

(2007) 06 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C) No. 4499 of 2007

C.P. Singh and Others

APPELLANT

Vs

Uttريا Railway Mazdoor Union and Others

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Citation : (2007) 06 DEL CK 0020

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Neeraj Kishan Kaul, C.D. Singh and Sunny Chaudhary and Maninder Singh and Kirtiman Singh, in CM No. 8523/200, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioners, 5 in number, pray that orders dated 23.5.2007 and 30.5.2007 passed by the Registrar, Trade Unions

be quashed and further directions be issued to him to prepare a fresh voters" list and thereafter conduct elections for the posts of office bearers in

the central council of respondent No. 1 trade union. First 3 petitioners are the ex office bearers of respondent No. 1. The remaining 2 petitioners

claim to be its members. It is claimed by the petitioners that the applicable bye-laws of respondent No. 1 envisage a 3 tier system i.e. central

council, divisional council and branch council to manage the affairs of respondent No. 1 and its divisions and that elections to the posts of office

bearers has to be as per the constitution, rules and bye-laws of respondent No. 1. It is stated that respondent No. 1 has 118 branch councils. It is

stated that delegates of the branch councils participate in the election process of the central council. Thus, a proper and valid conduct of elections

at the branch level is a sine qua non for Constituting a valid voters list to elect office bearers of the central council. It is stated that vide order dated

23.5.2007, the Registrar, Trade Unions has mechanically adopted the voters" list prepared by Justice Devinder Gupta (Retd.), a former Chief

Justice of the Andhra Pradesh High Court, which is stated to in violation of the bye-laws of respondent No. 1. It is stated that a learned Single

Judge of this Court had adversely commented upon the said voters" list. It is stated that the consequential order dated 30.5.2007 notifying

25.6.2007 as the date of poll has Therefore to be quashed.

2. Brief backdrop facts, relevant to be noted, for adjudicating the issue are that elections to elect the office bearers of the central council of

respondent No. 1 are required to be held every 3 years. The last election was held on 4-5.7.2002. Thus, the term of the office bearers ended on

4-5.7.2005. Fresh elections could not be held due to inter se dispute and resultant litigation between the 2 groups.

3. Proceedings were initiated in this Court and the High Court of Judicature at the Allahabad. These proceedings related to the issue of finalization

of the list of eligible voters to elect the office bearers of the central council.

4. Vide batch of writ petitions, lead matter being WP(C) No. 10251-55/2005, a list of central council members i.e. persons eligible to vote as

circulated on 24.5.2005 was challenged. By consent of parties, Justice Devinder Gupta (Retd.) a former Chief Justice of the Andhra Pradesh High

Court was appointed to conduct the elections after finalizing the voters" list.

5. Pursuant to the consent order passed, Justice Devinder Gupta (Retd.) finalized a list of voters and submitted a report to the Court. The list as

finalized was challenged. Vide order dated 27.3.2006, the batch of writ petitions were disposed of noting that the petitioners had withdrawn their

consent and that a dispute pertaining to the affairs of the Union could not form the subject matter of a writ proceedings. It was held that the

appropriate forum where the disputes could be adjudicated would be a Civil Court. In para 19 of the order dated 27.3.2006 it was noted that a

number of serious, not frivolous, objections have been raised against the list.

6. From an order passed by the High Court of Judicature at Allahabad proceedings reached the Supreme Court. Civil Appeal No. 3953/2006

was decided by the Supreme Court on 6.9.2006. The said order relates to the

issue as to who would conduct the elections to the office bearers of the central council of respondent No. 1. Noting that elections were overdue, vide order dated 6.9.2006, Supreme Court appointed the Registrar, Trade Unions as the administrator of respondent No. 1 and empowered him to conduct elections to the central council of respondent No. 1. It was directed by the Supreme Court that any dispute or difference in regard to the voters' list shall also be determined by the Registrar, Trade Unions.

7. Order dated 27.3.2006 passed by the learned Single Judge of this Court deciding WP(C) No. 10251-55/2005 and connected writ petitions was challenged before a Division Bench of this Court. The said appeal being LPA No. 596-600/2006 was disposed of by the Division Bench vide order dated 24.4.2007, holding that in view of the directions issued by the Supreme Court nothing remained for adjudication in the matter.

8. Acting as administrator of respondent No. 1, Registrar, Trade Unions took over custody of the relevant record and possession of the head office of respondent No. 1. He proceeded to finalize the voters' list. Whereas one group prayed that the voters' list prepared by Justice Devinder Gupta (Retd.) be adopted the other group opposed the prayer and requested Registrar, Trade Unions to prepare a fresh list.

9. The Registrar, Trade Unions considered the objections and opined that Justice Devinder Gupta (Retd.) had dealt with the objections which were pressed by the other group with prayer that a fresh voters' list be prepared. He held that since Justice Devinder Gupta (Retd.) had already dealt with the matter and he was of the opinion that no useful purpose would be served to de novo examine the objections, vide order dated 23.5.2007 Registrar, Trade Unions adopted the same list. Thereafter, he issued a notification on 1.6.2007 notifying the schedule for the ensuing elections. In between, he issued the order dated 30.5.2007 notifying that the poll would be held on 25.6.2007.

10. Writ petitions were filed in the Allahabad High Court raising a challenge to the order dated 23.5.2007. On 7.6.2007 following order was passed:

Sri Govind Saran, Advocate accepted notice on behalf of respondent Nos. 1 and 3 and Sri Ashok Kumar Singh, Advocate accepts notice for

respondent No. 2. The petitioner is permitted to serve notice to the respondent No. 4. Steps be taken within a period of one week List thereafter.

In the meantime, liberty is given to the petitioner to file an objection against the order passed by the Administrator dated 23.5.2007. If such

objection is filed the same shall be decided by a speaking and reasoned order within a period of one week from the date of filing of the objection.

It is provided that election as notified may be held but the final result may not be declared.

11. The instant writ petition was filed on 5.6.2007, a date after the notification dated 1.6.2007 was issued by the Registrar, Trade Unions.

12. In my considered opinion, the instant writ petition has to be dismissed on various counts.

13. Firstly, as opined by the Division Bench of this Court vide order dated 24.4.2007 in LPA No. 596-600/2006 the conduct of elections was

vested in the Registrar, Trade Unions by the Supreme Court vide order dated 6.9.2006 with a clear caveat that in case of any dispute it would be

open to the parties to approach the concerned High Court for requisite directions. The concerned High Court was held to be the High Court of

Judicature at Allahabad. The Division Bench has categorically held as under:

The order of the Supreme Court is clear and explicit which state that if there be any necessity it shall be open to the parties to approach the

concerned High Court for requisite directions. When it is stated that? it shall be open to the parties to approach the concerned High Court? it

necessarily speaks of the High Court which had rendered the decision against which the SLP was filed. If any clarification is necessary in respect of

the order of the Supreme Court it would be necessary for the applicant to move an appropriate application before the competent court. We are of

the considered opinion that this Court cannot pass an order or clarification as sought for by the applicant.

14. Secondly, recourse has already taken by some persons who are aggrieved by the order dated 23.5.2007. They have filed a petition before the

High Court of Judicature at Allahabad. As noted herein above, the Allahabad High Court is already seized of the issue. Thus, the concerned High

Court i.e. the High Court of Judicature at Allahabad having taken cognizance of the issue pertaining to the finalization of the voters' list, the

principle of comity requires this Court to adopt a hands off approach.

15. Thirdly, it is not a case where Registrar, Trade Unions has mechanically adopted the list of eligible voters prepared by Justice Devinder Gupta

(Retd.). The Registrar, Trade Unions adopted the said list as a draft list and after hearing objections to the same has proceeded to pass a detailed

order dated 23.5.2007 giving reasons as to why he has adopted the said list. Thus, the case projected in the petition that the Registrar, Trade

Unions could not have adopted the list prepared by the Justice Devinder Gupta (Retd.) as if the same was a finalized list is without any substratum.

16. I may note that the Registrar, Trade Unions has incorrectly recorded that the list prepared by Justice Devinder Gupta (Retd.) has been

accorded a judicial sanction. This observation is incorrect inasmuch as far from according a sanction to the list, a learned Single Judge of this Court

had noted that there were serious objections raised to the list. But, said incorrect recording of a fact does not vitiate the order dated 23.5.2007

inasmuch as the Registrar, Trade Unions has independently scrutinized the list and has dealt with the objections filed thereto. The election process

having commenced post finalization of the voters" list by issuance of the notification dated 1.6.2007 notifying the schedule for conduct of elections,

law leans against interference in the election process requiring all electoral disputes to be adjudicated at the post election stage.

17. Lastly, as held by the learned Single Judge of this Court in his order dated 27.3.2006 writ remedy is not available where substratum of a

dispute relates to the affairs of a Registrar, Trade Unions. It has been opined that appropriate remedy is by way of suit. More so, for the reason,

nature of dispute pertaining to finalization of the voters" list, in the instant case, requires adjudication of disputed questions of fact.

18. The writ petition is dismissed.

19. No costs.