
(2001) 06 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 10976 of 1991 and W.M.P. No. 16565 of 1991

Appa Servai P.

APPELLANT

Vs

Commissioner of Labour and Others

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Trade Unions Regulations, 1927 — Regulation 18
Trade Unions Act, 1926 — Section 20

Citation : (2002) 1 LLJ 208 : (2001) 3 MLJ 89

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; N.G.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The petitioner, a member of the third respondent Trade Union, had filed the present writ petition praying for the issue

of a writ of certiorari or any other appropriate writ calling for the records relating to the proceedings of the second respondent, the additional

Registrar of Trade Union-I in his proceedings No. B-3/No. 3266/91, dated July 31, 1991 and quash the same.

2. Heard Mr. Sivakumar, learned counsel appearing for the petitioner, and Mr. N.G.R. Prasad, learned counsel appearing for the third

respondent. Respondents 1 and 2 have also been served, but they have not filed their counter. The fourth respondent has been served, but he has

neither entered appearance nor filed his counter. The fifth respondent has not been served. However, the non-service on the fifth respondent need

not delay the disposal as the contesting respondents have been served.

3. According to the petitioner, he is a member of the third respondent Trade Union, which was started during the year 1975 and registered with the second respondent. There are about 5000 members in the said trade Union, who are all employed in Pallavan Transport Corporation, whom the third respondent Union represented. According to the petitioner, the Annual General Council Meeting was not convened and none of the records have been maintained and that the respondents 3 and 4, who are the office bearers, in view of the split in the political party, there was a split in the third respondent Union. The fourth respondent continued to act as President, but the Secretary and Treasurer were changed without conducting any election as provided under the Bye-laws and as provided under the Trade Unions Act.

4. In the year 1989, there was a merger of the two splitted groups. The General Council of the third Respondent Union has not been called for the past four years, and no General Body Meeting was conducted, and consequently required returns and declaration of funds were not filed and no Books of Account or Vouchers were maintained for the relevant period. The petitioner who is an executive member, had been repeatedly demanding the President and the Treasurer to render the accounts to be submitted for the respective years. The third respondent had failed to submit the Returns relating to the Union for the years 1987, 1988 and 1989 are required u/s 20 of the Trade Unions Act, 1926 read with Regulation 18 of the Tamil Nadu Trade Unions Regulations 1927, to the second respondent.

5. The second respondent issued notice dated September 14, 1989 calling for an explanation from respondents 3 to 5 as to why the Registration of the third respondent, Trade Union, should not be cancelled. On October 21, 1989 certain explanation was submitted. Yet, the statements were not filed. On March 5, 1991, the second respondent issued a show cause notice granting 15 days time and informing that the failure to send the statement will result in cancellation of the registration of the third respondent Union and as there was no reply to the show cause notice dated April 2, 1991 the second respondent had sent the second show cause notice. The third respondent had sent its reply dated April 19, 1991, requesting time but without signature. The said letter did not contain the signature of the Secretary. Since returns were not filed by the third respondent, the

second respondent, by letter dated June 21, 1991, cancelled the Registration and called upon the respondent to surrender the registration

certificate as per Regulations, 1927.

6. Thereafter the fourth respondent sent a representation dated July 19, 1991 alleging some false reasons for the non-filing of the Returns without

reference to the Executive Committee or General Council. Based upon the said representation, the second respondent without affording an

opportunity to the petitioner and others passed an order on July 31, 1991 rescinding its earlier order cancelling the registration. Being aggrieved,

the present writ petition has been filed.

7. It is contented by the petitioner that the second respondent has no authority to review its own order and the second respondent's action is

illegal, without jurisdiction, besides being arbitrary and in violation of principles of natural justice.

8. Interim stay was granted at the first instance. At the instance of the contesting respondent by order dated September 19, 1991, this Court

vacated the interim stay granted as the writ petitioner cannot have any grievance on the restoration of the registration of the third respondent Union.

Since then, without any break the third respondent Union is admittedly functioning and representing several thousand workers employed in various

Transport Corporations.

9. A counter-affidavit has been filed on behalf of the third respondent stating that the writ petitioner has started another Union and he is not an

aggrieved party to the restoration of the registration of the third respondent Trade Union. The present writ petition is not a bona fide action and it is

a mala fide one. The Union was recognised by the Management since 1983. The Union had been conducting various negotiations and entered into

various settlements from time to time including the Deepavali bonus and other settlements. The third respondent-Union has got a membership of

10,000 workers. The third respondent points out that there were factional disputes in the Union owing to political faction in the State and certain

disgruntled elements tried to forcibly seize the premises of the Union. Therefore, the Management sealed the premises and, therefore, the third

respondent was constrained to file a civil suit in O.S. No.5708 of 1988 on the file of the City Civil Court, which suit was decreed on October 14,

1988 in favour of the third respondent. Because of the factional dispute, the third respondent was prevented from filing E-Form Returns under the

Trade Unions Act for the years 1987, 1988 and 1989. Only on that basis, the second respondent had cancelled the registration. When this was

explained to the second respondent, the second respondent restored the registration of the third respondent Union by the impugned proceedings.

10. The impugned order relates to the matter between the Union and the Registrar and the petitioner is not an aggrieved party. It is pointed out that

the third respondent had submitted the necessary E-Forms and other declarations, besides, the accounts have been furnished. In the light of the

said development, the restoration of the Trade Union is not liable to be interfered and this respondent prayed for dismissal of the suit.

11. Mr. N.G.R. Prasad, appearing for the third and fourth respondents contended that no interference is called for and the petition is not bona fide

and he is not an aggrieved person. According to Mr. N.G.R. Prasad, the impugned proceedings is only administrative and, therefore, the second

respondent has got an authority to revoke the order of cancellation of its earlier order. While placing reliance on Section 21 of the General Clauses

Act, the learned counsel would also refer to the decision of the Bombay High Court in *Saraswat Co-op. Bank Employees Union Vs. V. State Of*

Maharashtra and Others, in support of his contention that the proceedings are only administrative and not quasi-judicial one and that the second

respondent is well-justified in revoking its earlier order.

12. The counsel for the petitioner and the contesting respondent made their submissions in respect of the following points:

(1) Whether the order impugned is quasi-judicial or administrative?

(2) Whether second respondent has acted without jurisdiction in cancelling its own order despite there being no provision to review its own order?

Whether Section 21 of the General Clauses Act could be invoked?

(3) Whether the second respondent has followed the principles of natural justice? Whether the objection submitted by the petitioner had been

considered or not?

(4) Whether second respondent as a routine had ordered revocation of its earlier order of cancellation without application of mind and without

reference to the fact that the third respondent Union had not submitted their

Returns or Accounts nor it had conducted Annual General Meetings

and that the omissions pointed out had not been rectified?

13. This Court is of the considered view that it is not necessary to decide the various contentions advanced by the counsel for the writ petitioner as

well as the counsel for the respondent, as in its considered view all those questions in view of the passage of a decade is unnecessary to be gone

into besides those questions need not necessarily be considered to render ultimate justice.

14. Concedingly for a decade the third respondent Union has been functioning and it had been conducting negotiations on behalf of several

thousand workers employed in various Transport Corporations and had taken part in very many annual settlements relating to Bonus, besides

various other disputes along with the other Trade Unions.

15. In fact, on the earlier occasion, a Division Bench of this Court had an occasion to appoint, Justice HADI as Commissioner to verify as to

which are the Unions entitled to take part in the negotiations with respect to the employees employed in various undertakings and the third

respondent is one of the Unions, which was reported to have number of members and it had been permitted to take part in the negotiations during

the relevant period.

16. Consequently, the third respondent Union had been representing several thousand workers for the past ten years and innumerable grievances

of its members have been taken up by the third respondent Union. Very many settlements have been arrived at between the Management and the

third respondent Union after negotiations.

17. If at this stage, at the instance of the petitioner, the order impugned has to be examined, it would result in serious prejudice and injustice.

18. Had the writ petition been decided during the year 1991 itself, things would have been different. But it is being taken up only now, and for the

past 10 years and above the third respondent Union had been functioning effectively, besides submitting its annual Returns, E-Forms and

declarations. At this point of time, if the validity of the order impugned is to be gone into, it may result in serious prejudice and cause irreparable

and undue hardship to the third respondent Union and a larger section of the workers whom the third respondent Union had represented in various

settlements from time to time.

19. In fact, if the impugned proceedings are to be interfered, and the cancellation order is restored, various settlements entered into between the

Management and the third respondent Union and other identically placed Trade Unions would be affected and the various representations made by

the third respondent Union will be in jeopardy. So also various proceedings instituted before various fora and this Court.

20. The writ jurisdiction is definitely for rendering substantial justice alone and the later developments and improvement and activities, which are in

the interest of the larger sections of the workers, have also to be taken into consideration, while examining the impugned proceedings. Further the

petitioner cannot claim that he is aggrieved by the impugned order as none of his personal rights have been infringed, besides he had associated

with some other trade Unions.

21. The remedy of the writ is not hyper-technical and it is to render substantial justice. The Court cannot adopt wreck attitude and negative

attitude. The Rule of law should run close to rule of life; and where larger interest of the society viz., workers, whose cause the third respondent

Union had espoused for the past ten years, the interference by judicial review if effected at this stage, will result not only in prejudice and undue

hardship but also result in defeat in very many agreements or settlements or negotiations that had taken place between the third respondent Union,

one of the major Unions and the Management of Transport Corporations.

22. It has been repeatedly held that when justice has been rendered and when the interest of larger number of workers are involved, this Court be

slow in interfering with such proceedings and will not be justified in sustaining those objections raised by the writ petitioner, who is not personally

prejudiced and as such objections would result in undue hardship and irreparable loss to the several thousand workers. If at this stage the

impugned order is to be interfered, as already pointed out, the same would result in undue hardship and injustice. Further the petitioner could not

have any grievance by the impugned order being sustained as he is one of the beneficiaries of the settlement concluded either by the third

respondent Union or other Unions.

23. As already pointed out, if the writ petition had been decided during the year

1991 itself, things would have been different. More than a decade has rolled and for more than a decade, the third respondent Union had been functioning effectively and had entered into various settlements after a detailed negotiations, and this Court has accepted in its proceedings that the third respondent Union is competent to represent the interests of several thousand workers, who are the members of the third respondent Union. If at this stage this Court is to interfere at the instance of the petitioner, all those orders or settlements or proceedings or events will be rendered illegal or ineffective. The Court of law shall not run rough to defeat those settlements and shall not be a cause for disruption of industrial peace. The balance of convenience and ultimate justice lies in sustaining the impugned order.

24. This Court under Article 226 of the Constitution of India will be justified in declining to grant relief as prayed for as grant of relief in favour of the petitioner would result in undue hardship to several thousand workers, whom the third respondent Union represented for the past ten"" years and to such course this Court shall not be justified by being a part. The petitioner's individual interest or challenge cannot be sustained or upheld as against larger interest of several thousand workers.

25. This Court declines to issue a writ prayed for though the points advanced by the petitioner deserves a detailed consideration. This Court also would he justified in taking into consideration of the development which had taken place in the course of last decade and such developments positively would show that the third respondent Union, is entitled to continue with its registration as it has been functioning normally, besides effectively espousing the cause of several thousand workers in the State Transport undertakings.

26. In the circumstances, this Court declines to make rule nisi absolute and discharge the rule nisi. The writ petition is dismissed, but without costs.

Consequently, connected W.M.P. is also dismissed. W.P. dismissed.