

(1997) 08 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24711 of 1997

Mazdoor Union Kisan Sahakari Chini Mill Ltd.Ghosi,Mau

APPELLANT

Vs

U.P.Co-operative Sugar Factories Federation,Lucknow & Ors.

RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 08 AHC CK 0081

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.

1. The petitioner is, as urged by Sri Ashok Khare learned Counsel for the petitioner, a recognised union under the byelaws whereof it is authorised to espouse cause of its members and incur expenses for the said purposes. Sri A.K. Misra, learned Counsel for the respondents had taken a preliminary objection that this writ petition is not maintainable at the behest of the petitioner. In reply thereto Sri Khare had relied on the decision in the case of Akhil Bhartiya So hit Karamchari Sangh (Railway) v. Union of India and others, AIR 1981 SC 298. He contends that on the basis of the ratio decided in the said decision, the petitioner is eligible and entitle to espouse the cause of its members and as such this writ petition is maintainable. In answer to the contention of Sri Khare, Sri Mishra relies on a Full Bench decision in the case of Umesh Chand Vinod Kumar and others v. Krishi Utpadan Mandi Samiti, Bharthana and another, AIR 1984 Allahabad 46and contends that pursuant to the Full Bench decision, a union or association has a right to espouse the cause of its member only on the conditions laid down therein. Sri Mishra, on the other hand, contends further that in the present case almost all the individual members of the union had initiated separate writ proceeding in order to secure their interest that they have been working in those post for which the advertisement impugned in the present writ petition has been issued. He refers to Annexure 5 to the writ petition wherein

particulars of the writ petitions filed by 114 persons whose interest the union is espousing, has been specified.

2. In this writ petition, the advertisements contained in Annexure 14 has been challenged by Sri Khare on two fold grounds. First, that after lapse of 12 years this being the first advertisement the backlog, if any, cannot be taken into account in respect of reservation of S.C., S.T. and backward classes and after the promulgation of Act No. 4 of 1994 which came into force on 1112 1983, the present recruitment being the first recruitment, it cannot be confined only to the case of the S.C., S.T. and backward classes inasmuch as according to him it should be general selection and only when the post reserved for S.C., S.T. and backward classes remain vacant then only such a procedure can be adopted.

3. Since the preliminary question as to the maintainability of the writ petition has been taken, in my view, is only the writ petition is found maintainable then he other contention as raised by Sri Khare can be gone into. In para 17 of the decision in the case of Umesh Chandra Vmod Kumar (supra) this Full Bench has considered the impact of the case of Akhil Bhartiya Soshit Karamchari Sangh (Railway), (supra) and had made the following observations:

"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 Indian 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."

4. Ultimately, in para 20, this Court in its Full Bench and summarised as to in which circumstances such writ petition can be maintained by the associations or unions.

5. It is a well settled principle that unions or associations can very well espouse the cause of its members even if it is not registered provided its byelaws or the rules authorises it to espouse the cause on behalf of its members. In the present, case as contended by Sri Khare, such byelaws are present. But the fact remains, the members for whom this writ petition is being moved are not little Indians. The little Indians as has been interpreted in the Full Bench decision is that those persons who are unable to espouse their own cause either due to the reason of poverty or their position in the society. In the present case, it appears that 114 members have already espoused their cause themselves. If it is a case that in fact those persons are covered by the cause that is being espoused in this writ petition, in that event, it cannot be expected to be a case that fits in the ratio laid down in para 20 of the Full Bench decision. From the facts itself it does not appear that it covers the first two conditions in para 20. However, it fulfills their condition. But then the very question can very well be gone into in the pending

writ petitions filed by those who are individually affected in accordance with the law and procedure prescribed. Since the question involves the service of 114 persons therefore, this question is connected with the cause of action involved in the pending writ proceedings initiated by those 114 members. It is not open to espouse the same cause involved in the proceedings that are pending. Inasmuch as it would be dependent on the result or the decision in the said writ petition. Inasmuch as if it is held that those petitioners are entitled to continue, in that event, there would be no vacancy for the purposes of such recruitment and the process through advertisement would be wholly void. Therefore, it is not a case which can be decided through a separate writ petition.

6. It is further contended by Sri Khare that the Union does not represent only 114 person but infact it represents 193 members of the Union. Therefore, the union may represent the rest of the members of the union who has not come before this Court. The other members of the Union can very well join in any of the writ petition if they want to espouse their cause through any of the aforesaid members. The union can very well get itself added as one of the petitioner in any one of the writ petition and its cause and challenge the very advertisement if it so advised. Inas much as the advertisement impugned is apprehended by the Union to affect the services of its members, out of which 114 members have already filed writ petition to establish their legal right. The Union is challenging the same on behalf of its members who themselves have already sought to establish their own right. The fact disclosed indicates that it is in furtherance of the right involved in pending writ petition. The advertisement cannot be challenged independent of such right. If the other members have any such right it is open to them to join their other coworkers. It is also open to the union to join them as well. Had it been a case independent having no nexus with the pending writ proceedings the case would have been otherwise. The Union is representing those 114 members as well. It is not a case that the union is disowning those 114 members or that the benefit that it would derive would not ensure to the said 114 members. The union is not supposed to split up the interest in between two groups of its members. The challenge to the advertisement flows from the right to continue in the post by those 114 members of the union along with the rest. The cause of action can, therefore, not be split up. It is the part of the same cause of action which is incapable of being split up by the union though it can be so done by individuals.

7. With these observations, the writ petition is dismissed. This order will not affect to the right of the petitioner or the individual members of the union to seek remedy in the pending writ petition in appropriate manner as it or they may be advised. Petition dismissed.