

(2006) 10 AHC CK 0094
In the Allahabad High Court

Dushyant Singh

APPELLANT

Vs

Sri Ram Prakash Sharma and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Penal Code, 1860 (IPC) — Section 302
Trade Unions Act, 1926 — Section 21A, 8

Citation : (2006) 10 ADJ 603

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Uttari Railway Mazdoor Union is a registered Trade Union u/s 8 of the Trade Unions Act 1926 (hereinafter referred to as the Union). The bye-laws of the Union speaks of a three tier management system, namely, the Central Council at the Headquarters, the Divisional Council in a Division and a Branch Council which are attached to different divisions. Each of these councils has its own set of office bearers who are elected every three years. The present dispute relates to the office bearers of the Divisional Council at Moradabad. The plaintiff-respondent No. 1 claims himself to be the elected Divisional Secretary of the Divisional Council of Moradabad whereas the petitioner defendant No. 4 alleges himself to be appointed as the Divisional Secretary pursuant to the resolution dated 28.9.2003.

2. The brief facts, as culled out from the pleadings is, that the plaintiff-respondent No. 1 was functioning as a Secretary of the Divisional Council at Moradabad as well as a working President of the Central Council at Headquarters. There were charges of murder, embezzlement and autocratic functioning against " the plaintiff-respondent No. 1. It is alleged that several requisitions were made to call a meeting of the working committee of the office bearers which was not being done by the plaintiff and, eventually the general body of the Central

Council, in a meeting held on 28.9.2003, unanimously resolved by a resolution No. 5, to remove the plaintiff as the working president of the Central Council as well as from the post of Secretary of the Divisional Council at Moradabad. By resolution No. 10, the petitioner was elected as the Assistant General Secretary of the Central Council and was further directed to work as the Secretary of the Divisional Council till fresh elections are held. It is alleged that the plaintiff respondent No. 1 did not hand over the charge of the working president of the Central Council nor handed over the charge of the post of the Secretary of the Divisional Council. Accordingly the office bearers of the Central Council, including the petitioner, filed Original Suit No. 138 of 2004 for a permanent injunction restraining the plaintiff-respondent No. 1, from interfering in the working of the petitioner as an office bearer of the Central Union. A further prayer was made that the plaintiff-respondent No. 1 be directed to hand over the possession of the fixed deposit receipts, official residence, telephones, car, etc. which the plaintiff-respondent No. 1 was using while working as the President of the Central Council.

3. The record indicates that an application for a grant of temporary injunction was also filed which was rejected by the trial court by an order dated 31.3.2003. The appeal filed by the petitioner and other office bearers was allowed by an order dated 6.12.2004 and the, respondent No. 1 was restrained from interfering in the functioning of the petitioner as an office bearer of the Central Council. The respondent No. 1 filed a writ petition No. 5277 of 2004 which was dismissed by a judgment dated 11.3.2005, against which, a SLP No. 6425 of 2005 has been filed which is pending consideration before the Supreme Court of India, in which, no interim order has been passed as yet.

4. Based on the aforesaid order of the appellate court dated 6.12.2004 granting an injunction in favour of the petitioner and the dismissal of the writ petition by a judgment dated 11.3.2005, the General Manager, Northern Railways, Headquarters at Baroda House, New Delhi, vide a letter dated 20.5.2005, accorded recognition to the petitioner as the Divisional Secretary of the Divisional Council of the Moradabad Division. Based on the aforesaid letter, it is alleged that the petitioner tried to take control of the office of the Divisional Secretary at Moradabad Division, which resulted in the filing of the original suit No. 381 of 2005 before the Civil Court, Moradabad by Sri Ram Prakash Sharma, the plaintiff-respondent No. 1, seeking a relief of a declaration that he should be declared the Divisional Secretary of the Divisional Council at Moradabad pursuant to the election held on 19.8.2004. The plaintiff-respondent No. 1 also filed an application for a grant of a temporary injunction under Order 39 Rule 1 and 2 of the C.P.C. This application was rejected by the trial court by an order dated 2.8.2005. The trial court further stayed the proceedings of the suit u/s 10 C.P.C. on the ground of the pendency of the Original Suit No. 138 of 2004 before the Civil Court, Ghaziabad. The plaintiff-respondent No. 1 filed a Misc. Appeal under Order 43, Rule 1(r) which was allowed by an order dated 22.5.2006. The appellate court restrained the petitioner from interfering in the working of plaintiff-respondent No. 1 as the Divisional Secretary of the Moradabad Division.

The petitioner, being aggrieved by the injunction granted by an order dated 22.5.2006, has filed the present writ petition.

5. Heard Sri S.N. Varma, the learned senior counsel assisted by Sri M.D. Singh Shekhar and Sri Rajesh Kumar Singh, Advocates for the petitioner and Sri Murlidhar, the learned senior counsel, assisted by Sri Bal Krishna Narayan and Sri S.L. Kesarwani for the plaintiff-respondent No. 1 and the Standing Counsel for respondent No. 4. In spite of the service of the notice, no one appeared for the railways, namely, for the respondent Nos. 2 and 3.

6. Sri S.N. Varma, the learned senior counsel contended that the plaintiff-respondent No. 1 had no prima facie case in his favour and that the suit was filed by concealing material facts. It was contended that the plaintiff-respondent did not disclose the resolution dated 28.9.2003 of no confidence against him nor disclosed his removal from the post of the Secretary nor did he disclose that a litigation was already pending being O.S. No. 138 of 2004 nor disclosed that the order of the railway authorities dated 20.5.2005, whereby, the petitioner was recognised as the Divisional Secretary. Consequently, the plaintiff had no prima facie case in his favour nor equity or balance of convenience was in his favour for a grant of an injunction. The learned Counsel for the petitioner further submitted that the question of the election of the office bearers of the Divisional Council taking place on 19.8.2004 does not arise inasmuch as the term of the office bearers under the bye laws of the Divisional Council is three years and that the last election of the Divisional Council, Moradabad was held on 18.2.2002. Since the term of three years had not expired, the question of holding an election on 19th August, 2004 did not arise. It was contended that the election of 19th August, 2004 was a sham election which had never taken place and therefore, the question of permitting the plaintiff-respondent No. 1 to be declared as the Divisional Secretary of the Divisional Council at Moradabad did not arise. It was contended that the railway authorities had never recognized the election of 19.8.2004 and the finding of the appellate court to the effect that the election of 19.8.2004 was admitted by the defendants is factually incorrect. The learned Counsel for the petitioner further stated that the general body of the Divisional Council issued a resolution dated 16.6.2005 nullifying the election of 19.8.2004 and therefore, submitted that no valid election dated 19.8.2004 had ever taken place. On the other hand, the petitioner was elected to work as the Divisional Secretary till the holding of the fresh elections, pursuant to the resolution dated 28.9.2003 and also on account of the fact that the petitioner had been recognized as the Divisional Secretary by an order of the railway authorities dated 20.5.2005.

7. Sri M.D. Singh Shekhar, the learned Counsel for the petitioner submitted that the plaintiff-respondent No. 1 was convicted for life imprisonment u/s 302 I.P.C. for the murder of another Union official and could not be allowed to continue as an office bearer in view of the bar created u/s 21-A of the Trade Unions Act which stipulated that a person would be disqualified for being an office bearer of

a registered Tirade Union, if he was convicted in an offence involving moral turpitude and sentenced to imprisonment.

8. Sri Murlidhar, Senior Advocate, for the plaintiff-respondent No. 1, on the other hand submitted that a conviction u/s 302 I.P.C. by itself does amount to a moral turpitude inviting disqualification u/s 21-A of the Trade Unions Act. Even otherwise, the plaintiff is on bail during the pendency of the appeal and therefore, submitted that the plaintiff-respondent No. 1 was fully competent to stand for the election and was validly elected in the election held on 19.8.2004.

9. Sri Bal Krishna Narayan, the learned Counsel for the plaintiff-respondent submitted that under Rule 49 of the bye-laws of the Union a no confidence motion can be brought against an office bearer by the respective Council and therefore, submitted that the resolution of the Central Council dated 28.9.2003 could not remove the plaintiff-respondent No. 1 from the post of the Divisional Secretary of the Divisional Council of the Moradabad Division and submitted that the resolution of the Central Council dated 28.9.2003 to that effect was ex facie illegal. Further, the original suit No. 138 of 2004 filed by the petitioner and other office bearers of the Central Council was only confined to the dispute with regard to the office bearers of the Central Council and the assets of the Central Council and did not relate to any dispute with regard to the office bearers of the Divisional Council of Moradabad Division and therefore, submitted that the trial court committed an error in holding that the controversy involved in the present suit was covered by the earlier suit No. 138 of 2004. The learned Counsel submitted that inspite of the resolution dated 28.9.2003, a bonafide election took place on 19.8.2004 in which the plaintiff was again elected as the Divisional Secretary and that this election was recognised by the Railway Authorities vide their letter dated 23.8.2004 written by the General Manager, Headquarter Office, Baroda House, New Delhi and the letter dated 25.8.2004 written by the Zonal Railway Manager Moradabad intimating the names of the office bearers of the Divisional Council. The learned Counsel for the plaintiff further submitted that the resolution of the Divisional Council dated 15.6.2005 annulling the election dated 19.8.2005 cannot be taken into consideration, inasmuch as, the said resolution was issued malafidely after the filing of the suit. Further, the letter of the Railway authorities dated 20.5.2005 recognising the petitioner as the Divisional Secretary was misconceived and had no relevance, inasmuch as, the said letter was issued on the basis of the orders passed in suit No. 138 of 2004 which was in relation to a different controversy. The learned Counsel, therefore, submitted that the plaintiff was entitled to continue as the Divisional Secretary in view of the election dated 19.8.2004 and that the petitioner defendant No. 4, being a rank outsider, could not be allowed to work as the Divisional Secretary. The learned Counsel, thus, submitted that the injunction order granted by the appellate court should not be disturbed during the pendency of the suit.

10. Sri Ajeet Kumar, another counsel appearing for the plaintiff-respondent No. 1, submitted that by a fiction of law under Order 8 Rule 5 C.P.C., the election of

19.8.2004 was deemed to be admitted by the petitioner as well as by the other defendants upon a perusal of their written statements and that the prayer No. 2 of the writ petition had become infructuous. The learned Counsel further submitted that merely convicted by a Court of Law would not amount to a moral turpitude and therefore, the plaintiff was not debarred from holding the post of a Union u/s 21-A of the Trade Unions Act.

11. In view of the submissions made by the learned Counsel for the parties and upon a perusal of the record, it is to be seen as to whether the appellate court was justified in issuing an injunction in favour of the plaintiff. The question for consideration is, whether a temporary injunction could be granted by the court below in view of the material placed before the Court ?

12. It is well settled law that before an order of temporary injunction can be granted, the Court must satisfy itself that a strong prima facie case has been made out by the plaintiff and that the balance of convenience was also in favour of the plaintiff and that a refusal to grant an injunction would cause an irreparable loss and injury to the plaintiff. It is well settled, that all the three ingredients should be present before the court could grant an injunction. The burden of proof that all the three ingredients are existing is upon the plaintiff. Merely because the plaintiff has proved that he has a prima facie case by itself would not be sufficient for the Court to grant an order of injunction nor would it entitle the plaintiff to obtain an order of injunction as a matter of right, especially, if the balance of convenience does not justify the granting of the injunction.

13. The Supreme Court in a large number of cases has held that a party is not entitled to get an order of injunction as a matter of right. The grant of an injunction is within the discretion of the Court, to be exercised with caution and that the injunction should be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant was restrained by an order of injunction, an irreparable loss or damage would be caused to, the plaintiff during the pendency of the suit.

14. The plaintiff has come out with a case that he was elected as the Divisional Secretary in the election held on 19.8.2004 and prior to this date he was also functioning as a Divisional Secretary. It was also contended that he had not been removed as the Divisional Secretary by any resolution nor was there a no confidence motion against him and that the defendant was not even a primary member of the Union and that he was illegally trying to take possession of the office of the Divisional Secretary at Moradabad on 22.5.2005. On these allegations the suit for injunction was filed.

15. In the opinion of the Court, the plaintiff-respondent is not entitled for the discretionary relief of a grant of a temporary injunction. The bye-laws of Union indicates that the period of the term of the office bearers is three years. The plaint is silent as to when the last election had taken place and when the next

election was due. Nothing has been stated with regard to the initiation of the election process, namely, the resolution for the holding of the election, the agenda or the notice circulated to the members, etc. Further, nothing has been indicated in the plaint with regard to the resolution of no confidence dated 29.9.2003 passed by the Central Council removing the plaintiff from the post of the Divisional Secretary. Not only this, the plaintiff has not indicated in the plaint, the previous litigation pending between the parties, which was also a crucial fact. Above all, the plaintiff has not mentioned about the letter of the railway authorities dated 20.5.2005, recognising the petitioner as the Divisional Secretary of the Moradabad Division. These are the crucial facts which have been concealed by the petitioner in his plaint which, in the opinion of the Court, disentitles him for an equitable and discretionary relief for a grant of a temporary injunction. The court cannot be permitted to grant an injunction to a party who conceals material facts.

16. It is strange that an election took place on 19.8.2004. What was the occasion for holding an election on 19.8.2004 ? Admittedly, the last election had taken place on 18.2.2002. The term is 3 years and therefore, the next election was due only in February, 2005 which could be extended for a period of another six months, as contemplated under the bye-laws. Consequently, the term of the office bearers of the Union had not expired on 19.8.2004 nor was there any resolution annulling the remaining term of the office bearers or preponing the elections. Further, in the absence of any averments made in the plaint with regard to the holding of the election, the agenda, notices, etc. and with regard to the process conducted in the holding of the elections, the election alleged to be held on 19.8.2004 appears to be a sham election and merely by alleging that the plaintiff was elected again in the election of 19.8.2004 by itself, would not entitle him for a grant of an injunction, unless the averments was further supported by documentary proof.

17. The learned Counsel for the plaintiff made a strong reliance on the letters dated 23.8.2004 issued by the railway authorities from the headquarters, New Delhi and the letter dated 25.8.2004 issued by the railway authorities of Moradabad to indicate that the railway authorities had recognized the elections of 19.8.2004. In the opinion of the Court, the submission of the learned Counsel appears to be misconceived. A perusal of the letters dated 23.8.2004 and 25.8.2004 indicates that the headquarters had only informed the Divisional Office with regard to the letter of the Divisional Secretary of an alleged election having taken place. The said letters does not appear to have recognized the elections of the plaintiff. On the other hand, the letter dated 20.5.2005 issued by the railway authorities from the head quarters clearly recognises the petitioner as a Divisional Secretary. This order of the railway authorities had been concealed by the plaintiff in his plaint and therefore, does entitle him for a grant of a temporary injunction.

18. The appellate court had granted an injunction laying stress on the fact that

the election had taken place on 19.8.2004 and was more impressed by the letters of the railway authorities dated 23.8.2004 and 25.8.2004. The lower appellate court has not considered the contents of the said letters which, in the opinion of the Court, does not indicate that the railway authorities had recognized any elections of 19.8.2004. The lower appellate court has also not taken into consideration the letter of the railway authorities dated 20.5.2005 recognizing the petitioner as the Divisional Secretary of the Moradabad Division.

19. The lower appellate court strangely has given a finding that the elections of 19.8.2004 has not been denied by the defendants. From a perusal of the written statement of the petitioner, it is clear, that the elections of 19.8.2004 has been specifically denied in the written statement. The written statement of the railways also does not recognise the election of 19.8.2004. Consequently, the finding of the lower appellate court on this aspect is patently erroneous and against the material evidence on record. The resolution of 28.9.2003 is a crucial document which has not been denied by the plaintiff. The validity of that resolution is under consideration in Original Suit No. 138 of 2004, pending before the Civil Court, Ghaziabad. The plaintiff had concealed this fact in this suit. By this resolution the plaintiff was removed as the Divisional Secretary of the Moradabad Division. The contention, that the Central Council had no authority to pass a resolution of no confidence with regard to the holding of the post of Divisional Secretary of a Divisional Council could only be questioned provided it was alleged. Since the plaintiff chose to remain silent on this aspect in his plaint, therefore, at this stage, the Court is not inclined to dwell on this controversy and it would be open to the plaintiff to lead evidence on this aspect.

20. Prima facie it appears that the plaintiff had been removed as the Divisional Secretary by a resolution dated 19.8.2003. The last election had taken place on 18.2.2002. The term of three years had not yet expired and therefore, it was doubtful that a fresh election could take place on 19.8.2004, i.e., prior to the expiry of the term of three years. However, the validity of the alleged election of 19.8.2004 would be decided by the court below after evidence is lead. At this stage, and on the basis of the said elections, the plaintiff cannot be allowed to continue especially when a doubt has been raised with regard to the holding of the election prior to the expiry of the term of the previous election coupled with the fact that the plaintiff had been removed by a resolution dated 29.9.2003 and the petitioner-defendant has been recognised by the railway authorities as the Divisional Secretary by an order dated 20.5.2005.

21. There is another aspect of the matter. u/s 21-A of the Trade Unions Act, a person is disqualified from being an office bearer of a Union, if he has been convicted by a court of any offence involving moral turpitude. Without going into the question as to whether the murder of a fellow Union leader amounts to a moral turpitude, or not, it is sufficient for the court to refuse to exercise its discretion in favour of a person who has been convicted for a life imprisonment for a murder charge.

22. In view of the aforesaid, this Court is of the opinion, that the plaintiff was not entitled for a grant of a temporary injunction. Consequently, the order of the lower appellate court dated 22.5.2006 cannot be sustained and is quashed. The writ petition is allowed.

23. In the circumstances of the case, the parties shall bear their own cost. It is made clear that any observation made by this Court are only tentative in nature and shall not be utilised by the trial court while deciding the suit.