

(1984) 08 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 11276 of 1984

H.M.T. Karmika Sangha

APPELLANT

Vs

Commissioner of Labour

RESPONDENT

Date of Decision : 01-08-1984

Acts Referred:

Election Rules — Rule 4 (2) (a), 4 (2) (b), 4 (2) (h)
Trade Unions Act, 1926 — Section 6, 8

Citation : (1985) ILR (Kar) 411

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : D. Leelakrishnan, for the Appellant; N. Devadas, H.C.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—The Petitioner-The Hindustan Machine Tools Karmika Sangha, a registered Union has presented this Petition praying for the issue of a Writ of Mandamus directing the Commissioner of Labour either to conduct an election for the Management of Labour Union by himself or to nominate any other officer.

2. The Petition has come up for preliminary hearing after notice to the respondent. By consent of both the Counsel it is taken up for final hearing.

3. The facts of the case to the extent necessary for disposal of this Petition are as follows :

The Petitioner is a Trade Union consisting of workmen of the Hindustan Machine Tools I&II Factories, Bangalore, It is a Trade Union registered under the Trade Unions Act. At the time of registration, as required u/s 6 of the Act, the Petitioner-Union had framed and submitted Election Rules (for short "the Rules") to the registering authorities. According to the said Rules, the Managing Committee is required to be elected by the General Body and its term is two years. The existing Managing Committee was elected on 5-5-1982. Therefore, its

term expired on 5-5-84, It is however continuing in office by virtue of Rule 9-D of the Rules. By a letter dated 12-12-1983 (Annexure-D) the Petitioner-Union requested the Commissioner of Labour to appoint an Officer to function as Returning Officer for conducting the election of the office bearers of the Labour Union, The resolution passed by the Executive Committee was also enclosed to the said letter, For the said letter a reply (Annexure-B) was sent by the Commissioner of Labour, the relevant portion of it reads as follows :

"With reference to your letter, dated 12-12-83, requesting for appointment of Returning Officer to conduct the election to H.M.T. Karmika Sangha, Bangalore, you are requested to make your own arrangements for appointment of Returning Officer as there is a dearth of staff in this Department."

The reason given was there was paucity of the officers for holding the election. Once again, another letter was sent on 6th April, 1984 (Annexure-F) requesting the Commissioner to hold the election. By a letter dated 18-4-1984 (Annexure-G) the Commissioner requested the Petitioner to furnish a copy of the Election Rules of the Union. Accordingly it was furnished. Again on 23-4-1984, the Petitioner addressed a letter (Annexure-H) to the Commissioner.

4 In that letter while the Petitioner admitted that its election rules had not been amended requiring an officer of the Labour Department to function as Returning Officer, the Petitioner pointed out that as such a statutory provision was made by one amendment to the Karnataka Trade Union Regulation, there was an obligation on the part of the Labour Commissioner to nominate a Returning Officer It was further pointed out that in accordance with the amended regulations, the request for nominating a Returning Officer by the Commissioner of Labour was backed not only by the Resolution of the Executive Committee but also a Resolution of the General Body.

5. The Commissioner however, gave his reply dated 8-5-1984 (Annexure-J) to the Petitioner. The relevant portion of it reads -

"As accepted by you, the election rules framed by your Association as per your Bye-laws, do not contain similar provision to Rule 4 (2) (a) and (h) of the Model Election Rules. The amendment made by notification No. LMA 20 LWA 67 dated 11th March 1968 issued by the State Government, is therefore, not adopted by you. In this connection, your reference to Karnataka Trade Union Regulations do not have such provisions and Rule 4 (2) (a) and (b) found in page 159 of Labour Manual I (II Edition), is only a printing mistake. By reading of Regulation 4, which deals with registration of Trade Unions, it will be very clear that Rule 4 (2) (a) and (b) are irrelevant in that place as they do not deal with any maintenance of registers of Trade Unions referred to in Section 8. The amendment was only to Model Election Rules of Trade Unions and not to My sore Trade Union Regulations. Therefore, reference to Karnataka Trade Union Regulations, in the matter will not be relevant.

In view of the above, it is regretted that Commissioner of Labour will not be able

to nominate a Returning Officer for your Union elections."

In the aforesaid communication, the Commissioner declined to nominate an officer of the Labour Department as Returning Officer for the reason that there was no provision contained in the Election Rules of the Petitioner providing for nominating Labour Commissioner or his nominee as Returning Officer and further the amendments to the Regulation on which the Petitioner relied did not exist.

6. It is in these circumstances, the Petitioner has presented this Petition.

7. Learned Counsel for the Petitioner urged the following contentions :

(i) That in view of Rule 4(2)(a) and (b) of the Karnataka Trade Union Regulations 1958 framed by the State Government u/s 29 of the Trade Unions Act, in respect of Trade Unions having membership exceeding 2000, the Commissioner of Labour or his nominee was bound to be the Returning Officer and therefore, notwithstanding the fact that there was no such provision in the Election Rules of the Petitioner-Union, the Commissioner was under an obligation to nominate a Returning Officer:

(ii) In the alternative even according to the existing Rules, the Petitioner could have legitimately requested the Commissioner of Labour to function as a Returning Officer or to nominate one of the Officers of the Labour Department as the Returning Officer and therefore his refusal to do so was contrary to the Rules.

8. As far as the first contention is concerned, the answer is provided in the Commissioner's letter Annexure-J. When the Petitioner relied on Regulation 4(2) (a) and (b) of the Karnataka Trade Union Regulations 1958, in its letter dated 23-4-1984, the Commissioner in his reply pointed out that there was no such Regulation at all though in the official publication of the Rules published by the Labour Department itself, the said Rule had been incorporated into the regulations.

9. In order to find out as to whether there is statutory basis for the contention urged on behalf of the Petitioner, it is necessary to inquire as to whether the Commissioner was right in saying that there was no Rule incorporated in Rule 4(2)(a) and (b) of the Mysore Trade Union Regulations 1958. The official publication of the Labour Manual Volume I, published by the Commissioner of Labour himself at page 159 reads ;

4. (1) "Register of Trade Unions - The Register of Trade Unions referred to in Section 8 shall be maintained in Form B.

2. (2) (a) The Commissioner of Labour or his nominee shall be the the Returning Officer for conducting elections of the Union whose membership exceeds 2000. The Returning Officer may appoint as many Polling Officers as may be necessary for conducting such elections.

(b) The Union which requires the assistance of the Commissioner of Labour for conducting elections, shall by a resolution passed by the Executive Committee,

request the Commissioner of Labour to conduct elections. The cost of elections shall be borne by the Union and the said cost shall be deposited in the office of the Commissioner of Labour in advance."

1. Omitted vide Mysore Trade Union (Amendment) Regulations 1966.

2. Ins. vide Mysore Trade Union (Amendment) Rules 1968.

The above Regulations are framed by the State Government in exercise of its power u/s 29 of the Trade Unions Act. If, Rule 4(2)(a) and (b) as set out above was part of the Regulations 1958, then it would be having statutory force, as it would be a Regulation framed by the State Government in exercise of its delegated of Legislative power u/s 29 of the Act. If that is so not with standing the fact that there is no Rule in the Election Rules of the Petitioner Trade Union or even if there is a provision which is contrary to the above Regulations, it is the above Regulation that will prevail and not the Rules of the Trade Union.

10. But the Commissioner of Labour in his letter dated 8-5-1984 (Annexure-J) stated that the above Rule 4(2)(a) and (b) was not at all introduced into the Trade Union Regulations 1958 by the Government, though the official publication says so. According to him it was a mistake in printing by wrongly incorporating an amendment made to the Model Election Rules, into the Trade Union Regulations.

11. In order to find out as to whether the Commissioner of Labour was right in saying so so, I verified the Official Gazette by which Rule 4(2)(a) and (b) were introduced. The said notification reads :

"G.S.R. 97 . The Government of Mysore hereby makes the following rules further to amend the Mysore Trade Union Election (Model) Rules, 1953, the draft of the said Rules having been published in Notification No G.S.R. 338 (FCL 20 LWA 67) dated 29th July 1967 in Part IV-2-C(i) of the Mysore Gazette dated the 3rd August 1967 namely :-

1. Title - These rules may be called the Mysore Trade Union Election (Model) (Amendment) Rules, 1968.

2. Amendment of Rules 4 - Rules 4 of the Mysore Trade Union Election (Model) Rules 1958 shall be renumbered as sub-rule (1) of that Rule and after the sub-rule (1) as so re-numbered, the following sub rules shall be added namely :-

"(2)(a) The Commissioner of Labour or his nominee shall be the Returning Officer for conducting elections of the Union whose member-ship exceeds 2,000. The Returning Officer may appoint as many polling officers as may be necessary for conducting such elections-

(b) The Union which requires the assistance of the Commissioner of Labour for conducting elections, shall by a resolution passed by the Executive Committee, request the Commissioner of Labour to conduct the elections. The cost of the elections shall be borne by the Union and the said cost shall be deposited to the

office of the Commissioner of Labour in advance.

(No. LMA 20 LWA 67J)"

As can be seen from the above notification, it was an amendment made to the Model Election Rules and not to the Trade Union Regulations 1958. Therefore, it is clear, that the Commissioner was right in saying that there was no Regulation 4(2)(a) and (b) on which the petitioner relied in its letter dated 23-4-1984 (Annexure-H). Obviously there is a mistake in printing of the Labour Manual, Volume No. I, though it is an official publication. Therefore, the fact remains that there is no provision like Regulation 4(2)(a) and (b) in the Trade Union Regulations 1958. Therefore, the first contention urged for the petitioner has to fail."

12. As far as the Election Rules are concerned, it is not disputed by the Learned Counsel for the Petitioner that the Rule similar to 4(2)(a) and (b) of the Model Election Rules as introduced by the Mysore Trade Union Election (Model) (Amendment) Rules 1968 has not been incorporated in its Rules. Therefore no reliance can be placed upon the said Rules.

13. Learned Counsel for the Petitioner submitted that even according to the existing Rules, there is no bar for the Petitioner to request the Labour Commissioner or his nominee to be a Returning Officer, In support of his submission he relied on Rule 4 of the Election Rules of the Petitioner. It reads :

"For purposes mentioned in the preceding Rule 3 and for purposes of conducting the elections of the Sangha, the President, in his absence the Vice President or Secretary in his absence Joint Secretary, or any person duly authorised by the Managing Committee shall notify the Calendar of events in Form " A "."

(Underlined by me)

Learned Counsel submitted that having regard to the wording of the Rule while it was open for the President, Vice-President, Secretary or Joint Secretary of the Petitioner to be a Returning Officer, it was also open for the Managing Committee to request any other person to be a Returning Officer. He submitted that as in the present case the Managing Committee had requested the Labour Commissioner to nominate a Returning Officer he was bound to do so.

14. It may be as contended for the Petitioner the expression "any other person duly authorised by the Managing Committee" in the Election Rules of the Petitioner as existing, can include the Labour Commissioner or his nominee. But still the question arises, whether a Writ of Mandamus would lie to the Commissioner to nominate a Returning Officer. The Rules framed by a Trade Union for purposes of securing registration u/s 6 of the Act are Rules meant for its internal administration and are equivalent to the bye-laws of Co-operative Society or Rules framed by a Society for securing registration under the Societies Registration Act. They would have no statutory force and consequently cannot create any statutory obligation in the Commissioner. (See Co-operative Central

Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, Therefore, even if the Petitioner - Union had incorporated Rules similar to Rule 4(2)(a) and (b) of the Model Election Rules into its Election Rules, or even if the rules without such amendment also provided for requesting the Labour Commissioner to nominate a Returning Officer, the Commissioner could not be compelled by the issue of a Writ of Mandamus to nominate a Returning Officer as the Trade Union has no authority to create a statutory duty in the Commissioner by framing its Own Rules which have no statutory force. Therefore, I consider it impermissible to issue a Writ of Mandamus to the Labour Commissioner, as sought for.

15. However, I may observe, that the Commissioner of Labour appointed by the State Government is placed in over all in-charge of the administration of the Labour Department and therefore if a Trade Union makes a request to appoint an Officer of the Labour Department as a Returning Officer, and he considers that it is expedient to do so, he could do so and there is nothing in the Act or Rules which prevents him from doing so. Therefore, in this case, particularly, having regard to the fact that the Petitioner-Trade Union had nominated an Advocate as Returning Officer but the same was challenged by some other persons and there was an injunction against him not to hold the elections and as the term of the office Bearers of the Petitioner Union expired on 5-5-1984, and no election has taken place so far, it is open to the Labour Commissioner to reconsider the matter and nominate a Returning Officer acceding to the request of the petitioner though he cannot be compelled by the issue of a Writ of mandamus.

16. In the result, I make the following Order :

Writ Petition is dismissed, but leaving liberty for the Commissioner of Labour to reconsider the request of the petitioner to nominate a Returning Officer on its merits in the light of this Order.