

**(2006) 12 DEL CK 0048**

**In the Delhi High Court**

**Case No :** Regular First Appeal (OS) No. 33 of 2006 and CM No's. 6880/06 and 12335/06

H.P. Singh

APPELLANT

Vs

Food Corporation of India Workers Union

RESPONDENT

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**Date of Decision :** 15-12-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

**Citation :** (2006) 12 DEL CK 0048

**Hon'ble Judges :** Mukul Mudgal, J; J.P. Singh, J

**Bench :** Division Bench

**Advocate :** Rajive Sawhney and Vineet Jhanji, for the Appellant; Indira Jaisingh and Rajiv Talwar and Bharat Sangal, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Mukul Mudgal, J.—This FAO challenges the order dated 31st March, 2006 passed by the learned Single Judge giving directions with respect to the conducting of elections of the Respondent Union which have led to the present appeal.

2. The facts of the case have been summarized briefly as under:

(a) On 11th April 1998 at the 30th Annual General Meeting of the Respondent Union the Appellant was re-elected General Secretary. On 13th-15th November 1998, a meeting of the Executive Committee of the Respondent Union was held at Puri (Orissa) and was attended by the Appellant. At this meeting an alleged resolution was passed entrusting and empowering the President to keep a watch on the activities of the Appellant and to remove him if his activities were found to be anti-social. The said resolution was denied by the Appellant as being a fabricated document.

(b) On 16th March, 1999 the President of the Union removed the Appellant from the post of General Secretary. Admittedly, no show-cause notice was issued to the Appellant before taking the said decision.

(c) The decision of the President was sought to be ratified at a meeting of the Union held on 24th March 1999, no notice of which was sent to the Appellant. No show-cause notice was either issued or sent to the Appellant before the alleged meeting and resolution dated 24th March 1999.

(d) Immediately after the passing of the alleged resolution dated 24th March 1999, the Respondent Union on 26th March 1999 filed a suit against the Appellant in this Court. By an order dated 26th March 1999 the Appellant was restrained from acting or representing the Union as the General Secretary and from holding any conference or meeting of the Respondent Union.

(e) Thereafter, the Appellant on receipt of the summons filed an application (IA No. 3383/99) under Order 39 Rule 4 for vacation of the stay order dated 26th March 1999. After hearing the arguments the following consent order was passed by this Court, the relevant part of which is reproduced hereunder:

(i) The Annual General Meeting fixed for 4th and 5th April, 1999 shall be now held on 8th April, 1999.

(ii) The AGM shall be conducted under the supervision of Hon"ble Mr. Justice P.K.Bahri a retired Judge of this Court and in case Justice Bahri is not available then Hon"ble Mr. Justice Jain a retired Judge of this Court shall be the Chairperson of the meeting.

(iii) The item on the agenda of the AGM shall be discussed and voted for from 10:00 a.m. to 4:00 p.m. on 8th April 1999 and thereafter the election shall be conducted under the supervision of the Chairperson of the Meeting.

(iv) The nomination for the various posts shall be filed before the Chairperson by 5:00 p.m. of 7th April, 1999.

(v) The voting shall be by secret ballots.

(vi) The Chairperson shall communicate the results to this Court in a sealed cover within a week of the AGM.

(vii) The Chairperson shall be empowered to take any decision on the spot which may become imperative. The Chairperson shall be given Rs. 20,000/- by the plaintiff.

(f) From 12th April 1999 till 29th May 1999 the application for vacation of stay was heard but no order was passed on the said application moved by the Appellant.

(g) On 24th April 1999, a meeting of the Executive Committee was held in Kolkata where it was allegedly resolved to remove the Appellant from the honorary membership of the Respondent Union pending disciplinary action.

(h) Subsequently on 9th May 1999 a resolution was passed against the Appellant removing him from the honorary membership of the Respondent Union. No show-cause notice, personal hearing or notice of the meeting was either sent to or

received by the Appellant.

(i) Fresh elections were held on 17th June 2000 at which new office bearers and an Executive Committee were elected. The Appellant was re-elected as General Secretary of the Respondent Union through this election.

(j) In October 2000 the Respondent Union filed another suit being Suit No. 2349/2000 for declaration and permanent injunction against the elected office-bearers and Executive Committee members of the Union. The Appellant was not a party to this suit.

(k) By an order dated 23rd October 2000 this Court restrained the Defendants in Suit 2349/2000 from acting and/or representing themselves as office-bearers/ Executive Committee members of the Union. By this order, this Hon"ble Court also appointed Hon"ble Mr.Justice J.K.Mehra as the Court Commissioner to hold fresh elections of the Union in accordance with the Constitution of the Union.

(l) In March 2001, the Appellant filed an appeal before the Division Bench being FAO (OS) No. 132/2001 for setting aside the stay. By this order of the Division Bench dated 26th March 2001, the Appellant was directed to approach the Hon"ble Single Judge for expeditious disposal of the above-said Applications.

(m) As per these directions, the Appellant filed an Application being I.A. No. 4124/2001 praying to dispose of the application filed by the Appellant under Order 39 Rule 4.

(n) By the order dated 31st March 2006 the Hon"ble Single Judge disposed off the suits directing that elections be held and restrained the Appellant from acting as General Secretary or representing the Respondent Union.

3. The learned Counsel for the appellant submits that the stigma of expulsion remained on the appellant and was not adjudicated by the learned Single Judge. Secondly, as a General Secretary, the appellant was entitled to function as a General Secretary according to the constitution of the Union and in particular Clauses 14 and 15 have been relied upon by the learned Counsel for the appellant which read as under:

#### 15. DISCIPLINARY PROCEDURES:

Any member whether honorary or ordinary, acting in a manner prejudicial to the interest of the union, will be liable to disciplinary action by the Executive Committee provided that no disciplinary action will be taken against a member unless he has been given a chance of hearing by the Executive Committee. Provided further that no member will be expelled from the union unless such decision has been taken by the Executive Committee at least by the two third's majority.

#### 16. TENURE OF OFFICE:

The Delegates" Session the Executive Committee and the office bearers will, on

election, be in office for at least one year unless otherwise debarred as per these rules and shall continue to be in office until being succeeded.

The Departmental Committees will also be elected for one year and shall continue to hold office until being duly succeeded.

The learned Counsel for the appellant further submitted that it was not for the Executive Committee to delegate this authority which was to be exercised by 2/3rd majority of the members.

4. We now deal with the plea raised by the learned Counsel for the appellant, Shri Rajive Sawhney that the ex-parte order in favor of the plaintiff/respondent could not be confirmed by the learned Single Judge without hearing the appellant. He has submitted that the consent given by him for holding of the election was only for a given date and did not and could not lead to a situation where the Court could not decide whether the ex-parte order was not justified and the disposal of the suit continued the ex-parte interim order debarring the appellant from continuing as General Secretary. The learned Counsel for the respondent Ms. Jaisingh submitted that this plea was fully dealt with by the learned Single Judge in paragraph 9 in the following terms:

10. It is to be kept in mind that the matter relates to the election of a union. The parties agreed that the lasting solution would be hold fresh elections. Even in second suit, with the consent of the parties, Mr. Justice J.K. Mehra (Retd.) was appointed as the Court Commissioner to hold elections of the union in accordance with the constitution of the union. Therefore, notwithstanding the pendency of this application in the first suit, the parties agreed even in the second suit that fresh elections should be held to clear the impasse. Normally such an election would have been held, but for the two difficulties faced by the learned Court Commissioner, which are mentioned in the sixth meeting held on 15th March, 2001. Therefore, he desired that the Court should decide on the said two aspects before the election is held. Matter came back before the Court to take a decision on the said issues, namely, about the membership of those who had not paid their subscriptions and the modalities of holding the elections.

11. During the course of arguments Ms. Indira Jaisingh, learned Senior counsel for the plaintiff, submitted that the plaintiff shall have no objection if the members whose names are on the register of membership, are allowed to vote even when they had not paid their subscription earlier with the condition that these members would clear their dues qua the arrears of subscription. Since the plaintiff had taken the stand before the learned Court Commissioner that those who had not paid their subscription had ceased to be the members and were not entitled to cast their votes and the plaintiff is not pressing this objection in view of the aforesaid concession, in so far as the first difficulty is concerned, it stands resolved.

5. The learned Counsel for the appellant submitted that on 26th March, 2001, another order was passed by another Division Bench of this Court which showed

that the learned single Judge was required to decide the application on merits. The said order dated 26th March, 2001 reads as follows:

FAO(OS) No. 132/2001 & CM 352/2001

We are not inclined to entertain this appeal against the order dated 26th March, 1999 at this stage, when the application for vacation is pending consideration before the learned Single Judge. Various orders have been passed from time to time, but no request appears to have been made for disposal of application under Order XXXIX Rule 4 of the Civil Procedure Code. It is for this appellant to apprise learned Single Judge of the requirement of expeditious disposal of application under Order XXXIX Rules 1 & 2 CPC by which ex-parte order was granted and also the application moved for vacation of the said ex parte order.

With leave and liberty granted as aforementioned the appeal is dismissed.

6. The learned Counsel for the respondent Ms. Jaisingh submitted that the said order of 26th March, 2001 was an ex-parte order dismissing the appeal filed by the appellant against the order dated 26th March, 1999 without issuing notice to the respondents and cannot be relied upon by the appellant against the respondents. She further submitted that the order dated 15th May, 2006 passed in this appeal by another Division Bench issuing notice and not granting stay, was challenged by the appellant by filing SLP No. 9877/2006 and the Hon'ble Supreme Court dismissed the said SLP where all the grounds sought to be raised today were urged. Ms. Jaisingh further submitted that on 21st August, 2006, the order dated 23rd October, 2000 for holding the election was reiterated and the elections were directed to be held within six weeks. The order of the Division Bench dated 21st August 2006 reads as under:

It is stated by the counsel appearing for the Respondent that counter affidavit is filed as against both the appeal as also the stay application. The same is not on our record. Counsel shall verify from the Registry and get the same placed on record. Rejoinder, if any, could be filed within a week.

Our attention is drawn towards the effective part of the impugned order dated 31st March 2006. We find from the said order that Justice J.K.Mehra, a retired judge of this Court was appointed as the Court Commissioner under Order dated 23rd October, 2000 to hold the elections of the Union after preparing a region-wise list of voters. Therefore we request the Court Commissioner to hold the elections of the Union within a period of six weeks from today. He is also requested to submit a report in that regard before the next date.

Renotify on 25th September, 2006 for hearing arguments.

7. The consent for holding elections is also implicit in this order of the Division Bench. The petitioner had also unsuccessfully raised the present pleas before the Hon'ble Supreme Court against the order of the Division Bench dated 15th May, 2006 issuing notice on the appellant's present appeal. This is also a significant factor which lends credence to the impugned order of the Learned Single Judge

and after considering the seven years stint claimed to be enjoyed by the appellant no fault can be found with the order of the Learned Single Judge restraining the appellant from holding himself out as the General Secretary of the Union particularly when the appellant is obviously not overanxious to have an expeditious election.

8. The learned senior counsel for the respondent Ms. Jaisingh submitted that on 16th March, 1999, the appellant was removed from General Secretaryship of the union and on 9th May, 1999 the appellant was expelled as a member. He took no legal steps to challenge the said order and inspire of this illegally purported to perform the functions of the General Secretary which led to the filing of the civil suit No.2349/2000 in this Court. Ms. Jaisingh also submitted that in the meanwhile the appellant also enjoyed a stint as a Member of Parliament and had consequently lost all interest in the activities of the Union. The legality of the removal from the General Secretary's post on 16th March, 1999 and expulsion as a Member on 9th May, 1999, not having been challenged in any legal proceedings cannot be set up as a ground in the written statement by the appellant and consequently as a ground in the present appeal.

9. In our view it is not open to the learned Counsel for the appellant to urge that the removal or expulsion of the appellant was illegal as the appellant himself had never challenged the removal in any proceedings for several years and sought to urge these pleas for the first time only as a defense to the suit. In so far as Clause 14 and 15 are concerned they demonstrated that the office bearers were to continue until the new elections. These elections were to be held every year and such clauses cannot be construed in a manner which permitted the period between two elections to stretch to seven years by a party which has not cooperated in earlier holding of the elections and the appellant can not be heard to urge that he continued to be the General Secretary.

10. We have perused the proceedings in this Court and the unsuccessful SLP in the Hon'ble Supreme Court against an order of the Division Bench issuing notice and also the proceedings before the Court Commissioner which have led Justice J.K. Mehra to relinquish charge as Court Commissioner. All these factors demonstrate eloquently that such conduct benefits only the appellant. Consequently the Learned Single Judge has rightly taken the only course to resolve their dispute by ordering a fresh election. No bona fide contender legitimately seeking a fresh and fair election can object to such a course of holding fresh elections under the supervision of an independent Court Commissioner. The obduracy of the stance of the appellant and the protracted challenge to the fresh elections demonstrates that the appellant is not keen on holding fresh elections so as to proclaim himself as General Secretary beyond seven years which has been rightly restricted by the Learned Single Judge. We cannot sustain any efforts by a party who has not permitted the elections for a period of more than seven years and seeks to continue by virtue of a clause which permitted continuance during the interim period up to the next elections

which are not being held. The appellant never challenged his expulsion and removal from the post of General Secretary at any forum and cannot consequently now agitate this issue in these proceedings to continue his efforts to act as the General Secretary of the Union.

11. We are of the view that consent to a Court Commissioner holding elections given once cannot be construed as consent being given for a single hearing. We are in agreement with the observations made by the Learned Single Judge in the impugned order dated 31st March 2006 with respect to the order dated 26th March 1999. The relevant portions have been reproduced below:

2. This order also records that according to the defendant the AGM of the plaintiff union had been fixed on 4th and 5th April 1999 and a very large number of members had already arrived in Delhi for the said purpose. Submission of the plaintiff's counsel, on the other hand, was that the AGM was, in fact, fixed on 9th to 11th April 1999 at Hyderabad and decision to fix the AGM at Hyderabad on the aforesaid dates was taken in the Executive Committee meeting held on 13th/15th November 1998. The version of the plaintiff was disputed by the defendant and that of the defendant was disputed by the plaintiff. In these circumstances, ultimately the parties agreed that the AGM would be held on 8th April 1999 and be conducted under the supervision of a retired High Court Judge.

3. Intention clearly was that there should be a fresh election and it is clear from the said order that it was not only the concern of the Court but, presumably the parties as well, that the election would be held as soon as possible. Date of election was accordingly fixed for 8th April 1999.

12. The Order dated 26th March 1999, the relevant parts of which have been reproduced earlier clearly stated that the items on the agenda of the AGM would be discussed and voted for from 10:00a.m to 4:00 p.m and the elections would be conducted under the supervision of the Chairperson thereafter. Even though the order dated 12th April 1999 records that no elections were held on 8th April 1999, the appellant's consent recorded in the order 26th March 1999 cannot be construed only with respect to the above-mentioned date and not on any further date. The consent given was for a fresh election and there is nothing in the order dated 26th March 1999 reproduced earlier to restrict the scope of the consent of the appellant for holding a fresh election in the manner suggested by the learned Counsel for the appellant. We affirm the Learned Single Judge's observations with respect to the holding of the elections of the Union in the impugned order dated 31st March 2006 as have been reproduced below:

5. Matter was taken up for hearing on 8th April 1999 on being mentioned by the parties, as the parties wanted certain further directions. This Court passed an order requesting the learned Chairperson to give necessary directions as and when he deemed it appropriate. However elections could not take place. Matter was again taken up for hearing on 12th April 1999 when counsel for the parties made a statement that it was not possible to elections immediately and prayer

was made that in the larger interest the elections be postponed for the time being. Order was passed accepting this request of the parties. It seems that thereafter applications were taken up for arguments and even arguments were heard. On 26th April 1999 the Court issued notice to the Chief Labor Commissioner (Central), Ministry of Labor, Government of India as well as to the Registrar of Trade Unions, West Bengal and the Managing Director of the FCI directing them to appear through counsel or representative. The tenor of this order would show that the purpose was to explore the possibility of holding smooth and fair elections.

13. In this suit CS (OS) No. 2349/2000 for permanent injunction the order dated 23rd October 2000 was passed appointing Mr. Justice J.K.Mehra (Retd.) as Court Commissioner to hold and conduct elections of the Union. We feel this order is a well-reasoned order passed after hearing the counsel for the parties where the defendants were restrained from representing themselves or acting as office bearers or members of the Executive Committee of the Union and a Court Commissioner was appointed with consent of both parties. Since the Learned Single Judge correctly emphasized the need for fresh elections and the fact that such elections are not only in public interest but also in the interest of the Union itself, the following directions were issued in the impugned judgment of 31st March 2006:

1. Mr. Justice J.K. Mehra (Retd), who was appointed as the Court Commissioner vide order dated 23rd October, 2000, shall hold the elections of the Union in accordance with the Constitution of the Union;
2. All the members who had not paid their subscriptions shall be allowed to clear the arrears of subscription within two months from the date of notice to be given by the learned Court Commissioner. Those who clear the arrears of subscription shall be entitled to contest the election as well as cast their votes;
3. List of voters shall be prepared region wise and it would be sent to the respective Regional Labour Commissioners with request to conduct the elections by themselves or through one of their colleagues with the assistance from the staff of FCI.
4. In conduct of the elections, which shall be through secret ballot, procedure as laid down in Food Corporation of India Staff Union's case (supra) as applicable mutates mutant shall be followed.
5. If the clarification is required in this behalf, the learned Court Commissioner shall have right to issue the clarifications.
6. Result of each region shall be compiled and final result announced by the learned Court Commissioner in Delhi.

14. Furthermore, the impugned judgment of 31st March 2006 does grant the relief sought for by the appellant in respect of the members who were in default of their dues. Thus the appellant cannot seek to derive the benefit of the Learned

Single Judge's judgment on this ground and challenge it on other grounds.

15. Since Hon"ble Justice J.K. Mehra has expressed his unwillingness to continue we hereby appoint Justice V.S. Aggarwal as Court Commissioner and direct the parties concerned to appear before him on the 15th of January 2007 at 4.30 P.M. so as to carry out the mandate of the order of the learned Single Judge dated 31st March, 2006. Thus, save and except the change in the name of the Court Commissioner and the date of appearance before him, the rest of the impugned order by the learned Single Judge dated 31st March, 2006 is affirmed and the appeal is dismissed accordingly with costs quantified at Rs. 10,000 payable within four weeks time.