
(2008) 2 JKJ 180

Jammu & Kashmir High Court (Srinagar Bench)

Case No: None

Aijaz Ahmed Sheikh
and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Oct. 11, 2007

Acts Referred:

Constitution of Jammu and Kashmir, 1956 " Section 124

Citation: (2008) 2 JKJ 180

Hon'ble Judges: Bashir. A. Kirmani, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Bashir A. Kirmani, J.

On 25th May 2007, the following order was passed in this matter;

1. Petitioners herein who are employees of respondent-Electricity Department posted at different places claim to have a constitutional right of

forming Association/ Union and state that in past they had associated themselves with existing unions registered in terms of Rule 4 of the

Government Servants (Recognition of Service Association) Rules of 1960 later substituted by SRO 160 dated 14.7.1995. Alleging that second

respondent i.e. Secretary of Power Development Department under notification No. DC/I'D/Adm-III/547- 650 dated 7.12.2006 issued a

schedule of elections for unions of non-gazetted employees in respondent department wherein registration of ""Provincial Power Employees Union

of Jammu"" and ""All J&K Electric Department Linemen and Workers Union"" was cancelled while recognition granted to ""Jammu and Kashmir

Central Non-Gazetted Electric Employees Union"" vide order No. 415 of 1972 dated 14.2.1972 required to be revalidated under SRO 160. But

instead of that respondents announced the election schedule as aforesaid appointing respondents 3 and 4"" as Election Commissioners, Jammu and

Kashmir for conducting elections of the unions in terms of said notification. Aggrieved thereby the petitioners allege that the elections sought to be

conducted by respondent No. 2 are de-horse the rules and without jurisdiction along with nomination of respondents 3 and 4 to act as of Election

Commissioners for Jammu and Kashmir respectively. Accordingly, they seek issuance of a prohibitory direction against respondents for not

conducting the elections to Non-Gazetted Electric Employees Workers Association Kashmir/Jammu in terms of notification issued by respondent

No. 3.

2. In their objections respondents while objecting to maintainability of writ petition and locus standi of petitioners to challenge the impugned

elections further state that since respondent-department is a huge organization having as many as more than ten wings and sub wings the number of

non-gazetted employees is very large and during last decade the growth of associations multiplied and the self proclaimed leaders of these

associations/unions used to continuously approach higher ones in department including ministers which created lot of indiscipline and unnecessary

strain on the officers.

3. This position prompted Government to settle the matter for which General Administration issued a communication No. GAD (Adm.) SW-75/96

dated 10.02.2006 wherein it was observed that Government having taken a serious note of mushrooming of the associations/unions of the

respondent department sought recommendation of two unions after proper scrutiny of records and also directed de-recognizing others and also

authorized the department to conduct elections of the office bearers of two unions. In addition the Government vide order dated 2.3.2006 further

stressed upon Power Development Commissioner J&K that various unions/association leaders approached the department with different and

sometimes conflicting charters of demands leading to enormous wastage of money, time and energy and impressed upon him to have elections to

the unions conducted. Consequent thereupon Power Development Department issued a notification on 7.12.2006 for holding elections with

commission as Chief Election Authority in terms of letter No. PDD/vi/GENL/26/2002 dated 4.8.2006 where under guidelines and process for

holding elections were made clear indicating the source of expenditure also. It is also pleaded that petitioners herein have no cause to agitate

against proposed elections scheduled to be conducted in terms of SRO160 of 1995 for the reason that they were not contesting any post and

were as such not connected with the matter. During course of submissions appearing counsel have reiterated the contents of their respective

pleadings.

4. I have heard learned Counsel and considered the matter. It appears that an unbridled proliferation of trade unions in respondent depart-

mentpersuaded the Government as also some of the trade union leaders to check it for which purpose, as appearing from official communications

on record, formation of one single trade union for workers of respondent-department was mooted which ultimately resulted in the initiation of

process to conduct impugned elections. The matter appears to have been dealt with under SRO 160 of 1995 purporting to have been issued on

14.7.1995 u/s 124 of the constitution of Jammu and Kashmir in suppression of the Government Servants (Recognition of Service Association)

Rules of 1960. Before proceeding further thus it would be appropriate to notice the contents of said SRO which contains latest rules on the

subject. Captioned as Jammu and Kashmir Civil service (Recognition of Service Association) Rules 1995. Under rule 3 thereof they apply to

service associations of all regular civil employees of the Government except those employed in industrial establishments in managerial or

administrative capacity and police personnel. Under rule 4 the service associations which had been recognized by Government before

commencement of aforesaid rules and in respect whereof recognition was subsisting at the time of commencement of rules would continue to be so

recognized for a period of one year from the date of commencement of rules or till the date when recognition would be withdrawn whichever

earlier. Under rule 6 every recognized service association would be required to follow the conditions mentioned therein and in case of breach of

any of the conditions contained in rules 5,6 and 7 the Government would after giving an opportunity of being heard to said association be at liberty

to withdraw the recognition granted to them earlier.

5. In backdrop of these rules it appears that under order No. GAD(AD,)SWd-75/96 dated 10.2.2006 of General Administration Department it

was communicated to Power Commissioner that two unions of PDD employees were already recognized in the name of ""Provincial Power

Employees Union, Jammu"" and ""All Jammu and Kashmir Electric Department Linemen and Workers Union"" under Government order No. 490-

GAD of 1998 dated 22.4.1998 and Government order No. 726-GAD of 2003 dated 11.06.2003 respectively and recommended cases of

Electric Employees Union Kashmir province"" and ""Jammu and Kashmir Non- Gazetted Employees Union"" for recognition. This appears to have

been followed by another communication No. PDD/vi/GENL/26/2002 dated 4.8.2006 wherein administrative department appears to have

informed the Power Commissioner about proceedings and decisions taken at a meeting held by Power Minister on 20.7.2006 and, accordingly,

desired him to take action regarding recognition of Employees Unions etc. Subsequently the Power Commissioner issued a notification under

endorsement No. DC/PDD/ADm-IN/547-650 dated 7.12.2006 as Chief Election Commissioner where under eight Unions/Associations namely

J&K Electric Department Linemen and Workers Union," "Technical Employees Federation", "J&K Non- Gazetted Electric Employees Union",

Power Workers Association". "Electric Employees Union", "Provincial Power Employees Union", "Electric: ITI Diploma Holders Association

and "The Jammu and Kashmir Central Electric Employees Union" were stated to have furnished documents and shown their willingness to contest elections.

6. It was further observed that out of these "Provincial Power Employees Union, Jammu" and "All Jammu and Kashmir Electric Department

Linemen and Workers Union" were recognized by the General Administration Department and, accordingly, all other Unions/Associations

aforementioned were deemed to have been de-recognized from the date of issuance of the circular. This was followed by a schedule for conduct

of elections to different offices of the said associations. Under annexures appended to said notification certain guidelines for conduct of elections

were prescribed and Power Commissioner designated as Chief Election Commissioner for J&K with respective Chief Engineers as Election

Commissioners, Superintendent Engineers as Returning Officers, Executive Engineers as Election Officers, Assistant Executive Engineers as

Presiding Officers and so on. At item 'c' of said annexure the name, headquarter, Constitution of the Union, its office bearers and financial

implications of elections etc. were also outlined. It is these notifications which are impugned in this writ petition.

7. As already said the whole controversy erupts from an effort of respondent-department to have a single association /Union of their employees for

effective representation and redressal of their grievances so as to avoid the confusion resulting from mushrooming of associations and the different,

sometimes conflicting demands being projected by their representatives leading to lot of administrative strain and resultant indiscipline. In a way

thus the respondents desire to have the representation of their employees streamlined to one single organic whole in itself appears to be quite a

positive idea, but at the same time, it has to be reconciled with the rights of employees to form associations or Unions which is constitutionally guaranteed.

8. As is apparent, the employees of respondent-department can be classified into various groups having different nature of jobs to perform. For

instance, those working in offices, those in the field as linemen, meter readers and drivers and those performing technical functions etc. From

perusal of records and what has been stated at Bar it appears that each one of aforesaid shades have tried to constitute themselves into separate

associations/unions perhaps with the idea of projecting problems specific to the nature of their job and seek solutions thereto. Obviously,

therefore,, the outlook of these sub groups regarding their problems and their perception of how to solve them is perhaps bound to differ. For

instance, while official infrastructure and comforts within office would be relevant to employees working in offices it would not have same relevance

to the field staff working out in the field as Linemen etc. for whom a suitable equipment, uniforms commensurate to the requirement of particular

season and safeguards against occupational hazards would be more relevant. In addition there could be certain status problems also between

different wings comprising employees of different academic levels. Similarly, risk and insurance cover would be more required in cases of those

working in power houses, on high tension lines, and sensitive areas as against those working in lesser hazardous conditions. Given that it would

perhaps not be surprising if these different groups even though employees of same department think in terms of having their own unions with their

specific ideas and perceptions of problems and solutions. At the same time, however, this phenomination can not be allowed to go out of hand and

convert the department into a heterogeneous combination of small groups each speaking his own language and in the process bothering everybody

from top to bottom at expense of public time with varied and sometimes conflicting demands and proposals which is bound to cause undesirable

strain on the official fabric of the department. All these features, as a matter of fact appear to have rightly persuaded the department as also the trade union leaders to consider having a common union of all employees so as to avoid unwanted difficulties, but while doing so, perhaps, they appear to have missed the element of diversity inherent among employees as aforesaid which perhaps did not allow the arrangement to work and ultimately landed the parties into this litigation.

9. Simultaneous to what has been said above and quite important by itself, is the question as to what role the department should assume for itself in

organizing its employees into an association/union and what should be the contours of its involvement/indulgence in election process. In

administrative sense and quite reasonably perhaps it cannot be more than that of overseeing and supervising the process. Practical indulgence the

way it appears to have been sought by department through the impugned notification and the memo of guidelines appended therewith appear to be

slightly overreaching for twin reasons, First, that it tries to outline the constitution/articles of the proposed association which apparently plans fetters

on their right to form associations; and secondly, that de-recognition of all other associations to have only two in the field and that too without

supplying visible reasons appears to define the limits of the above said right within respondent-department which again amounts to objectionable

restrictions. Right to form associations and unions vesting in citizens is subject to control only when such control would be in the interest of

sovereignty and integrity of the State, public order or public morality, none of which appears to be involved in the matter. In fact it is only

administrative convenience that appears to have persuaded the respondent-department to restrict the right of its employees regarding formation of

association/union under the garb of streamlining/channelizing it in their interest, which perhaps renders the indulgence apparently shown by

respondent-department through impugned notification/guidelines appended therewith as excessive. As a matter of fact, the department and

Government could perhaps have more aptly tried to exercise reasonable control in the matter by proper indulgence through recognition powers

vesting in them.

10. The tentative conclusion of what has been said above is that while respondent-departments' concern to have a single union/association of its

employees or two, cannot be questioned for the reason of reflecting a positive and bonafide approach towards effectively solving the administrative

problems of its employees and reducing avoidable burden on higher ups, the right of employees to reasonably organize themselves into lawful

associations also should not be defeated, diverted or diminished, which perhaps recommends a fresh approach to the subject by both, the

department as well as the employees. Illustratively, two situations can be talked about. Either the employees of course with active patronage of

authorities convert themselves into one union or if necessarily more than one then as less or as many as would certainly avoid the difficulties caused

by their multiple number; or else, they may have their multiple unions from different places, levels and shades of employees but create some sort of

an apical body representative of them all to interact with authorities on their problems and solutions to the exclusion of constituent unions. After an

interaction between authorities and employees-representatives these or any other modes can be considered.

11. Before parting, however, it perhaps need to be said that despite having heard the matter for final disposal at threshold stage in given texture of

this controversy I defer the same, with a view to recommend its consideration by parties on indicated lines for which I have also avoided

discussions on the intricate constitutional and other legal issues involved in the matter and restricted its consideration only to the level and within

limits the controversy appears to have precipitated.

12. Accordingly, the matter is admitted to be listed again after ten weeks. Meanwhile, the parties shall try to evolve a pattern to resolve the

controversy in its fullness as already observed, and inform the Court accordingly. The respondent-Power Commissioner shall arrange an

interaction between concerned authorities and employees within eight weeks from now and follow it up for desired results. Till the matter, comes

next on board, status quo as currently obtaining shall prevail in the matter.

13. Thereafter when the matter came upon on 6.9.2007, the standing counsel for respondent Electricity Department stated that persuaded by

above quoted order of this Court the parties to the writ petition had thoroughly interacted with each other and executed a memo of understanding

according to which all employee-union of respondent-department unanimously agree to conduct elections to the Union/Association strictly under

SRO 160 of 1995, after removing what representatives of the Unions viewed as certain flaws there under. It was further agreed upon that

procedure for conducting elections would be decided by parties jointly while expenditure would have to be born by Department and the publicity

charges by concerned Union/employees and that a committee would be constituted to examine pending demands of employees. A copy of memo

of understanding as aforesaid purporting to have been signed by all representatives of Association of employees of respondent department and the

Management has been taken on record along with covering letter purporting to have been written by respondent Power Development

Commissioner to the aforesaid standing counsel.

14. In view of the memo of understanding as aforesaid the matter stands accordingly concluded as nothing more is required to be done in view of

the agreed arrangement evolved by parties and accordingly, the petition is disposed of in terms of the memo of understanding mentioned above

entered into by parties on 21st August 2007, any breach whereof would entitle the aggrieved party to re-agitate the matter, if advised.

15. Disposed of.