
(1999) 05 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 1045 of 1994

All Manipur DIC Supervisors Association	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 GLT 374

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : A. Nilamani Singh, for the Appellant; T. Nandakumar, A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—I have heard Mr. A. Nilamani, learned senior counsel for the Petitioner Association as well as Mr. T. Nandakumar, learned Advocate General, Manipur for the State Respondents.

2. This writ petition under Article 226 of the Constitution has been filed by the Manipur DIC Supervisors Association, formerly called the Manipur DIC Field Staff Employees' Association. DIC stands to District Industries Centre.

3. The Petitioner Association's 68 members were initially appointed and designated as Field Organiser (Cottage/Handloom) and Economic Surveyor in the DICs in the pay scale of Rs. 325-710/- per month. There were four other posts, namely, Supervisor (Infrastructure), Supervisor (Credit), Supervisor (Marketing) and Supervisor (Technical) in the DICs.

4. Considering that the DICs Field Organisers and Economic Surveyors on the one hand and Surveyors on the other requiring more or less same essential qualifications discharge same or similar functions, the Respondent No. 4 Director of Industries wrote to the Respondent No. 2, Secretary (Industries) vide Annexure-A/1 dated 28.2.83 to convey an approval of the Government for

equalisation of pay scale and status of the Field Organisers, Economic Surveyors and Surveyors. The Respondent No. 2, in turn made similar request to the Respondent No. 3 Secretary, Finance (PIC) vide Annexure A/2 dated 19.5.83 PIC stands for pay Implementation cell.

5. The Finance Department (PIC) by referring to its notification dated 16.6.83 regarding amendment of the Manipur Services (Revision of Pay) Rules, 1982 (ROP "82" in short) issued a corrigendum, Annexure-A/3 dated 17.10.87 revising the pay scale of Field Organisers and economic surveyors from Rs. 325-710/- per month to Rs. 720-1470/-w.e.f 31.3.82 equal to the pay scale of Supervisors.

6. The Finance Department (PIC) issued another order, Annexure-A/4 dated 11.3.88 revising the pay scale Rs. 720-1470/- per month to Rs. 1400-40-1800-EB-50-2300/-per month as specified in the first schedule appended to Manipur (Revision of Pay) Rules, 1987(ROP"87" in short).

7. The Finance Department (PIC) issued a letter Annexure-A/6 dated 24.12.91 to the General Manager, DIC that "the employees who were enjoying the scale of pay of Rs. 1400-2300/- under ROP "87" may continue to elect that scale of pay even after the notification of the ROP "90" if such retention of the scales of pay under the ROP "87" are more beneficial to them".

8. The Petitioner Association submitted representation to the Government go redesignate the post field organisers and Economic Surveyors as Supervisor (KVI/ Textile/EI) on the ground that all the supporting staff of the DIC, namely, supervisor, Field Organisers and economic surveyors have been discharging same or similar functions under the respective Functional/Project Managers and have been enjoying the same pay scale of Rs. 1400-2300/- per month. The Under Secretary, Industries sent the representation to the Respondent No. 4 Director of Industries to examine the matter and submit a report vide Annexure A/7 dated 2.7.93. The Respondent No. 4 submitted a favourable report, Annexure-A/8 dated 27.8.93 to the Commissioner of Industries stating inter alia, "the proposal when implemented will not cause any financial commitment/involvement The proposal may, therefore, be considered favourably at the earliest as a measure of streamlining the nomenclatures of the Department"

9. After exchange of correspondences, ultimately the Commissioner, Industries Department issued the following orders, Annexure-A/11 dated 30.12.93.

Government of Manipur Secretariat : Industries Department Orders by the Governor : Manipur Imphal, the 30th December, 1993

No. 1/11/93-IND: The Governor of Manipur is pleased to re-designate the following class-Hi posts of the Industries Department, Manipur as detailed below in the same scale of pay of Rs. 1400-2300/- in public interest.

Sl. Name of posts. No. of Creation order Post to which No. posts No. and date re-designated. 1. Field Organiser 16 58/28/78-[ND Supervisor(KVI) (Cottage) posts dated 1.9.78 2. Field Organiser 8 58/28/78-IND (Pt) Supervisor

(Handloom) posts dated 10.10.84 (Textile) 3. Economic Surv 45 (a) 58/28/78-IND Supervisor eyor posts dt. 1.9.78 (Economic Investagation). (b) 58/28/78-IND(Pt) dt. 1.9.78 (c) 58/28/78-IND(Pt) dt. 31.8.86 (d) 58/28/78-IND(Pt) (e) 58/28/78-IND (Pt) dt. 17. 4. 86 (f) 58/28/78-IND(Pt) dt. 25.11.80 (g) 60/28/80-IND(Pt) dt. 25.11.80 By order & in the name of Governor, Sd/-(H.V. Lalringa) Commissioner (Ind) Govt, of Manipur 10. Under the relevant Recruitment Rules vide Annexure-A/13, the post of Supervisor (DIC) is one of the feeder posts for promotion to the post of Assistant Director (DIC)/Development Officer (DIC). Consequent of re-designation of the post of Field Organiser and Economic Surveyor as Supervisor (KVI/Textile/EI), the members of the Petitioner Association who were initially appointed and designated as Field Organiser and Economic Surveyor had been made eligible for promotion to the higher post of Assistant Director(DIC)/Development Officer (DIC).

11. Then came the following Government order Annexure-A/14 dated 13.9.94. The following is the full text of the said order:

Government of Manipur Secretariat : Industries Department Orders by the Governor : Manipur Imphal, the 13th September, 1994 No.1/11/93-IND. The Governor of Manipur is pleased to cancel this Department order of even number dated 30.1253 whereby 16(sixteen) posts of Field Organiser (Cottage) had been re-designated as Supervisor (KVI), 8 (eight) posts of Field Organiser(Handloom) had been re-designated as Supervisor (Textiles) and 45 (Forty five) posts of Economic Surveyor had been re-designated as Supervisor(Economic Investigation). The posts now stand designated as they were prior to the issuance of the order dated 30.12.93 quoted above.

2. Further, it is ordered that the amount of additional pay, allowances etc. drawn by the Employees if any, consequent upon the redesignation of their posts vide the issue of Government order dated 30.12.93 aforesaid be recovered from the Employees concerned. By orders & in the name of Governor:

Sd/(A.K.Mangotra) Secretary(Industries) Govt. of Manipur.

12. Being aggrieved, the Petitioner Association has filed the instant writ petition challenging the above order adversely affecting its members on the grounds that the impugned order has not disclosed any reason whatsoever for cancellation of re-designation, that by re-designation order a right has been accrued to/confer upon the members of the Petitioner Association for being considered for promotion to the higher post of Assistant Director/Development Officer, that no show-cause notice was given to them before issuing the impugned order adversely affecting them and that re-designation does not involve any financial implication as they have been enjoying the same scale of pay which they were enjoying immediately before re-designation of respective posts.

13. On behalf of the State Respondents, a Joint Secretary Finance(PIC) Department filed an affidavit-in-opposition stating inter alia, that the Finance Department which is consulted for creation of post, re-designation etc.

particularly where there are financial implications have not been consulted by the Administrative Department i.e. Industries Department before issue of the order and hence the order was cancelled.

14. This is not a public interest litigation. Admittedly the Petitioner-association is not registered under the Societies Registration Act, 1860 or under any other statute. A technical point is taken in paragraph 2 of the affidavit-in-opposition that the Petitioner Association, not being a registered body is not a legal entity which can sue or be sued in its name. On this point, in paragraph 3 of the rejoinder affidavit, it is stated "the Petitioner Association having disclosed the names and service particulars of its members in an Appendix to the writ petition, has got legal entity to sue and be sued in law, though it has not been registered."

Obviously such disclosure does not confer any legal entity on the Petitioner Association to maintain a legal proceeding. Nothing has been placed before me to show that the Petitioner Association, though not a legal entity is permitted by any specific statutory provision to sue or be sued in its collective capacity. Mr. T. Nandakumar, learned Advocate General, submits that the Petitioner Association, not being a registered body having legal entity, this writ petition filed by its not maintainable and liable to be dismissed on this score alone. Where a number of individuals are affected by an official act, they can ordinarily bring a legal proceeding to challenge that act only if all such persons joined in the proceedings by name. In the instant case, all the members of the Petitioner Association who have been adversely affected by the impugned Government order, Annexure-A/14 dated 13.1.94 ought to have joined in the writ petition by name. It has been held in *Director General Ordnance Factories Employees' Association Vs. Union of India (UOI)* and *Director General Ordnance Factories*, that

9. In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge that only if all the members join in the proceedings by name, the association, in such a case, cannot maintain an application under Article 226 or other legal proceeding in its own name, as has been established by a number of decisions.

15. Even where an association is permitted by law to bring a legal proceeding, it can bring an application under Article 226 only when its rights as a collective body as distinguished from the aggregate rights of its members are affected by the act challenged in the proceedings *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI)* and Others,

15. Mr. A. Nilamani, learned senior counsel for the Association, however, contends that in the facts and circumstances of the case the instant petition should not be thrown out at this stage on the ground that it was filed by an unregistered

Association. In this regard, Mr. Nilamani refers to the decision in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, This decision is clearly distinguishable. There the point raised was whether an unrecognised Association can bring a legal proceeding, and not whether an unregistered Association can do so and in that case learned Attorney General took no objection to a non-recognised association maintaining the writ petitions. Moreover the said decision speaks of "little Indians".

16. Mr. A Nilamani placed reliance on another decision in Umesh Chand Vmod Kumar Vs. Krishi Utpadan Mandi Samiti reported in AIR 1984 Allahabad 46(58) which refers to the earlier decision as under:

7. The question of "standing" was the subject of a passing observation by Krishna lyre, J in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, (to which the other two learned Judges constituting the Bench did not avert to).

According to these observations the concept of "cause of action" and "person aggrieved" has become obsolescent in some jurisdictions, like "public interest litigation" by little Indians in large numbers seeking remedies in courts. In such a case alone an association of little Indians may be permitted to sue on their behalf. These observations graft an exception to the traditional rule of locus standi. They will not cover the case of an association suing on behalf of its members where its own interests are not affected and where its members do not answer the description of little Indians.

45. Our answer to the referred questions is as follows:

A.1 The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights:

(1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position("little Indians")

(2) In case of a public injury leading to public interest litigation, provided the association has some concern deeper than that of a wayfarer or a busybody, i.e. it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members. So that any order passed by the court in such proceedings will be binding on the members. In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement of protection of the rights of its members, as distinguished from the enforcement of its own rights.

(Emphasis supplied).

17. There is nothing on record to show that the members of the Petitioner Association are unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position ("little Indians") and that the rules of Regulations of the Petitioner association specifically authorised it to take legal proceeding on behalf of its members. The writ petition as well as rejoinder affidavit filed by the Petitioner association is silent in this regard. It is obviously not a case of public injury.

18. In view of the above, it must be held that this writ petition filed by the Petitioner association is not maintainable and is, therefore, dismissed without entering into its merit

19. I, however, hope and trust that the state Respondents would consider on merit the case of the members of the Petitioner association having regard to the relevant facts and circumstances. This Court's interim orders dated 21.9.94 and 9.2.95 suspending the operation of the impugned order dated 13.9.94 (Annexure-A/14) stand vacated.

20. The parties are left to bear their own costs.