

(1998) 07 MAD CK 0147

In the Madras High Court

Case No : Writ Petition No. 12887 of 1989 and W.M.P. No. 18530 of 1989

South Arcot District Central Co-Operative Bank Ltd.
Empolyees Association

APPELLANT

Vs

The Deputy Commissioner of Labour D.M.S. Compound,
Teynampet, Madras-6, and another

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 19(2), 23, 29

Citation : (1998) 3 CTC 143

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. K. Chandru, for Mr. D. Hariparanthaman, for the Appellant; Mr. M. Venkatachalapathy, for Mr. S.M. Loganathan and Mr. V. Selvanayagam, Government Advs., for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner-association has filed the above writ petition seeking to issue a writ of mandamus, directing the second respondent-bank to forbear from altering the conditions of service of workmen relating to filling up the post of Manager incharge of taluk administration without following the procedure prescribed under the Industrial Disputes Act, 1947.

2. According to the petitioner, the petitioner-association entered into several settlements with the second respondent-management. By settlement dated 15.9.1982 signed u/s 12(3) of the Industrial Disputes Act it was agreed as follows:-

It is mutually agreed that a special allowance of Rs.50 per month shall be paid to Field Managers Gr.I who are posted to be incharge of Taluk level administration. Posting of Field Managers Gr.I to be incharge of Taluks will be strictly on seniority basis.

Subsequent to the said settlement the petitioner-association raised disputes. The Government in G.O.Ms.No.621 Labour Department dated 7.4.1988 have referred the issues for adjudication by the Industrial Tribunal at Madras. Issue No.42, according to the petitioner, related to recruitment and promotion policy. The said dispute has been taken on file as I.D.No.25 of 1988 and the matter is pending. In the order dated 6.6.1989 the second respondent directed the field manager to handover the charge to the Co-operative Society Registrar recruited from the Government Department. The petitioner-association protested the same in and by the letter dated 2.8.1989. Thereafter the second respondent issued a notice purporting to be u/s 9A of the Industrial Disputes Act on the same date namely 19.8.1989. The petitioner-association protested against the said notice and requested the second respondent not to resort to such a change in service condition in view of the binding nature of the earlier settlement and in view of the fact that the dispute itself is pending consideration of the Industrial Tribunal, Madras in I.D.No.25 of 1988. So aggrieved the petitioner-association has filed the above writ petition.

3. The learned Senior Counsel appearing for the second respondent has raised an objection regarding the maintainability of the writ petition as the same has been filed against the Co- operative Society. The learned Senior Counsel has relied on the decision of the Full Bench in Ganesan, K. v. The Special Officer, Salem Co-operative Sugar Mills and 2 others 1994 W.L.R. 509 in which the Full Bench of this Court has held that the writ petition cannot be maintained against the co-operative society. The learned Senior Counsel appearing for the petitioner has submitted that while the rights accrued under the Industrial Disputes Act are violated, this court has categorically held in so many decisions that by exercising powers under Art. 226 of the Constitution of India this court can interfere to safeguard the interest of the aggrieved workman.

4. In order to overcome the hurdle in the writ petition as also the incompetency alleged in seeking the relief under Art. 226 of the Constitution of India, Mr. Chandru, the learned Senior Counsel appearing for the petitioner has relied on a number of decisions. Though the learned senior counsel has placed reliance upon several decisions, I am not referring to all the cases for the reason that some of them have laid down the same proposition of law and so I am referring only some of the decisions to decide the issue in question.

5. The learned Senior Counsel appearing for the petitioner has relied on the decision in V. Pandurangan v. S.O.S.R.Co-op. Housing Society Ltd., 1995 (1) L.L.N. 263. D. Raju, J., as he then was, in the said decision, has held that the writ is maintainable challenging the order passed by the second respondent and to prevent the first respondent from acting on the said order. In the said case, the second respondent/Deputy Registrar ordered recovery of the bonus paid to the petitioners therein and the first respondent sought to recover the same from the petitioners. So, the petitioner challenged the said proceedings by filing the writ of certiorarified mandamus. The said writ petition was resisted as not

maintainable, citing the Full Bench decision of this court in Tamil Arasan case, 1991 (2) L.W. 409. The learned Judge, while allowing the said writ petition, has held as follows:-

Allowing the respondents to take shelter under the decision of the Full Bench of this Court in Tamil Arasan case, 1989 (II) L.L.N. 69 in matters like the one before this court in these writ petitions, would amount to undermine the very principle of rule of law. An official of the State Government in the Co-operative Department could avoid in such circumstances passing orders directly and by indirectly directing the society to pass orders and deny an effective remedy to the person aggrieved against an order made in gross abuse of the basic principles of natural justice as well as the fundamental principles of rule of law secured to citizen under the Constitution of India, particularly under Art. 14 which strikes at the root of any arbitrary action of the authorities of the State. An authority of the State cannot escape from the purview of the court by indirectly bringing pressure upon the society to pass an order instead of himself passing such an order. For all the reasons stated above, I am of the view that the impugned orders are liable to be quashed, ofcourse with liberty to the respondents to proceed in the matter afresh by issuing due and proper notice and giving sufficient opportunity to the petitioner to show cause against any proposed action before passing any order adverse to the interests of the petitioner.

6. The learned Senior Counsel appearing for the second respondent has submitted that the said decision will not help the petitioner herein to sustain the writ petition as in the said case the order was passed admittedly by Government Officer. But, even with respect to the prayer for mandamus against the first respondent, the learned Judge has sustained the writ petition holding that if the order was made in gross abuse of the principles of natural justice as well as the fundamental principles of rule of law, secured to citizen under the Constitution of India, particularly under Art. 14, the writ can be issued, and so the objections raised by the learned Senior Counsel cannot be countenanced.

7. The learned Senior Counsel appearing for the petitioner has further relied on the decision of the Division Bench in R. Varadharajan v. Special Officer, K.C.L.D. Bank, 1995 (1) L.L.N. 265 in which the petitioner therein filed the writ petition against the co-operative society, and the Division Bench of this court had an occasion to deal with the issue regarding the maintainability of writ petition against the co-operative society. While allowing the writ petition and dismissing the writ Appeals, the learned Judges, following the decision in Rohtas Industries Ltd., v. Rohtas Industries Staff Union, 1976(1) L.L.N. 165 in which it was held that the scope of Art. 226 of the Constitution of India was wide enough to affect even a private individual, have held as follows:-

In this case we do not find any difficulty in applying the ratio laid down by the Supreme Court as referred to above, as, admittedly, the impugned order was passed without observing the principles of natural justice. Therefore, on that

simple ground, we are inclined to allow the writ petition, and accordingly, the impugned order of the respondent, dated 31st July 1991, is quashed. The writ petition is allowed. No costs.

8. The Division Bench of this Court in *C. Marianandam v. Govt. of Tamil Nadu and others* 1989 (1) L.L.N. 728 has held as follows:-

In my view, the monstrosity of the situation in the present case would undoubtedly warrant the issue of writ to the third respondent even if it is a private institution. On the admitted facts of the case, it is seen that the services of the headmaster of the school are terminated on a very serious charge of misbehaviour with a lady teacher and other charges without giving an opportunity to him to deny the same. It is a shocking state of affair that the management of an educational institution should throw to the winds the elementary principles of natural justice in dealing with its headmaster, who is at the helm of affairs on the academic side. This is a case in which the court should exercise its prerogative power and would be failing in its duty if it chooses to remain a mute witness to the situation on the ground that the third respondent is not a statutory authority.

9. Similar View has been taken by the Division Bench of this Court in *Chemplast Sanmar Limited case*, W.A.Nos.848 and 849 of 1997 in which it is held as follows:-

On a careful consideration of the respective submissions of the learned counsel appearing on either side in this regard and on going through the relevant decisions which have been adverted to in the decision rendered in *Binny's Case*, 1995 (1) LLN 687 we are of the view that the stand taken for the appellant that there is no monstrous situation to warrant this Court's interference in exercise of its jurisdiction under Article 226 of the Constitution of India cannot be countenanced. If a patent violation of the mandatory provisions of the Industrial Disputes Act, which would constitute unfair labour practice, and alteration of conditions of service without following the procedure laid down u/s 9A of the Act read with the Fourth Schedule to the Act is demonstrated to exist, the powers of this court to come to the rescue of the victimised workmen, cannot be seriously disputed. In our view, the ratio of the decision in *Binny's Case*, in W.P.No.11862 of 1996 would equally apply to the case on hand and the learned single Judge could not be said to have committed any error in choosing to exercise his discretion in the matter by entertaining the writ petition under Article 226 of the Constitution of India:

10. The Division Bench of this Court in the decision in *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills)* and others, has formulated the propositions regarding the maintainability of the writ petition and has held as follows:-

On an analysis of the above rulings, the following propositions emerge:

(1) A private body which is not a "State" within the meaning of Art. 12 of the Constitution of India is not generally amenable to Art. 226 of the Constitution.

(2) A writ will be issued against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

(3) A writ will be issued in extraordinary circumstances if the monstrosity of the situation warrants it.

(4) A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.

(5) The implementation of a settlement under S. 12(3) of the Industrial Disputes Act, is not a public duty and no writ will lie against a private body.

(6) If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Art. 226 of the Constitution could be exercised to quash a settlement under S. 18(1) or S. 12(3) of the Industrial Disputes Act.

11. On the basis of the abovesaid decisions, the learned Senior Counsel appearing for the petitioner has submitted that the writ petition is maintainable especially when I.D.No.25 of 1988 is pending on the same issue. From the abovesaid decisions it is very clear that this writ petition is maintainable even against a private party in certain circumstances. If a patent violation of the mandatory provisions of the Industrial Disputes Act, which will constitute unfair labour practice, and alteration of conditions of service without following the procedure laid down u/s 9A of the Act, the powers of this Court under Article 226 of the Constitution of India can be exercised to rectify the mistake committed by the management even if it is a Co-operative Society. So, in view of the flagrant violation of the provisions of the Act, in this case, the writ can be maintained since the monstrosity of the situation is present.

12. Moreover the period of the earlier settlement, though it is expired, unless it is cancelled or superseded by another settlement, the said settlement will be in force. Pursuant to the notice u/s 9-A of the Act it is open for conciliation. Meanwhile, according to the learned Senior Counsel appearing for the petitioner, the respondents cannot alter the service conditions.

13. The Apex Court has analysed the principles applied in this regard in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, holding as follows:-

As soon as the settlement is concluded and becomes operative, the contract embodied in it takes effect and the existing terms and conditions of the workmen are modified accordingly. Unless there is something to the contrary in a particular term or condition of the settlement the embodied contract endures indefinitely, continuing to govern the relation between the parties in the future, subject of course to subsequent alteration through a fresh settlement, award or valid legislation. I have said that the transaction is a contract But it is also something more. Conceptually, it is a "settlement". It concludes or "settles" a dispute.

Differences which had arisen and were threatening industrial peace and harmony stand resolved in terms of a new contract. In order that the new contract be afforded a chance of being effectively worked out, mandate obliging the parties to unreservedly comply with it for a period of time is desirable. It was made "binding" by the statute for such period, Section 19(2) was enacted. The spirit of conciliation, the foundation of the settlement, was required by law to bind the parties for the time prescribed. Immediate reagitation in respect of matters covered by the settlement was banned. Section 23(c) prohibited strikes by the workmen in breach of the contract and lock-outs by the employer in respect of such matters. A breach of any term was made punishable by S. 29. Certainty in industrial relations is essential to industry, and a period of such certainty is ensured by S. 19(2). On the expiry of the period prescribed in the sub-section, the conceptual quality of the transaction as a "settlement" comes to an end. The ban lifts. The parties are no longer bound to maintain the industrial status quo in respect of matters covered by the settlement. They are at liberty to seek an alteration of the contract. But until altered, the contract continues to govern the relations between the parties in respect of the terms and conditions of service.

14. Nainarsundaram, J., as he then was, in W.P.No.963 of 1987 dated 10.2.1987 while construing the scope of Section 33(1) of the Act has held as follows:-

It is only in this context, a contention is raised by the petitioner that the fourth respondent should not implement the change in the shift timings and that would be violative of section 33(1) of the Act. That there is a conciliation proceeding pending before the third respondent over the dispute relating to the change in the shift timings cannot and need not be disputed now, if this is so, as per Section 33(1) of the Act, the change should not be effectuated, save with express permission in writing of the third-respondent before whom the conciliation proceedings pending.

15. While considering the similar issue, Sathiadev, J., in W.P.Nos.11258 and 11259 of 1983 has held as follows:-

Since the special officer is appointed under Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act. 1976 (Act 25 of 1976) he becomes a statutory authority in relation to the affairs of the Co-operative Society. Therefore, when he is a party to a section 12(3) settlement which comes into existence under the I.D. Act and till the matter is decided in a Labour Court, he cannot transgress Section 9A of the Industrial Disputes Act. It is in this view, the writ petition filed is maintainable.

16. In view of the above, the submission of the learned Senior Counsel appearing for the second respondent that the period of settlement has already been expired and so the second respondent is entitled to alter the service conditions immediately after issue of notice u/s 9A of the Act, cannot be sustained. Even after issue of notice u/s 9-A of the Act, the second respondent can have conciliation and he cannot immediately alter the conditions of service.

17. In view of the discussions made earlier, the second respondent cannot alter the service conditions mentioned in the earlier agreement until it is altered or modified or replaced by another agreement or otherwise in accordance with law.

18. For the foregoing reasons, this writ petition is allowed. No costs. Consequently, W.M.P.No. 18530 of 1989 is closed.