IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR. G. CHOCKALINGAM

W.A.No.1620 OF 2011
and M.P. No.1 of 2011

1. National Textile Corporation Limited,
rep. By its Senior Manager (Human Resources)
NTC House, Post Box No.2409,
35B, Somasundaram Mill Road,
Coimbatore – 641 009.

2. Coimbatore Murugan Mills
rep. By its General Manager,
Mettupalayam Road,
Coimbatore 641 043.

3. Pankaja Mills
rep. By its General Manager,
30, Pankaja Mills Road,
Puliyakulam,
Coimbatore 642 045.

4. Sri Rangavilas Ginning, Spinning & Weaving Mills,
rep. By its General Manager,
Peelamedu, Coimbatore 641 004.

5. Kaleeswarar Mills "B" Unit,
rep. By its General Manager,
Kalaiyar Koil – 643 551
Coimbatore. ... Appellants/Respondent

vs.

1. Coimbatore Periyar Districts Dravida Panjalai Thozhilalar Munnetra Sangam,
rep. By its General Secretary S.Doraisamy,
69, Tatabad 3rd Street,
Coimbatore 641 012.

2. Sivagangai Mavatta Marumalarchi Panjalai Thozilalar Munnetra Sangam (MLF),
rep. By its General Secretary Muthukrishnan,
Rajagambeeram,
Sivagangai District.

3. Gopalsamy
4. S.Rajendran
5. S.Sivasamy
6. P.Periasamy

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.06.2011 passed in W.P.No.6334 of 2011.

W.P.No.6334 of 2011:

Petition filed under Article 226 of the Constitution of India, seeking a Writ of certiorarified mandamus, calling for the records from the first respondent relating to the impugned letter dated 29.1.2011 bearing reference No.IR/2011-01 and quash the same as illegal, arbitrary and consequently direct the respondents 1 to 5 to continue to deduct subscription from its employees including the petitioners 3 to 6 who are members of the 1st and 2nd petitioners and remit the same to the 1st and 2nd petitioners irrespective of whether they have been recognised or not.

For Appellants : Mr.C.V.Vijayakumar for Mr.T.R.Rajaraman

For Respondents : Mr.K.Srinivasamurthy, for M/s.Row & Reddy

Date of Reserving the Judgment : 06.01.2015
Date of Pronouncing the Judgment : 23.02.2015

J U D G M E N T

V.DHANAPALAN,J.

Heard C.V.Vijayakumar, learned counsel appearing for Mr.T.R.Rajaraman, learned counsel for the appellants and Mr.T.R.Rajaraman, learned counsel appearing for the respondents.

2. The appellants have come up with the present Writ Appeal being aggrieved by the order dated 14.06.2011 passed in W.P.No.6334 of 2011, wherein, the Writ Petition was allowed setting aside the impugned order dated 29.01.2011 passed by the respondents with a direction to the respondents to deduct membership contribution payable to the Unions from the salary of willing members based on their written authorisation and remit the same into the account of petitioners 1 and 2 from the month of June 2011.

3. Facts of the case are as under:

3.1. According to National Textile Corporation Limited (the 1st respondent in the W.P.No.6334 of 2011), which is a Government of India Undertaking, they have seven National Textile Mills in Tamilnadu, i.e. five in Coimbatore District, one in Sivagangai District and the other in Ramnad District. The said Mills were taken over by the Central Government. The employees working in the Mills, viz. Coimbatore Murugan Mills, Pankaja Mills, Sri Rangavilas Ginning, Spinning & Weaving Mills and Kaleeswarar Mills "B" Unit (hereinafter referred to as 'NTC units'), who are members of Coimbatore Periyar Districts Dravida Panjalai Thozhilalar Munnetra Sangam and Sivagangai Mavatta Marumalarchi Panjalai Thozilalar Munnetra Sangam (hereinafter referred to as 'Unions').

3.2. Till 2010, the NTC units were deducting subscription/donation from the members of the Unions who are working in these Mills based on the list given by the NTC units and remitting the same to them by way of cheque, which has been the practice for more than 25 years. On 18.12.2010, the Unions which are affiliated to the four Trade Unions viz. (i) Coimbatore District Mill Workers Union (CITU), (ii) Desia Panjalai Thozilalar Sangam (INTUC), (iii) Koval Erode Mavatta Dravida Panjalai Thozhilalar Matrum Nirvaga Uzhiyar Sangam (LPF) and (iv) Coimbatore Regional Mill Labour Union were declared as negotiating agents, as they had got more than 10% of the votes polled in all the NTC mills in Tamilnadu put together, which was contrary to the earlier practice of giving representation for negotiating to the Unions which had 10% of its members in the respective Mills/Units. This position has been contested in Contempt Petition No.156 of 2011.

3.3. Pursuant to the election, the Management of NTC units wrote a letter on 27.10.2010 to the aforesaid four Unions who have secured a minimum of 10% votes in all the Units put together to furnish the list of their members to enable the Management to deduct and remit subscription from their wages to the Unions. But, no such communication was sent to the Unions.

3.4. According to the Writ Petitioners, their Union is affiliated to Marumalarchi Labour Front (MLF) and they have not secured 10% of the total votes polled in all the NTC units in Tamilnadu. On 08.01.2011, they wrote a letter to the NTC drawing their attention to the judgment of a Hon'ble Division Bench of this Court in State Bank of India case reported in 1989 (1) LLJ 554 and requested them to deduct Union subscription/donation for the members of their Union as per their wish and remit the same to them. On 10.01.2011, the Writ Petitioners sent a list of their members together with the authorisation letters signed by the individual workers to NTC units and requested them to deduct the Union subscription. But the Management did not choose to make any such deduction. The Writ Petitioners put forth their grievance in their letter dated 28.01.2011 to the NTC. On 29.01.2011, the NTC made it clear that they will deduct subscription only for the Unions which had secured 10% or more votes out of the total votes polled in the recent election and who had been recognised by the Management. It is the contention of the Writ Petitioners that the Management recognising the Union/Unions which have got 10% of votes in all the seven Mills in Tamilnadu put together has nothing to do with the deduction of Unions subscription from the workers who authorise them and such a facility cannot be confined only to recognised Unions. Contending that the impugned letter dated 29.01.2011 of the NTC is illegal and contrary to law, the Unions filed a Writ Petition in W.P.No.6334 of 2011 seeking to quash the impugned letter bearing Reference No.IR/2011-01 and direct the respondents therein to continue to deduct subscription from its employees including the Writ Petitioners 3 to 6 who are the members of the 1st and 2nd Writ petitioners and remit the same to the 1st and 2nd Petitioner irrespective of whether they have been recognised or not.

3.5. In the counter affidavit filed by the NTC units before the Writ Court, they admitted that the National Textile Corporation was deducting subscription/donations from the members of the Unions who are working with the Mills prior to the Trade Union Election held on 19.12.2010. For the first time since the inception of the National Textile Corporation in Tamilnadu, the Trade Union election was conducted and four unions got selected as recognised Unions to represent the workers for the seven unit Mills of the Corporation situated in Tamilnadu. Prior to the Trade Union Election, the Corporation used to deduct subscription of the members of the Union working in the Mills and after the Trade Union Election, the Corporation had decided to deduct subscriptions/donations only from members of the Union who got elected in the Trade Union election held on 19.12.2010.

3.6. It is the further submission of the NTC units that there are more than eight registered Trade Unions other than the four Unions elected by the workmen and they are functioning at the unit level (individual mills) in the seven unit Mills of the Corporation in Tamilnadu. In the said circumstances, it is very cumbersome for the Corporation to deduct subscriptions/donations of the individual workmen and remit the same to the unrecognized unions and that after the Trade Union election, Corporation is only duty bound to deduct subscriptions/donations of individual workmen of the four recognised Unions and remit the same to the respective Unions.

4. The Writ Court, on 14.06.2011, after hearing the learned counsel on either side allowed the said Writ Petition, wherein it was held as under:

> "6. The right to form Trade Unions is guaranteed as a fundamental right under Article 19(1)(c) of the Constitution of India. The said right includes the right to continue as a member of the Union. The petitioners 1 and 2 Unions are registered under Section 2(e) of the Trade Unions Act, 1926. The members of the Trade Unions are admitted as members in terms of Section 6(e) of the Act. The payment of subscription by members to the Trade Unions are made compulsory under Section 6(ee) of the Act. The Trade Unions cannot refuse to receive subscription from its members. The same is declared as a right of the members as decided by the Honourable Supreme Court in the decision reported in AIR 1974 SC 1789:(1974)4 SCC 852 (M.T.Chandrasenan v. N.Sukumaran).
>
> 7. It is not in dispute that so long as the registration of Trade Union is not cancelled, the Unions will enjoy certain rights, of course with liabilities, in terms of Section 15 of the Trade Unions Act, 1926. Section 7(2)(kkk) of the Payment of Wages Act, 1936 deals with the deduction of subscriptions from the willing members and the employer is bound to deduct and remit the same into the account of the Trade Union. The said provision viz., Section 7(2)(kkk) reads as follows:
>
> "7. Deductions which may be made from wages.
>
> (1) ....
>
> (2) Deductions from the wages of an employed

person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

....

(kkk) deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926)."

Thus, there is a statutory duty/obligation on the part of the employer to deduct subscription payable by the members of the petitioners 1 and 2 Unions, who have given consent/authorisation in writing. The action of the respondents in refusing to deduct and remit the amount to the account of the petitioners 1 and 2 is a statutory violation and the same amounts to defeating the object of forming the Trade Unions followed with registration.

8. It is also not in dispute that for the past 25 years deductions were made towards Union subscription, irrespective of whether the Unions are recognised or not. The election conducted on 19.12.2010 is for recognising the Trade Unions for negotiation with the management. For recognition, 10% of total votes polled was made as pre-requisite and four Unions having got more than 10% of the votes polled and they were granted recognition by the respondent management.

9. The issue regarding recognition of the Trade Unions for the purpose of negotiation was considered by the Supreme Court in the decision reported in 1995 Supp (1) SCC 678 (Food Corporation of India Staff Union Vs. Food Corporation of India and Others). The said decision was rendered setting out the procedures and norms to be followed for assessing the representative capacity of the Trade Unions. The recognition of the Trade Unions for the purpose of making deductions from the employees of the Trade Unions was not at all the issue in the said decision of the Honourable Supreme Court.

10. The said issue was specifically raised before the Division Bench of this Court in the decision reported in 1989 (1) LLJ 554 (State Bank Staff Union v. State Bank of India). In the said

decision, the Division Bench held that if individual employee voluntarily made written request, the same can be implemented by the management till the said individual employee withdraws the same. The said Division Bench accepted the arguments made on the basis of Section 7(2)(kkk) of the Payment of Wages Act, 1936, which empowers the registered Trade Unions to request the management to make deductions based on the written authorisation of the members of the registered Trade Unions.

11. In this case, the members of the Trade Unions belonging to the petitioners 1 and 2 have already given consent letters for deduction of their contribution payable. Thus there is no impediment to deduct the contribution for payment to the concerned Unions depending upon the consent given by the individual employees. The petitioners are specifically demanding to deduct subscription only from the employees, who have given their consent/authorisation.

12. In the counter affidavit filed by the respondents, the point raised by the petitioners in the affidavit regarding the provision for the deduction of contribution contemplated under Section 7 (2)(kkk) has not been answered even though the same is specifically raised. The learned counsel for the respondents was also not in a position to advance any argument on the said aspect.

13. The said issue having been considered by the Division Bench of this Court in the above decision and in view of the statutory provision which is applicable to the respondents herein, the petitioners are justified in their demand for deduction of subscription for the consenting members and remit the same to the petitioners 1 and 2. As already stated, for the the past 25 years the said practice is being continued. As long as a practice which was in vogue for several years, which is not prohibited under any statutory rule, the respondents are not justified in taking a different stand merely because election was conducted for recognising the Unions eligible to participate during negotiations.

14. If the arguments of the respondents are accepted, it will be in effect promoting the recognised Unions alone and not the registered Trade Unions, which are not satisfying the eligibility for recognitions due to non-securing of particular percentage of the votes polled. Registration under the Trade Unions Act, 1926 gives some benefits and the petitioners 1 and 2 having enjoyed the said benefit for the past 25 years and the same having not been restricted by any enactment or by a judgment of the Honourable Supreme Court, the respondents are bound to comply with the request made by the respondents 1 and 2.

15. In the result the writ petition is allowed. The impugned order passed by the respondents dated 29.1.2011 is unsustainable and the same is set aside. The respondents are directed to deduct membership contribution payable to the Unions from the salary of willing members based on their written authorisation and remit the same into the account of petitioners 1 and 2 from the month of June, 2011. ”

5. Learned counsel for the appellants would contend that the learned Single Judge ought to have held that the Writ Petition is unsustainable for the sole reason that the respondents/Writ Petitioners have no fundamental right to insist deductions from the wages by the Management for subscription towards contribution for the Trade Union. He would further contend that the learned Judge ought to have considered under Payment of Wages Act, 1936 that the Management has the discretion to deduct subscription from the wages of the workmen for the Trade Union. It is also his contention that the learned Judge failed to see that the Management had already implemented the authorisation for deduction of subscription of the workmen in respect of members of recognised Unions i.e. Members of four Unions which are successful in the Trade Union Election held for the first time on 19.12.2010 and expressed its difficulties with regard to similar direction for the members of seven other unsuccessful Trade Unions.

6. Controverting the said submissions, learned counsel appearing for the respondents would submit that the action of the NTC Mills is contrary to the practice that has been existing for the past 25 years and that the Management has been deducting subscription for all the registered Unions for its members irrespective of whether the Union was recognised or not. He would contend that deduction of

Union subscription only from the recognised Union and not in the case of other Unions would amount to unfair practice.

7. We have carefully considered the submissions made by the learned counsel on either side and perused the material documents available on record.

8. An analysis of the case would reveal that Textile Corporation Limited, a Government of India Undertaking, has got five Mills in its fold in Tamilnadu and they have been following certain procedures in deducting subscription/donation from the members of the Unions, who are working in these Mills, based on the list given by the NTC units and remitting the same to them by way of cheque, which has been the practice for more than 25 years. On 18.12.2010, the Unions which are affiliated to the four Trade Unions, i.e. CITU, INTUC, LPF and Coimbatore Regional Mill Labour Union were declared as negotiating agents, as they had got more than 10% of the votes polled in the election held on 19.12.2010 in all the NTC mills in Tamilnadu put together, which the respondents claim that it is contrary to the earlier practice. Pursuant thereto, the Management wrote a letter on 27.10.2010 to all the affiliated four Unions, who have secured a minimum of 10% votes in all the Units put together to furnish the list of their members to enable them deduct and remit subscription from their wages. The said communication was not sent to the Unions.

9. It is the case of the respondents Union that their Union is affiliated to Marumalarchi Labour Front (MLF) and they have not secured 10% of the total votes polled in all the NTC units in Tamilnadu. On 08.01.2011, they wrote a letter to the NTC drawing their attention to the judgment of a Hon'ble Division Bench of this Court in State Bank of India case and requested them to deduct Union subscription/donation for the members of their Union as per the list provided. On 10.01.2011, the Union sent a list of their members together with the authorisation letters signed by the individual workers to NTC units and requested them to deduct the Union subscription, but the Management did not do so. The Union, i.e. the Writ Petitioners put forth their grievance in their letter dated 28.01.2011 to the appellants/Management and vide letter dated 29.01.2011 in Ref.No.IR/2011-01, which is the order impugned in the Writ Petition, the Mangement made it clear that they will deduct subscription only for the Unions which had secured 10% or more votes out of the total votes polled in the recent election and who had been recognised by the Management. Challenging the same, the Writ Petitioners/Union went before the Writ Court.

10. Learned Single Judge after analysing the entire facts and circumstances of the case and the legal position, came to the conclusion that the impugned order is contrary to law and therefore set aside the same and allowed the Writ Petition.

11. The Constitution of India, under Article 19(1)(c) guaranteed the fundamental right to form a Trade Union, which includes the right to continue as a member of the Union. The respondents/Union are registered under Section 2(e) of the Trade Union Act, 1926 and the members of the Trade Unions are admitted as members in terms of Section 6(e) of the Act. The payment of subscription by members to the Trade Unions are made compulsory under Section 6(ee) of the Act. The Trade Unions cannot refuse to receive subscription from its members, as it is a right declared as per the ratio laid down by the Honourable Supreme Court in the case of M.T.Chandrasenan v. N.Sukumaran.

12. It is pertinent to state that so long as the registration of the respondents/Union is not cancelled, the Unions will enjoy certain rights, of course with liabilities, in terms of Section 15 of the Trade Unions Act. It is also equally important to note that Payment of Wages Act under Section 7(2)(kkk) deals with the deduction of subscriptions from willing members and the employer is bound to deduct and remit the same into the account of the Trade Union. Thus, there is a statutory obligation on the part of the employer to deduct subscription from willing members, who have given their consent in writing.

13. It is not in dispute that for the past 25 years, deductions were made by the appellants/Management towards Union subscription. It is the case of the NTC/Management that all of a sudden, there was a fresh election and as required votes have not been polled by the respondent Union, they are not in a position to continue deduction. Recognition of Trade Unions for the purpose of negotiation was considered by the Supreme Court in the case of Food Corporation of India Staff Union Vs. Food Corporation of India and Others, wherein, the procedures and norms to be followed for assessing the representative capacity of the Trade Unions have been set out. Recognition of Trade Unions for the purpose of making deductions from the employees of the Trade Unions was not at all the issue in the said decision. Those recognised Unions have the right to negotiate with the employees, which is a right guaranteed and therefore, that decision has been well considered by the Honourable Supreme Court and that law is in force.

14. As regards the right of the members paying subscription, deduction of the same from their salary is a right guaranteed to them and the Management cannot cast away the burden of deduction. Denial of deduction of subscription from the salary of the members of the Union is a factor which causes serious concern in the peaceful working of the Management. Practical approach made by this country in such Trade Union activities is a matter which has been experienced by every Management. Such being the position, the law laid down in State Bank Staff Union case as to the deduction of subscription from willing members as stipulated under Section 7(2)(kkk) of the Payment of Wages Act would clearly impress upon this Court that such a statutory provision is applicable to the facts of this case also. It is also not in dispute that the practice of deduction of subscription from the members which was in vogue for several years, is not prohibited under any statutory rule and the appellants/Management are not justified in taking a different stand merely because election was conducted for recognising the Unions eligible to participate during negotiations. Registration under the Trade Union Act, 1926 gives some benefits and when the respondents Union having enjoyed the said benefit for the past 25 years and the same having not been restricted by any enactment or by any judgment, the appellants/Management are bound to comply with the request made by the respondents Union.

15. Upon perusing the entire factual matrix and the legal position and on analysing the views taken by the learned Single Judge in allowing the Writ Petition, in the light of what is followed for the past and the practice in question and the right of the registered Trade Union, to some extent, certain benefits cannot be denied and the said view of the learned Single Judge is not called for any interference and it is no way legally infirmed. Therefore, we have no hesitation to endorse the views of the learned Single Judge and accordingly, we confirm the order of the Writ Court.

In fine, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abe

To

1. The General Secretary,
   Coimbatore Periyar Districts Dravida Panjalai
   Thozhilalar Munnetra Sangam,
   69, Tatabad 3rd Street,
   Coimbatore 641 012.

2. The General Secretary,
   Sivagangai Mavatta Marumalarchi Panjalai
   Thozilalar Munnetra Sangam (MLF),
   Rajagambeeram,
   Sivagangai District.

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.10249
+1cc to M/s.Row & Reddy, Advocate, S.R.No.9711

W.A.No.1620 OF 2011

CTK(CO)
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