
(2015) 02 JH CK 0114

In the Jharkhand High Court

Case No : Writ Petition(L) No. 5609 of 2014

Arun Kumar Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Trade Unions Act, 1926 — Section 6 (hh)

Citation : (2015) 02 JH CK 0114

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Anand Sen and Nagmani Tiwary, for the Appellant; Jai Prakash, A.A.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Chandrashekhar, J.—Seeking a direction to the Labour Commissioner-cum-Registrar, Trade Unions-respondent No. 2 for initiating the process of election of the office bearers of the Telco Workers Union-respondent No. 5, under the supervision and control of the Deputy Commissioner and the Senior Superintendent of Police, the present writ petition has been filed.

2. The petitioner No. 1 and the petitioner No. 2 claiming themselves employed with Tata Motors Limited raised a grievance with respect to continuance of the office bearers of the respondent No. 5, after completion of three years" period for which, the office bearers were elected. It is stated that the election for the office bearers of the Telco Workers Union was held on 10.05.2011 and the office bearers were elected for a period of three years however, they are still continuing in their capacity as the elected office bearers of the respondent-Union and the process for holding election has not even been notified.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioners submits that, the petitioners were members of Telco Workers Union however, they were expelled from the

membership of the Union because the petitioners raised their voice against the irregularities committed by the present office bearers of the Telco Workers Union. It is stated that vide order dated 20.10.2014, the Additional Registrar, Trade Unions has quashed the order of expulsion of the petitioners from the membership of the Telco Workers Union and their membership has been restored.

5. Reiterating the stand taken in the counter-affidavit, Sri K.N. Choubey, the learned Senior counsel appearing for respondent No. 5 submits that, the present writ petition is not maintainable. The prayer in the writ petition is for issuing a direction to respondent No. 2 for holding the election of Telco Workers Union which is a private body and therefore, no direction can be issued for holding the election of the respondent-Union. It is stated that the present writ petition has been filed relying on orders dated 11.02.2010 and 16.06.2012 passed by the Labour Commissioner-cum-Registrar, Trade Unions. Referring to order dated 30.04.2010 in W.P.(C) No. 947 of 2010 and order dated 06.02.2015 in W.P.(C) No. 6869 of 2012, it is submitted that, the foundation for filing the writ petition is no longer in existence and therefore, the writ petition is liable to be dismissed in limine. It is further submitted that, in view of subsequent developments, amendment in the Constitution of the Telco Workers Union was approved by the General Body and necessary communication for approval of the Registrar, Trade Unions was made on 07.10.2014 and unless, the amendments are approved by the respondent No. 2, election for the office bearers of the Telco Workers Union cannot be held.

6. Vide order dated 19.01.2015, the petitioners were permitted to serve Dasti Notice upon the respondents. On 28.01.2015, when the matter was listed again, the learned counsel for the petitioners referred to affidavit filed by the petitioners and submitted that the respondent Nos. 5 and 6 have refused to accept Dasti Notices. On 28.01.2015, other 2 writ petitions filed by Telco Workers Union were also listed along with the present Writ Petition. Though, respondent No. 5 has filed a counter-affidavit through respondent No. 6, respondent No. 6 has not entered appearance, though served.

7. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

8. From the materials brought on record, I find that on the application of the petitioner No. 1 and others, the respondent No. 2 heard the rival parties and vide order dated 16.06.2012 declined to enter the name of the office bearers of Telco Workers Union in Form-B Register. Challenging order dated 16.06.2012, the respondent No. 5 preferred W.P.(C) No. 6869 of 2012. In the said writ petition the intervention application filed by the petitioner No. 1 was allowed and he was added as a party respondent. The plea taken by the learned Senior counsel for the respondent No. 5 that the writ petition filed by the petitioners who are no longer members of Telco Workers Union is liable to be dismissed, merits no acceptance. The order of expulsion of the petitioners has been quashed by the respondent No. 2 vide order dated 20.10.2014 and it has not been brought on

record by the respondent No. 5 that the said order has been challenged by the respondent No. 5. In view of the fact that the petitioner No. 1 was a party in the proceeding before the respondent No. 2 and he has been added as a party in W.P. (C) No. 6869 of 2012, it cannot be said that the writ petition has been filed by a persona-non-grata. It is not in dispute that the tenure of the office bearers of the Telco Workers Union is for three years, commencing from 1st April of the first year to 31st March of the third year. In letter dated 20.02.2014, the General Secretary of the respondent No. 5 stated that the tenure of the Union would expire on 31.03.2014. And, it is a matter of record that the office bearers of the Telco Workers Union are still continuing in office. In so far as, the prayer in the writ petition for declaring illegal the further continuance of the office bearers of respondent No. 5 is concerned, I am not inclined to adjudicate the same because there is no foundation laid in the writ petition and the said payer of the petitioners is declined. In so far as, a direction for holding fresh elections is concerned, an order passed by this Court in W.P.(C) No. 1069 of 2014 whereby a direction has been issued to the Deputy Commissioner and the Superintendent of Police for holding election of Tata Workers Union has been relied by the petitioners. From the materials on record, I find that the petitioners have levelled allegations of irregularities committed by the office bearers of the respondent No. 5. On the complaint made by the petitioner No. 1 and others, the respondent No. 2 initiated a proceeding and finally declined to enter the name of the office bearers in Form-B Register. Though, order dated 16.06.2012 passed by the respondent No. 2 has been quashed in W.P.(C) No. 6869 of 2012, the fact remains that the petitioner No. 1 and other co-workers were complainants before the respondent No. 2. Reliance on order dated 30.04.2010 in W.P.(C) No. 947 of 2010 by the respondent No. 5 is misplaced. In the present case, the respondent No. 2 - Registrar, Trade Unions has not directed holding election of respondent No. 5. In *B.C. Sharma and Another Vs. M.L. Bhalla and Others*, , it has been held that the officer bearers who were elected for a definite term are under a solemn duty to ensure that elections are held before expiry of their tenure. In view of provision under Section 6 (hh) of the Trade Unions Act 1926, in the Constitution of the Telco workers Union, tenure of the office bearers has been fixed for three years. This Court has issued direction on several occasions to the Deputy Commissioner and the Senior Superintendent of Police for holding election of Tata Workers Union. I am of the opinion that the respondent No. 5 cannot be permitted to delay initiation of election on a plea that the respondent No. 2 has not approved the amendments in the Constitution of Telco Workers Union though, a communication was made on 17.10.2014. From the counter-affidavit filed by one Chandrabhan Prasad claiming himself as the General-Secretary of the Telco Workers Union-respondent No. 5, I do not find any averment in the counter-affidavit that he has been authorised for filing the counter-affidavit. No resolution of the Union authorising him to file the counter-affidavit has been brought on record. Even if the above deficiency is ignored, there is a serious lacuna in the affidavit filed by the said Chandrabhan Prasad on the ground of which, the counter-affidavit allegedly filed on behalf of respondent

No. 5 is liable to be ignored. In the counter-affidavit allegedly filed on behalf of the respondent No. 5, there is no averment that the Telco Workers Union-respondent No. 5 has resolved to oppose the writ petition filed by the petitioners and that the process of election of respondent No. 5-Union cannot be initiated unless, the respondent No. 2 approves the amendment in the Constitution of the Union. Leaving this aside, in view of the fact that the office bearers of the respondent No. 5- Union have continued for about one year beyond their tenure, a direction is issued to the Deputy Commissioner, Jamshedpur, East Singhbhum and the Senior Superintendent of Police, Jamshedpur for taking immediate steps for holding election of the Telco Workers Union.

9. Let necessary steps be taken within 2 weeks and the election of the office bearers of Telco Workers Union must be completed within 4 weeks, thereafter. The respondent Nos. 3 and 4 shall adopt the procedure which was adopted for holding election of Tata Workers Union.

10. The writ petition is disposed of with above direction to the respondent Nos. 3 and 4.