
(1996) 02 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No's. 8037, 9847, 10197 and 10198 of 1995

T.N.E.B. Engineers' Sangam

APPELLANT

Vs

Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 18(1)

Citation : (1996) 1 LLJ 1071

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

AR. Lakshmanan, J.—W.P. No. 8037 of 1995 relates to the withdrawal of recognition accorded to the petitioners' Trade Union. W.P.

Nos. 9847, 10197 and 10198 of 1995 relate to the transfer orders given to the three office bearers of the T.N.E.B. Supervisors Sangam. Since

both the matters arose out of the same set of facts all the four petitioners are dealt with together.

2. W.P. No. 8037 of 1995 was filed by the General Secretary of the T.N.E.B. Engineers Sangam to quash the order dated May 23, 1995

withdrawing the recognition accorded as Union of Industrial employees of the Board.

3. The short facts are as follow:The Petitioners' Union is a body registered under the Trade Unions Act, 1926. Originally there was T.N.E.B.

Supervisors Sangam functioning in the respondent Board and the said Union was conferred recognition by the respondent vide order dated

February 5, 1970. Subsequently, the name of the Union was changed in 1979 as that of T.N.E.B. Engineers' Sangam. According to the

petitioners, their union has substantial following of the Juhior Engineers II Grade

working in the respondent Board and they have been called for negotiations with reference to the grievances of the workmen represented by their union. By a settlement dated December 31, 1993 the petitioners' Union along with several other Unions agreed to have several issues resolved and the settlement reached was subsequently converted into a settlement u/s 12(3) of the Industrial Disputes Act, 1947. It is the grievance of the petitioner that even after the settlement was signed and converted into 12(3) settlement, the respondent did not implement the said settlement in its letter and spirit. On the contrary, attempts were made to scuttle the settlement to the detriment of Diploma Holders working in the Board. The Petitioners' Union made several representations to the respondent voicing their protest regarding the delay in implementing the settlement and the denial of promotion to Diploma Holders. There were three rounds of talks held in March 1995, before the Accounts Member of the Board with the petitioners' Union. In these discussions, even though the Accounts Member of the Board agreed to implement the first portion of term 3(i) of the settlement, the same thing was not done. However, undue interest was shown in recruiting persons who are degree holders thereby reducing the promotional chances of the Junior Engineers II Grade. While no interest was shown in releasing the panel for promotion to Junior Engineers II Grade, the respondent Board however over worked on two holidays i.e., on April 1, 1995 and April 2, 1995 and despatched recruitment orders to the degree holders. Therefore, members of the petitioners' Union who were annoyed by such an action assembled before the Board's Office and demanded the implementation of terms of the settlement including maintaining the ratio of the recruitment of degree holders and promotion of Junior Engineers II Grade. They met the Secretary of the Board on that day and held discussions with him. However, the Board instead of appreciating the hurt feelings of the members of the Union and resolve their grievances devised a plan to victimise the members. Pursuant to the same, it issued a show cause notice dated April 4, 1995 which was issued by the Chairman without the authorisation of the Board. In the said notice, the petitioners were accused of staging a Dharna in front to the Board's Secretariat, and that they used disrespectful words against the officers of the Board and by that show cause notice,

they were asked as to why the recognition given to the Union should not be withdrawn. The petitioners' Union sent a detailed representation dated April 19, 1995 wherein they denied all the allegations levelled against them. They have also stated that if the board chooses to proceed with the show cause notice, an enquiry must be held to prove those allegations. It must be noted herein that in the show cause notice issued to them, no details of any of the allegations made by the Chairman was forthcoming. In the meanwhile, the respondent also sent a circular and asked the various subordinate officers to take action against the members of the petitioners Union for their alleged participation in the Dharna. The Board has also directed its subordinate officers to impose penal wage cut and also to take disciplinary action. In the meanwhile, the respondent herein by an order dated May 23, 1995 withdrew the recognition granted to the petitioners union on the specious plea that they have violated the conditions of recognition by breaching the code of discipline. According to the petitioners the impugned order contained further allegations which did not find a place in the original show cause notice. Though several documents and statements were relied on by them, they were not given notice of the same. According to the respondent since the petitioners did not deny their involvement, the allegations were found to be proved.

4. The respondent filed a counter affidavit denying the allegations contained in the affidavit. According to them, there is no statutory provision in this State regarding the recognition of trade unions as prevailing in the State of Maharashtra. The working conditions of the employees of the Board are governed by settlements reached under the provisions of the Industrial Disputes Act in so far as such of those employees who are governed by the provisions of the Industrial Disputes Act. The last such settlement reached with the workmen of the respondent Board was dated December 31, 1993 reached u/s 18(1) of the I.D. Act, 1947, the said settlement was later converted into one u/s 12(3) of the I.D. Act and was signed before the Commissioner of Labour on January 19, 1994. The said settlement is to be in operation for a period of four years with effect from December 1, 1992. The petitioners' Sangam was also a party to the said settlement, and signed by the then General Secretary of the Petitioners' Sangam.

Among other issues, the settlement dated January 10, 1994 deals with the issue relating to revision of work allocation and staff pattern with

consequential revision of wages. The first part of the settlement deals with the merger of rural sections Grade 1 and Grade 2 in distribution circles

and the posting of Assistant Engineer/Junior Engineer First Grade to those merged rural section in the distribution circle in the ratio of 2:3. The

other part of the said clause 3 deals with the existing practice of maintaining the ratio of 2:2:1 hitherto followed for the purpose of sanction of post

in all the circles including distribution circles.

While steps were taken for implementing the said clause, the association representing the Assistant Engineers namely degree holders filed a Writ

Petition in W.P. No. 2330 of 1994 praying for the issuance of writ of certiorarified mandamus seeking to call for the proceedings issued by the

respondent Board herein dated January 25, 1994 and the one dated February 4, 1994 pursuant to the settlement dated January 19, 1994 and

quash the said proceedings on the ground that the clause in the said settlement fixing the ratio 2:3 and 2:2:1 was done behind their back and

therefore the same was not valid. The said Writ Petition is still pending. The petitioners herein also filed two, other Writ Petitions-W.P. Nos. 4748

of 1990 and 4191 of 1990 for implementation of the ratio of 2:2:1. Another Writ Petition was filed W.P. No. 5238 of 1995 seeking among other

things to maintain the cadre strength ratio 2:2:1 in the sections other than distribution sections and the ratio of 2:3 in the Distribution Sections. This

Writ petition also is pending.

5. Under such circumstances, the Board has expressed its inability to implement the clause 3(1) in so far as it related to maintaining overall ratio of

2:2:1 which according to the Board could not be commenced immediately, and therefore, the respondent Board cannot be found at fault for any

alleged non-implementation of second part of Clause 3(i). When the rural sections Grades I and II in the distribution circles were merged as per

clause 3(i) of the settlement dated January 19, 1994, the question of filling up of posts arose for consideration. 469 posts have to be filled up and

by applying the ratio of 2:3, 188 posts of Assistant Engineers have to be filled up. The respondent Board accordingly notified the vacancies, after

following the procedure. The employment exchange was called upon to sponsor candidates and after considering the candidates sponsored by the

employment exchange, interview was called for from October 20, 1994 onwards

and selection from amongst those candidates was finalised on

March 31, 1995 and the necessary orders of appointment were issued on April 1, and April 2, 1995.

6. The recognition of the unions representing the workmen of the respondent are governed by certain codified rules framed by the respondent

Board in its proceedings BPMS No. 2822 dated December 31, 1963. There are separate rules relating to the recognition of associations

representing the staff i.e., clerical employees and rules relating to the union which represent the workmen category who are otherwise called

industrial employees. My attention was also drawn to clause 1 and clause 8 which according to the respondent, are relevant and also Rule 3. On

April 1995, the members of the petitioners' union staged an agitation called dharna. in front of the headquarters office of the respondent Board at

Mount Road and gradually the members of the petitioner union also trespassed into the premises of the respondent Board. By about 11.30 a.m.

they entered the head-quarters office-premises in particular the 8 and 10th floors of the high rise building situated in the headquarter premises

which was besieged by the members of the petitioner Union, The respondent Board was totally unaware of the move the petitioners to indulge in

the said agitation of Dharna and other activities such as squatting in the office of the respondent Board and thereby paralyse the day to day official

function of the respondent Board. There was a total pandemonium in the office of the respondent Board on April 3, 1995 due to the above sudden

agitation resorted to by the members of the petitioner Sangam. Due to the unlawful activities indulged in by the members of the petitioner Sangam,

the officials of the respondent Board were not in a position to take any immediate steps to disperse the members of the petitioner Sangam from the

premises of the respondent Board. The situation was so tense, that the respondent Board had to seek the help of the police by preferring a

complaint to the Inspector of Police Law and Order, Chintadripet Police Station complaining about the unlawful assembly of more than 500

members belonging to the petitioner Sangam before the office premises of the top officials in the 10th and 8th floors on that day. The complaint of

the Board was registered as Crime No. 55/F1/CSE/95 dated April 3, 1995. After the intervention of the police only with considerable force, the

members of the petitioners Sangam could be dispersed from the premises of the respondent Board. However, because of the sudden agitation

resorted to by the members of the petitioner Sangam, the functioning of the offices of the various departments situated in the whole complex got

affected. Works in the various circles were also affected. Apart from that the general morale and discipline among the workmen of the respondent

Board was also seriously prejudiced. The Board as a first step called upon the petitioner Sangam to show cause as to why the recognition granted

to them should not be withdrawn. The said show cause notice was issued on April 4, 1995. The respondent Board also issued a communication to

at) the Superintending Engineers and Chief Engineers in various circles to identify such of those workmen, who are members of the petitioner

Sangam and who participated in the above agitation on April 3, 1995 for the purpose of taking appropriate disciplinary action against them. The

petitioner submitted its explanation on April 19, 1995 to the show cause notice dated April 4, 1995.

Taking into consideration the explanation offered by the petitioner Sangam, and after due consideration of the entire situation, in the Board meeting

held on April 19, 1995, BP(FB)No. 28 dated May 23, 1995 was issued withdrawing the recognition accorded to the petitioner Sangam in BPMS

185 dated February 5, 1970 and the same was also communicated to the petitioner Sangam. According to the respondent, the proceedings dated

May 23, 1995 was fully justified and the same is not liable to be interfered with for all or any of the reasons urged in the writ petition. It is also

urged that the writ petition itself is not maintainable as the petitioner has got neither a common law right nor statutory right so as to invoke the

extraordinary jurisdiction of this Court by challenging the withdrawal of the recognition made in the order dated May 23, 1995.

7. I have heard the arguments of Mr, K. Chandru for the petitioners and Mr. R. Krishnamoorthi, learned Advocate General for "the respondent.

Mr. R. Krishnamoorthi contended that the recognition accorded to the petitioners union was always subject to the petitioners conforming to the

rules based on which such recognition was accorded. It is further contended that in view of the several Writ Petitions filed by the petitioners as well

the Writ Petition filed by the TNEB Engineers Association, no progress could be made in the matter of implementation of the second part of the

Clause 3(1) of the settlement dated January 19, 1994. It is also submitted that the selection process namely posting of Assistant Engineer/Junior

Engineer first grade in the ratio of 2:3 in rural sections of the distribution circles did not in any way affect the rights as contained in the second part

of Clauses 3(1) and hence there is no reason why the members of the petitioner union should get annoyed and also resort to unlawful activities, and

create a law and order situation and thereby paralyse the entire working in the respondent Board office premises. By issuing the orders of the

appointment on April 1 and 2, 1995, none of the rights of the Junior Engineers Grade 2 was in any way affected. It is argued by Mr. R.

Krishnamoorthi, learned Advocate General that after the issuance of the show cause notice dated April 4, 1995, everyone of the allegations made

in the said show cause notice were categorically admitted by the petitioners in their explanation dated April 19, 1995 and therefore the contention

of the petitioner that there should still be an enquiry would only be an empty formality and the same was not contemplated at all either in the rules

or was required to be done. Therefore, there is no violation of principles of natural justice as put forth by Mr. K. Chandru learned counsel for the

petitioners. I have gone through the show cause notice dated April 4, 1995 which contained every details that were required to be given and also

the explanation given by the petitioners in their explanation dated May 19, 1995.

8. There cannot be any second opinion that the disciplinary action that is to be initiated against the erring employees is a regular feature in the

respondent Board whenever any misconduct is committed by any employee and no exception can be taken to the action of the respondent Board

in directing the concerned officials to initiate appropriate disciplinary action against such of those employees who indulged in acts of misconduct

which were brought to their notice. However, we are in this case concerned as to whether the respondent Board is justified by its order dated May

23, 1995 withdrawing the recognition accorded to the petitioner union and the same does not call for interference.

9. As noticed earlier, Mr. K. Chandru, learned counsel for the petitioner contended that the recognition was withdrawn without giving due

opportunities. On the other hand, Mr. R. Krishnamoorthi, learned Advocate General contended that the recognition in respect of the petitioner

union was made in accordance with the rules for the recognition of the industrial employees of Madras State Electricity Board in its proceedings

BPMS No. 2822 dated December 31, 1963 and therefore, the recognition or withdrawal of it would be governed only by those rules and the

State Level Evaluation and Implementation Committee do not come into the picture at all. It is also contended by the learned counsel for the

respondent that the show cause notice issued by the Chairman was in accordance with the rules and the same was also ratified by the Board.

Therefore, there is no discrepancy in the issuance of the show cause notice. it is also pointed out that in the explanation dated April 19, 1995, the

petitioner did not express any sense of regret for the behaviour of its members and therefore, the respondent was fully justified in passing the

impugned order. Lastly, it is contended by the learned Senior Counsel that even if the petitioner feels that the Board has not implemented the said

settlement in its letter and spirit, it is always open to the petitioner to adjudicate his grievance by raising a dispute before the proper authorities

under the Industrial Disputes Act, 1947, that by resorting to direct action, the petitioner Sangam defeated the object of the Labour Law and also

subjected themselves for larger criticism before the public. It is also stated that the petitioner union has got neither a statutory right nor a common

law right and therefore, the availability or non-availability of alternate remedy does not alter the situation about the maintainability of their writ

petition, and that none of the unrecognised unions are provided with any accommodation in the Board's premises. As the petitioners is not having

the status of recognised union as on date, the respondent Board is entitled to call upon them to vacate the premises occupied by them. Since

several other registered trade unions that are existing in the respondent Board are not provided with any accommodation in the respondents

premises, the petitioner cannot claim any special treatment.

10. As already seen, recognition was given to the petitioners Sangam on February 5, 1970. The petitioner Union during all the period have held

many discussions with the Board and came to settlements with them. It is stated in the show cause notice that the petitioner union has engaged in

unfair labour practice, criticised the functions of the Board by using disrespectful and improper language against the officers of the Board and also

threatened to resort to illegal strike against the provisions of law which acts are clear violation of the conditions under which the recognition had

been accorded to their union. Therefore, the petitioner union was directed to explain within 10 days from the date of receipt of the said

communication, as to why their recognition granted in B.P. No. 185 dated February 5, 1970 as a union of industrial employees should not be

withdrawn. The petitioner union sent a detailed reply to the same and in para 2 of the same it is stated as follows..

a) No Dharna was staged on April 3, 1995.

b) No trespassing was caused as the spontaneous gathering was none but the employees of the Board, struggling and sweating for the ultimate betterment of the Board.

c) We deny no disrespectful language or threat of illegal strike being done. No public servant was prevented. Had this been true, Board would have enclosed evidence in proof"".

11. It is also stated in the reply only after the Dharna was conducted on October 25, 1994 the Board thought it fit to prepare a panel on

November 4, 1994 of Junior Engineer Grade II for promotion as Junior Engineer Grade I. Even though panel was approved, no posting was

given. Therefore, telegrams were again sent on November 16, 1994 and second postcard campaign was initiated on January 22, 1994. When the

Board did not implement the settlement even after this, the members of the petitioner union had to painfully announce a token fast on March 16,

1995 and it was only after this, they were called for discussion on March 8, 1995 and subsequently. During the discussion on March 15, 1995 the

Chief Engineer/Personnel assured. petitioner union in the presence of Accounts Member and others that promotion orders of Junior Engineers

Grade 1" would follow in a day or two, and the talks were adjourned to March 27, 1995 for discussion regarding the ratio in the arrears other

than distribution. During discussion on March 8, 15 and 27, 1995 the Board admitted that Assistant Engineers are in excess and the Board did not

open anything then about fresh recruitment of Assistant Engineers. While the members of the petitioner union were eagerly waiting for their posting

as Junior Engineer Grade 1, they learnt that the Board has secretly prepared appointment orders for recruiting graduate Engineers. This only meant

that the Board was going back on the settlement. It is hence contended that the said act of non-implementation of the settlement is unfair labour

practice on the part of the Board. It is true as pointed out by Mr. R. Krishnamoorthil learned Advocate General appearing for the respondent that

the members of the petitioner union assembled in front of the Chairman's room and wanted to know about the orders of appointment. The office

bearers were informed by the Chairman that the members should clear from the premises and then only further discussion will follow. Even this the

petitioner union agreed to and advised their members of disperse. In para 6 of their reply the petitioners have specifically denied the allegation that

on April 3, 1995 the petitioner union staged a Dharna by assembling inside the high rise building, is not true. They also denied that they used any

disrespectful language against the officers of the Board. They also say that it has not been their tradition to use such words. In fact in the show

cause notice there has not even a mention of any disrespect. The petitioners have also denied that they have engaged in unfair labour practice and

that they have been resorting to only constitutional methods for resolving a dispute. Only after the members of the petitioner union assembled on

April 3, 1995, the Board had issued promotion order to 125, junior Engineer Grade 11/Electrical on April 4, 1995 which only shows that their

grievance was justified, and if this promotion had been given earlier there would have been no occasion for the members of the, petitioner union

assembling in front of the Board Office, The concluding portion of the reply has also to be noticed. The petitioners have admitted that their intention

is to abide by the code of discipline and they also request the Board to reciprocate the same. They also assured the respondent Board their utmost

co-operation in the peaceful functioning of the Board. They also submit that a drastic measure like withdrawal of the recognition will not take either

party anywhere and bring any peaceful solution to the issue. There the petitioner also requests for an enquiry in case the Board chooses to proceed

further with the show cause notice.

12. It is the grievance of Mr. K. Chandru, learned counsel for the petitioners, that the respondent without affording any opportunity or enquiry has

passed the impugned order unilaterally withdrawing the recognition conferred on them in the year 1970. It is contended by him that the question of

recognition is monitored by a State Level Evaluation and Implementation Committee presided over by the Commissioner of Labour and only that committee can recommend withdrawal of recognition. According to him the show cause notice issued by the Chairman is vitiated and contended that the impugned order withdrawing recognition contains more reasons than the original allegations found in the show cause notice and the petitioner union is deprived of meeting those additional charges. I see much force in this contention. This apart, the petitioners" Union has demanded an enquiry. Under such circumstances, the respondent if they wanted to proceed with the show cause notice after the reply of the petitioners, ought to have conducted an enquiry after supplying the necessary documents and evidences to substantiate those charges. In this case, the respondent has openly shifted the burden of proof on the petitioner to substantiate the allegations which is contrary to law. Further, the statement that the petitioner did not deny the allegations is contrary to the materials on record. The petitioners have while explaining the reasons for staging Dharna etc., however specifically denied that they have engaged in any unfair labour practice and that they have not trespassed into the office of the Chairman as the spontaneous gathering was none but the employees of the Board, struggling and sweating for the ultimate betterment of the Board. According to the petitioners, they have not used any disrespectful language and threatened for an illegal strike. In any event, as contended by Mr. K, Chandru, learned counsel for the petitioners in as much as the respondent has initiated disciplinary action against some of the members of the petitioner union and only when the charges are proved in accordance with the standing orders, it would be open to the respondent to conclude the issues and withdraw the recognition. The respondent has not given any opportunity to put forth the grievances of the petitioners by conducting an enquiry which will find whether the petitioner union has indulged in any unlawful activities. Therefore, I am of the clear view that the withdrawal of the recognition of the petitioner union without affording the requisite opportunity to the petitioners is bad in law and it is opposed to the principles of natural justice. Therefore, the order impugned in this writ petition is liable to be set aside.

13. Mr. K. Chandru has also cited the decision reported in Tamil Nadu Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu

Electricity Board, . The question that arose in that case was, where and under what circumstances a trade union, which is recognised, can be derecognised and whether such derecognition can be done only after giving valid reasons. S. Mohan, J., as he then was, observed that an administrative order cannot be passed whimsically and must conform to certain reasonable standards. In the instant case, it is not in dispute that after recognition from the year 1970, the petitioner-union entered into various settlements on behalf of the employees and the petitioner union has also been granted facilities like free accommodation, right to negotiate on behalf of the staff and other facilities as provided for in the Code of Discipline in Industry.

14. The case reported in Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Board Accounts and Executive Staff Union, is against the order of S. Mohan, J., as he then was, in Tamil Nadu Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu Electricity Board, . The appeal was filed by the Tamil Nadu Electricity Board. The Bench held that the grant of recognition confers a status on 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 a group of workers with reference to which it was recognised, and that withdrawal of that status or recognition will certainly bring about adverse consequences and with reference to such consequences, even an order of withdrawal, like the one made by the appellant, if it is illegal and in violation of principles of natural justice, certainly a body like the respondent-union can approach this Court under Article 226 of the Constitution.

15. As already seen, it is the contention of Mr. K. Chandru, that the respondent has passed the impugned order without any enquiry whatsoever even though it is stated in the order that on enquiry the order is so passed. Admittedly no enquiry was conducted in this case. Therefore, the impugned order has to be quashed as illegal and is in violation of principles of natural justice. In the instant case, though notice was issued by the respondent on April 4, 1995 directing the petitioner-union to explain as to why the recognition granted to it as a union of industrial employees should not be withdrawn, a detailed reply was sent by the petitioner-union on

April 19, 1995 explaining their clear and categorical stand and at the same time requesting the respondent for an enquiry in case the respondent chooses to proceed further with the show cause notice. However, the respondent without giving any opportunity as prayed for, has passed the impugned order.

16. The decision reported in Reserve Bank of India Employees' Association, Nagpur Vs. A.P. Aiyer, Manager, Reserve Bank of India, Nagpur

and another, is the judgment of a Division Bench of the Bombay High Court agreeing with the view taken by the Madras High Court in Tamil Nadu

Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu Electricity Board, . That was a case of recognition granted to the Reserve

Bank of India Employees Association in respect of Class III Employees. The workload of Class lit Employees of Notes Examination and

Verification Department was increased by the National Tribunal. Since the management turned down the requests of Class III employees, there

was a strike and go slow. Notice was issued to the union indicating the proposal to withdraw the recognition and calling upon the union to show;

cause against the proposal. The Union wanted time to give a reply. It was also mentioned in the reply that recognition issue was sub-judice in a

Court of law. Without sending and reply on the extension application, the management withdrew the recognition. Therefore, the withdrawal of

recognition was challenged by the union by filing a writ petition. Allowing the writ petition and making the rule nisi absolute, the Nagpur Bench held

as follows in para 4 at page 158.

It is difficult to hold that refusal to grant recognition and withdrawal of recognition once granted can be placed on the same footing. Primary

purpose of a trade union is collective bargaining and only recognised unions can properly wield that authority and influence. Recognition once

obtained by the union becomes its soul and gives it a new vigour as an authorised bargaining agent of the members and indeed raises its status to a

new height. Any union can ill-afford to lose that status in case it wants to continue efficiently and effectively to serve the cause of the workers for

which alone it is recognised. In any case, recognition gives certain privileges and "derecognition" amounts to their denial. Order of derecognition

adds insult to the injury in case it is passed as a disciplinary measure and is for

alleged commission of offence and/or acts of indiscipline. Such an order attaches stigma and is plainly punitive in nature".

The bench has further observed that the application of principles of natural justice does not depend upon either statute or upon a positive term in

the agreement requiring its compliance, and this is not a case where the application of principles of natural justice has been excluded by

agreement. The Division Bench disagreed with the Kerala High Court and agreed with the Madras view in *Tamil Nadu Electricity Board Accounts*

and *Executive Staff Union Vs. Tamil Nadu Electricity Board*, .

17. In *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, the Supreme Court while dealing with the question of administrative action

and when it becomes quasi judicial, has observed as follows :

An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi alteram*

partem. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. , A large number of authorities

are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the

case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken".

18. Admittedly, the respondent has granted recognition to the petitioner-union. When it wants to undo that recognition by derecognising, it is

incumbent upon the respondent to give opportunity to the petitioner-union and to state valid reasons for derecognition. In other words, the

derecognition cannot be done in an arbitrary manner. Therefore, W.P. No. 8037 of 1995 is allowed and the order impugned withdrawn.

The recognition granted to the petitioner, union is quashed.

19. Now I will take up W.P. Nos. 9847, 10197 and 10198 of 1995. These three writ petitions were filed by the office bearers of the petitioner-

union in W.P. No. 8037 of 1995.

20. The petitioner in W.P. No. 9847 of 1995 N. Chandrasekaran, who was the General Secretary of the Union and who was working as Junior

Engineer/E;.)Gr/Elec. Mtec/High Rise Building, Madras-2, was transferred and posted to Ennore Thermal Power Station, against one of the

existing vacancies. The Superintending Engineer, Madras Development Circle, was requested to relieve him and report the date of (elief.

According to the petitioner, he is an active member of the Tamil Nadu, Engineers Sangam and that he was the General Secretary of the said

Sangam from 1969 till 1987 and subsequently elected as its Vice President for a period of three years and once again elected as the General

Secretary in the year 1985. The petitioner narrates the settlement dated December 31, 1993 of their union along with several other unions, by

which several issues were resolved u/s 12(3) of the Industrial Disputes Act. He also narrates certain other facts and the writ petition filed by the

Sangam challenging the withdrawal of recognition.

21. The petitioner in W.P. No. 10197 of 1995 K. Ekambaram, and the petitioner in W.P. No. 10198 of 1995 V. Ashok Kumar were the Vice

President (Civil) and the Headquarters Secretary of the Sangam respectively. " They also challenge their transfer to North Madras Thermal Power

Project and Ennore Thermal Power Station respectively.

22. It is pointed out by Mr. K. Chandru that only these three office bearers have been functioning in the headquarters of the Sangam and if they are

removed from the campus of the Board Secretariat, it will effectively prevent representing the grievances of the members of the Sangam to the

various authorities and their activities will be crippled. According to Mr. K. Chandru, precisely this was the purpose which the Chairman of the

Electricity Board/2nd Respondent wanted to achieve. The impugned order of transfer was challenged by the petitioners as arbitrary and violative

of Article 14 of the Constitution and also actuated by mala fides.

Mr. K. Chandru would submit that the intention of the respondents was to victimise the office bearers of the Sangam and that the transfers were

made vindictively after withdrawing recognition granted to the Sangam, and therefore, the respondent, under the guise of passing an administrative

order, in effect making orders which are mala fide, and which will amount to unfair labour practice and totally prohibited by Section 25T of the

Industrial Disputes Act. It is contended that balance of convenience is in favour of the petitioners and they have a prima facie case to succeed.

23. The respondents filed separate counter affidavit in all the three writ petitions. It is stated in the counter affidavit that transfer of staff becomes

necessary for various reasons in the interests of administration. Under the service rules and service regulation governing the employees of the

Board, the Board is empowered to transfer its employees. Regulation 105 of the Tamil Nadu Electricity Board Service Regulation, framed u/s

79(c) of the Electricity Supply Act, 1948, which has statutory force and is binding on employees, provides that member of a class of service may

be required to serve in any post borne on the cadre of such class of service and in any place of duty as the exigency of the administration requires.

The right of the Board to its employees has already been settled as per the orders of this Court and also by the Supreme Court. The transfer

orders were issued on July 1, 1995 and the individuals were relieved on July 6, 1995. It is stated that the petitioners in W.P. Nos. 9847 and

10198 of 1995 were transferred to Ennore Thermal Power Station on July 1, 1995 and were relieved on July 6, 1995 and that the petitioner in

W.P. No. 101 97 of 1995 was transferred to North Madras Thermal Power Project on July 10, 1995 and relieved on July 11, 1995. According

to the respondents, the substitutes were also posted in their places. It is also stated that thin transfers were effected purely on administrative

grounds and exigencies and there is no mala fide intention for these transfers and the allegation of the Sangam that the petitioners were victims for

their trade union activities connected with the implementation of the terms of settlement, is denied.

24. I have carefully gone through the averments made in the affidavits filed in support of the writ petitions and also the averments made in the

counter affidavits. The petitioners' case is that they had protested against the policy of the respondents regarding recruitment, promotion, etc., and

that therefore, the recognition granted to their Sangam, was withdrawn by the respondents. They also alleged that they have been transferred from

the head-quarters to other places like Ennore Thermal Power Station and North Madras Thermal Station and therefore, their rights are adversely

affected. They also raised the plea of victimisation. The allegations of victimisation, in my opinion, has to be rejected as the petitioners cannot claim

any immunity from transfer merely by reason of their being office bearers of the union. The fact that they had organised protests and agitations is

not a ground from which intention to victimize the petitioners can be inferred. Apart from the general allegations that their trade union activities have

led to their transfer, there is no other material from which it can be inferred that the transfers were effected with a view to victimise the petitioners.

25. Mr. R. Krishnamoorthi, learned Senior Counsel appearing for the respondents, submitted that the validity of Standing Order No. 28, its

interpretation as also the Board's power to transfer its employees, have been considered by this Court in numerous decisions and it has been

uniformly held by the Court that transfer is a general condition of service of the employees, that such transfers are to be effected for the

administrative convenience of the Board and that the Court does not sit in appeal nor call for details of administrative exigencies.

26. In *B. Varada Rao v. State of Karnataka* 1986 II CLR 277, the Apex Court observed that it is well understood that transfer of Government

servant, who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service and therefore does

not result in any alteration of any of the conditions of service to his disadvantage. The Supreme Court declined to accept the case of the petitioner

therein that he should not be transferred.

27. *S. Mohan J., as he then was, in M. Syed Ali v. The General Superintendent, Ennore Thermal Power Station* (W.P. No. 4214 of 1983 dated

June 27, 1983), while dealing with the challenge to an order of transfer of a workman from the Ennore Thermal Station, and referring to Standing

Order No. 17 dealing with the clerical staff of the Board, which is similar to Standing Order 28 for the workmen, held that there is absolutely no

bar for transfer from Ennore Thermal Power Station to another Circle. *S. Nainar Sundaram J., as he then was* also took the same view in W.P.

Nos. 5718, 5781 and 5869 of 1984.

28. *S. Natarajan, J. : as he then was, in the case of P. Pakkiri v. The Chief Engineer/Personnel, Tamil Nadu Electricity Board* (W.P. Nos. 1144 to

1146 of 1985 dated April 19, 1985), after referring to clause 28 of the Standing Order, held that the contentions advanced on the basis of the

Standing Order were not sustainable. The learned Judge has further observed as follows :

In the first place it has been pointed out that the purpose of this standing order is to see that by reason of transfer a workman does not lose his

seniority in the unit to which he belongs. It is to safeguard the workman

against the loss of seniority, this standing order has been framed. This inference can be easily drawn from the fact that the standing order does not impose a total ban on transfers of workman from one unit to another. On the other hand, the standing order contains only a guideline which has to be followed as far as practicable.... Therefore, the main purpose of the Standing Order is to ensure the maintenance of the seniority of the workmen in the grade or category in which he is employed and for ensuring pay protection as well".

29. In *M. Bomman v. Tamil Nadu Electricity Board*, 1992 W.L.R. 852 this Court (A. R. Lakshmanan, J.) after considering the case of the petitioners therein based on Clauses 17 and 28 of the Tamil Nadu Electricity Board Standing Orders, as also the allegations of mala fides, held that the allegations of mala fides were not made out on the facts of the case. I further observed that only in cases where the order of transfer is found to be mala fide or in cases where such orders are in colourable exercise of power, the orders would become wholly illegal and void and that transferring a person because he is trouble-some or trouble-maker would be in the interest of administration and that such transfers cannot be characterised as punitive. The transfer of the petitioners therein outside the circle in which they were employed was held to be within the competence of the authorities.

30. In *N.K. Singh Vs. Union of India and others*, the Supreme Court has observed that no roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual, It was further held that transfer of a Government servant in a transferable service is a necessary incident of the service career and that assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. The Supreme Court has also held that several imponderables requiring formation of a subjective opinion in that sphere may be involved at times and that the only realistic approach as to leave it to the wisdom of the hierarchy of superiors to make that decision and unless that decision is vitiated by mala fides, or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially

manageable standards for scrutinizing all transfers and Courts lack the necessary expertise for personnel management of all Government

Departments. The Supreme Court has finally observed that this must be left, in public interest, to the departmental heads subject to the limited

judicial scrutiny indicated.

31. I am of the view that the transfer when it is incidence of service and is not affected by mala fide or in prejudice of any binding rule, cannot be

judicially reviewed. In this case, though mala fide has been alleged against the respondents, the same has not been proved. The petitioners' transfer

is in accordance with the exigency of the situation and that it is not for this Court to enter into a roving enquiry to ascertain the precise nature of the

administrative exigency and judicially review the same. It is not in dispute that the transfer has been effected by an authority who is competent to

effect such transfers. I have already rejected the contention of Mr. K. Chandru that the impugned order of transfer is said to have been made mala

fide because the petitioners held offices in their Sangam, and had agitated against the policies of the respondents in certain matters. It is also not the

case of the petitioners that there is any loss of emoluments or loss of status because of the transfer. It is not their case that the transfer amounts to

reduction in rank either. Transfer of a public servant made on administrative grounds or on public interest should not normally be interfered with

unless there are strong and compelling circumstances rendering the transfer order improper and unjustifiable. The petitioners have not made out any

case for interfering with the impugned orders of transfer. It is also very clearly stated by the respondents that all the three petitioners have already

been relieved and that substitutes have been posted in their place. There are no merits in these three writ petitions.

32. For the foregoing reasons, W.P. No. 8037 of 1995 is allowed and the impugned order withdrawing recognition to the petitioner/Tamil Nadu

Electricity Board Engineers Sangam is quashed. W.P. Nos. 9847, 10197 and 10198 of 1995 filed by the petitioners against the order of transfer,

are dismissed. However, there will be no order as to costs.