
(2010) 10 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No"s. 8247 and 9880 of 2010 and M.P. No"s. 1, 2, 3 and 4 of 2010

All India Postal Employees Union

APPELLANT

Vs

Chief Post Master General, Tamil Nadu Postal and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 22, 226, 24

Citation : (2011) 256 MLJ 1229

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Radha Gopalan, for the Appellant; S. Sabari Perumal and K.M. Ramesh, for the Respondent

Judgement

K.B.K. Vasuki, J.—On consent, both the writ petitions are taken up for final hearing at the admission stage.

2. Both the writ petitions are sequence to the appointment of ad hoc committee by the second Respondent/General Secretary, All India Postal

Employees Union - Group C (herein after shortly referred to as "AIPEU -Group C) in the place of Petitioner union and appointment of the third

Respondent in W.P. No. 9880 of 2010 for collection of membership verification forms in Tiruvananthapuram Division and approval of such

appointment of the third Respondent by the second Respondent and the same are hence disposed of by common order.

3. While W.P. No. 8247 of 2010 is filed for forbearing the first Respondent/Chief Post Master General from approving the resolution of Central

Working Committee in the meeting held at Ajmer on 26.3.2010 and 27.3.2010 appointing ad hoc committee in the place of Petitioner union, W.P.

No. 9880 of 2010 is filed against the order of the first Respondent dated 22.4.2010 approving the third Respondent Pandian as Officer bearer for collection of membership verification forms in Tiruvannamalai Division.

4. The brief facts which are relevant for consideration herein are as follows:

The Petitioner is All India Postal Employees Union Group C, Tiruvannamalai Division and it was duly elected in the Biennial conference held on

29.6.2008 and the tenure of the present. Union is for 24 months with grace extension of three months and its functions are governed by

Constitution of All India Postal Employees Union Group C with specified powers one among which is to elect the office bearers. While so, one

K.P. Pitchandi, Postal Assistant, Tiruvannamalai sent a representation dated 11.7.2008, to the second Respondent as if the Divisional Secretary of

the Petitioner has omitted to receive and process his membership application and on receipt of the representation, notice was issued to the

Divisional Secretary of the Petitioner to submit his report on the representation and the Divisional secretary has sent his reply denying the

allegations by saying that failure to process the membership application is mainly on account of the complainant's failure to submit declaration in the

prescribed manner. Not accepting his explanation, the second Respondent appointed a fact finding authority to go into the question as to whether

the omission to submit the membership application of K. Pichandi is, willful and deliberate denial or not? The fact finding authority summoned the

Divisional Secretary for enquiry and the same was followed by a report by the fact finding authority adverse to that of Divisional Secretary as if the

Divisional secretary has challenged the authority of the enquiry committee and thrown an open challenge that he will not abide by any instruction of

the second Respondent.

5. Pending enquiry by the fact finding authority, the Divisional secretary was directed to accept the membership and accept subscription under due

receipt and the same was admittedly not complied with by the Divisional Secretary. But, the Divisional secretary sent his representation explaining

the circumstances under which the membership application was not accepted as due to the failure of the member to submit his declaration and

authorisation. The Divisional Secretary has also explained in his reply as to what transpired in the course of enquiry held by the fact finding

authority. Thereafter, meeting of the Central Working Committee of the second Respondent was held on 26.3.2010 and 27.3.2010 at Ajmer,

Rajasthan. In the course of which, CWC unanimously resolved to form an ad hoc committee in action of the CWC which is neutral in nature

amounting to infringement of the very existence and function of the very elected governing body and against democracy and mala fide in nature and

is in violation of the principles of natural justice.

6. In the meanwhile, the second Respondent has also authorised the office bearer for collection of membership forms for few divisions in Tamil

nadu and one of the Divisions is Tiruvannamalai and one of the Respondents viz., Pandian in his capacity of Convenor of newly constituted ad hoc

committee was authorised to sign the declaratory forms relating to the members of Tiruvannamalai Division and the same was communicated to the

Post Master General for his approval on 9.4.2010. Aggrieved by the constitution of ad hoc committee, W.P. No. 8247 of 2010 came to be filed

on 20.4.2010 along with M.P. 1 of 2010 for mandamus against the first Respondent not to act upon CWC meeting and the same was taken up for

hearing on 21.2.2010 and an order of status quo was granted on 22.4.2010 by our High Court. In the meanwhile, the authorisation of convenor of

ad hoc committee was approved by the first Respondent in his letter dated 15.4.2010 and the same was forwarded to divisional branches.

However, the first Respondent has by his letter dated 21.4.2010 cancelled the earlier approval in view of ban on extension of trade union facilities

to AIPEU Group C in W.P. No. 5848 of 2010 and the cancellation letter was forwarded to the concerned branches and the same was followed

by another letter dated 22.4.2010 in and under which, the revised authorisation of V. Shivkumar, S. Nagalingam, R. Pandian and N. Kannan in

their capacity as postal respect of Tiruvannamalai Division Union on the ground that the Divisional Union defied the direction of Central

Headquarter in the membership verification process and acted against the constitution of the Union and also the decision of the higher ups and the

same was communicated along with the copy of the resolution approved in CWC meeting by letter dated 2.4.2010 enclosed at pages 37 and 38

of the typed set of papers to the first Respondent by the second Respondent.

7. As per which, ad hoc committee was constituted as per Article 22(j) read with

24(i) for ensuring total membership without any denial etc. in the ongoing verification of membership process and to hold a special General Body meeting to elect new office bearers to the divisional union within 3 months from the date of recognition based on the membership on rolls on the date of notification. As per the resolution, ad hoc committee having the third Respondent in W.P. No. 9880 of 2010 as its convenor and one T.G. Pandian, P. Mani and M. Arjunan as its three members is constituted. It appears that the second Respondent has not communicated the copy of the resolution to the concerned divisional union i.e. Tiruvannamalai union, however, on coming to know the same, the office bearers except the Divisional Secretary jointly issued legal notice to the Director General, Chief Post Master, President and secretary of AIPEU-Group C on 3.4.2010 in which, the office bearers have raised serious issue as if the constitution of ad hoc committee in the place of elected governing body of the union without any notice and without any opportunity to the elected body is in violation of the constitution of AIPEU Group C and the employees made by the second Respondent/AIPEU was approved by the first Respondent and the approval was also communicated to the other post offices and second writ petition in W.P. No. 9880 of 2010 came to be filed along with M.P. No. 2 of 2010 for stay of the proceedings of the first Respondent dated 22.4.2010 insofar as it relates to approval of Pandian as office bearer for collection of membership verification without approving the appointment of adhoc committee. In the writ petition what is seriously challenged is the authority of the second Respondent AIPEU Group C in authorising the office bearer and the authority of the first Respondent in approving the same for collection of membership verification while continuance of status quo granted by this Court. The High Court has by order dated 5.5.2010 ordered status quo in the light of the earlier order dated 22.4.2010 in W.P. No. 8247 of 2010 to be maintained.

8. Thus, the issue involved in both the writ petitions is the authority of CWC in appointing ad hoc committee in the place of duly elected governing body and in authorising the office bearer and the authority of the first Respondent in approving the same.

9. The main contention raised by the learned senior counsel appearing for the

Petitioner is that the action of the second Respondent in appointing ad hoc committee to carry out the functions of duly elected body, that too for the alleged defiance of the instruction of Central Headquarters by the Divisional Secretary who is one of the office bearers, without notice and any opportunity of being personally heard to the other office bearers is arbitrary, unfair, biased, illegal, without jurisdiction, against Constitution and is in violation of the principles of natural justice. It is further contended by the learned senior counsel for the Petitioner that the ad hoc committee is not vested with any power to carry out any of the functions of the elected body without the approval of the competent authority i.e. first Respondent/Chief Post Master General and the action of the first Respondent in approving the third Respondent in the capacity of Convenor as office bearer for collection of membership forms as authorised by the second Respondent is also vitiated on identical grounds. It is further contended by the learned senior counsel for the Petitioner that the effect of granting status quo in W.P. 8247 of 2010 is to allow duly elected body to carry on the functions of Tiruvannamalai division and as one of the duties of the duly elected body is to collect membership forms and to verify the same and to elect the office bearers, the appointment of the office bearer to do the same functions thereby infringing the power of the duly elected body is mala fide in nature and suffers from arbitrariness and is without jurisdiction.

10. Per contra, the learned Counsel appearing for the first Respondent/second Respondent AIPEU Group C and the third Respondent, would attempt to defend the actions of the first Respondent on the ground that the second Respondent has every authority to appoint ad hoc committee in any one of the circumstances as specified under Article 22(j). It is further argued by the learned Counsel for the Respondents that as the writ petitions are filed against the constitution of ad hoc committee for the purpose of holding election the remedy available to the Petitioner is only before the civil Court and not by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

11. I have considered the rival submissions made on both sides and perused the materials available on record.

12. Before going into the relief sought for in both the writ petitions, the objection

regarding the maintainability of the writ petitions is to be decided

first. The learned Counsel for the Respondents have in support of their objection relied upon the judgment in K.V. Sridharan and S. Ragupathy Vs.

S. Sundaramoorthy and The Principal Chief Postmaster General, . Whereas, the learned senior counsel for the Petitioner has contended that the

actual issue in dispute herein is not election dispute to apply the ratio laid down by the Division Bench of our High Court but the actual dispute is

against the illegal action taken against the entire association under the guise of disciplinary action against one of the office bearers and as the relief

sought for is only against the first Respondent not to approve the appointment of ad hoc committee the writ petitions are maintainable. In support

of such contention, the Petitioner has also relied on the judgment of the High Court, Delhi in dated 21.5.2010 in Indian Hockey Federation v.

Union of India and Anr. W.P. (C) No. 3713 of 2008. In my considered view, the argument so advanced on the side of the Petitioner in support of

the maintainability of the writ petitions deserves acceptance.

13. As rightly pointed out by learned senior counsel for the Petitioner, the judgment in Sridharan K. V. and Ors. v. S. Sundamoorthy and Anr.

(supra) is made against the order of the writ petition which in-turn is against the election of office bearers of AIPEU Group C and the Division

Bench of our High Court has rightly dismissed the writ petition raising the dispute relating the election of the office bearer of registered trade union

as not maintainable.

14. Whereas, in the instant case, the election is yet to be conducted and the resolution passed by CWC is questioned as amounting to infringement

of right of existence of the elected body and the right of elected body to carry on its functions as per the constitution that too without any notice

and without any opportunity to the parties concerned and the relief sought for herein is only against the first Respondent not to act upon the

resolution and against the approval granted by the first Respondent for the authorisation of office bearer by the second Respondent in the place of

the Petitioner union. That being so, the ratio laid down in the judgment cited on the Petitioner side is more applicable herein. In the case decided by

the Delhi High Court, the writ petition is filed against similar appointment of ad hoc committee for administering the affairs of Indian Hockey

Federation and the decision taken by the Government in approving such appointment and one of the stand taken by the Respondents is against the then Secretary General of Indian Hockey Federation and the High Court has in para 50 of the judgment, observed that while there may be justification in insisting that IHF should take corrective action with regard to the allegations concerning the conduct of one of its office bearers that cannot be the reason for placing IHF itself under suspension and ultimately held the suspension of IHF as illegal on more than one ground etc. It is further held by the Delhi High Court that neither suspension nor revocation of IHF without issuing show cause notice to IHF can be sustained in law and the Delhi High Court has decided so by following the judgment of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, , wherein the Supreme Court held the action of the Govt, in superseding the municipality as without complying the principles of natural justice. Further, the decision of the supreme Court as referred to above is also arising in writ jurisdiction. The ratio laid down in the Delhi High Court is hence applicable to the facts of the present case and the issue relating to maintainability of the writ petitions is hence answered in favour of the Petitioner.

15. On facts, the typed set of papers filed in W.P. No. 8247 of 2010 would reveal that the entire communication of the second Respondent regarding the action of the Divisional Secretary in denying the collection of membership form from one Pitchandi, has been addressed to the Divisional secretary in his individual capacity and the second Respondent has not thought fit to send the communication to the elected body represented by the President and the instruction, defiance of which led to the impugned resolution of the committee to constitute ad hoc committee, is also communicated to Saravanan, Divisional Secretary and not to the elected body, as such, the power vested u/s 22(j) of the constitution cannot at all be invoked by CWC and such action of the CWC is by applying the law laid down in *Indian Hockey Federation v. Union of India* (supra) a bad and invalid In law and deserves no approval by the competent authority.

16. As already referred to, W.P. No. 8247 of 2010 is filed for directing the first Respondent competent authority not to act upon the resolution of

CWC and till date no approval is granted by the first Respondent. Though the learned Counsel for the Respondents 1 and 2 argued that the failure

to grant approval to ad hoc committee is mainly because of the interim order granted in W.P. No. 8247 of 2010, the same is not factually

acceptable. The resolution regarding constitution of the ad hoc committee is intimated to the first Respondent as early as on 2.4.2010 and the

lawyer notice issued by the Petitioner to the first Respondent and others not to act upon the same is received by him on 3.4.2010 and the writ

petition was filed on 20.4.2010 and the interim order of status quo was granted on 22.4.2010. In the meanwhile, the second Respondent has

authorised the office bearer for different divisions for collection of membership forms and the third Respondent who was appointed as Convenor of

ad hoc committee is authorised as the officer bearer of Tivuvannamalai Division and the authorisation was forwarded to the first Respondent and

the same was approved by the first Respondent on 21.4.2010 and the approval was again cancelled by the first Respondent on 22.4.2010. The

first Respondent has till that date, not thought fit to approve the selection of ad hoc committee as such, there was no substance in the contention

raised on the side of the Respondents that the ad hoc committee is not approved because of the Interim order passed by this Court on 22.4.2010.

17. Be that as may, as the appointment of ad hoc committee to carry out the functions of elected body is now made out to be totally illegal and as

the constitution of the ad hoc committee will come into effect only after the approval of the first Respondent/competent authority, the Petitioner

union is well justified in approaching this Court for forbearing the first Respondent from granting approval to the same and the Petitioner is for the

reasons discussed above entitled for the relief sought for in W.P. No. 8247 of 2010. Further, as of now, the tenure of the newly elected body has

also come to an end and the question of approval or non approval of ad hoc committee constituted by the second Respondent does not at all arise

herein and the first Respondent cannot at this juncture act upon the resolution passed in CWC meeting.

18. Insofar as the relief sought for in W.P. No. 9880 of 2010 is concerned, the same is against the approval of the authorisation of office bearer to

carry out certain functions and the powers vested upon the Petitioner union. The date and events made available herein, would reveal that the first

Respondent has initially approved the authorisation of the third Respondent viz. Pandian as convenor of ad hoc committee without approving the ad hoc committee and the same was followed by an order of cancellation and the order of fresh approval of Pandian as SPM, Harur came to be passed on 22.4.2010 the date on which the order of status quo was granted by this Court. As rightly argued by the learned senior counsel for the Petitioner, in view of the order of status quo, the Petitioner herein is allowed to carry out the functions and the order of status quo was passed in the presence of the learned Counsel for the first Respondent and hence, the order of approval of office bearer to carry out the function is without jurisdiction and is also in violation of the order of status quo. On that score alone, the order dated 22.4.2010 of the first Respondent which is impugned in W.P. No. 9800 of 2010 liable to be set aside.

19. In the course of argument, the attention of the Court is brought to the fact that tenure of Petitioner union expired on 29.9.2010 and in the meanwhile, the Petitioner union has completed the process of collection of verification of membership forms as authorised under the constitution and what remains to be done is to perm it the Petitioner union to conduct the election. Whereas, the learned Counsel for the Respondents 2 and 3 in W.P. No. 9880 of 2010 has contended that the third Respondent viz., Pandian has in pursuance of the order of approval collected membership forms and verified the same etc. In my considered view, since the order of status quo was granted on 22.4.2010 in W.P. No. 8257 of 2010, in the presence of the learned Counsel for the first Respondent, the action of the first Respondent in approving the authorisation of the third Respondent as office bearer for Tiruvannamalai Division by order dated 22.4.2010 and the action of the third Respondent in collecting the membership forms and processing the same is legally impermissible and no sanctity can be attached to the exercise completed by the third Respondent. However, in view of the fact that the period of elected body has come to an end by 29.9.2010, the question of entrusting the elected body to process the applications after 29.9.2010 does not arise. This Court is of the reasonable view that the job of processing the application forms which are in the hands of the third Respondent and further process of conducting the election can be entrusted to any neutral body in any responsible cadre and as

suggested by the learned senior counsel for the Petitioner, the superintendent of Post office, Tiruvannamalai who is the drawing and disbursing officer can be entrusted with such task.

20. As the Superintendent of the Post Office, Tiruvannamalai comes under the control of the first Respondent, the first Respondent can be directed

to pass appropriate orders for authorising the Superintendent of Post Office, Tiruvannamalai Division to conduct verification of 22 applications

which are said to be processed and submitted to the Superintendent of Post Office, Tiruvannamalai Division by the third Respondent. It is now

represented by the learned senior counsel for the Petitioner, out of 22 applications entrusted to the third Respondent for processing, 9 members

have dual membership and they were submitted to the elected body as well as to the third Respondent. The Superintendent of the Post Office,

Tiruvannamalai Division on receipt of due orders from the first Respondent is directed to conduct verification of the applications submitted to him

by the elected body of the Petitioner Union and the third Respondent and to process the same in the manner known to law to ascertain dual

membership or withdrawal etc. and then to finalise the list of membership and to proceed to conduct the election as per the procedure laid down

under the Constitution.

21. In the result, the order of the first Respondent dated 22.4.2010 in SR/1-11/2009 is hereby set aside and the first Respondent/Chief Post

Master General is, without acting upon the resolution in CWC meeting held at Ajmer on 26.3.2010 and 27.3.2010, directed to pass suitable order

authorising the Superintendent of Post Office, Tiruvannamalai Division to proceed with the final verification of both set of membership forms

submitted to him by the elected body of the Petitioner union and the third Respondent in W.P. No. 9880 of 2010 respectively and to draw the final

list of membership and to proceed to hold election for the Petitioner union in the manner as indicated above and as per the procedure prescribed

under the Constitution, within one week from the date of receipt of the copy of this order and the Superintendent of Post Office, Tiruvannamalai

Division is also directed to complete the whole exercise within four weeks thereafter. Till then, the previous elected body of the Petitioner union

shall continue to be in charge of the day to day affairs of the Petitioner union

without taking any important decision.

22. Both the writ petitions are accordingly ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.