

(2011) 01 DEL CK 0314

In the Delhi High Court

Case No : Writ Petition (C) 4299 of 2010

Air Corporation Employees Union

APPELLANT

Vs

Air India Limited

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Citation : (2011) 178 DLT 699 : (2011) 129 FLR 752 : (2011) 129 FLR 268 :
(2011) 4 LLJ 105 : (2011) LLR 376

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : A. Mariarputham and Inder Jit Singh, for the Appellant; Lalit Bhasin and Ratna Dhingra, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—For the reasons stated therein, this application is allowed. The name of Respondent "National Aviation Company of India Ltd." is modified as "Air India Limited". The amended memo of parties is taken on record.

2. The application is disposed of.

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3. Can a registered trade union be derecognized by the Management without being issued a show cause notice and without affording such union an opportunity of being heard? This is the question that arises for consideration in the present writ petition.

4. For the reasons explaining hereinafter, this Court answers the question in negative.

5. The Petitioner Air Corporations Employees Union ("ACEU") states that it is the largest and most representative trade union of the non-technical and some technical workmen of the Respondent Air India Limited (earlier known as the National Aviation Company of India Limited). It was registered under the Trade

Unions Act, 1926 on 16th November 1989. It is stated that ACEU was granted recognition by the Respondent way back in 1959 and this continued till 26th May 2010 when all of a sudden the recognition stood withdrawn by a letter of that date addressed by the Respondent to the General Secretary of the ACEU. The allegation in the said letter is that in the utter breach of terms of the settlement and Code of Discipline, last signed on 15th June 2007, the ACEU had "indulged in regular violations of Code of Discipline and of the Settlement and acted in a manner resulting in the disruption of the normal working of the company and breach of the industrial peace and harmony." The said letter stated that ACEU had given directives and strike notices from time to time in the last three years and some of the instances were enumerated in Annexure A to the letter.

6. The letter dated 26th May 2010 further stated:

The ACEU also issued a directive dated 14th May 2010 to go on strike w.e.f. 31st May 2010 and went on legal and unjustified strike on 25th May 2010 even while the matter was seized till conciliation, thereby causing harassment to the innocent passengers, causing revenue loss and disrupting flights nationwide and to international destinations.

7. Mr. A. Mariarputham, learned Senior counsel appearing for the Petitioner relies upon the decisions of the Madras High Court in Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Board Accounts and Executive Staff Union, , T.N.E.B. Engineers" Sangam Vs. Tamil Nadu Electricity Board, and the judgment of the Division Bench of the Bombay High Court in Reserve Bank of India Employees" Association, Nagpur Vs. A.P. Aiyer, Manager, Reserve Bank of India, Nagpur and another, and submits that the impugned order dated 26th May 2010 passed by the Respondent withdrawing recognition of the ACEU is bad in law as it was without any prior show-cause notice to the Petitioner and without affording it an opportunity of being heard. He submits that although an interim order was passed by this Court 28th June 2010 staying the impugned order dated 26th May 2010 it could not be worked out. The premises occupied by the ACEU remains locked and its belongings remain in the premises which have since been locked.

8. Appearing for the Respondent Mr. Lalit Bhasin, learned Counsel relies upon the decision of the Division Bench of the Calcutta High Court in A.C. Mukherjee and Others Vs. Union of India (UOI) and Others, and urges that there is no vested right in a trade union to be granted recognition. He submits that in the said decision, which involved ACEU itself, it was noticed that recognition was granted in terms of the Code of Discipline which did not have any statutory force. It was "at best a private arrangement". It was held that no writ petition would lie to enforce the provisions of the Code of Discipline. Reliance is also placed on the judgment of the Kerala High Court in M.A. David v. The Kerala State Electricity Board (1972) 1 LLJ 44, the decision of the Supreme Court in Titaghur Paper Mills Co. Limited v. Ram Naresh Kumar (1961) 1 LLJ 511 and that of the Karnataka High Court in Workmen of Kampli Co-operative Sugar Factory Ltd. Vs. Mgt. of Kampli Co-operative Sugar Factory Ltd. and Others, .

9. There appears to be cleavage of opinions on the short question that arises in this writ petition. The High Courts of Kerala and Karnataka have held that in the absence of any statutory code governing the recognition of a trade union, it's deracination did not require the issuance by the management of a prior notice or of an opportunity of being heard. The High Courts of Madras and Bombay have taken the opposite view.

10. The decision of the Calcutta High Court in *A.C. Mukherjee v. Union of India* did concern the ACEU itself. Yet, the question that arises in this writ petition did not arise in the said case. There the Petitioners, who were fifteen workmen of Indian Airlines, challenged an order passed by Indian Airlines to the effect that in view of the recognition granted to the Indian Aircraft Technicians' Association, the ACEU will not be any longer entitled to represent the categories of workmen specified in the letter. A preliminary objection was raised by the Indian Airlines as to the locus stand of the Petitioners in that case. The submission was that since the order was passed against the ACEU, the Petitioners as ordinary members had no locus stand to challenge the said order. This objection was upheld by the Calcutta High Court. It was held in that case that the impugned order did not affect the right of the workers to form their union. The second point urged by the Indian Airlines that the Code of Discipline was not a statutory rule and therefore, was not amenable to enforcement in the writ jurisdiction was upheld. The third point urged was that neither recognition nor de-recognition of the union violated the fundamental right to form an association under Article 19(1)(c) of the Constitution. It was thereafter observed in Para 16 as under:

The recognition of 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 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.

11. This Court does not find any observation in the above decision in *A.C. Mukherjee* regarding the procedure to be followed for de-recognition of a union.

12. On the other hand, the Division Bench of the Bombay High Court in *Reserve Bank of India Employees' Association, Nagpur v. A.P. Aiyer, Manager, Reserve Bank of India, Nagpur* has categorically ruled that the de-recognition of a union requires compliance with the rules of natural justice. The relevant observations are contained in paras 4, 5 and 6 of the said judgment which read as under:

4. Now, it is true, as a general principle that no association has a fundamental right to be recognized. In a given case where absence of recognition renders the right to form an association illusory different considerations are likely to arise. But, this controversy need not detain as in the present case we are concerned

only with the case of de recognition. We find it difficult to hold that refusal to grant recognition and withdrawal of the recognition once granted can be placed on the same footing. Primary purpose of Trade Union is collective bargaining and only recognized unions can properly wield that authority and influence. Recognition once obtained by the Union becomes its soul and gives it a new vigor as an authorized bargaining agent of the members and indeed raises its status to a new height. Any Union can ill-afford to lose that status in case it wants to continue efficiently and effectively to serve the cause of the workers for which alone it is recognized. In any case, the recognition gives certain privileges and "deracination" amounts to their denial. Order of derecognition adds insult to the injury in case it is passed as a disciplinary measure and is for alleged commission of offence and/or acts of indiscipline. Such an order attaches stigma and is plainly punitive in nature.

5. Professor de Smith in his classic "Judicial Review of Administrative Action" (Fourth Edition) at page 177 while dealing with the topic "Scope of the Audi Alteram Partem Rule Today" says:

Right in property, personal liberty, status, immunity from penalties or other fiscal impositions, interest in preserving one's livelihood and reputation, and reasonable expectations of preserving or even acquiring benefits (e.g. license, monetary awards), are among the interests to which procedural protection may be accorded. This is by no means an exhaustive list.

Dealing further with the changing concept of applying the Rule even to privileges at page 188, it is observed:

In the past Courts have refused to imply a procedural duty to hear before an administrative tribunal exercises discretionary licensing powers: such decisions were said to concern privileges, not rights. This conceptualist approach has been in large part abandoned in favor of a more sophisticated analysis towards the procedural duties of licensing authorities and a more realistic assessment of the economic effect upon the individual.

We are proceeding on the assumption that the impugned order is in exercise of the administrative powers and not a quasi judicial powers. But, that will make no difference as far as the application of principles of natural justice is concerned. With proliferation of State activities, a very narrow margin exists between administrative power and quasi judicial power. Of course, depending upon the nature of the power, the person exercising, the circumstances and the manner under which it is exercised and the consequences ensuing there from, the principle "no one shall be condemned unheard " applies even to administrative order. This principle stands on its own strength and always applies to such orders excepting where its application is excluded expressly or by necessary implication. Duty to act fairly by any public body is implied in the exercise of its functions. It includes even procedural obligations. Applying these tests to the present matter, we are of the clear opinion that the impugned order adversely affects the status

and/or privileges of the Petitioner and is punitive in nature and, therefore, such an order could not be passed without following the principles of natural justice.

6. It appears that there has been some divergence of opinion about the rights of privately recognized unions, in the matter of their right of recognition as well as deracination. We will deal with only those authorities which have direct bearing on the question before us. In *M. A. David v. K.S.E. Board* 1973 II L.L.J. 466, it is observed:

Recognition of a trade Union is, by and large, a matter of agreement between the employer and the union except in Maharashtra and Madhya Pradesh where there has been legislation in this behalf. If recognition cannot be enforced by a Writ, recognition cannot be continued also as of right.... In the absence of any statutory rule or at least an agreement, the Appellant-Union cannot insist that it should be heard before the recognition is withdrawn.

Now, the application of principles of natural justice, as observed above, does not depend upon either statute or upon a positive term in the agreement requiring its compliance. This is not a case where the application of principles of natural justice has been excluded by agreement. It seems to us that this aspect of the matter was not raised before the learned Judge of Kerala High Court. We find it difficult to tow the aforesaid line of reasoning. In the case of the Tamil Nadu Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu Electricity Board, , Madras High Court considered the aforesaid decision and dissented there from. In the course of judgment, it is observed:

On the other hand, if it is to be held that, unless there is a statutory provisions dealing with the recognition, it is not possible for a person like the Respondent to approach the Court under Art 226 of the Constitution, in the event of deracination, either on the ground of violation of the principles of natural justice or on the ground of arbitrariness, we respectfully disagree with the view of the Kerala High Court.

With great respect to the learned Judges of the Kerala High Court, we prefer the line adopted by the Madras High Court.

13. This Court finds that the learned Single Judge of the Karnataka High Court in *Workmen of Kampli Cooperative Sugar Factory Limited v. Management* disagreed with the view expressed by the Bombay and Madras High Courts only on the ground that in those cases the grant and withdrawal of recognition of the trade union was governed by some statutory provisions and that in the absence of a statutory provision the grant of recognition does not confer any enforceable rights on the union. With respect, this Court is unable to make a distinction between a situation where there is statutory provision governing the recognition of a registered union and where there is no such statutory provision. The fact remains that the deracination of a union has adverse consequences for such union as it loses the privilege of being able to negotiate with the management on behalf of the workers as a collective body. Also, as pointed out by the Bombay

High Court in Reserve Bank of India Employees" Association the refusal to grant recognition and the withdrawal of recognition once granted cannot be placed on the same footing. In the instant case, the recognition granted by the Respondent to ACEU in 1959 has continued for five decades. The withdrawal of de-recognition would undoubtedly have adverse civil consequences for ACEU. Consequently, the Respondent will have to comply with the rules of natural justice before withdrawing recognition. Even where the situation calls for urgent measures, the Respondent could suspend the recognition granted and in the meanwhile issue a show cause notice to the union, and after giving it an opportunity of being heard decide on the issue of de-recognition. Admittedly this procedure was not followed in the instant case.

14. This Court with respect adopts the reasoning and the conclusion of the decisions of the High Court of Madras and the Bombay High Court aforementioned and holds that the impugned order dated 26th May 2010 derecognizing the ACEU is bad in law as it was passed without any show-cause notice to the Petitioner and without affording the Petitioner an opportunity of being heard.

15. It is pointed out by Mr. Bhasin, learned Counsel for the Respondent that services of some of the office bearers of the ACEU have been terminated and those orders are under challenge in different courts/tribunals. He submitted that in the circumstances it would not be appropriate to permit ACEU to occupy the premises pending a decision on the question of deracination. Mr. Mariarputham, learned Senior counsel for the Petitioner, while not disputing that some of the office bearers have been dismissed from service, and have challenged such dismissals, submits that the ACEU should be permitted to access the records and papers that remained in the premises occupied earlier by ACEU for the purposes of the reply to the show cause notice and for appearance before the management on the question of de-recognition of the ACEU.

16. Mr. Bhasin fairly states that the Respondent will have no objection to the Petitioner being permitted to access the premises earlier occupied by it for the purposes of retrieving the papers and records kept in those premises. Mr. Bhasin further states that as and when such request is made, it will be acceded to by the Respondent.

17. Accordingly, the letter dated 26th May 2010 which is Annexure P-2 to the paper book at page 12, insofar as it derecognizes the ACEU is set aside. The said letter dated 26th May 2010 will be treated as the show-cause notice to the Petitioner requiring it to show cause why it should not be de-recognized by the Respondent. The Petitioner will reply to the said letter dated 26th May 2010 within four weeks from today. The Respondent will, within a period of six weeks thereafter, after giving a hearing to the Petitioner on a date to be intimated to the Petitioner at least 10 days in advance, pass a reasoned order, which will be communicated to the Petitioner within two weeks thereafter. If the Petitioner is aggrieved by the said decision, it will be open to the Petitioner to avail of such

remedies as may be available to it in accordance with law.

18. The petition and the pending application are disposed of in the above terms. The Review Petition is rendered in fructuous and is dismissed as such.