

(2005) 04 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34575 of 2001

Dwarikesh Sugar Industries Ltd.

APPELLANT

Vs

District Judge, Dwarikesh Sugar Mills Karmchari Union and
Registrar, Trade Unions

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Trade Unions Act, 1926 — Section 11, 11(3)

Citation : (2005) 6 AWC 6137 : (2005) 106 FLR 10 : (2005) 3 LLJ 245

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : V.K.S. Choudhary, U.S. Awasthi and P.K. Bajpai, for the Appellant;
Anil Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Pleadings have been exchanged and the counsel for the parties agree that this petition may be finally disposed off under the rules of the Court.

2. This writ petition is directed against an order dated 29.8.2001 passed in a pending appeal by the District Judge, Kanpur Nagar filed u/s 11 of the Trade Unions Act, 1923. The further prayer is for a direction to the appellate authority to try the appeal as a civil suit.

3. The petitioner is a duly incorporated company under the Indian Companies Act and is engaged in manufacture and sale of sugar from 1995. Employees of the petitioner Mill formed a Trade Union known as Dwarikesh Sugar Mills Karamchari Union, which was registered with the Registrar, trade unions and a certificate dated 19.10.2000 was issued. It appears that the management of the mills refused to accept or recognize the respondent No. 2 union and approached the Registrar through various letters including letter dated 18.1.2001. It also appears that certain employees also approached the Registrar for cancellation of the registration and subsequently vide order, dated 8.2.2000 the registration was

cancelled after show cause. The respondent union thereafter filed an appeal u/s 11 of the Act. The petitioner had already filed a caveat before the District Judge, Kanpur Nagar, Kanpur who is the designated appellate authority under the Act. Nevertheless, the petitioner moved an application dated 10.2.2001 for impleadment, which was allowed and it took part in the proceedings. After the entire proceedings had culminated into a date for judgment, it moved an application stating that the appellate authority has to try the appeal as a suit after framing issues, and directing the parties to lead evidence. This application dated 24.8.2001 has been rejected by the impugned order.

4. The only argument raised on behalf of the petitioner is that in view of the provisions of Section 11 (3) of the Act, the entire procedure of trying a suit has to be followed. Before dealing with the argument it would be appropriate to first examine the provision, which is extracted below:

(3) "For the purpose of an appeal under Sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908, and may direct by whom the whole or any part of the costs of the appeal shall be paid, any such costs shall be recovered as if they had been awarded in a suit under the said Code.

5. Sub-Section 3, which is the relevant provision, denotes that: "so far as may be" the appellate Court should follow the same procedure when trying a suit under the CPC 1908. Thus, it gives sufficient elbow room to the District Judge to follow the procedure as that in a suit for disposal of the appeal. To my mind the District Judge can summon witnesses, compel production of documents, order for discovery and inspection where he deems it necessary. He is not expected to follow the entire procedure of a suit whether it is necessary or not in a given set of facts. There can be cases where there may be no necessity to frame issues or summon witnesses. In the present case, the petitioner was impleaded as a party on his application, it was allowed to file objections, its oral and written arguments were also advanced and after the date of judgment was fixed, it moved the application without giving any justification in it as to which procedure applicable to a suit was not followed and why it should have been followed. With its wide open eyes, it participated in the entire proceedings but yet the application was made at the fag end only to delay the proceedings and it has succeeded too. It is apparent from the record that this was the first union, which was being formed in the petitioner industry and judicial notice can be taken that industrial units are more loathe than not to accept a union of their employees. There is nothing on record to show whether any effort was made or any application was made asking the court to allow the petitioner to lead evidence. In my opinion, the entire exercise of filing the application and then getting the proceedings stayed was to somehow buy more time of union less functioning. The District Judge has given cogent reasons in his order, which cannot be faulted.

6. Another aspect of this petition can also be examined Assuming that there was

some irregularity in the procedure adopted by the appellate Court, mere irregularity will not infuse the petitioner with a right to challenge the order before the writ court unless it shows prejudice caused due to not following the procedure. On a pointed question, the learned counsel for the petitioner has only one answer with regard to prejudice, that he may have to deal with an illegal union and any settlements entered with it may also be illegal. This stand is too far stretched. The prejudice has to be shown in the proceedings pending and not on the anticipated result of those proceedings. Therefore, on this score also the petitioner could not have maintained this petition. However, the petitioner has managed to stall the proceedings in appeal for about five years thus, are also liable for penal costs.

7. For the reasons given hereinabove this is not a fit case for interference under Article 226 of the Constitution of India and the petition is rejected with cost of Rs. 10,000/- which the petitioner should deposit within a month with the District Judge, Kanpur Nagar, Kanpur which would be payable to the respondent No. 2, Dwarikesh Sugar Mills Karmchari Union Bundki district Bijnore. The District Judge shall also forthwith decide the appeal within a month from the date of submission of a certified copy of this order.