
(1962) 04 CAL CK 0011
In the Calcutta High Court

Ray (R.)	Vs	APPELLANT
Dalvi (V.G.) and Others		RESPONDENT

Date of Decision : 19-04-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 120, 20
Constitution of India, 1950 — Article 10, 16, 4

Citation : (1962) 2 LLJ 562

Hon'ble Judges : S.K. Niyogi, J;B.N. Banerjee, J

Bench : Division Bench

Judgement

B.N. Banerjee, J.—There is a National Federation of Post and Telegraph Employees, a trade union. A constituent body of the said trade union is the All India Postal Employees' Union, Postmen and Class IV, which is itself not a trade union but a mere unincorporated association. The membership of the unincorporated association is open to all postmen and Class IV postal employees and to extra-departmental staff other than extra-departmental agent's branch and sub-postmaster. The association has its headquarters at Delhi.

2. According to its rules, the All India Postal Employees' Union may have branches, variously known as circle, divisional, district and city or local branches. One such branch is the West Bengal Circle branch, having its head office in Calcutta (as defined in the City Civil Courts Act, 1953). The plaintiff-appellant, R. Ray (who is now dead), claimed to be a member as well as the secretary of the said West Bengal Circle branch.

3. The defendant 1, V.G. Dalvi, is the general (secretary of the All India Postal Employees' Union and the defendant 2 Jamnadas Akhtar is its deputy general secretary.

4. By a letter (Ex. A. 55), dated 25 June 1958, addressed to the plaintiff, the defendant 2, in his capacity, as the deputy general secretary Of the All India Postal Employees' Union, Postmen and Class IV, suspended the West Bengal Circle branch and appointed an ad hoc committee, consisting amongst others of

defendant 3, as its chairman and defendant 4 as its convener, to take over administration of the circle branch. The letter in so far as it is material for the purposes of the instant appeal is set out below:

In accordance with the resolution passed at the Nagercoil Conference of the A.I.P.E.U., Postmen and Class IV, I, in the capacity of the deputy general secretary of the A.I.P.E.U., Postmen and Class IV, hereby inform you that while acting under the Clause K of Rule No. 18 of the constitution of the A.I.P.E.U., Postmen and Class IV, I have suspended the West Bengal Circle Branch of the A.I.P.E.U., Postmen and Class IV, and have formed an ad hoc committee consisting of the following persons:

* * *

The ad hoc committee will function as the circle branch till fresh election which will be held as soon as possible and within this period it shall reorganize the union in the circle and hold the circle conference to conduct the election of the office-bearers.

Reasons.--The decision for the suspension of the circle branch and the formation of the ad hoc committee are as follows:

(1) At the last annual session of the circle union, a section of elected delegates was not allowed to take part in the preliminary deliberations.

(2) The treasurer of the circle union did not keep the funds of the circle union in any scheduled bank or post office; instead of it, he kept the funds in his own pockets and thus defied the provisions of the constitution and the decision of the circle union.

(3) The balance sheet presented at the annual session was not duly audited although the circle union had previously appointed a chartered accountant for that purpose.

(4) The circle union overlooked the abovementioned fact and did not take any action against the financial secretary or the treasurer.

In the light of the abovementioned facts, I have suspended the circle union and have formed an ad hoc committee solely in the interests of the members of union and to safeguard the sanctity of the constitution of the union.

In accordance with the decision, you are asked to hand over the charge to Sri Bhola Nath Bhattacharya of Bagh Bazaar Post Office, who is authorized to take charge from you and to act as convener of the ad hoc committee.

The plaintiff-appellant protested against the action taken against the West Bengal Circle by his letter, dated 30 June 1958 (Ex. A. 59), the material portion of which is here in below quoted:

(a) I have found therein that you have levelled certain charges against this circle union and declared these as reasons for suspension; but unfortunately you never

referred these charges to me. Had this been done, I could have conclusively proved that the charges could not be made at least against this circle union and are, therefore, fictitious, if not through information submitted by interested person or persona. I tell you very frankly that during my lifetime I have never seen that any democratic organization has taken any action against anybody without hearing from the other party. You have given me no opportunity to defend my position and have taken decision against me. I, therefore, request you to please cancel your decision of suspension at least for the sake of natural Justice.

(b) I like to mention incidentally that the charge 1 can never be levelled against this circle union. Calcutta District Branch violated the decision of the "Special All India Conference" in regard to the "emergency fund" and did not pay a single pie to the circle union as quota in spite of repeated correspondence from the circle union in this respect mainly as Sri B.L. Bharati, one of their office-bearers and an office-bearer of the C.H.Q. as well, encouraged that branch to act in this in disciplined line. Some of the delegates of that branch also misbehaved during the conference. The conference, therefore, took a decision in regard to that branch in the lines of the directive from the C.H.Q. in the matter of non-payment of "emergency fund." The delegate-in-charge of the Calcutta District Branch, who also happens to be the honorary secretary of the branch, apologized before the conference for indiscipline and misconduct of some of his delegates and assured to make payment of the quota within a few days. The conference then decided to allow these delegates to participate in the conference. And this decision was ungrudgingly accepted by all the delegates including those from the Calcutta District branch. And uptill now nobody has raised any dispute regarding this decision.

(c) Moreover, I like to politely point out that Clause 21 of the constitution of our union, reported to have come into force in the Nagercoil conference, clearly lays down that if anyone has any dispute to raise regarding any matter in any circle, the matter should be referred to the circle union first and when nothing was referred to the circle in this respect, no decision can be taken in regard to the matter by any other body. And also the deputy general secretary is not empowered to issue such an order under Rule 19(k) of the constitution referred to above.

(d) I have also observed that you have stated in your letter under reference that you have taken the decision of suspension to accordance with the resolution passed at the Nagercoil conference. From records supplied to us, I find that no such decision was taken at the All India Conference at Nagercoil.

(e) In fine, I would again request you to please immediately cancel the order of suspension as it has created a deadlock in this circle. I, however, assure you that if after proper investigation and after hearing from us against any charge or charges, you may consider reliable, any competent body of the organization considers that I had not been sufficiently responsible to the cause of the workers,

I shall immediately vacate my post of trust by immediately calling the circle conference to elect a better man in your presence or in any other way conducive to the interest of the general members.

I also request you to please immediately instruct all concerned to defer taking action till the reconsideration of this letter.

The defendant 2, by his letter, dated 18 July 1953 (Ex. A. 62), regretted his inability to cancel the order of suspension, at that stage, but assured the plaintiff that he would place the matter before the central working committee at its next meeting and communicate the decision of the committee to the plaintiff. In the meantime he asked the plaintiff to "abide by" the order of suspension and to make over the charge. This request was repeated by the defendant 2 in his letter, dated 7 August 1958 (Ex. A. 64), to the plaintiff. The plaintiff, however, expressed his unwillingness to obey the order of suspension and make over charge. This will appear, amongst other documents, from plaintiff's letter, dated 3 September 1958 (Ex. A. 66). The attitude of the plaintiff considerably annoyed the defendant 2, the deputy general secretary, and he refused to discuss the matter further with the plaintiff, as appears from his letter (Ex. A. 67), dated 17 September 1958, an extract from which is set out below:

The central union does not recognize any circle union headed by you. I have already told you in my previous letters that I have suspended the circle union on reasons given in earlier letter on the subject and the question of cancelling this decision or entering into correspondence with any defunct body does not-arise at all.

It is no use entering into further discussion on this point. In our hearts we know who is wrong. Anyway it is in fitness of things that the charge is handed over to the convener of the ad hoc committee. Any further discussion can be held after the charge is handed over.

The determination and annoyance of the deputy general secretary (defendant 2) notwithstanding, the attitude of the general secretary (defendant 1) was conciliatory. By his letter (Ex. A. 69), dated 22 September 1958, to the plaintiff, he justified the order of suspension but nevertheless wrote as follows:

However, out of regard for you and the larger interests of the unity and solidarity of our organization in the West Bengal circle, I have asked my deputy general secretary to withdraw the order of supersession and to dissolve the ad hoc committee only on one condition that; your treasurer should immediately hand over all the cash (except an amount of Bs. 100 to be kept with you s for day-to-day expenses of the union) including all amounts received by him in respect, of special and emergency funds and all other assets belonging to the union to Sri Jamnadas Akhtar or to such persons as he may nominate on behalf of the central union. Of course, the treasurer should get all the accounts of the union audited by the union's auditor within a specified period to be submitted to the next meeting of the circle conference. On the above condition being fulfilled, I have

asked Sri Akhtar to call the circle conference as early as possible on a date to be settled in consultation with you. The working committee that will be elected by the conference will be given the cash and other assets by Sri Akhtar.

I think this is the best solution of the dispute and I believe that it will be acceptable to you. I would appeal to you to use your personal influence to restore unity and harmony in the affairs of the circle union which is a major unit in our organization.

5. The plaintiff replied to this letter by a long and discursive letter. (Ex. A. 74), dated 31 October 1958, at the end of which he observed:

As regards the only condition suggested by you in your letter I am to say that you will perhaps now agree that as this circle union was not at fault in any way but a grave injustice was done to it, no condition, in all fairness, is at all necessary. However, if you still consider that any condition is still necessary, I am prepared?not for any other reason but only out of regard for you and for restoring unity amongst workers-to hand over the pass book containing the entire balance (i.e., total cash asset) of this circle minus about rupees one hundred only to be kept with the circle union for day-to-day work of this circle union as suggested by you, even though this will cripple the activity of this circle union and thus harm the general members to some extent. The pass book will be handed over to the deputy general secretary, C.H.Q. immediately on hearing from him either under registered post or personally if he is able to come down to Calcutta. And he may hand over the same to the circle committee when he comes to attend the next circle conference as desired by you.

6. On receipt of the above letter from the plaintiff, the defendant 1 wrote to the defendant 2 a letter (Ex. A. 76), dated 18 November 1958, asking him to cancel the order of suspension as here in below quoted:

In the meanwhile, I have received a letter dated (nil) from Sri Ray giving explanation on the points stated in my letter. He is prepared to send the pass book of the union to you by registered post, thus satisfying the condition imposed by me. Sri Ray's letter in original is enclosed herewith for your information.

It is no use going into the details of the controversy. We must drop a curtain on the past and think of the future. The West Bengal Circle Union is one of our major units and we must bring the affairs to normal. In view of the unity and solidarity of our organization which is absolutely necessary if we are to have a show-down with the Government after the Pay Commission's report is out, I would strongly advise you to write after you receive the pass book immediately cancelling the order of supersession of the circle committee and dissolving the ad hoc committee. You should also ask Sri Ray as the circle secretary to call a meeting of the circle conference, as early as possible after giving proper notice, on a date or dates to be settled in consultation with you. You should be present at the meeting of the conference.

7. The deputy general secretary (defendant 2), however, remained unrelenting. He wrote a threatening letter (Ex. A. 77), dated 18 November 1958, to the defendant 2 to the following effect:

Please clarify the situation. In case you also think that information supplied by the central union to you was "incorrect, unreliable and incomplete" and you have intervened to cancel the order of suspension and the suspended circle branch is restored, please treat this letter as my resignation and allow me to call a meeting of the central working committee to discuss the situation, because in the light of the interpretation given to your letter by Sri Ray, it is impossible for me to function.

I have already circulated for holding of the annual conference of the circle branch but Mr. Ray's letter has upset the programme.

I may point to you that in view of mischiefs of Mr. Ray, it is not possible for me to consult him on the question of fixing the annual conference.

8. The threat contained in the letter (Ex. A. 77) had its effect on defendant 1 and he became more or less resigned in his attitude when he replied to the defendant 2 on 24 November 1958 (Ex. A. 79):

I enclose herewith a copy of demi-official letter addressed by me to Sri Ray. It is clear that unless and until the C.H.Q. sends an official letter of cancellation of the suspension order of West Bengal Circle Union and dissolution of the ad hoc committee there is no cancellation and dissolution.

I would however advise you to write to Sri Ray asking him to carry out the condition imposed by me in my first demi-official letter and on his complying with it, issue a circular to all the district branches of the West Bengal Circle Union calling a meeting of the circle conference on a date or dates fixed in consultation with Sri Ray.

I enclose also the original letter received from Sri Ray which I could not enclose in my last letter.

My advice is that the controversy must be put an end to as early as possible.

9. The plaintiff, however, had relied too much on the attitude of the general secretary (defendant 1) and he advertised the contents of the letter Ex. A. 69 from the general secretary (defendant 1) as victory for the circle branch. This annoyed the defendant 1, as will appear from his letter (Ex. A. 80), dated 24 November 1958, set out here in below:

My deputy general secretary Sri Jamnadas has drawn my attention to a circular which you have issued to all your district branches announcing your "Vijay" on the strength of my demi-official letter to you. Sri Jamnadas has naturally taken objection to your carrying on this kind of propaganda; You will realize that you are not "out of the woods" until you receive an official letter from Sri Jamnadas carrying out my advice. This sort of action on your part has unnecessarily

complicated matters. I addressed you as general secretary, West Bengal Circle Union" not to give recognition to the suspended union over the head of the central headquarter, but simply because I did not know your residential address. So, please stop all further propaganda based on my letter until you hear officially from Sri Jamnadas Akhtar. I have to maintain the prestige of the central headquarter and any action on the part of your circle to harm that prestige will not be tolerated by me, in the interest of discipline in our organization.

As regards there being no provision in circle constitution about the general secretary C.H.Q. being entitled to call a meeting of the circle conference, of course there could naturally be no such provision in your circle-constitution. But the central headquarter being the supreme body of our organization, it has full powers of control and supervision over all circle unions. So, I think you should not make any bones about Sri Jamnadas calling the meeting of the circle conference in consultation with you. Forget all that has happened and try to create a congenial atmosphere between the central headquarters and your circle union in the largest interests of the unity and solidarity of our organization.

10. At this stage defendant 2 wrote to the plaintiff, after lapse of about nine weeks, the following letter (Ex. A. 81), dated 29 November 1958:

I am sending to you a copy of circular which I have sent to all the branches in the West Bengal Circle. You shall agree to me that I have tried to prepare grounds for mutual co-operation by advising the ad hoc committee to withdraw all chargesheets. The central union is prepared to take further steps to achieve the unity. in order to enable me to take these steps, I advise you to hand over the account books (I.e., pass book, ledger, vouchers, cash book, etc) to my nominee in Calcutta to get the accounts audited by a chartered accountant. As soon as this is done and accounts are duly audited, I shall take the next step in the light of Sri Dalvi's letter addressed to you on this subject. You will not be expected to pay the auditor's fee.

11. The plaintiff complied with the request of the defendant 2, and handed over the pass book and the money and at the same time wrote the following letter (Ex. A. 82), dated 1 December 1958, to the defendant 2:

I am sending the pass book of this circle union to you along with this letter as advised by the general secretary, Sri V.G. Dalvi. The balance of the emergency fund has also been deposited in the pass book for the present.

I expect that you will take proper steps be that the letter of suspension is rescinded at an early date and thus arrangements may also be made for holding the circle conference early.

12. On 12 December 1958, the defendant 2 gave an unencouraging reply (Ex. A. 85) to the plaintiff to the following effect:

I have already informed you that the central union does not recognize any organization which claims to be the West Bengal Circle Branch of the A.I.P.E.U.,

Postmen and Class IV. You expect us to rescind the letter of suspension. Before taking any step on the lines proposed by you, it is necessary that you should recognize the ad hoc committee of the West Bengal Circle Branch of this union. The handing over of your pass book to us means certain obligations to be fulfilled by you. One of these obligations is to adhere to the discipline of the central union. The insistence to claim the continued existence of the Bengal Circle Union and your attachment to it as circle secretary means defiance of this discipline. As a lawyer of repute, you know the legal and the moral position. If you stand on your previous claims, then the question of asking the withdrawal of suspension letter does not arise at all. You expect us to take that step only because there is no recognized circle branch.

Please do not prolong our decision on the problem and salient to the earlier decision of the central union. Sri Dalvi had asked you to hand over the accounts, etc., to us to upkeep your prestige. I am also in favour of it. After all you have been leading the organization for a number of years. However, discipline is discipline. As long as the order of suspension is there, you cannot claim to be the circle secretary nor does the central union recognize the defunct circle branch.

13. The only reply which the plaintiff could think of giving to the defendant 2 in these circumstances will appear from his letter (Ex. A. 86), dated 22 December 1958, set out hereunder:

I now invite your attention to the relevant portion of the directive of our general secretary, as contained in his demi-official letter dated 18 November 1958, addressed to you, for your perusal which reads as...I would strongly advise you to write, after you received the pass book, immediately cancelling the order of supersession of the circle committee and dissolving the ad hoc committee." I think my request to you to cancel the letter of suspension immediately, you will now agree, is, therefore, a request to you. to act in accordance with the directive of the general secretary. All other new points that you have now raised in your letter under reference including the handing over of accounts, etc., therefore do not arise at least for the present as the directive is very specific and supersedes all past suggestions, if any, as referred to by you. I can assure you, however, that nothing has been done by me that is morally or legally not Justified. Moreover, the obligations, etc., that you have referred to in your letter under reference, relate to the dispute of the past which has been closed by the general secretary and accepted by you also. I, therefore, do not understand why you raise issues relating to chapters agreed to by you as closed and cite these as grounds for refusing cancellation of the suspension in clear violation of the directive contained in the demi-official letter dated 18 November 1958 from our general secretary, Sri Dalvi.

I would, in the circumstances, request you to please cancel the letter of suspension immediately as directed by our general secretary and see that disunity amongst workers, created out of formation of ad hoc body, is not allowed to continue by any further delay from your end.

14. Needless to add, the letter produced no effect on the defendant 2.

15. It was in the background of the facts appearing from the correspondence quoted above that the plaintiff filed the suit, out of which this appeal arises, in the City Civil Court at Calcutta, challenging the order of suspension, dated 24 June 1958, as illegal, made without Jurisdiction and ultra vires the constitution of the union and claiming declaration to that effect and also a permanent injunction on the defendants restraining them from giving effect to the operation of the order. The suit was (?) filed as a representative suit, under the provisions of Order 1, Rule 8, of the Code of Civil Procedure.

16. Separate written statements were filed by all the four defendants in the suit. The written statements filed by defendants 1 and 2 follow a similar pattern. They denied the competency of the plaintiff to be and to become a member of the secretary of the West Bengal circle branch and to represent its members or to maintain the suit in a representative capacity. They maintained that the order of suspension was duly made on account of misconduct in bona fide exercise of the disciplinary powers under the constitution of the All India Union and that the ad hoc committee was also properly appointed. They also contended that the office-bearers of the committee, of which the plaintiff was the secretary, had not been duly elected. They disputed the Jurisdiction of the City Civil Court to try the suit and also pleaded certain legal bare by way of demurrer.

17. The written statements filed by defendants 3 and 4 also disputed the plaintiff's case in toto and contended that the suit was maintainable as against them.

18. The trial Court held that it had Jurisdiction to try the suit but dismissed the plaintiff's claim on merits, being, inter alia, of the opinion-

(1) that defendant 2, in exercise of the powers delegated to him, lawfully suspended the West Bengal Circle branch on charges of misconduct and irregularities in administration.

(2) that the ad hoc committee was validly appointed, and

(3) that the plaintiff was neither a regular nor an honorary member of any primary branch and as such could not lawfully be elected secretary of the circle branch and that the suit filed by him in his capacity as an ordinary member was misconceived and not maintainable in law.

19. The propriety of the decree passed by the trial Court is being disputed in this appeal.

20. When the appeal first came up for hearing before a Division Bench presided over by Guha, J., there was an objection raised on behalf of the defendants-respondents to the effect that the City Civil Court, Calcutta, had no jurisdiction to try the suit. in support of the objection it was urged that only part of the cause of action arose within the jurisdiction of the City Civil Court, the disputed order

having been made at Delhi but made operative in Calcutta and inasmuch as Section 20(c) of CPC would not apply to suite before the City Civil Court by reason of the provisions of Section 7 of the City Civil Courts Act, 1953, read with Section 120 of the Civil Procedure Code(?) the suit filed before the City civil Court, without leave under Clause 12 of the Letters Patent, must be deemed to be Incompetently instituted in that Court. On the objection being taken, the Division Bench felt that the following two questions should be decided by a Special Division Bench, namely

(a) whether Section 20, and Section 20(1) in particular, of the Code of Civil Procedure, apply to the City Civil Court, or whether in such matters the City Civil Court is governed by Clause 12 of the Letters Patent

(b) if the City Civil Court is at all governed by Clause 12 of the Letters Patent, whether a suit in which part only of the cause of action arose within the territorial jurisdiction of that Court, instituted without leave of the City Civil Court, becomes incompetently instituted and, therefore, not maintainable;

and made a reference accordingly.

21. A special Division Bench consisting of Bachawat, Sinha and P.N. Mookerjee, JJ., heard the reference and answered the questions, as here in below stated:

Question (a): Section 20 including Section 20(c) of the CPC applies to the City Civil Court. Subject to limitation in Section 20 of the Code a suit may be instituted in the City Civil Court when the cause of action wholly or in part arises in the City of Calcutta. Leave of the Court to institute the suit in such cases is not required. Clause 12 of the Letters Patent of the High Court does not apply to the City Civil Court

Question (b): in view of the answer given above this question does not arise.

22. With the answers given above the appeal has now been placed before us for final hearing.

23. During the pendency of the appeal in this Court R. Ray, the plaintiff-appellant, died. The present appellant was brought on the record in his place.

24. Mr. Jitendra Kumar Sen Gupta, learned advocate for the appellant, argued the following points in support of the appeal. He contended, in the first place, that there was no power in the central body or in any officer of the central body to suspend the circle branch at all or alternatively on grounds mentioned in letter Ex. A. 55 dated 30 June 1958. He contended, in the next place, that in any event the deputy general secretary (defendant 2) had no power, to suspend the circle branch or union, alternatively such power, if it all exists in the general secretary (defendant 1), was not delegated to his deputy (defendant 2) or not validly delegated to him. Thirdly, he contended, that in the absence of ratification of the order of suspension by the Central working committee, the order could not become effective. He also contended that the manner in which the order of

suspension was made was opposed to all rules of natural justice and that the action of the deputy general secretary (defendant 2) was mala fide. Lastly, he contended that the order of suspension had been withdrawn by the general secretary (defendant 1) but the deputy general secretary (defendant 2) wrongfully refused to give effect thereto.

25. In order to appreciate the points urged by Mr. Sen Gupta, it is necessary for us to examine some of the rules (called as articles) which govern either the National Federation of Post and Telegraph Employees, a trade union, or its constituent body, the All India Postal Employees' Union, Postmen and Class IV. The constitution of the National Federation (Ex. A. 31) is printed at p. 280 of part IIA of the paper book. Article 4 of the Constitution (Ex, A. 31) reads as follows:

4. Structure.--(a) The federation shall consist of the following federating unions:

(i) * * * (ii) The All India Postal Employees Union, Postmen and Class IV

(iii) to (ix) * * *

(b) The federating unions shall not have the right to secede from the federation. The federation shall not have the power to expel any union.

26. Article 10 deals with the powers of the federal executive committee and Article 10(iv), which invests the committee with rule-making power, is to the following effect:

(iv) To make rules in all matters not inconsistent with the constitution of the federation.

27. Article 16 deals with the quota of subscription payable by the federating units to the parent federation and is to the following effect:

Ten per cent of the monthly subscription raised by each local unit of each of the federating unions shall be remitted direct to the treasurer of the federation not later than the 20 of every month.

28. The aforesaid constitution was approved by the Government of India, Ministry of Communication, and the letter of appeal is printed at p. 278 to 279 of part IIA of the paper book.

29. In exercise of the rule-making power under Article 10(iv) of the constitution of the federation, the following rules amongst others were framed:

1. Each federating union shall provide for the following in its constitution:

(1) * * * (iii) Branches defaulting payment of quota of subscription to the national federation, all India and circle unions or to any one of them for three consecutive months shall remain suspended till clearance of the dues.

30. The All India Postal Employees' Union, Postmen and Class IV, at its conference held at Srinagar (Kashmir), on 23 September 1956, adopted a

constitution of its own (Ex. A. 32) which is printed at p. 310-323 of part IIA of the paper book. The material portions of Rules 4, 6, 7, 8, 9, 10, 11, 13, 15, 16, 23 and 24 are set out hereinbelow:

4. Federation.--This union shall be federated to the National Federation of Post and Telegraphs Employees compulsorily.

6. Organization.--The union shall consist of circle, divisional and district or local branches where needed.

7. Membership.--(a) All postmen and Class IV postal workers and extra-departmental staff.

(b) Outsiders shall be eligible to become the members of the union.

8. Management.--Management shall rest with the following bodies:

* * * (a) All India conference, which shall meet once in a year. A special session of All India Conference shall be convened by the general secretary on advice tendered by the central working committee or federal executive committee or on a requisition made by three circle branches.

(b) The central working committee which shall meet at least once in every

10. Office-bearers.--There shall be following office-bearers of this union:

One president.

Two vice-presidents.

One general secretary.

One deputy general secretary.

Two assistant general secretaries.

Four organizing secretaries.

One financial secretary.

One assistant financial secretary.

11. Duration of office.--All office-bearers shall hold office till the next session of the all India conference.

13. Function of office-bearers

I. * * * II. * * * III. General secretary

(a) The general secretary shall be the chief executive officer of the union and shall administer the affairs and working of the union as per direction of all India conference and central working committee.

(b) * * * (c) * * * (d) He shall have power to investigate, inspect and guide the subordinate circle branches in their duties and organizational work.

(e) He shall call the meetings in consultation with the president or on the requisition of the members as per constitution.

(f) * * * (g) * * * (h) He shall be competent to delegate his powers to the deputy general secretary.

IV. Deputy general secretary and assistant general secretaries

Those officials shall help and assist the general secretary in administering the affairs of the union and shall perform the duties assigned to them either by the conference or by the central working committee or by the general secretary.

15. Disciplinary action.?The central working committee, and the all India conference shall have the right of suspending and expelling any office-bearer or member of the union who shall be furnished with a list of charges in writing and be allowed fourteen days from the date of the receipt of the charges in which to submit the defence. If the defence is not submitted within the prescribed period, ex parte decision shall be taken. The suspended or expelled members have the right of appeal from the central working committee to the all India conference.

23. Disaffiliation of branches.?Any branch falling to pay quotas for three consecutive months shall be disaffiliated with due notice.

The circle branches, which are component parts of the All India Postal Employees' Union, Postmen and Class IV, also had a constitution of its own (Ex. A. 19) framed on the same date. Rules 4, 5, 6 and 8 of the rules of the circle branch are to the following effect:

4. Membership.?Every member of local branch shall be deemed to be the member of the circle and all India union.

5. Relation.?The circle union shall be one of the component units of the all India union.

* * *

8. Management.?Management shall rest with the following bodies:

(a) the circle conference shall normally meet every year.

(b) the circle executive shall ordinarily meet once after six months.

The All India Postal Employees' Union, Postmen and Class IV, is said to have changed its old constitution, adopted at Srinagar, and framed another one (Ex. A. 33) at its conference at Nagarooll, held on 20 to 22 December 1957. The material portions of the said constitution are set out below:

4. Federation.?This union shall be affiliated to the National Federation of Post and Telegraph Employees.

5. Organization.?The union shall consist of circle, divisional, district and city or local branches. The local branch may be formed where needed with prior

sanction of the respective circle branch.

6. Membership.?(a) All postmen and class IV postal employees and all extra-departmental staff other than E.D.A. branch and sub-postmasters.

(b) Non-employees of the Post and Telegraph department shall be deemed as honorary members during their tenure of their office.

12. Management: (a) Management shall rest with the following bodies. All India conference, which shall meet once in a year. A separate session of the all India conference shall be convened by the general secretary on decision of central working committee or on the requisition made by any three circle branches.

(b) The central working committee, which shall meet at least once in every six months.

(c) At least twenty-one days notice shall be given for holding of the all India conference and as regards the central working committee, a notice shall be given at least fifteen days before the meeting.

15(A). Office-bearers: There shall be following office-bearers of this union:

One president.

Two vice-presidents.

One general secretary.

One deputy general secretary.

Two assistant general secretaries.

Four organizing secretaries One financial secretary.

One assistant financial secretary.

15(B). Voting: At the time of election of Office-bearers and decisions in the conference the delegates and office-bearers of the central union shall cast their votes and select the office-bearers. Ordinarily, the voting shall be conducted by show of hands, power, in case of demand by any voter, the chairman of the meeting shall conduct lay secret ballot.

16. Duration of office: All office-bearers shall hold office till the next session of the all India conference;

17(iii). (a) General secretary : The general secretary shall be the chief executive officer of the union and shall administer the affairs and working of the union as per direction of all India conference and central working committee.

* * * (h) He shall be competent to delegate his power to the deputy general secretary.

(k) He shall have power to take necessary action regarding circle unions

including suspension and confiscation of the funds of any circle union and formation of ad hoc committee in its place, subject to the ratification of the committee. However, the appeal can be made to the all India conference.

20. Disciplinary actions: The central working committee and the all India conference shall have the right of suspending and expelling any office-bearer or member of the union who shall be furnished with a list of charges in writing and be allowed fourteen days from the date of the receipt of the charges in which to submit the defence. If the defence is not submitted within the prescribed period, ex parte decision may be taken. The suspended or expelled members shall have the right of appeal from the central working committee to the all India conference.

21. Disputes: All disputes regarding the election of office bearers or of any other kind in a circle, divisional, district, city or local branch will be referred to the circle union, and take decision which will be subject to the ratification of the circle executive. However, an appeal against such decision can be made to the circle executive committee and after that to the circle conference. In case of dispute at circle levels the decision of the all India conference shall be final. In case of disputes regarding formation of branches at local levels, the decision of the all India union shall be final.

27. Suspension of branches: Any branch which fails to pay quotas for three months shall be suspended with due notice of one month.

31. Keeping in mind the provisions of the aforesaid constitutions we now turn to examine the arguments advanced by Mr. Sen Gupta.

32. His contention that there is no power in the constitution to suspend a circle union is not correct. The general secretary had no such power under the Srinagar constitution (Ex. A. 32), but under Rule 18-III(k) of the Nagerooll constitution (Ex. A. 33), the general secretary was invested the power to suspend any circle union, to confiscate its funds and to form an ad hoc committee in its place subject to the ratification of the committee meaning the central working committee mentioned in Rule 12(b). Under Rule 18-III(h) of the Nagerooll constitution (Ex. A. 33), the general secretary was also competent to delegate his powers to deputy general secretary and the later, as his delegate, was, therefore, also competent to suspend circle branches. The validity of such delegation, however, has to be determined in this appeal.

33. His next contention that even if there was the power to suspend a circle union invested either in the general secretary or in his delegate, the power was not exercisable on the grounds stated in the letter of suspension, dated 24 June 1958 (Ex. A.55), is also not correct in the form in which he puts it. This argument has its basis on letter, dated 8 January 1958, which reads as follows:

In exercise of the power conferred upon me by Rule 18-III(H) of the constitution of the All India Postal Employees' Union, Postmen and Class IV, passed at

Nagerooll in December 1957, I hereby delegate my powers under the said constitution to Sri Jamna Das Akhtar, the deputy general secretary of A.I.P.E.U., Postmen and Glass IV, who will exercise all such powers of the general secretary during my absence from Delhi.

It was contended that there was no evidence to show that general secretary was absent from Delhi at the time when the suspension order was passed by the deputy general secretary. This point was not established by cross-examination, although D.W. 2, Michulal Bharati, in examination-in-chief, spoke of delegation of power by the general secretary to the deputy. in the absence of evidence, we are not prepared to hold that the deputy general secretary had exceeded the power delegated to him in the matter of suspension, namely, that he exercised the power when the general secretary was himself in Delhi.

34. It was next contended by Mr. Sen Gupta that power to suspend vested on the general secretary, being a power judicial in nature, was incapable of being delegated and therefore the order of suspension by deputy general secretary under the delegated power should not be maintained. in support of his proposition, Mr. Sen Gupta strongly relied on the case of Barnard and Ors. v. National Dock Labour Board (1953) 1 All B.R. 113. in that case the plaintiffs were registered Dock workers employed by the firm of master lighter men. The National Dock Labour Board was set up under the Dock Workers (Regulation of Employment) Order, 1947, to administer the scheme provided by the order, with power to delegate to local dock boards, constituted by the order, certain disciplinary functions, including their power to suspend a worker for falling to comply with a provision of the order. it was held that the power of suspension conferred by Clause 16(2)(b) on the local board was a judicial or a quasi-judicial function and the local board had no power to delegate it. Singleton, L.J., in his Judgment observed:

In the present case, if the question is not one of Jurisdiction, it is certainly closely akin to it. The local board had no jurisdiction to delegate; the port manager had no jurisdiction to adjudicate; each purported so to do; and as to Cooper v. Wilson (1937) 2 All E.R. 726 a writ of certiorari was of no use. it could be of no use to the plaintiffs in this case because they did not know of the illegality which gives rise to the preliminary point until long after the time for taking out the writ had expired, and the question which has been argued before us was not before the appeal tribunal at all. in the circumstances, I am of opinion that the court has power to grant to the plaintiffs a declaration that their suspension was wrongful.

35. This argument, which had also been made before the trial Court, was repelled with the following observations:

I do not see how this would have application in the instant case. The constitution has provided for delegation of powers by defendant 1 to defendant 2. Defendant 1 in delegating this power was exercising his constitutional right and I fail to see

how the principle that delegate could not delegate his power would apply to the present case. The constitution provided for the delegation and that being done, it cannot be said that the delegation of power to defendant 2 was not legal.

The point was not correctly decided by the trial Court. The question for consideration was whether quasi-judicial power of suspension, as disciplinary measure, can at all be delegated, the existence of a rule for delegation of such power notwithstanding. That question is not answered by the summary manner, as was sought to be done by the trial Court. I, therefore, uphold the contention of Mr. Sen Gupta that the deputy secretary had no power to suspend in exercise of the authority delegated to him, on the ground that that such a power was incapable of delegation.

36. Mr. Sen Gupta next contended that the order of suspension was also bad because the circle union was not called upon to show of cause why it should not be suspended, for the reason stated in letter Ex. A. 55, already quoted. The trial Court overruled the contention with the following observations:

(a) in the central working committee meeting in December 1957, the question of illegality of election at Barrackpore conference was taken up and defendant 2 was authorized to conduct enquiries and give his decision. After that, he made enquiry of assistant circle secretary Sri Singha Ray and had a report from him. I have also referred to the correspondence that passed between plaintiff and defendant 2 on the subject. The charges were also brought to the notice of the plaintiff as well as the (assistant circle secretary and it is only when no satisfactory explanation was forthcoming, the order of suspension was issued. It is not, therefore, correct to say (that principles of natural justice were violated while passing the order of suspension on 24 June 1958. Ample opportunity was given to explain the position and when the explanation was not found satisfactory, the order of suspension was passed.

(b) That in every case, a charge has to be formulated and served on the delinquent, his explanation taken and then penal order passed need not be followed in every case because there might be exceptions when the violation of the constitution is patent. In the case reported in 1955 S.C. 545 at 552, this observation was made:

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined, they must be given effect. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. In that instant case, the violation of the constitution being patent, no explanation from the offending unit was necessary. But the question is

academic, as I have already said, the charges were formulated and communicated to the assistant secretary as also to the plaintiff and the explanations submitted by them were duly considered and then the order of suspension was passed.

The reasons given by the trial court do not appeal to us. The reasonings are based on the language of Ex. A. 13, a letter, dated 27 May 1958, written by the deputy general secretary to Aswini Kumar Singh Roy, assistant secretary of West Bengal circle branch union, which set out below:

It was reported to the C.W.C. meeting held on 21 December 1957 at Nagerool (Madras), that there were irregularity and illegality in the management and proceedings of the West Bengal circle branch.

From the enquiries made by the C.H.Q. from various sources the following illegality and irregularity appear to have taken place in the management and proceedings of the West Bengal Circle branch and the West Bengal circle conference held on 14 to 16 December 1957 at Barrackpore:

(1) At the last annual session of the circle union, a section of elected delegates were not allowed to take part in the preliminary deliberations.

(2) The treasurer of the circle union did not keep the funds of the circle union in any scheduled bank or post office instead of it, he kept the funds in his own pockets and thus defied the provisions of the constitution and the decision of the circle union:

(3) The balance sheet presented at the annual session was not duly audited although the circle union previously appointed a chartered accountant for that purpose.

You are hereby requested to make a full report on all the above points to this office without further delay.

There is nothing to show, from what has been quoted above, that the central working committee left further action in the matter of the irregularities at Barrackpore conference to the decision of the deputy general secretary. The letter Ex. A. 13 may have been written by the deputy general secretary on his own initiative. Then again, the West Bengal circle branch was not called upon to show cause. The assistant secretary of the circle branch was called upon to report on the charges. That the assistant secretary did, as will appear from his report, Ex, A. 14, admitting the charges, in a somewhat obliging fashion, which is apparent from the following sentence in the report:

I shall be failing in my duty if I do not mention here that you being the deputy general secretary of the central headquarters of A.I.F.E.U., Postmen and Class IV, have kindly made a correspondence with me for which I actually remain thankful to you.

The assistant secretary's report does not show that he apprised the office-

bearers of the circle branch of the charges. Nor does it appear that he conducted any enquiry. The views that he expressed in the report were his personal views, although he subscribed his official designation to the report. This is not asking the circle branch to show cause to the charges. We, therefore, uphold the contention that the penalty of suspension was imposed, without opportunity to the circle branch to show cause to the charges. Since imposition of such penalty has to be done by way of a quasi Judicial proceeding and since the principles of natural Justice were violated in such proceeding, in that the circle branch had no opportunity to show cause to the charges, the order of suspension cannot be maintained.

37. Then again, it does not appear that the order of suspension of the circle branch was ever ratified by the central working committee, as it required to be done under Rule 18-III(k) of the Nagerooll conference rules. We have already observed that the central working committee does not appear to leave the disciplinary action against the circle branch wholly with the deputy general secretary. Therefore, the non-ratification of the penalty by the central working committee makes the order of suspension ineffective.

38. Mr. Sen Gupta also contended that the general secretary had agreed to withdraw the order of suspension but the deputy general secretary would not give effect thereto and this showed mala fides on the part of the deputy general secretary. in our opinion the deputy general secretary had certainly made the order of suspension a prestige issue for him, as will appear from his letters (Ex. A. 67, Ex. A. 77 and Ex. A. 85) already quoted. But the general secretary ultimately relented to the stand taken by the deputy general secretary and the suspension order was not finally cancelled. We do not, therefore, make much of this point.

39. The aforesaid findings might have been sufficient to dispose of this appeal in favour of the appellants. But Mr. Nirmal Kumar Sen, learned advocate for the respondents, strongly contended that the suit was not maintainable at the instance of R. Ray, the plaintiff. The form in which this argument was put in the Court below will appear from the following passage in the judgment:

So far as the question of maintainability, one would have to refer again to the constitution (Exe. A. 19, A. 32 and A. 33) ; it was stated that all postmen and Class IV postal workers and extra-departmental staff and also outsiders would be eligible to become members of the union. in Ex. A. 19 it was provided that every member of local branch shall be deemed to be the member of the circle as also all India union. in Ex. A. 32, it was provided that all postmen and Class IV postal employees and extra-departmental staff other than E.D.A. branch and sub-postmasters would be members of the union and that non-employees of the Post and Telegraph Department would be deemed as honorary members during tenure of their office. it is clear from the constitution that one should be member either regular or honorary at the primary unit, and then and then only he would be qualified to be elected at the circle level. Plaintiff is admittedly a practising

lawyer of Calcutta. He was never a member either regular or honorary at the primary stage, that being the position, he could not be elected as circle secretary at the Barraokpore conference. Plaintiff was filing this suit in his capacity as an ordinary member of the West Bengal circle branch as also in his capacity as the secretary of the West Bengal circle. Not being a member either regular or honorary in the primary stage, plaintiff could not be an ordinary member of the West Bengal circle branch. For the same reason, he could not be elected as secretary at the circle level. The suit filed by him. therefore, in his capacity as an ordinary member and also in his capacity as secretary is thus misconceived.

It appears, however, from evidence of D.W. 2, Michu Lal Bharati, that honorary members can be office-bearers. R. Ray was an honorary member. We do not find any bar in the rules to an honorary member bringing a suit. Then again, R. Ray does not describe himself as the secretary of the branch circle in the cause title of the plaint. initially he brought the suit in a dual capacity, firstly, as a member, and secondly, as secretary. Later on, he converted the suit into a representative suit under Order 1, Rule 8, of the Code of Civil Procedure, as a suit on behalf of the members of the circle branch. There is no reason why a suit by a representative of the members of the circle branch is not maintainable. Lastly, R. Ray's election as secretary was never objected to by anybody. He was at any rate the de facto secretary of the circle branch and as such entitled to sue. For the reasons aforesaid, we overrule the objection that the suit was not maintainable at the instance of R. Ray.

38. In the result we hold that the trial Court was wrong in dismissing the suit. We set aside the judgment and decree of the trial Court and decree the claim. The order of suspension is declared as illegal and void. The defendants are restrained from giving effect to the order.

39. This appeal is allowed with costs. Niyogi, J.

40. I agree.