

(1999) 06 GAU CK 0008
In the Gauhati High Court

Case No : Writ Appeal No. 78 (a) of 1997 in Civil Rule No. 1009 of 1996

State of Manipur and Another

APPELLANT

Vs

All Manipur Electrician Apprentices Union

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 GLR 198

Hon'ble Judges : P.G. Agrawal, J;P.C. Phukan, J

Bench : Division Bench

Advocate : T. Nandakumar, A.G, for the Appellant; A. Nilamani, for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—We have heard Mr. T. Nandakmar, learned Advocate General for the Appellant, State of Manipur as well as Mr. A. Nilamani, learned Senior Council for the Respondent Union.

2. The Writ petition registered as Civil Rule No. 1009/96, giving rise to the instant Writ Appeal, was filed by the All Manipur Electrician Apprentices Union, represented by its Secretary, seeking appropriate Writ to direct the State Respondents to consider the case of its members, who are trained apprentices, for appointment to the posts of Assistant Linemen, Switch Board Attendants, etc. Its members did not join in the proceeding by name as Petitioners of the Writ petition.

3. The learned Single Judge issued a Writ in respect of appointment of trained apprentices as Assistant Line Men by the final order dated 9.6.1997, impugned in this Writ Appeal without deciding the point as to whether or not the Petitioner Union could have maintained a petition under Article 226 of the Constitution for enforcement or protection of the rights of its members.

4. The learned Single Judge has omitted to decide the above point and to

determine the question of facts necessary for such determination, which appear to us essential to the right decision of the Writ petition. There is no material on records before us to decide (sic) point. There is nothing on record to indicate whether the Petitioner Union is registered under the Society Registration Act, 1860 under any other Statute. There is no affidavit-in-opposition in the records of the petition. On perusal of the same, we find that, before the learned Single Judge disposed of the Civil Rule by passing the impugned order, no notice of motion nor any Rule was ever issued in response to which the State Respondents could have filed any affidavit-in-opposition.

5. In Director General Ordnance Factories Employees' Association Vs. Union of India (UOI) and Director General Ordnance Factories, , it has been held -

9. In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge that only if all the members join in the proceedings by name; the association, in such a case, can not maintain an application under Article 226 on other legal proceeding in its own name, as has been established by a number of decisions.

6. As per the above decision, a body without acquiring a legal personality can not bring legal proceedings for and on behalf of its members. Thus a body unregistered under any statute and hence without a legal personality can not bring legal proceeding for and on behalf of its members. However, as per a later decision in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, even an un-registered body can file a petition under Article 226 for enforcement of the rights of its members.

(1) In case members of such an association are themselves unable to approach the Court by reason of poverty, disability or socially or economically disadvantaged position ("little Indians").

(2) In case a public injury leading to public interest litigation; provided the association has some concern deeper than that of a wayfarer or a busybody, i.e. it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court; in such proceedings will be binding on, the members. In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for, the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

(emphasis supplied)

7. Since the learned Single Judge omitted to give any decision as to whether in

the facts and circumstances of the case, the Petitioner Union could have maintained a petition under Article 226 of the Constitution for the enforcement or protection of the rights of its members, and omitted, to determine the questions necessary for such decision, viz., as to whether the members of the Petitioner Union are unable to approach this Court by reason of poverty, disability or socially or economically disadvantaged position, and as to whether the Rules or Regulations of the Petitioner Union specifically authorise it to take legal proceeding on behalf of its members, and are left with no option than to set aside the impugned order and to remand the case to the learned Single Judge to decide this point after giving opportunity to the Petitioner Union to file additional affidavit and to the State Respondents to file affidavit-in-opposition; and in case this point is decided in favour of the Petitioner Union, to dispose of the Writ petition on its merits.

8. This Writ appeal is allowed accordingly. No costs.