

SUPREME COURT OF INDIA

Bokajan Cement Corporation Employees' Union

Vs.

Cement Corporation of India Ltd.

(Y.K. Sabharwal and B.N. Agarwal JJ.)

10.11.2003

JUDGMENT

Y.K. Sabharwal J.

1. The short question for determination in this matter is whether an employee as a result of cessation of employment would lose his right to continue as a member of the trade union. The High Court, by the impugned judgment, reversing the decision of a Single Judge, has answered the question in the affirmative. The union is the appellant.

2. The High Court has held that the right to continue as a member of the trade union continues so long as an employee is actually employed. For its conclusion, the reliance has been placed by the High Court on Section 6 of the *Trade Union Act, 1926* (for short, 'the Act') and clause 5 of the Constitution of Bokajan Cement Corporation Employees' Union. The High Court has held that the membership of a trade union is not a benefit that accrues to the employee so as to claim its continuance even after he ceases to be in employment; his right continues so long as he remains employed and on cessation of employment, membership of trade union ceases.

3. There is no specific provision in the Act which provides for automatic cessation of membership of the trade union on an employee on cessation of his employment. There is also no specific clause in the Constitution of the appellant union which provides for such automatic cessation. Learned counsel for the respondent, however, places strong reliance on Section 6(e) of the Act and Clause 5 of the Constitution of the trade union to support the impugned judgment.

4. Let us first look at some provisions of the Act.

5. Section 2(h) defines the expression 'trade union'. It reads"

"Trade union' means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for

imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect—

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft."

6. "Registered Trade Union" means a trade union registered under the Act (Section 2(e)). The mode of registration is provided in Section 4. Every application for registration of a trade union is required to be accompanied by a copy of the rules of the trade union and a statement of the particulars as provided in Section 5 of the Act. Section 6, inter alia, provides that a trade union shall not be entitled to registration unless rules thereof provide for the matters enumerated in Clauses (a) to (j). For present purposes Clause (e) is relevant, Section 6(e) reads as under:-

"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 or temporary members as (office- bearers) required under section 22 to form the executive of the Trade Union."

7. Section 22, inter alia, provides that not less than one-half of the total number of the office-bearers of every registered trade union in an unrecognized sector shall be persons actually engaged or employed in an industry with which the trade union is connected.

8. It is, thus, clear that the rules of the trade union have to provide for 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 or temporary members as office bearers required under Section 22 to form the executive of the trade union. The Constitution of trade union has, inter alia, to comply Section 6(e) so as to seek registration under the Act.

9. Mr. Reddy, learned counsel for the respondent contends that the words 'actually engaged or employed' would become redundant if an employee can continue as a member of a trade union even after cessation of employment. The contention is that on cessation of employment, it cannot be said that the employee is actually engaged or employed in the industry and, therefore, such an employee ceases to be an ordinary member as a result of employment.

10. In order to appreciate the contention of Mr. Reddy, it is also necessary to examine the relevant provisions of the Constitution of the appellant trade union.

11. Clause 5 of the Constitution of the trade union reads as under:

"Membership : Any worker employed by the Cement Corporation of India Ltd., directly or indirectly throughout shall be eligible for the membership of the Union provides he/she accepts the constitution. By-laws and discipline of the Union and pays the stipulated admission fee of Rs.1.00 along with stipulated subscription."

12. Clause 9 of the Constitution which provides for the cessation of membership reads as under:

"OBLIGATIONS :

I) A member, who fails to pay 3 months' subscription continuously shall cease to be the member of the union.

II) The Union shall remove from the Membership Register the names of those who have died withdrawn from the Union and ceased to be members of the Union under any provisions of the Constitution.

III) A person who ceases to be member of the Union shall forthwith be disqualified from exercising the right of a member and shall have no claim on funds and benefits of the Union.

IV) Any member losing validity of his/her membership as per provision vide Subsection (ii) of this Section, shall be readmitted on payment of Rs. 2/- (Two) only as re-admission fee plus the usual subscription for the month in which he is readmitted subject to the approval of the Executive Committee of the Union."

13. Relying upon the aforesaid Clause 5 and laying great emphasis on the word 'throughout' therein, it is contended by Mr. Reddy that continuing in employment all through so as to remain a member of the trade union has been clearly provided in the Constitution and, therefore, on discontinuance of employment, the membership of trade union would automatically cease.

14. The Constitution of a trade union is not required to be construed as a statute. It deserves to be construed broadly and liberally. The Act and the Constitution of the trade union, unless clearly stipulate otherwise, deserve to be interpreted so as to advance the interest of the trade union and its members. The membership of a trade union is a valuable right which can be taken away only within clear parameters of the Act and the Constitution of the trade union.

15. Clause 5 is also not a provision which provides for the circumstances under which a member would lose his membership. It provides eligibility/conditions for becoming member

of the union. Regarding Section 6(e) its only effect is that the rules of a trade union have, inter alia, to provide for the admission of those who are actually engaged or employed in industry as ordinary members so as to entitle a trade union to seek registration under the Act. Section 6(e) does not provide that on cessation of employment, an employee would cease to be a member. On aspect of cessation of membership of the trade union, the trade union can make a provision in its Constitution, it is one thing to say that the Constitution of trade union shall provide that those actually engaged or employed would be entitled to be admitted as members of the trade union and it is altogether different thing to say that they would cease to be members once they are not actually engaged or employed. The latter is not what Section 6(e) contemplates. Likewise, Clause 5 of the Constitution of the trade union provides for all workers employed by the Cement Corporation of India directly or indirectly throughout to be eligible for the membership of the trade union on acceptance of the other part of the said clause. The expression 'throughout' in Clause 5 only shows that all through the said eligibility condition will continue. Again Clause 5 is not a provision for cessation but is a provision for eligibility to become a member. As already stated, these clauses are not required to be construed as a statute. The apprehension of Mr. Reddy that non-acceptance of his contention would result in a situation of 'once a member - always a member', is not of any significance since that depends upon the Constitution of a trade union. If a trade union accepts that once a member would always continue to be a member, there is nothing in the Act which mitigates against it. A trade union may provide under which circumstances a member would lose the membership.

16. Apart from Clause 9 reproduced earlier, there is no other clause which provides for cessation of the membership of the trade union. It is not the case of the respondent that the member in question ceased to be member of the trade union having suffered disqualification under Clause 9. Clause 9 does not stipulate cessation of memberships on cessation of employment. Further, Section 15 of the Act permits 2 trades union to spend its funds on the unemployment of its members. Section 15 of the Act, inter alia, provides that the general funds of a registered trade union shall not be spent on any other objects than..... (f) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members. Clause 11 of the Constitution of the trade union in question contemplates the application of the funds of the union for all or any of the purposes as envisaged in Section 15 of the Act provided that the total expenditure in any one month shall not exceed 10% of the total gross annual income. Clause 12(iii)(a) of the Constitution of the trade union provides that a member of the union who is dismissed for joining the union or promoting or actively participating in its activities, shall be entitled to victimization benefits in accordance with the rules laid down by the Executive Committee of the Union. Clause 12(iii)(b) entitles a member to legal aid in proceedings which arise out of his relations with the employer. It reads:

"A member of the Union who has paid the subscription of previous one year, shall be entitled to legal aid in all proceedings which arise out of his or her relations with the employer provided that this clause does not apply to the newly-appointed employee."

17. There is no provision in the Act on the Constitution of the trade union providing for automatic cessation of membership on cessation of employment.

18. In view of the provisions in the Constitution of the trade union and in absence of any provision providing for cessation of membership as a result of cessation of employment, it cannot be held that an employee would cease to be a member of the trade union on termination of his employment.

19. Reliance has, however, been placed on behalf of the respondent upon the decision of this Court in *State Bank of India Staff Association and Anr. v. State Bank of India and Ors.* where it was held that the management was not stampeded to negotiate with the retired employee as General Secretary of the Banks Staff Association since he ceased to be an employee of the Bank after retirement. In the said case, the relevant Rules and Constitution of the State Bank of India Staff Association provided that after retirement from Bank's service, ordinary members shall not continue to be such members. Considering the said Rules, it was held that "A cursory look at Rule 5 will make it clear that to become an ordinary member of the Association one has to be a permanent employee of the State Bank of India and at the same time not below the age of 18 years whereas Rule 6 provides that a person who is not a permanent employee of the Bank as contemplated under Rule 5 but has some sympathy with the objects and spirits of the Union he may be elected honorary member at the triennial or special meeting of the General Council etc. ... convened for the purpose. Further, according to Rule 9 ordinary members after retirement from the Bank's service shall not continue to be such members while Clause (a) of Rule 9 provides that an ordinary/honorary member of the Association will be eligible to occupy or continue in any post in the Central Committee/Central Working Committee/Circle Committee/Unit Committee but such ordinary/honorary member of the aforesaid committees will forthwith cease to be such member if he ceases to be an ordinary/honorary member, notwithstanding contained to the contrary in the Rules."

20. The State Bank of India Staff Association's case does not lay down that Clause (e) of Section 6 provides for cessation of membership. In our view, it only provides for admission of membership, in the absence of any provision in the Constitution of the trade union for automatic cessation of membership as a result of cessation of employment, it cannot be held that an employee would cease to be a member of the trade union in such an eventuality.

21. For the aforesaid reasons, setting aside the impugned judgment, we restore the judgment of the learned Single Judge of the High Court and allow the appeal. The parties, in the facts and circumstances of the case, are left to bear their own costs.