

CASE NO.:
Appeal (civil) 3337-3338 of 2002

PETITIONER:
CHAIRMAN S.B.I. & ANR.

Vs.

RESPONDENT:
ALALSSOORCIISASTAIOSNTA&TEORBSA.NK OFFICERS

DATE OF JUDGMENT: 06/05/2002

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

D.P.MOHAPATRA, J.

Leave is granted.

These appeals filed by the Chairman, State Bank of India, Central Office, Mumbai and the Chief General Manager, State Bank of India, Local Head Office at Bhubaneshwar are directed against the judgment dated 24.11.1998 of the High Court of Orissa in OJC No. 8863/1997 and the Order dated 23.7.1999 disposing of the petition for review of the said judgment, Civil Review No.15/99, filed by the appellants. The operative portion of the judgment dated 24.11.98 reads as follows:

"For the foregoing reasons we set aside paragraph 2 of the Staff Circular No.91 of 1987 if the same is still in force and direct the opposite parties to confer such rights on the petitioner-Association as are available to them under Rule 24 of the Verification Rules.

The Management of the State Bank of India are also directed to keep in mind the observations made in this judgment while dealing with its employees, officers and their Unions, recognized or unrecognized."

The High Court, allowing the review petition in part by the order dated 23rd July, 1999, issued the following directions :

"For the aforesaid reasons, in partial modification of the judgment dated 24.11.1998, we pass the following order:-

(i) We set aside paragraph 2 of the Staff Circular No.91 of 1987 if the same is still in force and direct

the management of the Bank to permit the writ petitioners-Association to meet and discuss the grievances of any individual member of the petitioner-Association relating to his service conditions in a regulated prescribed manner and further to appear on behalf of its members in any domestic or departmental enquiry or in any proceeding before the Conciliation Officer, Labour Court, Industrial Tribunal or any other Tribunal.

(ii) The management of the Bank will be at liberty to take such suitable disciplinary action as permissible in law if any individual employee or officer or office bearer of any Union or Association including the writ petitioner Association, recognized or unrecognized, indulge in any coercive or intimidating or indisciplined acts or behaviour.

(iii) We also direct the management of the State Bank of India to keep in mind the relevant observations made in the judgment dated 24.11.1998 and also in this order while dealing with its employees, officers and their Unions, recognized or unrecognized.

The review is allowed in part to the extent indicated above."

In the circular, Staff Circular No.91 of 1987 dated 13-11-1987 which was under challenge in the writ petition, it was stated that the bank does not enter into any dialogue etc. with a non-recognized union/association; that the bank has recognized the All India State Bank Officers' Association for this circle; the said rights and privileges cannot be extended to any other association of the Officers in the same circle.

Para 2 of the Staff Circular No.91 of 1987 which was struck down by the High Court, reads as follows:

"Having regard to very serious developments as brought out in our Staff Circulars Nos. 84 and 90 of 1987, it will not be in order for any Bank functionary to enter into any dialogue or accept any representation from the office-bearers of the unrecognized All Orissa State Bank Officers' Association in this Circle, even in matters pertaining to individual grievances. In case the representatives of the above unrecognized Association resort to any coercive methods like dharna, gherao etc. decisions obtained, if any, under

such circumstances would be deemed to have been taken under duress and such decisions shall not be binding on the Bank. Needless to add that the cases of officers indulging in such unwarranted actions would be dealt with sternly and suitable disciplinary action would be taken against them."

From the judgment under challenge it is clear that the controversy raised in the case relates to the rights of the All Orissa State Bank Officers' Association (a non-recognised association), respondent no.1 herein, vis-a-vis the Management of the Bank, to espouse the case of the officers of the Bank with the management of the bank; whether the respondent association has any such right or the rights are vested only in a recognized association, the All India State Bank Officers' Federation/Association.

The respondent No.1 Association represented through its General Secretary, filed the writ petition raising grievance against unjust, unfair and hostile treatment towards its members and claiming treatment at par with office-bearers of the recognized association, and prayed that norms for guidance in matters relating to a non-recognized association may be laid down by the Court. It does not appear to have been disputed before the High Court and it was also not disputed in this Court that a non-recognized association is a registered association under the Trade Unions Act. The management of the Bank has not recognized the said association. According to the Bank, the association does not satisfy the criteria laid down by the Verification of Membership and Recognition of Trade Unions' Rules, 1994 (hereinafter referred to as 'the Verification Rules') framed by the Government of Orissa. The non-recognized association pleaded that in 1982 the association submitted a list of its members and claimed recognition, but in spite of recommendation of the Officer-in-charge of the local Head Office, the Central Office at Bombay did not take any decision and started adopting unfair labour practice to encourage defection from the petitioner's association to the recognized association. The non-recognized association also alleged that members of the recognized association are being shown illegal and undue favour in the matter of posting, transfer, entertainment or representations whereas the members of the non-recognized association are being put to various inconveniences in a systematic and calculated manner. Certain instances were stated in the writ application in support of the allegation of hostile discrimination and unfair treatment.

The Chief General Manager in the local Head Office at Bhubaneswar, respondent No.2 herein, in his counter affidavit denied the allegations of discrimination, arbitrary treatment and unfair practice. However, he referred to certain rights and privileges allowed to members of recognized association and asserted that only such rights and privileges were not being extended to the office-bearers of the non-recognized association. He refuted the claim of the non-recognized association for parity of treatment with members and office bearers of the recognized association.

The High Court in para 5 of the judgment observed, "Admittedly, the verification of membership and recognition of Trade Union Rules, 1994 framed by the State of Orissa are applicable to the petitioner-Association". Thereafter the High Court took note of the provisions in Rule 18 in which it is laid down that the Union which secures not less than 30% of the total number of votes polled shall be entitled to be recognized and considered. The provision of Rule 24 in which are enumerated the rights of a non-recognized union is quoted herein below :

"24 (a) Rights of Unrecognised Union to meet and discuss with the employer or any person appointed by him in that behalf the grievances of any individual member relating to his service conditions.

(b) To appear on behalf of its members employed in the establishment in any domestic or departmental enquiry held by the employer and before the Conciliation Officer/Labour Court/Industrial Tribunal or Arbitrator."

The High Court also took note of Rules 21 and 23 in which are enumerated the rights and facilities of recognized unions. The High Court observed that the petitioner association (respondent no.1) is still a non-recognized union and it is not possible for the Court in exercise of writ jurisdiction to determine the dispute over membership and that, when a statutory machinery is available it is for the non-recognized association to avail of that machinery in accordance with the prescribed procedure. Dealing with the question of the right of the non-recognized association to speak on behalf of its members, the High Court observed that a non-recognized union has no right to represent the entire workmen but it has the right to represent those who are its members, individually or as a group of workmen; acceptance of a demand and discussion over a demand is not the one and same thing; right of raising grievance and discussion is a fundamental right and cannot be taken away totally. The High Court drew a distinction between acceptance of a demand and discussion over the demand. The High Court placed reliance on the principles laid down and observations made by this Court in *Balmer Lawrie Workers' Union, Bombay & Anr. vs. Balmer Lawrie & Co. Ltd. & Ors.* [(1985) 2 SCR 492]. The High Court held that the staff circular No.91/1987 on the face of it is contrary to Rule 24 of the Verification Rules and also violative of the rights forming the basis of a domestic society, and that the management of the Bank cannot direct its officers not to enter into any dialogue or accept any representation from the non-recognized union even in matters pertaining to individual grievances. In para 9 of the Judgment the High Court summed up its conclusions on the point in the following words:

"Mr. Dora, learned Advocate appearing

for the Bank and its management fairly submits that there cannot be any direction contrary to Rule 24 of the Verification Rules. Thus the direction contained in para 2 of the Staff Circular No.91 of 1987 is arbitrary, contrary to Rule 24 of the Verification Rules and liable to be set aside."

Dealing with the allegations of discrimination or unfair labour practice etc. the High Court recorded the following findings in para 11 of its judgment:

"However, on the basis of the materials produced before us, we are unable to hold that there is any deliberate or consistent policy of discrimination or unfair labour practice against the members of the petitioner Association. In the affidavits filed on behalf of the management almost all the instances given by the petitioner-Association have been specifically dealt with and answered. There is no sufficient material from which we can conclusively hold any systematic victimization or harassment of the members of petitioner-Association."

The High Court also took note of the submissions made on behalf of the management of the Bank that excepting the specified office bearers of the recognized Association or Union all other officers of the bank are entitled to be treated equally in accordance with the Bank's administrative policy irrespective of their union affiliation. On the above findings and observations the High Court allowed the writ petition.

Coming to the order passed on the review petition filed by the appellants it appears that the main grounds urged in support of the prayer for review of the judgment were that the Verification Rules framed by the Govt. of Orissa were not applicable to the Officers of the Bank since they are not 'employees' within the meaning of Rule 3 (c) of the Verification Rules, and that the Court had erred in quashing para 2 of the Staff Circular No.91 of 1987 dated 13.11.1987 which is applicable on All India basis, since that would amount to disturbing a long standing All India Policy of the Bank. Considering the first ground, the High Court observed that the submission appears to be correct although during hearing of the writ application it was clearly stated that the said Rules are applicable. The High Court expressed its inability to give any finding on the point in the absence of sufficient material before it. However, the High Court further observed "so we are inclined to accept the contention that the Verification Rules as such will not cover a Union which is not a union of workmen as defined in the Industrial Disputes Act". The further observation of the High Court was that although Rule 24 of the Verification Rules in terms does not apply to a union of officers who are not 'workmen' but the principle behind the Rule can be extended to any non-recognized union even if it is not a union of workmen. Dealing with the allegation made by the non-recognized association

regarding discrimination against its members and office-bearers, the High Court reiterated that though the Verification Rules as such do not apply to the petitioner's association if it is not a union of workmen as defined under the Industrial Disputes Act, if any individual employee or officer of a union or association of employees or officers including petitioners association recognized or not indulge in any disorderly or indisciplined or intimidating acts or behaviour, the management is at liberty to take such action as is permissible in law.

The High Court disposed of the Review Petition by passing the judgment/order which has been quoted earlier.

With growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussions and negotiations in labour related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry. To avoid arbitrariness, bias and favouritism in the matter of recognition of a trade union Rules have been framed laying down the procedure for ascertaining which of the trade unions commands support of majority of workmen/employees. Such procedure is for the benefit of the workmen/employees as well as the management/employer since collective bargaining with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coming into existence in the industry, provisions have been made in the Rules conceding certain rights to non-recognized unions. Though such non-recognized unions may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general, they have the right to meet and discuss with the employer or any person appointed by him on issues relating to grievances of any individual member regarding his service conditions and to appear on behalf of their members in any domestic or departmental enquiry held by the employer or before the conciliation officer or labour court or industrial tribunal. In essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement if any arrived at as a result of such discussion/negotiations is binding on all workmen/employees, whereas a non-recognized union cannot claim such a right, but it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent an individual member in domestic inquiry or departmental inquiry and proceedings before the conciliation officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the Trade Union Act and the Rules framed thereunder acknowledge the existence of a non-recognised union. Such a union is not superfluous entity and it has a relevance in specific

matters relating to administration of the establishment. It follows, therefore, that the management/employer cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under the Constitution in Article 19(1)(c). It is also to be kept in mind that for the sake of industrial peace and proper administration of the industry it is necessary for the management to seek cooperation of the entire work force. The management by its conduct should not give an impression as if it favours a certain sections of its employees to the exclusion of others which, to say the least, will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in a manner which helps in uniting its workmen/employees and not give an impression of a divisive force out to create differences and distrust amongst workmen and employees. Judged in this light the contents of paragraph 2 of the Staff Circular No.91 of 1987 clearly give an impression that the management has decided at the threshold before being aware of the nature of the dispute raised that its representatives should have no discussion at all with office bearers of the non-recognized association. Such a circular is not only contrary to the express provision in Rule 24 but also runs counter to the scheme of the Trade Union Act and the Rules. In the case of Balmer Lawrie Workers' Union (supra), this Court, reviewing the scheme of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Practices Act, 1971, traced the history of development of trade-unions on the advent of industrial revolution and the need for multiple trade-unions in industries and consequential necessity for selecting one of the trade-unions as the recognised union by the management, and also took note of the difference between the rights and privileges of a recognized trade-union and a non-recognised trade-union. In that connection, this Court made certain observations, portions of which are extracted hereunder:

"A need was felt that where there are multiple unions seeking to represent workmen in an undertaking or in an industry, a concept of recognized, union must be developed. Standing Labour Committee of the Union of India at its 29th Session held in July 1970 addressed itself to the question of recognition of trade union by the employer. In fact even amongst trade union leaders there was near

unanimity that the concept of recognized union as the sole bargaining agent must be developed in the larger interest of industrial peace and harmony. National Commission on Labour chaired by late Shri P.B. Gajendragadkar, former Chief Justice of India, after unanimously and wholeheartedly expressing itself in favour of the concept of recognized union and it being clothed with powers of sole bargaining agent with exclusive right to represent workmen, addressed itself only to the question of the method of ascertaining which amongst various rival unions must be accorded the status of a recognized union. Planting itself firmly in favour of democratic principle, it was agreed that the union which represents the largest number of workmen working in the undertaking must acquire the status as that would be in tune with the concept of industrial democracy."

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"Before the introduction of Sec.2-A in the Industrial Disputes Act, 1947 the courts leaned in favour of the view that individual dispute cannot be comprehended in the expression 'industrial dispute' as defined in the Industrial Disputes Act, 1947. Any dispute not espoused by the union for the general benefit of all workmen or a sizeable segment of them would not be comprehended in the expression 'industrial dispute' was the courts' view. Often an invidious situation arose out of this legal conundrum. An individual workman if punished by the employer and if he was not a member of the recognized union, the latter was very reluctant to espouse the cause of such stray workman and the individual workman was without a remedy. Cases came to light where the recognized union by devious means compelled the workmen to be its member before it would espouse their causes. The trade union tyranny was taken note of by the legislature and Sec.2-A was introduced in the Industrial Disputes Act, 1947 by which it was made distinctly clear that the discharge, dismissal retrenchment or termination of service of the individual workman would be an industrial dispute notwithstanding that no other workman or any union of workman is a party to the dispute. Sec.20, sub-sec.2 while conferring exclusive right on the recognized union to represent workmen in any proceeding under the

Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted in Sec.2A. This legal position is reiterated in Sec.20(2)(b). Therefore while interpreting Sec.20(2)(b) it must be kept in view that an individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognized union would not espouse his case and he will be able to pursue his remedy under the Industrial Disputes Act, 1947. Once this protection is assured, let us see whether the status to represent workmen conferred on a recognized union to the exclusion of any individual workman or one or two workmen and who are not members of the recognized union would deny to such workmen the fundamental freedom guaranteed under Art.19(1)(a) and 19(1)(c) of the Constitution."

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".Conferring the status of recognized union on the union satisfying certain pre-requisites which the other union is not in a position to satisfy does not deny the right to form association. In fact the appellant union has been recognized under the Trade Unions Act and the members have formed their association without let or hindrance by anyone. Not only that the appellant union can communicate with the employer, it is not correct to say that the disinclination of the workmen to join the recognized union violates the fundamental freedom to form association. It is equally not correct to say that recognition by an employer is implicit in the fundamental freedom to form an association. Forming an association is entirely independent and different from its recognition. Recognition of a union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a union other than the recognized union does not put it on an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association.

The Legislature has in fact taken

note of the existing phenomenon in trade unions where there would be unions claiming to represent workman in an undertaking or industry other than recognized union. Sec.22 of 1971 Act confers some specific rights on such non-recognised unions, on such being the right to meet and discuss with the employer the grievances of individual workman. The Legislature has made a clear distinction between individual grievance of a workman and an individual dispute affecting all or a large number of workmen. In the case of even an unrecognized union, it enjoys the statutory right to meet and discuss the grievance of individual workman. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognized union. The exclusion is partial and the embargo on such unrecognized union or individual workman to represent workman is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Article 19(1)(a) or 19(1)(c) of the Constitution."

(emphasis supplied)

The judgment of the High Court disposing of the writ petition and the order disposing of the review petition filed on behalf of the management make the position amply clear that the rights and privileges vested in a non-recognized association are limited to espousing the grievances of individual members relating to their service conditions and representing them in domestic or departmental enquiries held by the employer and not proceeding before the conciliation officer, labour court, industrial tribunal or arbitrator. The High Court has not conceded any right to the non-recognized union to participate in discussions relating to general issues concerning all workmen.

In our considered view there is no serious illegality or infirmity in the judgment and order passed by the High Court. Therefore, no interference in the matter is called for. Accordingly, the appeals are dismissed, but in the circumstances of the case without any order as to costs.

..J.
(D.P. MOHAPATRA)

..J.
(K.G. BALAKRISHNAN)

May 6, 2002

JUDIS