
(1956) 09 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2367 of 1956

Triloki Nath Tripathi

APPELLANT

Vs

Allahabad Divisional Branch of All India Postal Workers Union
Class III and Others

RESPONDENT

Date of Decision : 13-09-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Trade Unions Act, 1926 — Section 6

Citation : AIR 1957 All 234

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.N. Dwivedi and K.K. Bajpal, for the Appellant; S.C. Khare and R.B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—This is a petition under Article 226 of the Constitution praying for a writ of certiorari quashing the proceedings of the meeting held on the 3rd of September, 1956, and further to issue a writ of mandamus to the opposite parties Nos. 1 and 2 who are the Allahabad Divisional Branch of the All India Postal Workers Union Class III and Sri R.C. Srivastava, Secretary of the Allahabad Divisional Branch of the All India postal Workers Union Class III.

2. The postal employees of class in formed a union known as the All India Postal Workers Union Class III. It was registered under the Trade Union Act, 1926 . The Union has a provincial branch known as the All India Postal Workers Union (Class III) U. P. Circle Branch. The dispute relates to the Allahabad Divisional Branch constituted under Rule 38(iii) of the Constitution. The petitioner is a member of the Allahabad Divisional Branch, opposite party No. 2 is the Secretary and opposite parties Nos. 3 to 10 are also members of that Branch.

3. On 15th of July 1956 a meeting of the general body of the Allahabad Division was held to elect office bearers. Some dispute arose between the members as

regards the voting rights of the members who were in arrears of membership subscription. On account of the difference of opinion the meeting was adjourned sine die and the dispute was referred to the secretary of the Circle Branch. On 27th of August 1956 opposite party No. 3 Sri Ram Chandra Srivastava issued a notice informing the members of the general body that a meeting will be held on the 3rd of September, 1956, for the purpose of electing delegates to the All India Conference and to the Circle Branch Conference.

This notice was circulated amongst the members between the 27th of August and 1st of September. On 1st September certain objections were raised by the petitioner and some other members to the validity of the proposed meeting. Negotiations started between the objectors and the opposite parties for some amicable adjustment but they failed on the morning of the 3rd of September. The meeting was therefore held on the 3rd of September, 1956, and opposite parties Nos. 3 to 6 were elected delegates to the All India Conference while opposite parties Nos. 7 to 10 were elected delegates to the Circle Branch Conference.

4. The petitioner challenged the election of the delegates which was held on the 3rd of September on various grounds. Notices were issued to the opposite parties. The petition was contested on behalf of the opposite parties. The main ground urged by the petitioner is that the meeting was invalid as notice issued on the 27th August, 1950, for holding the meeting of 3rd of September, 1956, was in violation of Rule 45 of the constitution of the Union and that the notice was not served on all the members at least 7 days before the date of the meeting.

In the application several other grounds were also taken but the arguments were confined mainly to the question whether the notice was in accordance with the provisions of Rule 45 of the constitution. The contention of the petitioner is that Rule 45 of the Constitution is a statutory rule and any violation of such a rule vitiates the entire proceedings and it is open to the petitioner to get relief under Article 226 of the Constitution quashing the entire proceedings of the meeting.

5. A number of points were urged by the respondents' counsel. It was contended first by him that the Allahabad branch of the All India Postal Workers Union Class III was a domestic body and the right of the petitioner, if any, was a private right which could not be enforced by means of a writ petition under Article 226 of the Constitution. The relief under Article 226 of the Constitution, either for mandamus or for certiorari could only be claimed as against a public body and in respect of matters which are of public nature.

In the present case although the Union has been registered under the Trade Unions Act and it had thus acquired a legal entity, nonetheless, the right which the petitioner claimed is a private right not enforceable by a petition under Article 226 of the Constitution. It was then contended that Rule 45 is not a statutory rule; it is in the nature of an agreement between the members of the Union. Every member when he joins the Union enters into an implied agreement

to abide by these rules and there is no statutory duty cast upon the opposite parties which could be enforced by a writ under Article 226 of the Constitution. Lastly it was urged that there has been no violation of the provisions of Rule 47 and even if there had been any such violation it will not vitiate the entire proceedings.

6. Article 226 of the Constitution is very widely worded. The High Court under Article 226 of the Constitution has power to issue to any person or authority, including in appropriate cases any Government within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

This Article is not confined to the enforcement of public rights and even assuming the argument of the other side to be correct that what the petitioner in the present case is doing is wholly to enforce his private right, there is no bar under Art 226 of the Constitution to this Court enforcing such a right by means of a writ of mandamus or certiorari or any direction suitable to the circumstances of the case. There is therefore no force in the contention raised by the respondents that the present petition is not maintainable and no mandamus can be granted to the petitioner on the ground that he is seeking to enforce his private right.

7. It was strongly contended by the petitioner that the constitution of the Allahabad Branch of the Union containing Rule 45 has statutory force and breach of the duty cast under the said rule can be enforced by means of a petition under Article 226 of the Constitution. The Union was registered under the Trade Unions Act of 1926, The name of the Union is the All India Postal Workers" Union Class III. Under Rule 5 of the Constitution of the Union the Union consists of Central Circle and Divisional Branches and local Branches where needed. All non-gazetted class III postal employees excluding postman and allied cadres were to be eligible to become members on application.

Rule 7 of the Constitution provides that members shall be admitted only on application and on express agreement to abide by the constitution. The Central Union which is the head office of the registered Union is also to be named as the All India Postal Workers" Union Class III and the composition of the Central Union is:

(a) The All India Conference consisting of:

(i) elected delegates representing local units on the basis of one representative for each unit of every fifty paid members; and

(ii) ex-officio delegates who shall be the office bearers of the Central Union and the Circle General Secretaries.

Then there are other Clauses (b) and (c) of Rule 17 which specify other persons who will constitute the All India Conference which is the main body to carry on

the duties of the Central Union.

8. The Circle Union is the second component part of the Union and is composed of local units duly affiliated. The management of the Circle Union is vested in the Circle Conference and the Circle Council. Rule 28(ii) provides for the composition of the Circle Conference. The other component parts of the Union are the Branch Unions. The membership of the Branch Union consists of all class III (permanent or temporary) employees Clause 45 of the Constitution provides that

"notice of the General Body meeting shall be served at least seven days before the date thereof and notice of an Executive Committee meeting shall be served at least five days before the date thereof. Extra-ordinary General Body meetings shall be convened under instructions from Centre or Circle Branch by giving 3 days notice."

9. The petitioner's counsel relied upon Section 6 of the Indian Trade Unions Act of 1926 which provides as follows:

"A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provides for the following matters namely:

(a) the name of the Trade Union;

(b) the whole of the objects for which the Trade Union has been established;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the officers and members of the Trade Union;

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary members as officers required u/s 23 to form the executive of the Trade Union;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(g) the manner in which the rules shall be amended, varied or rescinded;

(h) the manner in which the members of the executive and the other officers of the Trade Union shall be appointed and removed;

(i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts, thereof and adequate facilities for the inspection of the account books by the officers and members of the Trade

Union; and

(j) the manner in which the Trade Union may be dissolved,"

10. Section 10 provides the conditions under which a registration can be cancelled and Sub-section (b) of the said section expressly provides that if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of- this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by Section 6, he can cancel the registration.

11. The counsel for the petitioner strongly urged that the rules relating to the election of the delegates and providing for the notice of the general meeting are matters which are covered by Clauses (d) and (h) of Section 6 of the Trade Unions Act and as there is an obligation on the Union to provide for these matters in the constitution before it can be registered, any provision relating to these matters acquires a statutory force and breach of any such rule can be enforced under Article 226 of the Constitution. In my opinion the fact that Section 6 provides that no Union can be registered unless its constitution provides for these matters does not necessarily mean that the rules relating to matters contained in Section 6 acquire a statutory force.

It is conceded by the petitioner that the rules in the constitution of the Union relating to matters other than those enumerated in Section 6 do not acquire any statutory force. Even though the rules are to be filed along with the application for registration, they have only a contractual force but the rules relating to matters enumerated in Section 6 do acquire statutory force as it is obligatory for the Union before registration to provide for such matters in the rules.

In my opinion it is only a condition precedent for registration that the constitution has to provide for the matters given in Section 6. No registration certificate can be issued unless the constitution provides for those matters but it cannot be said that the rules relating to these matters are rules framed under the authority of Section 6. Section 6 itself does not confer any authority to frame any rules. The existence of such rules, as I have pointed out, is a condition precedent for the registration of the Union.

12. It was strongly urged by the counsel for the petitioner that a distinction has been drawn in the Act between the provisions of the constitution relating to the matters enumerated in Section 6 and other matters inasmuch as express power has been given in Section 10 to the Registrar to cancel the registration in the event of the Union rescinding any of the provisions of the constitution relating to the matters contained in Section 6.

That to my mind strengthens the argument of the respondents that the provisions u/s 6 are only a condition precedent for the exercise of the powers of

registration and nothing more. Section 10 only provides that a registration cannot be allowed to continue if at any stage the Union rescinds the constitutional provisions relating to matters in Section 6 of the Act. Section 29 of the Act gives power to make regulations to any appropriate Government for the purpose of carrying into effect the provisions of the Act. Clause (2) of Section 29 enumerates the matters which can be provided for in the regulations.

If any regulation is framed in the exercise of power by any authority u/s 29 such a regulation will have no doubt a statutory force. But it cannot be said that these rules which were framed prior to the registration of the Union and the existence of which was necessary for the registration acquired any statutory force. Reliance was placed by the petitioner on the case of *Norey v. Keep* (1909) 1 Ch 561 (A). That was an action brought by one James Norey, a member of the executive council of the National Society of Operative Printers' Assistants (a registered trade union) against other members of the council claiming a declaration that each of the plaintiffs was entitled to inspect by his accountant or firm of accountants such books and accounts and list of members of the society as he was entitled under the Trade Union Acts to inspect.

Rule 19(12) of the society provided in that case that the books and accounts of the society and list of members shall be open to the inspection of all the members thereof, and of every person having an interest in the funds, in accordance" with the Trade Union Acts, on one week's notice being given, on application to the committee. u/s 14 of the Trade Union Act of 1871 the rules have to contain provisions in respect of the several matters specified in the 1st schedule of the Act, and in Clause 6 of the schedule one of the matters which had to be provided for under the rules was the inspection of the books and names of members of the Trade Union by every person having an interest in the funds of the Trade Union.

It appears that Rule 19(12) on which the plaintiff in that case relied was framed with a view to comply with the provisions of Clause 6 of the schedule. The petitioner particularly relies on the following observations in that case at page 564:

"It would appear, therefore, that persons interested in the funds of the society have a statutory, or at any rate a semi-statutory, right for the rule was made in accordance with the Act--to inspect the books and accounts of the society."

The case is no authority for the proposition to my mind that the rules have acquired any statutory force. Even the observation relied upon by the petitioner is a halting one. It only says that the rules of the society have a statutory, or at any rate a semi-statutory, right. Apart from this, there it was further observed that the members of the society have an interest in its funds and therefore they are within not only the terms of the rules but also the terms of the Act itself entitled to an inspection. What was the manner in which the member could seek inspection of the account books was really the question which was involved in

that case. There was also a right given to inspect in the clear terms under the provisions of the statute itself.

13. In the case of *Jamalpur Arya Samaj v. Dr. D. Ram* AIR 1954 Pat 297 (B), it was held that Article 226 of the Constitution provides a remedy for the vindication of a public right. Where the jurisdiction of a domestic tribunal is founded not upon any statutory obligation but upon rules which constitute the contract, Implied or expressed, between the members of an association, the proper procedure for the party aggrieved is to file a suit and not to apply for a writ under Article 226 of the Constitution.

14. In the case of *Mohammed Ibrahim Vs. Assansol Iron and Steel Workers' Union and Others*, it was held by the Calcutta High Court that the constitution of a union does not acquire statutory force and the rules and regulations framed u/s 29 only had the force of law. In my Judgment, therefore, Rule 45, even assuming that it relates to a matter contained in Clauses (d) and (h) of Section 6 has not got statutory force. It is only in the nature of a contract binding on the members of the Union. Any breach of such rule cannot be enforced by a writ of mandamus under Article 226 of the Constitution, If any of the rights of the petitioner has been infringed by violation of any of these rules the remedy of the petitioner will be by way of a suit.

15. Coming to the merits of the case itself, it was argued by the petitioner that the violation of the provisions of Rule 45 renders the entire proceedings of the meeting held on the 3rd of September ultra vires and the opposite parties who are said to have been elected as delegates in that meeting have not been duly and properly elected as delegates to the conference and had no right to participate in the deliberations of the conference. The notice was given on the 27th of August, Rule 45 provides that a notice of the meeting shall be served at least 7 days before the date thereof. The argument is that the words "at least 7 days" mean seven clear days. The notice in this case was given on the 27th of August and the meeting was held on the 3rd of September. Clear seven days therefore did not intervene between the date of the notice and the date of the meeting. There was, therefore, violation of Rule 45.

16. A large number of English authorities were cited by the petitioner's counsel to show that if any statutory rule regarding the notice was not observed even in Incorporated bodies the proceedings were held to be ultra vires. It is not necessary for me to refer to all these cases as my decision on the previous issue is sufficient to dispose of the petition. But to my mind the law on this point has been settled by the decision of their Lordships of the Supreme Court in the case of *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, . The facts of that case were that the theoretical examination of the M.B.B.S. of the Utkal University was fixed for the 9th and 10th of April 1951.

The practical was fixed for the 19th and the viva-voce for the 20th. Sometime on the 9th it was brought to the notice of a member of the Senate that there has

been leakage of the questions. However the matter was not brought to the notice of the Vice Chancellor and the examinations were held on the 9th and 10th. On the 18th the Vice Chancellor was informed. He asked the Principal to look into the matter. The Principal submitted a report on the 20th and came to the conclusion that there had been a leakage. On the 21st there was going to be an ordinary meeting of the University Syndicate to consider certain other matters.

This matter was not on the agenda and the Vice Chancellor in the meeting informed the members as to what had happened, and the Syndicate after considering the whole matter passed a resolution to the effect that it was satisfied that there had been leakage of questions in anatomy and the results in anatomy examination were cancelled and another examination was to be held from 7th of May, 1951. The candidates who were successful in the examination which had already been held on the 9th and the 10th applied to the High Court for a direction under Article 226 of the Constitution and challenged the proceedings of the Syndicate on the ground that there was no notice to all the members of the Syndicate of the matter which was suddenly discussed by the Vice Chancellor and brought before the Syndicate on the 21st. The High Court held that there was no proper notice to all the members and the University was a statutory body. The proceedings of the meeting were cancelled and the order cancelling the results was set aside. On appeal to the Supreme Court it was observed as follows:

"Several English authorities were cited about the effect of an omission to give notice to even one member of a body entitled to receive it, in particular a decision of the Privy Council in AIR 1934 62 (Privy Council) We do not think it necessary to examine the general principle at any length because, in our opinion, this case is governed by its own facts. It may well be that when there is a statutory requirement about notice the provisions of the statute cannot be evaded or ignored. It may also be though we do not stop to enquire whether it is, then when the constitution of a non-statutory, body requires notice to be given, then also there cannot be any relaxation of the rule.

The reason for the stricter rule laid down in the cases cited before us is that though an incorporated body like a university is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed.

Hence, an omission to give proper notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate

resolutions which purport to have been passed by it. But this is only when such inflexible rigidity is imposed by the Incorporating constitution. The position is different when either by custom or by the nature of the body or by its constitution and rules, greater latitude and flexibility are permissible. Each case must be governed by its own facts and no universal rule can be laid down; also it may well be that in the same body certain things, such as routine matters, can be disposed of more easily and with less formality than others. It all depends on the nature of the body and its rules."

17. From the nature of the body and the circumstances of present case it cannot be said that the rule about giving of notice is to be enforced with rigidity and the rule was so inflexible that any violation of such a rule will render the entire proceedings ultra vires. The notice was given on the 27th of August. The members had sufficient notice. There was some controversy among the members as regards the rights of those who were in arrears to vote at the meeting. The matter has been referred to the Secretary of the Central Union who had given his opinion. Negotiation for compromise went on till the morning of the 3rd of September. In these circumstances it cannot be said that the members in any way were prejudiced by not getting seven clear days" notice. In my judgment, therefore, there has been no violation of Rule 45 such as to render the entire proceedings of the meeting of the 3rd illegal and ultra vires.

18. There is, therefore, no force in this petition and it is rejected, but in the circumstances I make no order as to costs.