

(1951) 10 MAD CK 0004

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 12219 of 1950

S. Ramakrishnaiah

APPELLANT

Vs

The President, District Board, Nellore and Others

RESPONDENT

Date of Decision : 19-10-1951

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 1952 Mad 253 : (1953) ILR (Mad) 57 : (1952) 65 LW 140 : (1952) 1 MLJ 38

Hon'ble Judges : Rajamannar, C.J;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Iyer, for Row and Reddy, for the Appellant; A.G. for State Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajamannar, C.J.—The applicant in this case is a citizen of the Indian Union, a teacher by profession and employed as Junior Assistant,

Board High School, Kurichedu from 16th January 1950 and from August 1950 employed as Junior Assistant, Board High School,

Singaroyakonda. An association called ""The Andhra Rashtra Elementary Teachers" Federation"" was formed in 1947 with certain objects which

related to educational and cultural advancement. One of the objects was to organise Taluk and District Teachers" Unions and to affiliate them to

the Federation. The applicant became a member of the Federation in 1947. He was elected as the Secretary of the Darsi Taluk Federation In the

same year and in 1948 he was Joint Secretary of the Nellore District Federation, and in 1949 he was elected as the Secretary of the main

federation itself. On or about 23rd April 1950 the applicant was served with an

order of the President, District Board, Nellore which ran as follows :

It is learnt that the Nellore District Board Elementary School teachers noted in the margin are working as members and office bearers of the

Nellore District Elementary Teachers" Federation and of the various Taluk Elementary Teachers" Federations in the District as noted against their

names; As the above associations are not the usual departmental associations, they ought not to have accepted the above posts without obtaining

previous permission from the executive authority of the District Board. They are therefore directed to submit their explanations within a week from

the date of receipt of this communication for not obtaining such previous permission. As it is objectionable to continue as members and office

bearers of the above unrecognised Federations, they are directed either to cease their connection with the said Federations at once or resign their

appointments as District Board teachers and report the fact to this office by 30 April 1950 the latest; failing which disciplinary action will be taken

against them.

(Signed) N. Chenchurama Naidu,
President,

2. The applicant states that this, action was apparently taken by the District Board, President in accordance with what was contained in G. O. Ms.

No. 416, Education, dated 24th February 1939 (printed as Appendix 5 at page 162 of the Madras Elementary Education Manual). The material

portion of this order is as follows:

The Government consider that provision should be made for the departmental recognition of Elementary School Teachers" Unions with a view to

ensure their working on useful lines. They have accordingly framed the rules set out in the annexure to regulate the working of these Unions. The

Director of Public Instruction is empowered to accord recognition to unions functioning in accordance with these rules, and to forbid the existence

of, and dissolve, any Teachers" Union not conforming to these rules.

2. Teachers in Local Board/Municipal service should obtain the permission of the Board/Council concerned before forming unions and should

apply to the Director of Public Instruction for recognition through the President of

the District Board/Executive Authority of the Council concerned.

3. Teachers in recognised elementary schools are prohibited from becoming members of teachers unions or other teachers' organizations not constituted in accordance with the orders herein contained.

Admittedly, neither the Federation nor any of the Unions of which the applicant is a member is a recognised union. The applicant states that he

along with other teachers who were served with similar notices waited on deputation on the President in May 1950 and requested him to withdraw

his order. On or about 17th August 1950 the applicant was served with another order bearing date 8th August 1950. It runs as follows :

The teachers noted in the margin have neither submitted their explanations nor even cared to submit replies till now. If no replies are received from

them by 15th August 1950 the latest, regular charges will be framed against them, for removal from service. They cannot be continued in service if

they want to continue as members of the unrecognised federation.

The applicant was under the circumstances compelled to resign his membership and post as office bearer of the District and Taluk Federations

already mentioned. There is the reference to another communication from the Divisional Inspector of Schools, Anantapur, but Mr.

Venkatasubramania Aiyar the learned counsel for the applicant represented to us, that he was not dealing with that communication in this

application and that he was confining himself to an attack against the validity of the rule in the G. O. of 1939 which prohibited teachers in

recognised elementary schools from becoming members of Teachers' Unions or Teachers' organisations not constituted in accordance with that

order.

3. The attack is based on Article 19(1)(c) of the Constitution which guarantees to every citizen the right to form associations or Unions. The

contention in brief is that the rule which prevents the applicant from becoming a part member of an unrecognised teachers' union save at the risk of

suffering dire consequences is inconsistent with the fundamental right of freedom of association. In any event it is an unreasonable restriction on the

exercise of such freedom. on this point the counter-affidavit filed on behalf of the respondents does not meet the Objection. The Assistant

Secretary to Government (Education Department) who has sworn to the affidavit

is merely content to state that the applicant's action was in direct contravention of the provisions of the G. O. and the first respondent, i.e. the President, District Board, was within his rights and justified in the action taken by him. In another part of the affidavit, however, dealing with the later communication of the Divisional Inspector of Schools which was issued in pursuance of a memorandum by the Government the following enunciation of the general policy of the Government is to be found :

The basic and fundamental rights referred to by the petitioner are not absolute and can never be so in practice. Reasonable restrictions in the interest of the profession have to be imposed, especially in a case like the teachers' profession whose primary duty is to educate along correct lines and form the character and conduct of the future generations of this country. While freedom of thought and action are necessary to develop the inherent virtues, certain amount of discipline also is necessary to develop them along right lines. The teachers' profession which is dedicated to the correct education of the young men of the country must therefore like any other profession throw themselves wholeheartedly into its work and not indulge in political ideologies.

4. We do not propose to discuss the very important and large question as to how far the employees of the State can be prevented either by legislation or by executive orders from taking part in active politics. Much can be said on both sides of the question as is evident from the differing Judgments in "United Public Workers v. Mitchell" 330 P.C. 74; 91 Law Ed 754 in which the validity of an Act of Congress making it unlawful for employees in the executive branch of the Federal Government to take any active part in political management or in political campaigns out of as well as in working hours, and a regulation of the Civil Service Commission making such conduct ground for removal of civil service employees came up for consideration before the Supreme Court of the United States. The point which arises for decision in the present case lies within a narrow compass. The question is whether any employee of the State or a local body could be prevented from becoming a member of an association which is not recognised by the Government, whether the previous permission or approval of the Government could be made a condition precedent for the exercise of the employee's right to become a

member of an association. Of course, it is obvious that the Government as employer may choose to recognise only one association as representative of a particular class of employees; but can the Government prohibit an employee from becoming a member of any association other than the recognised association? Here again, we are not concerned with the complication of such an association being an unlawful one. In that case really, the employee voluntarily runs the risk of being penalised for becoming a member of an unlawful association. It has been held in "Whitney v. California" 274 U.S. 367: 71 Law Ed. 1005 and "New York Ex. Rel. Byrant v. Zimmerman", 278 U.S. 63: 73 Law Ed 184 that the constitutional right, of freedom of association is not infringed by a statute providing punishment for one who knowingly becomes a member of or assists in organising, an association to advocate, teach or aid and abet the commission of, crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes or by a statute prohibiting, under penalty, membership in a secret, oath-bound organisation which has not filed its constitution, by-laws, rules, regulations and oath of membership, it was not contended by the learned Advocate General that the associations of which the petitioner before us happened to be a member were unlawful associations.

5. It is well established that the exercise of any of the fundamental rights like the right of free speech, right of freedom of religion or the right of freedom of association cannot be made subject to the discretionary control of administrative or executive authority which can grant or withhold permission to exercise such right at its discretion. It is equally well established that there cannot be any restriction on the exercise of such a right which consists in a previous restraint on such exercise and which is the nature of administrative censorship. The guaranteed freedoms cannot be abridged or abrogated by the exercise of official discretion. It suffices to give a few leading instances to illustrate this well established rule. In "Lovell v. Griffin" 303 U S 444 : 82 Law Ed 949 a municipal ordinance prohibiting the distribution of circulars, handbooks etc., without permission obtained from the City Manager was held to be invalid because it struck at the very foundation of the freedom of the press by subjecting it to license and censorship. In "Hague v. Committee for Industrial. Organisation" 307

US 496 : 83 Law Ed 1423, a municipal ordinance requiring the obtaining of a permit for a public assembly in or upon the public streets, highways etc., was held to be unconstitutional. It was observed by Mr. Justice Roberts in that case that uncontrolled official suppression of the privilege of free speech should not be made a substitute for the duty to maintain order in confection with the exercise of the right. In "Schneider v. Irvington", 308 U. S. 147 : 84 Law Ed 155 a municipal ordinance which prohibited canvassing, soliciting and the distribution of circulars or calling from house to house without first having received a written permit from the chief of police was held to be bad, because the liberty of free speech was made to depend upon the exercise of the police officer's discretion. In "Largent v. Texas", 318 US 418 : 87 Law Ed. 873, a municipal ordinance making it unlawful for any person to solicit orders or to sell books, wares or merchandise within the residential portion of a city without first obtaining a permit from the municipal authority was held to be an unconstitutional abridgment of the freedom of the press and of speech. It was observed in the opinion of Mr. Justice Reed :

Dissemination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form.

6. Indeed we do not understand the learned Advocate General to controvert this position which has also found favour with our supreme Court,
See "Romesh Thapper v. State of Madras" 1950 SCJ 413.

7. Applying this principle we must hold that the rules contained in G. O. 416, Education, dated 24th February 1939, in so far as they empower, the Director of Public Instructions to forbid the existence of, and dissolve, any Teachers' Union not conforming to the rules and compelling teachers in Local Board or Municipal service to obtain the permission of the Board or Council concerned before forming unions and in so far as they prohibit teachers in recognised elementary schools from becoming members of teachers unions or other teachers' organisations not constituted in accordance with the orders of the Government should be declared to be void as constituting an abridgment of the right, of freedom of association guaranteed by Article 19(1)(c) of the Constitution. The application is to this extent allowed; but there will be no order as to costs.