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## CAPACITY TO SUE AND BE SUED OF TRADE UNIONS

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### Introduction

The capacity of trade unions to sue and be sued occupies a pivotal position within the intricate intersection of labour law and tort law. Trade unions, representing workers' interests, play an indispensable role in shaping labour relations, advocating for employee rights, and promoting collective bargaining. However, this multifaceted role often raises legal questions regarding their capacity as legal entities in the context of civil litigation. The examination of this capacity revolves around the core principles of legal personality, tort liability, standing, and the delicate balance between the rights of individuals and the collective interests of workers.

Trade unions emerged as a result of the perpetual conflict between the employer and the employee and the inability of the employee to obtain basic 'worker's rights' such as a minimum wage, humane conditions of labour and so forth.

Sydney and Webb's define trade unions as "a continuous association of wage earners for the purpose of maintaining and improving the condition of their working lives"<sup>1957</sup>. According to the Trade Unions Act, 1926<sup>1958</sup>, "Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions."

The English law in the context of trade unions gave recognition to a theory that there may exist a legal entity without any corporate existence. This was substantiated by Sec. 2(1) of the Trade Union and Labour Relations Act, 1974 provides that a Trade Union shall not be treated as a corporate body though it can sue or be

sued in its name.<sup>1959</sup> In the Indian legal landscape, the settled position of law as evidenced in section 13 of the Trade Unions Act, 1926, expressly provides that every registered Trade Union shall be a body corporate with all attributes of a legal personality.<sup>1960</sup> Section 18 of the Act, however, enacts that no suit shall lie against a registered Trade Union, its members or officers in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union was a party on the ground only that such act induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or labour as he wills.<sup>1961</sup>

**TAFF VALE RAILWAY CO- APPELLANT V AMALGAMATED SOCIETY OF RAILWAY SERVANTS (1901)<sup>1962</sup> – RESPONDENTS**

**REPORTABLE IN**

**COURT: HOUSE OF LORDS**

**QUORUM: 6 JUDGE BENCH –HOUSE OF LORDS**

<sup>1957</sup> LawTeacher. November 2013. Trade Unions. [online]. Available from: <https://www.lawteacher.net/free-law-essays/employment-law/trade-unions.php?vref=1> [Accessed 23 October 2023].

<sup>1958</sup> Trade Unions Act, 1926, § 2(h), No. 16, Acts of Parliament 1926.

<sup>1959</sup> Taff Vale Ry, Ratanlal & Dhirajlal, The Law of Torts, 28th Edition.

<sup>1960</sup> Trade Unions Act, 1926, § 13, No. 16, Acts of Parliament 1926.

<sup>1961</sup> Trade Unions Act, 1926, § 18, No. 16, Acts of Parliament 1926.

<sup>1962</sup> THE TAFF VALE RAILWAY COMPANY APPELLANTS; AND THE AMALGAMATED SOCIETY OF RAILWAY SERVANTS RESPONDENTS., [1901] A.C. 426.

FARWELL J., EARL OF HALSBURY L.C., LORD MACNAGHTEN, LORD SHAND, LORD BRAMPTON, AND LORD LINDLEY.

**CIVIL APPEAL NO** A.C. 426

**DECIDED ON:** JULY 22, 1901

**FACTS OF THE CASE:**

A strike having arisen in August, 1900, among the appellants' servants, in which Bell, the general secretary of the respondent society, and Holmes, the organising secretary thereof for the West of England, took part, the appellants brought an action against the respondent society in its registered name, and against Bell and Holmes, claiming an injunction and such further relief as the Court might direct. A summons for an interim injunction having been taken out by the plaintiffs, and a notice of motion having been given by the respondents to strike out the name of the defendant society, Farwell J., sitting as vacation judge, on the 5th September, 1900, dismissed the respondents' application, and granted an interim injunction against the society in terms similar to those of the injunction previously granted against Bell and Holmes, restraining the society, their servants, agents, and others acting by their authority from watching or besetting or causing to be watched or beset the Great Western Railway Station at Cardiff, or the works of the plaintiffs or any of them, or the approaches thereto, or the places of residence, or any place where they might happen to be, of any workman employed or proposing to work for the plaintiffs, for the purpose of persuading or otherwise preventing persons from working for the plaintiffs, or for any purpose except merely to obtain or communicate information, and from procuring any persons who had or might enter into any contracts with the plaintiffs to commit a breach of such contracts.

Essentially, the defendant society, a trade union, had taken out a summons to strike out their name as defendants, arguing that they are neither a corporation nor an individual, and therefore cannot be sued in any capacity. They

further contended that if their name was not struck out, no injunction should be granted against them. Trade unions are associations of individuals that owe their legal validity to the Trade Union Acts, 1871 and 1876. While trade union contracts may have limitations on enforcement, the status of the association itself is not affected. The legislature has legalized trade unions and intended for them to be dealt with by the courts accordingly. The defendant society, being a trade union, possesses qualities similar to those of a corporation, such as the capacity to own property and act by agents.

**LEGAL ISSUES:**

Whether the defendant society, being a trade union, can be sued in its registered name?

Whether a trade union can be held legally liable for the actions and losses caused by its members during an industrial dispute, particularly in terms of financial damages to the employer?

**JUDGEMENT:**

In the case of Taff Vale Railway Co v Amalgamated Society of Railway Servants (1901), the House of Lords ruled in favour of the Taff Vale Railway Company. The House of Lords, in its ruling, held that a trade union could be sued for damages resulting from industrial action initiated or endorsed by the union. The judgment held that a trade union, in this case, the Amalgamated Society of Railway Servants, could be held financially liable for the losses incurred by the employer (the railway company) as a result of the strike organized by the union. The House of Lords concluded that the union was liable for the economic damages caused by its members' actions during the strike, which included acts of sabotage and disruption. The court affirms the judgment of Farwell J. and reverses the decision of the Court of Appeal.

**RATIO:**

The ratio decidendi in the case is that the use of the name of a society registered under the Societies Registration Act in connection with legal proceedings is permissive and not

compulsory. This means that a society registered under the Societies Registration Act may have some characteristics similar to those of a corporation, but it is not a corporation itself. The Court of Appeal erred in holding that the trade union cannot be sued in its registered name. The Trade Union Acts imply a liability on trade unions to be sued in their trade union name. The use of the registered name is permissive, but if a judgment or order is for the payment of money, it can only be enforced against the property of the trade union. The key legal principle established in this case was that a trade union could be held financially liable for the losses incurred by an employer during an industrial dispute caused by the union's actions or directives.

This is evidenced by the view of Lord Macnaghten, which is shared by the bench, in page 440 of the judgement: "The registered office is the place where it carries on business. A partnership firm which is not a corporation, nor, I suppose, a legal entity, may now be sued in the firm's name. And when, I find that the Act of Parliament actually provides for a registered trade union being sued in certain cases for penalties by its registered name, as a trade union, and does not say that the cases specified are the only cases in which it may be so sued, I can see nothing contrary to principle, or contrary to the provisions of the Trade Union Acts, in holding that a trade union may be sued by its registered name."<sup>1963</sup>

#### STUDENT COMMENT:

This ruling set a significant precedent, making trade unions potentially financially responsible for the consequences of industrial disputes initiated or endorsed by the union. It had a profound impact on trade union activities and their legal standing, ultimately leading to calls for legislative reform to protect trade unions from such liability. This decision had a chilling effect on trade union activity and made unions

vulnerable to legal action and potentially huge financial penalties. As a result, it sparked outrage among trade unions and led to calls for legislative reform. In response to the Taff Vale decision, the Trade Disputes Act of 1906 was passed in the United Kingdom. This law, also known as the "Taff Vale decision" or "Taff Vale Act," effectively reversed the House of Lords' ruling. It protected trade unions from being sued for damages resulting from industrial disputes and recognized the right of workers to strike.

The Taff Vale case is a crucial part of the historical development of labor law and the protection of workers' rights in the United Kingdom, ultimately leading to more favorable legal conditions for trade unions and workers.

#### HINDUSTAN UNILEVER LTD –PETITIONERS V. MEMBER INDUSTRIAL COURT, MAHARASHTRA, NAGPUR BENCH, CIVIL LINES, NAGPUR AND ANOTHER<sup>1964</sup>– RESPONDENTS

#### REPORTABLE IN

**COURT:** HIGH COURT OF BOMBAY

**QUORUM:** SINGLE BENCH

JUSTICE R.K. DESHPANDE

**CIVIL APPEAL NO.** 1133 OF 2002

**DECIDED ON:** OCTOBER 21, 2011

#### FACTS:

- The petitioner, Hindustan Unilever Limited, was involved in the business of purchasing tea, processing, blending, and packaging it under the label of 'Brooke Bond' which was its subsidiary.
- The Regional Accounts Office (RAO) in Nagpur, a part of the petitioner's operations, was closed, and the employees were retrenched with immediate effect from January 5, 2001.
- The Industrial Court declared this closure and retrenchment as illegal, constituting an unfair labour practice under the Maharashtra Recognition of Trade Unions & Unfair Labour Practices Act, 1971 (MRTU & PULP Act). The court

<sup>1963</sup> THE TAFF VALE RAILWAY COMPANY APPELLANTS; AND THE AMALGAMATED SOCIETY OF RAILWAY SERVANTS RESPONDENTS., [1901] A.C. 426 – Page 440.

<sup>1964</sup> Hindustan Unilever Ltd. v. Member, 2011 SCC OnLine Bom 1426.

ordered the withdrawal of the closure and restoration of the status prior to January 5, 2001.

Essentially, HUL terminated the employment of the respondent employee on the grounds of misconduct and insubordination. The employee challenged the termination before the Industrial Court, which held that the termination was illegal and ordered reinstatement with full back wages.

#### LEGAL ISSUES:

1. Whether the closure of the RAO in Nagpur and the subsequent retrenchment of employees violated statutory provisions, making it an unfair labor practice?
2. Whether the Industrial Court's order of reinstatement with full back wages is valid?

#### JUDGEMENT:

The Bombay High Court upheld the order of the Industrial Court and dismissed the petition filed by HUL. The Court held that the termination of the employee's employment was not justified as there was no substantial evidence to support the allegations of misconduct and insubordination. The Court also held that the Industrial Court's order of reinstatement with full back wages was a valid remedy considering the illegal termination. The judgment and order of the Industrial Court declaring the closure and retrenchment as illegal were quashed and set aside. The prayer for the continuation of the interim order was rejected as the petition had been allowed, ending the arrangement.

#### RELEVANT JUDGMENTS:

1. Akhil Bhartiya Shramik Kamgar Union v. Buildtech Constructions, 2004<sup>1965</sup>– This judgment deals with the principles of termination of employment and the requirement of substantial evidence to support allegations of misconduct.
2. Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir, 2008<sup>1966</sup> – This judgment emphasizes the need for a fair and

reasonable inquiry before terminating an employee's employment.

3. Sanket Food Products Pvt. Ltd. v. Prabhakar Asaram Bhalerao, 2014<sup>1967</sup>– This judgment discusses the concept of reinstatement with full back wages as a remedy for illegal termination.

#### RATIO:

#### Illegal Closure and Violation of Statutory Provisions:

The judge found that the closure of the Regional Accounts Office (RAO) in Nagpur and the subsequent retrenchment of employees were illegal. This conclusion was based on the judge's determination that these actions violated various statutory provisions, including Sections 9A, 25K, 25I, and 25-0 of the Industrial Disputes Act (ID Act), clause 8 of the Model Standing Orders, and Section 66 of the Bombay Shops & Establishments Act.

#### Functional Integrity and Interdependence:

The argument that there was no functional integrity between the RAO and the Company's Branch office in Bombay was rejected. The judge emphasized the importance of the "functional integrity" and "functional interdependence" test in determining whether the closure was in violation of the ID Act.

#### Union Authorization for Settlement:

The judge considered the absence of a provision in the constitution of the Union authorizing any office bearer to enter into a settlement with the management. The court also took into account the Union's Executive Committee's resolution, which did not accept the settlement signed by an office bearer. This reinforced the argument against the legality of the closure.

#### Trade Union Distinct Status:

The judge noted the distinct status of a Trade Union incorporated under the Trade Unions Act compared to a Company incorporated under the Companies Act, indicating that the rights and privileges conferred on registered Unions differ.

<sup>1965</sup> Akhil Bhartiya Shramik Kamgar Union v. Buildtech Constructions, 2004 SCC OnLine Bom 278.

<sup>1966</sup> Central Bank of India v. Madhulika Guruprasad Dahir, (2008) 13 SCC 170.

<sup>1967</sup> Sanket Food Products Pvt. Ltd. v. Prabhakar Asaram Bhalerao, 2013 SCC OnLine Bom 1981.

**Jurisdiction of Industrial Court:** The judge confirmed the jurisdiction of the Industrial Court to deal with the challenges to the closure and retrenchment, rejecting objections raised regarding its competence. The court found that the matter was within the comprehensive jurisdiction of the Industrial Court, with no imposed restrictions.

**Applicability of Legal Provisions:** The judge considered the applicability of Section 25-FFF, Chapter V-B of the ID Act, and the definition of "undertaking" under the ID Act, and found that they did not apply to the closure of RAO Nagpur.

**STUDENT COMMENT:**

This case brings to light an intriguing legal battle between a multinational company and its workers' union, centring on the closure of the Regional Accounts Office (RAO) in Nagpur and the subsequent retrenchment of employees. While dissecting this case, it becomes evident that it has broader implications for the capacity of trade unions to sue and be sued in similar disputes.

The court's ruling, which quashed the closure and retrenchment as illegal, underscores the extent to which trade unions can exercise their rights in seeking legal remedies. The case reaffirms that trade unions have the capacity to initiate legal proceedings when they perceive unfair labour practices by employers, especially when it pertains to closures, retrenchments, or other actions that affect the livelihoods of workers.

At the same time, the case highlights that trade unions can also be held accountable through legal action when it is perceived that their actions, such as entering into settlements, do not align with their constitution or if their conduct is challenged under labor laws. In essence, this case serves as a reminder that while trade unions have the capacity to sue to protect the interests of their members, they are not immune to legal scrutiny themselves.

**Central Professor/Scientist Technical Council, Gwalior Petitioner v. Rajmata Vijayaraje Scindia Krishi Vishwa Vidyalaya, Gwalior<sup>1968</sup>**  
**Respondents**

**Reportable in**

**Court:** High Court of Madhya Pradesh at Gwalior

**Quorum:** Single Bench

Rohit Arya, J

**Writ Petition No.** 1381 of 2016

**Decided on:** February 24, 2016

**FACTS:**

The petitioner, Central Professor/Scientist Technical Council, through its Secretary Shri P.S Tomar, filed a writ petition under Article 226/227 of the Constitution of India seeking relief. The petitioner sought the inclusion of all the posts mentioned in Annexure-P/4 under the advertisement Annexure-P/1 and a 15-day extension for the members of the petitioner union to apply for the added posts. The petitioner also requested that the candidates who are members of the petitioner union be considered for these posts. The respondent, Rajmata Vijayaraje Scindia Krishi Vishwa Vidyalaya (referred to as "Agriculture College"), had invited applications for filling up vacancies under different disciplines at the University, College of Agriculture, KNK College of Horticulture, Mandsaur, and ICAR Research Projects. The petitioner raised two grievances: firstly, the subsequent advertisement dated 18-12-2015 did not include the posts under ICAR Research Project, and secondly, the condition that candidates who fulfilled the prescribed qualifications under the advertisement dated 22-10-2013 needed to apply again with proof of earlier application and fees deposited.

**ISSUE:**

Whether the petitioner, as a trade union, has the standing to maintain a writ petition under Article 226/227 of the Constitution of India?

<sup>1968</sup> Central Professor/Scientist Technical Council v. Rajmata Vijayaraje Scindia Krishi Vishwa Vidyalaya, 2016 SCC OnLine MP 3371.

**JUDGEMENT:**

Based on these findings, the court dismissed the petition, stating that the individual person may, if advised, take recourse to law for the redressal of grievances before the appropriate forum in accordance with the law.

**RELEVANT JUDGEMENTS:**

1. Chiranjit Lal Chowdhuri v. The Union of India, AIR 1951<sup>1969</sup>

This case provided the basis for the interpretation of the expression "person aggrieved" and the rights of associations to bring legal proceedings under Article 226 of the Constitution of India.

2. Indian Trade Union v. State of Kerala, AIR 1961<sup>1970</sup>

- This case established the entitlement of trade unions to raise industrial disputes under the law.

3. Dr. K.G Choubey v. Jawaharlal Nehru Krishi Vishwa Vidyalaya , 2011<sup>1971</sup>

- This case dealt with issues related to the enhancement of the age of superannuation for teachers in universities, covering similar concerns as in the present case.

**RATIO:**

- The court held that only a "person aggrieved" in the matter of promotion could maintain a writ petition. The interpretation of the expression "aggrieved person" varies according to the context of the statute and the facts of the case. The court referred to the case of Chiranjit Lal Chowdhuri v. The Union of India (AIR 1951 SC 41)<sup>1972</sup>, where the Supreme Court established that an association can bring an application under Article 226 of the Constitution of India only when its rights as a collective body, as distinguished from the aggregate rights of its members, are affected by the act challenged in the

proceedings. The court emphasized the need for a legal burden to be imposed on a person to establish that they are aggrieved. It was noted that trade unions are entitled under the law to raise an industrial dispute. The court clarified that the expression "person aggrieved" does not include individuals who suffer from psychological or imaginary injuries. To be considered aggrieved, one's right or interest must have been adversely affected or jeopardized.

**STUDENT COMMENT:**

This case illuminates the complex interplay between collective interests, individual rights, and the definition of "person aggrieved" within the legal framework.

One of the central issues in this case revolved around the question of whether the petitioners acting as a trade union, had the legal standing to file a writ petition under Article 226/227 of the Indian Constitution. The court's interpretation of who qualifies as a "person aggrieved" is pivotal. It emphasizes that for a person or an entity, including trade unions, to be considered "aggrieved," a legal burden must be imposed upon them. This ruling underscores the idea that trade unions should primarily act in cases where their collective rights as a distinct body are at stake rather than the individual rights of their members. Moreover, the case further underscores the need for a trade union to demonstrate that their rights as a collective entity, separate from the rights of their individual members, have been adversely affected. This implies that trade unions cannot indiscriminately intervene in every matter that touches their members' interests but should be discerning in selecting cases where their collective rights are at stake. Lastly, it also acknowledges the legitimacy of trade unions to raise industrial disputes, as recognized under the law- This reinforces the essential role that trade unions play in representing the interests of workers in disputes with employers.

<sup>1969</sup> Chiranjit, *supra* note 13, at 13.

<sup>1970</sup> Indian Trade Union v. State of Kerala, AIR 1961 SC 645.

<sup>1971</sup> K.G. Choubey (Dr.) v. Jawaharlal Nehru Krishi Vishwa Vidyalaya, 2013 SCC OnLine MP 10837.

<sup>1972</sup> Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833.



**Crescent Dyes And Chemicals Ltd. Appellant Vs  
Ram Naresh Tripathi, 1992<sup>1973</sup> Respondents****Reportable in****Court:** Supreme Court of India**Quorum:** Division Bench

A Ahmadi, M Punchhi, K Ramaswamy, JJ.

**Civil Appeal No.** 5358 of 1992**Decided on:** December 16, 1992**FACTS:**

The case involves a delinquent employee, Ram Naresh Tripathi, who was charge sheeted with misconduct on November 29, 1980. The Labour Court initially concluded that the dismissal order did not violate the principles of natural justice and dismissed the complaint on June 30, 1982. The High Court later quashed the judgments of the lower authorities and remanded the matter to the Labour Court for re-evaluation, allowing both parties to present evidence. The central question in this case pertains to the right of a delinquent employee to be represented by a person from another Trade Union, who is not a member of a recognized or non-recognized union within the employing organization. The High Court ruled that in order to ensure a fair and impartial domestic enquiry, a delinquent should be allowed to be represented by a person of their choice, even if that person is an outsider. This, it argued, was essential to uphold the principles of natural justice.

**ISSUES:**

1. Whether a delinquent is entitled to be represented by an office-bearer of another Trade Union, who is not a member of either a recognized union or a non-recognized union functioning within the undertaking in which the delinquent is employed, notwithstanding the statutory limitation contained in the certified Standing Orders and clause (ii) of Section 22 of the Maharashtra Recognition of Trade Unions

and Prevention of Unfair Labour Practices Act, 1971?

2. Whether the limitation imposed by the Standing Orders and Section 22(ii) of the Act violates the principles of natural justice, specifically the right to hearing and a fair trial?

3. Whether the delinquent has the right to be represented through counsel or agent of his choice, and if so, whether the refusal to be represented by an agent of his choice would amount to a denial of natural justice

**JUDGMENT:**

The Supreme Court allowed the appeal, set aside the High Court's order, and held that the Enquiry Officer was justified in refusing permission to the representative who was not a member of a recognized or non-recognized union. The Supreme Court also directed the Labour Court to drop the proceedings if it had not already disposed of the case, rendering them infructuous. There was no order as to costs in this case.

**RATIO:**

With reference to Page 117 of the judgement, "The short question which falls for determination in this appeal is whether a delinquent is entitled to be represented by an office-bearer of another Trade Union, who is not a member of either a recognised union or a non-recognised union functioning within the undertaking in which the delinquent is employed, notwithstanding the statutory limitation contained in the certified Standing Orders and clause (ii) of Section 22 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereafter called 'the Act')." From this excerpt, it can be inferred that the ratio decidendi of the case is that a delinquent is not entitled to be represented by an office-bearer of another Trade Union who is not a member of either a recognized or non-recognized union functioning within the undertaking, as per the statutory limitation contained in the certified Standing Orders and Section 22 of the Maharashtra Recognition of Trade Unions and

<sup>1973</sup> Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi, (1993) 2 SCC 115.

Prevention of Unfair Labour Practices Act, 1971. The Court reasoned that for a domestic enquiry to be fair and impartial, it is necessary to allow the delinquent employee to be represented by a person of their choice, even if that person is an outsider. The denial of such representation could be seen as a violation of the principles of natural justice. The Judge also referred to Section 22 of the Act, which only deals with the rights of unrecognised unions. It concluded that the statutory limitations on representation do not deny the basic and fundamental right of a workman. The Judge's reasoning also considered past cases, such as *Pett v. Greyhound Racing Association Ltd.*<sup>1974</sup>, which established that the right to representation depends on the discretion of the Tribunal, and it is not an absolute right in the context of natural justice. The Indian legal system similarly does not concede an absolute right to representation as part of the right to be heard.

#### STUDENT COMMENT:

The case at hand presents an interesting perspective on the capacity of trade unions to sue and be sued. While the central issue revolves around the right of a delinquent employee to be represented by a person of their choice, it indirectly touches upon the role and capacity of trade unions in legal matters. One of the critical elements of this case is the distinction between recognized and non-recognized unions under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Act provides a framework for the recognition of trade unions and the delineation of their rights and obligations. It is evident that recognized unions have a specific legal status, and the Act empowers the Industrial Court to cancel their recognition under certain circumstances. This recognition is closely tied to the capacity to represent employees effectively.

However, the case also raises questions about the extent of this capacity. The High Court's

ruling emphasizes the importance of allowing a delinquent employee to be represented by a person of their choice, even if that individual is not affiliated with a recognized or non-recognized union within the organization. This implies a more flexible interpretation of the capacity of trade unions to represent employees in legal matters.

The Supreme Court's judgment, on the other hand, appears to uphold the statutory limitations on representation and suggests that there is no absolute right to representation in domestic enquiries. This could be seen as a restraint on the capacity of trade unions to freely choose representatives for their members.

In this context, this case highlights the middle ground between the rights and limitations of trade unions in the legal realm. While recognized unions have a specific legal status and capacity, the case introduces the concept that delinquent employees should have the right to choose their own representation, even from outside the recognized or non-recognized union structures.

#### **NATIONAL UNION OF GENERAL AND MUNICIPAL WORKERS- Appellant v. GILLIAN AND OTHERS**<sup>1975</sup>

**Respondent**

**Reportable in**

**Court:** Court Of Appeal King's Bench Division

**Quorum:** Division Bench

Scott, MacKinnon L.J.J. And Uthwatt J.

**Civil Appeals Nos.** A. C. 1725 of 1945

**Decided on:** October 16, 1945

#### **FACTS:**

In this case, the National Union of General and Municipal Workers (the plaintiff) brought an action against the defendants, who were officers of the Chemical Workers' Union. The central issue was whether a trade union, specifically one registered under the Trade Union Acts, had the legal capacity to bring an action for tort, in this case, an action for libel. The defendants

<sup>1974</sup> PETT v. GREYHOUND RACING ASSOCIATION LTD. (No. 2), [1970] 2 W.L.R. 256.

<sup>1975</sup> NATIONAL UNION OF GENERAL AND MUNICIPAL WORKERS v. GILLIAN AND OTHERS., [1946] K.B. 81.

argued that a registered trade union, not being a natural person or corporation, could not possess any legal powers or existence beyond what was explicitly conferred by Parliament in relevant statutes. They contended that the union had no capacity to sue in tort.

**ISSUES:**

1. Whether a trade union registered under the Trade Union Acts has the legal capacity to bring an action for tort, specifically an action for libel?
2. Whether the statutory framework, especially the Trade Union Act of 1871, granted legal personality and capacity to trade unions?

**JUDGEMENT:**

Therefore, a registered trade union is a lawful body entitled to sue in the courts, and the plaintiff union in this action for libel can properly rely on its objects as showing the proper scope of its activities notwithstanding that its objects are in restraint of trade. The appeal was dismissed, affirming that a registered trade union does have legal capacity to bring an action for tort, including defamation. The court clarified that the Trade Union Act of 1871 and subsequent legislative changes had granted trade unions legal personality and capacity, even if some of their objectives involved restraint of trade. Thus, the court applied the principles of *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants*<sup>1976</sup> and affirmed decision of *Birkett.J.*

**Ratio:**

The case was an appeal from Justice Birkett. In his decision, Justice Birkett held that a trade union does have legal capacity to bring an action for tort, including an action for libel. He pointed out that while a registered trade union is neither a natural person nor a corporation, it does have some legal existence, and it serves various functions, including promoting good relations between employers and employees. The Trade Union Act of 1871 was critical in this

context. Justice Birkett observed that this legislation validated and encouraged trade unions' activities, aiming to foster cooperation between employers and employees. He emphasized that this intention by Parliament attributed legal personality to trade unions and, therefore, they could sue in tort. Furthermore, the judge rejected the argument that because some of the trade union's objectives involved restraint of trade, it would be deemed an unlawful association. He cited the Trade Union Act of 1871 and later amendments, which legitimized trade unions, including those with some purposes in restraint of trade. Justice Birkett also noted that the ability to bring an action. Quoting dicta of Justice Birkett – "It being assumed that a trade union can sue in tort, I can see no ground for excluding the action of defamation. That is, to my mind, more than a sufficient reason against making libel an exception to the general rule that a trade union may sue in tort. The appeal must be dismissed with costs. The point decided in *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants* was that a registered trade union might properly be named as a defendant to an action."

Furthermore, heed must be paid to Page 83 of the judgement – "It is submitted that *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants*<sup>1977</sup> is both applicable to and conclusive of this case. The Trade Union Act, 1906, which provides that an action against a trade union for tort is not to be entertained by any court in no way affects its right to bring an action for tort."

**Student Comment:**

The case recognized that, despite being unique entities, trade unions possess some legal existence and capacity. This legal personality is attributed to them by legislation, particularly the Trade Union Act of 1871. This stood out to me as it was a very progressive decision and reaffirmed the weight the *Taff Vale Ry. Co. V. Amalgamated Society of Railway Servants* carried. Justice Birkett emphasized that the primary objective of this legislation was to validate and encourage

<sup>1976</sup> *Taff, supra* note 6, at 20.

<sup>1977</sup> *Taff, supra* note 6, at 20.

the functions of trade unions. It acknowledged the vital role that trade unions played in fostering cooperation between employers and employees, which was of fundamental public importance. In the context of capacity to sue and be sued, this case underscores the importance of legal recognition and protection for trade unions. It reinforces their role as legitimate entities with the right to seek legal redress when necessary. The ruling is a testament to the evolving legal landscape that acknowledges the pivotal role of trade unions in industrial relations and the protection of workers' rights. It serves as a milestone in defining and upholding the legal standing of trade unions in the United Kingdom.

