ***Jarnail Singh*** (supra) and ***V.P. Ahuja*** (supra) wherein the Court dissected the dismissal order which was purportedly *simpliciter* in nature and lifted the veil to examine and determine that it was, in effect, stigmatic. We attempt to do the same analysis in the present case before us, as follows:

58.1. The petitioner in W.P.(C) No. 4233 of 2022 was dismissed on 30.04.2020 under Section 6(2) without assigning any reasons. This was maintained in the appellate order dated 28.10.2020. Although the said dismissal ostensibly appears to be *simpliciter*, the learned Counsel for the Respondent admitted, rather candidly, before this Court during oral arguments, that his dismissal arose from the failure of the petitioner to join the assigned duty during the COVID-19 pandemic. Hence, it can be safely inferred that the dismissal of the petitioner was effectively stigmatic and as it appears, the provisions of Section 6(2) were employed to circumvent the rigours of Section 6(1) of the Act.

58.2. Similarly, the petitioner in W.P.(C) No. 16081 of 2023 was dismissed under Section 6(2) of the Act on 23.03.2020, which was subsequently upheld in the appellate order dated 28.10.2020. It was contended on behalf of the petitioner that the reason of his dismissal was the lodging of FIR No. 114/2020 against the office-bearers of the JSM NGO, of which the petitioner was Secretary. Pursuant to the order of this Court dated 28.04.2023 in the previous round of litigation, the appeal was re-considered and decided on 07.08.2023 with the observation that the petitioner was allegedly involved in the production and sale of face masks during COVID-19 in collaboration with JSM NGO, aligning with the allegations of the said FIR. The petitioner contended that he was not named in the said FIR, and cognizance of the same was not taken by the learned Magistrate. Therefore, from the bare reading of the aforesaid order and in light of

the decision relied upon by the petitioners in ***Davinder Singh*** (supra), we find the dismissal of the petitioner to be stigmatic in nature.

58.3. Reliance was placed on ***Didar Singh*** (supra)***, V. Sadasiva*** (supra)***, Hemant Kumar*** (supra), ***AK Kraipak*** (supra)***, Board of High School and Intermediate Education*** (supra), ***Board of High School and Intermediate Education*** (supra) and ***Binapeni Dei*** (supra), to emphasise the indispensability of fairness in procedure. We find ourselves in agreement with these decisions, especially since the dismissals, though couched as *simpliciter,* were stigmatic in essence. Accordingly, the petitioners ought to have been afforded fair and meaningful opportunity to be heard as provided for under Section 6(1) of the Act. However, in the present case, since the authority failed to do so, the principles of natural justice stand violated.

58.4. Hence, in both writ petitions, we find the dismissal orders passed under Section 6(2) of the Act to be stigmatic in essence. We arrive at this conclusion in view of the aforesaid reasons, coupled with the lack of material placed on record by Respondent No. 1 to prove that continuation of their service, was indeed, undesirable. Once dismissal is found to be stigmatic, opportunity to be heard must be granted which is conspicuously absent in the present case.

VALIDITY OF SECTION 6(2) OF THE ACT

59. While undertaking the judicial exercise of determining the validity of Section 6(2), it must be borne in mind that the provision governs dismissal *simpliciter* of CDVs, whose engagement is

voluntary and honorary in nature. Thus, an endeavour must be made to find synergy while balancing the overarching principles of natural justice which serve as an essential safeguard, especially considering the very nature of the service rendered by CDVs.

60. In the case of a stigmatic dismissal, reasons must be furnished, and due opportunity must be given to the affected party to make their case. However, if there are no negative or stigmatic findings constituting the foundation (as opposed to motive) of dismissal, the requirement of a hearing is not mandatory and the same may depend on the incidental surrounding facts and circumstances. A dismissal *simpliciter,* in its true sense, will not adversely affect the future prospects of a CDV. In the present case, considering the aim and object of the Act and as also duly recognised in ***Anand*** (supra), that CDVs are meant to act as "first responders" in situations of disaster, thereby necessitating speedy mechanisms pertaining to their service under the Act; Section 6(2) aligns with the object of the Act in that regard.

61. Pertaining to the authority vested by Section 6(2), the learned Counsel for Respondent No. 1 submitted that the authority or powers so conferred under Section 6(2) are not unfettered; rather, they are intended to align with and further the object of the Act by ensuring civil protection during emergencies. We find some substance in this contention in light of the decision of the Hon'ble Supreme Court in ***Charan Lal Sahu v. Union of India***[36] wherein it was held that principles of natural justice may not be attracted to an Act of

[36] **(1990) 1 SCC 613 : 1989 SCC OnLine SC 363**

Parliament which is within its legislative competence. It was held as follows:

> *"...For legislation by the Parliament, no principle of natural justice is attracted provided such legislation is within the competence of the legislature, which indeed the present Act is within the competence of the Parliament..."*

It was held in ***Dharampal Satyapal Ltd. v. CCE***[37], that principles of natural justice are flexible rules and cannot be fit into a straitjacket formula. It was further held that in situations where it is felt that a fair hearing would not make a difference i.e., change the conclusion, then a hearing may be dispensed with, since such procedure would have no bearing on the final result. We find that the aforesaid reasoning squarely applies to dismissal *simpliciter* in its true essence wherein no punitive findings are passed against the affected party.

62. In ***Secretary, State of Karnataka v. Uma Devi***[38], it was held by the Hon'ble Supreme Court that no vested right arises from temporary/casual service. The Apex Court in ***State of Punjab & Ors. v. Jaswant Singh***[39]**,** held that an employee who has been found unsuitable for the job s/he has been selected or appointed for, may be dismissed without notice during probationary period, such termination being treated as *simpliciter* and not punitive. The Hon'ble Court therein had affirmed the decision of the Full Bench of the Punjab & Haryana High Court in ***Sher Singh, Ex-Constable v. State of Haryana***

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[37] **(2015) 8 SCC 519**
[38] **(2006) 4 SCC 1**
[39] **2023 SCC OnLine SC 1111**

& Ors.[40]**,** wherein it was held that the probationer does not have any right in the post, and his services are terminable at any time during the probation period. The relevant rule applicable therein provided that a Constable who was found unfit to be an efficient police officer may be discharged by the Superintendent of Police any time within 3 years of enrolment and such order was not appealable. From the aforesaid decision, we may draw some inspiration for the adjudication of the present case, wherein CDVs, by the very nature of their voluntary services do not hold a substantive right to tenure, there are no avenues of promotion or other such considerations pertaining to regular employment, their dismissal under Section 6(2), in its true sense would be *simpliciter,* unless it could be found that such order cloaks stigmatic findings. Further, the Hon'ble Court reiterated in ***Sarita Choudhary v. High Court of Madhya Pradesh & Anr.***[41]**,** that a probationer has no vested right of hearing and hence, there would be no violation of principles of natural justice in such case. The line drawn to determine whether a dismissal is stigmatic or not is whether such termination would affect the future employment prospects.

63. Pertaining to the nature of work, it was contended on behalf of the petitioners that though CDVs were appointed on voluntary basis, they were deployed to work in Government offices such as that of DMs. In support, they placed on record various RTI responses wherein the following data was found:

[40] **1994 SCC OnLine P&H 166**

[41] **2024 SCC OnLine SC 4694**

(i) As per response dated 13.09.2023, the number of CDVs made to work as regular employees was 58 in the Office of [42]DM (Northeast);

(ii) 84 in the O/o DM (Northwest) against 74 permanent employees in the said Office as per response dated 27.07.2023;

(iii) 96 CDVs in the O/o DM (South) against approximately 73 permanent employees as per response dated 24.07.2023;

(iv) 21 CDVs in the O/o DM (Southeast) as per response dated 17.07.2023.

In light of such data, if we adopt the view that CDVs are working in the same capacity as other permanent employees, it still does not entitle the petitioners to re-appointment on the ground of nature of work alone as it is well-established in ***Shankarsan Dash v Union of India***[43] along with other plethora of decisions of the Hon'ble Supreme Court that there is no indefeasible right to be appointed, only a right to be *considered* for appointment exists. We further note that Respondent No. 1, in Circular dated 31.10.2023, has admitted that CDVs were called for duties in various departments of GNCTD, which runs contrary to the provisions of the Act. It was further admitted that such call out was neither carried out in a fair and/or transparent manner nor in accordance with due process.

[42] "O/o" hereinafter
[43] **(1991) 3 SCC 47**

64. It was contended on behalf of the petitioners that dismissal under Section 6(2) in its true sense would also constitute a stigmatic dismissal by submitting that Regulation 4 of the CDR read with the appended 'Form A' acts as an absolute restriction from future enrolment in the CDC because 'Form A' mandates a candidate to disclose any prior experience in the CDC and cite relevant details. However, upon perusal of the Act, the CDR and the Civil Defence Rules, we find no provision restricting the re-appointment of CDVs who have been dismissed under the Act *in toto*, only the requirement of furnishing prior details has been stipulated, which would not, by itself, prejudice a CDV dismissed without stigma under Section 6(2). In ***Sarita Choudhary*** (supra)**,** it was held that the main factor to determine whether a dismissal is stigmatic or not is whether such termination would affect the future employment of the employee. In the present case, we find that there is neither any embargo on re-appointment to the CDC nor would the dismissal from the CDC affect future employment elsewhere.

65. The respondents relied upon ***Mansukh Lal Rawal & Ors.*** (supra)**,** ***Jiban Krishna Mondal*** (supra), ***Grah Rakshak, Home Guards Welfare Association*** (supra), ***S.K. Mukherjee*** (supra), and ***Anand v. GNCTD*** (supra)**,** to highlight the voluntary and honorary nature of service. Further, ***Rajesh Mishra*** (supra), rendered in the context of Home Guards, was relied upon to state that there does not exist a master-servant relationship between the Government and the volunteers. The decision in ***Moirangninthou Singh*** (supra) was relied upon to submit that the Home Guards being a voluntary organisation, could not be equated with other organisations such as the civil police,

the army or other paramilitary organisations. The learned Counsel for Respondent No. 1 sought to draw parallel with Home Guards who are ordinarily unpaid volunteers and whose pay is determined by the State Government as and when called on duty. The decision in ***Jiban Krishna Mondal*** (supra) clearly denies regularisation to such volunteer members. However, while these decisions stand on firm grounds, they are of no avail to the respondents since the voluntary nature of CDVs is not only provided in black letters of the statute but also is an admitted fact by all contesting parties herein; further, the present *lis* does not pertain to the issue of regularisation nor does the controversy at hand warrant the determination regarding existence or non-existence of a master-servant relationship. Primarily, the redressal sought by the petitioners pertains to the alleged violation of *audi alterem partem* at the time of their dismissal and the challenge to the *vires* of Section 6(2) read with Section 14(1) of the Act.

66. The contention raised by respondents that CDC is not an "industry" and CDVs are not "workmen" under the Industrial Disputes Act, 1947, is of no avail keeping in mind the abovementioned reasoning that the grievance of present petitioners arises from the alleged violation of the principles of natural justice. It is well-established that principles of natural justice, *audi alteram partem* in the present case, is not confined to workmen and industrial disputes but is omnipresent in almost all areas of the law where statutory power is exercised to the prejudice of an individual. The Act itself clarifies under Section 6(1) that when dismissal is stigmatic or punitive, fair procedure must be followed. Further, the learned Counsel relied on the decision in ***Akshay Amrutlal Thakkar*** (supra) to

establish that no civil consequences follow in cases of discharge of a volunteer and that such volunteers are not entitled to regularisation. We are of the view that the factors surrounding that decision were distinct, since the petitioners therein attained the maximum age and were no longer members of the Home Guards, hence, regularisation was not feasible.

67. Reliance was placed on ***Suraj Prasad Tewari*** (supra) and ***Rajendra Singh*** (supra) on behalf of the petitioners to submit that the petitioners were entitled to protection under Article 311 of the Constitution of India. However, we are not in agreement with this contention owing to the voluntary and honorary nature of service of the CDVs. Article 311 grants protection to persons holding civil posts under the State or the Union. In contrast, the appointment of CDVs is not against any civil or cadre post or in possession of any other characteristics of civil employment under the Government. The statute deems them as "public servants" but that does not convert their honorary and voluntary appointment to a regular employment.

68. It was vehemently contended by the respondents that fundamental rights of CDVs under Articles 14, 16, 19(1)(g) and 21 of the Constitution of India have not been violated. Dismissal *simpliciter* does not inherently violate Article 14. Arbitrariness is antithetical to Article 14, however, observing the surrounding facts and circumstances of the case at hand, we observe that there is intelligible differentia i.e., the distinction between regular employees and volunteers is intelligible and bears rational nexus with the object of

the Act i.e., ensuring civil protection in emergencies requiring swift mechanisms and procedures. Article 16 pertains to public employment which is distinguishable from the present facts and nature of service of CDVs. Further, the right under Article 19(1)(g) is not infringed since the honorary engagement of CDVs does not constitute a "profession" or regular employment. Further, Clause 7 of the Standing Order No. 01 of 2022 explicitly provides that the deployment of CDVs is rotational and temporary. The Clause further clarifies that remuneration paid should not be construed as "livelihood", hence, in the presence of express statutory provision, we find no violation under Article 21 as well. **However, at this juncture, we deem it fit to observe that, though authorities enjoy a higher degree of discretion with respect to volunteers; principles of justice and fairness warrant that a balance be met and such discretion should not render a volunteer entirely at the mercy of such authority.**

VALIDITY OF SECTION 14(1)

69. Reliance was placed on the celebrated decision in ***McDowell*** (supra), wherein it was held that mere allegations of arbitrariness are not sufficient to strike down a legislation. The *vires* of an Act can only be challenged on two grounds i.e., either due to lack of legislative competence or due to violation of fundamental rights enshrined in Part III of the Constitution of India. The Court highlighted that there was no third ground. While the aforesaid decision is cogent in its footing, this Court is faced with the question whether a provision that completely ousts the jurisdiction of all Courts can be allowed to stand

or not. While legislative competence empowers the Legislatures to stipulate and regulate procedures, they cannot enact provisions that completely negate ambit of judicial review or the power of the constitutional courts to enforce and protect fundamental rights, *inter alia*, hence, notwithstanding the abovementioned decision, provisions that threaten judicial review and thereby the very basic structure of the Constitution of India, are amenable to challenge.

70. In view of the aforesaid decision, we shall address the issue pertaining to Section 14(1) of the Act. In this regard, the learned Counsel of the petitioners placed reliance on ***Ram Chandar*** (supra), wherein a similar provision barring the jurisdiction of courts was dealt with. The Court therein held that the provision only applied to orders passed within the powers conferred under the relevant Act, and the orders exceeding such powers could be challenged before a Court of law.

71. It has been submitted by the learned Counsel for the petitioner that the justiciability of any action taken by the relevant authority under Section 6 of the Act for dismissal, either stigmatic under Section 6(1) or dismissal *simpliciter* in terms of Section 6(2) of the Act, is absolutely barred. We do not see any force in the said argument primarily due to two reasons, first being that the Act itself provides a mechanism for appeal under Section 7. Therefore, it cannot be said that there is a complete bar on the justiciability of the orders passed under Section 6 of the Act. Secondly, the intention of the Legislature, in this behalf, can be gathered from Section 14(1), which lays down as follows:

*"**14. Savings as to orders.**—(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court."*

According to this Court, the literal meaning of the sub-section (2) is loud and clear i.e., the protection under Section 14(1) is not absolute, in as much as it could not have the effect of protecting an order which is passed in violation of a mandatory provision of the Act. The intention of the Legislature behind Section 14(1) must have been that no Court will be called upon to consider the proprietary, as distinguished from the legality, of any order purporting to be passed under the Act. It would, therefore, follow that if an authority or person makes an order which, according to him, complies with the principles laid down in Section 6, the Court cannot consider whether the discretion so exercised by the authority or person was correct, or examine as to whether some other order might have been in greater conformity with the principles laid down under the said provision or not. In light of the above and upon harmonious construction, we hold that Section 14(1) does not act as an absolute embargo on the jurisdiction of this Court. It merely stipulates that the proprietary of any order under the Act cannot be challenged in any Court, whereas, in our considered view, a challenge to the legality can always be subjected to judicial review before a constitutional court. Therefore, in the light of the said proposition, as far as the facts of the present case are concerned, any attempt made by the relevant authority to envelope the impugned orders passed under the Act in a protective cover of Section 6(2), so as to divert judicial scrutiny of this Court, falls foul of the restriction mentioned under Section 14(1) of the Act. The legality

of the order passed under the Act ought to be subjected to judicial review.

72. Having noted the above, we shall proceed to trace the evolving tapestry of judicial review since its inception, examining the developments as enunciated by the Hon'ble Supreme Court over the years. We begin with one of the more recent decisions in ***Union of India v Parashotam Dass***[44]**,** wherein it was reasoned:

> *"25. While we agree with the aforesaid principle, we are unable to appreciate the observations in Shri Kant Sharma [Union of India v. Shri Kant Sharma, (2015) 6 SCC 773 : (2015) 2 SCC (L&S) 386] , which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure.* ***The principles of basic structure have withstood the test of time and are emphasised in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction*** *under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal."*
>
> (emphasis supplied)

73. Further, as reasoned herein above, Section 14(1) does not protect or create an embargo to the justiciability of an order passed under Section 6 of the Act. Any ramification of such protection would be to confer wide and unfettered powers onto the competent authority under the Act and exclude the scope of judicial review. Stemming from the seeds sown in ***Kesavananda Bharati v. State of Kerala***[45]**,** the Hon'ble Supreme Court in ***Minerva Mills Ltd. v. Union of India***[46]**,**

[44] **(2025) 5 SCC 786 : 2023 SCC OnLine SC 314**
[45] **(1973) 4 SCC 225**
[46] **(1980) 3 SCC 625**

reiterated the paramount importance and necessity of judicial review and how it is intrinsically woven into the constitutional scheme thereby forming an innate part of the basic structure doctrine. We reproduce the relevant excerpt as follows:

> *"21. ...Our Constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislature and the Judiciary.* ***It is the function of the Judges, nay their duty, to pronounce upon the validity of laws.*** *If courts are totally deprived of that power, the fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water.*
>
> ***
>
> *88. ...So also if the legislature makes a law and a dispute arises whether in making the law the legislature has acted outside the area of its legislative competence or the law is violative of the fundamental rights or of any other provisions of the Constitution, its resolution cannot, for the same reasons, be left to the determination of the legislature. The Constitution has, therefore, created an independent machinery for resolving these disputes and this independent machinery is the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the legislature. It is the solemn duty of the judiciary under the Constitution to keep the different organs of the State such as the executive and the legislature within the limits of the power conferred upon them by the Constitution. This power of judicial review is conferred on the judiciary by Articles 32 and 226 of the Constitution…It is a cardinal principle of our Constitution that no one howsoever highly placed and no authority however lofty can claim to be the sole judge of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. The judiciary is the interpreter of the Constitution and to the judiciary is assigned the delicate task to determine what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law, which inter alia requires that "the exercise of powers by the government whether it be the legislature or the executive or any other authority, be conditioned by the Constitution and the law".* ***The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule***

> ***of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution.*** *Of course, when I say this, I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament.* ***But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution."***
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> (emphasis supplied)

74. In addition to the aforementioned decisions, it has been consistently established in plethora of decisions ranging from ***Powers, Privileges and Immunities of State Legislatures, In re (Keshav Singh)***[47]***, L. Chandra Kumar v Union of India***[48]**,** *inter alia*, to more recent pronouncements of the Hon'ble Apex Court such as ***Maharashtra Chess Assn. v Union of India***[49]*,* that the jurisdiction conferred upon the Hon'ble Supreme Court and High Courts under Articles 32 and 226 of the Constitution of India respectively, is indeed an intrinsic part of the basic structure of our Constitution and hence, such jurisdiction cannot be ousted by a statute. In our considered opinion, to hold otherwise, would render the rights enshrined in the Constitution futile and illusory as the citizen would be bereft of an avenue to protect/enforce/exercise such rights.

75. The powers conferred upon a High Court under Article 226 are broad and far-reaching, extending beyond the scope of Part III of the Constitution of India. It was very rightly put in ***U.P. State Sugar***

[47] **1964 SCC OnLine SC 21**
[48] **(1997) 3 SCC 261**
[49] **(2020) 13 SCC 285**

Corpn. Ltd.* v *Kamal Swaroop Tondon[50], that such power may be exercised to *"reach injustice wherever it is found"*. This power ought to be transcendental in the aid of justice and to uphold the rule of law, hence, it cannot be confined or outrightly ousted to hinder or impede the interests of justice. It has been categorically held in ***Maharashtra Chess Assn.*** (supra), that the writ jurisdiction of a High Court cannot be completely ousted by statute since a High Court is vested with the duty to uphold rule of law within its territorial jurisdiction. The limitation on the exercise of such jurisdiction is self-imposed. A High Court may choose to confine its jurisdiction in light of efficacious alternative remedy; however, it is a matter of discretion, and the Court would be well-within its jurisdiction to grant relief under Article 226 of the Constitution of India despite the existence of such remedy, as also reaffirmed in ***U.P. State Spg. Co. Ltd. v. R.S. Pandey***[51].

76. In light of the abovementioned judicial precedents, in our considered view, Section 14(1) of the Act has to be read down to interpret that no Court shall be called upon to consider the propriety, as distinguished from the legality, of any order purporting to be passed under the Act.

77. Turning to the question of validity and constitutionality of Section 6(2), it is evident from the foregoing discussion that Section 6(2) aligns with the object of the Act and further, dismissal *simpliciter*, in itself, is a valid and well-settled principle in service law, and hence

[50] **(2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352**
[51] **(2005) 8 SCC 264 : 2006 SCC (L&S) 78**

it is not liable to struck down as unconstitutional. We now deem it fit to add that if the power conferred under sub-section (2) is exercised to circumvent the rigours of Section 6(1), the legality of such dismissal will be amenable to challenge in a Court of law.

78. Pertaining to the appeals preferred by both the petitioners dated 18.05.2020 in W.P.(C) No. 4233/2022 and 18.04.2020 (stamped on 21.04.2020) in W.P. (C) No. 16081/2023 under Section 7 of the Act which came to be rejected on grounds of limitation; we hold that in the present case, the dismissal under Section 6(2) assumed colours of a stigmatic dismissal and hence, warranted a fair opportunity to be heard and peruse the material relied upon which constituted the foundation of the stigmatic dismissal. We further find that such an opportunity was not awarded at the stage of initial dismissal or at the stage of appeal, thereby rendering the impugned orders in both writ petitions liable to be quashed and set aside.

79. As a sequitur to the aforesaid reasoning, it is directed that since the dismissal of the petitioners has been made under Section 6(1) of the Act in substance but cloaking it under Section 6(2) of the Act, this Court while quashing the impugned orders, hereby directs the respondents to treat and provide all such opportunities/rights to the petitioners as have been imbibed under Section 6(1) of the Act. Needless, to say that the competent authority shall pass a speaking order after affording full opportunity of hearing to the petitioners in both writ petitions and it would be desirable that the said exercise may be made within a period of three months from the day a certified copy of this judgment is provided to the competent authority.

80. Further, taking into account the Circular issued by Respondent No. 1 dated 31.10.2023 by way of which services CDVs were discontinued with immediate effect; the prayer of the petitioners seeking reinstatement has become infructuous. However, we deem it fit to direct Respondent No. 1 to inform the petitioners when the services under the Act resume and vacancy arises, giving them preference in that regard.

81. For all the aforesaid reasons, we partly allow both writ petitions, in the aforesaid terms. There shall be no order(s) as to costs.

82. Pending application(s), if any, also stands disposed of.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

DECEMBER 9, 2025/*gunn/at*