

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

APOT/136/2022

with

WPO/1017/2022

IA NO:GA/1/2022

GA/2/2023

WEST BENGAL TRANSPORT CORPORATION LTD. AND ORS.

VS

THE CALCUTTA TRAM MAZDOOR SABHA AND ANR.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

AND

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

For appellants : Ms. Deblina Chattaraj,

For respondents : Mr. Saptangshu Basu,

Mr. Shibnath Bhattacharya,

Mr. Abhishek Bhattacharjee,

Heard On : 25.01.2023

Judgement Delivered On : 12.05.2023

THE COURT:-

- 1) The instant appeal has been preferred against the Judgement and Order passed by the Hon'ble Single Bench dated the 18.05.2022 in W.P.O. No. 1017 of 2022.
- 2) The appellant, that is the West Bengal Transport Corporation Ltd.(for short WBTC), formerly known as the Calcutta Tramways Company Ltd. (for short CTC), was the respondent No. 2 in the writ petition.

The Calcutta Tram Majdoor Sabha, a registered trade union being represented by its General Secretary, is the respondent No. 1 in the instant appeal. The said trade union was the writ petitioner.

The Managing Director, WBTC and the Chief Accounts Officer, WBTC, being the appellants No. 2 and 3, were the respondent nos. 3 and 4 in the writ petition.

The State of West Bengal being represented by the Secretary Transport Department, Government of West Bengal, who was the respondent No. 1 to the writ petition, has not been made a party in the instant appeal.

- 3) Through the impugned Judgment, the Hon'ble Single Bench has stated as follows:

“ in the fixation of benefits under ROPA 1998, the petitioner as a trade union had a negotiating authority. It can, therefore, maintain a writ petition with regard thereto unlike an individual claim wherein it had no role to play in the process of

bargaining. ... Thus, the instant writ petition at the instance of the petitioner, a registered trade union is maintainable.

... it is true that the additional members for whom the petitioner has claimed the relief are not identically placed in the same platform though their rights considered in the broader spectrum are one and the same i.e., claim for interest on account of delayed payment. The scale of pay of each individual member, the date of their appointment, the length of service as also the date of superannuation may be different which requires the employer to consider the claim of each workman separately in the light of these parameters. The petitioner as a trade union is, therefor, not entitled to any mandatory order in this writ petition for payment of the benefits under ROPA-1998 to each of its additional members. The additional members on whose behalf, the W.P.O No.1017 of 2022 Page 10 of 11 petitioner has ventilated the grievances will have to make individual representations. The writ petitioner has filed a supplementary affidavit including therein the representation made by its additional members with regard to which the respondents have raised objection. The petitioner therefor, is only entitled to an order that the claims of each of its additional members shall be considered by CTC now known as WBTC as the employer by applying the applicable legal provisions. Since the respondent no.2 CTC now known as WBTC has referred to several discrepancies in the representations made by the individual members being the additional members of the petitioner as disclosed in the supplementary affidavit, I direct each of the additional members to make individual representations providing the necessary particulars within a period of four weeks from the date of this order. In the event, such applications/representations are made to the employer that is CTC now known as WBTC shall consider each of such

applications/representations on their merit through the respondent no.3 i.e., Managing Director, West Bengal Transport Corporation Ltd. or any senior officer designated for this purpose and pass on the benefits to such members who are found entitled to. In case of rejection of any claim, CTC now known as WBTC shall give proper reasons for the rejection of the claim and communicate the same to the concerned employee. The petitioner shall within two weeks from date furnish to CTC now known as WBTC a list of its additional members so that it will be convenient for CTC now known as WBTC to process and adjudicate the claim of the W.P.O No.1017 of 2022 Page 11 of 11 additional members of the petitioner on the same being made. The entire exercise for adjudicating the claim and passing of the benefit to those who are entitled to receive the same shall be completed within six months from expiry of one month period from the date this order. Since there is an assurance from the side of the State i.e., respondent no.1, the said respondent shall provide funds to respondent no.2, if necessary to pay the benefits to the additional members of the petitioner.”

- 4) a)** The fact of the *lis* is that the Calcutta Tram Majdoor Sabha, a registered trade union being represented by its General Secretary, has prayed for payment of interest upon the amount which has been paid at a belated stage under ROPA 1998. The said trade union is a registered trade union under the provisions of the Trade Unions Act, 1926. The Trade Union (*supra*) being the respondent/writ petitioner claims that several workers of CTC who have joined their Union after 2013 have been stated to be additional members and on behalf of these additional members the said Trade Union is praying for payment of interest. As the

payment through annual instalments along with agreed interest was made by the year 2008 but beyond the scheduled date as per the Notification dated 23rd June 2000, so the employees are claiming the interest because of the delayed payment of the instalments. Earlier, two writ petitions were preferred. The first writ petition being WP 910 of 2006 while the second writ petition was WP 888 of 2008.

b) On the earlier two occasions the question of maintainability of the writ petitions was not raised. In the instant writ petition the question of maintainability has been raised on the ground that the members of the petitioner Trade Union being employees of WBTC have individual claims arising out of individual contracts of employment between the employer and the employee. The point thus raised is that the relief claimed does not relate to any right of the Trade Union but involves rights of the individual members. It is also the contention of the appellant/ WBTC that the Trade Union cannot support/ raise any individual cause of its members.

5) The Learned Counsel appearing on behalf of the appellant/ WBTC has opposed the *lis* on the ground that the writ petition which has been filed by the Trade Union is not tenable in law. It is submitted that the employees of WBTC have individual claims arising out of individual contracts of employment between the employer and the employee concerned. It is further submitted that the reliefs claimed do not relate to any right of the Trade Union. Instead, it relates to the individual rights of

the members, i.e. the employees. Learned Counsel has further submitted that the Trade Union cannot raise any individual cause of its members. Relying upon the above grounds (*supra*), Learned Counsel has prayed for rejection of the prayers of the petitioner, the Trade Union.

- 6)** The Learned Counsel appearing on behalf of the respondent/ Trade Union has submitted that by a Government Memo. bearing No. 1183-F dated 27th November 1995 read with the Memo. No. 11833-F dated 27th November, 1995, a Pay Commission was constituted for examining the structure of emoluments and other conditions of service of the members of the State Government, undertakings, statutory bodies, corporations etc. and for presenting suitable recommendations. The said Pay Commission submitted its recommendations which was accepted by a Notification No.7306-F dated 16th October 1998 published by the Government of West Bengal, Finance Department with retrospective effect from 1st January 1996.

The Government of West Bengal Transport Department accepted the proposals and agreed to pay the arrears with interest in instalments. The employees/ workmen of WBTC were to receive the arrears from 1st of April 1997 to 31st March 2000 with interest up to April 2000 in annual instalments. Learned Counsel has further submitted that the principal sum along with interest up to April 2000 has been paid to the workmen but those have been paid much after the scheduled date as such the said

trade union as a registered Trade Union is claiming interest on behalf of its additional members for the delay in payment.

Learned Counsel has further submitted that the said Trade Union being recognized union always had/has a significant role in the collective bargaining process for finalizing the benefits of the workmen including those under ROPA 1998. Banking upon the aforesaid submissions, Learned Counsel has prayed for rejection of the instant appeal.

7) The crux of the instant appeal is two fold:-

- i) As to whether the respondent/writ petitioner, that is the Trade Union, is competent to claim the benefits which have been prayed for on behalf of the employees/workmen of the WBTC or not.
- ii) Up to what extent relief can be claimed by the writ petitioner/ Trade Union on behalf of its additional members being the workmen of WBTC.

8) From the submissions of the respective Learned Counsel and the documents available, it is a fact that the Calcutta Tram Majdoor Sabha is a registered Trade Union under the provisions of the Trade Union Act, 1926. Apart from the aforesaid fact, it is also admitted that the said Trade Union is a recognized Trade Union of the WBTC. Being a recognized trade union the said writ petitioner had played a significant role in the collective bargaining process for finalizing the benefits of the

workmen/employees, including those which are available under ROPA 1998.

This Court relies upon the Judgement passed by the Hon'ble Apex Court in the case of *Karnataka State Road Transport Corporation vs. Karnataka State Road Transport Corporation Staff and Workers' Federation and another* reported in (1999) 2 SCC 687, wherein the Hon'ble Apex Court has held as follows:

“9. So far as the locus standi of the Union in the present proceedings is concerned, it must be kept in view that the Corporation itself by its order dated 24-12-1987 granted recognition to the Union as the sole bargaining agent for its members. It was noted by the office memorandum of the Corporation dated 24-12-1987 that the Federation having secured 53.04% of the votes polled at the Corporation level in the referendum held on 11-12-1987, the Corporation was pleased to accord recognition to the respondent-Federation as the sole bargaining agent at the Corporation level. However, this was subject to the conditions stipulated under the notification dated 30-4-1987 which prescribed four years' period from the date of such conferment of the right of collective bargaining with the employer by the Union concerned. It is also not in dispute between the parties that even in the subsequent referendum, the respondent-Federation/Union secured 61.07% of the votes polled at the Corporation level and the Corporation, by its office memorandum dated 16-7-1992, continued recognition to the Union as the sole

bargaining agent subject to the conditions stipulated in the earlier notification dated 3-12-1991. It is. Therefore., not in dispute between the parties that till 16-7-1996, the respondent-Federation/Union remained a recognized Union. We fail to appreciate how the said Union cannot challenge the government order dated 10-9-1993 and the consequent notification issued by the Corporation on 21-9-1993. On both these occasions, the respondent-Union was admittedly a recognized Union of the employees and had got the benefit of the payroll check-off facility under the settlement of 28-7-1988. It is also interesting to note that before the learned Single Judge; only three questions were posed for consideration in the light of the contentions of the rival parties. They were as under:

“(i) Whether this petition under Article 226 of the Constitution of India is not maintainable in view of the question in controversy relating to the breach of the settlement?

(ii) Whether the Government has lawful authority to interfere with the settlement validly made between the petitioner and the Corporation by issuing directions under Section 34 of the Act?

(iii) Whether Annexure A is a direction under Section 34 of the Act?”

The question of locus standi of the writ petitioner, the respondent-Union was not even brought in issue. But even that apart, appeals filed by the State and the Corporation before the Division Bench which came to be decided by the impugned common judgment dated 10-6-1997, no such contention appears to have been

canvassed. It is also pertinent to note that it is not the case of the Corporation that by any fresh referendum, the respondent-Federation has lost its recognition as the sole bargaining agent on account of its membership getting depleted and any other rival union has emerged as a recognized union having mustered a sufficiently larger membership. Consequently, the first point for determination as canvassed for our consideration by the learned counsel for the appellants is found to be totally devoid of any substance and stands rejected. To say the least, such objection appears to have been waived by both the appellants before the learned Single Judge as well as before the Division Bench and, therefore, also cannot be countenanced. This point for determination, therefore, is answered in the affirmative in favor of the respondent-Union and against the appellants.”

- 9)** In the Judgement passed by the Hon’ble Apex Court in *JK Jute Mill Majdoor Morcha vs. Juggilal Kamalapat Jute Mills Company Limited* published in (2019) 11 SCC 332, the Hon’ble Apex Court has stated the following:

“12. on a reading of the aforesaid statutory provisions, what becomes clear is that a trade union is certainly an entity established under a statute, namely, the Trade Unions Act, and would therefore fall within the definition of “person” under Section 3(23) of the Code. This being so, it is clear that an “operational debt”, meaning a claim in respect of employment, could certainly be made by a person duly authorized to make such claim on behalf of a workman. Rule 6, Form 5 of

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also recognizes the fact that claims may be made not only in an individual capacity, but also conjointly. Further, a registered trade union recognized by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. Equally, the general fund of the trade union, which inter alia is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen.”

10) As such the Hon’ble Supreme Court has reached the conclusion that a Trade Union falls within the definition of “person” (under Section 3 (23) of the Insolvency and Bankruptcy Code 2016 (for short IBC)), so a claim in respect of an employment can be made by a person being authorized to make the same on behalf of the workman. As a result a registered and recognized trade union is entitled to make a claim .

11) This Court is of the same view as that of the Hon’ble Single Bench that a writ petition by a Trade Union is not automatically maintainable as it relates to a petition under IBC. It is a fact that in order to have a writ petition maintainable it is settled that one has to establish that he

has an enforceable right which has been infringed, however this view has been expanded by incorporating the concept of a “person aggrieved” and by further holding that a “person aggrieved” can maintain a writ petition. In the instant case the Trade Union has a vital role to play as it did by negotiating the terms with the employer representing the employees. In the instant case the petitioner that is the trade union had a negotiating authority in fixing the benefits under the ROPA 1998. As such the instant *lis* initiated by the writ petitioner that is the registered trade union is maintainable.

In another Judgement published in 1970 (1) SCC 225, the Hon’ble Apex Court in Paragraph 5 has stated the following:

“ ... The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. ...”

12) This Court also accepts the view of the Hon’ble Single Bench as to the fact that the additional members for whom the writ petitioner trade union has claimed the reliefs are not identically placed as the scale of pay of each individual member, the date of their appointment, the length of service and the date of superannuation of each of the employees varied from one employee to the other as such the employer is to consider each of the employee/workmen separately in the context of each member.

13) This Court is of the same view as that of the Hon'ble Single Bench that the trade union is not entitled to any mandatory order for payment of the benefits under ROPA 1998 to each of its additional members. The additional members on whose behalf the trade union had ventilated the grievances will have to make individual representations.

14) As such this Court is also of the view that the Trade Union is only entitled to an order that the claims of each of its additional members shall be considered by CTC now known as WBTC, acting as the employer by examining individual claims in accordance with law.

15) This Court therefore affirms the direction given by the Hon'ble Single Bench directing each of the additional members to make individual representations providing the necessary particulars. This Court is also of the same view that the WBTC shall consider each of such applications/representations on their merit and pass reasoned orders.

Thus, this Court does not find any infirmity in the Judgement and Order dated 18-05-2022 passed by the Hon'ble Singble Bench and the same stands affirmed.

A.P.O.T. No. 136 of 2022 with WPO/1017/2022 IA NO:GA/1/2022

GA/2/2023 stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)