Tamilnadu Arasu Pokkuvarathu Kazhaka ... vs The Management Of on 10 June, 2024

Author: N.Seshasayee

Bench: N.Seshasayee

W.A(MD)No.7

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A(MD)No.75 of 2019

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Tamilnadu Arasu Pokkuvarathu Kazhaka Oozhiyarkal Sangam – CITU,
Rep. By its General Secretary,
Venmani Illam,
Anantha Nambiar Nagar,

Trichy. ...Appellant/Petitioner

Vs.

The Management of,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy – Region,
Rep. By its Managing Director,
Trichy. ..Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against order passed by this Court dated 14.09.2015 made in W.P(MD)No.16613 of 2015.

For Appellant : Mr.S.Arunachalam
For Respondent : Mr.S.C.Herold Singh
Standing Counsel

JUDGMENT

[Judgment was delivered by L.VICTORIA GOWRI, J.] I. Prelude:-

> "Satyagraha is strike plus something more. This something makes for better morals amongst those who carry on the fight. It also means greater loss of morals for the opponent. A satyagrahi is better non-cooperator than a striker"
>
> - J.B.Kripalani, Chairman, Fundamental Rights Subcommittee, Member of Constituent Assembly.

https://www.mhc.tn.gov.in/judis India is the largest democracy with a living organ as her constitution. The distinguishing feature of any democracy is the space offered for legitimate dissent. If we give a glance on the history of labour jurisprudence in India, the right of strike, though not raised to the high pedestal of a fundamental right, the same has been recognised as a mode of redress for resolving/ventilating the grievances of workers/employees. It is ironic to understand that, the right to strike is not absolute even under our industrial jurisprudence and the same is subjected to the restrictions enumerated in Chapter III and V of the Industrial Disputes Act, 1947 (herein after to be metioned as the 'Act'). Carefully pointing out that liberty of the citizens if interfered with, under the guise of protecting public interest by legislative action, such action would tend to be arbitrary, we are compelled to test the right to strike encompassed in the right to form associations/unions by harmoniously reading the restrictions mandated in Chapter III and V of Industrial Disputes Act, 1947, in conjunction with Articles 19(1(3)(4) r/w. Articles 41,42, 43, 43-A and 51-A(b) of the Constitution of India.

II. Factual Matrix:-

2.The sequence of facts which enwomb the critical question of law for consideration in the instant case is as to, whether a strike called for by the https://www.mhc.tn.gov.in/judis workers in a public utility service, if undergone after giving notice of strike to the employer, as mandated in Section 22 of the Industrial Dispute Act, 1947, be termed an illegal strike and whether the right to strike legally as mandated in Industrial Disputes Act, 1947, is protected under Article 19 and Article 21 of the Constitution of India. The facts, which ensemble the bone of contention of the case in hand is the call of the workers of Tamil Nadu Arasu Pokkuvarathu Kalaga Ooliyargal Sangam – CITU., to recognize their right to strike. The Appellant Union has challenged the order passed by the Management of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, that is, the respondent, dated 07.02.2015, refusing to treat the days 01.10.2007, 05.07.2010 and 27.01.2011 as days of leave availed by the workers, who are the members of the appellant Union, who participated in the All India strikes on those days, by deducting the leave available in their leave currency, as like the members of the Union of 'Anna Thozhir Sanga Peravai'. The respondent Corporation had declared the strike of the appellants as an illegal strike. The appellant has challenged the impugned order of rejection, refusing three days of All India strike undergone by them as leave availed by the workers on the following grounds:-

(i).The workers belonging to the appellant Union participated in certain All India strikes called for by the aforesaid Union opposing the new economic https://www.mhc.tn.gov.in/judis policies and decisions of the Central Government on 01.10.2007, 12.04.2010, 13.04.2010, 05.07.2010, 27.01.2011, and 15.12.2012, only after issuing prior notices by the Trade Union to the employer respondent Corporation. Hence, the said days of strike cannot be treated by the respondent as absence from duty/illegal strikes.

(ii).The respondent Corporation, considering the fact that, the appellant Union had already issued advance call letter announcing the date of All India strikes, ought to have granted leave to those workers on those days by deducting the leave available in their currency of leave account, on the ground that the strikes were not against the respondent Corporation.

(iii).The respondent Corporation, having considered the request of the workers of Anna Thozhir Sanga Peravai to deduct the leave available in their leave currency, by treating the days of strike, more particularly, 01.10.2007, 05.07.2010 and 27.01.2011, the days on which the said Union underwent strike against the economic policies and decisions of the Central Government, as days of leave, ought to have extended the same/similar treatment to the workers of the appellant Union as well.

(iv).When the respondent Corporation issued an order dated 24.11.2011, directing the payment of wages to 671 workers of a particular Union, namely, 'Anna Thozhir Sanga Peravai', who also participated in those All India strikes, https://www.mhc.tn.gov.in/judis held on 01.10.2007, 05.07.2010, 27.01.2011, by deducting leave in their credit, the respondent Corporation refused to

treat the Petitioner Union alone discriminatively and the said Act would amount to violation of the equality clause.

3.The learned Single Judge found no justification to interfere with the impugned order of the respondent Corporation, relying upon the judgment of the Hon'ble Apex Court in Ex.Capt. Harish Uppal v. Union of India and another1 and categorically concluded that any action taken or any agreement reached, which is not permissible in law cannot be supported by this Court sitting under Article 226 of the Constitution of India and hence, the appellant Union's request to extend the benefit extended to the Anna Thozhir Sanga Peravai, to the workers of the appellant Union cannot be supported.

Challenging the same, the appellants are before us.

III. A Critical Analysis:-

4.At the first instance, we are not hesitant to observe that the case of Ex-

Captain Harish Uppal2 has nothing to do with the strikes of workers, on the contrary, the same has dealt with the unreasonable boycott of Courts hindering 1 2003 2 SCC 45 2 Supra 1 https://www.mhc.tn.gov.in/judis the day-to-day administration of justice by the lawyers. The same is certainly not applicable to the facts and circumstances of the instant case in hand. The learned Single Judge ought not to have relied upon the said case law, while dismissing the Writ Petition. The rational claim of the Appellant Union is that, the Appellant Union and other Unions called for All India strikes opposing the economic policies and decisions of the Central Government on various dates, more particularly, on 01.10.2007, 05.07.2010 and 27.01.2011, after issuing prior notice of strike to the respondent Corporation and the respondent Corporation having deducted the leave available in the currency of leave account, treating those three days as leave availed by the workers pertaining to Anna Thozhir Sanga Peravai, had categorically refused the same kind of treatment by crediting the leave available in the currency of leave account of the workers of the Appellant Union as leave in a discriminative manner. Hence, to give quietus to the issue in hand, it is necessary to examine whether the strike called for by the workers of the appellant Union is a legal strike or an illegal one?

(4A).Relying upon Para 36 of the judgment of the Hon'ble Apex Court in Ex-Captain Harish Uppal3 case, the learned Single Judge had categorically undermined the claim of the appellant Union. The learned Single Judge lost 3 Supra 1 https://www.mhc.tn.gov.in/judis sight as to the proposition of law discussed in Para 39 of the same judgment, which is extracted as follows:-

> “39.Further, strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees, who were not having any other method of redressing their grievances. But by any standard, professionals belonging to a noble profession, who are considered to be an intelligent class, cannot have any justification for remaining absent from their duty.”

5.Pointing out strike is bad and the same cannot be justified from any point of view, if the same is resorted to by Lawyers in boycotting the Courts, the Hon'ble Apex Court did not hesitate to observe that strike is a weapon of industrial employees to redress their grievances in the same judgment. Strikes are dealt with in Chapter V of the Industrial Disputes Act, 1947. Section 22 prohibits strikes and the relevant Provision is extracted as follows:-

"22. Prohibition of strikes and lock-outs.—(1) No person employed in a public utility service shall go on strike in breach of contract—

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before https://www.mhc.tn.gov.in/judis a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen—

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are https://www.mhc.tn.gov.in/judis referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day."

6.Section 23 of the Industrial Disputes Act, 1947, provides for general prohibition of strikes and lockouts and the same is extracted as follows:-

"23. General prohibition of strikes and lock-outs.—No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before 1 [a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings; 2*** [(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or]

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

7.Illegal strikes and lockouts are defined in Section 24 of the aforesaid https://www.mhc.tn.gov.in/judis Act and the same is extracted as follows:-

"24. Illegal strikes and lock-outs.—(1) A strike or a lock-out shall be illegal if—

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10 1 [or sub-section (4A) of section 10A].

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, 4 [an arbitrator, a] 2 [Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this

Act or the continuance thereof was not prohibited under sub-section (3) of section 10 4 [or sub-section (4A) of section 10A].

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

8.It is needless to state that, the respondent Corporation is a public utility transport service. Hence, no worker employed in the respondent Corporation shall go on strike in breach of contract without giving to the employer notice of strike as provided under Section 22 of the Industrial Disputes Act, 1947, during any period, in which, a settlement or award is in operation in respect of any of https://www.mhc.tn.gov.in/judis the matters covered by the settlement or award. No doubt, in the instant case, the workers of the appellant Union have issued notice of strike as mandated under Section 22 of the Industrial Dispute Act, 1947, and the strike was not with respect to any of the matters covered by any settlement or award entered into between the workers and the respondent Corporation, but the same is precisely with respect to opposing the economic policies and decisions taken by the Central Government. All the workers have sufficient leave in the currency of their leave account and their only claim is to adjust those leaves on the particular days, on which they underwent strike towards the leave available in their leave account. Having accorded the said facility to the workers of one of the unions which participated in those strikes, namely, Anna Thozhir Sanga Peravai, there is no reason for the respondent Corporation to reject the similar claim raised by the workers of the appellant Union. More so, we have no hesitation to hold that the strike underwent after putting the respondent Corporation, who is the employer, with notice of strike as mandated in the Industrial Dispute Act, 1947, cannot be termed as an illegal strike.

9.Now, the question to be decided is as to, whether a legally called strike is protected under Articles 19 and 21 of the Constitution of India?

10.A close watch of the evolution of labour jurisprudence in India, in the context of comparative constitutionalism, on empirical basis in synchronization with the various conventions of the International Labour Organization would be relevant. Time and again, the various line of judgments of the Hon'ble Supreme Court have categorically held that the right to strike is not a fundamental right as guaranteed by the Constitution of India. The Hon'ble Supreme Court in the case of Kameshwar Prasad and others V. State of Bihar and another4, in its Constitutional Bench of Five Judges has held as follows:-

"13.The first question that falls to be considered is whether the right to make a ",demonstration" is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) and 19(1)(b). A "'demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on

> political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society..... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of 4 1960 SCC Online SC 30 https://www.mhc.tn.gov.in/judis speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Article 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19(1)(a) and 19(1) (b). It is needless to add that from the very nature of things a demonstration may take various forms; It may be noisy and disorderly, for instance stone-

throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.

14.If thus particular forms of demonstration fall within the scope of Article 19(1)(a) or 19(1)(b), the next question is whether r. 4-A, in so far as it lays an embargo on any form of demonstration for the redress of the grievances of Government employees, could be sustained as falling within the scope of Article 19(2) and (3). These clauses run:

> "19. (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, https://www.mhc.tn.gov.in/judis public order, decency or morality or in relation to contempt of court defamation or incitement to an offence.
>
> (3)Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order' reasonable restrictions on the exercise of the right conferred by the said sub-clause."

The learned Judges of the High Court have, as stated earlier, upheld the validity of the rule by considering them as reasonable restrictions in the interest of public order. In coming to this conclusion the learned Judges of the High Court did not have the benefit of the exposition of the

meaning of the expression in the interest of public order" in these two clauses by this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia. Speaking for the Court Subba Rao, J., summarised his conclusion on the point in these terms:

> "Public order (Article 19(2) and (3)) is synonymous with 'public safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strike, war affecting the security of the State."

The learned Judge further stated that in order that a legislation may be "in the interests of public order" there must be a proximate and reasonable nexus between the nature of the speech prohibited and public order. The learned Judge rejected the argument that the phrase "in the interests of public order" which is wider than the words ',for the maintenance of public order" which were found in the https://www.mhc.tn.gov.in/judis Article as originally enacted-thereby sanctioned the enactment of a law which restricted the right merely because the speech had a tendency however remote to disturb public order. The connection has to be intimate, real and rational. The validity of the rule now impugned has to be judged with reference to tests here propounded.

19.We would therefore allow the appeal in part and grant the appellants a declaration that Rule 4-A in the form in which it now stands prohibiting “any form of demonstration” is violative of the appellants' rights under Article 19(1)(a) and (b) and should therefore be struck down. It is only necessary to add that the rule, insofar as it prohibit a strike, cannot be struck down and since there is no fundamental right to resort to a strike.

11.It is interesting to understand from the extracted operative portion of the aforesaid judgment that their Lordships of the Hon'ble Supreme Court have upheld the right of peaceful demonstration, while holding that there is no fundamental right to resort to a strike. Another Constitutional Bench of Five Judges of the Hon'ble Supreme Court in the case of Indian bank Employees Association v. the National Industrial Tribunal (Bank Disputes Bombay and others)5, has dealt with the right to strike and the relevant portion is extracted as follows:-

> “16.We shall now proceed to consider the soundness and tenability of the steps in the reasoning. It is not necessary to discuss 5 1961 SCC Online SC 5 https://www.mhc.tn.gov.in/judis in any detail the first step as sub-clause (c) of clause (1) of Article 19 does guarantee to all citizens the right ,“to from associations". It matters little whether or not learned Counsel is right in his submission that the expression "union“ in the clause has reference particularly to Trade Unions or whether the term is used in a generic sense to designate any association formed for any legitimate purpose and merely as a variant of the expression "Association" for comprehending every body of persons so formed. It is not controverted that workmen have a right to form "associations or unions" and that any legal impediment in the way of the formation of such unions imposed directly or indirectly which does not satisfy the tests laid down in clause (4) would be unconstitutional as contravening a right guaranteed by Part III of the Constitution.

17.It is the second step in the argument of the learned Counsel, viz., that the right guaranteed to form "an union" carries with it a concomitant right that the achievement of the object for which the union is formed shall not be restricted by legislation unless such restriction were imposed in the interest of public order or morality, that calls for critical examination. We shall be referring a little later to the authorities on which learned Counsel rested his arguments under this head, but before doing so we consider it would be proper to discuss the matter on principle and on the construction of the constitutional provision and then examine how far the authorities support or contradict the conclusion reached.

18.The point for discussion could be formulated thus : When sub-clause (c) of clause (1) of Article 19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in clause (4) of Article 19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an association were formed, let us say. for carrying on a lawful business such as a joint stock company or a partnership, does the guarantee by sub-clause (c) of the freedom. to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and achieve its profit-making object and that the only limitations which the law could impose on the activity of the association or in the way of regulating its business activity would be those based on public order and morality under clause (4) of Article 19? We are clearly of the opinion that this has to be answered in the negative. An affirmative answer would be contradictory of the scheme underlying the text and the frame of the several fundamental rights which are guaranteed by Part III and particularly by the scheme of the seven freedoms or groups of freedoms guaranteed by sub-clauses (a) to (g) of clause (1) of Article

19. The acceptance of any such argument would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by sub-clause (g) of clause (1) of Article 19, the validity of a law which imposes any https://www.mhc.tn.gov.in/judis restriction on this guaranteed right would have to be tested by the, criteria laid down by clause (6) of Article 19. if however he associated with another and carried on the same activity-say as a partnership, or as a company etc., he obtains larger rights of a different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different standards, viz., those laid down in clause (4) of Article 19. This would itself be sufficient to demonstrate that the construction which the learned Counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Article 19-as contrasted with certain other Articles like Articles 26, 29 and 30- grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, i.e., in right of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens: composing it are subject.

19.The resulting position way, be illustrated thus If an association were formed' for' the purpose of carrying on business, the right to form it would be Guaranteed by sub-clause (c) of clause (1) of Article 19 subject to any law restricting that right conforming to clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by sub-clause (g) of clause (1) of Article 19 subject to any relevant law on the matter https://www.mhc.tn.gov.in/judis conforming to clause (6) of Article 19 ; while the property which the association acquires or possesses would be protected by sub-clause

(f) of clause (1) of Article 19 subject to legislation within the limits laid down by clause (5) of Article 19.

20.We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this : while the right to form an union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-clause (b), their right to move from place to place within India by sub-clause(d), their right to discuss their problems and to propagate their views by sub- clause (a), their right to hold property would be that guaranteed by sub-clause (f) and so oneach of these freedoms being subject to such restrictions as might properly be imposed by clauses (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III a fair and liberal sense, it is quite another to read which guaranteed right as involving or including 'Concomitant rights necessary to achieve the object which might be supposed to under lie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights. concomitant to concomitant rights and so on, lead to an almost grotesque result.

21.There is no doubt that in the context of the principles underlying the Constitution and the manner in which its Part III has https://www.mhc.tn.gov.in/judis been framed the guarantees embodied in it are to be interpreted in a liberal way so as to subserve the purpose for which the constitution- makers intended them and not in any pedantic or narrow sense, but this however does not imply that the Court is at liberty to give an unnatural and artificial meaning to the- expressions used based on ideological considerations. Besides it may be pointed out that both under the Trade Unions act as well as under the Industrial Disputes Act the expressions `union signifies not merely a union of workers but includes also unions of employers. If the fulfilment of every object for which an union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to an union of employers which would result in an absurdity. We are pointing this out not as any conclusive answer, but to indicate that the theory of learned Counsel that a right to, form unions guaranteed by sub-clause (c) of clause (1) of Article 19 carries with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfilment of those objects, should be declared unconstitutional and void under Art, 13 of the Constitution, is not a proposition which could be accepted as correct.

22.Besides the qualification subject to which the right under sub-clause (c) is guaranteed, viz., the contents of clause (4) of Article 19 throw considerable light upon the scope of the freedom, for the significance and contents of the grants of the Constitution are best https://www.mhc.tn.gov.in/judis understood and read in the light of the restrictions imposed. If the right guaranteed included not merely that which. would flow on a literal reading of the Article, but every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefor, would be not merely those in clause (4) of Article 19, but would be more numerous and very different, restrictions which bore upon and took into account the several fields in which associations or unions of citizens, might legitimately engage themselves. Merely by way of illustration we might point out that learned Counsel admitted that though the freedom guaranteed to workmen to form labour unions carried with it the concomitant right to collective bargaining together with the right to strike, still the provision in the Industrial Disputes Act forbidding strikes in the protected industries as well as in the event of a reference of the dispute to adjudication under Section 10 of the Industrial Disputes Act was conceded to be a reasonable restriction on the right guaranteed by sub-clause(c) of clause(1) of Article 19. It would be seen that if the right to strike were by implication a right guaranteed by sub-clause (c) of clause (1) of Article 19 then the restriction on that right in the interests of the general public, viz., of national economy while perfectly legitimate if tested by the criteria in clause (6) of Article 19, might not be capable of being sustained as a reasonable restriction imposed for reasons of morality or public order. On the construction of the Article, therefore, apart from the authorities to which we shall refer presently, we have reached the conclusion that even a very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that the trade https://www.mhc.tn.gov.in/judis unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, And the validity of such legislation would have to be tested not with reference to the criteria laid down in clause(4) of Article 19 but by totally different considerations."

12.The Hon'ble Supreme Court in the above extracted judgment had categorically settled that the right guaranteed under Sub-clause (c) of Clause (1) of Article 19, though it extends to the formation of an Association, but the methods adopted by the Union for achieving the object of its formation are certainly subject to such laws as might be framed for the said purpose and the validity of such law cannot be tested by reference to the criteria found in Clause (4) of Article 19 of the Constitution. The Constitutional Bench of Five Judges of the Hon'ble Supreme Court in Radheshyam Sarma versus Postmaster General, Central Circle Nagpur and Others6, dealt with the right to strike and the relevant portion of the same is extracted as follows:-

> "4.The first question that arises is whether Sections 3, 4 and 5 of the Ordinance are violative of any fundamental rights en- shrined in the Constitution. The Ordinance as its name shows was passed in order that essential services may be maintained. Its necessity had 6 1964 SCC Online SC 269 https://www.mhc.tn.gov.in/judis arisen because of a threat of strike inter alia by the employees of the Department. Among "Essential Service" as defined in Section 2 (1) is included the postal, telegraph or telephone service. Section 3 of the Ordinance provides that "if the Central

> Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in any essential service specified in the Order". Further upon the issue of such an order no person employed in any essential service to which the order relates shall go or remain on strike; and any strike declared or commenced, whether before or after the issue of the order, by persons employed in any such service, shall be illegal. Section 4 provides that any person who commences a strike which is illegal under the Ordinance or goes or remains on or otherwise takes part in, any such strike shall be punished with imprisonment. Section 5 provides that any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under the Ordinance shall be punishable with imprisonment.
>
> 5.The constitutionality of these sections is attacked on the ground that they violate the fundamental rights guaranteed by clauses (a) and (b) of Article 19 (1). Under clause (1) (a) all citizens have the fundamental right to freedom of speech and expression and under clause (1) (b) to assemble peaceably and without arms.

Reasonable restrictions on these fundamental rights can be placed under the conditions provided in clauses (2) and (3) of Article 19. We are of opinion that there is no force in the contentiton that these provisions of the Ordinance violate the fundamental rights enshrined https://www.mhc.tn.gov.in/judis in sub- clauses (a) and (b) of Article 19(1). A perusal of Art. 19(1) shows that there is no fundamental right to strike, and all that the Ordinance provides is with respect to any illegal strike as provided in the Ordinance. This aspect has been elaborately discussed in the Bank Employees' case and it has been held that there is no fundamental right to strike (see All India Bank Employees' Association V. National Industrial Tribunal).”

13.Reiterating the earlier verdict of the Hon'ble Supreme Court in All India Bank Employees Association v. National Industrial Tribunal7 in the above extracted case, the Hon'ble Apex Court endorsed the earlier judgment that there is no fundamental right to strike, that too, prohibition of illegal strike cannot be interfered with. The Hon'ble High Court of Andhra Pradesh, at Hyderabad, in the case of A.P.S.R.T. Corporation Employees Union v.

A.P.S.R.T. Corporation, Hyderabad and Others8 has dealt with the case of strike wherein it has distinguished between legal strike and illegal strike and the relevant portion of the same is extracted as follows:-

> “3.The question of legality of the strike, raised by the learned counsel for the management, may be considered first S. 24(i) of the Industrial Disputes Act declares that a strike shall be illegal if it is commenced or declared in contravention of section 22 or section
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> 23. We are concerned in the present case with sec; 23(c) which 7 Supra 5 8 1969 SCC Online AP 192 https://www.mhc.tn.gov.in/judis prohibits a workman from going on strike ‘during any period in which a settlement or award is in operation, in respect of

any of the matters covered by the settlement or award'. Section 19(2) provides that a settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. It is the case of the management that on the day of strike i.e. on 28-3-1966, there was in force a settlement in respect of some of the demands made by the workers in their notice of strike. ..... Nor am I prepared to hold that a strike, if justified, could be considered an activity subversive of industrial peace or opposed to the lawful objects of Trade Unions. A right to strike is labour's ultimate weapon and in the course of a hundred years it has emerged as the inherent right of every worker. It is an element which is of the very essence of the principle of collective bargaining and as stated by an eminent English judge the right to strike is an implication read into, the contract by the modern law as to trade disputes'. See Lord Denning in Morgan v. Fry. The nature of the right is such that, it cannot in my view, be abridged or ??? ??? save in strict conformity with the provisions of the statute providing for such abridgement or taking away.

4..... In the present case no demand was rejected and two principal demands were met. The strike was indeed a substantial https://www.mhc.tn.gov.in/judis success. I am not saying that the Justifiability of a strike, is not to be judged by the measure of the results of the strike, though that would certainly be a relevant matter to be considered. In addition to the reasonableness of the demands we have in this, case the additional undisputed fact that even after notice of strike was given, the workers did not adopt a narrow uncompromising attitude. They suggested, in the course of the conciliation proceedings, that all the demands may be referred to arbitration. I therefore hold that the strike was justified and the Tribunal fell into an error and approached the question from a wrong angle in basing its conclusion on the numerical percentage of successful demands."

14.The Hon'ble High Court of Andhra Pradesh has concluded in the aforesaid case that a strike could be justified only on arriving at a decision as to whether the strike resorted to by the workers as against the employer is a legal strike or an illegal one in consonance with Sections 22, 23 and 24 of the Industrial Disputes Act, 1947. In yet another case of Gujarat Steel Tubes Limited and Others versus Gujarat Steel Tubes Mastur Sabha and Others9, a three Judges Division Bench of the Hon'ble Supreme Court dealt with the right to strike and participation in illegal strike and the relevant portion of the same is extracted as follows:-

"2.....A total strike ensued, whose chain reaction was a wholesale termination of all the employees, followed by fresh 9 1980 (2) SCC 593 https://www.mhc.tn.gov.in/judis recruitment of workmen, de facto breakdown of the strike and dispute over restoration of the removed workmen. This cataclysmic episode and its sequel formed the basis of Section 10-A arbitration and award, a writ

Petition and judgment, inevitably spiralling up this Court in two appeals – one by the Management and the other by the Union – which have been heard together and are being disposed of by this common judgment.

5.Gandhiji, to whom the Arbitrator has adverted in passing in his award, way back in March 1946, wrote on Capitalism and Strikes in the Harijan:

"How should capital behave when labour strikes? This question is in the air and has great importance at the present moment. One way is that of suppression named or nicknamed 'American'. It consists in suppression of labour through organised goondaism. Everybody would consider this as wrong and destructive. The other way, right and honourable, consists in considering every strike on its merits and giving labour its due not what capital considers as due, but what labour itself would so consider and enlightened public opinion acclaims as just....

In my opinion, employers and employed are equal partners even if employees are not considered superior. But what we see today is the reverse. The reason is that the employers harness intelligence on their side. They have the superior advantage which concentration of capital brings with it, and they know how to make use of it.... Whilst capital in India is fairly organised, labour is still in a more or less disorganised condition in spite of Unions and Federation. Therefore, it lacks the power that true combination gives.

8.The course of this precarious coexistence was often ruffled, and there was now and then, some flare up leading to strike, conciliation and even reference under Section 10.When no such reference was pending, another an industrial break-down and a total strike.

Olive Branch Approach

12.The golden rule for the judicial resolution of an industrial dispute is first to persuade fighting parties, by judicious suggestions, into the peacemaking zone, disentangle the difference, narrow the mistrust gap and convert them through consensual steps, into negotiated justice. Law is not the law word in justice, especially social justice. Moreover, in our hierarchical court system, the little man lives in the short run but most litigation lives in the long run. So it is that negotiation first and adjudication next, is a welcome formula for the Bench and the Bar, Management and Union. This “olive branch” approach brought the parties closer in our Court and gave us a better understanding of the problem, although we could not clinch a settlement.

65.In our opinion, the facts of the case before us speak for themselves. Here are workmen on strike. The strike is illegal. The Management is hurt because production

is paralysed. The strikers allegedly indulge in objectionable activities. The exasperated Management hits back by ordering their discharge for reasons set out in several pages in the appropriate contemporaneous proceeding. Misconduct after misconduct is flung on the workers to https://www.mhc.tn.gov.in/judis justify the drastic action. In all conscience and common sense, the discharge is the punishment for the misconduct. The Management minces no words. What is explicitly stated is not a colourless farewell to make way for fresh hands to work the factory until the strike is settled but a hard hitting order with grounds of guilt and penalty of removal.

126.We observe here also an unfortunate failure to separate and scan the evidence with specific reference to charges against individual workman. On the contrary, all that we find in the award is an autopsy of the strike by the Sabha and a study of its allegedly perverse postures. A disciplinary inquiry resulting in punishment of particular delinquents cannot but be illegal if the evidence is of mass misconduct by unspecified strikers led by leaders who are perhaps not even workmen. We are constrained to state that pointed consideration of facts which make any of the 400 workmen guilty, is a search in vain. The award being ex facie blank from this vital angle, the verdict must prima facie rank as void since vicarious guilt must be brought home against the actively participating members of a collectivity by positive testimony, not by hunch, suspicion or occult intuition. The short position is this. Is there a punishment of any workman? If yes, has it been preceded by an enquiry? If not, does the Management desire to prove the charge before the tribunal? If yes, what is the evidence, against whom, of what misconduct? If individuated proof be forthcoming and relates to an illegal strike, the further probe is this: was the strike unjustified? If yes, was the accused worker an active participant therein? If yes, what role did https://www.mhc.tn.gov.in/judis he play and of what acts was he author? Then alone the stage is set for a just punishment. These exercises, as an assembly-line process are fundamental. Generalisation of a violent strike, of a vicious Union leadership, of strikers fanatically or foolishly or out of fear, failing to report for work, are good background material. Beyond that, these must be identified by a rational process, the workmen, their individual delinquency and the sentence according to their sin. Sans that, the dismissal is bad. Viewed from this perspective, the award fails."

15.Fully fortified by the aforesaid judgment of the Hon'ble Justice V.R.Krishna Iyer, we are of the considered opinion that, even in the instant lis in hand, the strike resorted to by the workers of the appellant Union cannot be construed as an illegal strike for the reason that the said strike was initiated by the appellant Union, after issuance of notice as mandated in Section 22 of the Industrial Disputes Act, 1947, and the same was led by leaders across India agitating against the economic policies and decisions of the Central Government. Moreover, the said strike was not a violent strike but a peaceful demonstration and when the respondent Corporation has extended the benefit of crediting the leave available in the currency of leave account in favour of the workers of another Union, the same benefit ought to have been extended to the workers of the appellant Union as well. The Hon'ble Division Bench of the https://www.mhc.tn.gov.in/judis Hon'ble Supreme Court in the

case of Dharam Dutt and Others versus Union of India and Others10, reiterated the earlier stand of the various Constitutional Bench judgments of the Hon'ble Supreme Court that, the right to strike is not a fundamental right and the relevant portion in para Nos.24 and 28 of the same is extracted as follows:-

> "From a reading of the two decisions, namely, Smt. Maneka Gandhi's case (seven-Judges Bench) and All India Bank Employees Association's case (five-Judges Bench), the following principles emerge : (i) a right to form associations or unions does not include within its ken as a fundamental right a right to form associations or unions for achieving a particular object or running a particular institution, the same being a concomitant or concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that it must also be able to achieve the purpose for which it has come into existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality; (ii) A right to form associations guaranteed under Article 19 (1)(c) does not imply the fulfillment of every object of an association as it would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by Part III and particularly by the scheme of the guarantees conferred by sub-clauses (a) to (g) of clause (1) of Article 19; (iii) While right to form an association is to be tested by 10 2004 (1) SCC 712 https://www.mhc.tn.gov.in/judis reference to Article 19(1)(c) and the validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation restricting the activities of the association shall have to be judged by reference to Article 19(1)(g) read with 19(6). A restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association; and (iv) A perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can lay claim to the fundamental rights guaranteed by Article 19 solely on the basis of there being an aggregation of citizens, i.e., the rights of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject.
>
> 28.A right to form unions guaranteed by Article 19(1)(c) does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfillment of those objects, should be declared unconstitutional and void. Even a very liberal interpretation cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to

be tested not with reference to the https://www.mhc.tn.gov.in/judis criteria laid down in clause (4) of Article 19 but by totally different considerations. A right guaranteed by Article 19(1)(c) on a literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(c) but which are sought to be included therein as flowing therefrom i.e. every right which is necessary in order that the association, brought into existence, fulfills every object for which it is formed, the qualifications therefor would not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves, would also become relevant."

16.The Division Bench of the Hon'ble Supreme Court examined the right to demonstrate in the case of Bimal Gurung v. Union of India and Others11 and the relevant portion of same is extracted as follows:-

"31.Article 19 of the Constitution of India guarantees some of most important fundamental rights to the citizens. Article 19 protects important attributes of personal liberty. Right to freedom of speech and expression as guaranteed under Article 19(1)(a) and the right to assemble peaceably and without arms as protected by Article 19(1)

(b) are the rights which in reference to the present case have importance. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights 11 2018 (15) SCC 480 https://www.mhc.tn.gov.in/judis expression of which are reflected in carrying demonstration on several occasions. Freedom to air once view is the lifeline of any democratic institution. The word "freedom of speech" must be broadly construed to include right to circulate once view by word or mouth or through audio visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). Demonstrations whether political, religious or social or other demonstrations which create public, disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; "it may be noisy and disorderly", for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). We in the present case are concerned with the demonstrations and the bandh call given by GJM.

35.A two-Judge Bench of this Court in Anita Thakur and others vs. Government of Jammu and Kashmir and others, (2016) 15 SCC 525 in which one of us Dr. A.K. Sikri was a member had occasion to consider Article 19 in reference to a protest march organised by a group of people. While dealing with the demonstration under Article https://www.mhc.tn.gov.in/judis 19(1)(a) and (b) following was laid down in paragraph 12: (SCC p.

533) "12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non- violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution."

17.Though the above extracted portions of the judgment has nothing to https://www.mhc.tn.gov.in/judis do with a strike or demonstration resorted to by the employees of any industrial establishment, but with the call for peaceful demonstration by a political party, namely, Gorka Janmukti Morcha, the Hon'ble Division Bench of the Hon'ble Supreme Court had upheld the right of peaceful demonstration by concluding that the right to hold peaceful demonstration is protected and guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. In yet another case of B.R.Singh and Others versus Union of India and Others12 the Hon'ble Supreme Court has dealt with the issue of strike in non-public utility service and the relevant portion of the same is extracted as follows:-

> "The right to form associations or unions is a fundamental right under Article 19(1)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-

> 12 (1989) 4 SCC 710 https://www.mhc.tn.gov.in/judis slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in Sections 10(3), 10-A(4-A), 22 and 23 of the Industrial Disputes Act, 1947 ("ID Act" for short). Section 10(3) empowers the appropriate Government to prohibit the continuance of a strike if it is in connection with a dispute referred to one of the fora created under the said statute.

Section 10-A (4-A) confers similar power on the appropriate Government where the industrial dispute which is the cause of the strike is referred to arbitration and a notification in that behalf is issued under Section 10-A(3-A). These two provisions have no application to the present case since it is nobody's contention that the Union's demands have been referred to any forum under the statute.

16. The field of operation of Sections 22 and 23 is different. While Section 10(3) and Section 10-A(4-A) confer power to prohibit continuance of strike which is in progress, Sections 22 and 23 seek to prohibit strike at the threshold. Section 22 provides that no person employed in a public utility service shall proceed on strike unless the requirements of clauses (a) to (d) of sub-section (1) thereof are fulfilled. The expression "public utility service" is defined in Section 2(n) and indisputably TFAI does not fall within that expression.

https://www.mhc.tn.gov.in/judis Section 23 next imposes a general restriction on declaring strikes in breach of contract during pendency of (1) conciliation proceedings,

(ii) proceedings before Labour Court, Tribunal or National Tribunal,

(iii) arbitration proceedings and (iv) during the period of operation of any settlement or award. In the present case no proceedings were pending before any of the aforementioned fora nor was it contended that any settlement or award touching these workmen was in operation during the strike period and hence this provision too can have no application. Under Section 24, a strike will be illegal only if it is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of an order made under Section 10(3) ?? 10-A(4-A) of the ID Act. Except the above provisions, no other provision was brought to our attention to support the contention that the strike was illegal. We, therefore, reject this contention.

17. The next question is whether the material on record reveals that the office- bearers of the Union had given threats to officials of TFAI as alleged. The Labour Court has negatived the involvement of office-bearers of the Union in giving threats either in person or on telephone. We have perused the evidence on record in this behalf and we are inclined to think that there were angry protests and efforts to obstruct the officers from entering the precincts of TFAI but there is no convincing

evidence of use of force or violence.

19.....In their frustration they decided to put pressure by proceeding on strike. During the strike period certain events happened which we wish were avoided. But fortunately nothing destructive, meaning thereby damaging to the property of TFAI, took https://www.mhc.tn.gov.in/judis place. A few brushes and exchange of strong words appear to have taken place which are described as threats by the management. The vast mass of labour was only responding to the call of the Union. Even the Union representatives were acting out of frustration and not out of animosity of the officers. The facts of this case, therefore, demand that we appreciate the conduct of both sides keeping in mind the prevailing overall situation.

20. Taking an overall view of the facts and circumstances which emerge from the oral as well as documentary evidence placed on record, we are of the opinion that while some of the Union leaders acted in haste, they do not appear to have been actuated by any oblique motive. The management also took action against the workmen not because it was unsympathetic towards their demands but because of the anxiety caused to them on account of untimely action taken by the Union only a few days before the President's scheduled visit to the Fair. The management also felt hurt as its reputation was at stake since several dignitaries from abroad were participating in the Fair. Its action must, therefore, be appreciated in this background.

21. The interest of the institution must be paramount to all concerned including the workmen. At the same time this Court cannot be oblivious to the economic hardships faced by labour. We have already pointed out earlier how both parties reacted to the tense atmosphere that built up over a period of time. The facts found by the Labour Court clearly show that while the labour was frustrated as its demands were outstanding since long and they were finding it https://www.mhc.tn.gov.in/judis difficult to combat the inflation without an upward revision in wages, etc., the management was worried about TFAI's reputation likely to be lowered in the eyes of visiting dignitaries because of certain events that were happening due to the workers' agitation. In these circumstances, it would be unwise and futile to embark upon a fault finding mission."

18.Taking cue from the aforesaid judgment, we have no hesitation to observe that the workers of the appellant Union have not resorted to any violence but have indulged only in a peaceful demonstration in a call for a national level strike, which was resorted to across the country agitating to the economic policies and decisions of the Central Government in a peaceful manner, after giving notice of strike to the employer Corporation. No untoward incident has been reported and the respondent Corporation has not chosen to initiate disciplinary action against the strikers as well. In view of the same, the appellant Association workers are entitled to the benefit extended to similarly placed workers of another workers Union, namely, Anna Thozir Sanga Peravai.

The Division Bench of the Hon'ble Supreme Court in the case of T.K.Rangarajan v. Government of Tamil nadu and Others13, reiterated that there is no moral or equitable justification for the workers to go on strike and the relevant portion is extracted as follows:-

> 13 2003 (6) SCC 581 https://www.mhc.tn.gov.in/judis “(C)There is no moral or equitable justification to go on strike

19.Apart from statutory rights, government employees cannot claim that they can take the Society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration.” IV. Comparative Constitutionalism - a tool for justice in labour jurisprudence:

> 19.No doubt foreign judgments would be persuasive tools in the hands of Indian Courts to analyse a domestic question, with respect to, whether the right to strike by workers/employees is protected by the Constitution of India as a fundamental right? We are aware that the Indian Constitution though not fully, but to a certain extent is the reflection of various Constitutions, namely, United States, the United Kingdom, Canada, Australia, Ireland, France and Japan.

Indian Constitution, being a by-product of colonial inheritance, reliance on other common law traditions, more particularly, United States, United Kingdom, Canada, etc., by our Constitutional Courts has become inevitable. We are anxious in experimenting with the relevant foreign judgments in arriving at a practical solution to the question, which is haunting the Indian labour https://www.mhc.tn.gov.in/judis jurisprudence for a long time, as to, why in a Country which gave birth from Satyagraha's, demonstrations, non-violent protests and non co-operation movements, even after 77 years of Independence, right to strike is not acknowledged as a fundamental right?

(i)United State of America :

20.The US Constitution 1st Amendment and 14th Amendment guarantees freedom of speech, right of people to assemble peacefully, and prohibits any state from making or enforcing any law depriving any person of life, liberty or property under due process of law and equal protection. The 1 st Amendment, amendment (1791) of the Constitution of United States, that is, part of the bill of rights reads as follows:-

> “U.S.CONSTITUTION FIRST AMENDMENT – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

21.14th Amendment carried out to the Constitution of United States in the year 1868 granted citizenship, equal civil and legal rights to African Americans and slaves, who had been emancipated after the American Civil War and the full text of the Amendment is as follows:-

> https://www.mhc.tn.gov.in/judis “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, or citizens of the United States and of

the State, wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of laws.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion, which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

No person shall be a senator or representative in Congress, or elector of President and Vice President, hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of the Congress, or as an Officer of the United States, or as a member of any State Legislature, or as an Executive or Judicial Officer of any State, to support the https://www.mhc.tn.gov.in/judis Constitution of United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave: but all such debts, obligations and claims shall be held illegal and void.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this Article”

22.In the case of Chas. Wolff Packing Company v. Court of Industrial Relations14, the US Supreme Court dealt with the validity of the Court of Industrial Relations Act of Kansas and held that the same is in conflict with the 14th Amendment and it deprives the plaintiff, that is, the worker's Union of their property and liberty of contract without due process of law and the relevant portion of the same is extracted as follows:-

“20. The system of compulsory arbitration which the act establishes is intended to compel, and if sustained will compel, the 14 262 U.S. 522 (1923)

> https://www.mhc.tn.gov.in/judis owner and employees to continue the business on terms which are not of their making. It will constrain them, not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. True, the terms have some qualifications, but as shown in the prior decision the qualifications are rather illusory and do not subtract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the Fourteenth Amendment.

The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Meyer v. Nebraska, 262 U. S. 390, 399, 43 S. Ct. 625, 627 (67 L. Ed. 1042, 29 A. L. R. 1446)."

23.In the case in Dorchy v. Kansas15 the US Supreme Court held that neither the common law nor the 14th Amendment confers absolute right to strike, but the same is subject to reasonable restrictions and the relevant portion of the same is extracted as follows:-

> "The right to carry on business-be it called liberty or property- has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly 15 272 U.S. 306 (1926) https://www.mhc.tn.gov.in/judis employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare Guaranty Trust Co. v. Green Cove R. R., 139 U. S. 137, 143; Red Cross Line v.

Atlantic Fruit Co., 264 U. S. 109. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. Compare People v. Barondess, 16 N. Y. Supp. 436; 133 N. Y. 649. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare Aikens v. Wisconsin, 105 U. S. 194, 204-5."

24.It is significant to understand that the amendment ensured federal protection to all the citizens of America, irrespective of race or earlier condition of servitude against the assaults both from State and private action and was popularly known as Civil Rights Amendment. In the international context, the various labor rights sprang up from the constitutionally guaranteed right of Association of the various Constitutions across various Nations in the World.

Surprisingly, the Constitution of the United States do not provide any explicit right to freedom of association. However, a right of association, despite its significant absence in the constitutional document has been nurtured slowly and steadily during the Civil Rights Movement in 1958 and finally recognized in https://www.mhc.tn.gov.in/judis the case of National Association for the

Advancement of Colored People (NAACP) versus Alabama16, dated 30.06.1958 and the relevant portion of the same is extracted as follows:-

> "Petitioner is a nonprofit membership corporation organized under the laws of New York for the purpose of advancing the welfare of Negroes. It operates through chartered affiliates which are independent unincorporated associations, with membership therein equivalent to membership in petitioner. It had local affiliates in Alabama and opened an office of its own there without complying with an Alabama statute which, with some exceptions, requires a foreign corporation to qualify before doing business in the State by filing its corporate charter and designating a place of business and an agent to receive service of process. Alleging that petitioner's activities were causing irreparable injury to the citizens of the State for which criminal prosecution and civil actions at law afforded no adequate relief, the State brought an equity suit in a state court to enjoin petitioner from conducting further activities in, and to oust it from, the State. The court issued an ex parte order restraining petitioner, pendente lite, from engaging in further activities in the State and from taking any steps to qualify to do business there. Petitioner moved to dissolve the restraining order, and the court, on the State's motion, ordered the production of many of petitioner's records, including its membership lists. After some delay, petitioner produced substantially all the data called for except its membership lists. It was adjudged in con- tempt and fined 16 357 U.S. 449 (1958) https://www.mhc.tn.gov.in/judis $100,000 for failure to produce the lists. The State Supreme Court denied certiorari to review the contempt judgment, and this Court granted certiorari. Held:
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> 1. Denial of relief by the State Supreme Court did not rest on an adequate state ground, and this Court has jurisdiction to entertain petitioner's federal claims. Pp. 454-458.
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> 2. Petitioner has a right to assert on behalf of its members a claim that they are entitled under the Federal Constitution to be protected from being compelled by the State to disclose their affiliation with the Association. Pp. 458-460.
>
> 3. Immunity from state serutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Four- teenth Amendment. The State has failed to show a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of petitioner's membership lists is likely to have. Accordingly, the judgment of civil contempt and the fine which resulted from petitioner's refusal to produce its membership lists must fall. Pp. 460-466.

(a) Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment. Pp.

460-461.

(b) In the circumstances of this case, compelled disclosure of petitioner's membership lists is likely to constitute an effective restraint on its members' freedom of association. Pp. 461-463.

https://www.mhc.tn.gov.in/judis

(c)Whatever interest the State may have in obtaining the names of petitioner's ordinary members, it has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order."

26.Later the US Supreme Court in 1960 in the case of Shelton versus Tucker17, dated 12.12.1960, held an Arkansas statute invalid, because it deprived teachers of the right of associational freedom protected by the due process Clause of the 14th Amendment by State action. The relevant portion of the same is extracted as follows:-

> "An Arkansas statute requires every teacher, as a condition of employment in a state supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years. Teachers in state supported schools and colleges are not covered by a civil service system, they are hired on a year-to-year basis, and they have no job security beyond the end of each school year. The contracts of the teachers here involved were not renewed, because they refused to file the required affidavits. Held: The statute is invalid, because it deprives teachers of their right of associational freedom protected by the Due Process Clause of the Fourteenth Amendment from invasion by state action." 17 364 U.S. 479 (1960) https://www.mhc.tn.gov.in/judis
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> 26.In 1972, the US Supreme Court in the case of Healy versus James18 held that, the denial by a State supported college to recognize the students request to form a local chapter of students for a democratic society as a campus organization violated the student's rights guaranteed under the first amendment.

The relevant portion of the aforesaid judgment is extracted as follows:-

> "This case, arising out of a deniel by a state college of official recognition to a group of students who desired to form a local chapter of students for a Democratic Society (SDS).
>
> 4. Petitioners are students attending Central Connecticut State College (CCSC), a state-supported institution of higher learning. In September 1969 they undertook to organize what they then referred to as a 'local chapter of SDS. Pursuant to procedures established by the College, petitioners filed a request for official recognition as a campus organization with the Student Affairs Committee, a committee composed of four students, three faculty members, and the Dean of Student Affairs. The request

specified three purposes for the proposed organization's existence. It would provide 'a forum of discussion and self-education for students developing an analysis of American society'; it would serve as 'an agency for integrating thought with action so as to bring about constructive changes'; and it would endeavor to provide 'a coordinating body for relating the problems of leftist students' with other interested groups on campus and in the community. The Committee, while satisfied that the statement of purposes was clear and unobjectionable on its face, exhibited concern over the relationship between the proposed local group and the 18 408 U.S. 169 (1972) https://www.mhc.tn.gov.in/judis National SDS organization. In response to inquiries, representatives of the proposed organization stated that they would not affiliate with any national organization and that their group would remain 'completely independent'.

13. By a vote of six to two the Committee ultimately approved the application and recommended to the President of the College, Dr. James, that the organization be accorded official recognition. In approving the application, the majority indicated that its decision was premised on the belief that varying viewpoints should be represented on campus and that since the Young Americans for Freedom, the Young Democrats, the Young Republicans, and the Liberal Party all enjoyed recognized status, a group should be available with which 'left wing' students might identify. The majority also noted and relied on the organization's claim of independence. Finally, it admonished the organization that immediate suspension would be considered if the group's activities proved incompatible with the school's policies against interference with the privacy of other students or destruction of property. The two dissenting members based their reservation primarily on the lack of clarity regarding the organization's independence.

14. Several days later, the President rejected the Committee's recommendation, and issued a statement indicating that petitioners organization was not to be accorded the benefits of official campus recognition. His accompanying remarks, which are set out in full in the margin, indicate several reasons for his action. He found that the https://www.mhc.tn.gov.in/judis organization's philosophy was antithetical to the school's policies, and that the group's independence was doubtful. He concluded that approval should not be granted to any group that 'openly repudiates' the College's dedication to academic freedom.

15.Deniel of official recognition posed serious problems for the organization's existence and growth. Its members were deprived of the opportunity to place announcements regarding meetings, rallies, or other activities in the student newspaper; they were precluded from using various campus bulletin boards; and - most importantly-

nonrecognition barred them from using campus facilities for holding meetings. This latter disability was brought home to petitioners shortly after the President's announcement. Petitioners circulated

a notice calling a meeting to discuss what further action should be taken in light of the group's official rejection. The members met at the coffee shop in the Student Center ('Devils' Den') but were disbanded on the President's order since nonrecognized groups were not entitled to use such facilities.

16. Their efforts to gain recognition having proved ultimately unsuccessful, and having been made to feel the burden of nonrecognition, petitioners resorted to the courts. They filed a suit in the United States District Court for the District of Connecticut, seeking declaratory and injunctive relief against the President of the College, other administrators, and the State Board of Trustees. Petitioners' primary complaint centered on the denial of First Amendment rights of expression and association arising from denial https://www.mhc.tn.gov.in/judis of campus recognition.....

48.We think the above discussion establishes the appropriate framework for consideration of petitioners' request for campus recognition. Because respondents failed to accord due recognition to First Amendment principles, the judgments below approving respondents' denial of recognition must be reversed. Since we cannot conclude from this record that petitioners were willing to abide by reasonable campus rules and regulations, we order the case remanded for reconsideration. We note, in so holding, that the wide latitude accorded by the Constitution to the freedoms of expression and association is not without its costs in terms of the risk to the maintenance of civility and an ordered society. Indeed, this latitude often has resulted, on the campus and elsewhere, in the infringement of the rights of others. Though we deplore the tendency of some to abuse the very constitutional privileges they invoke, and although the infringement of rights of others certainly should not be tolerated, we reaffirm this Court's dedication to the principles of the Bill of Rights upon which our vigorous and free society is founded.

49. Reversed and remanded."

27.The US Supreme Court in the case of RICHARD ALYNG, SECRETARY OF AGRICULTURE v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, ET https://www.mhc.tn.gov.in/judis AL.19, while examining the constitutionality of a statutory provision, namely, Omnibus Budget Reconciliation Act of 1981, which interfered with the right of the strikers family in the allotment of food stamps, held that, the said Act does not infringe the right of the workers to express themselves about union matters free of coercion by the Government, thereby constitutionally recognizing the right of freedom of Association and precisely, the same explicitly confirms the constitutional guarantee ensuring the right to strike under the U.S. Constitution and the relevant portion of the same is extracted as follows:-

> "2.A 1981 amendment to the Food Stamp Act states that no household shall become eligible to participate in the food stamp program during the time that any member of the household is on strike or shall increase the allotment of food stamps that it was receiving already because the income of the striking member has decreased. We must decide whether this provision is valid under the First and the Fifth Amendments.

> 11. Any impact on associational rights in this case results from the Government's refusal to extend food stamp benefits to those on strike, who are now without their wage income. Denying such benefits makes it harder for strikers to maintain themselves and their families during the strike and exerts pressure on them to abandon their union. Strikers and their union would be much better off if food stamps were available, but the strikers' right of association does not require the Government to furnish funds to maximize the exercise of that right. "We have held in several 19 485 U.S. 360 (1988) https://www.mhc.tn.gov.in/judis contexts (including the First Amendment] that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right." Regan v. Taxation with Representation of Washington, 461 U.S. 540, 549, 103 S.Ct. 1997, 2003, 76 L.Ed.20 129 (1983). Exercising the right to strike inevitably risks economic hardship, but we are not inclined to hold that the right of association requires the Government to minimize that result by qualifying the striker for food stamps.
>
> 12. In Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S.Ct. 1898, 52 L.Ed.2d 513 (1977), we upheld a statute that denied unemployment compensation benefits to workers who are thrown out of work as a result of a labor dispute other than a lockout, saying that the case "does not involve any discernible fundamental interest. Id., at 489, 97 S.Ct. at 1908. Although the complaining worker there was a nonstriking employee of a parent company that found it necessary to close because its subsidiary was on strike, it is clear enough that the same result would have obtained had the striking employees themselves applied for compensation.
>
> B
>
> 13. For the same reasons, we cannot agree that § 109 abridges appellees' right to express themselves about union matters free of coercion by the Government."

28.In a verdict dated 28.06.2000, in the case of Boy Scoutts of America versus Dale20, the Supreme Court of US protected the right of private 20 530 U.S. 640 (2000) https://www.mhc.tn.gov.in/judis organizations under the umbrella of the 1st Amendment Right under the freedom of assembly to take decisions as to membership violating anti-discrimination laws of the State. The relevant portion of the same is extracted as follows:-

> "Petitioners are the Boy Scouts of America and its Monmouth Council (collectively, Boy Scouts). The Boy Scouts is a private, not- for-profit organization engaged in instilling its system of values in young people. It asserts that homosexual conduct is inconsistent with those values. Respondent Dale is an adult whose position as assistant scoutmaster of a New Jersey troop was revoked when the Boy Scouts learned that he is an avowed homosexual and gay rights activist. He filed suit in the New Jersey Superior Court, alleging,inter alia, that the Boy Scouts had violated the state statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. That court's Chancery Division granted summary judgment

for the Boy Scouts, but its Appellate Division reversed in pertinent part and remanded. The State Supreme Court affirmed, holding, inter alia,that the Boy Scouts violated the State's public accommodations law by revoking Dale's membership based on his avowed homosexuality. Among other rulings, the court held that application of that law did not violate the Boy Scouts' First Amendment right of expressive association because Dale's inclusion would not significantly affect members' ability to carry out their purposes; determined that New Jersey has a compelling interest in eliminating the destructive consequences of discrimination from society, and that its public accommodations law abridges no more speech than is necessary to accomplish its purpose; and distinguished https://www.mhc.tn.gov.in/judis Hurley v. IrishAmerican Gay, Lesbian and Bisexual Group of Boston, Inc.,515 U. S. 557, on the ground that Dale's reinstatement did not compel the Boy Scouts to express any message.

Held: Applying New Jersey's public accommodations law to require the Boy Scouts to readmit Dale violates the Boy Scouts' First Amendment right of expressive association. Government actions that unconstitutionally burden that right may take many forms, one of which is intrusion into a group's internal affairs by forcing it to accept a member it does not desire. Roberts v. United States Jaycees, 468 U. S. 609, 623. Such forced membership is unconstitutional if the person's presence affects in a significant way the group's ability to advocate public or private viewpoints. New York State Club Assn., Inc. v.City of New York, 487 U. S. 1, 13. However, the freedom of expressive association is not absolute; it can be overridden by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.

29.Thus, very interestingly we could conclude that, though the word Association do not explicitly find its place anywhere in the US Constitution, the Supreme Court of US since 1958, has evolved by judicial activism, an active constitutional right to form Associations to the extent of right to formation of anonymous association, invalidating all those laws requiring disclosure of membership or financial donations to such associations as https://www.mhc.tn.gov.in/judis unconstitutional. It is only from the right of Association does the right to strike stems up.

30.In 1935, the US Congress passed the National Labor Relations Act (NLRA), indicating the policy of the United States to encourage collective bargaining by protecting workers full freedom of Association. The said advancement in US labor policy fruitened out of the experience, which proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees. Section 7 of the National

Labor Relations Act, 1935, provides that all employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement https://www.mhc.tn.gov.in/judis requiring membership in a labor organization as a condition of employment without interference of the employer.

(ii)South Africa:

31.It is equally significant to appreciate the nuances of the constitutional democracy of the Republic of South Africa, which adopted its constitution as the Supreme Law of the Republic of South Africa. The Supreme Law of South Africa under Chapter 2 provides for Bill of Rights, which is the cornerstone of the democracy in South Africa codifying the rights of all the people of the democracy of South Africa. Section 23 under Chapter 2 - Bill of Rights deals with labor relations and the same provides every worker the right to form and join a trade union and even a right to strike and the said provision is extracted as follows:-

"Chapter 2 – Bill of Rights Labour relations

23. (1) Everyone has the right to fair labour practices.

(2) Every worker has the right—

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike.

(3) Every employer has the right—

(a) to form and join an employers' organisation; and https://www.mhc.tn.gov.in/judis

(b) to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right—

(a) to determine its own administration, programmes and activities;

(b) to organise; and

(c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1)."

32.Mandating a national legislation to regulate collective bargaining among the Employers Organizations and Trade Unions, limiting a right under Chapter 2 of the Constitution of South Africa, Section 23(5) mandates that the limitation must comply with Section 36(1) of the Constitution. Section 36 of the Supreme Law makes it clear that the limitation should be reasonable and justifiable based on human dignity, equality and freedom, taking into account all the relevant facts and for better appreciation, Section 36 of the Supreme Law https://www.mhc.tn.gov.in/judis is extracted as follows:-

> "Chapter 2 – Bill of Rights Limitation of rights
>
> 36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
>
> (a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."

33.The national legislation, which was enacted in the Republic of South Africa in terms of Section 23(5), is the Labor Relations Act, 66 of 1995, (herein after referred as "LRA"). Section 1 of the LRA provides as follows:-

> "The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the work-place by fulfilling the primary objects of

this Act, which are -

https://www.mhc.tn.gov.in/judis

(a) to give effect to and regulate the fundamental rights conferred by Section 27 of the Constitution;

(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation,

(c)to provide a framework within which employees and their trade unions, employers and employers' organisations can-

(i)collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest, and

(ii)formulate industrial policy; and to promote-

(i)orderly collective bargaining;

(ii)collective bargaining at sectoral level;

(iii)employee participation in decision-making in the work- place; and

(iv)the effective resolution of labour disputes."

34.Section 3 of LRA is as follows:-

"Any person applying this Act must interpret its provisions-

(a)to give effect to its primary objects;

(b)in compliance with the Constitution; and

(c)in compliance with the public international law obligations of the Republic.

https://www.mhc.tn.gov.in/judis These obligations flow from international instrumenes such as the Conventions of the ILO that have been ratified by South Africa and other relevant normatiunal instruments that are binding on South Africa."

35.In this background, the constitutional Court of South Africa, in the case of National Union of Metal Workers of South Africa (Numsa), M Nkgabutle and 291 others v. Bader Bop (PTY) Limited, the Minister of Labor21 dated 13.12.2002, dealt with the right of strike given to the minority Unions for the purpose of acquiring organizational rights. The Constitutional Court of South Africa, while

dealing with the appeal of a Minor Trade Union, namely, National Metal Workers Union of South Africa, seeking grant of organizational rights under Sections 12, 13, 14 and 15 of LRA, carefully considered that the employer Bader Bop (PTY) Ltd negated the demand of the said Union for grant of organizational rights, with only 26% of the workers on its fold. The Union declared a dispute over these organizational rights and the same was referred to the commission for conciliation, mediation and arbitration (CCMA), a statutory body in South Africa which resolves labor disputes between the employers and employees. Since the conciliation at CCMA failed, National Metal Workers Union of South Africa (herein after referred as 'NUMSA'), informed the employer Bader Bop that its intention of instituting a 21 (2002) ZACC 30 https://www.mhc.tn.gov.in/judis strike in terms of LRA Section 189(d) of LRA. Contending that in the absence of organizational rights as provided under Sections 14 and 15 of LRA, the minority Union cannot strike, the employer approached the learned Labor Court. The employers application though dismissed by the Labor Court was later upheld on by the Labor Appeal Court, from where the matter was referred to the Constitutional Court of South Africa. The Constitutional Court held in favor of the minority Union upholding that right to strike over organizational rights. The relevant portion of the same is extracted as follows:-

> “13.In section 23, the Constitution recognises the importance of ensuring fair labour relations. The entrenchment of the right of workers to form and join trade unions and to engage in strike action, as well as the right of trade unions, employers and employer organisations to engage in collective bargaining, illustrates that the Constitution contemplates that collective bargaining between employers and workers is key to a fair industrial relations environment. This case concerns the right to strike. That right is both of historical and contemporaneous significance. In the first place, it is of importance for the dignity of workers who in our constitutional order may not be treated as coerced employees. Secondly, it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system. In interpreting the rights in section 23, therefore, the importance of those rights in promoting a fair working environment https://www.mhc.tn.gov.in/judis must be understood. It is also important to comprehend the dynamic nature of the wage-work bargain and the context within which it takes place. Care must be taken to avoid setting in constitutional concrete, principles governing that bargain which may become obsolete or inappropriate as social and economic conditions change.
>
> ……As has already been acknowledged by this Court, in interpreting section 23 of the Constitution an important source of international law will be the conventions and recommendations of the ILO.
>
> 29.There are two key ILO Conventions relevant to the issue at hand: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). South Africa is a member of the ILO and has ratified both these Conventions. There are also two key supervisory bodies engaged in ensuring the observation and application of these Conventions: the Committee of Experts on the Application of Conventions and

Recommendations;

and the Freedom of Association Committee of the Governing Body of the ILO. The Committee of Experts is composed of twenty recognised experts in the field of labour law who are independent of their governments and appointed by the Governing Body of the ILO on the recommendation of its Directive-General. It reviews the https://www.mhc.tn.gov.in/judis national reports received from member states on the implementation of the conventions.

30.The Freedom of Association Committee hears complaints about alleged breaches of the principles of freedom of association and has developed a complex jurisprudence on freedom of association. The Committee comprises three representatives each of governments, employers and workers, with an independent chairperson. Its decisions are therefore an authoritative development of the principles of freedom of association contained in the ILO conventions. The jurisprudence of these committees too will be an important resource in developing the labour rights contained in our Constitution.

31.An important principle of freedom of association is enshrined in Article 2 of the Convention on Freedom of Association and Protection of the Right to Organise which states:

> "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation." Both committees have considered this provision to capture an important aspect of freedom of association in that it affords workers and employers an option to choose the particular organisation they wish to join. Although both committees have accepted that this does not mean that trade union pluralism is mandatory, they have held https://www.mhc.tn.gov.in/judis that a majoritarian system will not be incompatible with freedom of association, as long as minority unions are allowed to exist, to organise members, to represent members in relation to individual grievances and to seek to challenge majority unions from time to time.

32.Although none of the ILO Conventions specifically referred to mentions the right to strike, both committees engaged with their supervision have asserted that the right to strike is essential to collective bargaining. The Committees accept that limitations on the right to strike for certain categories of workers such as essential services, and limitations on the procedures to be followed do not constitute an infringement of the freedom of association.

33.These principles culled from the jurisprudence of the two ILO committees are directly relevant to the interpretation both of the relevant provisions of the Act and of the Constitution.

34.Of importance to this case in the ILO jurisprudence described is firstly the principle that freedom of association is ordinarily interpreted to afford unions the right to recruit members and to represent those members at least in individual workplace grievances; and secondly, the principle that unions should have the right to strike to enforce collective bargaining demands. The first

principle is closely related to the principle of freedom of association entrenched in section 18 of our Constitution, which is given specific https://www.mhc.tn.gov.in/judis content in the right to form and join a trade union entrenched in section 23(2)(a), and the right of trade unions to organise in section 23(4)(b). These rights will be impaired where workers are not permitted to have their union represent them in workplace disciplinary and grievance matters, but are required to be represented by a rival union that they have chosen not to join.

35.The second principle relates to the right of a union to take industrial action to pursue its demands. Once again, the question is whether the workers' right to strike in order to force an employer to recognise shop stewards for the purposes of grievance and disciplinary proceedings, amongst other things, has been limited by the Act. Prohibiting the right to strike in relation to a demand that itself relates to a fundamental right otherwise not protected as a matter of right in the legislation would constitute a limitation of the right to strike in section 23. No substantial argument was submitted on behalf of the employer or the Department of Labour as to why such a limitation would be justifiable.

36.Taking these two principles together, it can be said that the jurisprudence of the enforcement committees of the ILO would suggest that a reading of the Act which permitted minority unions the right to strike over the issue of shop steward recognition, particularly for the purposes of the representation of union members in grievance and disciplinary procedures, would be more in accordance with the principles of freedom of association entrenched in the ILO Conventions. Similarly, it would avoid a https://www.mhc.tn.gov.in/judis limitation of the right of freedom of association in section 18 of our Constitution; and the rights of workers to form and join trade unions and to strike; as well as the right of trade unions to organise and bargain collectively entrenched in section 23 of our Constitution. It should, however, be emphasised that no substantial argument was addressed to us as to why an interpretation of the statute that would have the effect of limiting the constitutional rights in issue would be justifiable. It is not appropriate therefore to see grounds for such justification if an interpretation of the Act which avoids such limitation is possible.

37.The first question that arises is whether the Act is capable of being interpreted in the manner contended for by the applicants, or whether it is only capable of being read as the respondents and the majority judgment in the LAC suggest. If it is capable of a broader interpretation that does not limit fundamental rights, that interpretation should be preferred. This is not to say that where the legislature intends legislation to limit rights, and where that legislation does so clearly but justifiably, such an interpretation may not be preferred in order to give effect to the clear intention of the democratic will of Parliament. If that were to be done, however, we would have to be persuaded by careful and thorough argument that such an interpretation was indeed the proper interpretation and that any limitation caused was justifiable as contemplated by section 36 of the Constitution.

41.Section 20 of the Act which forms part of Chapter III, Part A confirms this as follows:

> https://www.mhc.tn.gov.in/judis "Nothing in this Part precludes the conclusion of a collective agreement that regulates organisational rights."

42.....On the interpretation of the Act adopted here, section 21 is available in two circumstances. The first is where a sufficiently representative union wishes to use the procedure to determine the manner in which the rights are to be exercised. The second is where there is a dispute as to whether the union is sufficiently representative or not. Section 21 on its own terms, however, is not available to a union that admits that it is not sufficiently representative as contemplated by the Act. On the other hand, however, section 21 should not be read to deny such unions the right to pursue organisational rights through the ordinary mechanisms of collective bargaining.

43.Where employers and unions have the right to engage in collective bargaining on a matter, the ordinary presumption would be that both parties would be entitled to exercise industrial action in respect of that matter. There is nothing in sections 64 or 65 suggesting that there is a limitation on the right to strike in this regard. Davis AJA in his dissent in the LAC also pointed to the fact that there was no express limitation on the right to strike in this respect. It was his view that in the absence of any express prohibition, the Act should be read so as to afford the right to strike to minority unions in these cases consistently with the right to strike in the Constitution." https://www.mhc.tn.gov.in/judis

36.The right to strike is elaborated in the case of ESKOM holdings (PTY) limited and National Union of Mine Workers and Others22, in the Labor Court of South Africa, Johannesburg, in case No.JR 1576 of 2007 that the right to strike should not be limited otherwise than as provided under the relevant labour laws as envisioned by the legislature and the relevant portion of the same is extracted as follows:-

> "There is no doubt that the right to strike is an important right and that it plays a pivotal role in the collective bargaining process. See NUMSA v Bader BOP [2003] 2 BLLR 103 (CC) at paragraph [13]]:
>
> "[13] In section 23, the Constitution recognises the importance of ensuring fair labour relations. The entrenchment of the right of workers to form and join trade unions and to engage in strike action, as well as the right of trade unions, employers and employer organisations to engage in collective bargaining, illustrates that the Constitution contemplates that collective bargaining between employers and workers is key to a fair industrial relations environment. This case concerns the right to strike. That right is both of historical and contemporaneous significance. In the first place, it is of importance for the dignity of workers who in our constitutional order may not be treated as coerced employees. Secondly, it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system. in interpreting the rights in 22 [2011] ZASCA 229 https://www.mhc.tn.gov.in/judis section 23, therefore, the importance of those rights in promoting a fair working environment must be understood. It is also important to comprehend the dynamic nature of the wage-work bargain and the context within which it takes place. Care must be taken to avoid setting in constitutional concrete, principles governing that bargain which may become obsolete or inappropriate as social and economic conditions change."

28.The importance of the right to strike is further reinforced by the view that the constitutional right to strike should not, in the absence of express limitations, be restrictively interpreted. See Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Ltd (1999) 20 ILJ 321 (LAC) at paragraphs [27]-[28] "[27] The arguments of both Mr van der Riet and Mr Loxton proceeded, also in my view correctly, on the premise that a proper appreciation of the statutory provisions concerning B strikes depends on their purpose. Mr van der Riet contended that the purpose of s 64(1)'s procedural requirements is to compel employees to explore the possible resolution of their dispute through negotiations before exercising their right to strike. The concept of a protected strike presupposes such negotiations. Once that purpose has been fulfilled, no further statutory object would be served by limiting the right to strike only to employees directly affected by the demand Instead, the restriction envisaged would place a substantive limitation on the right of non-bargaining unit union members to strike for which the provisions of the statute offer no explicit or implicit support. I agree https://www.mhc.tn.gov.in/judis with the submission.

[28] The Constitutional Court has itself emphasized the general Importance of the right to strike "Collective bargaining is based on the recognition of the fact that employers enjoy greater social and economic power than individual workers. Workers therefore need to act in concert to provide them collectively with sufficient power to bargain effectively with employers. Workers enjoy collective power primarily through the mechanism of strike action.' The court went to point out that the importance of the right to strike for workers has led to its being entrenched far more frequently as a fundamental right in constitutions than is the right to lock out, and that the two rights 'are not always and necessarily equivalent' (In Re: Certification of the Constitution of the Republic of South Africa 1996 (1996) 17 ILJ 821 (CC); G (1996) 10 BCLR 1253 (CC) at 1284-5 para (66).) This is of course not to say that striking should be encouraged or unprocedural strikes condoned: but only that there is no justification for importing into the LRA, without any visible textual support, limitations on the right to strike which are additional to those the legislature has chosen clearly to express"

29.The right to strike may, therefore, be limited in the same manner as any other right entrenched in the Constitution but subject to the provision of the limitation clause contained in section 36(1) of the Constitution.” https://www.mhc.tn.gov.in/judis

(iii)Europe:

> 37.As far as Europe is concerned, the first mass movement of the working classes is the Chartist movement. The Chartist movement, sprang up in 1838 with six demands, namely, (i)all men have to vote (universal manhood suffrage), (ii)voting should take place by secret ballot, (iii)parliamentary elections every year, not once in every 5 years, (iv)constituency should be of equal size, (v)members of parliament should be paid and (vi)the property qualification for becoming a member of parliament should be abolished, and the same paved way for the enactment of the Great Reform Act of Britain in 1867 and 1884.

> 38.The seeds of the Chartist Movement blossomed into the Representation of People Act 1918, Equal Franchise Act, 1928, Representation of the People Act, 1969. The right to strike is a principle enshrined in the 1948 Universal Declaration of Human Rights. In the international level, it has been augmented by the International Labor Organisation(ILO) supervisory bodies, though it has not been mentioned explicitly in any of the ILO conventions.

More particularly, the convention Nº87 on freedom of Association and protection of the right to organize do not contain any specific mention as to the https://www.mhc.tn.gov.in/judis right to strike. However, all through these years, the International Labor Organization has recognized the right to strike as an inseparable corollary to the right to freedom of Association. Only due to the relentless contribution of the committee on freedom of association - a committee of the governing body of ILO with a tripartite composition and the committee of experts on the application of conventions and recommendations recognised the right to strike as a fundamental right in the context of the ILO standards.

39.For better appreciation, Part 1, which provides for Freedom of Association of Convention 87 - Freedom of Association and Protection of the Right to Organize Convention, 1948, of the International Labor Organization is extracted as follows:-

> “PART I. FREEDOM OF ASSOCIATION Article 1 Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.
>
> Article 2 Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
>
> https://www.mhc.tn.gov.in/judis Article 3
>
> 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4 Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5 Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6 The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7 The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

https://www.mhc.tn.gov.in/judis Article 8 1.1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9 1.1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10 In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II.PROTECTION OF THE RIGHT TO ORGANISE Article 11 https://www.mhc.tn.gov.in/judis Each member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise."

40.In similar lines to ILO, the European convention on human rights and fundamental freedoms (ECHR), do not mention the right to strike in any of its Articles. Article 11 of the ECHR is extracted as follows:

> "Article 11 Freedom of Assembly and Association:-
>
> 1.Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade Unions for the protection of his interests.
>
> 2.No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This

> Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by the members of the armed forces, of the police or of the administration of State."

41.It is interesting to understand that, in interpreting Article 11 and the other Articles of ECHR treating the same as a living document, the European Court of Human Rights in Strasbourg (ECtHR) has evolved through its various https://www.mhc.tn.gov.in/judis verdicts nurturing and metamorphosing the right to strike into an absolute fundamental right. In the landmark case of Demir and Beykara versus Turkey23, the European Court of Human Rights (ECtHR) upheld the right of forming a Trade Union by the civil servants of municipalities and their right to exercise collective bargaining and reach collective agreements in the aforesaid case. In the said case, using international law as a tool for interpreting European human rights law, the European Court of Human Rights passed a favourable order in favour of the Trade Union. The relevant portion of the same is extracted as follows:-

> "15.The trade union Tüm Bel Sen was founded in 1990 by civil servants from various municipalities whose employment was governed by the Public Service Act (Law no. 657). Under Article 2 of its constitution, the trade union's object is to promote democratic trade unionism and thereby assist its members in their aspirations and claims. Its head office is located in Istanbul.
>
> 16.On 27 February 1993, Tüm Bel Sen entered into a collective agreement with the Gaziantep Municipal Council for a period of two years, effective from 1 January 1993. The agreement concerned all aspects of the working conditions of the Gaziantep Municipal Council's employees, such as salaries, allowances and welfare services.
>
> 17.As the said Gaziantep Municipal Council had failed to fulfil certain of its obligations under the agreement, in particular its 23 (2008) ECHR 1345 https://www.mhc.tn.gov.in/judis financial obligations, the second applicant, as President of the trade union, brought civil proceedings against it in the Gaziantep District Court ("the District Court") on 18th June 1993.
>
> 18. In a judgment of 22th June 1994, the District Court found in favour of Tüm Bel Sen. The Gaziantep Municipal Council appealed on points of law.
>
> 19. On 13th December 1994 the Court of Cassation (Fourth Civil Division) quashed the District Court's judgment. It found that, even though there was no legal bar preventing civil servants from forming a trade union, any union so formed had no authority to enter into collective agreements as the law stood.
>
> 20. In arriving at this conclusion, the Court of Cassation took into account the special relationship between civil servants and the public administration as regards recruitment, the nature and scope of the work concerned, and the privileges and guarantees afforded to officials by virtue of their status. It considered that this

> relationship was different from that which existed between employers and ordinary contractual staff (that is to say, employees in the private sector together with manual workers employed by a public administration). As a result, Law no. 2322, governing collective agreements and the right to take strike or lock-out action, could not apply to relations between civil servants and a public administration.

Any agreement of a "collective" nature between civil servants' unions and a public administration had to be grounded in specific legislation.

21. In a judgment of 28th March 1995, the Gaziantep District Court stood by its original judgment on the ground that, despite the lack of https://www.mhc.tn.gov.in/judis express statutory provisions recognising a right for trade unions formed by civil servants to enter into collective agreements, this lacuna had to be filled by reference to international treaties such as the conventions of the International Labour Organisation (ILO) which had already been ratified by Turkey and which, by virtue of the Turkish Constitution, were directly applicable in domestic law.

22. Among other things, the District Court indicated, firstly, that the trade union Tüm Bel Sen was a legally established entity which had filed its constitution with the provincial governor's office a long time ago and which, since then, had carried on its activities without the slightest intervention by the competent authorities. The court added that, on this matter, there was no discrepancy between its judgment and that of the Fourth Civil Division of the Court of Cassation.

23.As regards the right of civil servants to enter into collective agreements, the court considered that, even if there was an omission in Turkish law on this point, the court to which a dispute was referred had an obligation, under Article 1 of the Civil Code, to make good the omission itself and to adjudicate the case. In the court's view, the same obligation also arose from Article 36 of the Turkish Constitution, under which everyone was afforded the right of access to a court. In this context the relevant provisions of the ILO conventions ratified by Turkey had to be applied in the case, even though the specific national laws had not yet been enacted by the legislature. Directly applying the relevant provisions of these international instruments ratified by Turkey, the court considered that the applicant trade union did have the right to enter into collective agreements.

24. As to the question whether the validity of the collective agreement in question was affected by the fact that it had not been provided for by any legislation at the time it was entered into, the court considered that, since it concerned employer-employee relations, the agreement was of a private-law nature. In the context of the limits imposed by Articles 19 and 20 of the Code of Obligations, namely compliance with statutory provisions, customary law, morals and public order, the parties had been freely entitled to determine the content of this collective agreement. An examination of the text of the collective agreement in question did not reveal any contradiction with those requirements. Consequently, the court found that the collective agreement between the applicant trade union and the Gaziantep Municipal Council had been a valid legal instrument with binding effect for the parties.

25.The court awarded Mr Kemal Demir a sum equivalent to the increases in pay and allowances provided for by the collective agreement in question.

26. In a judgment of 6th December 1995, the Court of Cassation (combined civil divisions) quashed the District Court's judgment of 28th March 1995. It found that certain rights and freedoms mentioned in the Turkish Constitution were directly applicable to litigants, whereas others were not. In fact, the Constitution, by the indication "the exercise of this right shall be governed by legislation" clearly earmarked the rights and freedoms which, to be used and applied, required the enactment of specific legislation. Absent such legislation, these rights and freedoms, which included the freedom to join a trade union and to bargain collectively, could not be exercised.

27. The Court of Cassation further considered that the principle of the individual's free will was not absolute in respect of the establishment of legal entities. They could acquire legal personality, distinct from their constituent persons, only by complying with the formal conditions and procedures laid down by law for that purpose. The creation of a legal entity was no more than a legal consequence conferred by the law on an expression of free will by the founders.

28. The Court of Cassation pointed out that the freedom to form associations, trade unions and political parties, even if provided for in the Turkish Constitution, could not be exercised simply by a declaration of the free will of individuals. As there was no specific law on the subject, the existence of such a legal entity could not be recognised. According to the Court of Cassation, this finding was not at odds with the principles of "the rule of law" and "democracy" mentioned in the Constitution, since supervision of legal entities by the State, in order to ensure public usefulness, was necessary in any democratic legal system.

29. The Court of Cassation further pointed out that the legislation in force at the time when the trade union was founded did not permit civil servants to form trade unions. It added that the amendments subsequently made to the Turkish Constitution, recognising the right of civil servants to form trade unions and bargain collectively, were not such as to invalidate the finding that Tüm Bel Sen had not acquired legal personality and, as a result, did not have the capacity to take or defend court proceedings.

30. An application by representatives of the trade union for rectification of that decision was rejected by the Court of Cassation https://www.mhc.tn.gov.in/judis on 10th April 1996.

31. Following an audit of the Gaziantep Municipal Council's accounts by the Audit Court, the members of the trade union Tüm Bel Sen had to reimburse the additional income they had received as a result of the defunct collective agreement. The Audit Court, in a number of decisions that it gave as the court of last resort in respect of the collective agreements entered into by the trade union, pointed out that the rules applicable to civil servants, including the salaries and allowances to which they were entitled, were laid down by law. It further considered that, since the amendment on 23th July 1995 of Article 53 of the Turkish Constitution and the enactment on 25th June 2001 of Law no.

4688 on civil servants' trade unions, such unions were admittedly entitled to engage in collective bargaining under certain conditions of representation, but were not entitled to enter into valid collective agreements directly with the authorities concerned, unlike trade unions of ordinary contractual employees who could enter into such agreements with their employers. If an agreement was entered into between the employing authority and the trade union concerned, it could only become binding following its approval by the Council of Ministers. The Audit Court, after finding that the collective agreement entered into by the applicant trade union had not fulfilled these conditions, decided that the accountants who had authorised higher payments than those provided for by law should reimburse the surplus amounts to the State's budget.

32. The Audit Court refused to apply section 4 of Law no. 4688, which required the discontinuance of any administrative, financial or judicial proceedings brought against accountants who were https://www.mhc.tn.gov.in/judis responsible for such payments. It considered that this provision did not render the collective agreements valid and did not release the accountants in question from the obligation to reimburse the State for any losses sustained by it as a result of payments made in accordance with those agreements.

33.The accountants concerned in turn brought proceedings against the civil servants who were members of the trade unions and had benefited from the additional payments granted under the defunct collective agreements.

96. The Court must now deal with the Government's objection that the application is incompatible ratione materiae with the provisions of the Convention on the ground that Article 11 of the Convention is not apptieable to "members of the administration of the State It is true that Article 11 § 2 in fine clearly indicates that the State is bound to respect the freedom of association of its employees, subject to the possible imposition of lawful restrictions on the exercise by members of its armed forces, police or administration of the rights protected in that Article (see Swedish Engine Drivers' Union v. Sweden, 6 February 1976, § 37. Series A no. 20).

97. In this connection, the Court considers that the restrictions imposed on the three groups mentioned in Article 11 are to be construed strictly and should therefore be confined to the "exercise" of the rights in question.

101. The Court observes that the right of public officials to join trade unions has been confirmed on a number of occasions by the Committee of Experts on the Application of Conventions and Recommendations. This Committee, in its Individual Observation to https://www.mhc.tn.gov.in/judis the Turkish government concerning ILO Convention No. 87, considered that the only admissible exception to the right to organise as contemplated by that instrument concerned the armed forces and the police (see paragraph 38 above).

102. The Court further notes that the ILO Committee on Freedom of Association adopted the same line of reasoning as regards municipal civil servants. In the Committee's view, local public service employees should be able effectively to establish organisations of their own choosing, and these organisations should enjoy the full right to further and defend the interests of the workers whom

they represent (see paragraph 39 above).

103. The instruments emanating from European organisations also show that the principle whereby civil servants enjoy the fundamental right of association has been very widely accepted by the member States. For example. Article 5 of the European Social Charter guarantees the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations. National legislation may impose partial restrictions on the police and total or partial restrictions on members of the armed forces, but no possibility of restriction is provided for in respect of other members of the administration of the State.

104. The right of association of civil servants has also been recognised by the Committee of Ministers of the Council of Europe in its Recommendation No. R (2000) 6 on the status of public officials in Europe. Principle 8 of which declares that public officials should, in principle, enjoy the same rights as all citizens, and that their trade-

https://www.mhc.tn.gov.in/judis union rights should only be lawfully restricted in so far as that is necessary for the proper exercise of their public functions.

107. The Court concludes from this that "members of the administration of the State" cannot be excluded from the scope of Article 11 of the Convention. At most, the national authorities are entitled to impose "lawful restrictions" on those members, in accordance with Article 11 § 2. In the present case, however, the Government have failed to show how the nature of the duties performed by the applicants, as municipal civil servants, requires them to be regarded as "members of the administration of the State subject to such restrictions.

108. Accordingly, the applicants may legitimately rely on Article 11 of the Convention and the objection raised by the Government on this point must therefore be dismissed."

42.The Court interpreted the European Convention on Human Rights in the light of international treaties and the relevant Rules of International Law as recognized by civilized countries to uphold the right of Municipal Officials to establish Trade Unions. Article 11 of the Convention No.7 of Freedom of Association of ILO and Convention 87 on Freedom of Association of ILO was interpreted by the Court. Based on ILO Convention Nos.87, 98 and 151 and on the pronouncements of ILO supervisory bodies, the Court ruled that there had been a violation of Article 11 of the European convention on human rights.

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43.In yet another case of Enerji Yapi-Yol Sen v. Turkey24, the European Court of Human Rights upheld the right of strike of public sector employees.

The principal facts of the aforesaid case is as follows:-

> "Enerji Yap?-Yol Sen is a union of civil servants which was founded in 1992 and is active in the fields of land registration, energy, infrastructure services and motorway construction. It is based in Ankara and is a member of the Federation of Public-Sector Trade Unions. On 13 April 1996 the Prime Minister's Public-Service Staff Directorate published circular no. 1996/21, which, inter alia, prohibited public-sector employees from taking part in a national one- day strike organised in connection with events planned by the Federation of Public-Sector Trade Unions to secure the right to a collective-bargaining agreement. On 18th April 1996 some of the trade union's board members took part in the strike and received disciplinary sanctions as a result. Appeals lodged by Enerji Yap?-Yol Sen were dismissed, the Turkish courts considering in particular that the aim of the impugned circular was to remind public servants of the legislative provisions governing the conduct expected of them." The summary of the aforesaid judgment as provided by the Registry of the European Court of Human Rights is as follows:-
>
> "Complaint Relying on Article 11, Enerji Yap?-Yol Sen alleged that the Turkish authorities had breached its right to trade-union freedom.
>
> 24 (2000) ECHR 2251 https://www.mhc.tn.gov.in/judis Decision of the Court Concerning the general principles relating to the obligations incumbent on the States under Article 11, the Court referred to its case-law set out in its Grand Chamber judgment in the case of Demir and Baykara v. Turkey (12 November 2008, application no. 34503/97).

It pointed out, inter alia, that the impugned circular had been adopted five days before the action planned by the Federation of Public-Sector Trade Unions, at a time when work was under way to bring Turkey's legislation into line with international conventions on the tradeunion rights of State employees and the legal situation of public servants was unclear. The Court acknowledged that the right to strike was not absolute and could be subject to certain conditions and restrictions. However, while certain categories of civil servants could be prohibited from taking strike action, the ban did not extend to all public servants or to employees of State-run commercial or industrial concerns. In this particular case the circular had been drafted in general terms, completely depriving all public servants of the right to take strike action. Furthermore, there was no evidence that the national action day on 18 April 1996 had been prohibited. In joining in the action the members of the applicant trade union had simply been making use of their freedom of peaceful assembly. In the Court's view the disciplinary action taken against them on the strength of the circular was capable of discouraging tradeunion members and others from exercising their legitimate right to take part in such one-day strikes or other actions aimed at defending their members' interests. Furthermore, the Turkish Government had failed to justify the need for the impugned restriction in a democratic society.

https://www.mhc.tn.gov.in/judis The Court found that the adoption and application of the circular did not answer a "pressing social need" and that there had been disproportionate interference with the applicant union's rights. There had therefore been a violation of Article 11."

44.As far as the United Kingdom is concerned, the said Country has ratified the UN instruments, namely, International Covenant on Economic, Social and Cultural Rights - Article 8 and International Covenant on Civil and Political Rights - Article 22. With respect to the various instruments of the International Labour Organization, the UK has ratified the following:-

> (1).Convention No.87 concerning Freedom of Association and Protection of the Right to Organize as ratified on June 27, 1949.
>
> (2).Convention No.98 concerning the right to organize and to bargain collectively as ratified on June 30, 1950.
>
> (3).Convention No.151 concerning labour relations (public service) as ratified on March 19, 1980. However, the UK did not ratify convention No.154, collective bargaining convention, 1981. In the European level, the UK has ratified the European social charter (European treaty) series No.35 as on 11 th July 1962 and the same came into force on 26th February 1965. The UK has incorporated the European convention on human rights into national law through the Human Rights Act, 1998. However, the UK did not ratify the https://www.mhc.tn.gov.in/judis revised European charter (European treaty) Series No.163 nor the collective complaints procedure protocol. The labour jurisprudence in UK has evolved in the general legislation on industrial action, that is, the Trade Union and Labour Relations (Consolidation) Act, 1992, (hereinafter referred as TULRCA) and the same as recently amended by the Trade Union Act, 2016, (hereinafter referred as TUA). In UK, to resort to a lawful strike, the Trade Union has to comply the mandatory procedures in TULRCA, 1992, as modified by the Trade Union Act, 2016.

45.It is pertinent to mention here that TUA, 2016, applies to Great Britain alone. A strike is defined in TULRCA, 1992 as “any concerted stoppage of work”. Needless to state that the right to strike is recognized as a fundamental right and the same is protected under Article 11 of the European Convention on Human Rights. Though the prominent provisions of TULRCA, 1992, do not give workers a specific right to strike though Section 146 of TULRCA, 1992, seems to be a worker friendly provision, it protects the workers from detriment on grounds related to union membership or activities however, taking part in the industrial action by resorting to the right to strike has not been considered as one covered as a protected activity under Section 146 of TULRCA, 1992.

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46.In the case of Secretary of State for Business and Trade versus Mrs. Mercer25, the question as to whether Section 146 of TULRCA, 1992, could be interpreted to provide such protection which is compatible with Article 11 of the European convention of human right came to be considered. The crux of the same as decided by Lady Simler (with whom Lord Lloyd - Jones, Lord Hamblen, Lord Burrows and Lord Richards agree) is as follows:-

"102.....In my judgment, the Court of Appeal was correct to hold that a Convention compatible interpretation of section 146 of TULRCA is not possible and would amount to impermissible judicial legislation rather than interpretation. I recognise that section 3 of the HRA can require a court to read in words which change the meaning and the effect of the legislation to achieve a compatible interpretation. However, I do not consider that there is a single, obvious legislative solution that will ensure compliance with article 11 while at the same time maintaining an appropriate balance between the competing rights of employers and their workers in this politically and socially sensitive context. Moreover, to interpret section 146 in the way proposed by the appellant would contradict a fundamental feature of the legislation. My reasons for these conclusions follow.

103. First, although article 11 may well require some protection (as opposed to none) for detriment short of dismissal in this context, I have rejected the argument advanced by the appellant 25 (2024) UKSC 12 https://www.mhc.tn.gov.in/judis that universal protection from all detriments is inevitably required by article 11. Having reached that conclusion, it is far from obvious to me what the nature, scope and structure of the requisite protection should be. As I have said, I cannot rule out the possibility that, consistently with the UK's positive obligations under article 11, there might be some circumstances where it would be permissible for a private employer to impose a sanction of some kind for participation in lawful industrial action (which may take many forms). I cannot assume that Parliament would necessarily choose to legislate to prohibit all forms of detriment, including, for example, reduction of a discretionary bonus or removal of a non-contractual benefit, irrespective of the application of the "sole or main purpose" test.

104. There are other policy choices that will have to be made if Parliament decides that legislative protection is required. The formulation currently proposed by the appellant would permit an employer to dismiss a "limb (b) worker" (that is to say, a worker who is not an employee but who nonetheless enjoys protection within the wider definition of "worker", including those engaged under contracts to perform work personally) for participating in lawful industrial action (there being no other prohibition on dismissing workers as opposed to employees); and would prohibit an employer from subjecting an employee to any detriment short of dismissal in circumstances where the employer would be lawfully permitted to dismiss that employee under section 238A of TULRCA. It follows that the introduction of legislation in this area would necessarily require consideration of whether the protection in section 146 should mirror (or should be more or less protective than) the complex but https://www.mhc.tn.gov.in/judis limited protection against dismissal on grounds of taking industrial action contained in sections 237 to 238A of TULRCA, thus permitting detrimental action short of dismissal in certain circumstances. Related to this, and depending on the formulation adopted, there may have to be consideration of whether limb (b) workers should enjoy greater protection for detriment by way of dismissal for lawful participation in a strike.

> 105. For this reason, seeking to interpret section 146 using section 3 of the HRA in this way, is tantamount to judicial legislation. It fundamentally alters the scope and structure of the rights conferred by TULRCA, re-drawing the balance between workers' and employers' rights. There is no formulation that does not involve making a series of policy choices that may have far-reaching practical ramifications. This goes beyond the permissible boundary of interpretation.

.....

120. In my view this is not one of those cases where it is inappropriate to make a declaration of incompatibility. The ultimate legislative solution to the problem identified in this case may call for enquiry. Questions of policy will have to be addressed and evaluated, their practical ramifications considered, and a fair balance struck between all the competing interests at stake. But the existence of policy choices in the means of giving effect to the lawful strike rights protected by article 11 is a reason in favour of making a declaration https://www.mhc.tn.gov.in/judis of incompatibility, not refusing one. It is for Parliament to decide whether to legislate and, if so, the scope and nature of such protection. Moreover, resolution of these issues being pre-eminently a matter for Parliament, it may consider that section 146 is not after all the correct vehicle to remedy the problem. That too is not a reason for refusing a declaration in this case. No legislation is pending or envisaged in this area, that might make it premature to make a declaration. Indeed, I can discern no good reason for rejecting the remedial measure provided for by section 4 of the HRA by making such a declaration.

121. Accordingly, I would make a declaration under section 4 of the HRA (Human Rights Act) that section 146 of TULRCA is incompatible with article 11, insofar as it fails to provide any protection against sanctions, short of dismissal, intended to deter or penalise trade union members from taking part in lawful strike action organised by their trade union. To that extent, I would allow this appeal."

47.As detailed above the Supreme Court of UK concluded that a fair balance has not been struck by Article 146 of TULRCA, 1992, and the same has resulted in breach of UK's obligations under Article 11.

V. Strike in the Context of Indian Labour Jurisprudence:

48.The Constitution of India is a living organ constituted by the people https://www.mhc.tn.gov.in/judis of India, resolving to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure justice, liberty, equality and fraternity to all its citizens. The clamour for constitutional reforms is an adventurous journey of judicial activism without distorting the doctrine of separation of powers. Hence, we are extremely cautious in the interpretation of right to strike from the context of Indian Labour Jurisprudence in conjunction with Part III of the Constitution of India.

49.Article 19 provides for protection of certain rights regarding freedom of speech, etc., and the right to strike as a fundamental right could be interpreted only through the prism of Article 19, provided by the Constitution of India in Part III. Article 19(1) for the said purpose is extracted as follows:-

> "19. Protection of certain rights regarding freedom of speech, etc. (1)All citizens shall have the right-
>
> (a) to freedom of speech and expression;
>
> (b)to assemble peaceably and without arms;
>
> (c)to form associations or unions or co-operative societies;
>
> (d)to move freely throughout the territory of India;
>
> (e)to reside and settle in any part of the territory of India;and
>
> (f)sub-clause (f) shall be omitted;
>
> (g)to practise any profession, or to carry on any occupation, trade or business."
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50.The rights guaranteed under Article 19(1) are subject to the restrictions in Articles 19(3) & 19(4) and the same are extracted as follows:-

> "19(3).Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub- clause.
>
> 19(4).Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests ofthe sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub- clause."

51.Time and again, the Hon'ble Supreme Court of India had made it clear that even in liberal interpretation of Clause (c) of Article 19, right to strike and collective bargaining cannot be granted to the Trade Unions for the said right is not a fundamental right. The primordial verdicts of the Hon'ble Supreme Court in this line are, All India Bank Employees Association versus National Industrial Tribunal and others26, Kameshwar Prasad and others versus the State of Bihar and another27, and Radheyshyam Sharma v The Post Master 26 Supra 5 27 Supra 4 https://www.mhc.tn.gov.in/judis General Central Circle28, all three of which were decided by the Five Judges Constitutional Bench of the Hon'ble Apex Court during 1961, 1962 and 1964 respectively. The proposition of law, which evolved in these three precedents is that there is no fundamental right to strike under the Indian Constitution.

52.As far as the Government employees are concerned, the substantial nature of their roles in discharge of their duties by acquiring the status of Government servants would subject them to the limitation of enjoying the fundamental rights within the parameters of their respective service laws and the prevailing statutory labour laws of the country. Following those verdicts of the different Constitutional Benches of the Hon'ble Supreme Court, thereafter a fleet of Supreme Court decisions followed endorsing and reiterating the same position of law, as far as the right to strike is concerned.

53.The statement of object and reasons of the Industrial Disputes Act, 1947, reveals, the need for a permanent legislation to rectify the defects felt by the experience of the working of the Trade Disputes Act, 1929, by the impact of the restraints, which have been imposed on the right of strike and lockout in public utility services and the absence of provision to institute proceedings for the settlement of industrial dispute in the aforesaid Act, as early as during 1947, 28 Supra 6 https://www.mhc.tn.gov.in/judis as a result of which, the Industrial Disputes Act, 1947, generally acceptable to both employers and workmen intact became inevitable. Precisely, the Industrial Disputes Act, 1947, was enacted with the prime object of envisaging collective bargaining and settlement between union representing the workmen and management and also the same provides for investigation and settlement of industrial disputes. Promoting industrial peace and harmony and the same is the ultimate pursuit of the aforesaid Act. The said Act was enacted with the object of improving the service conditions of industrial labour, providing and regulating their service conditions, bringing about the existence of harmony and cordial relationship between the employers and the employees. The term 'strike' is defined in Section 2(q) of the Industrial Disputes Act, 1947, and the same is extracted as follows:-

> "'strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;"
>
> 54.Strikes are categorized into two, namely, legal strikes and illegal strikes. Illegal strikes and lockouts are expanded and explained in Section 24 and the same is extracted as follows:-
>
> "24. Illegal strikes and lock-outs.- (1) A strike or a lock-out https://www.mhc.tn.gov.in/judis shall be illegal if -
>
> (i)it is commenced or declared in contravention of section 22 or section 23; or
>
> (ii)it is continued in contravention of an order made under sub-section (3) of section 10 [or sub-section (4-A) of section 10-A].

(2)Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, [an arbitrator, a] [Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the

provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 [or sub-section (4-A) of section 10-A].

(3)A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

55.Thus, it has become clear from the import of Sections 22, 23 and 24 of Act, 1947, that the right to strike is confined only within the parameters of Sections 22, 23 and 24 of the Industrial Disputes Act, 1947. Time and again, the Hon'ble Supreme Court has categorically held that the right to strike can never ever be a fundamental right under the Constitution, but the workers/labour's right to strike flows from the statutory labour laws of the nation, precisely https://www.mhc.tn.gov.in/judis concluding that the said right is not a fundamental one, but a statutory right.

56.Now, coming to our task in analyzing the scope of interpreting the right to strike under the Constitution of India has fastened us with the responsibility of invoking our discretion to comparative constitutionalism in consensus with the various conventions of the International Labour Organization.

57.India is a founder member of the International Labour Organization, which came into existence in 1919. India is one among the 185 members of ILO. The significant role of ILO is to ensure the growth of its tripartite system in the member Countries. The Governments succumbing to the tripartite character of ILO associates itself with the two other social partners, namely, workers and employers in making its policy decisions pertaining to labour jurisprudence in the Nation. The governing body of ILO consists of the following committees:

(I)program, planning and administrative;

(II)Freedom of Association;

(III)legal issues and international labour standards;

(IV)employment and social policy;

https://www.mhc.tn.gov.in/judis (V)technical cooperation and;

(VI)sectoral and technical meetings and related business and India is a member of all the six committees of the governing body of ILO.

58.International labour standards promoted by ILO has always been India's parameters to be achieved, which is continuously taken into account while devising guidelines and evolving legislative and administrative measures for the protection and advancement of the interest of labour in India. Of the eight core conventions of ILO, which is also called the fundamental/human rights conventions, India has ratified only the following:-

(i)small element, forced labour convention (No.29).

(ii)abolition of forced labour convention (No.105).

(iii)equal remuneration convention (No.100).

(iv)discrimination (employment occupation convention No.111).

59.The conventions which are not ratified by India are as follows:-

(i)freedom of Association and Protection of Right to organised Convention (No.87).

(ii)right to organise and collective bargaining convention (No.98).

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(iii)minimum age convention (No.138).

(iv)worst forms of child labour convention (No.182).

60.Consequent to the World Summit for Social Development in 1995, all the above extracted seven conventions were categorised as the fundamental human rights conventions or the core conventions by the Indian Labour Organisation. Later Convention No.181 was also added to the list and the same was not ratified by India. It is pertinent to understand that Convention No.87 concerning Freedom of Association and protection of the right to organise provides for the right of workers and employers, without any distinction, to establish and join organisations of their own choosing without authorisation including the right to form or join federations and confederations, including, those at the international level is not ratified by India so far.

61.We are inclined to adopt the dualistic approach of considering the International Law and the domestic law as separate entities in interpreting the right to strike in the context of the case in hand. Appreciating the caveat of the Government of India by not recognising Convention No.87 of the International Labour Organisation, we are careful enough to concede that the International Law will not bind the Indian Courts in interpreting the right to strike until the https://www.mhc.tn.gov.in/judis same is incorporated in the domestic laws through appropriate legislation.

Schedule VII of the Constitution delineates the powers of the Central Government and that of the States respectively. Entry 13, which provides for the participation in international conferences, Associations and other bodies and implementing of decisions made thereat and Entry 14 entering into treaties and agreement with foreign countries and implementing of treaties, agreements and conventions with foreign countries, vests the Union Government with the power to enter into treaties agreements and conventions with foreign countries.

The treaty making power of the Executive is propounded in Article 253 of the Constitution and the same is extracted as follows:-

> "Article 253 - Legislation for giving effect to international agreements. - notwithstanding anything in the foregoing provisions of this Chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other Country or Countries or any decision made at any international conference, Association or other body."

62.From a careful reading of Article 253, we make it clear that, until and unless invoking the law making power, the Parliament enacts any law for implementing any treaty, agreement or convention, even the conventions of the international organizations ratified by our Country cannot become a part of this https://www.mhc.tn.gov.in/judis Country's law to be implemented in the Nation. Those conventions of the various international organizations even those ratified by our Nation will remain mute ambitious directives enwombed with the Parliament for applying those principles in making laws in future. Hence, akin to the Directive Principles of State Policy envisioned in Part IV of our Constitution, all the International Conventions, whatever, ratified by India would remain spirited public monumental letters awaiting State action. Until and unless, State dwells into enacting respective legislations, the Courts cannot embark upon interpreting fundamental rights in consonance with international conventions or significant precedents of foreign nations. In such background, now, our task to interpret the right to strike is limited within the boundaries of the various provisions of the Constitution of India and the prevailing labor laws of the land.

63.At this juncture, we are inclined to point out the fact that, the various judgments, which have dealt with the right to strike by the various courts of this country, should be analyzed from the perspective of Part IV and Part IV - A of the Constitution of India. The fundamental duties in Part IV-A was inserted by the Constitution (42nd Amendment) Act, 1976, with effect from 03.01.1977.

Hence, the judgments of the Hon'ble Supreme Court and the various other Courts, which have dealt with the right to strike can be classified into two, https://www.mhc.tn.gov.in/judis namely, those pronounced prior to the 42nd Amendment of the Constitution and those pronounced after the 42nd Amendment of the Constitution. Following the verdict of the Constitutional Bench of the Hon'ble Supreme Court in the case of All Indian Bank Employees Association versus National Industrial Tribunal and others29, Kameshwar Prashad versus State of Bihar30, time and again the Hon'ble Supreme Court in various judgments has concluded that the right to strike can never ever be a fundamental right as guaranteed under Article 19(1)

(c) of the Constitution of India.

64.We cautiously bring on record that even post 1942 Constitutional Amendment, while interpreting Article 19, with respect to the workers/employees/labors right to strike and right of collective bargaining not even in one occasion, Article 19 was read in conjunction with Article 51-A of the

Constitution of India for the critical analysis of the right to strike and right of collective bargaining, which has been already ratified by the various international treaties and conventions and by the various other countries.

Though we are satisfied that while interpreting the aspect of right to strike, we are bound only by the domestic laws and not by the international conventions or judicial pronouncements/precedents of foreign countries, we are of the considered view that Article 51-A if read in conjunction with Article 19, the 29 Supra 5 30 Supra 4 https://www.mhc.tn.gov.in/judis same would evolve a tool for liberal interpretation of the right to strike in the context of Indian Labor jurisprudence. Even before the 42nd Amendment of the Constitution, the highest Court of this land has recognized the fundamental duties, which is vested with the Citizens of India as a consequence of the fundamental rights enjoyed by them. Fundamental duties are the duties that citizens owe to the State. For better clarity, Article 51-A is extracted as follows:-

> "51A. Fundamental Duties.
>
> It shall be the duty of every citizens of India -
>
> (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
>
> (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
>
> (c) to uphold and protect the sovereignty, unity and integrity of India;
>
> (d) to defend the country and render national service when called upon to do so;
>
> (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
>
> (f) to value and preserve the rich heritage of our composite culture;
>
> (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living https://www.mhc.tn.gov.in/judis creatures;
>
> (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
>
> (i) to safeguard public property and to abjure violence;
>
> (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

65.Even before the 42nd Amendment Act was passed by the Government in 1976, the Hon'ble Supreme Court in the case of Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore31 has upheld that the State has power to impose duties on its citizens and the relevant portion of the same is extracted as follows:-

"Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in

31 (1969) 3 SCC 84 https://www.mhc.tn.gov.in/judis the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare, society in which justice social, economical and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met."

66.The Hon'ble Supreme Court in the case of M.C.Mehta and another v.

Union of India and Others32 has dealt with fundamental rights and the relevant portion is extracted as follows:-

"Law has to grow in order to satisfy the needs of the fast changing society and keep abrest with the economic developments taking place in the Country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy." 32 (1987) 1 SCC 395 https://www.mhc.tn.gov.in/judis

67.In yet another case dealt with by the Hon'ble Supreme Court post 42nd Constitutional Amendment, in the case of M.C.Mehta versus Kamal Nath and and Others33 has dealt with fundamental duties and the relevant portion is extracted as follows:-

> "4.Mr.M.C.Mehta, who has been pursuing this case with his usual vigour and vehemence, has contended that if a person disturbs the ecological balance and tinkers with the natural conditions of rivers, forests, air and water, which are the gifts of nature, he would be guilt of violating not only the fundamental rights, guaranteed under Article 21 of the Constitution, but also be violating the fundamental duties to protect the environment under Article 51-A(g) which provides that it shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to show compassion for living creatures."

68.The relevant portion with respect to fundamental duties in the case of Javed and Others versus State of Haryana and Others34 dealt with by the Hon'ble Supreme Court is extracted as follows:-

> "Fundamental rights are not to be read in isolation. They have to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51A." 33 (2000) 6 SCC 213 34 Writ Petition (Civil) No.302 of 2001 https://www.mhc.tn.gov.in/judis

69.In the case of Ranganath Mishra versus Union of India and Others35 the Hon'ble Supreme Court has dealt with fundamental duties and the relevant portion is extracted as follows:-

> "1.A letter written by the petitioner herein to the Chief Justice of India requesting this Court to issue necessary directions of the State to educate its citizen in the matter of fundamental duties so that a right balance may emerge between rights and duties, was treated as a writ petition.
>
> 3. When the matter was taken up for hearing, the learned amicus curiae brought to our notice the report of the National Commission to Review the Working of the Constitution wherein a report made by a committee commonly known as "Justice J.S. Verma Committee on operationalization of fundamental duties of citizens has been accepted and a strong suggestion has been made for their early implementation. The Commission, inter alia, recommends:
>
> "3.40.2. Education is not confined only to the time spent in schools and colleges. Education begins at birth in the subconscious and continues till death. Anyone who says that he has nothing more to learn is already brain-dead. It follows that the influences that play on a child at home are of great importance. Parents should understand that education begins at home, the examples they set, the environment of enlightenment and tolerance that is necessary to produce good citizens cannot be subcontracted to formal schooling, important though this is. Schemes should, therefore, be framed that 35 (2003) 7 SCC 133 https://www.mhc.tn.gov.in/judis include parents in social activities that have as their objective the country's age-old traditions, its welcome to the persecuted of every faith, its virtues of tolerance of and respect for all religions and a certain pride in belonging to this land and in being considered as Indian. The highest office in our democracy is the office of citizen; this

is not only a platitude, it must translate into reality. The distinction is not illusory. This country has given far too much Indulgence to an attitude of mind that acts on the question what is there in it for me? Education and the process of inculcating unselfishness and a sense of obligation to one's fellowmen should inspire the question where does my duty lie? The transformation has the potential to make our nation strong, invincible and able to command the respect of the world.

3.40.3. (1) The Commission recommends that the first and foremost step required by the Union and State Governments is to sensitise the people and to create general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee on the subject. Consideration should be given to the ways and means by which fundamental duties could be popularized and made effective; (ii) right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected; (iii) reform of the whole process of education is an immediate.

4.In its recommendations, the Justice Verma Committee in the chapter entitled "Salient Recommendations" under the heading "Operationalization Overview" observes as under:

"Duties are observed by individuals as a result of dictates of https://www.mhc.tn.gov.in/judis the social system and the environment in which one lives, under the influence of role models, or on account of punitive provisions of law. It may be necessary to enact suitable legislation wherever necessary to require obedience of obligations by the citizens. If the existing laws are inadequate to enforce the needed discipline, the legislative vacuum needs to be filled. If legislation and judicial directions are available and still there are violations of fundamental duties by the citizens, this would call for other strategies for making them operational.

The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with social sanctions and to facilitate the performance of the task through exemplar, role models. The element of compulsion in legal sanction when combined with the natural urge for obedience of the norms to attract social approbation would make the citizens willing participants in the exercise. The real task, therefore, is to devise methods which are a combination of these aspects to ensure a ready acceptance of the programme by the general citizenry and the youth, in particular. The Committee is strongly of the view that the significance of dignity of the individual in all its facets and the objective of overall development of the personality of the individual must be emphasized in the curriculum at all the stages of education. This requires consciousness of citizenship values which are a combination of rights and duties, and together give rise to social responsibilities. Methods must be devised to operationalize this concept as a constitutional value in our educational curriculum and in co- curricular activities, in schools and colleges."

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5. Various recommendations have been made in the said report as regards the mode and manner to be adopted for generating awareness and consciousness of the citizens towards their fundamental duties.

6. Keeping in view the fact that the Government of India would take notice of the recommendations of the aforesaid Commission/Committee, we agree with Shri K. Parasaran that the same may be considered in their right earnestness by the Central Government and we accordingly direct it to do spas also to take appropriate steps for their implementation as expeditiously as possible."

70.In Ramlila Maidan Incident versus Home Secretary36 the Hon'ble Supreme Court has relied upon Article 51-A and the relevant portion is extracted as follows:-

> "2. It appears justified here to mention the First Amendment to the United States (US) Constitution, a bellwether in the pursuit of expanding the horizon of civil liberties. This Amendment provides for the freedom of speech of press in the American Bill of Rights. This Amendment added new dimensions to this right to freedom and purportedly, without any limitations. The expressions used in wording the Amendment have a wide magnitude and are capable of liberal construction. It reads as under:
>
> Congress shall make no law respecting an establishment of 36 (2012) 2 MLJ 32 (SC) https://www.mhc.tn.gov.in/judis religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> 3. The effect of use of these expressions, in particular, was that the freedom of speech of press was considered absolute and free from any restrictions whatsoever. Shortly thereafter, as a result of widening of the power of judicial review, the US Supreme Court preferred to test each case on the touchstone of the rule of 'clear-

and-present- danger. However, application of this rule was unable to withstand the pace of development of law and, therefore, through its judicial pronouncements, the US Supreme Court applied the doctrine of 'balancing of interests'. The cases relating to speech did not simply involve the rights of the offending speaker but typically they presented a clash of several rights or a conflict between individual rights and necessary functions of the Government. Justice Frankfurter often applied the above-mentioned Balancing Formula and concluded that "while the Court has emphasized the importance of 'free speech', it has recognized that free speech is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if free expression of ideas is not found to be the overbalancing considerations.

6.....The Indian Constitution spells out the right to freedom of speech and expression under Article 19(1)(a). It also provides the right to assemble peacefully and without arms to every citizen of the

country under Article 19(1)(a). However, these rights are not free from any restrictions and are not absolute in their terms and https://www.mhc.tn.gov.in/judis application. Articles 19(2) and 19(1)(a), respectively, control the freedoms available to a citizen. Article 19(2) empowers the State to impose reasonable restrictions on exercise of the right to freedom of speech and expression in the interest of the factors stated in the said clause. Similarly, Article 19(3) enables the State to make any law imposing reasonable restrictions on the exercise of the right conferred, again in the interest of the factors stated therein.

19. Artide 51A deals with the fundamental duties of the citizens. It, inter alia, postulates that it shall be the duty of every citizen of India to abide by the Constitution, to promote harmony and the spirit of common brotherhood, to safeguard public property and to abjure violence.

20. Thus, a common thread runs through Parts III, IV and IVA of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these parts. It is necessary to be clear about the meaning of the word "fundamental" as used in the expression "fundamental in the governance of the State to describe the directive principles which have not legally been made enforceable."

71.The introduction of Article 51-A enumerating the various “fundamental duties” of the citizens of India, by the 42nd Amendment Act, has https://www.mhc.tn.gov.in/judis paved way to interpret the Constitution facilitating the Citizens of India to exercise their fundamental duties, so as to kindle the uniqueness of the indigenous democratic system to perfection. While the makers of our Constitution having rendered the fundamental rights as enforceable and the Directive Principles of State Policy enumerated under Part IV of the Constitution as unenforceable, as far as Part IV-A, which provides for fundamental duties is silent as to whether these duties are enforceable or not in a Court of law. In the absence of a specific bar as to its enforceability as enumerated in the Constitution of India, the positive presumption would be that the fundamental duties are enforceable. If we view the right to strike through the prism of fundamental duties enumerated under Article 51-A read with Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution of India, the spectrum of legal principles, which refracts encourages us to give a liberal interpretation elevating the right to strike from one as statutory right to that of fundamental right. Article 51-A(b) mandates that it shall be the duty of every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom: Article 19(1)(a) proclaims the right to freedom of speech and expression, Article 19(1)(b) the right to assemble peacefully and without arms and Article 19(1)(c) to form associations or unions, however, subject to the restrictions enumerated in Articles 19(3) and 19(4).

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72.The fundamental duty to cherish and follow the noble ideals, which inspired our national struggle for freedom would create rights in favour of citizens who may benefit from the observance of the said duty. The term “strike” is the quintessence of our national struggle for freedom. The democratic

system of this Country has evolved from the decision of the people of this Country to constitute a sovereign, socialist, secular, democratic, republic, exclusively for the purpose of securing to all its citizens justice, liberty, equality and fraternity. The making and carving of Indian democracy has a checkered history of various strikes spanning over a prolonged period of time led by the various National leaders of this proud Nation. The first of all its kind was in 1908, when a strike was organized at the European Coral Mill in Thoothukudi, Tamil Nadu, by the renowned National leader V.O.Chidambaram Pillai, Subramanya Shiva and Padmanabha Iyengar digladiating against the poor working condition of 1695 workers, of whom 59 percent were aged 14 to 16 in the said Coral Mills owned by the British. Demanding reduction in the number of working hours and an increase in pay, the leaders augmented the spirit of strike among the voiceless workers in support of labour welfare quickly gaining the sympathy and support of the people of Thoothukudi.

Though the agitation on 12th March 1908, resulted in remanding all the three https://www.mhc.tn.gov.in/judis leaders to the District Jail, the fury of the people of Tirunelveli resulted in an uncontrollable riot in the locality, compelling the British administration to heed to the demands of the striking workers.

73.By the same time, over 2000 people were struck in Transvaal, South Africa, defying the “Black Act”, that is, “the Asiatic Law Amendment ordinates”, a law passed in South Africa in 1906, to limit the number of Indians entering the Transvaal. On 10th January 1908, Mohandas Karamchand Gandhi, an Attorney in Johannesburg appeared before the Magistrates Court for defying the said Black Act and for disobeying an order to leave Transvaal within 48 hours. Thousands of people who defied the Black Act, including MK Gandhi were sent to prison and some of them repeatedly. The continuous struggle, strike and satyagraha resulted in the formation of the Union of South Africa, following which, the satyagraha was suspended in 1911, hoping for a negotiable settlement, however, negotiations failed. Adding oil to fire, the Cape Supreme Court, South Africa mandated that all marriages not performed according to Christian rights were invalid, making the children born out of Indian marriages illegitimate depriving them of inheritance. This ultimately resulted in resuming satyagraha in September 1913, both in Natal and Transvaal with a stupendous participation of men, women and children. Gandhiji led the https://www.mhc.tn.gov.in/judis great march of 2200 workers along with their families from Newcastle to the Transvaal border resulting in imprisonment of thousands of workers with family. Finally, the British were forced to sign an agreement with Gandhiji fulfilling all the demands of the satyagrahis.

74.After Gandhiji arrived in India in July 1914, the spirit of strike and satyagraha reached its ultimatum in the freedom struggle of India. Gandhiji's first satyagraha in British India is the Chambaran satyagraha. The Chambaran Satyagraha Movement in 1917 was the biggest revolt against the British colonial authorities, forcing the farmers to grow indigo instead of food crops.

Gandhiji's leadership inculcated the fighting spirit of the voiceless peasants in the Chambaran district of Bihar. Gandhiji's relentless participation in the Chambaran Movement compelled the British planters eventually meet the farmers demand resulting in cancellation of revenue hikes and collection until the famine ended. Following the Chambaran satyagraha, Gandhiji led the famous Ahamdabad Mill strike, which was the biggest civil disobedience movement during that period of

time, in which Gandhiji in the form of hunger strike confronted the British, which resulted in a 35 percent wage hike for the workers. The Rowlatt Act, officially known as the Anarchical and Revolutionary Crimes Act, 1919, curtailing civil liberties was opposed by https://www.mhc.tn.gov.in/judis Gandhiji, declaring the same as that which reflected the distrust of common man, which compelled Gandhiji and his supporters to form the satyagraha sabha in Bombay during March 1919 to revolt and strike against the Rowlatt Act. The situations which emanated from the enactment of Rowlatt Act led to the non-cooperation movement during 1920 to 1922, as led by Mahatma Gandhi against the British rule in India.

75.Quoting Leo Tolstoy's letter in reply to one from the editor of Free Hindustan, Mahatma Gandhiji lamented, “if we do not want the English in India, we must pay the price. Tolstoy indicates it. Do not resist evil, but also do not yourself participate in evil - in the violent deeds of the administration of the law courts, the collection of taxes and, what is more important, of the soldiers, and no one in the world will enslave you, “passionately”, declares the sage of Yasnaya Polyana. Who can question the truth of what he says in the following:

> “a commercial company enslaved a nation comprising 200 millions. Tell this to a man free from superstition and he will fail to grasp what these words mean. What does it mean that 30,000 people, not athletes, but rather ordinary people, have enslaved 200 millions of vigorous, clever, capable, freedom - loving people? Do not the figures make it clear that not the English, but the Indians, have enslaved themselves?” https://www.mhc.tn.gov.in/judis

76.On the clarion call of Mahatma Gandhiji to this enslaved nation, lakhs and lakhs of men, women and children plunged into the freedom movement armed with the tool of the most powerful strike, named, Satyagraha, have had forcefully reaped the fruits of strike, that is, the free India, independent from the British. Ironically, in independent India, the spirits of strike, that is, the right to strike which was watered, showered, nurtured and grown by the father of this Nation is time and again held not to be the fundamental right of the citizens of India.

77.The Martin Luther King, Jr., in his article, “My trip to the land of Gandhi” published in Ebony magazine about his trip to India during July 1, 1959 to July 31, 1959, remarked as follows:-

> “The trip had a great impact upon me personally. It was wonderful to be in Gandhi's land, to talk with his son, his grandsons, his cousin and other relatives: to share the reminiscences of his close comrades: to visit his ashram, to see the countless memorials for him and finally, to lay a wreath on his entombed ashes at Rajghat. I left India more convinced than ever before that non-violent resistance is the most potent weapon available to oppressed people in their struggle for freedom. It was a marvellous thing to see the amazing results of a non-violent campaign. The aftermath of hatred and bitterness that usually follows a violent campaign was found nowhere in India. Today, a mutual friendship based on complete equality exists between the https://www.mhc.tn.gov.in/judis Indian and British people within the commonwealth. The way of acquiescence leads to moral and spiritual suicide. The

> way of violence leads to bitterness in the survivors and brutality in the destroyers. But, the way of non-violence leads to redemption and the creation of the beloved community.
>
> The spirit of Gandhi is very much alive in India today. Some of his disciples have misgivings about this when they remember the trauma of the fight for national independence and when they look around and find nobody today who comes near the stature of the Mahatma.....
>
> India can never forget Gandhi. For example, the Gandhi Memorial Trust, (also known as Gandhi's Marak Nidhi), collected some 130 million dollars soon after the death of the Father of the Nation. This was perhaps the largest, spontaneous, mass monetary contribution to the memory of a single individual in the history of the World. This fund, along with support from the Government and other institutions, is resulting in the spread and development of Gandhian philosophy, the implementing of his constructive program, the erection of libraries and the publication of works by and about the life and times of Gandhi. Posterity, could not escape him even if it tried. By all standards of measurement, he is one of the half dozen greatest men in World history."

78.It is needless to state that our Father of Nation, Mahatma Gandhi ji as https://www.mhc.tn.gov.in/judis the crusader against the colonial imperialism of the British, without arm twisting and without rasing even his fingers against the British, adorned the non-violent weapon called Satyagraha to oust the British out of our motherland.

And the foremost fundamental duty of every Indian is to cherish and to follow the noble ideals of satyagraha, which inspired our national struggle for freedom. Exhuming the historical ideals which inspired our national struggle for freedom, time and again, our Courts have resorted to a speech-restrictive, narrow interpretation of Article 19 of the Constitution of India, concluding that the right to strike is not a fundamental right, rather the said right flows from the statutory labour laws and the same is a sheer statutory right. We are duty bound to point out that in all those judgments, which have reduced the right to strike as a sheer statutory right is the result of a narrow interpretation of Article 19 without reading the same in conjunction with Article 51-A of the Constitution of India.

VI. Epilogue:-

79.In a democratic Country, peaceful demonstrations and strikes are tools of labour jurisprudence. No doubt, right to strike is a part of freedom of Association and therefore, the same is protected under Article 19 read with Article 51-A(b) of the Constitution of India. Right to strike is an inevitable https://www.mhc.tn.gov.in/judis corollary of the right to freedom of Association. Liberty in our Constitution is the freedom of the Indian citizens to act without unreasonable restrictions and the same includes the right of thought, speech and expression, right to assemble peacefully and without arms, right to form associations or unions, etc. In a democratic country, liberty is the general rule

and restraint the exception. Thus, prohibiting legal strikes and demonstrations organized following the mandates of Chapter V of the Industrial Disputes Act, 1947, even in any essential services listed by the State would be protected under Article 19(a)(b)(c) read with Article 51-A(b) of the Constitution of India. On the enactment of the Industrial Disputes Act, 1947, strikes have ostensibly become legal within the parameters of Chapter V of the aforesaid Act. The fundamental duties being a part of the concept of the "welfare State", Article 51-A(b) entails the corresponding right to form associations or unions to the citizens of India and the right to assemble peacefully without arms with freedom of speech and expression.

80.In the light of the foregoing analysis, we are more fully satisfied that we have the discretionary power to determine the constitutionality of the right to strike in the light of Chapter III, Chapter IV and Chapter IV-A of the Constitution of India. A harmonious interpretation of Article 19(a)(b)(c) in conjunction with Article 41, 42, 43, 43-A and 51-A(b) would make it clear that https://www.mhc.tn.gov.in/judis the fundamental duty under Article 51-A(b) gives every worker/employee with a right to legal strike which also imposes a collective duty on the state to facilitate the citizens to discharge the obligation of right to strike against any unreasonable/illegal stand of the employer.

81.Hence, we have no hesitation to conclude that the fundamental duty mentioned in Article 51-A(b) may be relied upon by any citizen of India to compel the officers of the State to acknowledge the duty of the employees/workers to strike in contributing towards the goal of the Constitution of India in establishing a welfare state and the said duty springs up from their fundamental right to assemble without arms with freedom of speech and expression, i.e., their right to strike, which is nothing but a corollary to the right to form associations or unions, guaranteed under Article 19(c) of the Constitution of India. In the instant case, when the strike resorted to by the workers of Aringar Anna Peravai has been treated as a legal strike and the days of strike has been credited and accounted with the available currency of casual leave, the respondent Corporation ought to have extended the same benefit to the employees of petitioner Union as well. Holding that the right to strike resorted to by the workers of the petitioner organisation was one which was called upon as provided under Chapter V of the Industrial Disputes Act, 1947, https://www.mhc.tn.gov.in/judis we have no hesitation to conclude that the same is protected under Article 19(1)

(a), 19(1)(b) and 19(1)(c) read with Articles 41, 42, 43, 43-A and 51-A(b) of the Constitution of India. In fine, we mindfully conclude that, the right to strike within the parameters of Chapter V of the Industrial Disputes Act, 1947, is a fundamental right guaranteed by the Constitution of India.

82.Accordingly, the order of the learned Single Judge is set aside and the Writ Appeal is allowed. There shall be no order as to costs. Consequently, miscellaneous petition is closed.

(N.S.S., J.) (L.V.G.,
10.06.2024

Index : Yes / No

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Mrn

To

Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Trichy – Region, Rep. By its Managing Director, Trichy.

https://www.mhc.tn.gov.in/judis N.SESHASAYEE, J.

and L.VICTORIA GOWRI, J.

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