
(2002) 05 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2289 of 2002

Jaspal Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 57

Citation : (2003) 2 MPLJ 48

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; S.K. Gangele for Respondent Nos. 1 and 2, A.G. Dhande for Respondent No. 3 and V.C. Jain, for the Respondent

Judgement

Arun Mishra, J.

Petitioners, who are the members of the Works Committee GE(P) Factory, Khamaria, Jabalpur, assail the order passed by Govt. of India, Ministry of Labour as contained in Annexure P. 4 on 16-4-2002 dissolving Works Committee on the ground that it was not constituted as per the provisions of the Industrial Disputes Act, 1947 and Industrial Disputes (Central) Rules, 1957.

The relevant facts giving rise to the writ petition indicate that elections of Works Committee were scheduled to be held as per the election programme Annexure P. 1 notified by respondent No. 2, Executive Engineer, GE (P) Factory, Khamaria, Jabalpur. Notice of election was published on 29-6-2000. The last date for filing nomination was 5-7-2000 upto 1500 hrs. Scrutiny was to take place on 6-7-2000 up to 11.30 hrs. Date of withdrawal of nomination was 8-7-2000 up to 11.30 hrs. Symbols were to be allotted on 8-7-2000 upto 14.00 hrs. The date of election fixed was 13-7-2000 from 9.00 hrs to 15.00 hrs. Counting of votes and declaration of results was to be held on 13-7-2000 immediately after 15.00 hrs. The Returning Officer received letter dated 12-7-2000 issued by GE (P) Fys. Khamaria whereby it was intimated that elections were postponed till further orders. Certain points were raised by respondent No. 3 MES Kamgar Union,

Branch Khamaria, Jabalpur, with respect to election to the Works Committee, the same were clarified and polling date had been re-fixed on 6-10-2000 vide letter dated 29-9-2000 Annexure P. 3.

The election to the Works Committee was held on 6-10-2000 but the result of election was stayed as per the direction of this Court vide order dated 4-10-2000 Annexure P. 4 in W.P. No. 5720/2000 which came to be decided as per order Annexure P. 5 on 30-11-2000. It was directed that parties can raise dispute under Rule 57 of Industrial Disputes (Central) Rules, 1957. This Court without expressing any opinion directed the petitioner that after the committee is constituted, the petitioner may take appropriate steps for dissolution of the Works Committee under Rule 57 of the Rules and the competent authority was directed to decide the controversy within two months from the date of its presentation.

It appears that respondent No. 3, MES Kamgar Union preferred petition for dissolution of the Works Committee before the Central Govt., competent authority under Rule 57. Notice was issued to respondent No. 3 MES Kamgar Union by Ministry of Labour, Govt. of India, Annexure P. 7, copy of which was endorsed to Garrison Engineer, MES, Jabalpur and also to Under Secretary, Ministry of Defence, New Delhi and they were requested to attend the hearing on 13-3-2002 at 3.00 p.m. Pursuant thereto petitioner No. 1 Jaspal Singh, one of the member and also holding the office of "Vice Chairman of Works Committee" as described in petition and petitioner No. 2 Vijay Kumar Batra, one of the member and as described in the petition "Secretary of Works Committee" attended the meeting. Respondent No. 3 MES Kamgar Union and respondent No. 4 were also heard while passing the impugned order Annexure P. 10 on 16-4-2002.

The petitioners assail the order on the ground that the same is in the violation of principles of natural justice. There was no notice issued to the Works Committee in any manner. The notice was issued to respondent No. 3 MES Kamgar Union. Petitioners No. 1 and 2 came to know of it and they attended the meeting. Each and every members of the Works Committee was required to be issued a separate notice. The order passed by the Central Govt. is also assailed on the ground that non-compliance of Rule 46. Petitioner seeks issue of writ of certiorari for quashing dated 16-4-2002 Annexure P. 10 as void, illegal and opposed to law as also violative of principles of natural justice.

In the return filed by respondent No. 2 which has been adopted by respondent No. 1 also, it has been contended that elections were postponed due to administrative reasons. The elections were held on 6-10-2000. The results of the election could not be declared because respondent No. 3 MES Kamgar Union filed a writ petition No. 5720/2000 and the results of the election were stayed and finally the petition was disposed of, hence the results were declared. The respondent No. 3 raised dispute before the Govt. under Rule 57 of the Industrial Disputes (Central) Rules, 1957. The petitioners are the members of the Union

namely "MES Khamaria Employees Union". The petitioners No. 1 and 2 participated in the proceedings before the "competent authority" and then the impugned order has been passed. The petitioners No. 1 and 2 were given the movement orders and they have also received requisite receipts from the management. The petitioners No. 3, 4 and 5 had the knowledge and information of the said proceedings. At no point of time they submitted any representation to the authorities, although their leaders were heard and they also participated in the proceedings. Thus, the submission raised by the petitioner of violation of principles of natural justice is devoid of substance.

Respondent No. 3, "M.E.S. Kamgar Union" in its return inter alia contends that there was violation of Rule 46(2) of the Rules. The elections notification was issued on 29-6-2000. The last date of receiving nominations was 5-7-2000 upto 1500 hours. As per rule 46(2) the elections were required to be held after 3 days from the last date of submission of nominations and before 15 days after closing the date for receiving the nominations. Rule 46(2) is as under:

46(2) For holding the election, the employees, shall fix a date which shall not be earlier than 3 days and later than 15 days after the closing date for receiving nomination.

Thus, the elections ought to have been conducted between 8th July, 2000 to 20th July, 2000. Accordingly the elections were rightly declared earlier as per Annexure P. 1 for 13th July, 2000. However, for whatever reason the election on the said date was postponed. The Chief Engineer issued a letter dated 20-9-2000 Annexure R/3-4 whereby the "GE (P) Fy Khamariya" area is renamed as "GE(P) Fy. Jabalpur" w.e.f. 1st October, 2000. The clause (q) of the letter dated 20-9-2000 shows that all industrial personnel presently under "GE (P) Fy. Jabalpur", on closing down are transferred to "GE (P) Fy., Khamariya" which is renamed as "GE(P) Fy., Jabalpur". It is learnt that about 80 workmen are transferred pursuant to this arrangement to "GE (P) Fy., Jabalpur". Obviously, names of these 80 workmen are not in the voter list earlier prepared by the respondent No. 6 for the Works Committee in question. Because of reorganisation of the department, the "GE (P) Fy., Khamariya" itself does not exist after 1-10-2000 new reorganised unit namely "GE (P) Fy., Jabalpur" came into existence w.e.f. 1-10-2000 and all its employees became entitled to participate in works committee election. Accordingly the said 80 workmen who are transferred to the Reorganised unit are also entitled to get their names included in the voter list contesting the works committee election in question. Accordingly the respondent No. 6 cannot be permitted to act on the voter list followed by nominations of erstwhile unit of "GE (P) Fy. Khamariya" which came to an end on 30-9-2000. Without doing the said exercise, the respondent No. 6 has no authority, jurisdiction and competence to conduct an election. The election on 6-10-2000 is liable to be set aside on this score alone. Respondent No. 4, M.E.S. Employees Union in its return supports the petitioner and submits that no notice was issued and it has been unnecessarily employed respondent

No. 4 to the petitioner.

Shri R.K. Gupta, learned counsel for the petitioners, submits that order passed by the Central Govt. Annexure P. 10 is illegal, bad in law and violative of principles of natural justice and it has not been made clear that which provision of the Act or of the Rules has been violated. The order is not speaking one and mind has not been applied to the fact that actual transfer of the employees took place after one year of the re-constitution of GE (P) Fy. Jabalpur in question. This aspect has not been taken into consideration as also the communication made by respondents No. 1 and 2 pointing out that no change was required to be made in the voter list and process could validly start from the stage of allotment. It has been mentioned in Annexure P. 8 that it would be seen that procedure laid down in Industrial Disputes Rules, 1957 has correctly been followed by GE (P) Fys Khamaria at all times. At no stage notice of election issued by this office as referred in Annexure "A" has been cancelled. Process of election had only been postponed due to certain reasons and as directed by higher HQ. So, there had been no necessity to call for fresh nominations and to issue the Voter's list again. There had been no change in the list issued earlier. Thus there is no violation of Industrial Disputes Rules at any stage.

Shri S.K. Gangele, learned counsel for respondents No. 1 and 2 and Shri A.G. Dhande, learned senior counsel for respondent No. 3 support the order passed by the Central Govt. and submit that once constitution of GE (P) Fy Jabalpur was changed and Rule 46 was violated the order passed by the Govt. of India calls for no interference and entire election procedure ought to have been conducted afresh.

Shri V.C. Jain, learned counsel for respondent No. 4 MES Employees Union, supports the plea taken by the petitioner.

The first question for consideration is whether there was substantial notice to the petitioners. It has been clearly mentioned in letter Annexure P. 7 dated 10-1-2002 issued by Deputy Secretary to the Govt. of India to the General Secretary, MES Kamgar Union, M.P. area, Jabalpur regarding dissolution of Works Committee in the establishment of MES. It has, therefore, been decided to fix a hearing in this case at 3.00 p.m. on 13th March, 2002 in the Chamber of Smt. Padma Balasubramanian, Joint Secretary, Ministry of Labour, Room No. 105, first floor, Shram Shakti Bhavan, New Delhi. The General Secretary was, therefore, requested to make it convenient to attend the hearing on the scheduled date and time.

The Garrison Engineer was specifically asked to inform the petitioner and all interested parties of date of hearing. The petitioners No. 1 and 2 had received movement order and actually attended the hearing. It has been stated by respondent No. 2 in the return that all petitioners were informed. Thus, when hearing was attended by two out of five members, there is nothing to disbelieve the version that petitioners were informed by respondent No. 2 of the date of

hearing.

The second question for consideration is about the violation of Rule 46 of the Rules and the prejudice caused if any to the parties by such violation and whether on the date on which the election was held on 6-10-2000 members were inducted or came on transfer. The order Annexure P. 4 dated 16-4-2002 passed by the Govt. of India is quoted below:

The General Secretary, MES Kamgar Union, M.P. Area, Jabalpur has submitted a representation to the Govt. of India, Ministry of Labour, regarding illegality in formation of works committee in the GE (P) Fys., MES, P.O. Khamaria, Jabalpur, under the Industrial Disputes (Central) Rules, 1957. Representative of management and representatives of MES Kamgar Union, MP area, Jabalpur and MES Employees Union, Jabalpur, were heard on 13th March, 2002 by me.

The management had issued notice for formation of works committee on 29-6-2000 in which it was mentioned that last date of filing nomination was 5th July, 2000 and the date of election was fixed on 13th July, 2000. Subsequently, the management postponed the works committee election vide their order dated 12th July, 2000. Thereafter, works committee elections were held on 6th October, 2000 violating the Rule 46 of Industrial Disputes (Central) Rules, 1957.

In the light of the facts and circumstances mentioned above, the works committee elections notified on 29-6-2000 and held on 6-10-2000 were not conducted as per the provisions of Industrial Disputes Act and Industrial Disputes (Central) Rules, 1957. Hence, the works committee constituted in the establishment of GE (P) Fys., MES, P.O. Khamaria, Jabalpur on 6-10-2000 is hereby dissolved.

In my opinion, simple fact that date of election was postponed beyond a date as provided in the rule 46 is not enough to invalidate the fresh election held on postponement. In *Bhulin Dewangan vs. State of M.P.* 2001(2) MPLJ (FB) 372, a full Bench of this Court in the context of Panchayat Act held that every non compliance of a provision is not enough to render the act as illegal and act done may be valid in para 15 this Court held that:

The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. The appears to be the reason for learned C.K. Prasad J. in *Dhumadandhin Vs. State of Madhya Pradesh and Others*, : 1997 (1) Vidhi Bhasvar 49 which was followed by R.S. Garg, J., in *Mahaveer Saket Vs. Collector and Others*, for holding that mere non-compliance of first part of the rule in fixing a meeting beyond the prescribed days of the motion of no confidence would not invalidate the whole proceedings.

In my opinion, the order Annexure P. 10 cannot be allowed to stand as the order does not deal with elaborately with the prejudice caused to the parties whether any change in the list of voters took place as on 6-10-2000 on which date the elections were held, whether the stand taken by respondent No. 2 in Annexure P. 8 of 18th March, 2002. Para (f), is proper and no prejudice was caused by postponement of election.

Thus, the impugned order Annexure P. 10 is quashed by issue of writ of certiorari. Parties agree to appear before the respondent No. 1 on 10-6-2002. No fresh notice is required to be issued by respondent No. 1 as the date has been fixed in presence of the counsel for the parties. Let the matter be heard and decided expeditiously within a period of one month thereafter. In the facts and circumstances of the case, no order as to costs.