
(1980) 09 MAD CK 0007
In the Madras High Court

The Tamil Nadu Electricity Board

APPELLANT

Vs

Tamil Nadu Electricity Board Accounts and Executive Staff
Union

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1981) 1 MLJ 309

Hon'ble Judges : M.M. Ismail, C.J

Bench : Single Bench

Judgement

M.M. Ismail, C.J.—This is an appeal against the order of Mohan, J., dated 11th August, 1980, allowing W. P. No. 5742 of 1979 filed by

the respondent herein.

2, The respondent accorded recognition to the appellant by its proceedings No. 1238 dated 30th July, 1969. Paragraph 3 of this order states as

follows:

The Tamil Nadu Electricity Board accepts the recommendation of the Commissioner of Labour, Madras, and hereby accords recognition under

the Coda of Discipline in Industry to the Tamil Nadu Electricity Board Accounts Subordinates Union, Coimbatore (Reg No. 2472) in respect of

the ministerial staff excluding peons, bill-collectors and store-keepers.

3. Subsequently, the Union, namely, the respondent herein, started enrolling members from peons, bill-collectors and store-keepers also. In view

of this the appellant proposed to de-recognise union as having violated the condition of the recognition. The respondent-union pointed out that,

though it had changed its name and changed its coverage in the sense of

extension of membership, it had not changed its representative capacity and as a bargaining agent, was still continuing to represent and bargain only for the ministerial staff excluding peons, bill collectors and store-keepers. Notwithstanding this explanation of the respondent-union, the appellant, by its proceedings dated 24th November, 1979, de-recognised the union. It was against these proceedings the writ petition in question was filed praying for the issue of a writ of certiorari. The learned Judge having allowed the writ petition, the present writ appeal has been filed by the Board.

4. Two submissions were made by Mr. M. R. Narayanaswami, the learned counsel for the appellant. One was that the writ petition itself was not

maintainable, because the recognition was not granted under any statute and, secondly, that the Code of Discipline in Industry referred to in

paragraph 3 of the proceedings of the Board, dated 30th July, 1969, were themselves not statutory. In support of these contentions, the learned

counsel relied on two decisions. One was of the Calcutta High Court in *A. C. Mukherjee and others v. Union of India and others* (1972) 2 LLJ

297. and the other was of the Kerala High Court in *M. A. David v. K.S.E. Board* (1973) 2 LLJ 446. In the former decision, paragraph 15 of the

judgment states:

The other point raised on behalf of the appellants almost goes by admission. The Code of Discipline is not a statutory rule and violation of the said

Code is not within the jurisdiction of Article 226 of the Constitution, It has been conceded by Mr. Dutta appearing for the appellant.

Thus the point was not decided in the judgment, as the learned Judges themselves state that the matter went by admission.

5. As far as the second decision is concerned, that was a case of de-recognition made without giving any notice. The contention that was raised

there was that there had been a violation of the principles of natural justice, inasmuch as no notice was given before the recognition was withdrawn.

In that case the Kerala High Court referred to the judgment of the Calcutta High Court to which we have already drawn attention, and pointed out

that the facts in that case were almost similar to those in the case before them. Having said so, the learned Judges proceeded to observe:

It is not claimed that there is any statutory rule or at least an agreement

between the Board and the union that the recognition once granted will not be withdrawn without giving an opportunity to the union to be heard. We hasten to add that, if there is only an agreement, then Article 226 may not be available, unless, probably, it can be construed that the said agreement is part of the conditions of service as contemplated by Article 309 of the Constitution. In a case like this, where there is no statutory rule or even an agreement, the union cannot insist that it should be heard before the recognition is withdrawn. It must be remembered that what the Board has done in this case was to lay down a policy as to how industrial peace could be achieved, which unions should be considered as representative of particular categories of employees and which unions should be allowed to resort to collective bargaining on behalf of the said workers. It must also be remembered that these arrangements made under Exhibit P-9 are only for three years. It is quite possible that, after three years, if circumstances change, and the representation of the workers in particular unions also change, the Board might change their decision and recognise some other unions, which are then found to be more representative of the categories of workers, and in that re-arrangement the appellant-union might also be recognised for the particular type of workers it represents.

In the absence of any statutory rule or at least an agreement, the appellant-union cannot insist that it should be heard before the recognition is withdrawn. We, therefore, confirm the decision of the single Judge and dismiss the appeal. However, we do not pass any order regarding costs.

6. For more than one reason, we are unable to follow the above judgment. That was also a case of de-recognition of the Kerala State Electricity Board Executive Workers' Union by the Kerala State Electricity Board. With reference to such a union we are unable to see any justification for a reference to Article 309 of the Constitution of India at all. Secondly in that case, as the judgment itself points out, what the Board had decided was to lay down a policy as to how industrial peace could be achieved, which union should be considered as representative of particular categories of employees and which unions should be allowed to resort to collective bargaining on behalf of the said workers. That is not the position in the present case. Recognition was granted by the appellant to the respondent union on the latter's application expressly for recognition, and therefore

the circumstances are not the same. Thirdly, in the case before the Kerala High Court, as the judgment itself points out, the arrangements made by

the Kerala State Electricity Board under Exhibit P-9, were only for three years, while no such restriction is present in the case on hand. For all

these reasons we are unable to hold that the decision of the Kerala High Court has any application to the present case. On the other hand, if it is to

be held that, unless there is a statutory provision dealing with recognition, it is not possible for a person like the respondent to approach the Court

under Article 226 of the Constitution, in the event of de-recognition, either on the ground of violation of the principles of natural justice or on the

ground of respectfully disagree with the view of the Kerala High Court, for the reasons which we shall presently indicate.

7. Admittedly there is no statutory provision in this case dealing with the question of recognition or de recognition. Equally admittedly the Code of

Discipline in Industry is not statutory. Notwithstanding this, it is conceded by the learned counsel for the appellant that the Code of Discipline in

Industry does contemplate recognition and that it was only under that Code recognition was applied for and granted. It is not disputed that the

grant of recognition confers a status on a body like the respondent-union to represent the workers in a particular category, with reference to their

service conditions, with the Management; in other words, it becomes a bargaining agent on behalf of the group of workers with reference to which

it was recognised. Withdrawal of that status or recognition will certainly bring about adverse consequences, on a body like the respondent-union,

and, with reference to such adverse consequences, even an order of withdrawal like the one made by the appellant if it is illegal or is in violation of

principles of natural justice, certainly a body like the respondent-union can approach this Court under Article 226 of the Constitution of India.

Therefore we reject the contention of the learned counsel for the appellant that the writ petition was not maintainable.

8. As far as the second point is concerned as we already pointed out, recognition was withdrawn only on the ground that the condition of

recognition had been violated. We have already extracted paragraph 3 of the proceedings of the Board granting recognition, and that does not say

anything about coverage in the sense of membership; it merely refers to the union being recognised in respect of the ministerial staff, excluding

peons, bill-collectors and store-keepers. In this case, from the correspondence that passed between the parties it is clear that the respondent-union

did not claim any right to represent peons, bill-collectors and storekeepers, but continued to represent only the ministerial staff and, though it

claimed it might extend the coverage in the sense of membership, it stood by the earlier order of recognition confining its representative capacity or

bargaining power only in respect of the ministerial staff. If so, there is no violation of the conditions of recognition. As a matter of fact, the

impugned order of the Board does not even refer to the stand of the respondent-union, that, notwithstanding the enlargement of membership, it

continued to have the status and capacity to represent only the ministerial staff.

9. Under these circumstances, we are of the opinion that the withdrawal of recognition was made on an erroneous basis that there had been a

violation of the conditions of recognition, since the respondent took up the stand that its capacity under the recognition as body a to represent only

the ministerial staff remained uncharged. Hence the writ appeal fails and is dismissed.