

(2014) 07 GUJ CK 0124

In the Gujarat High Court

Case No : Special Civil Application No. 7447 of 2014

Indrajitsinh Vijaysinh Solanki

APPELLANT

Vs

Commissioner of Labour

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2(p)

Citation : (2014) 143 FLR 361

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Shalin Mehta, Senior Advocate and P.C. Chaudhari, Advocate for the Appellant; K.M. Patel, Mihir Joshi, Senior Advocates, D.G. Shukla, Kunan Nayak, Yogen N. Pandya and Rashesh Rindani, A.G.P, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.—Challenge in this petition is made to the action of the respondent No. 6, who was appointed as Election Officer, pursuant to the directions of this Court, as contained in the judgment dated 23.12.2013 recorded on Special Civil Application No. 288 of 2013. Under these circumstances, to appreciate the controversy in the present petition, the circumstances leading to filing of Special Civil Application No. 288 of 2013 ("the earlier petition" for short) needs to be kept in view. It is recorded that the contesting respondent in this petition is respondents No. 4 and 5. In earlier petition also, the contesting respondents were respondents No. 4 and 5. Respondents No. 4 and 5 in both the petitions are the same persons. The present petition is contested, principally on the ground of maintainability. The contest is from the respondents No. 4 and 5. Therefore the question of maintainability of this petition needs to be adjudicated first.

Mr. K.M. Patel, learned Senior Advocate for respondents No. 4 and 5 has vehemently submitted that, this petition is not maintainable. According to respondents No. 4 and 5, the petitioners need to file an election petition, or they

can avail an alternative remedy of approaching the Industrial Court as provided under section 14-A of the Trade Unions Act, 1926, or can approach the Civil Court by filing a Civil Suit. Reliance is placed on number of authorities in this regard, which are referred hereinafter. In substance, the contest of respondents No. 4 and 5 is that, this Court may not go into the merits of the matter.

On the other hand, Mr. Shalin Mehta, learned Senior Advocate for the petitioners has vehemently contended that, respondents No. 4 and 5 have attempted to frustrate the order of this Court dated 23.12.2013 in the earlier petition and it was facilitated by respondent No. 6. It is submitted that since respondent No. 6 was acting under the orders of this Court, his mischief needs closer scrutiny by this Court and the same be examined by this Court. It is also submitted that, there is no other remedy to the petitioners, atleast no efficacious remedy in the facts of this case. On behalf of petitioners also, number of authorities are cited to counter the authorities relied on behalf of respondents No. 4 and 5.

2. Having heard learned advocates for the respective parties, on the question of maintainability of this petition, and having gone through the material on record, this Court finds as under. It is also recorded that, while examining the contention of maintainability at the instance of respondents No. 4 and 5, the merits of the matter, the locus and interests of respondents No. 4 and 5, are also recorded and discussed, since they are interwoven.

3. The controversy is with regard to the office bearers of the Electricity Mazdoor Sabha. The said Union represents the workers of the Torrent Power Limited (erstwhile-the Ahmedabad Electricity Company Limited). The present respondents No. 4 and 5 were the President and the General Secretary, respectively, of the said Union, since years and it was the case of the present petitioners, who were the members of the said Union that, though the maximum term of the office bearers of the Union, as prescribed in the constitution of the Union, and the maximum term as per the statute, was already over since long, the office bearers i.e. respondents No. 4 and 5, were not holding election of the said Union, and under these circumstances, a petition was filed before this Court being Special Civil Application No. 288 of 2013.

4. The circumstances leading to the filing of the said petition, the stand of the respective parties therein, observations, findings and final directions given by this Court in the said petition, all are relevant, and therefore the entire judgment of this Court in Special Civil Application No. 288 of 2013, dated 23.12.2013 is quoted hereunder:

"SPECIAL CIVIL APPLICATION No. 288 of 2013 CORAM: HONOURABLE MR. JUSTICE N.V. ANJARIA Date: 23.12.2013 CAV JUDGMENT

1. The petitioners herein are the members of Electricity Mazdoor Sabha, a registered union, who have by filing the present petition prayed for issuance of a writ or direction to direct respondent No. 2-the Registrar of Trade Unions to immediately hold the election of the office bearers of the Electricity Mazdoor

Sabha under its supervision and control to elect new office bearers for the period 2012 onwards before any negotiation/settlement with regard to wage revision is finalised.

2. The relevant facts and the contentions of the parties in light of which the aforesaid prayer falls for consideration may be set out.

3. It is the grievance of the petitioner that the existing office bearers of the union have been avoiding the holding of elections which are due from October, 2012 and for which the process was required to be started in August-September, 2012. It is stated that in order that the elections are held in time, they addressed letters and representations to the Deputy Commissioner of Labour on 28.8.2012. Thereafter again on 11.9.2012, a representation was addressed to the Registrar, Trade Unions and the Deputy Labour Commissioner respectively, requesting them to immediately start the election process and hold elections. It is further stated in the petition that along with the aforesaid letter dated 11.9.2012, list of signatures of 1700 workers out of total 2600 members of the union was forwarded emphasizing immediate holding of elections which were already due. It is the further case that individual as well as joint representations dated 13.9.2012, 25.9.2012, 11.10.2012, 21.12.2012, 24.12.2012, etc., were addressed to the competent authorities reiterating the request.

3.1 A case is put forth that the elections to the union are not being conducted deliberately and it is suspected that the existing office bearers may unauthorisedly enter into settlement with respondent No. 3 Company regarding wage revision against the interest of the workers' community at large. In this context it was submitted that the settlement has to be arrived at with proper representation of the workers and after proper negotiations. It was submitted that unless the negotiation for settlement are undertaken by and through the duly elected representatives of the union, the workers' rights and interests may suffer in ultimate analysis. It was submitted that the holding of elections without any delay and in the free and fair manner was thus necessary.

3.2 Respondent Nos. 4 and 5 being the President and the General Secretary of the union filed their affidavit-in-reply dated 23.1.2013, and contended that the petitioners have wrongly stated that they were the members, as they have been suspended for 10 years by the union in its Annual General Meeting. It was stated that the union had arrived at settlement with the Company in the interest of the workers. It was stated that the Executive Committee members of the respondent union in its meeting held on 28.8.2010 before the last election had unanimously decided to resolve that the tenure of the next elected Executive Committee would be upto 31.12.2012. Respondent Nos. 4 and 5 further stated that they were elected in July, 2007 and again in 2010 and during their tenure, the settlement in question was arrived at, they having negotiated with the Company. With regard to holding of elections it was averred that Annual General Meeting was convened on and another Meeting in connection with the election of the office bearers was convened on 29.12.2012 and in that regard respondent No. 2-

Registrar of Trade Unions was intimated by letter dated 22.12.2012.

3.3 Respondent No. 3 Company responding to the petition filed affidavit-in-reply dated 19.1.2013 and inter alia opposed the case of the petitioners, stating in paragraph 9 of the petition that the petition is an attempt to disturb industrial peace prevailing in the respondent Company. It was contended that Electricity Mazdoor Sabha is a trade union different from its office bearers and there can be no bar to negotiations with the union. It was contended that the petition involved dispute amongst the members of the union. It was further contended that the Company had entered into settlement with trade union on 22.3.2010 under section 18(1) read with section 2(p) of the Industrial Disputes Act, 1947 which was arrived at in course of conciliation proceedings and the period of said settlement was from 1.4.2009 to 31.3.2013. Since the period of operation of the settlement came to end on 31.3.2013, the union has raised fresh demands by its letter dated 10.11.2012. It is stated that the Company and the union have been amicably settled the demands by way of mutual negotiations. The affidavit of the Company further mentioned that during the continuance of such negotiations and deliberations, it received copy of the present petition to know about the dispute regarding elections of the office bearers of the union, therefore, by letter dated 15.1.2013 it inquired, and said union by letter dated 16.1.2013 clarified that the Samanya Karobari Samiri in its meeting dated 16.7.2012 and thereafter in the General Meeting of the union held on 29.12.2012, resolved that the present Committee of the office bearers have been authorised to deliberate and negotiate the settlement and to hold the election once the settlement has been arrived between the parties.

3.4 Reply affidavit on behalf of respondent Nos. 1 and 2 is also filed in which it is stated on behalf of Deputy Labour Commissioner that pursuant to representation of petitioners dated 28.8.2012 and 11.9.2012 regarding holding of election to the union, the office of the Deputy Labour Commissioner informed respondent Nos. 4 and 5 by letter dated 3.10.2012 that election process was required to be initiated within time as the term had already expired. It is further stated that as respondent Nos. 4 and 5 ignored the directions from the office of the Deponent, a show-cause notice dated 18.1.2013 for cancellation of registration of the union was issued. It was further stated that in the Trade Unions Act, 1926 there was no provision for disqualifying the office bearers of the union for not holding the election timely.

3.5 The respective parties filed their rejoinder affidavits and sur-rejoinder affidavits. Respondent Nos. 4 and 5 denied that 1700 members had joined the petitioners in requesting for holding of immediate election as claimed. The pleadings contained allegations and counter-allegations in this regard. With regard to the Meeting dated 29.12.2012 it was the case that the said Meeting was called pursuant to notice dated 14.12.2012. In that it was resolved by passing Resolution to give authority to the existing Committee to deliberate with regard to the pay-scales. It was further resolved that the existing Committee of

the office bearers would continue in respect of negotiating on the new pay-scales applicable from April, 2013.

4. Heard learned advocate Mr. T.R. Mishra for the petitioners, learned senior Counsel Mr. Mihir Joshi appearing for M/s. Trivedi and Gupta with learned advocate Mr. K.B. Nayak for respondent No. 3 and learned advocate Mr. D.G. Shukla for respondent Nos. 4 and 5. Learned Assistant Government Pleader appeared on behalf of respondent Nos. 1 and 2 authorities to assist the Court.

4.1 It was submitted by learned advocate for the petitioner that attempt to thwart and delay the election by respondent Nos. 4 and 5 was evident from the facts of the case. It was submitted that though the term of the office bearers of the union has been over, the office bearers have unauthorisedly continued themselves in the office. By referring to the affidavit-in-reply of the Company, it was submitted by learned advocate for the petitioner that the stand taken by it was indicative that the Company and the office bearers are hand-in-glove. He submitted that elections are overdue and required to be held under supervision of an independent authority. He then additionally submitted that the petitioners are also entitled to participate in the elections. He submitted that the Resolution was passed to suspend the petitioners from the membership, which was not approved by the Deputy Registrar of Trade Unions, and the same was cancelled and the petitioners continued to the members.

4.2 In support of his contentions, learned advocate for the petitioner relied on the decisions in B.C. Sharma and Another Vs. M.L. Bhalla and Others, , as well as in North Eastern Railway Employees' Union v. Third Additional District Judge, Farukhabad AIR 1988 All. 2117.

4.3 Learned advocate Mr. D.G. Shukla for respondent Nos. 4 and 5 submitted that the said respondent was elected as office bearers of the Union in the past year also, that they were instrumental in negotiating the settlement with the company. The settlement was arrived at for the period from 1.4.2009 to 31.3.2013, under which the workers could get the monetary benefits to their benefit and the total amount ran into about Rs. 75 crores. On the basis of affidavit in reply, it was further contended that in the last election held on 27.9.2010, both the petitioners also contested the election to the post of General Secretary but were not elected.

4.4 Learned advocate for the respondent Nos. 4 and 5 relied on these decisions to buttress his contentions: (i) Triloki Nath Tripathi Vs. Allahabad Divisional Branch of All India Postal Workers Union Class III and Others, , (ii) O.P. Gupta Vs. Union of India and Others, , and (iii) Tata Workers Union Vs. State of Jharkhand and Another, .

4.5 Learned Senior Counsel Shri Mihir Joshi with learned advocate Mr. K.B. Naik for M/s. Trivedi and Gupta, appearing for respondent No. 3-company submitted that the anxiety of the company was to see that the process of settlement with the workers is not stalled. It was submitted that three years settlement was

entered into by the Union which was in particular benefit of the members of the union - all the workers. It was submitted that the company was for industrial peace and for negotiating the settlement, as the period of earlier one has expired and therefore, interested to see that the election to the office bearer of the union are held without unnecessary delay.

5. The Constitution of the Electricity Mazdur Sabha-respondent Union produced at Annexure-L at page 25, regarding election to the Union, Rule 35 deals with the election rules. It contemplates for appointment of selection officer, providing that such officer shall not be one having direct or indirect interest with any candidate or any panel of candidates. The duties of the election officers are mentioned. The rules also deal with the manner of voting and the steps in the election process until declaration of the results. The terms of office is provided for 2 years.

5.1 From the facts narrated above and the pleadings and contentions of the respective parties, certain factual aspects emerged which could not be disputed. Firstly, the term of the present office bearers of the respondent-union already expired in September, 2012. At the end of the two years term, elections were required to be held, which are not held. Therefore there is no gainsaying that the election to the office bearers of the union is overdue. Secondly, there has been repeated request not only by the petitioners, but there has been a strict intimation from the competent authorities to the office bearers who are elected in the last elections and continuing in office, to start the election process and to hold the election. On record, its letter dated 18.1.2013 produced at page 82 of the compilation of the petition, letter from the Deputy Registrar, Trade Unions wherein a serious exception is taken for not initiating the election process and for not holding the election and to show cause as to why the registration of the union should not be cancelled. It further appears, as noted above, by another letter dated 15.1.2013, the Registrar Trade Union intimated that the resolution Nos. 2 and 3 passed by the Union in the general meeting dated 29.12.2012 were cancelled as the elections were not held and the constitution of the Union was being violated by not holding the election.

5.2 Thirdly, requiring the holding of timely elections are emphasized, in the context of undertaking and continuing with the negotiations for settlement of wages, etc., with the Company. Fourthly, there cannot be two views that the settlement, etc., and other matters relating to the rights and interest of the workers has to be negotiated with the employer-Company by and through elected representatives. The elections are therefore necessary so that the workers can choose their representatives for the purpose.

5.3 In the next place, as coming out from paragraph 4.7 of affidavit-in-reply on behalf of respondent Nos. 4 and 5, that the executive committee members of the respondent-Union at its meeting held on 28.8.2010 before the last election, unanimously decided to extend the tenure of the executive committee upto 31.12.2012. In meeting held on 12.7.2012, it was resolved by the committee members to submit the charter of demand for revision of pay scales as the

existing settlement to expire on 31.3.2013. It was also proposed to postpone the election of the committee members and to hold the elections after new memorandum of settlement was arrived at. It was further intimated that the resolution whereby the petitioners and other seven members were came to be suspended was also not approved and it was further stated that those persons continues to be the members of the Union. By another letter dated 5.3.2013, the very authority has required respondent Nos. 4 and 5 to start the election process stating that the term of two years was already over.

6. A contention was raised by learned advocate for the petitioner that the petitioners apprehend seriously that they would not be allowed to participate, vote and contest in the election. This grievance is outside the compass of the basic controversy in the petition and is beyond the prayers of the petition. Any dispute, if at all arises or any objection to the eligibility of the petitioners as members entitled to participate or vote in or contest the election would be in the nature of election dispute arising in course of the election process only, and if such dispute arises, it would have to be dealt within accordance with law and the machinery provided in law. The apprehension of the petitioners is accordingly misplaced. Nothing further could be observed in that regard.

7. It was stated that Election Officer has been appointed, which shows inclination on part of respondent Nos. 4 and 5 to hold the election. On the other hand, in this regard, learned advocate for the petitioner took exception and contended that holding of the election should be supervised and controlled by independent Officer and another person independent of any side should be there to conduct the election.

8. Even as per the parties came out with their pleadings and contentions as above, they all were in a way unanimous to the extent that the elections are due and are required to be held. The contesting parties in course of the hearing also suggested from their respective side, the names of the persons who may be the Election Officer to conduct the elections. However, the parties could not agree on the name.

9. In the facts and circumstances of the case, it would be proper and apposite that the election to the office bearers of the union are conducted under the supervision of an independent officer. The election should not only be held free and fair, but it must seen that they are held free and fair. Therefore, a direction in this regard is issued herein. Since an independent officer is being directed to be appointed to supervise the election, it would be in fitness of the things that the entire initiation of the elections including the appointment of Election Officer is done by such officer.

9.1 In the context of the scenario emerging as above, following directions would meet the ends of justice:

(i) The election to the office bearers of the respondent-Union shall be held within the time frame provided herein and the same shall be held under the supervision

of an officer to be appointed by the Deputy Labour Commissioner from his office.

(ii) Such officer shall be other than the Deputy Registrar, Trade Unions. The exclusion of the Deputy Registrar, Trade Unions provided hereinabove, is upon joint request of the parties and it is clarified that his exclusion does not cast anything adverse on the person or the post.

(iii) Such officer shall be named by the office of Deputy Commissioner of labour within one week from the date of receipt of this order. For this purpose, the Registry of this Court shall forward a copy of this order to the Dy. Commissioner of Labour.

(iv) The officer to be appointed as per (i) above, shall appoint an election officer to conduct the election to the office bearers of the Union, from amongst the persons experienced in holding the Union election. While it would be open for the supervising officer to take suggestion from both the sides on the name of the persons to be appointed as election officer, the ultimate decision shall be taken by him and shall be final and binding.

(v) The officer concerned shall appoint an election officer within ten days.

(vi) The election officer shall thereafter immediately proceed to commence the election process by publishing the preliminary list of voters. The list of voters shall be displayed at a proper place. The election officer shall fix the election schedule wherein time bound programme for inviting objections to the preliminary list of voters, considerations of the objections and publication for final list of voters shall be provided for.

(vii) The time wise stages shall also be fixed by the election officer in the election process for conducting the election right from the stage of filing of nominations, withdrawal of nominations, scrutiny thereof, publication of final list of candidates, holding of actual counting and the declaration of final result, which shall be having due regard to rules provided in the constitution of the Union.

(viii) The election officer shall complete the entire election process within a period of six weeks from the date of his assuming the charge.

(ix) The officer who will be appointed as per direction Nos. (i) and (ii) hereinabove by the Deputy Commissioner of Labour shall supervise the process of election to ensure that the elections are held in accordance with law and in free and fair way.

10. The petition is allowed in terms of the directions and observations above."

5. In above circumstances and pursuant to the above quoted directions of this Court, the Deputy Commissioner of Labour, Ahmedabad issued a notification on 28.1.2014, which also contained the information that, present respondent No. 6 is nominated as the Chief Election Officer. It is noted that, the respondent No. 6 is an employee of the respondent Company and prior to the issuance of the directions by this Court, when a show was made by the earlier office bearers

(respondents No. 4 and 5) that they need to hold the election, at that time also, said respondent No. 6 was the Election Officer.

The supervising officer, as nominated by the Deputy Commissioner of Labour, pursuant to the above referred directions, found that, respondent No. 6 was acting arbitrarily and therefore, he removed respondent No. 6. Resultantly, the time limit prescribed by this Court to hold the free and fair election, could not be complied with and under these circumstances, the Electricity Company moved this Court by filing Miscellaneous Civil Application No. 1326 of 2014 in Special Civil Application No. 288 of 2013. The relevant part of the order passed on the said application dated 7.5.2014 reads as under:

"3. The present Miscellaneous Civil Application came to be filed by the applicant company-original respondent No. 3 praying that opponent No. 3-Commissioner of Labour and opponent No. 4-Registrar of Trade Unions and Deputy Commissioner of Labour be directed to complete the elections within four weeks as directed in the aforesaid judgment of this Court. 4. Having noticed from the facts stated in the application that the Election Officer was abruptly dropped as per the communication dated 24th February, 2014 aforementioned, this Court passed order dated 5th May, 2014 inter alia requiring the said supervisor to file affidavit and to explain the reasons because of which he relieved the Election Officer, more particularly because it amounted to breach of time bound completion of elections ordered in the judgment.

7. In the facts and circumstances of the case and in light of the scenario obtained as above, it is considered trite that opponent No. 3-Commissioner of Labour and opponent No. 4- Registrar of Trade Union ensures that the elections to the Union are got completed within six weeks from today in compliance of the directions by this Court passed in the main Special Civil Application. The modification being only that now Opponent Nos. 3 and 4 Authorities shall supervise the elections directly acting as supervisors in substitution. Mr. Sisodiya who was as such unanimously appointed shall continue to act as Election Officer and shall publish the election programme on or before 9th May, 2014.

8. It is reiterated that it will be the responsibility of opponent Nos. 3 and 4 herein to ensure that the directions of this Court and time schedule of the election to be notified by the Election Officer, as noted above, are strictly adhered to and the election shall be completed within six weeks from today as directed. Directions issued by this Court in main petition in paragraph 9.1 shall remain binding to the Election Officer and continue to operate qualified by the order passed hereinabove.

9. The present Miscellaneous Civil Application is allowed and disposed of in the aforesaid terms."

Pursuant to the above directions of this Court, election was held on 2.6.2014 and the results are out. As per the said result, petitioner No. 1 is declared elected as the General Secretary and petitioner No. 7 is declared elected as the President of

the Electricity Mazdoor Sabha. The contesting respondents No. 4 and 5, who were earlier the President and the General Secretary, respectively, also contested the election for the same posts, but have lost the confidence of the majority members of the Union, as evident from the results. The said result has come on record along with the report of the Deputy Commissioner of Labour. As per the said result, petitioner No. 7 (Mr. Narendra Bhadoriya) secured 720 votes for the post of President, while respondent No. 4 (Mr. Virabhai Parmar) secured 516 votes for the said post. For the post of General Secretary, petitioner No. 1 (Mr. Indrajitsinh Solanki) secured 717 votes, while one Mr. Bharat Jadav secured 706 votes, and the respondent No. 5 (Mr. A.P. Solanki) ranked third securing 569 votes.

The question before this Court now is, as to whether this election result should be given effect to or not. The hurdle is created by the respondent No. 6-- the Election Officer, who was appointed pursuant to the directions of this Court, and who was continued as such by this Court, inspite of his removal by the supervising authority of the Government. He has held that, the petitioners No. 1 and 7, who are declared elected as the General Secretary and the President, as noted above, and who represented the group, which had complained against the earlier office bearers (respondents No. 4 and 5) that though the term of the office bearers of the Union had expired way back in the year 2012, they were not holding the election, and therefore the petition was filed before this Court being Special Civil Application No. 288 of 2013, were not the members of the Union at all. It is this action of the respondent No. 6, which is questioned in this petition, and it is this petition which is questioned to be not maintainable by respondents No. 4 and 5. It is this situation, with which this Court is faced with.

6. The glaring aspects as emerging from the record are that, this petition is contested less on merits, more on maintainability, because respondents No. 4 and 5 are also very sure that they have little less to say on merits, because the say of the majority of the members of the Union about their credibility is already reflected in terms, by way of the results of the election, which is held pursuant to the directions of this Court. What is submitted by respondents No. 4 and 5 is that, this Court cannot entertain this petition, and the newly elected office bearers need to file election petition, etc. In the meantime, they, i.e. respondents No. 4 and 5, will continue to function as office bearers of the Union. On further scrutiny it is found that, the real cause for this contest is that, it is this year in which, the Union has to negotiate with the Management of the respondent Company for the wage revision, etc. The stakes involved in which, as claimed by all, is more than 100 crores of rupees. Further, such settlement is not on yearly basis. It comes after three to five years. If this aspect is kept in view, the picture which emerges is that, it is the insistence of the respondents No. 4 and 5, whose term has expired in September, 2012 as recorded in the judgment of this Court dated 23.12.2013 that, it is they and they alone, who should continue to function as the President and the General Secretary, until the negotiations with the Management of this financial stakes are concluded. Their say, in substance is

that, though they might have lost the confidence of the majority of the members of the Union, but let this petition be held to be not maintainable, and by the time, the elected President and General Secretary undertake the legal battle, that they were the members of the Union, respondents No. 4 and 5 may continue to function as the office bearers of the Union. It is this ingenuity, which this Court is not inclined to uphold. This Court further finds that, the effect of accepting the contention of respondents No. 4 and 5 about the maintainability of this petition, would result in miscarriage of justice, and would also frustrate the directions given by this Court in the earlier petition vide judgment dated 23.12.2013. For these reasons, the preliminary objection raised by respondents No. 4 and 5 about the maintainability of this petition, needs to be and is rejected.

7. It needs to be kept in view that, in a case where any respondent contests the petition on the ground of it being not maintainable, the Court should be very slow in entertaining that contention, if ultimately the acceptance thereof is to result in approving the ingenuity of the said respondent, or that it would result in frustrating the directions which are already given by the competent Court, which, in the facts of this case, is this Court.

8. Mr. K.M. Patel, learned Senior Advocate for respondents No. 4 and 5 has relied on the following decisions in support of his submissions:

- (i) State of Gujarat and Others Vs. Essar Oil Limited and Another, .
- (ii) Supreme Court Bar Association and Others Vs. B.D. Kaushik, .
- (iii) A.R. Antulay Vs. R.S. Nayak and Another, .
- (iv) Birad Mal Singhvi Vs. Anand Purohit, .
- (v) Kanubha Gulabsinh Parmar Vs. State of Gujarat, .
- (vi) R.K. Kathal Vs. Registrar, Trade Union and Others, .
- (vii) Borosil Glass Works Ltd. Employees Union Vs. D. D. Bambode and Others, .
- (viii) O.P. Gupta v. Union of India 2001 LLR 125.
- (ix) Special Civil Application No. 4779 of 2010, dated 27.4.2010 - Sanjay Rishanrao Suple v. State of Gujarat.

It is recorded that, though number of authorities, as quoted above, are cited by learned advocate for the respondents No. 4 and 5, to contest this petition on the ground of maintainability, none of the authorities deals with the situation, with which this Court is faced with, which is noted above, and therefore, none of the authorities will take the case of the respondents No. 4 and 5 any further.

9. It is further recorded that, once this petition is entertained, there is nothing to be adjudicated on merits. The election of the Union is held under the supervision of the Authorities of the Government, under the orders of this Court. The election result is placed on record by the Authorities of the Government. There is no

reason not to give effect to the said election result. Thus, this petition needs to be entertained and allowed. There are additional reasons to do so. They are as under.

10. So far the respondents No. 4 and 5 are concerned, except that, they were the office bearers of the Union, for the term which legally expired in the year 2012, beyond that they do not have any locus. Their vested interest, as briefly touched above, is evident from the further fact that, they could read what was written on the wall and therefore, the present elected office bearers were attacked on all counts. Their annual subscription was not accepted, and the said subscription, which is of about Rs. 100/- per annum, was forced to be sent through electronic payment, registered post, etc. and still it is claimed that they are not the members of the Union, since they had not paid the annual subscription. There is ample material on record to show that, since the subscription was not being accepted, those persons had moved the Government, and the Government had in turn, asked the explanation in that regard from the earlier office bearers (respondents No. 4 and 5), and what happened to that is not further coming on record. Thus, principally, the contest is that, since the presently elected President and General Secretary had not paid their annual subscription of Rs. 100/-, they are not the legal members of the Union and therefore, they could not be the voters, and therefore they could not have been elected as the President and the General Secretary. It is this fallacy, which this Court is not inclined to entertain.

11. The lack of bona fide of respondents No. 4 and 5 does not end there. Their Plan-B is-ready. It is alternatively submitted that these two persons, along with others, are already suspended by the earlier office bearers, from the primary membership. This Court could notice the change of stand of respondents No. 4 and 5 to suit their convenience, during the course of hearing, since they could not decide as to because they were suspended therefore their subscription was not accepted, or that if their non-payment of subscription does not work, then it is the alternative argument that though they might have paid the subscription, but since we (respondents No. 4 and 5) had suspended them, therefore they were not the members of the Union. So far the taking aid to the suspension of the said two persons is concerned, it needs to be rejected with serious criticism, since it is tainted with lack of bona fide of respondents No. 4 and 5 on more than one counts. Firstly, the cause to suspend them was that, since the office bearers were not holding election, they were making representations to various Authorities and thereby the reputation of the Union is tainted and therefore, it was necessary to suspend them from the membership of the Union. The Registrar of the Trade Unions, who is the competent Authority under the statute to check such malfunction, is conscious about its implications and it has already held long back that the said decision cannot be given effect to. The said decision of the Registrar of the Trade Unions is not challenged by the then office bearers. Further, the meeting in which, such a resolution is claimed to have been adopted/ was a non-quorum meeting, and in any case, such a meeting was convened by

the persons, who were not the legal office bearers, since their term had already expired in September, 2012. The Government Officer nominated by this Court vide judgment dated 23.12.2013 had, in terms, directed the present respondent No. 6-the Election Officer, not to act contrary to the instructions of the Registrar of the Trade Unions, so far the membership of the petitioners No. 1 and 7 are concerned, and inspite of that, the Election Officer has, in defiance of those instructions, refused to treat the petitioners as the members of the Union. Under these circumstances, the present petition came to be filed, to interfere in the action of the respondent No. 6, and this Court, in summer vacation, had granted protection in favour of the petitioners vide order dated 21.5.2014. The said order is passed after hearing the respondents, including the respondents No. 4 and 5, who appeared on caveat. Pursuant to the said order, with the inclusion of the petitioners, election came to be held as per the directions of this Court dated 23.12.2013, and the final result is that, the petitioners No. 7 and 1 are declared elected as the President and the General Secretary, respectively. Under these circumstances, at the stage of final hearing, this Court is faced with the situation, that, in the event, the action of respondent No. 6 is not interfered with, on the ground that let some other Authority look into it, ultimately, the ill-design of the out going office bearers will get approval of this Court, though they have lost the confidence of the majority of the members in the very election, which was held pursuant to the directions of this Court. The objection of respondents No. 4 and 5 is rejected, on these additional grounds as well.

12. From the above, it is very clear that respondents No. 4 and 5 have acted with complete lack of bona fide all throughout. Further, with due seriousness, it is recorded that, respondents No. 4 and 5 have also tried to portray the proceedings before this Court and outcome thereof with disrepute. Specific reference can be made to election pamphlet at page 162, in the canvassing on behalf of the out going office bearers against the present petitioners, who succeeded in the election. The said pamphlet reads that, the voters may keep in mind that the petitioners are in the fray of election pursuant to the interim directions of the High Court and until that case is concluded, which may take one to six years, ultimately it is the wage revision of the members of the Union, which will be obstructed. Let the myth of the outgoing office bearers that they will be able to drag the litigation for years, may be without succeeding, but surely without loosing on merits, be disillusioned. It is recorded that, inspite of the said warning, the results are not to their convenience. It is this election result, the implementation of which is contested to be not maintainable by respondents No. 4 and 5. Relegating the petitioners to any alternative remedy would ultimately prove the said election canvassing to be right which needs to be rejected and curbed with full force. Further, serious view could have been taken by this Court, and initiation of appropriate proceedings could also have been considered by this Court, however this Court has restrained from doing so.

13. The stand of the company is that, they cannot have any preference, with whom they will negotiate. Their case is that whosoever is legal representative of

the Union, they will negotiate with them. The stand of the Company does not need any mention beyond this.

14. It is recorded that, though number of authorities are cited by both the sides, since this petition is being decided in the peculiar facts as recorded above and since it is held to be in continuation of Special Civil Application No. 288 of 2013, this petition is held to be maintainable and therefore, those authorities are not discussed. As recorded above, on merits, there is hardly any dispute.

15. Considering the totality, this Court finds that, this petition needs to be entertained and allowed.

In the result, the following order is passed:

This petition is held to be maintainable and is entertained.

This petition is allowed.

The action of the respondent No. 6 impugned in this petition is held to be illegal and arbitrary and the same is quashed and set aside.

The action taken report as submitted by the Registrar of Trade Union-cum-Labour Commissioner, Gujarat State is accepted, along with election result report annexed therewith.

The election result as pronounced by the Chief Election Officer on 3.6.2014 and as submitted to the Deputy Labour Commissioner, Gandhinagar on 3.6.2014, wherein the petitioner No. 1 is declared elected as the General Secretary and petitioner No. 7 is declared elected as the President of the Electricity Mazdoor Sabha, in the election held on 2.6.2014, is accepted and is directed to be given effect to.

Respondents No. 4 and 5 are found to be guilty of lack of bona fide all throughout and also found to have attempted, to some extent, to obstruct the administration of justice, but this Court has restrained itself from initiating any proceedings against them.

Rule is made absolute. No order as to costs.

After this judgment is pronounced, Mr. D.G. Shukla, learned advocate for the respondents No. 4 and 5 has requested that this judgment be stayed for sometime to enable them to challenge the same, if so advised, before the higher forum.

Considering the totality and also the fact that this Court has found the respondents No. 4 and 5 to be guilty of lack of bona fide throughout, and further that, they have also attempted to obstruct the administration of justice, request made on their behalf, needs to be and is rejected.