

(2013) 08 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (C) 3256 of 2010 and C.M. No's. 6507/10, 6777/10 and 7431/10 (i. 5) and W.P. (C) 4891 of 2008 and C.M. No. 9394 of 2008 (Stay) (i. 3)

FCI Handling Workers Union

APPELLANT

Vs

UOI and Others
 Shree Nath Singh and Others Vs Food
Corporatoin of India and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18(3)(d)

Citation : (2013) 08 DEL CK 0002

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjiv Bahl, Mr. Chandan Kumar and Mr. Eklavya, in W.P. C 3256/2010 and C.M. Nos. 6507/10, 6777/10 and 7431/10 i. 5 and Mr. Arvind Nayar, Mr. Vikash Kumar and Mr. Zartab Anwar, in W.P. C 4891/2008 and C.M. No. 9394/2008 Stay i. 3 and W.P. C 865/2010 and C.M. Nos. 1822/2010 and 5309/2010 i. 4, for the Appellant; Om Prakash Advocate for R-2 and 3 in W.P. (C) 3256/2010 and C.M. Nos. 6507/10, 6777/10 and 7431/10 (i. 5), W.P. (C) 4891/2008 and C.M. No. 9394/2008 (Stay) (i. 3) and for R-1 and 2 in W.P. (C) 865/2010 and C.M. Nos. 1822/2010 and 5309/2010 (i. 4), Mr. Arvind Nayar and Mr. Vikas Kumar and Mr. Zartab Anwar for R-4 in W.P. (C) 3256/2010 and C.M. Nos. 6507/10, 6777/10 and 7431/10 (i. 5), for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P. (C) 3256/2010 & C.M. Nos. 6507/10, 6777/10 & 7431/10

1. This writ petition is filed by one of the workers' union of the respondent no. 2/ employer/Food Corporation of India (FCI). Petitioner is called as FCI handling union. Another union is FCI workers' union, which is respondent no. 4 to this petition. Petitioner seeks quashing of the circular nos. 7/2006 and 11/2007 dated

23.2.2006 and 20.11.2007 respectively issued by respondent no. 2, and also for setting aside of the Memorandum of Settlement dated 7.11.2007 entered into between the respondent no. 4 and the respondent no. 2. In sum and substance, the disputes are with respect to method of promotion. Before the impugned circulars and the settlement came into effect, promotion was being effected gang-wise. After the issuance of circulars and the settlement dated 7.11.2007, promotions are to be made depot-wise. As a result of implementation of the impugned circulars, various gangs stand merged in the depots in which they were working in the respondent no. 2. On behalf of the petitioner two principal grounds have been urged to claim the relief's as prayed for in the writ petition. First ground is that the settlement dated 7.11.2007 (and on which the circular dated 20.11.2007 was issued) entered into between the respondent no. 4 and respondent no. 2/employer is illegal because respondent no. 4-union is not a majority union and which is required by Section 18(3)(d) of the Industrial Disputes Act, 1947. For this purpose, reliance is placed by the petitioner upon para 17 of the judgment of the Supreme Court in the case of Transmission Corpn., A.P. Ltd. and Others Vs. P. Ramachandra Rao and Another, In fact, para-17 of the judgment in the case of Transmission Corpn. (supra) reproduces the para of an earlier judgment of the Supreme Court in the case of Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., . The second ground which is urged is that the settlement dated 7.11.2007 falls foul of Rule 58 of the Industrial Disputes (Central) Rules 1957 inasmuch as the settlement has been signed by the Assistant Secretary whereas it could have been signed only by a President or Vice President or a Secretary or a General Secretary or any other officer authorized by President and Secretary of the union. 3. On behalf of counsels for respondent nos. 2 and 4, who have argued a common case, it is pleaded that the writ petition is liable to be dismissed on the following grounds:-

(i) Petition is barred by delay and laches because the impugned circulars and the settlement issued in 2006/2007 have been implemented for various depots in various States up to July, 2008, but this petition is filed only in May, 2010.

(ii) Alongwith the argument as stated in sub-para-(i) above, the principle of estoppel is also pressed, and which is a facet of the first argument.

(iii) The writ petition is liable to be dismissed because petitioner has not come to Court with clean hands because at the time of filing this petition, in May 2010 and obtaining interim orders petitioner had concealed the facts that the impugned circulars and the settlement dated 7.11.2007 stood implemented to quite an extent in various States before the petitioner raised a dispute under the Industrial Disputes Act in about July 2008.

(iv) Petitioner has accepted, by not challenging, the finality of the decision of the Government of India, Ministry of Labour, communicated vide letter dated 15.11.2007, and which was also sent to the petitioner informing : "Re-organization/merger of Labour Gangs in the Depot is a policy matter of the

Management. Hence, no industrial dispute subsists".

(v) The respondent no. 4-union is a majority union, and so stated by the respondent no. 2 in its additional affidavit dated 12.9.2011.

(vi) The provision of Rule 58 cannot be read to frustrate the object of the rule inasmuch as any office bearer of the union can sign once there are disputes in the union and elections have to take place, and which is the position emerging in the present case, because, dispute of elections to the union-respondent no. 4 was subject matter of certain civil suits and appellate proceedings wherein a retired Judge of this Court was appointed as a Court Commissioner. While arguing that Rule 58 has to be read as per the legislative intent, it is argued that the same should be treated as directory and not mandatory once the settlement is otherwise accepted and not disputed by the union in question.

3. In my opinion, there is no merit in the writ petition and in fact, the writ petition is a clear abuse of the process of law. I will now deal with each of the arguments which have been urged on behalf of the petitioner and also to the responses/arguments urged on behalf of respondent nos. 2 and 4.

4. Firstly, before referring to the twin arguments urged on behalf of the petitioner to challenge the settlement dated 7.11.2007 and the impugned circulars, I hold that the writ petition is liable to be dismissed on the ground of delay and laches, estoppel and concealment of facts. The impugned circulars and the settlement which have been challenged are of the year 2006-2007. Surely a writ petition which is filed in the year 2010 would be barred by delay and laches as also estoppel because an affidavit dated 18.8.2010 has been filed by the respondent no. 2 that the impugned circulars and the settlement have been implemented in many depots in many States such as Assam, Andhra Pradesh, Jharkhand, Madhya Pradesh, Nagaland, Manipur and West Bengal. This was done before July, 2008 when an industrial dispute was raised by the petitioner in spite of the GOI's letter dated 15.11.2007. In my opinion, it is not open to the petitioner to contend ignorance because surely, as workers of the respondent no. 2, they knew of the factum of existence of the impugned circulars and the Memorandum of Settlement, but yet it did not choose to challenge the same before July, 2008, and only when, the same was challenged by means of proceedings under the Industrial disputes Act. Further, it is relevant to note that for the self same reasons, the petitioner is not entitled to relief by calling upon this Court to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India, and which is also discretionary. The orders of this Court of staying of the impugned circulars and settlement were obtained in the year 2010 by concealing the facts with respect to the implementation having already been effected in various depots in various States. Merely because the circulars have not been implemented in certain depots of certain States cannot mean that there is no known concealment of facts, inasmuch as, to the extent of implementation already done, the petitioner ought to have come clean before this Court and stated the aspect of implementation and which has admittedly not been done,

besides the fact that implementation in all the depots of all the States would naturally have taken time i.e. it could only be done in a time-span. This deliberate action of not coming to the Court with clean hands, therefore, disentitles the petitioner to seek enforcement of discretionary and extra-ordinary jurisdiction under Article 226 of the Constitution of India.

5. In my opinion, the writ petition is also barred in law because the petitioner was undoubtedly sent the letter dated 15.11.2007 by the Government of India, Ministry of Labour stating that no dispute subsists i.e. no dispute can be raised with respect to reorganization or merger of the labour gangs. This letter was issued amounting to an order because of the reason that circular of 2006 by which there was to be reorganization/merger of labour gangs in the depot was challenged. What matters is the substance of the challenge and not the form of the challenge. Substance of the challenge in the writ petition is to stop reorganization/merger of labour gangs in the depots which was the subject matter of the 2006 circulars. The fact that the settlement dated 7.11.2007 was subsequently implemented by issuing of one of the impugned circulars dated 20.11.2007 i.e. on a date after the Ministry's letter dated 15.11.2007 cannot take the case of the petitioner any further inasmuch as all along the dispute was of reorganization/merger of the labour gangs in the depots. Therefore, the decision of the Government dated 15.11.2007 having never been challenged, not even in this writ petition, and the same having become final, the petitioner is hence legally barred now from challenging the substance of the said decision of Government of India dated 15.11.2007.

6. So far as the first argument urged on behalf of the petitioner that respondent No. 4/union is not a majority union, I find that there is no such ground which is urged in the writ petition. However, an order as passed by a learned Single Judge of this Court on 13.5.2011 as to whether respondent No. 4/union represents majority of the workers, and to this aspect, and as already stated above, respondent No. 2 has filed its additional affidavit dated 12.9.2011 clearly stating that respondent No. 4 represents majority of the workers of the respondent No. 2. Petitioner has not challenged this statement by filing any reply to this affidavit of the respondent no. 2. Therefore, the argument of the petitioner that the respondent No. 4/union does not represent majority union of the respondent No. 2 is rejected. Also it is conceded before me that respondent no. 4-union is a larger union than the petitioner.

7. So far as the second argument which is urged on behalf of the petitioner is concerned that the settlement in question dated 7.11.2007 has only been signed by the Assistant Secretary of the respondent No. 4, and not by the office bearers which is required as per Rule 58, in my opinion, there has to be a purposive interpretation and such a reading of Rule 58 that the object of the same is not defeated i.e. the Rule 58 therefore is to be treated as directory and not mandatory. The purpose of Rule 58 is that an authorized officer of a union should sign the settlement. In the present case, there was no authorized officer of the

union as prescribed under Rule 58 because disputes had arisen resulting in litigation in civil courts with respect to the election of the respondent No. 4-union. Therefore, in this scenario, the Assistant Secretary of the respondent No. 4 signed the settlement and which is not disputed by the respondent no. 4-union. Therefore, I do not find any illegality, especially so because the respondent No. 4/union itself does not dispute the finality of entering into of the settlement dated 7.11.2007 and which was signed by Assistant Secretary at the relevant point of time in view of the litigation pertaining to the elections of the respondent No. 4.

8. In view of the above, I do not find any merit in the writ petition which is accordingly dismissed with costs of Rs. 50,000/-. Out of the aforesaid costs, Rs. 25,000/- will be paid to respondent No. 2 and Rs. 25,000/- will be paid to respondent No. 4. Interim orders are vacated. All pending applications stand disposed of.

W.P. (C) 4891/2008

9. In view of the reasoning given for dismissing W.P. (C) No. 3256/2010, and adopting the same, this writ petition is also dismissed. Interim orders, if any, are vacated. All pending applications stand disposed of.

W.P. (C) 865/2010

In view of the fact that the W.P. (C) No. 3256/2010 is dismissed upholding the settlement dated 7.11.2007, and the circulars 7/2006 and 11/2007 dated 23.2.2006 and 20.11.2007 respectively are upheld, learned counsel for the petitioner accordingly does not press the petition.

Dismissed as not pressed. All pending applications stand disposed of.