IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO. 7659 OF 2018

IN THE MATTER OF:

VOICE OF EX-SERVICEMEN SOCIETY

(REGD) & ORS. ...PETITIONER

VERSUS

UNION OF INDIA &ORS. ...RESPONDENTS

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NEXT DATE 04.12.2019

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RESPONDENT NO.1/UOI

THROUGH

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NEW DELHI-110003
CLERK - 9810064705

DATED: 03.12.2019

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VOICE OF EX-SERVICEMEN SOCIETY (REGD) & ORS. ... PETITIONER

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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1/UNION OF INDIA

MOST RESPECTFULLY SHOWETH:

I, Maj Rohit M Nair S/o Mr Muraleedharan Nair, aged about 35 years, working as AQMG Canteen Services Dte, QMG Branch, IHQ of MoD (Army), New Delhi, 110001, do hereby solemnly affirm and declare as under:

A. That I am the above named Deponent and am authorized and well conversant with the facts and circumstances of the present case, as available in our office, during the ordinary course of my official duty and thus competent to swear the present Affidavit.

B. That I have read and understood the contents of the present affidavit. The contents thereof are true and no part it is false and nothing material has been concealed there from.

C. That it is submitted that all the averments made in the writ petition by the petitioner are denied unless specifically admitted herein by the answering Respondent.

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D. It is further submitted that all annexure are true copies of their respective originals.

PRELIMINARY OBJECTIONS &SUBMISSIONS:-

1. It is most respectfully submitted that the present petition styled as a PIL is liable to be dismissed on the grounds that the Petitioners have failed to bring out any injury caused to them or anyone else because of violation of any constitutional or statutory obligation on the part of the Canteen Stores Department (CSD), which is necessary premise for filing PIL. Further, it is submitted that there is no violation of any constitutional or statutory provisions of non compliance by the Canteen Stores Department/ Unit Run Canteen (URC) with its constitutional or statutory duties.
2. It is respectfully further submitted that the complaints brought out in the instant PIL with regard to limit of purchase imposed for three categories from CSD/ URC for three categories i.e. Officers, JCO and OR by an administrative order issued by the CSD cannot be made a subject matter in PIL.
3. It is further submitted that Voice of Ex-Servicemen Society (Regd) [Petitioner No 1] has no locus standi to file the present PIL since the term 'Ex-Servicemen' would include the retired Officers and Retired Civilians who also avail the consumer services from CSD/ URC. The instant PIL filed by minuscule section of members of the said Society does not

represent the entire population of Ex-servicemen availing the CSD/ URC welfare facility across the country. It has been filed with a personal motive as the petitioners cannot claim equality amongst non-equals i.e. vis a vis Officers or any other Cadre as a matter of right. It was held by the Hon'ble Apex Court in the case of *Janta Dal Vs HS Chowdhury* (AIR 1993 SC 892: 1993 AIR SCW 248) that a person acting *bonafide* and having sufficient interest in the proceeding of public interest litigation will along have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infarction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

4. It is further submitted that the petitioners through the PIL have cast aspersions against an organization which is catering for welfare of the military personnel (irrespective of rank), their dependents and also civilians paid through defence services estimate. Further, the petitioners have questioned the basic structure of the armed forces without any justifiable basis which is very serious and heinous in nature, that too themselves being part of the organization and also have enjoyed and still enjoying the canteen facility.

5. The Hon'ble Court may kindly be pleased to reject the instant PIL on the above stated grounds of preliminary objection without going into merits of the case.

6. Notwithstanding the above preliminary objections, the parawise comments are offered in the succeeding paragraphs.

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PARAWISE REPLY

1. The averments made in the said para are vehemently denied. Voice of Ex-Servicemen Society (Regd) [Petitioner No 1] has no locus standi to file the present PIL since the term 'Ex-Servicemen' would include the retired Officers and Retired Civilians who also avail the consumer services from CSD/ URC. The instant PIL filed by miniscule section of members of the said Society does not represent the entire population of Ex-servicemen availing the CSD/ URC welfare facility across the country. It has been filed with a personal motive as the petitioners cannot claim equality amongst non-equals i.e. vis a vis Officers or any other Cadre as a matter of right. It is pertinent to mention that no such issue has been raised at any point of time since the inception of the CSD/ URC facility in 1921 and by raising such issues the petitioners are attempting to destabilize the rank structure in the Armed Forces, which is quintessential for the effective functioning of the organization so as to achieve its operational and military goals and would be adversarial to the interests of the organization. Further, the CSD/ URC facility is for meeting the day to day needs of the beneficiaries and the monetary limit on purchase stipulated in respect of Officer/ JCO/ OR is justifiable and not in any manner arbitrary. Hence, the averment made by the petitioners that they have no personal interest and is not an adversarial litigation, is wholly untenable. The contention made by the Petitioner in this Para, that huge amount of the government money is

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being misused is misleading, false and baseless and the petitioners be called upon to prove the said fact stated in the PIL.

2. The averments made in the said para are vehemently denied being wrong, misconceived and erroneous. The averments of arbitrariness and irregularity in provisions for availing of facilities of CSD are ex facie baseless and hence denied. For the purpose of clarity, it is respectfully submitted that the origin of Canteen Stores Department is traced back to 1921 wherein the British Govt contracted the Vendors to provide stores to British troops stationed in India. Subsequently, the facility was extended to Indian troops. In 1928, the contractors syndicate was formed and in 1948 post partition CSD became CSD (I). The facility functioned as per the previous regulations till 1955. In 1955, the practice of release of Quantitative Discount (QD) was institutionalized, which was basically a share of profit given back to Unit Run Canteens (URCs) for collective welfare of the troops. In 1966, canteen facility as extended to serving civilians paid from Defence Budget (grocery only (less liquor and AFD items) and in 2105, it was fully extended to retired civilians paid from Defence Budget. The budget of CSD was brought under the ambit of Consolidated Fund of India w.e.f. 1977. Copy of Letter dated 28 Mar 1977 addressed to Under Secretary, Govt of India to Chief of Army Staff with paper for consideration of Cabinet is annexed as **ANNEXURE I**. The stores are cheaper in CSD due to 50% exemption of GST by the Govt

(less liquor) and negotiation with manufacturers by CSD. A copy of notification dated 28 June 2017 issued by Department of Revenue, Ministry of Finance is annexed at **ANNEXURE II**.

It is further relevant to submit that Canteen facility is a welfare measure for the defence personnel and their dependents. Akin to all other welfare measures, canteen services has its own requisite QR for being eligible for availing the canteen facility as per AO 2/2006/QMG dated 09 Mar 2006 annexed at **ANNEXURE III.** QR is as given below:-

(a) All individuals drawing pay/ pension from defence budget are entitled for canteen facility (as applicable).

(b) Special provision has been made for widows of WW-I and WW-II.

(c) Special provision has been made for personnel who have been released on expiry of terms of engagement.

(d) Further, all individuals who have served for minimum five years are eligible for the facility during their life time.

That Akin to other welfare measures, Canteen services are also governed by certain terms of reference, as given below:-

(a) Annual budget available at CSD as sanctioned by the Parliament and released through CFI.

(b) Total Number of beneficiaries eligible for the facility.

(c) Cadre strength within the beneficiary (Officers/ Hony CO/JCOs/OR/Defence Civilian).

(d) Purchasing power of each cadre/ rank.

(e) Privilege/ entitlement associated with each cadre/ rank.

Canteen Stores Department functions under the aegis of Board of Control Canteen Services (BOCCS), headed by Hon'ble Raksha Mantri, who is the chairman is the apex body wrt canteen issues. A copy of MoD ID Note No 8(18)/2017-D(Mov) dated 4th June 2018 showing composition of BOCCS is annexed at **ANNEXURE IV**. BOCCS is assisted by Executive Committee headed by Addl Secy, MoD.

It is further submitted that introduction of items/Price Negotiation, management of CSD Cadre (paid out of defence budget) is the responsibility of General Manager CSD, who is the chairman of Board of Administration. The role of CSD Head Office at Mumbai is restricted to this activity only. Post procurement of stores from manufacturers, CSD Head Office through its 34 Depots in the states issues stores to Unit Run Canteens (URCs) based on the demand indented by the URCs, after levying meagre amount of profit to cater for its operational expenditure.

Unit Run Canteens (URC) are private ventures set up through regimental resources (non public fund), which is generated through contribution from individuals (non public fund). URCs are set up as a welfare measure/ facility and not for generation of profit/ commercial venture. In this connection, please refer Hon'ble Supreme Court ruling in RR Pillai Vs Union of India case of 2009 (**ANNEXURE V**). URCs are managed by respective URC management and all operating expenses including payment to civilians hired by

URC management for daily operations are paid through Regimental resources (non public fund). However, all URCs are to strictly adhere to the policy/ guidelines laid down uniformly to all 3,700 URCs (approx as on date) by QMG Branch/ CS Dte. In order to meet their operating expenses, URCs levy a meagre profit percentage from beneficiaries.

It is pertinent to mention that since inception Armed Forces organization consist of the rank structure, which is quintessential for the effective functioning of the organization so as to achieve its operation and military goals. Accordingly, the perks and privileges in the Armed Forces are also on the basis of the rank of the individual as per the customs and usages of service and no individual in the Armed forces can claim discrimination in these aspects. The ibid policy (vide letter dated 16 Apr 2015, 7 Oct 2008 & 12 Jan 2016 is annexed at **ANNEXURE VI, VII, VIII)** authorizing officers/ JCO/ OR to canteen facility is based on the following aspects and has not been arbitrarily formulated/ skewed towards a particular cadre/ rank:-

(a) Annual budget available at CSD as sanctioned by the Parliament and released through CFI.

(b) Total Number of beneficiaries eligible for the facility.

(c) Cadre strength within the beneficiary (Officers/ Hony Commissioned Officers /Junior Commissioned Officers /Other Ranks / Civilians paid through defence estimates).

(d) Purchasing power of each cadre/ rank.

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(e) Privilege/ entitlement associated with each cadre/ rank.

It is pertinent to bring out that the petitioners are authorized to avail the canteen facility like any other beneficiaries and have not been prohibited from availing the said facility by any of the policies therefore there is no violation of Article 14 of the Constitution of India nor their right are infringed in any manner under Civil Right Act 1955.

CSD is run through CFI budget (Public Fund) whereas URCs are private ventures run from regimental resources (non public fund) only. URC is not a government/ semi govt organisation, but purely private venture. In this connection, please refer Hon'ble Supreme Court ruling of 2009 in RR Pillai case. URCs are not run through Govt grants of any nature.

3. The averment made by the petitioners that the instant PIL is based on authentic information and documents appears to be misleading and they should be called upon to prove the veracity of the facts stated therein.

4. The averment made by the petitioners is wholly untenable as they cannot claim equality amongst non-equals i.e. vis a vis Officers or any other Cadre as a matter of right and as such there is no violation of Article 14. It is pertinent to mention that since inception Armed Forces organization consist of the rank structure, which is quintessential for the effective functioning of the organization so as to achieve its operational and military goals. Accordingly, the perks

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and privileges in the Armed Forces are also on the basis of the rank of the individual as per the customs and usages of service and no individual in the Armed Forces can claim discrimination in these aspects. Hence, the policy authorizing Officers/ JCO/ OR to avail canteen facility and the restriction imposed taking into consideration the terms of reference mention in Para 4 ibid cannot be said to arbitrarily formulated/ skewed towards a particular Cadre/ rank. The restrictions with respect to the purchase of items and the monetary limit in respect of the Officers/ JCO/ OR have been stipulated by the QMG Branch taking into consideration the Annual Budget available at CSD as sanctioned by the Parliament and released through CFI, total number of beneficiaries eligible for category, Cadre strength within the beneficiary (Officers/ Hony Commissioned Officers/ JCOs/ OR/ Defence Civilians) and the purchasing power of each Cadre/ rank, which is justifiable and not in any manner arbitrary or discriminatory.

5. The averment made by the petitioners are wholly untenable, baseless and hence denied in view of para 3 of the preliminary objections raised hereinabove which are not repeated herein for sake of brevity and may be read as forming part of the present para.

6. The averment made by the petitioners that the respondent i.e. MoD is state is admitted for being matter of record however, it is pertinent to submit that it has been held by the Hon'ble Supreme Court in the case of *RR Pillai Vs Union of India* in 2009 that URCs are set up as a welfare

measure/ facility and not for generation of profit and is not the instrumentality of the State.

7. The Petitioners have raised five questions of law in this para, which actually are not the question of law but pertaining to policies formulated by the QMG branch for day to day functioning of approximately 3700 URCs running in the Armed Forces, equitably applicable to all the URCs.

A. With regard to the questions raised in this sub para, it is clarified that CSD and URC are two separate and distinct organization and for the functioning of the URCs, Army HQ/ QMG has the authority and is responsible to issue administrative guidelines/ policies. No policy has been issued which is arbitrary and discriminatory in nature by QMG Branch as has been brought out in reply to the preceding paragraphs.

B. With regard to the questions raised in this sub para, it is clarified that QMG issues broad policies/ guidelines for administration of URCs and the respective URCs are responsible to formulate their policies for regulating the day to day administration and functioning depending upon the local conditions, which are purely administrative in nature and have no statutory force. The petitioners have alleged discrimination in the policy, which is strongly denied by the respondents. Discrimination if so, is only between "equals" i.e. discrimination within officer cadre/ JCO cadre/ OR cadre. Discrimination cannot be between two different cadres who have altogether different

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QR. If the contention of the petitioner is considered, then it will amount to asking same pay/ pension and equality in all aspects as officers.

C. With regard to the questions raised in this sub para, it is brought out that post audit of annual accounts of CSD HO by CGDA and C&AG, the profit accrued by CSD HO (deducting the payment and operating expenditure) is divided into two parts i.e. Quantitative Discount (QD) released to URCs based on their annual sales and balance amount. The balance amount is further subdivided into two parts, i.e. 50% of balance amount is released to Welfare Organisations run by respective Service HQ for collective welfare projects as Canteen Trade Surplus (CTS) (Grant in Aid) and the other 50% remains with the Consolidated Fund of India. QD and CTS are released to URCs and Welfare Organisations run by respective Service HQ respectively, post vetting by MoD and MoD (Finance) and finally approved by Hon'ble RRM (Chairman BOCCS). The guidelines for the utilisation of QD and CTS were initially laid down in 2012 by MoD and further revised in 2014 (**ANNEXURE IX and X**). All URCs are to strictly abide by the guidelines on the subject matter. It is pertinent to note that QD and CTS is released as Grants in Aid and subject to audit by C&AG and CGDA. Hence, the allegation of the litigant is false and misleading. The C&AG audit report of 2016 has been tabled in parliament and the Action Taken Note has already been submitted. Where ever there have been minor aberrations, they have been rectified and

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strictly implemented. The C&AG audit observations on CTS/ QD have been replied to, by MoD in the Action Taken Note (ATN).It is once again reiterated that CSD is run through CFI budget (Public Fund) whereas URCs are private ventures run from regimental resources (non public fund) only. The audit of the accounts of respective URCs is done by the Chartered Accountants as per laid down policy.

D. With regard to the questions raised in this sub para, it is clarified that the distribution and utilization of the QD disbursed by CSD to Units running URCs and the profit generated by URCs is being done in accordance with the stipulated policies formulated by CSD, QMG and respective Service HQ and there is no illegality in it. Operating expenses charged by URCs from beneficiaries are uniform across all 3,700 URCs which have been approved by BOCCS and in vogue since 1977. This amount is used by the URC to cater for its functioning like creating and maintaining URC infrastructure, payment of rent and allied charges, payment of salary to URC employees, cater for loss/ damage etc. The net profit (non public fund) generated by the URC is divided into two parts, i.e, the share of profit generated from ESM is deposited with respective Command Welfare Fund (CWF) by the URC and the balance is retained by the URC for welfare projects of its serving personnel. A Copy of Dy. Dte Gen Canteen Services letter bearing No. 96036/Q/DDGCS dt. 21.02.2018 providing policy for Distribution for URC profit is annexed at **ANNEXURE XI**. HQs Command utilize the

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amount deposited in the CWF for collective welfare activities. The accounts are audited through Internal BOO, being regimental funds (non public funds) as per laid down SOP.

E. With regard to the questions raised in this sub para, it is clarified that the petitioners are time and again treating CSD and URCs at the same pedestal, which is not the case. Taking into consideration the reply brought out in preceding paragraphs the policies/ guidelines issued are administrative in nature having no statutory force behind it and that URCs are not the instrumentality of the State it therefore they cannot be deemed to be hit by Article 14 of the Constitution of India.

8.1 The averments made by the Petitioners are admitted being matter of fact. However, at the cost of repetition it is submitted that Voice of Ex-Servicemen Society (Regd) [Petitioner No 1] has no locus standi to file the present PIL since the term 'Ex-Servicemen' would include the retired Officers, and Retired Civilians who also avail the consumer services from CSD/ URC. The instant PIL filed by miniscule section of members of the said society does not represent the entire population of Ex-servicemen availing the CSD/ URC welfare facility across the country.

8.2 The contents of this para are wrong, misconceived and hence denied. In reply to the averments made in this para, it is pertinent to mention that since inception Armed Forces organization consist of the rank structure, which is quintessential for the effective functioning of the organization so as to achieve its operation and military goals. Accordingly, the perks and privileges in the Armed Forces are also on the basis of the rank of the individual as per the customs and usages of service and no individual in the Armed forces can claim discrimination in these aspects. Hence, the policy authorizing Officers/ JCO/ OR to avail canteen facility and the restriction imposed taking into consideration the terms of reference cannot be said to arbitrarily formulated/ skewed towards a particular Cadre/ rank. It is pertinent to bring out that the petitioners are authorized to avail the canteen facility like any other beneficiaries and have not been prohibited from availing the said facility by any of the policies therefore there is no violation of Article 14 of the Constitution of India nor their right are infringed in any manner under Civil Right Act 1955.

The contentions of the Petitioner that the policies issued by QMG Branch with regard to restrictions on the quantity of items authorized to be purchased by the JCOs/ OR vis a vis the Officer; are wholly untenable. The restrictions with respect to the purchase of items and the monetary limit in respect of the Officers/ JCO/ OR have been stipulated by the QMG Branch taking into consideration the Annual Budget available at CSD as sanctioned by the Parliament and released through CFI, total number of beneficiaries eligible for category, Cadre strength within the beneficiary (Officers/ Hony Commissioned Officers/ JCOs/ OR/ Defence Civilians) and the purchasing power of each

Cadre/ rank, which is justifiable and not in any manner arbitrary or discriminatory.

It is pertinent to bring out that the petitioners are authorized to avail the canteen facility like any other beneficiaries and have not been prohibited from availing the said facility by any of the policies therefore there is no violation of Article 14 of the Constitution of India nor their right are infringed in any manner under Civil Right Act 1955.

8.3 The averments made by the Petitioner are admitted to the extent forming part of record. It is intimated that at present there are approximately 3700 URCs which is functional. Board Of Control Canteen Services (BOCCS), headed by Hon'ble Raksha Rajya Mantri, who is the chairman of BOCCS is the apex body w.r.t canteen issues. It is assisted by Executive Committee (EC) of BOCCS headed by AddlSecy, MoD. However, QMG is mandated to take policy issues pertaining to beneficiaries/ URCs. QMG is assisted in the functioning by CS Dte headed by Brig CS.

8.4 The averments made by the Petitioner are admitted to the extent forming part of record. However, it is pertinent to bring out that Post procurement of stores from manufacturers, CSD Head Office through its 34 Depots in the states issues stores to Unit Run Canteens (URCs) based on the demand indented by the URCs, after levying meagre amount of profit to cater for its operational expenditure. It is clarified that URCs are separate private ventures run by respective Units as a Non Public Fund ventures set up

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through regimental resources generated through contribution from the individual beneficiaries.

8.5 The averment made by the Petitioner are admitted being matter of fact.

8.6 The averment made by the Petitioner are admitted being matter of fact. It is pertinent to mention that post audit of annual accounts of CSD HO by CGDA and C&AG, the profit accrued by CSD HO (deducting the payment and operating expenditure) is divided into two parts i.e. Quantitative Discount (QD) released to URCs based on their annual sales and balance amount. The balance amount is further subdivided into two parts, i.e. 50% of balance amount is released to Welfare Organisations run by respective Service HQ for collective welfare projects as Canteen Trade Surplus (CTS) (Grant in Aid) and the other 50% remains with the Consolidated Fund of India. QD and CTS are released to URCs and Welfare Organisations run by respective Service HQ respectively, post vetting by MoD and MoD(Finance) and finally approved by Hon'ble RRM (Chairman BOCCS). The guidelines for the utilisation of QD and CTS were initially laid down in 2012 by MoD and further revised in 2014. All URCs are to strictly abide by the guidelines on the subject matter. It is pertinent to note that QD and CTS is released as Grants in Aid and subject to audit by C&AG and CGDA.

8.7 In response to this para it is pertinent to submit that as brought out earlier, QD is released to URCs post vetting by MoD and MoD(Finance) and finally approved by Hon'ble

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RRM (Chairman BOCCS). The guidelines for the utilisation of QD was initially laid down in 2012 by MoD and further revised in 2014. All URCs are to strictly abide by the guidelines on the subject matter. It is pertinent to note that QD is released as Grants in Aid and subject to audit by C&AG and CGDA.

8.8 In response to this para it is submitted that operating expenses charged by URCs from beneficiaries are uniform across all 3,700 URCs which have been approved by BOCCS and in vogue since 1977. This amount is used by the URC to cater for its functioning like creating and maintaining URC infrastructure, payment of rent and allied charges, payment of salary to URC employees, cater for loss/ damage etc. The net profit (non public fund)generated by the URC is divided into two parts, i.e, the share of profit generated from ESM is deposited with respective Command Welfare Fund (CWF) by the URC and the balance is retained by the URC for welfare projects of its serving personnel (**ANNEXURE XI**). HQs Command utilize the amount deposited in the CWF for collective welfare activities. The accounts are audited through internal BOO, being regimental funds (non public funds) as per laid down SOP.

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8.9 The averment made by the petitioners are wholly untenable and hence denied. The URCs through their regimental resources (non public funds) pay for the stores demanded by them, in advance to CSD HO. URCs being non public fund ventures are not liable to be audited by C&AG but the

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audit of the accounts of respective URCs is done by the Chartered Accountants as per laid down policy. It is submitted that the petitioner is quoting PAC report of 2012-13, which is of very old vintage. As per action taken report on Para 14 of 75th Report (Year 2012-13), it is intimated that "PAC recommendations that the URC must be audited for greater assurance of transparency in the operation of URC, Ministry accepted the recommendation to the extent that QD accounts of URC are audited by C&AG." The same has been implemented in true letter and spirit.

8.10 In response to this para it is submitted that the net profit (non public fund) generated by the URC is divided into two parts, i.e, the share of profit generated from ESM is deposited with respective Command Welfare Fund (CWF) by the URC and the balance is retained by the URC for welfare projects of its serving personnel.

HQ Commands are the field Formations which undertake large scale collective welfare projects, such as:-

(a) Running of ECHS polyclinics for ESM.

(b) Organising ESM interaction sessions.

(c) Running of Vocational Training Centres /Family Welfare Centres /Skill development centres for dependents & beneficiaries.

(d) Organising coaching/ tuition classes for wards of beneficiaries.

(e) Scholarship to meritorious wards of beneficiaries.

(f) Financial assistance to veterans.

(g) Running of old age homes.

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(h) Financial assistance during natural calamities.

(j) Improvement in station amenities like parks/ gyms etc.

(k) Setting up specialist medical centres like IVF centres, Artificial limb centres etc.

HQs Command undertake welfare projects also at Station level which are monitored by military hierarchy. Hence, the allegation of the petitioners is misleading. It is respectfully submitted that profit generated from ESM is ploughed back to collective welfare projects. The petitioners are availing the facility for which they are paying a very miniscule amount. The amount is ploughed back for the collective welfare projects, which is standard norm/ practice in nation building/ society.

8.11 In response to this para it is submitted that the operating expenses charged by URCs from beneficiaries are uniform across all 3,700 URCs which have been approved by BOCCS and in vogue since 1977. This amount is used by the URC to cater for its functioning like creating and maintaining URC infrastructure, payment of rent and allied charges, payment of salary to URC employees, cater for loss/damage etc. The net profit (non public fund) generated by the URC is divided into two parts, i.e. the share of profit generated from ESM is deposited with respective Command Welfare Fund (CWF) by the URC and the balance is retained by the URC for welfare projects of its serving personnel. The CS Dte Letter No 60306/Q/Can/Q1(A) dated 30 Jul 1956 which has been

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quoted has already been superseded vide Letter dated 21 Feb 2018 (*supra*).

The C&AG audit report of 2016 has been tabled in parliament and the Action Taken Note has already been submitted. Wherever there have been minor aberrations, they have been rectified and strictly implemented. The C&AG audit observations on CTS/ QD have been replied to, by MoD in the Action Taken Note (ATN).It is submitted that the petitioner is quoting PAC report of 2011-12, which is of very old vintage. Lot of work has been done on these issues till date and the results are evident on ground. Also, these allegations are all emotive in nature and no substantial proof has been provided by the litigants on any allegations.

8.12 In reply to the averments raised in this para, it is pertinent to mention that since inception Armed Forces organization consist of the rank structure, which is quintessential for the effective functioning of the organization so as to achieve its operation and military goals. Accordingly, the perks and privileges in the Armed Forces are also on the basis of the rank of the individual as per the customs and usages of service and no individual in the Armed Forces can claim discrimination in these aspects. Hence, the policy authorizing Officers/ JCO/ OR to avail canteen facility and the restriction imposed taking into consideration the terms of reference cannot be said to be arbitrarily formulated/ skewed towards a particular Cadre/ rank.

The contentions of the Petitioner that the policies issued by QMG Branch with regard to restrictions on the quantity of items authorized to be purchased by the JCOs/ OR vis a vis the Officer; that they are not given access to certain URC like in Defence Services Officers Institute (DSOI) Delhi; and that there are separate counters for Officers are discriminatory, are wholly untenable. The restrictions with respect to the purchase of items and the monetary limit in respect of the Officers/ JCO/ OR have been stipulated by the QMG Branch taking into consideration the Annual Budget available at CSD as sanctioned by the Parliament and released through CFI, total number of beneficiaries eligible for category, Cadre strength within the beneficiary (Officers/ Hony Commissioned Officers/ JCOs/ OR/ Defence Civilians) and the purchasing power of each Cadre/ rank, which is justifiable and not in any manner arbitrary or discriminatory.

It is pertinent to bring out that the petitioners are authorized to avail the canteen facility like any other beneficiaries and have not been prohibited from availing the said facility by any of the policies therefore there is no violation of Article 14 of the Constitution of India.

13. It is respectfully submitted that no policy letter has been issued by CS Dte/QMG branch for provisioning separate line for officers/ JCO/ OR. However, policy letter has been issued by CS Dte to provide adequate counters for Senior citizens/ physically disabled. A copy of policy letter dated 06.11.2017 is annexed as **ANNEXURE XII**. As brought out in para 7 above, URCs are private ventures. The number of counters will depend on the space available, influx of

beneficiaries, financial capability of the URCs and also the perks/ privileges associated with rank and maintaining of military decorum.

8.14 In response to this para it is respectfully submitted DSOI is a club with restricted membership for officers. Any beneficiary can visit any canteen for purchase of grocery. However, URCs at DSOI are located within DSOI premises, hence the restriction, as non member of a private club are not allowed for entry into that club. It is pertinent to mention that there are certain CSD/ URC located inside sensitive security installations which have restricted entry imposed on them by Local Military Authority (LMA) for even serving Armed Forces Personnel, other than their own unit personnel. In no manner, can such administrative or security measures be termed discriminatory or prejudiced. Further, DSOI at Delhi is located in a extremely congested location with very minimal space and hence the limitation. Notwithstanding, there are 158 URCs in Delhi NCR which are available to the beneficiaries. Hence, it can be presumed that the litigants have made it an ego issue, seeing the facility given to a separate cadre, for which the litigants are not entitled for. Also, the litigants are not keen to ask for additional facility, but seem to disrupt a facility provided for higher cadre.

8.15-16 It is respectfully submitted that URCs sell the stores purchased from CSD depots to entitled beneficiaries only. Further, URC sell only stores procured from CSD only and do not sell any other stores, procured from any other agencies. All beneficiaries have been issued with Canteen Smart card by QMG Branch/ CS Dte. Access to URC is only through smart cards. No unauthorized individual can enter any URC and buy CSD stores. Further, to prevent pilferage/ misuse, limit on items have been implemented through the smart card of all beneficiaries (irrespective of rank) vide letter dated 23.03.2018, a copy whereof is annexed as **ANNEXURE XIII**. Hence, the acquisition of the petitioners that officers can buy more stores (of a particular item) is absolutely false. For e.g. all Officers/JCO/OR can buy only 10 soaps per month, irrespective of rank. However, their entitlement as a whole, varies as per their rank structure.

It is respectfully submitted that the budget allocation for FY 2017-18 was Rs 17,000 crores and the strength of beneficiaries, as on date is almost 85 lakhs (including dependents). If calculated, the budget availability per individual per month comes to Rs 1,666.6/- (including grocery, liquor and AFD/ four wheeler), which is very meagre. Hence, with the facts enumerated, it is evident that there is no budget available to cater to the demands raised by the litigants. The grocery entitlement has been increased in 2015, inspite of budget constraints, based on the request of ESM community, as grocery are essential stores. Further, there has been an influx of 6-7 lakh beneficiaries since 2015, which has further tightened the budget available.

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Each cadre has its own legislated set of duties/ responsibilities, pay and privileges. There can't be an organisation where all different posts/ranks have the exact same entitlements. If the same template is applied, it amounts to asking for equal pay of officers, but without equal duties/ responsibilities, which does not stand to logic. The respondents are not against enhancing the entitlement of JCO/OR. However, the limit on liquor/ four wheelers can and will be enhanced as and when the budget allocation increases. The officer cadre as on date is around 5% and hence keeping in view their associated privileges, the entitlement has been formulated. Curtailing privilege given to officer cadre will not result in any substantial financial gain and will only lead to dissatisfaction and increase the litigations.

The claim by respondent that widows of Officers can purchase cars but widows of JCO's/ NCOs/ORs are not entitled to purchase car is false. The copy of latest policy on purchase of Cars dated 24 May 2019 is annexed at **Annexure XIV.**

17. In response to this para it is submitted that the C&AG audit report of 2016 has been tabled in parliament and the Action Taken Note has already been submitted. Where ever there have been minor aberrations, they have been rectified and strictly implemented. The C&AG audit observations on CSD/ SD have been replied to, by MoD in the Action Taken

Note (ATN). It is once again reiterated that CSD is run through CFI budget (Public Fund) whereas URCs are private ventures run from regimental resources (non public fund) only.

Loan given to URCs by CSD HO are vetted by CDA representatives and URCs repay the loan with the interest @ 4.5 to 6%. URCs pay rent for the accommodation and do not use free land/ accommodation. Service personnel are not used at URCs (less highly active field areas, due to security issues) and in peace stations, service personnel are utilized for security purpose only. Copy of CS Dte Letter No 96001/Q/DDGCS dated 26 Apr 2018 is annexed at **ANNEXURE XV**.

URC is not a government/ semi govt organisation, but purely private venture. URCs are not run through Govt grants of any nature.

8.18 The allegations of misappropriation is totally false. Wherever there have been aberrations, strict disciplinary/ administrative action against the erring individuals, have been initiated, as per law. It may be appreciated that there is no skewed/ discriminatory/ arbitrary policy. Non adherence to policy issue by handful few is a separate issue which has always been handled with exemplary punishments and is an universal phenomenon.

8.19 The vacancy of canteen manager is not reserved for officers, but preference is given to Ex servicemen of any rank/

NOTARY SHAHJAHAN DELHI Reg. No. 15096 Dt. Exp. 29/03/2024 GOVT. OF INDIA wards/ NoK of ESM, based on merit. There are URCs which are being efficiently run by retired JCO/ NCOs as on date.

8.20 It is submitted that the petitioner is quoting PAC report of 2011-12, which is of very old vintage. Lot of work has been done on these issues till date and the results are evident on ground. Service personnel are not used at URCs (less highly active field areas, due to security issues) and in peace stations, service personnel are utilized for security purpose only.

8.21-22 The averment made by the Petitioner are admitted being matter of fact. However, the concerns raised by the petitioners are unfounded and without any basis.

9. In response to this para it is submitted that the petitioner has failed to point out a single violation of constitutional or legal principle which would merit invocation of discretionary jurisdiction of this Hon'ble Court under Art. 226/227 of the Constitution and the grounds stated in para in response are denied in view of submissions made hereinabove and for being contrary to law, legal principles and tenets of law.

10-12 That the contents of para 10-12 need no reply.

PRAYER

Wherefore in the facts and circumstances as enumerated herein above, the answering Respondents doth most humbly pray that this Hon'ble Court may be pleased to:

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i. Dismiss the present Writ Petition as being a manifest abuse of the process of the Court with costs;

ii. Pass any other and further order[s] as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Rohit Nair

DEPONENT

ए क्यू एम जी / AQMG

कैन्टीन सर्विस / Canteen Services

VERIFICATION

Verified at New Delhi on this 03rd 03 DEC 2019 of December, 2019 that the contents of the above affidavit are true and correct to my knowledge and the same are based upon the records maintained by the answering Respondents in its regular and ordinary course of business and belief. No part of it is false and nothing material has been concealed therefrom.

03 DEC 2019

I identified the deponent who has signed in my presence

Rohit Nair

DEPONENT

रोहित एन नायर / Rohit M Nair

मेजर / Major

ए क्यू एम जी / AQMG

कैन्टीन सर्विस / Canteen Services

NOTARY

GOVT. OF INDIA

DELHI

Reg. No. 11698

Dt. Exp. 23/07/2024

Rohit M Nair

Notary Public