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

% **Date of decision: 5th August, 2020**

\+ **W.P.(C) No.4181/2020**

LT. COL. P.K. CHOUDHARY .... PETITIONER

Through: Mr. Prashanto Chandra Sen, Sr. Adv. with Mr. Shivank Pratap Singh & Ms. Sanandika Pratap Singh, Advs.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS

Through: Mr. Chetan Sharma, ASG with Mr. Ajay Digpaul, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Lieutenant Colonel with the Indian Army, has filed this petition seeking a writ of mandamus directing the respondents (i) Union of India, (ii) Director General of Military Intelligence, and (iii) Chief of the Army Staff, to withdraw their policy dated 6th June, 2020 to the extent that it bans the petitioner and other members of the Indian Army from using social networking platforms like Facebook and Instagram and to the extent it orders the petitioner and other members of the Indian Army to delete their accounts from social networking platforms like Facebook and Instagram; declaration is also sought that the respondent no.2 Director General of Military Intelligence is not empowered under the Constitution of India or under any

other law, to modify, amend or abrogate the fundamental rights of the petitioner and other members of the Armed Forces.

2. The petition came up before us first on 14th July, 2020. It was found that though the petitioner had pleaded that on 9th July, 2020, the policy aforesaid was circulated to the members of the Indian Army but the policy had not been produced before the Court. It was the plea and contention of the counsel for the petitioner that the petitioner, as a responsible officer, to maintain confidentiality, had not annexed the policy, which is for restricted circulation, to the petition or reproduced the contents thereof in the petition. Being of the view that the counsels should be heard only after we have had an occasion to peruse the policy and if the documents prescribing the policy did not record the reasons therefor, the documents containing the reasons for the policy, we directed the counsel for respondents, appearing on advance notice on 14th July, 2020, to circulate in a sealed cover the policy and / or the documents containing the reasons therefor and deferred the hearing to 21st July, 2020.

3. The contention of the counsel for the petitioner on 14th July, 2020, that the petitioner till the next date be relieved from the mandate of being required to delete his existing social media accounts by 15th July, 2020, was rejected observing that till we had found a reason to entertain the petition and had entertained the petition, the question of granting any such interim relief did not arise especially when the matter had the potential of concerning the safety and security of the country.

4. The respondents, on 20th July, 2020 circulated to us in a sealed cover the documents as directed vide order dated 14th July, 2020 and we heard the senior counsel for the petitioner appearing on 21st July, 2020 and the Additional Solicitor General (ASG) appearing for the respondents and reserved orders.

5. The petition has been filed, pleading that (i) the petitioner is currently posted in Jammu & Kashmir and is an active user of Facebook and uses the said platform *inter alia* to connect with his friends and family; (ii) most of the petitioner's family members including his elder daughter are settled abroad; the younger daughter of the petitioner studies in a residential school and the wife of the petitioner works in Lucknow and the father of the petitioner also spends a lot of time outside India; in these circumstances, the petitioner finds social media platforms, particularly Facebook, an important tool to connect with his family; (iii) Facebook enables the petitioner to share knowledge and information on varied subjects, with his daughters, helping the petitioner to parent them even when he is posted in remote locations; (iv) the petitioner, owing to the nature of his profession, being constantly on the move, also at forward locations on the country's border, finds Facebook to be an effective means to maintain his social relationships with friends, family and other acquaintances; (v) the petitioner uses his Facebook account responsibly, in accordance with the guidelines issued by the Indian Army from time to time and has never shared over Facebook or on any social networking platform, any classified or sensitive information pertaining to his role and duties as an Indian Army officer; (vi) on 9th July, 2020, the petitioner through a news article learnt that Indian Army had passed an order requiring the petitioner and other personnel of Indian Army to delete

Facebook, Instagram and 87 other applications, by 15th July, 2020; (vii) subsequently, on 10th July, 2020 the petitioner received a letter titled "POLICY ON USE OF SOCIAL MEDIA PLATFORMS AND MOBILE PHONES IN IA" issued by the respondent no.2 Director General of Military Intelligence on 6th June, 2020, *inter alia* banning usage of 89 applications and websites listed therein and directing deletion of accounts on the said websites and applications— the ban and direction for deletion, was applicable to all ranks of Indian Army; (viii) the policy and the direction violate fundamental rights of the petitioner under the Constitution of India, including the right to freedom of speech and expression and right to privacy; (ix) the remote areas, extreme weather conditions, difficult terrain, lingering threat of an enemy attack at all times, where the Indian Army soldiers are posted, take a great toll on the physical and mental health of the soldiers and the said conditions have to be borne by the soldiers being far away from their family, friends and loved ones; (x) the soldiers rely on social networking platforms like Facebook, to address various issues arising in their families and often use the virtual connect to compensate for the physical distance existing between themselves and their families; (xi) with the advent of the internet age, in particular high speed internet, in connectivity over mobile networks, the soldiers have found an effective way to come closer to their friends, family and loved ones, in the virtual world, easing the stress otherwise suffered by the soldiers; (xii) websites and applications like Facebook and Instagram have become more popular modes of communication than the traditional modes; (xiii) India has the largest number of users on Facebook, in the world; soldiers can view pictures, videos of events such as weddings, birthdays and other events of cultural

significance, in real time or even on a later date, as per their convenience and need; (xiv) the impugned policy and direction thus is not only violative of the fundamental right to freedom of speech and expression but also the right of life and right to privacy and the restrictions imposed vide the impugned policy violate Article 14 of the Constitution of India; (xv) the impugned policy is draconian in nature; (xvi) the purported security concerns and risk of data breach, forming the basis of the impugned policy and direction, are not limited to soldiers only; several members of the civil administration and political class who possess information of a much higher level of sensitivity than a regular soldier but the restrictions as imposed on the soldiers do not extend to them, making the policy arbitrary; (xvii) the fundamental rights of the soldiers are sought to be abrogated by an executive order, in blatant abuse of authority; (xviii) the respondent no.2 Director General of Military Intelligence is not empowered to impose any restrictions on fundamental rights of the soldiers; (xix) the policy has an entire section dedicated to measures such as sensitization and training of army personnel, to avoid breach of security and data – this gives rise to a glaring absurdity; on one hand soldiers are ordered to stop using all major social media platforms and directed to delete their user profiles and on the other hand the policy seeks to sensitize the soldiers and train them in proper and safe conduct over social networking platforms; (xx) such contradictions are a testament to non-application of mind while formulating the policy; (xxi) the treatment meted out to the soldiers vide the impugned policy is akin to treating them as slaves and is an insult to the integrity of the soldiers; (xxii) the policy assumes that all soldiers are vulnerable to be lured by honey traps and bribes and which is an insult to all the soldiers; (xxiii) the direction to delete the accounts from

Facebook and other social media platforms violates the right to privacy; (xxiv) such abrogation or restriction on fundamental rights of soldiers cannot be done by way of executive order; Article 33 of the Constitution of India and Section 21 of the Army Act, 1950 are reproduced in the petition itself; (xxv) the restrictions contained in the policy, particularly relating to ban on use of social networking platforms and deletion of accounts, are not contemplated under Section 21 of the Army Act or the Rules framed by the Central Government in terms thereof; Rules 19, 20 and 21 of the Army Rules, 1954 are reproduced in the petition itself; and, (xxvi) reference in the petition itself is made to ***K.S. Puttaswamy Vs. Union of India*** (2019) 1 SCC 1, ***Union of India Vs. L.D. Balam Singh*** (2002) 9 SCC 73, ***Prithi Pal Singh Vs. Union of India*** AIR 1982 SC 1413, ***Sakal Papers (P) Ltd. Vs. Union of India*** AIR 1962 SC 305, ***LIC Vs. Manubhai D. Shah (Prof.)*** (1992) 3 SCC 637 & ***Lipika Pual Vs. State of Tripura*** 2020 SCC OnLine Tri 17.

6. The senior counsel for the petitioner has argued on the same lines as pleaded i.e. (i) that vide the impugned policy, the fundamental right of the petitioner of freedom of speech and expression has been curtailed; (ii) that though Article 33 of the Constitution of India permits such right to be curtailed or modified in the application to the members of the armed forces but only by law; (iii) that the law contained in this regard being Section 21 of the Army Act also does not curtail the right which has been curtailed by the impugned policy issued by an executive order and which is not law; (iv) Section 21 of the Army Act also requires the Government to act by notification or by making Rules and which has also not been done; (v) that the impugned policy absolutely banning the personnel of the Indian Army from using social media sites, also does not satisfy the test of proportionality,

fairness and the duty to impose the least restrictive ban, to curb the menace even if any; (vi) that there is no such ban on the armies of USA and UK; (vii) that Indian Army, which is 18 lacs strong, has a rigorous course of conduct; (viii) the recruitment to the Indian Army also is very rigorous and Indian Army is a very disciplined force and the guidelines issued on the use of social media have been serving the purpose and will serve the purpose in future also; (ix) that the ban imposed on the personnel of the Indian Army shows the distrust of the country for its own army officials; (x) that the army personnel, owing to the nature of their duty, have no social connectivity or bonding with their family, friends, acquaintances and are also mostly living in very difficult terrain and situations and all of which has effect on their mental well being and causes depression; (x) that even if the authorities had any cause, issuing a advisory or an alert would serve the purpose; (xi) that instead of putting a blanket ban, the social media accounts of all the army personnel can be monitored; (xii) that no such ban has been imposed on others similarly placed as army personnel and similarly possessed of confidential / sensitive information and thus the army personnel are being discriminated against; (xiii) that in the 15 years of existence of Facebook, there have been hardly any cases of honey trapping of army officials; (xiv) that it is necessary to allow army personnel use of social media platform, for integration with the society and to enable them to, sitting far, from where they do not have a choice to move, explore other places / persons; and, (xv) attention is drawn to ***Dalbir Singh Vs. The State of Punjab*** AIR 1962 SC 1106 (paras 6 and 7) and to ***R. Viswan Vs. Union of India*** (1983) 3 SCC 401 (para 7).

7. We have perused the policy as well as other voluminous documents containing the background of and the material on which impugned policy is based. Suffice it is to state, that the policy is, (i) an outcome of constantly evolving intelligence of security threats and assessment of security safeguards needed; (ii) to plug the gaps and meet the ever threatening electronic and cyber infrastructure; (iii) an outcome of the paradigm shift in the intelligence activities of hostile nations; increased popularity of various social media platforms; the vulnerability of unsuspecting military personnel; (iv) necessitated by the directives, instructions and policies issued from time to time, advising the military personnel to regulate the use of social media websites, failing to meet the threat; (v) virtual impossibility to keep track of lacs of online profiles or to identify the fictitious enemy profiles; (vi) on assessment of the different modes adopted to honey trap, not necessarily in the conventional sense; and, (vii) an outcome of the assessment of vulnerability of different social media platforms.

8. We also find that the impugned policy has not been issued impulsively but is preceded by prolonged study of different aspects and data collated in this regard with particular instances and deliberations at the highest level thereon and has been issued after considering similar bans imposed by other countries, on armed personnel.

9. To be fair to the senior counsel for the petitioner, he also has argued the matter not only as a responsible officer of the Court but as a concerned citizen of the country, concerned not blindly with the case of his client but in the light of the sensitivity of the issue and not with the exuberance and

without care for consequences attitude displayed by the counsel for the petitioner during the hearing on 14th July, 2020.

10. Per contra, the learned ASG (a) has drawn attention to Rules 19, 20 and 21 of the Army Rules, 1950 prohibiting persons, subject to the Army Act, from taking active part in any society, institution or organization not recognized as part of the armed forces of the Union unless it be of recreational or religious nature or from publishing in any form whatsoever or communicating directly or indirectly to the press any matter in relation to a political question or on a service subject and containing any service information or from delivering a lecture or wireless address on a matter relating to political question or on a service subject, without prior sanction; (b) placed reliance on ***63 Moons Technologies Ltd. Vs. Union of India*** 2019 SCC OnLine SC 624 (paras 54 and 59) to contend that the same lays down the test of judicial interference with the subjective satisfaction of the government; (c) contended that in none of the judgments referred to by the petitioner in the petition, Rule 21 supra issued in pursuance to Section 21 of the Army Act has been referred to; (d) invited attention to Defence Services Regulations issued on 5th December, 1986 prescribing the procedure for obtaining permission for communication to the press or to give lecture, by prior submission of the content; (e) drawn attention to Special Army Order-III issued on 9th April, 2001 to show that the expression "service information and service subject" in Rule 21 is all embracing and would encompass within its meaning any information relating to the services and to show that the expression "press" includes all non-military audio visual, visual print electronic media, internet, non-military e-mail, non-military Wide / Local Area Networks and general public; (f) contended that thus the policy

impugning which this petition has been filed is only clarificatory and the restrictions on the use of social media platforms was already restricted / banned; (g) that there is a similar ban in Navy also and in several other countries; (h) such bans have become essential on perception of threat posed by use of certain social media platforms; (i) it is not as if all social media platforms have been banned; and, (j) a list of social media sites, of which restricted usage is permitted viz. Skype, WhatsApp, Telegram, Signal, YouTube, LinkedIn etc., is handed over.

11. The learned ASG has also shared with us the printouts of the Twitter and Facebook accounts of the petitioner, to demonstrate violation by the petitioner in particular, of the Regulations earlier issued qua use of social networking sites on the internet by the army personnel; particular attention is drawn to the posts by the petitioner, on matters which are barred including photographs of the places of his duty.

12. The senior counsel for the petitioner, in rejoinder contended that he has no instructions qua the printouts of the Facebook and Twitter account of the petitioner, shared by the ASG and has fairly contended that he is not supporting any violations if committed by the petitioner and is only urging a pure question of law, of the fundamental rights of the personnel of armed forces being permitted to be curtailed only by law and not by executive fiat.

13. The ASG stated that the army authorities will consider taking action against the petitioner for the violations committed by the petitioner, of the advisories and guidelines in force from time to time, as have surfaced on perusal of the Facebook and Twitter accounts of the petitioner.

14. We have considered the controversy for the stage of admission only.

15. A Division Bench of this Court, of which one of us (Rajiv Sahai Endlaw, J.) was a part, in ***Pradeep Oil Corporation Vs. Union of India*** AIR 2012 Delhi 56, relying on past precedents, held that the power under Article 226 of the Constitution of India is discretionary and will be exercised only in furtherance of interest of justice and not merely on making out of a legal point; the Courts have to weigh public interest vis-à-vis the private interest while exercising the powers under Article 226 of the Constitution of India. Mention may also be made of ***Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd.*** (2005) 6 SCC 138, laying down that even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and only in furtherance of a public interest and not merely on the making out of a legal point; the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not; only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere. An earlier Division Bench of this Court also, in ***Anil Kumar Khurana Vs. Municipal Corporation of Delhi*** MANU/DE/0420/1996 held that (i) exercise of jurisdiction under Article 226 is purely discretionary; (ii) seldom can a petitioner ask for it as of right; (iii) writs are not issued as a matter of course; (iv) while deciding a writ petition, the Court can see which way the justice lies; (v) the Court is not obliged or bound to interfere in writ jurisdiction in every case where the order of the authorities may be without jurisdiction; (vi) in an equitable jurisdiction, it is the duty of the Court to preserve the public good – the writ court cannot protect the wrong; (vii) a person who seeks equity must do equity; (viii) no

one can be allowed to take advantage of own wrong; (ix) a person who has committed a wrong may not be heard by a writ court in support of the plea that the authority which is taking action against him has no power or jurisdiction and such power vests in another statutory authority; and, (x) the law breakers can be refused equitable relief assuming they may have some case on merits – the writ Court can deny hearing to such law breakers.

16. We have enquired from the senior counsel for the petitioner, why, having been shown the posts and tweets of petitioner (and which *prima facie* do not appear to have been responsibly issued) and why inspite of being shown the elaborate process and material preceding the decision making of the policy impugned, should we proceed to adjudicate the legal contention urged of the impugned policy being not in compliance of Article 33 of the Constitution of India and Section 21 of the Army Act. It is also not as if such non-compliance is writ large. It will have to be adjudicated, whether the impugned policy is merely in pursuance to and clarificatory of the Regulations and the Army Orders to which attention is drawn by the ASG and to which there is no challenge. We also enquired from the senior counsel for the petitioner, whether not it is a settled principle of interpretation, that laws made for all times, are to be interpreted to apply with changing times, especially fast developing technology and whether not so interpreted, the existing laws are enough for issuance of the policy impugned in this petition and no fresh law is required. It is evident from the records produced that the earlier advisories and directives qua conduct and behavior of army personnel on social networking sites have not been abided by some. The material produced shows certain army personnel to be unsuspectingly answering all kinds of questions relating to their postings and

whereabouts and postings and whereabouts of others merely on being told by a person befriended on social networking sites, of a defence background and which information when collated from a number of sources can easily convey a full picture to an expert espionage eye.

17. We find it to be a fit case to apply the law as discussed in the paragraph before the preceding paragraph. Even if there is any error in the respondents issuing the impugned policy and direction, without complying with the procedure prescribed in Section 21 of the Army Act, considering that the issue has an element of urgency and concerns the safety and security of the entire country, we do not deem it necessary to**,** for the grievance of the petitioner only**,** render an adjudication on the questions urged and which may require us to refer to the documents and materials shown to us in confidence. What has also weighed in our mind is, that any interpretation given by us in the facts of the present case, of Section 21 of the Army Act, Defence Regulations and army orders, may be prejudicial to the personnel of the armed forces in a case with better facts. The counsel for the petitioner also has in response to the question posed to him not been able to give any explanation, why we should not in our discretion refuse to adjudicate the question urged of violation of fundamental rights of the petitioner of speech and expression without in accordance with law. In fact, save for stating that Facebook and Twitter are more convenient, no answer was forthcoming to, why the filial and other social needs of the petitioner cannot be fulfilled by other means of communication cited by the ASG, which are still available to the petitioner. It was suggested that the petitioner cannot explore other people whose contacts are not known to him. In this context we may record that we find the petitioner, on Facebook and Twitter, following and being

followed by a large number of persons from other fields and making comments on their posts/tweets and qua which the ASG said, is breach of earlier advisories / Regulations.

18. Supreme Court, in ***People's Union for Civil Liberties Vs. Union of India*** (2004) 2 SCC 476 was concerned with writ petitions seeking disclosure of information relating to purported safety violations and defects in various nuclear installations and power plants across the country. It was held that (i) the jurisdiction of the Courts in such matter is very limited; (ii) the Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from *mala fide,* dishonesty or corrupt practices; (iii) the order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder; no such case had been made out in the facts of that case; (iv) the State must have the prerogative of preventing evidence being given on matters that would be contrary to public interest; and, (v) when any claim of privilege is made by the State in respect of any document, the question whether the documents belong to the privileged class, is first to be decided by the Court; the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question; the claim of immunity and privilege has to be based on public interest. Again, in ***State of N.C.T. of Delhi Vs. Sanjeev*** (2005) 5 SCC 181, it was held that (a) the present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of

cases which relate to deployment of troops, entering into international treaty etc.; the distinctive features of some of these recent cases signify the willingness of the Court to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised; (b) the administrative action is subject to control by judicial review on the grounds of illegality, irrationality and procedural impropriety; (c) if the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous; (d) if a power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated; and, (e) judicial review can be limited in the case of national security. Again, in ***Ex-Armymen's Protection Services Pvt. Ltd. Vs. Union of India*** (2014) 5 SCC 409, it was held that (i) the decision on whether the requirements of national security outweigh the duty of fairness on a particular case is for the government and not for the Courts; the government alone have access to the necessary information and in any event the judicial process is unsuitable for reaching decisions on national security; (ii) those who are responsible for the national security must be the sole judges of what the national security requires and it is undesirable that such matter should be made the subject matter of evidence in a Court of law or otherwise discussed in public; (iii) what is in the interest of national security is not a question of law – it is a matter of policy and it is not for the Court to decide whether something is in interest of State or not; and, (iv) once the State is of the stand that the issue involves national security, the Court shall not disclose the reasons to the affected party. The same was followed recently in ***Digi Cable Network (India) Pvt. Ltd. Vs. Union of India*** (2019) 4 SCC 451.

19. Supreme Court in ***Union of India Vs. Rajasthan High Court*** (2017) 2 SCC 599 was concerned with the directions issued by a High Court, to include the Chief Justices and Judges of the High Court in the list of persons exempted from pre-embarkation security checks at airports. While setting aside the said order of the High Court, it was held that (i) the High Court had evidently transgressed the wise and self-imposed restraint on the power of judicial review; matters of security ought to be determined by the authorities of the government vested with the duty and obligation to do so; (ii) gathering of intelligence information, formulation of policies of security, deciding on steps to be taken to meet threats originating both internally and externally, are matters on which Courts singularly lack expertise; (iii) it was not for the Court, in the exercise of its power of judicial review, to suggest a policy which it considered fit and the formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond the legitimate domain of judicial review; (iv) formulation of such a policy is based on information and inputs which are not available to the Court; and, (v) the Court is not an expert in such matters.

20. More contemporaneously, in the context of procurement of Rafale Fighter Jets for Indian Air Force, it was reiterated that though there is a general presumption against ousting the jurisdiction of the Courts, there are however certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is *bona fide*. Comparatively recently, in ***Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal*** MANU/SC/1561/2019, in the context of disclosure under the Right to Information Act, 2005, the

proceedings of the Collegium System for appointment and elevation of Judges to the Supreme Court and High Court, the Supreme Court held (i) if the inner working of the government machinery is needlessly exposed to public, it would hamper frank and forthright views, thoughts or options on sensitive matters; (ii) therefore the level of deliberations of that class or category of documents get protection, in particular, on policy matters; (iii) the Court would be willing to respond to the executive public interest immunity to disclose such documents where national security or high policy, high sensitivity is involved; (iii) there are several limitations on complete disclosure of governmental information, especially in matters relating to national security; and, (iv) there is also a need to accept and trust the government's decision makers. Yet again in ***The Secretary, Ministry of Defence Vs. Babita Puniya*** AIR 2020 SC 1000, in the context of grant of permanent commission to women in the Indian Army, it was reiterated that the Courts are indeed conscious of the limitations viz. issues of national security and policy, imposed on the judicial evolution of doctrine in matters relating to armed forces.

21. The Division Bench of this Court also in ***Esab India Ltd. Vs. Special Director of Enforcement*** 178 (2011) DLT 569, again in the context of arms procurement, held that when a question of national security is involved, the Court may not be the proper forum to weigh the matter and that as the Executive is solely responsible for national security, no other organ could judge so well such matters and the documents in relation to these matters fall in a class which per se requires protection. It was further held that Article 19(2) of the Constitution of India also carves out exception in the matters relating to interests of sovereignty and integrity of India and the security of

the State. Another Division Bench in ***Mehmood Pracha Vs. Intelligence Bureau*** MANU/DE/2187/2018, in the context of writ petition seeking mandamus to constitute a special investigation team to investigate all aspects of the hostage crisis, observed that national security is not a question of law but a matter of policy and it is not for the Court to decide whether something is in the interest of the State or not – it should be left to the Executive and that the decision on, whether the requirements of national security outweigh duty of fairness in any particular case is for the government and not for the Court. Finding no right or justification for seeking divulgence of more information, it was held that the Court could not grant the relief sought.

22. It is also in the light of the aforesaid judgments that we have herein observed that we do not deem it appropriate to exercise the discretion vested in us as aforesaid in exercise of powers under Article 226, to not entertain the petition and not adjudicate the issues raised. Had we, on perusal of the impugned policy which itself is a restricted document or the supporting material thereof found the same be suffering from the vice of non-application of mind or being not based on any material on record or being without proper deliberations, we would have certainly proceeded to answer the legal issue raised by the petitioner, of the ban being imposed on the petitioner and others similarly placed as the petitioner without complying with Article 33 of the Constitution and Section 21 of the Army Act. However, once we are satisfied on the aforesaid parameters and find other means of communication to be still available to the petitioner and the ban being with respect to certain social networking websites only and more so, once we have found the petitioner himself to have been posting tweets which according to the ASG are in violation of the policy earlier in force qua use of social media, we do

not deem it apposite to at the instance of the petitioner to go into the questions urged. Rather, we do not appreciate the pleadings of the petitioner as a senior officer in the Army, of army personnel being treated as slaves and the government not trusting its army.

23. We may also notice that warfare and inter-country rivalries and animosities today are not confined to accession of territory and destruction of installations and infrastructure of enemy countries but also extend to influencing and affecting the economies and political stability of enemy country including by inciting civil unrest and disturbance and influencing the political will of the citizens of the enemy country. In such a scenario, if the government, after complete assessment, has concluded that permitting use of certain social networking websites by personnel of its defence forces is enabling the enemy countries to gain an edge, the Courts would be loath to interfere.

24. In the circumstances, no case for interference is made out.

25. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 05, 2020
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