
(2011) 10 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 16391 of 2011 and M.P. No. 1 of 2011

Dr. Ambedkar M.E.S. Employees Association

APPELLANT

Vs

Head Quarters Chief Engineer (Navy), Station Road,
Vizagapattinam-4 Andhra Pradesh, Administration Officer II
CWE (Navy) (Commander Works Engineer) Fort St. George,
Chennai-600009 and Garrison Engineer, (Maintenance),
Naval Air Station, Arakkonam

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 2, 3, 4

Citation : (2011) 10 MAD CK 0214

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Krishnamurthy for M/s. Dalit Tiger C. Ponnusamy, for the Appellant; N. Mariappan, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is the trade union. In the writ petition, they have come forward to challenge an order dated 24.1.2011 passed by the second respondent and seeks to set aside the same and also seeks for a direction to the third respondent to grant permission to conduct introductory inaugural function. By the impugned order, the respondents informed the petitioner that the employees were already members of the trade union, i.e., Dr.Ambedkar SC/ST MES Employees Union and that merely because a new society was registered with Registration No. 82/2010 under the Tamil Nadu Societies Registration Act, they cannot acquire any legal status and that no facility can be extended to them. Challenging the same, the writ petition came to be filed.

2. The writ petition was not admitted and only a notice was ordered to the respondents. Accordingly, notice was served. The third respondent has filed a

counter affidavit, dated 30.7.2011.

3. In the counter affidavit, it was stated that already a trade union is functioning from the year 2006 having two office bearers, i.e., M/s.E.Mani and M.Mariappan. The recognition granted to the said union was not cancelled. The petitioner after having registered a new association, had asked for permission to conduct its inaugural function. Since there was no prior intimation regarding the cancellation of the earlier trade union and the subsequent formation of a new society, permission cannot be granted. A typed set was also filed showing the earlier Certificate of Registration of the previous union is still intact. That union had already sent the names of office bearers elected by them.

4. The communication sent by the respondents cannot be impugned and no judicial review is permissible over the said communication. In the absence of any law for the trade union recognition, this court cannot by granting direction confer defacto recognition on the petitioner association. In this context, it is necessary to refer to a division bench judgment of this court, presided by A.K.Ganguly, C.J. (as he then was) in K.V. Sridharan and S. Ragupathy Vs. S. Sundaramoorthy and The Principal Chief Postmaster General, . In paragraph 3, the division bench had observed as follows:

3....The said Act does not make any provision for recognition of such a union. Any recognition of union, even if it is a union relating to the employees of the Central Government, is governed by some departmental circulars. Those circulars are administrative in nature and not statutory. Therefore, those circulars also cannot be enforced in a writ petition. However, unfortunately, with regard to disputes arising out of the conduct of elections of such trade unions for electing its Office Bearers, various writ petitions are filed before this Court and some of them are entertained. But in none of these cases, this question has ever been discussed. At least, no such decision has been brought to the notice of this Court.

5. Further, the Supreme Court vide its judgment in Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, has held that the premises of the employer cannot be used for any activities of trade union without permission and no fundamental right is involved in such matters. The following passages found in paragraphs 10,11 and 12 may be usefully extracted below:

10. It was strenuously urged on behalf of the respondent that the rights guaranteed under Article 19(1)(a), (b) and (c) are inviolable and they cannot be interfered with, excepting in accordance with sub-articles 2, 3 and 4 of the said Article. According to Mr Garg, the railway workers have a right to assemble in any place they choose and give expression to their views so long as they do not disturb the work going on in the premises and that right is guaranteed to them under our Constitution.

11. It was not disputed that the Northern Railway is the owner of the premises in question. The fact that the Indian Railways are State undertakings does not affect their right to enjoy their properties in the same manner as any private

individual may do subject only to such restrictions as the law or the usage may place on them. Hence unless it is shown that either under law or because of some usage the railway servants have a right to hold their meetings in railway premises, we see no basis for objecting to the direction given by the General Manager. There is no fundamental right for anyone to hold meetings in Government premises. If it is otherwise there is bound to be chaos in our offices. The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so.

12. It is true that the freedoms guaranteed under our Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged by the tests prescribed by sub-articles (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others. If Mr Garg is right in his contentions then a citizen of this country in the exercise of his right under clauses (d) and (e) of Article 19(1) could move about freely in a public office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights.

6. In the light of the above, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.