
(1973) 02 KL CK 0014
In the High Court Of Kerala
Case No : W.A. No. 449 of 1971

M.A. David

APPELLANT

Vs

K.S. E. Board

RESPONDENT

Date of Decision : 19-02-1973

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), 226, 309

Citation : (1973) KLJ 486

Hon'ble Judges : V. Khalid, J;T.C. Raghavan, J

Bench : Division Bench

Advocate : M.P. Menon and M. Ramachandran, for the Appellant; V. Narayana Menon and A.N. Kuttan, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, C.J.—The appellant is the Vice President of the Kerala State Electricity Board Executive Workers' Union. He filed a writ petition on behalf of the Union for quashing Ex. P9, claiming that the respondent, the Kerala State Electricity Board, should not have withdrawn the recognition given by the Board to the Union. A learned judge dismissed the writ petition, and hence the appeal. The decision of the Single Judge is reported as M.A. David Vs. K.S. E. Board, . Some of the contentions raised before the Single Judge have not been very seriously urged before us: of course, they have also been urged, but not seriously. One of them is that the decisions taken under Ex. P9 were under extraneous political pressure. As the Single Judge has rightly pointed out, the allegations of mala fides are denied in the counter affidavit filed on behalf of the Board. And it is also averred in the counter affidavit that the Board has taken these decisions bona fide after careful deliberation without being influenced by any extraneous consideration. The Single Judge has accepted the truthfulness and genuineness of these allegations; and we do not think we need reconsider the matter at the appellate stage.

2. The next contention urged is that, though the Board has stated that Ex. P9

has been passed on the principle of recognition of only majority unions this principle has not been strictly adhered to by the Board in giving recognition to some other unions which are not strictly majority unions. In support of this the counsel has pointed out that the union of drivers by name the Kerala State Electricity Board Drivers" Union has been recognised in Ex. P9 though it is not a majority union. Here also the averments in the counter affidavit indicate that the drivers form a separate category distinct from the other executive employees and the Drivers" Union represents the majority of the drivers. Thus, on this contention also we agree with the Single Judge.

3. The next contention urged is a more serious one, viz., that the withdrawal of recognition of the Union represented by the appellant infringes the fundamental right guaranteed under Art. 19 (1) (c) of the Constitution. Though this contention has been raised by the counsel, the counsel has not seriously pursued it in view of the decisions of the Supreme Court referred to by the Single Judge himself, viz., All India Bank Employees" Association Vs. National Industrial Tribunal and Others, and Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others, . In addition to these two decisions referred to by the Single Judge, another, recent decision of the Supreme Court has also come to our notice, viz., D.A.V. College, Vs. State of Punjab and Others, , where the Supreme Court has referred to the earlier decisions and has confirmed them: the principle laid down is that the right guaranteed under Art. 19 (1) (c) to form associations does not carry with it the concomitant right that the associations shall achieve their object: in other words, the right to form associations does not have with it the concomitant right that such associations should be recognised by the employer. Thus, this contention is also not of any avail.

4. The contention seriously urged by the counsel of the appellant is that, recognition having been accorded once the same should not have been withdrawn without notice to the Union: in other words, the principle of natural justice, viz., audi alteram partem has been violated in withdrawing the recognition already granted to the Union.

5. It is not disputed by the Board that recognition was granted to this Union in 1966. But, the contention of the Board is that the Union was not entitled to recognition and the mere fact that the Board recognised the Union does not confer on it any right which the Union otherwise does not have. It is also contended by the Board that Ex. P9 contains a decision on the Board's policy as to how industrial peace should be attained and how, on what principle, recognition should be accorded to the unions to which of them recognition should be accorded. The counsel of the Union has drawn our attention to Ex. P8, the minutes of the Tenth Meeting of the Electricity Board Industrial Relations Committee held on 23rd January 1971. In this committee, the appellant-Union was not a member ever since its formation, though the Union itself was recognised by the Board. At the meeting, discussion appears to have taken place on the question as to how representative major unions and other unions should

be recognised and what should be the qualification for recognition. After discussion, widely divergent views are found to have been expressed by the members who took part in the discussion, and therefore, the matter appears to have been left to be decided by the Board itself. In pursuance of this, Ex. P9 came to be passed on 23rd February 1971. The principle followed in taking the decisions in Ex. P9 appears to have been that the unions should be classified category-wise and that the majority unions which come within each category should alone be recognised. We do not think that any objection can be taken to this principle. In fact, six categories of workers have been classified in Ex. P9 and eight unions coming within these six categories have been recognised on the basis of the said principle. We may point out at this stage that at that time there were actually twelve unions, which had already been recognised, out of which eight alone have been included in Ex. P9 leaving out the rest, of which the appellant-Union was one.

6. The counsel of the appellant-Union and the counsel of the Board have drawn our attention to quite a few decisions, English decisions and decisions of the American Supreme Court. They have also drawn our attention to a few decisions of Indian courts. We do not think we need consider all the decisions cited before us. The decisions which we think relevant for the purpose of the enquiry before us are Southern Railway Mazdoor Union Vs. Southern Railway (by General Manager), and North-East Frontier Railway Mazdoor Union Vs. The General Manager, North-East Frontier Railway and Another, . The first of these is a decision by a Single Judge of the Madras High Court (Kailasam J.), who was considering Para. 3610 of the Indian Railway Establishment Manual. The said paragraph reads.

Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition rests in the discretion of Government, but recognition, when granted, will not be withdrawn without due cause and without giving an opportunity, to the association to show cause against such withdrawal.

Note The term "industrial employees" includes railway servants.

In view of the second sentence of this paragraph, the learned judge has held that, once recognition has been granted and if that recognition has to be withdrawn, an opportunity should be given to the association to show cause against such withdrawal. This conclusion follows from the particular language of Para. 3610 itself, which provides that the grant and continuance of recognition rests in the discretion of the Government and the recognition once granted will not be withdrawn without giving an opportunity to the association to show cause against withdrawal. By the way, this paragraph also indicates that the grant and continuance of recognition rests in the discretion of the Government, the employer. It is evident that this decision cannot be pressed into service in a case like the one before us, where there is no provision of law or statutory rule which confers a right on the appellant-Union similar to the right conferred by Para.

3610 referred to above.

7. The other decision is a Division Bench ruling of the Assam and Nagaland High Court, where also the question considered was under the same Para. 3610 of the Railway Establishment Manual. And similar reasoning finds place in this judgment as well. Goswami J., who spoke for the Division Bench, has observed that though a labour union has no fundamental right to recognition by the employer, still recognition once obtained by it in accordance with the relevant rules becomes its "life-blood and gets integrated into its very existence". It must be remembered that the case was decided on the language of Para. 3610 of the Railway Establishment Manual: the finding in the case was that the rules for the recognition of labour unions in that case related to the conditions of service of the railway employees under Art. 309 of the Constitution. It must also be remembered that, in the case before us, there are no rules for the recognition of labour unions which can be construed as part of the conditions of service.

8. There is yet another decision a Division Bench ruling of the Calcutta High Court in A.C. Mukherjee and Others Vs. Union of India (UOI) and Others, . In our opinion, this decision is almost similar to the case before us. The Calcutta High Court has said that the order of de-recognition does not infringe the fundamental right guaranteed under Art. 19(1) (c) of the Constitution. Of course, this has been laid down by the decisions of the Supreme Court we have already referred to. The Calcutta decision has gone on to observe that recognition or de-recognition of a union, being a matter of private arrangement under the code of discipline which has no statutory force whatsoever, cannot confer on the appellants (before the Calcutta High Court) either individually or in a representative capacity the right to ask for recognition, or to complain against de-recognition, of the union. The decision has also pointed out that recognition of a trade union is, by and large, a matter of agreement between the employer and the union except in Maharashtra and Madhya Pradesh, where there has been legislation in this behalf. If recognition cannot be enforced by a writ, recognition cannot be continued also as of right.

9. It is not claimed that there is any statutory rule or at least any agreement between the Board and the Union that the recognition once granted will not be withdrawn without giving an opportunity to the Union to be heard. We hasten to add that, if there is only an agreement, then Art. 226 may not be available, unless, probably, it can be construed that the said agreement is part of the condition of service as contemplated by Art. 309 of the Constitution. In a case like this where there is no statutory rule or even an agreement, the Union cannot insist that it should be heard before the recognition is withdrawn. It must be remembered that what the Board has done in this case was to lay down a policy as to how industrial peace could be achieved, which unions should be considered as representative of particular categories of employees and which unions should be allowed to resort to collective bargaining on behalf of the said workers. It must also be remembered that these arrangements made under Ex. P9 are only

for three years. It is quite possible that, after three years if circumstances change and the representation of the workers in particular unions also change, the Board might change their decision and recognise some other unions which are then found to be more representative of the categories of workers, and in that re-arrangement, the appellant-Union might also be recognised for the particular type of workers it represents. In the absence of any statutory rule or at least an agreement, the appellant-Union cannot insist that it should be heard before the recognition is withdrawn. We therefore confirm the decision of the Single judge and dismiss the appeal. However, we do not pass any order regarding costs.