

(2008) 05 DEL CK 0191

In the Delhi High Court

Case No : Regular First Appeal (OS) 21-22 of 2006 and C.M. 5583 and 6424 of 2008

Delhi State Electricity Workers" Union and Another

APPELLANT

Vs

Kuldeep Kumar and Another

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Citation : (2008) 104 DRJ 342

Hon'ble Judges : V.K. Shali, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Raman Kapur Manish Kumar and Amit Kumar, for the Appellant; Rajesh Pathak, for Respondent No. 1, R.N. Mittal and Akanksha Verma, for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This regular first appeal arises from the decision of the learned Single Judge dated 28th February 2006 in Civil Suit (OS) No. 1011/2004. The appellants/plaintiffs had filed the suit for declaration and permanent injunction against the respondent No. 1/defendant No. 1 Kuldeep Kumar. The appellant No. 1 is the Delhi State Electricity Workers" Union, stated to be a recognized Union, and the appellant No. 2 is the President of the appellant No. 1. The respondent No. 2 is the Registrar of the Trade Union.

2. The undisputed facts of the case as summarized up by the learned Single Judge are as follows:

(a) The Delhi Vidyut Board was unbundled with the result that there was changed/amendment in the name and constitution of appellant No. 1 as it originally stood. The appellants claim to be looking after the interests of workmen in various electricity generation, transmission and distribution companies operating in the National Capital Territory of Delhi. The dispute really arises from the meeting called to hold the elections on 21st July 2004. It is not in

dispute that there was no adequate quorum for holding the meeting and the meeting was adjourned by half an hour. It is not in dispute that the adjourned meeting could be held even if the quorum was not present. The quorum provided for a general meeting as one-fourth and the relevant Clause is 13 (b) of the constitution, which is as under:

13. General Meetings:--The General Meeting of the Union shall be held after every two years, before the end of July to transact the following business:

(b) The quorum of the General Meeting shall be 1/4th of the total membership on the rolls. No quorum is necessary for an adjourned meeting but in the adjourn meeting no business other than the agenda of the original meeting shall be discussed.

(b) The appellant claimed that respondent No. 1 was indulging in activities which were anti-Union and thus a meeting of the General Council of the appellant Union was called on 19th December, 2003 when respondent No. 1 was expelled from the membership of appellant No. 1 Union and this decision was also conveyed to BSES as per the letter dated 15th January 2004. The respondent No. 1 is stated not to have challenged the said decision. The General Secretary of the appellant Union is stated to have issued a notice dated 16th July 2004 for holding a meeting on 21st July 2004 only thereafter.

(c) The respondent No. 1 is stated to have unauthorisedly used the letterhead of appellant No. 1 Union to address the letter dated 9th August 2004 claiming to be its Vice President and calling a meeting to discuss the same agenda which had already been taken up on 21st July 2004. The meeting was held on 26th August 2004 wherein the respondent No. 1 is alleged to have been elected as General Secretary. Such meeting is stated to be totally unauthorized. Despite this, the respondent No. 1 continued to represent himself as the Secretary of the appellant No. 1 Union resulting in the suit being filed.

(d) The respondent No. 1 had resisted the suit and had taken the plea that the respondent No. 1 could not have been expelled from the Union on 19th December, 2003 as the respondent No. 1 had never been given any opportunity to defend himself. This expulsion is stated to be contrary to the clauses of the constitution of appellant No. 1 Union. The meeting of 26th August 2004 is stated to have been validly requisitioned. It had been further stated that the requisition was made not only by respondent No. 1 but by other members supporting the requisition which was more than the required number to requisition the meeting.

(e) The respondent No. 1 had also stated that the Registrar, Trade Union after enquiry had accepted the position of the respondent No. 1 as per communication dated 2nd September, 2004.

(f) The respondent No. 1 had also raised a plea that the suit was not maintainable and no relief could be granted to the appellant/plaintiff for the reason that the decision taken in the meeting held on 26th August 2004 and the

election of the respondent No. 1 as the Secretary had not been challenged by the appellants.

3. The learned Single Judge framed the following issues:

(1) Whether the suit is not maintainable? OPD

(2) Whether defendant No. 1 was validly expelled as a Member of the plaintiff Union? OPP

(3) Whether defendant No. 1 was validly elected at the meeting held on 26.08.2004? OPD

If issues No. 2 and 3 are answered in favour of the plaintiff:

(4) Whether defendant No. 1 is liable to be restrained from representing himself as the General Secretary of plaintiff No. 1 or using its letterheads? OPP

4. Issue No. 1 on the question maintainability of the suit was held in favour of the appellant and since that finding is not challenged, we need not dwell into this issue further.

5. So far the Issue No. 2 regarding the expulsion of respondent No. 1 from the appellant No. 1 Union is concerned, the learned Single Judge after referring to the Clause 10(e) relating to expulsion, came to the following findings:

(a) The General Council is separate from the Executive Committee.

(b) The decision of the General Council being the supreme body is final.

(c) The expulsion of the respondent No. 1 was directly placed before the General Council without the Executive Committee following the procedure prescribed under Clause 10(e) and the respondent No. 1 was denied the right to appear before the Executive Committee and right to appeal against any adverse order to the General Council. No notice for scheduling the meeting of 19th December, 2003 which proposed to expel the respondent No. 1, was proved or shown.

(d) The respondent No. 1 could not have been expelled as the member of the appellant No. 1 Union without giving the opportunity of hearing before the Executive Committee as provided under Clause 10(e).

(e) The respondent No. 1 was also denied the right to challenge his expulsion before the General Council.

6. In view of the above findings, issue No. 2 was decided against the appellant upon finding that the expulsion of the respondent No. 1 could not be sustained.

7. Issue No. 3 relating to validity of election of respondent No. 1 at the meeting held on 26th August 2004 was found to be based on the premises that the meeting was validly convened. The learned Single Judge in respect of the issue No. 3 has found as follows:

(i) The respondent No. 1 was aggrieved by the election process of 21st July 2004. He requisitioned a meeting on 26th August 2004 to discuss the following:

(a) Vote of "No Confidence" in General Secretary;

(b) General Election;

(c) Statement of Accounts.

(ii) Since the expulsion of respondent No. 1 has already been held illegal, the legality of his requisitioning a meeting could not be challenged, particularly when apart from the respondent No. 1 a number of members had requisitioned meeting and the number of members who had called on meeting dehors the respondent No. 1 was more 1/3rd which was the requisite criteria.

(iii) Even in the letter sent by the appellant No. 2 dated 12th August 2004 the only stand taken was that no cognizance of the notice could be taken as the respondent No. 1 was expelled as a member. It was not stated that the requisition for meeting could not be made or signed by 33% members or some non members were included. The procedure for requisition is contained in Clause 13 (a) which reads as follows:

13. General Meetings:--The General Meeting of the Union shall be held after every two years, before the end of July, to transact the following business:

(a) The President may advise the General Secretary to convene a General Meeting of the members if he thinks necessary. He may call the meeting on the requisition signed by more than 33% members of the Union if the Gen. Secy. fails to convene the Meeting within 15 days on receipt of an advise from his (President).

(iv) The appellant No. 2 had, however, refused to convene the meeting in consonance with the aforesaid Clause 13(a). As per the requisition, meeting was scheduled for 9th August 2004 well beyond the period of 15 days. Consequently, the meeting held by the respondent No. 1 and the election of the respondent No. 1 were proper.

(v) The respondent No. 1 applied to the Government of National Capital Territory of Delhi, for being recognized as the General Secretary and in terms of letter dated 24th September, 2004, the respondent No. 1 had been informed that the elections were acknowledged and accepted. This was done after the Labour Department gave a hearing to the respondent No. 1 as evident from the communication dated 17th September, 2004. Consequent to the above findings, the issue No. 3 was answered in favour of the respondent No. 1.

8. In so far as Issue No. 4 is concerned, the learned Single Judge held that it could have arisen only after issues No. 2 and 3 had been answered in favour of the appellant/plaintiff. Since the issues No. 2 and 3 had been answered against the appellant, the respondent No. 1 could not be restrained from representing himself as the General Secretary of appellant No. 1 Union or using its letterhead.

The learned Single Judge thus answered the issue No. 4 against the appellant.

9. The learned Single Judge also observed that pursuant to the suggestions given by the learned Counsel for the parties on 12th January 2006 that in order to put an end to the dispute about election, an officer could be appointed by this Court for holding elections and verify the rolls.

10. Thereafter an application bearing I.A. No. 1356/2006 was filed seeking disposal of the matter in terms of the order of this Court dated 9th August 2005 when issues were framed. The said application was filed through a new counsel who entered appearance on behalf of the appellants/plaintiffs and was filed because on 12th January 2006, the appellant/plaintiffs counsel obtained time to effectuate the settlement in the presence of the authorized representative of the appellant Union to make a statement in this behalf.

11. In terms of the averments made in IA No. 1356/2006, the appellants made their intention clear that they did not want the elections to be held and were not even willing for verification of the rolls. The appellants made it clear that they were not desirous of an independent authority verifying the respective strengths of the two groups and thus what was proposed by both the counsel for the parties as fair solution was sought to be nullified by a new counsel presenting the said IA 1356/2006. Accordingly, the application was allowed and the matter went for trial. The learned Single Judge has observed that the appellants had not been willing to have any independent verification of either the rolls or of holding of fresh elections almost co-terminus with the tenure of the elected body which is two years. Clause 13 provides for a General Meeting of the Union to be held every two years and one of the purposes to be transacted as mentioned in Sub-clause (ii) of the said clause is to elect the members of the General Council.

12. The learned Single Judge held that while the Court though was not powerless in this behalf but it would not be appropriate to exercise such a jurisdiction at the behest of the respondent/defendant, since the authority of the respondent No. 1 to act as the General Secretary was not being affected as the issues were held against the appellant No. 1. The learned Single Judge also held that since in the nature of equitable reliefs, suit for declaration and permanent injunction was filed by the appellant No. 2, who himself was not ready to adopt any reasonable course of action for either verification of the membership or for holding fresh elections, and that too at the culmination of the existing tenure of the executive, the appellant stood disentitled to avail any relief. The order of the learned Single Judge dated 7th February 2007 has been challenged in the present appeal.

13. On 27th March, 2006, during the pendency of this appeal, the following order was passed by this Court:

Notice. Mr. Patnaik accepts notice on behalf of the respondent.

In order to resolve the conflict between the parties, we appoint Mr. A.K. Garg, retired Additional District and Sessions Judge of this Court as the Court Observer

to conduct the election to Delhi State Electricity Workers Union. The election be conducted by the Court Observer within a period of two months in accordance with the Constitution of the Union.

According to the appellant there are about 12,000 members of their union. Learned Counsel for the respondent says that they do not challenge the strength of the workers' union. However, it must be ensured that the names of the workers who owe allegiance to respondent should not be debarred from casting their votes in the elections. Therefore, it will also be open for the Court Observer to verify and allow the members by taking into consideration the list which is supplied by both the parties.

A direction is issued to the management of the workers union to assist the Court Observer in carrying out the direction of this Court by providing appropriate facilities, staff, conveyance and whatever is required by the Court Observer. The fee of the Court Observer is fixed at Rs. 50,000/- to be equally shared by both the parties besides other expenses which have to be incurred by the Court Observer. Report of the election be filed in this Court before the next date of hearing.

Copy of the order be sent to Mr. A.K. Garg, retired Additional District and Sessions Judge.

Renotify on 29.5.2006.

Dasti.

14. On 25th May, 2006, two applications were filed by Shri Anil Kumar Sharma as President of Delhi Vidyut Board Karamchari Union (Regd.), being CM Nos. 7549/06 and 7550/2006. CM No. 7549/06 was filed by Mr. Sharma for impleadment as a party in the appeal and CM No. 7550/06 was filed seeking directions to the Election Observer to verify the membership of the plaintiff union and to exclude the nominees who are not registered members of the said union.

15. On 29th May, 2006, the interim report submitted by the Election Observer appointed by this Court was accepted and the observer was allowed to file the final report after completion of the election process. Thereafter an application being CM No. 8071/2006 was filed on behalf of Shri Rakesh Kumar Bhardwaj and others seeking intervention in this Regular First Appeal. Another application being Cm No. 8073/2006 was also filed by the said applicant Shri Rakesh Kumar Bhardwaj seeking stay of the polling scheduled on 2nd June, 2006. The Court permitted the election to go on and result to be announced and this was to be done subject to the result of application being CM No. 8071/2006. The order dated 7th August, 2006, recorded that the new Managing Committee has taken over the management of the Trade Union. It was also noted in the said order that the appellant No. 2 took an active part in the election but lost in the said the election. Thereafter the matter was listed on several other dates viz. 2nd September, 2006, 4th December, 2006, 29th January, 2007, 14th February, 2007,

30th April, 2007 and on 21st August, 2007, the following order was passed:

Learned senior counsel for the respondent submits that nothing further survives in the appeal. The elections have already been held by the Court Commissioner and the respondent has won with an overall majority. This position is not disputed by the appellant. Request is made on behalf of Mr. R.N. Mittal, learned Senior counsel for the intervenor, for an adjournment on ground of demise of Mr. Mittal's brother. In view of this, the matter is adjourned to 28.9.2007.

16. This order clearly shows that on 21st August, 2007, that the statement of the respondent that nothing survives in the appeal and elections have already been held by the Court Commissioner and the respondent has won with an overall majority, was not denied by the appellant. Thus, in so far as the appellant is concerned nothing survives in the appeal. Thereafter the matter was listed again at the behest of the intervenors' counsel due to some bereavement on 28th September, 2007 when it was adjourned, on 11th October, 2007 it was adjourned and on 22nd November, 2007 when it was adjourned, and on 4th March, 2008, the learned Counsel for the applicant in CM 8071/2006 sought time to file amended application. On 21st April, 2008, an application CM No. 5583/2008 filed by the respondent No. 1, seeking directions to the Management to talk to the respondent No. 1 and not the appellant No. 2 who has already lost the election. This plea of the respondent need not be entertained in this appeal because in any case, we are of the view that upto date the application for intervention has not been allowed and we see no reason why CM No. 8071/2006 for intervention at this belated stage should be allowed when the appellant, had himself had not disputed that nothing further survives in the appeal as recorded in the order dated 21st August, 2007. It is not in dispute that the application CM No. 8071/2006 was only filed after this Court on 31st May, 2006 on the eve of the elections. Since the application for intervention CM 8071/2006 has not been allowed till date, we see no reason why this appeal should remain pending in this Court when the appellant himself did not dispute that the appeal did not survive and even before us no arguments were advanced on behalf of the appellant and all the pleas were raised on behalf of the applicant Rakesh Kumar Bhardwaj in CM 8071/2006 by Mr. R.N. Mittal, the learned senior counsel. In our view, to permit intervention in this infructuous appeal would serve no purpose and we have, therefore, not gone into various pleas of Shri Mittal regarding the violation of the Constitution by the learned Additional District Judge appointed by this Court. We fully endorse the reasoning of the learned Single Judge that the appellant was not ready and willing to adopt any reasonable course of action for either verification of the membership or for holding fresh elections. Thus, quite apart from the fact that the appellant has not pressed the appeal, we see no reason to pass any order in the appeal when the appellant has himself declined to address any plea on merits. Consequently, the application for intervention CM 8071/2006 filed by Rakesh Kumar Bhardwaj is dismissed. This naturally leads to the dismissal of the CM No. 8073/2006 for stay of election filed by Rakesh Kumar Bhardwaj. No other application was urged before us. While upholding the

reasoning of the learned Single Judge, which we fully endorse, we dismiss the appeal and all the pending applications. No order as to costs.