

(1991) 08 PAT CK 0026

In the Patna High Court

Case No : Civil Revision No. 212 of 1991 (R)

Bokaro Steel Workers" Union and Another

APPELLANT

Vs

Sri P.N. Tripathy and Others

RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0026

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 30th April, 1991 passed by Shri Narendra Kumer Lal, Additional District Judge, 6th Court, Dhanbad in Misc. Appeal No. 6 of 1991, whereby and whereunder the said learned court reversed an order dated 4-12-1990 passed by Munsif, Chas in Title Suit No. 120 of 1990 whereby and whereunder the said learned Court allowed an application for injunction filed on behalf of the Plaintiffs-Petitioners.

2. Bereft of all unnecessary details, the fact of the matter is; the Petitioner No. 1 is a Trade Union registered under the Trade Union Act, 1926. The Petitioner No. 2 claims himself to be the validly elected Joint Secretary of the Petitioner No. 1.

3. Admittedly, according to the constitution of the Petitioner No. 1, the election of a four tier body namely ; (1) General body, (2) Board of Representatives, (3) Executive Committee and (4) Steering Committee, which is required to be held every two years and the same should be completed before 30th June, subject to the proviso that the same may be postponed for extraordinary reason and if so decided by a special resolution adopted by the Board of Representatives in a meeting specially called for the said purpose but under no circumstances, the duration between two elections would exceed two years and three months.

4. Allegedly, an election was held on 24-10-1989 and the representatives of the various bodies had been functioning since then. Prior to the said election, an election was held on 5-8-1987. In the paid election. the Defendant-Opposite party No. 1 was elected as working President and Defendant Nos. 2, 3 and 4

were elected as Vice Presidents and Defendant Nos. 5 and 6 were elected as Joint Treasurers.

5. The Plaintiff-Petitioner No. 2 was allegedly elected as Joint General Secretary and in absences of a General Secretary, he has been exercising his powers of the General Secretary.

6. Allegedly, the Defendant No. 7, who was elected as a President of the Union on 5.8.1987 did not exercise any function in that capacity as he at the relevant time, was the Chief Minister of Bihar and later became a Cabinet Minister of the Central Government.

7 Allegedly, he was not elected or nominated as President of the Union in its election held in October, 1989. However, according to the Defendants, an election was held on 25.8.1990 which was conducted by an election committee constituted on 1.8.1990. The said fact was brought to the notice of all concerned by the Defendant-opposite party No. 1 by a letter dated 25.8.1990, which is contained in Annexure-II to the plaint.

According to the Plaintiffs, the said letter dated 25.8.1990 and enclosures are forged and fabricated documents.

8. It was further contended that the said letter was issued by the Defendant No. 1 for serving his personal end and in fact, some persons who were allegedly elected were not eligible to offer their candidature. It was further contended that in fact, a no confidence motion was tabled upon service of notice dated 13.8.1990 and in a meeting held on 29.8.1990, a vote of no confidence was passed against the opposite parties No. 1 to 6.

9. However, it appears that the Registrar, Trade Union having been informed about the election held in August, 1990, by an order as contained in his letter dated 15.9.1990 informed the Managing Director of Bokaro Steel Plant that the Defendants No. 1 to 10 have been elected office bearers of the Petitioner No. 1 in the election held on 24.8.1990.

10. The Petitioners contend that the said order is wholly illegal as he did not hear the concerned parties and passed the same without application of mind.

The said letter dated 15th September, 1990 is contained in Annexure-3 to the Civil Revision application.

11. The Plaintiffs, thereafter filed the aforementioned suit and although no relief was claimed against the Defendant Nos. 11 and 12, but by way of abundant precaution, an application under Sub-Section 2 of Section 80 of the CPC was filed on 23.11.1990 praying therein the permission of the court to institute the suit on account of emergencies with the leave of the court without serving any notice upon the Defendants No. 11 and 12 as required under Sub-Section 1 of Section 80 of the Code of Civil Procedure.

12. In the said suit, the Plaintiff filed an application for injunction which is

contained in Annexure-4 to the Civil Revision application praying inter alia, therein that the Defendants No. 1 to 10 and their associates be restrained from representing, functioning, negotiating, interfering, participating, corresponding, collecting any subscription from employees of Defendant Nos. 13 and 14, and other authorities, operating any Bank account relating to Bokaro Steel Workers Union in any manner and in any capacity whatsoever relating to Union or interfering with any matter in relation to the Union before Labour Court, Tribunals, Conciliation proceedings to participating in NJCS for Steel Industry, or in any Committee of Defendant Nos. 13 and 14 or any authorities and have any access into the office premise of the Union and further restraining Defendant Nos. 13 and 14 in negotiating, corresponding, discussing, opting and/or nominating in any committee/seminars and paying any Union subscription collected from the employees members to Defendant Nos. 1 to 10 and their associates and giving effect to letter dated 15.9.1990 issued by the Defendant No. 11 to Defendant No. 14 and in any manner; and further restraining Defendants No. 1 to 10 and their associates in interfering with functions of Plaintiff-Union through their elected representatives as declared on 24-10-1989 excluding Defendant Nos. 1 to 6 and in meantime grant ad-interim injunction accordingly.

13. A show cause was filed by the Defendant Nos. 1 to 8 wherein holding of any election on 24.10.1989 was denied. It was further contended that they were validly elected as officer bearers of the Petitioner No. 1-Union in the election held on 24.8.1990 which was done under the supervision and control of the election committee consisting of Shri Damodar Pandey Ex-M.P., Sri Rajendra Prasad Singh M.L.A. and Shri B.N. Mishra, an employee of Bokaro Steel Plant.

14. According to the said opposite parties, the Petitioner No. 2 had falsely described himself as a Joint General Secretary of the Petitioner No. 1-Union.

In the said show cause, the opposite party Nos. 1 to 8 further brought to the notice of the Court various other litigations which had been instituted by the Defendant No. 9 or the Plaintiffs and some of which are pending in the said court.

15. In the said suit, an order of ad-interim injunction was passed on 4.12.1990 as a result whereof, the Defendant Nos. 1 to 10 and 13 and 14 were directed to be restrained, as prayed for in the Plaintiffs-petitioners' application for injunction filed on 23.11.1990.

By an order dated 22.12.1990, the learned Munsif after the show causes were filed by all the concerned Defendants made the ad-interim order of injunction absolute.

16. The learned Munsif upon consideration of the respective cases of the parties came to the conclusion that three factions having been claiming themselves to be the officer bearers: one led by Defendant No. 9, the second led by Defendant No. 1 and third led by Plaintiff No. 2 on the basis of the purported elections held on 9.8.1987, 24.8.90 and 24.10.1989 respectively.

17. The learned Munsif further held that the order passed by the Registrar, Trade Union was illegal and the said order can be challenged in a suit, particularly, in view of the order of this Court dated 11.10.1990 passed in CWJC No. 2004 of 1990 (R), wherein it was directed:

The learned Counsel is permitted to withdraw this application in order to challenge the order as contained in Annexure-3 in Title Suit No. 87/90 which is pending in the court of Munsif, Chas.

18. The learned Munsif in the operative portion of his order held:

Considering the above facts and circumstances and discussions, it is apparent to me that as this Plaintiff has got a good prima facie case for ad-interim injunction as prayed for if they are not allowed the irreparable injury happens to the Plaintiff which cannot be compensated in terms of money. About the balance of convenience is concerned, it is settled principles of law that when the prima facie case became proved the balance of convenience also lies in their favor.

19. The Defendant Nos. 1 to 8 being aggrieved by and dissatisfied with the said order, preferred an appeal before the District Judge, Dhanbad which was registered as Misc. Appeal No. 6 of 1991.

It appears that therein an application was filed for grant of stay of operation of the order of injunction but the learned 6th Additional District Judge, Dhanbad, in whose court the said appeal was transferred for disposal, rejected the said application.

20. By reason of the impugned order dated 30th April, 1991, the learned Court of appeal below however allowed the said appeal and vacated the order of injunction.

21. Mr. N.K. Prasad, the learned Counsel appearing on behalf of the Petitioners submitted that the learned Court below committed a material irregularity in passing the impugned order in so far as it did not consider any of the documents relied upon by the court of Munsif nor did it meet the reasoning's of the trial court.

22. The learned Counsel further submitted that the reasonings adopted by the learned Court below in reversing the order of temporary injunction passed by the learned trial court is wholly perverse.

23. It was further submitted that the opposite party No. 12 being a statutory authority was bound to apply his mind while exercising his jurisdiction u/s 28(2) of the Trade Union Act and as he passed the said order without hearing the Petitioners the same being wholly illegal, it must be held that a prima facie case was made out in favour of the Petitioners for grant of an order of injunction.

The learned Counsel, in this connection has relied upon a decision in *Mukund Ram Tanti v. S.I. Raza, Registrar, Trade Unions, Bihar Patna and ors.* (AIR 1962 Pat 368).

24. The learned Counsel further submitted that from a perusal of the order passed by the appellate court, relevant portions whereof are at pages 90 to 93 of the brief, it would appear that he reversed the order of injunction passed by the learned Munsif only on technical grounds, namely (1) no notice u/s 80 of the CPC was served upon the Defendant Nos. 12 and 13, (2) in a suit filed by the Defendant No. 9 being Title Suit No. 67/90 and Title Suit No. 87 of 90 no order of injunction was passed and that the order of ad-interim injunction was barred under the principles of resjudicata; (3) in view of the letter of Registrar, which is contained in Annexure-3 to the Civil Revision application, the Defendant had already been acting as office bearers of the Petitioner No. 1 Union, and thus the said order having been already given effect to, the same should be allowed to be acted upon.

25. It was further contended by Mr. Prasad that there is nothing to show that in fact, the opposite party Nos. 1 to 8 entered into any negotiations or settlements with the opposite party Nos. 13 and 14 and the two purported agreements referred to in the counter affidavit filed by the opposite party Nos. 1 and 2 having been executed in March, 1991, the same should not be taken into consideration at all for any purpose.

26. It was further submitted that perversity of the order passed by the learned Court of appeal below would be evident from the fact that he relied upon a decision of Ravi Kiran Jain Vs. Bar Council of U.P. and Others, , wherein it was held that the General Parliamentary election and Assembly election of the country can not be held because of natural calamities, in view of the provisions of the Section 21 of the General Clauses Act.

27. Mr. A.K. Sinha, the learned Counsel appearing on behalf of the opposite party No. 9 supported the contentions of Mr. N.K. Prasad and submitted that the letter dated 15.9.1990 as contained in Annexure-3 to the Civil Revision application issued by the opposite party No. 12 being illegal, the same could not have been directed to be implemented.

28. Mr. A.K. Tripathy, the learned Counsel appearing on behalf of the opposite party Nos. 1 to 8, on the other hand, submitted that the Civil Revision application is not maintainable at all, inasmuch as, the impugned order passed by the learned Court of appeal below in allowing the appeal filed on behalf of the opposite parties No. 1 to 8 cannot be said to be suffering from any jurisdictional error.

29. It was further submitted that the learned Munsif evidently committed an illegality inasmuch as, he did not apply his mind with regard to the two basic principles of injunction namely, balance of convenience and irreparable injury and proceeded to pass the order of injunction only because he found a prima facie case in favour of the Plaintiff.

30. According to the learned Counsel, the learned Court of appeal below although held that it cannot be said with "definiteness" that the Plaintiff was able to

establish any prima facie case in his favour but he declined to grant order of injunction upon considering the question of the balance of convenience and irreparable injury. He, however, held that in view of the fact that even INTUC which is a parent organisation having recognised the opposite parties No. 1 to 8, it can not be said that the Plaintiff has been able to make out any prima facie case for grant of an order of injunction.

31. The learned Counsel further submitted that the learned trial court relied upon the photo copies of documents which were produced before it, although, the same were challenged to be forged documents and despite the fact that the Plaintiffs were called upon to produce the original thereof, the same were not produced, and thus the learned Munsif should not have placed any reliance thereupon.

32. The learned Counsel further submitted that admittedly six of the opposite parties were elected as office bearers of the Union even in the election which allegedly took place on 24.10.1989 and thus if the story of the Plaintiff that a vote of no confidence was passed as against them is disbelieved, in such an event they are entitled to continue to represent the Union.

The learned Counsel submitted that after 24.8.1990 neither the Petitioner No. 2 nor Sri O.P. Gupta carried out the functions of representing the Union at all.

In support of its various contention, the learned Counsel has relied upon the decision of Supreme Court in *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, , *The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another*, , AIR 1989 29 (SC) and *Anandi Kumar and Ors. v. Subansh Jha and 35 Ors.* (1980 B.L.T. 56).

33. With regard to the jurisdiction of the Registrar, Trade Union, the learned Counsel had relied upon a decision of the Supreme Court in *North Eastern Railway Employees Union and Others Vs. IIIrd Additional District Judge, Farukhabad and Others*, .

34. From the facts as noted hereinbefore, it is evident that the question which requires consideration in this case is absolutely short.

35. The court of Munsif held that the Petitioners have made out a prima facie case for grant of injunction as they have been able to prove that they are validly elected in the election held on 24.10.1989 and prima facie, the election held on 24.8.1990 was not valid.

36. However, the learned Court of appeal below observed :

I accordingly hold that it cannot be said with definiteness at this stage that the Plaintiff was able to establish any prima facie case in his favour.

37. It is, therefore, evident that both court below were required to consider the question as to whether an order of injunction should be granted in favour of the Petitioners or not on the touchstones of the balance of convenience and

irreparable injury.

38. In this case, it is not in dispute that more than 10,000 employees who work in the establishments of opposite party Nos. 13 and 14 are the members of the Petitioner No. 1.

The question of balance of convenience will have to be judged in a case of this nature not from the angle as to whether the order of injunction will be beneficial personally to the Petitioner No. 2 or the opposite party Nos. 1 to 10, who claim themselves to be the office bearers of the Union but in terms of interest of the workmen who are large in number.

39. In a case of this nature, in my opinion, the interest of the workmen of the opposite party Nos. 13 and 14 who are members of the Petitioner No. 1-Union, must receive the utmost consideration of court in the present day context where the participation of the labour in the management of the industry plays an important role and thus the function of the office bearers of the Union who represent the Union before the Management (s) as also before various authorities whether statutory or not, can not be minimised.

40. Rival claims have been made by the parties to the suit relating to validity of one election or the other. The same has to be decided in the suit itself.

In law, however the Registrar, Trade Union has been held to possess such power by necessary implication as it is necessary for him to exercise his statutory duty to enter the names of validly elected representative of a Union in the register maintained by him. This position in law is neither denied nor disputed.

41. From a perusal of Annexure-3 to the Civil Revision application, it is evident that such a question was raised before the opposite party No. 12 and he decided the said question in favour of the opposite party Nos. 1 to 10.

42. It is true that the order passed by the Registrar, Trade Union has been questioned on various grounds but from the prayer portion of the petition for injunction filed on behalf of the Petitioners before the learned trial court, it does not transpire that any prayer was made therein to direct the parties concerned not to act pursuant to or in furtherance of the said order.

In absence of such a prayer, there is absolutely no reason as to why the same shall not be acted upon unless it is set aside.

43. The question as to whether the jurisdiction of the civil court is ousted by the necessary implication in view of the provisions of the Trade Union Act may be raised in the suit as an issue to the said question did not fall for consideration for the learned Munsif at that stage inasmuch as, as noticed hereinbefore the operation of the order as contained in Annexure-3 passed by the opposite party No. 2 was not sought to be stayed by grant of an order of injunction or otherwise at the instance of the Plaintiffs.

44. Thus, the said order remains valid unless the same is declared invalid or

inoperative.

Further whether legally or otherwise, such an order has already been issued, the effect whereof is yet to be considered. In terms of Section 114 of the Evidence Act, an order passed by a statutory authority will be presumed to have been passed after due compliance of all the procedures required therefor. Such a presumption can be raised by a Court of law even while considering the matter of injunction.

45. From a perusal of the application for injunction filed on behalf of the plaintiffs-Petitioners, it would appear that they have not stated anything in details as to how and in what manner they would suffer irreparable loss and injury, if the order of injunction is not passed in their favour. They have also not stated as to how the balance of convenience lies in favour of the Plaintiffs in the matter of grant of injunction.

In their application for injunction, it was merely stated that:

That the Plaintiff No. 1 is a recognised Union representing very large number of members in the important Public Sectors like Bokaro Steel Plant, Hindustan Steel Works Construction Ltd. Ferro Scrap Nig- gam Ltd. and other Companies and Contractors and the Union and its members will suffer irreparable loss and injury in case the injunction as prayed is not granted.

That the balance of convenience lies in favour of the Plaintiffs in granting injunction as prayed for would defeat the very purpose of filing the suit.

46. The learned Munsif, as noticed hereinbefore, did not consider the question of balance of convenience and irreparable injury at all. The learned Munsif thought that once a prima facie case is made out by the Plaintiffs for grant of an order of injunction, the same should be granted as a matter of course.

47. The reasonings adopted by the learned Munsif, to say least, was wholly perverse. On the other hand, the learned Court of appeal below albeit in a cryptic manner very emphatically considered the question of balance of convenience and irreparable injury in the impugned order holding:

Regarding the balance of convenience, admittedly, the election held on 24.8.1990 has been given recognition even by the Registrar of Trade Union who had been given statutory power to decide the dispute between the rival unions as well as the All India Trade Union Congress to which the Union is affiliated and also by the management of the Bokaro Steel Plant and by all other concerned department of the government and different factories. It will, therefore, be not proper at this stage to change the course of events by superimposing any orders of this Court at this stage which obviously for the reasons, aforesaid, the court is not in a position even to come to any categorical findings as to which of the election claimed by the rival faction was legal or illegal. The question of irreparable loss to the Plaintiff does not arise in this case because the Plaintiff No. 2 has already been left out of the race by the parent organisation i.e. INTUC.

Thus, I find that there is neither any prima facie case nor any balance of convenience nor question of any irreparable loss in favour of the Plaintiff-Respondent.

48. It is now a trite law that the court while granting an interim injunction will be guided by the question of convenience or in convenience and will look at two things. It will first see whether there is a bonafide contention between the parties and then on which side, in the event of obtaining a successful result to the suit, will be the balance of convenience, if the injunction do not issue.

A comparative study of the consideration of balance of convenience and inconvenience in the event injunction is granted or is to be refused has to be made.

49. The burden to prove that the balance of inconvenience which would be suffered by him would be upon the Plaintiff. He, thus must make out a case of a comparative inconvenience entitling him to the interference of the court.

50. The learned Munsif thus failed to exercise his jurisdictional discretion and weigh the amount of substantial mischief done or threatened to the Plaintiff and compare with that of the injunction, if granted would inflict upon the Defendant.

51. This case, as noticed hereinbefore is not only to be reviewed from the view point of personal gains or loss of the Plaintiff No. 2 vis-a-vis the Defendant Nos. 1 to 8 but the interests of the workmen in general have got to be considered.

If an Order of injunction, as prayed for, is granted, the Defendant No. 1 to 8 would be restrained from doing anything in the matter of representing the workmen despite the fact that the election held on 24.8.1990 has prima facie been held to be valid by the Registrar of the Trade Union and in respect whereof, as noticed hereinbefore, no prayer for injunction has been made.

52. Even in such a case, thereby the plaintiff No. 2 by himself cannot represent the workmen as it is the case that Defendant Nos. 1 to 6 who were validly elected" in the election held on 27.10.1989, no longer enjoy the confidence of the workmen.

53. Mr. N.K. Prasad has not placed before me any material for the purpose of showing that in fact, vote of no confidence has been passed as against Defendant Nos. 1 to 6.

In such an event, therefore, the Defendant Nos. 1 to 6 continue to be the office bearers of the Petitioner No. 1 Union; even if it be conceded for a moment and for the sake of argument that the election held on 24.8.1990 was prima facie illegal. In this situation, the learned Court of appeal below can not be said to have committed any illegality in holding that the balance of convenience lies in favour of refusal to pass an order of injunction as at least the parent organisation of the Petitioner No. 1 as also the Registrar of Trade Union who is a statutory authority held in favour of the opposite party Nos. 1 to 8.

54. In the event, a settlement is entered into in course of the conciliation proceedings or by way of tripartite settlements by and between the management and the Petitioner-1-Union whether represented by the Petitioner No. 2 or the opposite parties No. 1 to 6, the result would be the same inasmuch such settlements would abide by the result of the suit.

55. The opposite parties have contended, which fact has not been disputed by the Petitioners that even recently they have entered two settlement with the Bokaro Steel Plant of Steel Authority of India Ltd. one of which is contained, in Annexure-A to the counter affidavit filed on behalf of the opposite party Nos. 1 to 8.

Prima facie, therefore, the opposite party Nos. 1 to 8 has been recognised by the opposite party No. 13 as also by the Deputy Labour Commissioner, Government of Bihar.

56. Taking thus all facts and circumstances into consideration, I am of the view that balance of convenience lies in refusal to grant an order of injunction in favour of the Petitioners.

57. So far as question of irreparable injury is concerned, the same must mean a substantial injury which can not be compensated in terms of money.

58. The question as to whether the Plaintiffs in the event of refusal to grant an order of injunction in his favour would suffer irreparable injury or not would depend upon the facts and circumstances of each case.

59. The petitioner No. 2 does not say that he would suffer from irreparable injury in the event, the prayer for injunction is refused.

59. However, in the event, such an order of injunction is granted, the workmen in general would suffer irreparable injury, inasmuch as, there would be no authority, who can represent them either before the opposite party Nos. 13 and 14 or before the authorities concerned inasmuch as, by now in view of the order passed by the opposite party No. 11, opposite party Nos. 13 and 14 have been recognising only the office bearers who had been elected in the meeting held on 24.8.1990.

In such a situation, a state of stalemate will come into being which would bring in sufferings of the workmen in general.

60. In *Hazrat Surat Sah v. Abdul Sabed JT 1988 (4) 232*), it has been laid down that irreparable injury means such injury which can not be compensated in terms of money and if there is no irreparable injury there is no question of grant of injunction.

61. For the views, which I have taken, in my opinion, it is not necessary to consider the other submissions made on behalf of the parties. However, I am of the view that in the interest of justice, the hearing of the suit must be expedited.

The learned Munsif, Chas is hereby directed to dispose of the suit with utmost expedition and not later than two months from the date of receipt of a copy of this order.

62. All the parties, if they have not yet filed their written statements would do so within two weeks from the date of receipt of a copy of this order.

63. So far as the amount of subscriptions collected by the Defendant Nos. 1 to 8 are concerned, they shall keep accounts therefore and the same if required by the court shall be produced before it for perusal and verification by the Plaintiff No. 2 or the Registrar of the Trade Union. The Defendant Nos. 1 to 8 shall not also make any capital expenditure till the disposal of the suit.

64. This application is, therefore, dismissed with the aforementioned observations and directions.

In the facts and circumstances of the case, there will be no order as to costs.