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(1971) 12 CAL CK 0008

In the Calcutta High Court

A.C. Mukherjee and Others — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 10-12-1971

Acts Referred:
Constitution of India, 1950 — Article 19, 226, 32
Trade Unions Act, 1926 — Section 1, 13

Citation : 76 CWN 208 : (1973) 1 ILR (Cal) 155 : (1972) 2 LLJ 297

Hon'ble Judges : P.B. Mukharji, C.J;S.K. Mukherjea, J

Bench : Division Bench

Judgement

P.B. Mukharji, C.J.—This is an appeal from the judgment and order or Mr. Justice Pradyot Kumar Banerjee discharging a rule under Article 226 of the Constitution of India.

2. The petitioner in this rule challenged an order passed by the respondent No. 4, Indian Airlines, dated the 7th of March, 1969, whereby the said respondent communicated an order to the respondent No. 5, Air Corporation Employees'' Union, that in view of the recognition granted to the Indian Aircraft Technicians'' Association, which is respondent No. 6, the Air Corporation Employees'' Union will not be any longer entitled to represent the categories specified in the said letter. The petitioners are 15 in number. They are all employees of the Indian Airlines. Some of the members of the respondent No. 5 union are employed as technical staff and some of them are clerical. It is stated that the petitioners are all technical staff working under the respondent No. 4 Indian Airlines.

3. The prayers in the petition were for the issue of writs of mandamus and certiorari on respondents Nos. 1, 2, 3, 4 and 7 commanding them not to give effect to the decision conveyed by the respondent No. 7 by the memorandum, dated the 17th March, 1969, and for quashing the same.

4. The memorandum which the Indian Airlines wrote to the general secretary of the Air Corporation Employees'' Union is dated the 17th March, 1969, and is said to be the offending order. The relevant extracts from that memorandum on which

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the arguments of the appellants rest are as follows:

2. By a communication No. 32/54/67-I & E (E), dated the 13th March, 1969, the Government of India in the Ministry of Labour, Employment and Rehabilitation has informed the Corporation of the results of the verification done by the appropriate authority and has stated that on verification it has been found that the Indian Aircraft Technicians'' Association has a membership of the majority of workmen amongst grades 3 to 9, in the technical categories of staff in the Aircraft Engineering Workshops, excluding the Motor Transport Workshops, in the Indian Airlines on the date of reckoning which was taken as 1st November, 1968. That association is, therefore, entitled to recognition under the Code of Discipline in respect of the aforesaid technical categories of Indian Airlines.

3. Accordingly, the management has granted recognition to the Indian Aircraft Technicians'' Association as the sole bargaining agent under the Code of Discipline in respect of all technical categories of staff in grades 3 to 9 in all the engineering workshops of Indian Airlines, excluding Motor Transport Workshop, employed by the Corporation as from this date.

4. In view of the aforesaid recognition granted to the Indian Aircraft Technicians'' Association and in the light of paragraph (b) of the letter of recognition of your union*****your union will not be any longer entitled to represent the categories specified in para 3 above.

5. The grievance of the petitioners appellants is against this order. What the order does is : first, it gives recognition to the Indian Aircraft Technicians'' Association as the sole bargaining agent under the Code of Discipline. That is the main point of grievance of the appellants ; and, secondly, it says that the union will not be any longer entitled to represent the categories specified in the light of the said recognition of the Indian Aircraft Technicians'' Association.

6. This is being opposed by the Union of India, The Chief Labour Commissioner, Indian Airlines and its Industrial Relations Manager and the Indian Aircraft Technicians'' Association. The fight is essentially and really between the Air Corporation Employees'' Union and the Indian Aircraft Technicians'' Association. The appellants are 15 alleged workmen said to be all working for gain in the Indian Airlines set up at the Dum Dum Airport.

7. On behalf of the Indian Airlines, the main argument why this appeal should be dismissed may be broadly stated. First, that the order passed against the Air Corporation Employees'' Union which is an incorporated body under the Trade Unions Act of 1926 and the petitioners as ordinary members of the said union had no locus standi to challenge the order. Secondly, that the Code of Discipline which is the basis of the order is not a statutory rule and violation of the administrative circular, even if any. is not amenable to writ jurisdiction of This Court. Thirdly, that no fundamental rights of the appellants are infringed by the impugned order and the appellants-petitioners'' fundamental right to form an association still remains but that the appellants-petitioners have no right to have

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their union recognised by the employer.

8. I shall take up the third point first. The appellants'' argument is that their fundamental right under Article 19(1)(c) of the Constitution has been violated. Now, the first ground in Article 19(1)(c) shows that it provides: "All citizens shall have the right to form associations or unions". This fundamental right guaranteed by the Constitution is only to form associations or unions. The impugned order in the present case does not affect such right at all, because the appellants'' right to form an association or union remains intact. What it does is that it does not recognise the union to be the sole bargaining agent under the Code of ''Discipline. The question of recognition or de-recognition of the union has nothing to do with it and, therefore, the order cannot be said to be violative of Article 19(1)(c) of the Constitution of India. The appellants can still form an union, can still continue to be members of that union and can still function as such.

9. As far back as in May, 1959, the Indian Airlines Corporation granted recognition to the Air Corporation Employees'' Union but only on the following terms and conditions:

That the union will represent only those categories of employees of the Corporation who belong to the union and do not have a separate association of their own.

In 1968, the trouble started, because the Government wanted to undertake a verification of the membership of the Air Corporation Employees'' Union amongst the technical categories of staff in grades 3 to 9. That was a communication of the 4th March, 1968. The result of the verification went against the Air Corporation Employees'' Union. The office memorandum on the point is dated the 13th March, 1969, and is as follows;

On verification it has been found that the IATA had a membership of 1913 out of the total strength of 2102 amongst grades 3 to 9 in the technical categories of staff in Aircraft Engineering Workshop excluding the Motor Transport Workshop in Indian Airlines on the date of reckoning which was taken as November 1,1928, The IATA is, therefore, entitled to recognition under the Code of Discipline in respect of the aforesaid technical categories of Indian Airlines.

Then followed the impugned order of the 17th March, 1969, leading to the de-recognition of the Air Corporation Employees'' Union. That is so far as the merits of the case are concerned.

10. The Code of Discipline which is the basis of the impugned order has no statutory force. It was at best a private arrangement. No writ will lie to enforce the provisions therein. Besides I find that there was no such provision as, contended by the appellants that they have a right to recognition. It was argued that the Code of Discipline has an "uniformly accepted principal of one trade union being given the representative status to represent the workmen

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establishment-wise or industry-wise". But the Code of Discipline makes it a condition that a union may claim to be recognised as a representative union provided it has a membership of at least 25 per cent of the workers of that industry in that area and that where there are other unions in an industry or establishment, the one with the largest membership should be recognised. Surely by that test the impugned order does not commit any breach either of the statute or regulations or the Constitution.

11. What was contended for the appellants can be briefly stated now at this stage. It is said that the petitioners'' fundamental right under Article 19(1)(c) of the Constitution has been violated. The union cannot now represent the petitioners who come under those categories and the appellants petitioners, therefore, cannot be represented by the union of their own choice. It is a part of the collective bargaining which is the main objective of all the trade unions. Without a right of representation by the union of their choice before the authorities concerned, the fundamental right to form an association has no meaning at all. This is the substance of the contention on behalf of the appellants.

12. But the order itself does not infringe that fundamental right under Article 19(1)(c) of the Constitution. The order does not in fact put any clog on the right of the appellants to form any association of their own choice or union of their own choice. The appellants'' union will not be recognised by the order to represent particular categories of workmen by the Indian Airlines. The recognition of the union of the appellants is withdrawn. There is no fundamental right guaranteed in the Constitution regarding recognition of any union formed by any of the citizens. There is no fundamental right that the employer must have to recognise a union of the choice of the employees and, if that is not so recognised, it can be said that non-recognition or withdrawal of recognition amounts to a violation of Article 19(1)(c) of the Constitution of India.

13. In a recent decision by the Supreme Court in D.A.V. College, Vs. State of Punjab and Others, , the Supreme Court observed at page 1747 of the report very pertinently:

There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In the All India Bank Employees'' Association Vs. National Industrial Tribunal and Others, it was observed that the right guaranteed under Article 19(1)(c) does not carry with it a concomitant right that the associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interest of public order or morality. The right under Article 19(1)(c) extends inter alia to the formation of an association or union.

The concomitant rights are not guaranteed under the Constitution. What is guaranteed by the Constitution is the right to form an association or union. Nothing more, nothing less. I, therefore, hold against the appellants on this third point.

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14. In view of the latest pronouncement of the Supreme Court, I refrain from citing the other cases in the argument. In Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, , it was said that the right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. That principle is not involved in the present appeal. The other cases cited are Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others, ; The Hindi Sahitya Sammelon and Ors. v. Shri Jagadish Swarup and Ors. AIR 1971 S.C. 678 ; Eastern Railway Employees'' Congress v. General Manager, Eastern Railway and Ors AIR 1965 S.C. 389; Kesoram Rayon Workers'' Union v. Registrar of Trade Unions and Ors. (1968) 1 Labour Law Cases 1539; In re : Kerala Education Bill AIR1957 . 1958 S.C. 956; State Trading Corporation of India Ltd. v. The Commercial Tax Officer and Ors. A.T.R. 1963 S.C. 1811; Raghubar Dayal Jai Parkash and Ors. v. The Union of India and Anr. AIR 1962 S.C. 263 ; and Raja Kulkani v. The State of Bombay AIR 1954 S.C. 73 ; In All India Bank Employees'' Association v. The National Industrial Tribunal, Bombay and Ors. 1961 II L.L.J. 385 : AIR 1962 S.C. 171, it was said by the Supreme Court that the right guaranteed under Article 19(1)(c) does not extend to concomitant right to an effective collective bargaining or to strike. This makes an end of the appellants'' case.

15. The other point raised on behalf of the appellants almost goes by admission. The Code of Discipline is not a statutory rule and violation of the said code is not within the jurisdiction of Article 226 of the Constitution. It has been conceded by Mr. Dutta appearing for the appellants.

16. The last point is whether the petitioners-appellants have any locus standi to maintain this application. It is said that the union of employees could not as such maintain the application. The union in that case would not be a citizen within the meaning of Article 19(1)(c) of the Constitution of India. That is why the appellants individually and in a representative capacity instituted the proceedings. But the writ asked for is a writ for mandamus or certiorari to cancel and quash the order of de-recognition of the Employees'' Union. That is purely a union''s right qua union. As pointed out in Rustom Cavasjee Cooper Vs. Union of India (UOI), :

A company registered under the Companies Act is a legal person separate and distinct from its individual members. Property of the company is not the property of the shareholders. ****The holder of a deposit account in a company is its creditor : he is not the owner of any specific fund lying with the company. A shareholder, a depositor or a director may not, therefore, be entitled to move a petition for infringement of the rights of the company, unless by the action impugned by him, his rights are also infringed.

The recognition or de-recognition of a union being a matter of private arrangement under the Code of Discipline which has no statutory force whatsoever cannot obviously confer on the appellants either individually or in a

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representative capacity the right to ask for such recognition or to complain against de-recognition of the union. Rights, if any, belong to the union of employees and as the union cannot file the writ and as the appellants individually or in a representative capacity cannot file the writ, their remedy, if any, would lie in a suit under the Code of Civil Procedure. There is one aspect of the facts which has some bearing on this point. The results of the verification of membership have already been stated elsewhere in this judgment. The Air Corporation Employees'' Union, respondent No. 5, has different regional offices one of which is situated at Calcutta, one at Delhi, one at Hyderabad and another at Bombay. In Calcutta region above 2500 employees of the Indian Airlines are members of the said union of which approximately about 750 employees belong to the category 3 to 9. It is stated that the Union, respondent No. 5, was duly registered with the Registrar of Trade Unions, Delhi. Section 13 of the Trade Unions Act, 1926, provides:

Every registered trade union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall, by the said name, sue and be sued.

Respondent No. 5 is a registered trade union. It is stated that the respondent Indian Aircraft Technicians'' Association, which is respondent No. 6, applied to the authorities concerned for recognition and thereafter respondent No. 4, the Indian Airlines, started verification regarding the membership of the respective unions in accordance with the Code of Discipline which was evolved in 1959. At the instance of some of the disgruntled individuals who were unsuccessful in obtaining control over the affairs of the said union, (sic) formed the union with some members from the workmen in the engineering department. The respondent No. 5 union contended that the verification of the membership of the union was not permitted under the Code of Discipline whereupon three members of the union moved This Court under Article 226 of the Constitution of India challenging the validity and/or propriety of the verification proceedings. A rule was issued and an interim order was granted. The Civil Rule is numbered Civil Revision Case No. 5825(W) of 1968. It is stated that the Regional Secretary of the Air Corporation Employees'' Union, Hyderabad Region, filed an application before the Andhra Pradesh High Court by the said Secretary but ultimately the said application was withdrawn. It appears that the interim order passed in Civil Rule No. 5825 (W) of 1968 was vacated by the order, dated the 5th March, 1969. Against the said order vacating the interim order an appeal was filed before This Court. The said appeal is pending. The question has been raised how far these proceedings are a bar to the present one. In the view that we are taking, it is unnecessary to express any opinion on the point.

17. I, therefore, dismiss this appeal. There will be no order as to costs.

18. The learned Counsel for the appellants prays for stay of operation of this judgment. The prayer is refused.

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S.K. Mukherjea, J.—I entirely agree. In my judgment, the application out of which this appeal arises is misconceived and not maintainable. The petitioners have no locus standi to make the application. The reliefs claimed are, as far as I can see, not available in law.

2. In challenging the impugned order, the petitioners have in fact challenged the decision of the respondent No. 4, Indian Airlines, to recognise the Indian Aircraft Technicians'' Association as a bargaining agent to represent the employees in categories of staff in grades 3 to 9 in all the Engineering Workshops of the Indian Airlines. The question arises whether recognition of a trade union by an employer is recognised by any statute or any bye-law, rule, or regulation having the force of a statute. Recognition of a trade union by itself means very little. It can only acquire a meaning if by recognising the trade union the employer recognises its right to represent the interests of its members. Now, far from contemplating "recognition of trade union" neither the Trade Union Act, nor any other statute has made any provision for negotiation or representation by a union on behalf of its members. Recognition of a trade union has so far been, by and large, a matter of agreement between the employers and the union, except in Maharashtra and Madhya Pradesh where there has been legislation in this behalf. That being so, recognition or de-recognition of a trade union cannot be, in my opinion, a matter for which an application will lie under Article 226 of the Constitution. It is common knowledge that efforts have been made from time to time to make provision for recognition of one trade union for one undertaking and for delimitation of its rights and obligations. This is a matter which has often been raised in labour conferences. Unfortunately, no general agreement has yet been arrived at in this matter. In 1947, the Trade Unions (Amendment) Act 1947, was passed. Chapter 11IA of the Act deals with recognition of trade unions. It provides for recognition by agreement and recognition by order of a Labour Court. It also confers certain rights on recognised trade unions. It contains such delectable provisions as that nothing in some of the provisions of the Act shall be construed as requiring an employer to send replies to letters or to grant interviews on matters, on which as a result of previous discussions with the executive of the trade union, the employer has arrived at a conclusion, meaning thereby that in other circumstances an employer will be required to reply to letters or to grant interviews, an operation which is as difficult as making a horse drink. Be that as it may, the Act was still-born. Sub-section (3) of Section 1 provides that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. After the lapse of a quarter of a century it is refreshing to read in statute manuals that so far no date has been appointed by the Central Government. I find it necessary to refer to a statute which has not come into force only to highlight the point that in the absence of a statute it is not possible for a Writ Court to enforce recognition or de-recognition of a trade union by a mandamus or certiorari. As my Lord has pointed out, if recognition is given to a trade union by agreement, the trade union may very well enforce its rights by a suit in the ordinary manner. A writ

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does not lie for specific performance of an agreement and on that ground alone a Writ Court will refuse to interfere in a case like this. It was faintly argued by learned Counsel appearing on behalf of the appellants that what is being challenged is not merely de-recognition but the right of the respondent No. 4 not to allow the respondent No. 5, the Air Corporation Employees'' Union, to represent its members as their bargaining agent. In my opinion, counsel was trying to make a distinction without a difference. As I have said, recognition by itself means little. It only means recognition of a trade union as an agent of its members. If recognition cannot be enforced by a writ, right of representation cannot be enforced by a writ either.

3. On the question of locus standi of the petitioners to make this application, I entirely agree with what my Lord has said. Counsel appearing for the petitioners argued that a trade union, not being a citizen, enjoys no fundamental rights under the Constitution, and, therefore, the respondent No. 5 could not have possibly made this application for enforcement of rights guaranteed by Article 19(1)(c) of the Constitution. Fundamental rights are enjoyed by the members and, therefore, for violation of those fundamental rights, the members of the trade union had to come forward to protect the rights of the union.

4. In Tata Engineering & Locomotive Co. Ltd. v. State of Bihar and Ors (1954) 6 S.C.R. 885, in a petition under Article 32 of the Constitution filed by a company challenging the levy of sales tax by the State of Bihar, two shareholders were also impleaded as petitioners. It was urged on behalf of the shareholders that in substance the interests of the company and of the shareholders were identical and the shareholders were entitled to maintain the petition, as the company not being a citizen was incompetent to enforce the rights guaranteed by Article 19 of the Constitution. The Court rejected the contention and observed that what the company could not achieve directly, it could not, relying upon the doctrine of lifting the veil, achieve indirectly. If learned Counsel is right in his contention that the union could not have made this application for enforcement of fundamental rights under Article 19(1)(c) of the Constitution the petitioners cannot successfully maintain this application either.

5. With these observations, I agree with the order my Lord has made.

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