

(2002) 05 CHH CK 0011
In the Chhattisgarh High Court
Case No : Misc. Civil Case No. 38 of 2002

Badrudin Qureshi and Others	Vs	APPELLANT
B.V. Bhadraiyya and Others		RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Trade Unions Act, 1926 — Section 28, 28J

Citation : (2003) 3 LLJ 1051 : (2003) 3 MPHT 38

Hon'ble Judges : K.H.N. Kuranga, C.J.;Fakhruddin, J

Bench : Full Bench

Advocate : Rajiv Shrivastava, for the Appellant; Prashant Jayaswal, for Respondent Nos. 1 to 5, N.K. Shukla, A.A.G. and Sanjay K. Agrawal, Dy. A.G. for Respondent Nos. 7 and 11 and Sandeep Dubey, for Respondent Nos. 8, 9 and 10, for the Respondent

Judgement

Fakhruddin, J.—The applicants have filed this petition for clarification of the order dated 20-3-2001 passed by this Court in Writ Petition No. 39 of 2000 whereby this Court directed the Industrial Court to decide the Reference Case No. 13/ I.T.U. Act/2000.

2. The respondents herein are the members of Steel Workers Union, Shram Shakti Sadan, Sctor-6, Bhilai, which is a welfare body constituted u/s 28(4) of the Indian Trade Union Act, 1926 for taking care of the workers of the Steel Industries in Durg District. The elections for the office bearers of the Steel Workers Union were held in the year 1995-97. In the said election Shri Ravi Arya and Shri N.P. Sharma were elected as President and General Secretary respectively. Their term expired on 31-12-1997. Fresh elections were held in the year 1998 but the dispute persisted so far as the office bearers of the Union for the term 1998-2000, is concerned. It is worthwhile to mention that in the fresh election held in 1998 Shri S.S. Babu and Shri Shyamlal Sahu were elected as President and General Secretary respectively. The matter was agitated before the Industrial Court, against their election and the Industrial Court decided the same

by its order dated 20-4-2000.

3. According to the applicants the elections were held on 20, 21 and 22 October, 2000 in which Shri Badruddin Qureshi and Shri Gajendra Singh were elected as President and General Secretary respectively. Shri B.V. Bhadraiyya was elected as Vice President and Shri Rajesh Sharma was elected as Treasurer. One petition was filed before the Industrial Court u/s 28(J) of the Indian Trade Union Act, 1926 by the Steel Workers Union, Bhilai, Shri R.C. Arya and Shri N.P. Sharma against Shri Badaruddin Qureshi, Shri S.S. Babu, Shri Gajendra Singh, Registrar Trade Union, Indore, Registrar, Trade Union, Raipur and Assistant Labour Commissioner, Durg. The Industrial Court by its order decided as stated.

4. Thereafter Writ Petition No. 39 of 2000 was filed by Shri B.V. Bhadaraiya, Shri Rajesh Sharma, M.S. Nanda, Shri R.K. Shrivastava and Somnath Srivas on 21-11-2000 claiming the following reliefs:--

"7.1. That, the action of respondent No. 1 in registering the names of petitioner Nos. 1 and 2 as well as respondent Nos. 4 to 6 in the E Form Annexure P-1 be kindly declared as illegal and registration certificate issued by respondent No. 1 on 25-10-2000 be kindly quashed.

7.2. That, the respondent Nos. 4 to 6 and 7 to 8 be kindly directed not to interfere in the election process and the election for the term be kindly permitted to complete as per election programme issued by returning officer on 20-10-2000 Annexure P-V.

7.3. Respondent Nos. 4 to 6 and 7 to 8 be kindly directed not to disturb the peace and tranquility of industrial area of District Durg."

5. The aforementioned petition was decided vide order dated 20-3-2001. The operative part of the order is being reproduced as under :--

"I have made an attempt to see whether the matter can be finally heard and disposed of on merits by giving finding to all the issues raised in the present petition. After hearing Counsel representing the parties at some length, one thing seems to be clear to me that election was held by the General Council though as contended by Mr. Vyas, learned Counsel for the petitioner, it was not done by following procedure prescribed in this regard.

Be that as it may, the matter as regards the validity of the said election is now pending determination before the Industrial Court at Raipur, at the instant of respondent Nos. 7 and 8. It has been contended on behalf of the respondents that this writ petition is not maintainable inasmuch as an alternative remedy is available as the petitioners could have also approached the Industrial Court which is competent to decide the grievance of the writ petition. Mr. Vyas submitted that since the petitioner Nos. 1 and 2 were not elected according to the procedure laid down in this regard, they could not have approached the Industrial Court. In this regard certain decision are sought to be placed before this Court.

I am, however, of the view that it will be a difficult preposition for this Court to enter into all these issues of facts as regards the actual holding of the election and participation of the petitioner Nos. 1 and 2. It would be most convenient for the Industrial Court to determine every aspect of the grievance of all the parties concerned. In this view of the matter the petitioner Nos. 1 and 2 should not have any difficulty in placing their own grievance before the Industrial Court. Therefore, I do not wish to express any opinion about the decisions rendered by the M.P. High Court in the matter of interpretation of Section 28(J) of the Indian Trade Union Act (M.P. Amendment) Act, 1960 as to do so may prejudice the proceedings before Industrial Court. Hence, without giving any finding to the issues raised before me and the submissions made at the Bar today, I am of the view that it would be fair and reasonable if I dispose of this writ petition as follows :--

(1) The petitioner Nos. 1 and 2 shall be at liberty to approach Industrial Court to redress their grievances. In other words the petitioner Nos. 1 and 2 shall be at liberty to participate in the proceedings before the Industrial Court at Raipur;

(2) The petitioners shall also be permitted to file proceedings;

(3) After hearing all the parties the learned Industrial Court shall decide the matter on merits; and

(4) The petitioners shall appear before the Industrial Court at Raipur on 30-3-2001 with a copy of this order."

6. Against this order this MCC has been filed on 11-3- 2002 for clarification of the order dated 20-3-2001. In between Writ Petition No, 1871 of 2001 was filed by Steel Workers Union, Shri R.C. Arya and Shri N.P. Sharma against Industrial Court, Raipur, Shri Badaruddin Qureshi, Shri S.S. Babu, Gajendra Singh, Registrar, Trade Union, Indore, Registrar, Trade Union, Raipur, Assistant Labour Commissioner, Durg, Shri B.V. Badaraiya, Shri Rajesh Sharma, Shri M.S. Nanda, Shri R.K. Shrivastava, Shri Somnath Srivas and Managing Director, Bhilai Steel Plant. In this petition the following relief were sought:--

"7.1. The petitioner prays that order dated 3-8-2001 (Annexure P-1) passed by Industrial Court in Reference Case No. 13/ITU/1/2000, Steel Workers Union and two Ors. v. Badaruddin Qureshi and Ors. be kindly quashed.

7.2. The respondent No. 1 be kindly directed to decide the Reference Case No. 13ATU Act/1/2000 within time period fixed by this Hon"ble Court and if possible be kindly directed to decide within outer limit of two months from the date of order of this Hon"ble Court."

Interim order was passed on 8-11-2001 and it was further continued by order dated 13-12-2001. The petition was finally decided on 20-2-2002. The order passed by this Court on 20-2-2002 is reproduced as under :--

In this petition petitioners have prayed for quashing of the order dated 3-8-2001,

Annexure P-1 passed by the Industrial Court, respondent No. 1, in Reference Case No. 13/ITU/1/2000, Steel Workers Union and two Ors. v. Badruddin Qureshi and Ors. The second prayer in the writ petition is to direct the respondent No. 3 to decide the aforesaid reference case within the time period fixed by this Hon'ble Court and if possible to direct the Tribunal to decide the case within outer limit of two months from the date of the order of this Hon'ble Court.

After filing of the writ petition, this Court granted stay of Annexure P-1. The date of grant of interim order is 8-11- 2001 and till today it is operating.

Having regard to facts and circumstances of the case, I feel that it is appropriate to continue the interim order granted by this Court and direct the respondent No. 1 Industrial Court to dispose of the aforesaid reference case within one month from the date of receipt of a copy of this order after hearing all the parties.

Accordingly the petition is disposed of. Interim order granted by this Court is continued till disposal of the reference case by the respondent No. 1 Industrial Court and the respondent No. 1 is directed to dispose of the aforesaid reference case within one month from the date of receipt of a copy of this order after hearing all the parties.

7. The petitioners in the instant case have sought for the clarification of the order dated 20-3-2001 passed by this Court in W.P. No. 39/2000 on the ground that though it is held by the Industrial Court that it had no jurisdiction yet proceeding ahead with the matter in view of the order passed by this Court it went ahead with the matter. It is submitted that a reading of the entire order would show that in the facts and circumstances of the case the Tribunal has to consider and decide the matter. It was not intended that the matter would be adjudicated by the Tribunal though it had no jurisdiction. It is said that when the matter was sent by this Court vide order dated 20-3-2001 the Tribunal had to decide the same in accordance with law. It is note worthy that the order of this Court neither confers nor takes away the jurisdiction of the Tribunal in any manner. The clarification is therefore prayed on that ground.

8. We have perused the entire record produced by the parties and the orders passed by this Court in both the writ petitions mentioned above. So far as the order dated 20-3-2001 passed in Writ Petition No. 39 of 2000 is concerned, the clarification of the same is sought for.

9. In our opinion the Tribunal had to decide the case on merits in accordance with law. The word "merit" includes the jurisdiction as well and the relevant aspects of the matter. It is made clear this Court did not confer any jurisdiction nor did it take away the same. The jurisdiction is conferred only under the statute. The statute u/s 28J of the Indian Trade Union Act is self-sufficient, as the jurisdiction has been dealt with u/s 28 of the Indian Trade Union Act and other relevant provisions relating thereto. The High Court has not conferred any jurisdiction. So far as the question of jurisdiction is concerned, it is conferred by a statute and not by the High Court and therefore the Tribunal has to take note

of it.

10. The Industrial Court is constituted under the statute and there is no dispute about it. The Trade Union Act and M.P.I.R. Act only confer the jurisdiction. The Tribunal is vested with the power to decide whether it has jurisdiction or not while remitting the matter to the Tribunal this Court has not at all conferred any jurisdiction not already vested with the Tribunal. Vide order dated 20-3-2001 direction was issued to decide the matter within a month. The power to decide the question of jurisdiction is vested in it whether the matter falls within the purview of Section 28(J) of the Indian Trade Union Act or otherwise. Since in between the order dated 4-3-2002 has been passed by the Tribunal.

11. It is pertinent to note here that the order dated 4-3- 2002 has been assailed in W.P. No. 815/2002 on the ground that the Tribunal has utterly failed to see that in its order dated 20-3-2001 this Court has declined to record its findings on the submissions made before this Court for the singular reason that it may prejudice the case pending before the Industrial Court. Hence the Industrial Court was duty bound to decide the case without being influenced or prejudiced by the order of this Court and thus the Tribunal was not precluded from examining the question of jurisdiction.

12. We have heard the Counsel for the parties in Writ Petition No. 39/2000. A prayer has been made by the Counsel for both the parties that in view of the clarification made by this Court and in the facts and circumstances of the case the impugned order dated 4-3-2002 passed in Writ Petition No. 815/2002 may be set aside and the matter may be remanded back to the Tribunal for deciding the question as to the jurisdiction of the Tribunal. We have given the thoughtful consideration to this submission made.

13. Accordingly without expressing any further opinion we find it appropriate that the order dated 4-3-2002 has been passed mis-interpreting order passed by this Court on 20-3-2001. The position has now been clarified. The order dated 4-3-2002 as prayed for and agreed to by both sides is set aside and the matter is remanded back to the Tribunal. We leave it open to the Tribunal to frame issue regarding jurisdiction, hear the parties and decide the same afresh.

14. Accordingly, the order dated 4-3-2002 passed by the Tribunal is set aside. The matter is remitted to the Tribunal for being decided afresh in accordance with law.

15. Counsel for the parties submit that since the matter is being remanded, the time granted in W.P. No. 39/2000 may be extended.

16. As regards this joint prayer made by the Counsel for the parties, in the opinion of this Court, ends of justice will be served if direction is given to the Tribunal to decide the case as early as possible preferably within two months from the date of appearance of the parties. The parties to appear before the Tribunal on 15-5-2002.

17. In view of this order, Writ Petition No. 815/2002 stands disposed of.

18. Records of the Industrial Court, if received by the Registry, be sent back forthwith.

Copy of this order be placed on record of Writ Petition No. 815 of 2002.

Subject to the observations made above this MCC and Writ Petition No. 815 of 2002 stand disposed of.

Parties are entitled for certified copy of this order.