

(2011) 10 MAD CK 0070

Madras High Court

Case No: Writ Petition No. 14246 of 2011

Manager Pokkuvarathu Kazhaga
Oozhier Munnetra Sangham

APPELLANT

Vs

The Government of Tamilnadu,
The Metropolitan Transport
Corporation and Anna
Thozirsanga Peravai, (Anna
Trade Union Federation)

RESPONDENT

Date of Decision: Oct. 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 226
- Payment of Wages Act, 1936 - Section 7(2)(KKK)

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: V. Prakash, for Mr. K. Sudalaimani in both W.Ps, for the Appellant; A. Navaneetha Krishnan, Advocate General Assisted by Mr. V.R. Kamalanathan, AGP for R1 and R2, Mr. Yashod Vardhan, for Mr. S. Muthuraj for R3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman

1. The petitioners are Trade Unions registered under the Trade Union Act. The petitioner in W.P.No. 14246 of 2011 is the Trade Union of workmen other than administrative staff employed under the second respondent Corporation, while the Petitioner in W.P.No. 14247 of 2011 is the Trade Union of administrative staff employed under the second respondent Corporation.

2. Both the petitioners are affiliated to Labour Progressive Federation shortly "L.P.F". The L.P.F.is the labour wing of the then ruling party of the State.

3. According to the petitioner the Pokkuvarathu Kazhaga Oozhier Munnetra Sangham, in W.P.No. 14246 of 2011, there were 12,454 members in their union during April 2011 and the membership got reduced to 4659 during May 2011, after the present ruling party came to power on 13.5.2011. Likewise, the petitioner the Nirvaga Paniyalar Munnetra Sangham in W.P.No. 14247 of 2011 has stated that there were 1094 members in their union in April 2011 and the same got reduced to 288 members in May 2011.

4. The petitioners have pleaded that after the AIADMK captured power on 13.5.2011 in the election for Members of the Legislative Assembly in Tamil Nadu, the workers were threatened and they were forced to sign on the forms cancelling the subscription to petitioner unions and opting for subscription to the third respondent union affiliated to the Labour Wing of the ruling party. It is also stated that the application forms cancelling subscription to the petitioner unions are not signed by the concerned workmen and the signatures are bogus.

5. In these circumstances, the petitioners have filed writ petitions seeking for the issuance of a writ of mandamus directing the second respondent not to act upon the letters/forms and requisitions seeking cancellation of subscription under the check off system purportedly given by any workman after 12.5.2011 and deduct subscription in favour of the third respondent without ascertainment of the genuineness of the signatures borne on such forms purportedly given by individual workers and without ascertaining the free will of the workers.

6. The second respondent filed counter affidavit refuting the allegations. The second respondent has stated that the subscription to a trade union is deducted based on the check off system. It is stated that whenever requisition letters are received from individual workers duly attested by the Branch Manager, the same would be forwarded to the head office for deduction of subscription to the union mentioned in the requisition letter. According to the second respondent, the same is in accordance with the Section 7 (2) (KKK) of the Payment of Wages Act. It is also averred that based on the consent letters given by the individual workers, the subscription was deducted to the unions concerned and the requisition letters of the unions were signed before the respective Branch Managers and those requisition letters were acted upon and the subscription amount was paid by drawing a cheque in favour of the concerned unions. The second respondent has also given an undertaking that if any of the workers whose subscription was deducted pursuant to their letters wanted to cancel their earlier requisition letters and to seek deduction of subscription from his salary for a different union, the second respondent is willing to act in accordance with such requisition letter.

7. The third respondent union filed a counter affidavit refuting the allegations that they have indulged in threat or coercion to force the workmen to give their forms. The third respondent also pleaded that the workmen voluntarily gave requisition letters to deduct subscription to the third respondent Corporation and based on

those letters, subscription was deducted in favour of the third respondent union. After the victory of AIADMK in the May 2011 Legislative Assembly Election, a large number of members came out from the petitioner unions and joined the third respondent union by giving requisition letters.

8. The petitioner filed a rejoinder affidavit stating that within a short span of one week, it could have been impossible for such a large number of workmen to give requisition letters authorising deduction from their wages towards subscription for the third respondent union. A large number of workmen could not give such requisition letters and it was an impossible one. It is also pleaded that the right of the workmen guaranteed under Article 19 (1) (a) and 19 (1) (c) of the Constitution of India are violated.

9. Heard both sides.

10. The learned Senior Counsel for petitioners have submitted that the requisition letters given by the large number of workmen were obtained by force in some cases and letters were forged in some other cases. The said action of the second respondent Corporation in forging the requisition letters of workmen seeking deduction of subscription in favour of the third respondent union is nothing but an infringement in the right of the members of the petitioner union guaranteed under Article 19 (1) (c) of Constitution of India. The learned Senior Counsel has relied on the decision of the Supreme Court in [Balmer Lawrie Workers" Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others](#), and also the judgement of the Supreme Court in [Bandhua Mukti Morcha Vs. Union of India \(UOI\) and Others](#), .

11. On the other hand, the learned counsel appearing for the second respondent Corporation has submitted that the prayer in the writ petition sought for by the petitioner is not maintainable. Further it is contended that the action of the second respondent is in accordance with Section 7(2)(KKK) of the Payment of Wages Act. The learned counsel further contended that there are 25 branches in the second respondent Corporation and those Branch Managers are bound to receive the requisition letters and to verify the same and to forward the same to the head office for necessary action for deduction of subscription. Since there are 25 Branch Managers, it is possible to forward the requisition letters to the head office as and when those requisition letters were received.

12. The learned Senior Counsel for the third respondent has submitted that the prayer in the writ petitions is not maintainable at the instance of trade unions and it is only for the concerned individual workman to allege as to which union he subscribed. The learned Senior Counsel has further submitted that after the victory of AIADMK party to power on 13.5.2011, a large number of workmen came to their union from the writ petitioner unions. According to the learned Senior Counsel, it is the usual practice and something took place during May 2006, when a large number of workmen switched over to petitioner union as the DMK party came to power. He

relied on para 22 of the order passed by this Court in W.P.No. 19426 of 2011, dated 19.9.2011, in this regard. Paragraph 22 of the said judgment gave the details of membership under the check off system in all the transport corporations during March 2006, March 2011, and July 2011, in both the writ petitioner unions and the third respondent union.

13. The learned Senior Counsel for the third respondent has relied on the Division Bench judgment of this Court in STATE BANK STAFF UNION, STATE BANK OF INDIA OFFICER'S ASSOCIATION ETC. AND STATE BANK OF INDIA, UNION OF INDIA ETC. reported in 1989 1 L.L.J 554 for the proposition that trade unions could not maintain the prayer as sought for in the writ petitions. The learned counsel has also relied on another decision of the Supreme Court in [Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others](#), wherein it is held that this Court would not go into the facts such as whether a large number of workmen could have come from one union to other union. The learned Senior Counsel for the third respondent has also stated that they have collected the affidavits from the workmen who have expressed their willingness to subscribe to their union for May 2011 and afterwards. The learned Senior Counsel for the third respondent has also produced those affidavits and I have perused the same.

14. I have considered the submissions made on either side.

15. It is not in dispute that Pokkuvarathu Kazhaga Oozhier Munnetra Sangham, Chennai, had 12454 members in their union in April 2011, but the same got reduced to 4659 in May 2011. Likewise, the Nirvaga Paniyalar Munnetra Sangham has stated that there were 1094 members in their union in April 2011 and the membership got reduced to 288 members during May 2011.

16. The learned Senior Counsel for the second respondent has produced the requisition letters given by the workmen and the endorsement made by the concerned Branch Managers authorising deduction towards subscription for the third respondent union, from May 2011 and afterwards. I have perused the same.

17. The learned Senior counsel for the petitioner had not disputed the requisition letters. According to the learned Senior Counsel for the petitioner, those requisition letters were obtained either by force by the third respondent union or by forging the signatures of the workmen. In my view, the issue as to whether the requisition letters were obtained by force or by forging signatures is purely a question of fact and the same could not be gone into by exercising the extraordinary power under Article 226 of the Constitution of India. At this juncture, it is also relevant to note that the learned Senior Counsel for the third respondent has also produced the volume of affidavits stating that requisition letters have been voluntarily given for subscription to the third respondent union. Therefore, there is a claim and counter claim by the petitioner on the one hand and the third respondent on the other hand, relating to the genuineness or otherwise of the requisition letters. As stated above,

it is purely a question of fact and the same would not be ascertained by this Court in exercise of power under Article 226 of the Constitution of India, based on the affidavits.

18. The learned Senior Counsel submitted that the action of the respondents 2 and 3 has resulted in the violation of the rights guaranteed under Article 19 (1) (c) of the Constitution of India. The learned Senior Counsel heavily relied on para. 13 and 14 of the judgement of the Supreme Court in [Bandhua Mukti Morcha Vs. Union of India \(UOI\) and Others](#) .

19. In the said judgement, the issue was relating to the release of bonded labourers in the two stone quarries in Faridabad District. It was a public interest litigation brought about by a voluntary organisation. The organisation complained of violation of fundamental rights of the stone quarry workers. The organised transport workers could not be compare with that of unorganised quarry workers. Hence, I am of the view that the said judgement is not applicable to the facts of the case. Likewise, the other judgement is also not applicable to the facts of the case.

20. Para 22 of the judgement relied on by the learned Senior Counsel for the third respondent is squarely applicable to the facts of the case. At this juncture, it is relevant to note that the details of the membership in various transport corporations during March 2006, March 2011, and July 2011 in the petitioner unions and the third respondent Union are shown in paragraph 22 of the judgement in W.P.No. 19426 of 2011, dated 19.9.2011. The chart in paragraph 22 relates to check off system in all the Transport Corporations is extracted hereunder:

CHECK OF SYSTEMS IN ALL STU"S

Name of the Corpora-tions	ATP			LPF		
	Mar-06	Mar-11	July-11	Mar-06	Mar-11	July-11
M.T.C.	9530	3286	14481	7980	13794	3391
SETC	2745	870	330	2236	3635	1645
T.N.S.T.C(TN V)	3011	1352	4356	2530	5943	3347
T.N.S.T.C(VP M)	8298	2265	12912	4320	14081	5379
T.N.S.T.C(KU M)	7544	2786	10097	4962	12072	6734
T.N.S.T.C(M DU)	5010	2757	7884	3880	8428	6777

T.N.S.T.C(CO M)	4991	1742	8518	7159	9807	5101
T.N.S.T.C(SL M)	6432	2402	8800	2096	9787	2570
TOTAL	47561	17460	70386	35163	77548	34944

21. The above chart would indicate that whatever the membership before election to the trade unions of the ruling party, their union membership got reduced drastically if the political party lost in the general elections. This factual situation is not disputed by the learned Senior Counsel for the petitioners.

22. Further more, as rightly contended by the learned Senior Counsel for the third respondent, no workman has come before this Court, questioning the action of the second respondent in deducting subscription to the third respondent union. In the judgement of this Court in STATE BANK STAFF UNION, STATE BANK OF INDIA OFFICER'S ASSOCIATION ETC. AND STATE BANK OF INDIA, UNION OF INDIA ETC. reported in 1989 1 L.L.J 554, the appellant union therein questioned the subscription being deducted to registered un-recognised trade unions based on the authorisation given by the workmen. This Court has held that based on the authorisation given by the workmen, the establishment was correct in deducting the subscription as per Section 7(2) (KKK) of the Payment of Wages Act. In para 25, this Court has held that the appellant union therein has no say in the matter of requisition given by the individual workman seeking the establishment to deduct subscription for a particular union. Para 25 of the said judgement is extracted hereunder:

25. At this stage, it is very relevant to note the argument of Mr.M.R. Narayanaswami, learned counsel appearing for the Bank Management that the writ petitioners are under a misconception regarding the scope of check-off facility. As rightly contended by him, the check-off facility is one given to the individual employee on his voluntary written request and it will be in force till the said individual employee withdraws the same.

It is to be remembered that either for giving the voluntary written request for for withdrawing the same, the Union has no say. If that be the position, by granting the relief prayed for in the writ petitions, the petitioners will be achieving indirectly what they cannot achieve directly. For that, the Court will not be a party, especially in proceedings under Article 226 of the Constitution.

23. Hence, these petitioner Unions cannot validly maintain writ petitions seeking for mandamus as prayed for in the writ petitions.

24. The other judgement in [Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others](#), relied on by the learned Senior Counsel for the third respondent also squarely applies to the facts of the case. In that case, the recruitment of Constable

was cancelled by the High Court on the ground that a large number of candidates could not have been interviewed during the short period. But the Supreme Court has set aside the judgement of the High Court. Paragraph 36 and 37 of the said judgement are relevant for the purpose of the case and those paragraphs are extracted hereunder:

36. We are, therefore, left with only one major contention regarding the enormousness of the number of candidates interviewed and the possible inability on the part of the Interview Board to complete the interviews in a proper manner. We would, therefore, proceed to consider this aspect in detail.

37. The basis of the contention regarding this factor made by the writ petitioners was the paucity of time. Based on the factors like the available time, the general requirements for assessing an individual candidate for the post of constable, the number of persons available for holding the interviews, the learned Single Judge had come to a finding that every Board on one day could, at the most, interview 250 candidates. The Division Bench also seems to have endorsed this view. We have very carefully examined the contentions raised by the appellant herein and also the material provided by the State through its counter-affidavits as also the plea raised by the officers who actually held the interviews in respect of the three districts of Dhubri, Barpeta and Sonitpur concerned. But before we go into the exercise of considering the situation in these three districts individually, we must consider the benchmark fixed by the learned Judge at 250 candidates per day. We are afraid we cannot uphold that finding. Learned Single Judge as well as the Division Bench seem to have proceeded more on imagination than the reality. Such a benchmark could not have been fixed generally and only because that benchmark was allegedly breached, the selection could not have been found fault with in a mechanical and mathematical manner. Instead of testing the matter on the basis of the ground realities for each district on the basis of material made available by the State, a mechanical approach, in our opinion, could not have been taken by the High Court.

25. For all the aforesaid reasons, the writ petitions fail and the same are dismissed. No costs.