

(2022) 03 CAL CK 0021
In the Calcutta High Court
Case No : WPA No. 2770 Of 2019

Fire Services Workers Union, West Bengal And Ors. APPELLANT
Vs
State Of West Bengal & Ors. RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 19(1)(a), 19(1)(c), 33
West Bengal Services (Duties, Rights And Obligations Of The Government Employees).
Rules, 1980 — Rule 4
Trade Union Act, 1926 — Section 10
West Bengal Fire Services (Maintenance Of Discipline) Act, 1974 — Section 3, 4
West Bengal Fire Services Act, 1950 — Section 38E

Citation : (2022) 03 CAL CK 0021

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharyya, Bhaskar Ghosh, Lalit Mohan Mahata,
Jhuma Chakraborty

Final Decision : Allowed

Judgement

Krishna Rao, J

1. The petitioner no. 1 is a Union of the personnels engaged as Group- B, C and D employees in the West Bengal Fire and Emergency Services.
2. The petitioner nos. 2 and 3 are the General Secretary and Joint Secretary of the petitioner no. 1.
3. The petitioners have challenged the Resolution No. 1940/FES/O/3S-16/2017 dt. 18.12.2018 issued by the Government of West Bengal.
4. The petitioner no. 1 is a registered Union under the Trade Union Act, 1926 having registration No. 732 dt. 30.03.1946.
5. The aims and objects of the petitioner no. 1 union amongst others to protect and espouse by all legal means the trade union rights including the economic,

social, democratic and cultural rights of the members for their services related interest.

6. Since the year 1946, the petitioner Union is discharging its duty as per the aims and objects of the Union after being recognized by Government of West Bengal and carrying out the immense responsibility of placing, highlighting and negotiating the grievances of the members of the union and other employees of the Department of Fire and Emergency Services, Government of West Bengal before the departmental authorities for redressal of the same by way of representations, deputations, discussions, deliberations of bilateral conciliation upon day-to-day interactions with the members as well as higher echelons of the administration and also extending their activities for protection of interest of other department of the State Government as well as Central Government along with working people of all strata apart from employees of the Department of Fire and Emergency Services, by fostering joint association and larger democratic movement by involving them by elevating through cultural level and thinking and awareness for the purpose of the same taking of various educational plans and activities by distributing leaflets, publishing poster, several magazines, organizing trade union class and cultural program etc.

7. All of a sudden by way of communication dt. 31.12.2018 a Resolution No. 1940/FES/O/3S-16/2017 dt. 18.12.18 issued by the Government of West Bengal was served upon the petitioner union.

8. By way of the resolution dt. 18.12.2018, the Governor of West Bengal has constituted a Board namely "The West Bengal Fire and Emergency Services Welfare Board" and "West Bengal Fire and Emergency Services Divisional Welfare Board" to ensure welfare of the members of the Fire Brigade of the State of West Bengal in the following manner:-

"West Bengal Fire & Emergency Services Welfare Board:-

(1) In the State, there shall be a Board, namely, the West Bengal Fire and Emergency Services Welfare Board and the said Board shall consist of the following members:-

(a)

Director General, West Bengal Fire &
Emergency Services
Chairman

(b)

Additional Director General or Director, West Bengal Fire & Emergency Services
Member Secretary

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Maintenance Superintendent

Member

(d)

Station Officers (two)

Members

(e)

Chief Mobilising Officer or Mobilising Officer

Member

(f)

Sub-Officers (two)

Members

(g)

Leaders (three)

Members

(h)

Fire Engine Operator cum Driver (three)

Members

(i)

Fire Operators (six)

Members

(j)

Staff Car Driver

Member

(2) The Board meeting shall be held once in every quarter.

(3) The Board shall formulate guidelines and procedures for smooth conduct of the Board.

4. West Bengal Fire and Emergency Services Divisional Welfare Board:-

(1) In every Division, there shall be a Board, namely, the West Bengal Fire and Emergency Services Divisional Welfare Board and the said Board shall consist of the following members:-

(a)

Divisional Fire Officer

Chairman

(b)

Senior Most Station Officer

Member

Secretary

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Station Officer

Member

(d)

Sub-Officers (two)

Members

(e)

Mobilising Officer or Assistant Mobilising Officer

Member

(f)

Leaders (three)

Members

(g)

Fire Engine Operator cum Driver (two)

Members

(h)

Fire Operators (three)

Members

(i)

Staff Car Driver

Member

(2) The Board meeting shall be held once in every month.

(3) The Board shall formulate regulations and procedure for smooth conduct of the Board

(4) The minutes of the meeting shall be recorded and the same will be sent to West Bengal Fire and Emergency Services Welfare Board for observation.

5. Quarterly report.-

(1) The West Bengal Fire and Emergency Services Welfare Board shall submit quarterly report to the Government in the Department of Fire and Emergency Services.

(2) The Additional Chief Secretary or the Principal Secretary or the Secretary of the Department of Fire and Emergency Services shall review the report periodically.

6. Annual Meeting:-

There shall be an annual meeting to be chaired by the Minister-In-Charge of the Department of Fire and Emergency Services and the be attended by the Additional Chief Secretary or Principal Secretary or Secretary, Department of Fire and Emergency Services and Director General, West Bengal Fire and Emergency Services to discuss progress of the Welfare schemes so far undertaken and/or to be undertaken for the welfare of the members of Fire Brigade. The meeting may also be attended by officers on invitation.

7. Welfare scheme:-

Matters relating to health care, retirement benefits, group housing, general principals of services as recruitment, promotion and discipline and other welfare scheme such as education and carrier counseling for dependents of members of Fire Brigade shall be in consideration of the West Bengal Fire and Emergency Services Welfare Board.

8. Fund:-

In order to implement different welfare activities of the members of Fire Brigade, the West Bengal Fire and Emergency Services Welfare Board shall maintain separate funds which shall comprise grant from the Government and/or Government organization.

9. Formulation of guidelines for functioning of West Bengal Fire and Emergency Services Divisional Welfare Boards:-

(1) The West Bengal Fire and Emergency Services Welfare Board shall formulate the operational guidelines for functioning of the West Bengal Fire and Emergency Services Divisional Welfare Boards, maintenance of funds etc.

(2) Members of the Board shall be selected by lotteries, if necessary.

Note:- All the associations or unions or societies of the members of Fire Brigade at all levels shall be treated as withdrawn with immediate effect."

9. By way of the impugned resolution dt. 18.12.2018, the respondents have

given the note that "All the associations or unions or societies of the members of Fire Brigade at all levels shall be treated as withdrawn with immediate effect".

10. On receipt of the resolution dt. 18.12.2018, the petitioner no. 2, the General Secretary of the petitioner no. 1 union had made representation to the respondent authorities for restoration of the Fire Services Workers Union, West Bengal by cancelling and/or withdrawing and/or rescinding the caption resolution immediately.

11. In spite of receipt of the representation from the petitioner no. 2 no action has been taken by the respondents.

12. The Ld. Senior Counsel Mr. Bikash Ranjan Bhattacharyya representing the petitioner, submitted that the members of the union were shocked to observe with dismay that the utter disregard and lack of sympathy of the rights of the democratic institutions, the respondents have communicated the resolution which is arbitrary, in complete violation of natural justice as the same was issued without giving any opportunity of hearing.

13. The Ld. Senior Counsel submitted that in the 3rd paragraph of the impugned Resolution the respondent authorities have made a false, frivolous, baseless and unfounded allegation, inter alia, that the repeal of West Bengal Fire Services (Maintenance of Discipline) Act, 1974 repealed by the West Bengal Fire Service (Maintenance of Discipline) (Repealing) Act 1978 resulted in lacking of proper discipline due discharge of duties in emergency situation by the member of the Fire Brigade without any material evidence to support and substantiate the same.

14. The Ld. Senior Counsel further submitted that the union enjoyed recognition of the Government of West Bengal on and from the date of registration of the Union and after grant of permission for formation of such Union by the concern Government upholding the right to form Union and as such the same cannot be illegally withdrawn by executive fiat.

15. The Ld. Senior Counsel further submitted that freedom of speech and expression as well as a freedom to form association or unions is not only a basis fundamental right but also a part of human rights, which has also been upheld by the Supreme Court of India and held that the recognition of the Government may attain the constitutional importance where without such recognition, the fundamental rights under Article 19(1)(a) and 19(1)(c) would become illusory.

16. It is further submitted that the right of the members of the Union to carry out their function is enshrined in the Article 19 (1) (a) and 19 (1) (c) of the Constitution of India and as such the impugned resolution is not sustainable in stopping the members of Union from carrying out their function relating to the Union on the said count.

17. The Ld. Senior Counsel further submitted that the impugned resolution is in gross violation of the fundamental rights as enshrined in the Constitution of India as well as provisions of Article 20 and Article 30 of the Universal Declaration of

Human Rights and International Covenant on Civil Political Rights, 1996 and total disregard the legal right and privileges granted under the Trade Unions Act, 1926.

18. The Ld. Senior Counsel further submitted that the executive government upon consideration of all aspects took a considerate decision to recognize the union one of the representative body of the employees of the Department of Fire and Emergency Services. The union is functioning in spite of their being change in the political Constitution of the Government from time to time and succeeding Government is duty bound to continue and carry on the unfinished job of the previous government for the reason that the action is that of the 'State' within the meaning of Article 12 of the Constitution of India which continues to subsist and therefore it is not required that the new Government can plead contrary to the State action taken by the previous Government in respect of the particular subjects.

19. The Ld. Senior Counsel further submitted that no reason for less a cogent or sustainable reason has been disclosed whatsoever changes of basic circumstances promoting to the purported decision of the said withdrawal of the association or unions or societies of the members of the Fire Brigade. The impugned resolution is arbitrary and violative of the provision of the Constitution of India and legal rights and privilege granted under the Trade Unions Act, 1926 and the impugned resolution have been issued in colourable exercise of power, particularly in the absence of any law supporting the said Act of the authorities.

20. The Ld. Senior Counsel pointed out Section 10 of the Trade Unions Act, 1926 wherein the cancellation of registration has been prescribed.

Section 10:-

"Cancellation of Registration.- A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar-

(a) on the application of the Trade Union to be verified in such manner as may be prescribed;

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded and rule providing for any matter provision for which is required by section 6;

(c) if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union."

21. The Counsel for the petitioner has relied upon Section 4 of West Bengal Service (duties), etc. rules which reads as follows:-

"Rights.- The following shall be the rights of Government employee:

(1) every Government employee shall have the right to form Associations/Unions/ Federative bodies of the employees;

(2) every Government employee shall full trade union rights including the right to strike. The right to strike shall, however, be subject to compliance with the provisions laid down in Appendix;

Note:

The right to strike shall not, however, be available to the members of the W.B.C.S (Executive and Judicial) and other allied executive, administrative, medical, engineering and educational services.

(3) every Government employee shall enjoy full democratic rights except being a member of any political party;

Explanation.- These rights do not however include any which is prohibited under the law of the land.

(4) any Government employee may, with prior intimation to the authority and subject to the conditions laid down in clause (7) of rule 6 of these rules, participate in a radio or television programme:

(a) incites communal and/or parochial feelings;

(b) goes against the unity and integrity of the country;

(5) any Government employee may contribute any literary or scientific writing or write any letter to any newspaper or periodical, subject to the provisions laid down in clause(4)."

22. The Counsel for the petitioner has also relied upon Appendix-I of the said rule which reads as follows:-

"Procedure to be followed before going on strike

1. No employee shall go on strike without-

(i) Completing the process of conciliation or negotiation in the manner laid down hereunder;

(ii) Giving notice of at least 14 days to the appropriate authority and the strike shall not commence before expiry of the period of notice. For public utility services (as detailed below) the period of notice shall be thirty days; and

Note:-

The following services shall be included in the category of public utility services:

- (1) All services directly connected with the running of hospitals.
- (2) Fire Brigade - operational services.
- (3) Drinking Water Supply - operational services.
- (4) Milk Supply - operational services.
- (5) Ration shop of the Food and Supplies Department."

23. The petitioner also relied upon Article 33 of the Constitution of India which reads as follows:-

"Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c) ,

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

24. The Ld. Senior Counsel appearing for the petitioner relied upon the judgment passed by the Coordinate Bench of this Court in W.P. No. 92 of 2012 (Bijitaswa Rout & Ors. -Vs- State of West Bengal & Ors.) dt. 10.12.2012 wherein the Coordinate Bench had set aside the Resolution No. 233-PL dt. 10.01.2012 issued by the Additional Chief Secretary, Home Department, Government of West Bengal conveyed the decision of the Government to substitute the Joint Consultative Committees for Police at different levels with the Police Welfare Board for the West Bengal Police and Kolkata Police and the recognition accorded in favour of the three Associations was to be treated as withdrawn.

25. The Ld. Senior Counsel by relying upon the said judgment submitted that the Coordinate Bench had set aside the said impugned resolution and the instant case is also covered under the said judgment. The Ld. Senior Counsel prayed for setting aside the impugned resolution dt. 18.12.2018.

26. Per contra, Mr. Lalit Mohan Mahata, the Ld. Counsel representing the respondents no. 1 and 2 submitted that the West Bengal Fire and Emergency Services was constituted in terms of West Bengal Fire Services Act, 1950 and Fire Brigade so constituted is an association of disciplined nature in a way that it can act in a concerted efforts and neatly coordination manner at the time of

emergency and the members of Fire Brigade are public servant within the meaning of Section 38E of the Act of 1950.

27. The Ld. Counsel for the respondents further submitted that to ensure discipline amongst the members of the Fire Brigade and also to ensure proper discharge of their duty, West Bengal Fire Services (Maintenance of Discipline) Ordinance, 1974 was passed and subsequently the Ordinance was replaced after coming into force of the West Bengal Fire Services (Maintenance of Discipline) Act, 1974.

28. The Counsel for the respondents further submitted that in Section 3 of the Act of 1974 there is a restriction on the right to form association, freedom of speech etc. and it is mentioned that "No member of Fire Brigade shall without sanction of State Government or the authority prescribed in this behalf of a member of or be associated in any way with, any trade union, labour union, political association or any class of trade union, labour union or political associations. The Ld. Counsel for the respondent has further submitted that Section 4 of the Act of 1974 provides penalty with imprisonment or with fined for violation of any Provisions of Section 3 of the Act of 1974.

29. The Ld. Counsel for the respondents further submitted that since beginning various unions, associations, registered and unregistered were formed by the members of the Fire Brigade for ventilating their grievances and there are altogether about 15-16 associations were in existence but only one association has challenged the impugned resolution implied that the other associations/unions have accepted the, impugned resolution.

30. The Ld. Counsel for the respondents further submitted that no formal sanction of State Government was obtained by any of the associations, unions and societies. It is further submitted that for ventilation of the grievances by each and every of such unions, associations resulted in lack of discipline in the general approach of administration of these disciplined organization like Fire Brigade.

31. The Ld. Counsel for the respondents further submitted that after considering the various factors, the Department of Fire and Emergency Services had felt to constitute Welfare Board so that the grievances of the members of the Fire Brigade can be ventilated in a concerted manner and also that the welfare of the members of the Fire Brigade can be looked after in a proper and systematic manner. It is further submitted that after considering the opinion of the finance department and the law department a new policy for consideration of Welfare Board was introduced and accordingly after getting approval of the Cabinet of the Government of West Bengal, the resolution has been issued under the name of West Bengal Fire and Emergency Services (Constitution of Board) and (Miscellaneous Provisions) schemes, 2018 constituting Welfare Board in two tire system was promulgated.

32. The Counsel for the respondents further submitted that there shall be one

Central West Bengal Fire and Emergency Welfare Board and one West Bengal Fire and Emergency Services Divisional Welfare Board in each District of West Bengal comprising representatives of all the cadres of Fire Brigade, shall be chosen by way of lotteries, if necessary, so that there cannot be any cadre or class of members of Fire Brigade directed who would remain unrepresented.

33. The Counsel for the respondent further submitted that the respondents have not committed any error by issuing the resolution dt. 18.12.2018 and prayed for dismissal of the writ application.

34. Considered the rival submissions of the parties, documents available on record and the judgment relied by the petitioner.

35. The issue arising for consideration in the instant writ application whether the impugned resolution No. 1940/FES/O/3S-16/2017 dt. 18.12.2018 issued by the Secretary to the Government of West Bengal conveying the withdrawal of all the associations, unions or societies of the members of Fire Brigade at all levels, is sustainable in law or not.

36. In the scheme of the Constitution, suppression of power is discernible. It has entrusted the executive or the administrative wing of the exclusive domain of formalities policies of governance, which is regarded by it to be in the best of interest of the nation and its people. What is good and right for the people rest or their decision and all their action must be directed towards achieving the same, with the caveat that the executive power of the State must be exercised in tune with the constitutional norms and principles. It is also open to the executive to change the policy according to the demands of time and situation, and also in public interest, for justifiable reasons. However, it is not the law that a policy decision enjoys immunity and can never be subject of judicial review. The grounds based there on scrutiny could be made or undoubtedly limited and the judicial review court may, in its discretion, decline to interfere unless an exceptional case warranting exercise of writ powers is set up. A change in policy by itself does not vitiate the action taken. If the change is based on proper materials and is considered rational or reasonable, there may not be the scope for interference. It would be perfectly legitimate exercise of power for the Court to examine as to whether the change in policy decision attracts the voice of unrepealness and arbitrariness or not, or whether it is patently malafide or not. Preservation of rule of law must be paramount importance for every reasonable citizen of the country, whatever is his capacity. Justice is not to be administered by the judiciary alone, it is the constitutional resolve of the people that the executive must reach ought to the masses by framing policies that are fair, just and reasonable and intended to promote public good. None can, however, possibly dispute that while an Executive Officer looks at things from this stand point of policy and expediency, a judge looks at things objectively, uninfluenced by considerations of policies and expediency. Quite often absence of statutory mandate to record reasons in support of a policy decision is used as shield to guard against judicial interference. The executive ought to realized that recording

of reasons serves a salutary purpose, namely, it excludes of chances of arbitrariness and ensures a decree of fairness and transparency in the decision making process. To look for the reasons that compelled the executive to change its policy would be also a just approached on the part of the Court in dispensing justice to the parties.

37. The fundamental rights that the Constitution envisions are scared and enable the people to engage a multifarious lawful activities not only in self-interest but also in the interest of the public, some of whom to their utter misfortune do not have the minimum resources to enforce their right for obtaining that, which otherwise ought to legitimately accrue of them. Right to obtain a permit or a license or recognition or exemption put follow if the pre conditions therefore, are found to have been fulfilled or adhered to, which is widely at variance from concession that may have been granted in special circumstances. Certainly, by granting recognition to the union of the petitioner, the authorities did not grant any concession. Also, law since to be settled that the rule that administrative orders confer no justiciable right is a general rule and alike all general rules, is subject to exception. To say that an administrative order can never confer any right is too wide a proposition. There are administrative orders can take away or abridge rights that the principal of audi alteram partem can be imported into this area. It is settled law that since by reason of a policy vested or abridge rights cannot be taken away, such a right, a fortiori, cannot be taken away by an amendment thereof.

38. Unless there is likelihood of a change in decision even if opportunity of hearing were extended and thus it may not be directed to be extended as mere ritual, for, in the ultimate analysis, it would be futile exercise, this Court is of the considered view that 'Useless formality theory' ought not to be applied mechanically.

39. The Registrar of trade unions, West Bengal had registered the union of the petitioner on 30.03.1946 that is prior to independence. The registration granted in favour of the petitioner union was accepted and were allowed to continue until 18.12.2018.

40. The Union on the basis of the recognition till the impugned resolution was issued, have claimed involvement in multifarious activities for the greater benefit of the Fire Brigade personnel's. The involvement of the Union by the Government, accepting the status of the Union as recognized Union and thus the recognition of the Union could not have been revoked on the specious ground that the recognition in terms of the Act had not been obtained.

41. The judgment passed by Coordinate Bench of this Court in WP No. 92 of 2012 (Bijitaswa Rout & Ors. -Vs- State of West Bengal & Ors.) held that:-

"This Court is further of the view that if at all recognition accorded in favour of the three Associations were to be revoked, that ought to have been preceded by an opportunity of hearing to the authorized representatives of each of the three

Associations. Non-grant of opportunity of hearing in conformity with the principles of natural justice, on facts and in the circumstances, also renders the impugned resolution vulnerable.”

42. The petitioner Union is registered under Trade Union Act, 1926. In the said Act the procedure for cancellation of registration is provided under Section 10 of the said Act. In the said Section, it is also provided that not less than two months previous notice in writing is specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

43. In the instant case, the Registrar has not passed any order for the withdrawal of the registration. The registration/recognition of the Union petitioner has not been withdrawn by the Registrar. It is admitted fact that before withdrawal of the registration, no opportunity has been given to the petitioner Union.

44. This Court is of the view that before withdrawal of registration, no opportunity was given to the petitioner. Non-grant of opportunity of hearing in conformity with the principle of natural justice. The order passed by the Coordinate Bench of this Court in WP No. 92 of 2012 dt. 10.12.12 is squarely applicable in the instant case.

45. In view of the above, the impugned resolution is stands set aside. The respondents shall be entitled to substitute West Bengal Fire & Emergency Services Welfare Board and West Bengal Fire & Emergency Services Divisional Welfare Board but in accordance with law. If representative from the petitioner Union is not to be included in the above mentioned Welfare Boards, their views must be invited and in case responses are received, the same must be received due consideration. The petitioner Union shall be entitled to function as the same was functioning before the impugned resolution was issued.

46. The Writ petition is stands allow to the extent as observed above, without any order for costs.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.