

(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)

Citation: (2011) 10 MAD CK 0070

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

uncture, 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

ATP LPF

Name of the Mar-06 Mar-11 July-11 Mar-06 Mar-11 July-11

Corpora-tions

M.T.C. 9530 3286 14481 7980 13794 3391

SETC 2745 870 330 2236 3635 1645

T.N.S.T.C(TN3011 1352 4356 2530 5943 3347

V)

T.N.S.T.C(VP 8298 2265 12912 4320 14081 5379

M)

T.N.S.T.C(KU7544 2786 10097 4962 12072 6734

M)

T.N.S.T.C(M 5010 2757 7884 3880 8428 6777

DU)

T.N.S.T.C(CO4991 1742 8518 7159 9807 5101

M)

T.N.S.T.C(SL 6432 2402 8800 2096 9787 2570

M)

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 pesons 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.