
(2017) 01 JH CK 0064
In the Jharkhand High Court
Case No : W.P. (L) No. 6691 of 2016

Abhay Kumar Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 46

Citation : (2017) 152 FLR 869 : (2017) 2 JCR 381 : (2017) 1 JLJR 538

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s Anil Kumar, Sr. Advocate, Abhishek Kumar, Sidhant, Advocate, for the Petitioner; JC to GP-IV, for the Respondent-State; Mr. V.P. Singh, Sr. Advocate, for the Respondent-Management; Mr. Rahul Kr. Gupta, Niyati Sah, Advocates, for the Respondent-Trade Union; Mr. Anoop Kr. Mehta, Advocate, for the Intervener

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.— Heard counsel for the parties.

2. Petitioner Abhay Kumar Singh is common in both the writ petitions while there are two other writ petitioners in WPC No. 5275/2015. Petitioners in WPC No. 5275/2015 approached this Court with a prayer to issue a writ in the nature of mandamus commanding the Respondents to start the process of election of Office Bearers of Respondent No. 4 - Union and conduct election of the Respondent No. 4 Union under the supervision and control of the Respondent Nos. 2 and 3 therein namely, Deputy Commissioner, East Singhbhum and Senior Superintendent of Police, East Singhbhum. Petitioners allege that the tenure of the Office Bearers of T.M.L. Drivelines Workers Union (Respondent No. 4 therein) had ceased. During pendency of the said writ petition, on the application made for intervention and impleadment of parties, the Union as well as Labour Commissioner - cum - Registrar, Trade Union, Government of Jharkhand was impleaded as Respondent No. 5 and 6. Notices were issued on the newly added

Respondents, whereupon the Union have appeared through their counsel in the matter. The Management Respondent No. 4 therein is also represented through their senior counsel Mr. V.P. Singh.

3. In the writ petition WPL No. 6691/2016, petitioner has made a prayer for setting aside the order dated 17.10.2016 as contained in Memo No. 1921 issued by the Respondent No. 3, where under amendment proposed in the bye-laws of the Respondent No. 4 - Union have been accepted, rejecting the objection of the petitioner.

4. Learned Senior counsel for the petitioner in the instant case has questioned the legality and correctness of the order impugned on the ground of being without jurisdiction. It is also being assailed on the ground that Deputy Labour Commissioner, Jamshedpur (Respondent No. 2) entrusted to undertake the inquiry by the Registrar, Trade Union, has submitted a report recommending the acceptance of the proposed amendment on behalf of the Respondent Union, to which the petitioner has not been given an opportunity to respond before the impugned order being passed.

5. It transpires from the submissions of the learned counsel for the parties that election of the Respondent Union has already taken place on 28.12.2016. Counsel for the Respondent Union has produced a copy of the memo no. 3022 dated 30.12.2016 issued by the Labour Superintendent-2, Jamshedpur addressed to the Sub Divisional Officer, Dhalbhumgarh in support thereof. According to the learned counsel for the Union, elections were held in a peaceful manner in the presence of the Executive Magistrate entrusted to ensure maintenance of law and order; a proper videography and coverage through CCTC cameras have also been undertaken; one Engineer Satish Kumar was deputed as observer by the Indian National Trade Union Congress (INTUC). Counsel for the petitioner has also sought to address the Court on the background of the controversy and the merits of the case.

6. Counsel for the Respondent Union, on the other hand, submits that the petitioner has an alternative remedy before the competent court of civil jurisdiction against the impugned order allowing amendment and the instant writ petition however challenging the amendment to the bye-laws of trade union, is not maintainable, unless they are susceptible to challenge on the available grounds of judicial review on the decision making process. He has referred to the statements made at paragraph-26 of the writ petition where the petitioner has stated that a General Body Meeting was called on 16.12.2016 by the Union under the Chairmanship of M.N. Roy proposed by R.K. Singh for the proposed amendment for change of name, address, election rules, etc. which was unanimously passed by the General Body Meeting on the same day. Annexure-3 has been enclosed in support thereof. It is submitted that once the proposed amendment have been allowed after due inquiry giving opportunity to the petitioner and others, there is no infirmity in the decision making process. It is further submitted that the petitioner, if so aggrieved, is entitled to approach the

competent Court of civil jurisdiction for assailing the same amendment.

7. Learned Senior counsel for the Respondent Management in WPL No. 5275/2015 submits that they have not been impleaded as party in the instant writ petition and have nothing to submit on the present grievances of the petitioner. Learned Senior counsel for the Management however submits that election of Union have already been held, which has been communicated to the Management as well.

8. Learned counsel for the Respondent State has however not received instruction in the matter as no direction was issued for filing counter affidavit as yet.

9. Learned Senior counsel for the petitioner has reiterated his submissions in rejoinder.

10. I have considered the submissions of the parties in the light of the material facts pleaded. As it appears, this petitioner along with two others had earlier approached this Court in WPL No. 5275/2015 with a prayer to direct the Respondents to start the process of election of Office Bearers of the same Respondent Union under the supervision and control of the Respondent Deputy Commissioner, East Singhbhum and Senior Superintendent of Police, East Singhbhum as have been done in the case of other similarly situated workers union in the said district. It appears that thereafter, election process was undertaken and has also been held on 28.12.2016 during pendency of these writ petitions. The impugned order has been assailed both on the grounds of merits as well as lack of jurisdiction of the Respondent No. 3 to allow such an amendment in the bye-laws of the Union acting upon the report of the Deputy Labour Commissioner, East Singhbhum, Jamshedpur. On a bare reading of the impugned letter dated 17.10.2016, it is apparent that the Additional Registrar, Trade Union has not issued the letter or taken the decision on his own. The letter itself is indicative of the facts that it is only a communication of the decision taken by the competent authority. There is presumption of regularity of official proceedings which the petitioner has not been able to dispel by any other cogent document on record. So far as the other grounds to assail the impugned decision is concerned, it appears from perusal of the report at Annexure-9 bearing letter no. 2451 dated 04.10.2016 that upon directions of the Labour Commissioner cum Registrar, Trade Union, Jharkhand, the said exercise was undertaken. It further appears that not only the Union, but the petitioner and others were also issued notices on 30.09.2016 to appear and adduce documents in support of their contention. Perusal of the impugned letter further indicates that both the parties appeared and advanced their respective contentions which have been taken note of as well. It therefore cannot be said that inquiry was conducted behind the back of the petitioner. In that sense, petitioner cannot also allege that the impugned decision suffers from violations of principles of natural justice. If the petitioner is aggrieved with the amendment allowed in the bye-laws of the Respondent Union on merits, it has an adequate remedy before the competent

Court of civil jurisdiction to assail the same. Such issue relating to assertion of facts and requiring scrutiny of bye-laws of trade union or the amendment proposed and allowed, need not be gone into in exercise of writ jurisdiction of this Court.

11. As has been noted herein-above as well, on account of election having been held by the Respondent Union, the writ petition WPL No. 5275/2015 has been rendered infructuous during its pendency. It is accordingly disposed of as such.

12. So far as writ petition WPL No. 6691/2016 is concerned, petitioner has failed to make out a case for interference under powers of judicial review of this Court under Article 226 of Constitution of India. Petitioner however is at liberty to assail the amendment allowed in an appropriate proceeding before the competent Court of civil jurisdiction. The writ petition is being disposed of without interfering in the impugned decision. I.A. No. 8426/2016 seeking intervention also stands disposed. I.A. No. 4089/2016 seeking stay of the proposed election has been rendered infructuous. Accordingly, it is disposed of as such.